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2022 RELEASE UNDER THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS ACT OF 1992

S. 3006

One Hundred Second Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, one thousand nine hundred and ninety-two

An Act

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "President John F. Kennedy Assassination Records Collection Act of 1992".

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

(2) all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

(5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

(6) legislation is necessary because Executive Order No. 12356, entitled "National Security Information" has eliminated the declassification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

(7) most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

14-00000

SEC. 3. DEFINITIONS.

In this Act:

(1) "Archivist" means the Archivist of the United States.

(2) "Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of—

(A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission");

(B) the Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission");

(C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee");

(D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives;

(E) the Select Committee on Assassinations (the "House Assassinations Committee") of the House of Representatives;

(F) the Library of Congress;

(G) the National Archives and Records Administration;

(H) any Presidential library;

(I) any Executive agency;

(J) any independent agency;

(K) any other office of the Federal Government; and

(L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy,

but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records.

(3) "Collection" means the President John F. Kennedy Assassination Records Collection established under section 4.

(4) "Executive agency" means an Executive agency as defined in subsection 552(f) of title 5, United States Code, and includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President, or any independent regulatory agency.

(5) "Government office" means any office of the Federal Government that has possession or control of assassination records, including—

(A) the House Committee on Administration with regard to the Select Committee on Assassinations of the records of the House of Representatives;

(B) the Select Committee on Intelligence of the Senate with regard to records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and other assassination records;

(C) the Library of Congress;

(D) the National Archives as custodian of assassination records that it has obtained or possesses, including the Commission to Investigate the Assassination of President

14-00000

John F. Kennedy and the Commission on Central Intelligence Agency Activities in the United States; and

(E) any other executive branch office or agency, and any independent agency.

(6) "Identification aid" means the written description prepared for each record as required in section 4.

(7) "National Archives" means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

(8) "Official investigation" means the reviews of the assassination of President John F. Kennedy conducted by any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

(9) "Originating body" means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

(10) "Public interest" means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy.

(11) "Record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(12) "Review Board" means the Assassination Records Review Board established by section 7.

(13) "Third agency" means a Government agency that originated an assassination record that is in the possession of another agency.

SEC. 4. PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) IN GENERAL.—(1) Not later than 60 days after the date of enactment of this Act, the National Archives and Records Administration shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the assassination of President John F. Kennedy, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The Archivist shall prepare and publish a subject guidebook and index to the collection.

(2) The Collection shall include—

(A) all assassination records—

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act;

(ii) that are required to be transmitted to the National Archives; or

14-00000

(iii) the disclosure of which is postponed under this Act;

(B) a central directory comprised of identification aids created for each record transmitted to the Archivist under section 5; and

(C) all Review Board records as required by this Act.

(b) DISCLOSURE OF RECORDS.—All assassination records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the National Archives within 30 days after their transmission to the National Archives.

(c) FEES FOR COPYING.—The Archivist shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

(d) ADDITIONAL REQUIREMENTS.—(1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives using appropriations authorized, specified, and restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Information Security Oversight Office, shall ensure the security of the postponed assassination records in the Collection.

(e) OVERSIGHT.—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the Collection.

SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF ASSASSINATION RECORDS BY GOVERNMENT OFFICES.

(a) IN GENERAL.—(1) As soon as practicable after the date of enactment of this Act, each Government office shall identify and organize its records relating to the assassination of President John F. Kennedy and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) No assassination record shall be destroyed, altered, or mutilated in any way.

(3) No assassination record made available or disclosed to the public prior to the date of enactment of this Act may be withheld, redacted, postponed for public disclosure, or reclassified.

(4) No assassination record created by a person or entity outside government (excluding names or identities consistent with the requirements of section 6) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) CUSTODY OF ASSASSINATION RECORDS PENDING REVIEW.—During the review by Government offices and pending review activity by the Review Board, each Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review;

(2) transfer is necessary for an administrative hearing or other Review Board function; or

(3) it is a third agency record described in subsection (c)(2)(C).

14-00000

(c) REVIEW.—(1) Not later than 300 days after the date of enactment of this Act, each Government office shall review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist.

(2) In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are assassination records;

(B) determine which of its assassination records have been officially disclosed or publicly available in a complete and unredacted form;

(C)(i) determine which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office; and

(ii) transmit to a third agency or other Government office those records, or particular information contained in those records, or complete and accurate copies thereof;.

(D)(i) determine whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Review Board all assassination records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by this Act;

(G) give priority to—

(i) the identification, review, and transmission of all assassination records publicly available or disclosed as of the date of enactment of this Act in a redacted or edited form; and

(ii) the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of assassination records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) IDENTIFICATION AIDS.—(1)(A) Not later than 45 days after the date of enactment of this Act, the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid for use with each assassination record subject to review under this Act.

14-00000

(B) The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system of electronic records by Government offices that are compatible with each other.

(2) Upon completion of an identification aid, a Government office shall—

(A) attach a printed copy to the record it describes;

(B) transmit to the Review Board a printed copy; and

(C) attach a printed copy to each assassination record it describes when it is transmitted to the Archivist.

(3) Assassination records which are in the possession of the National Archives on the date of enactment of this Act, and which have been publicly available in their entirety without redaction, shall be made available in the Collection without any additional review by the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) TRANSMISSION TO THE NATIONAL ARCHIVES.—Each Government office shall—

(1) transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement by the Review Board or upon completion of other action authorized by this Act, all assassination records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) CUSTODY OF POSTPONED ASSASSINATION RECORDS.—An assassination record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required in section 4(e)(2).

(g) PERIODIC REVIEW OF POSTPONED ASSASSINATION RECORDS.—(1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).

(2)(A) A periodic review shall address the public disclosure of additional assassination records in the Collection under the standards of this Act.

(B) All postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed assassination records shall serve to downgrade and declassify security classified information.

(D) Each assassination record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25 years after the date of enactment of this Act, unless the President certifies, as required by this Act, that—

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

14-00000

(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) FEES FOR COPYING.—Executive branch agencies shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

SEC. 7. ESTABLISHMENT AND POWERS OF THE ASSASSINATION RECORDS REVIEW BOARD.

(a) ESTABLISHMENT.—There is established as an independent agency a board to be known as the Assassinations Records Review Board.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political

14-00000

affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Government records related to the assassination of President John F. Kennedy.

(2) The President shall make nominations to the Review Board not later than 90 calendar days after the date of enactment of this Act.

(3) If the Senate votes not to confirm a nomination to the Review Board, the President shall make an additional nomination not later than 30 days thereafter.

(4)(A) The President shall make nominations to the Review Board after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

(B) If an organization described in subparagraph (A) does not recommend at least 2 nominees meeting the qualifications stated in paragraph (5) by the date that is 45 days after the date of enactment of this Act, the President shall consider for nomination the persons recommended by the other organizations described in subparagraph (A).

(C) The President may request an organization described in subparagraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board—

(A) shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and none of whom shall have had any previous involvement with any official investigation or inquiry conducted by a Federal, State, or local government, relating to the assassination of President John F. Kennedy;

(B) shall be distinguished persons of high national professional reputation in their respective fields who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ensuring and facilitating the review, transmission to the public, and public disclosure of records related to the assassination of President John F. Kennedy and who possess an appreciation of the value of such material to the public, scholars, and government; and

(C) shall include at least 1 professional historian and 1 attorney.

(c) SECURITY CLEARANCES.—(1) All Review Board nominees shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(2) All nominees shall qualify for the necessary security clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate.

(d) CONFIRMATION HEARINGS.—(1) The Committee on Governmental Affairs of the Senate shall hold confirmation hearings within 30 days in which the Senate is in session after the nomination of 3 Review Board members.

(2) The Committee on Governmental Affairs shall vote on the nominations within 14 days in which the Senate is in session after the confirmation hearings, and shall report its results to the full Senate immediately.

14-00000

(3) The Senate shall vote on each nominee to confirm or reject within 14 days in which the Senate is in session after reported by the Committee on Governmental Affairs.

(e) VACANCY.—A vacancy on the Review Board shall be filled in the same manner as specified for original appointment within 30 days of the occurrence of the vacancy.

(f) CHAIRPERSON.—The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) REMOVAL OF REVIEW BOARD MEMBER.—(1) No member of the Review Board shall be removed from office, other than—

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties. .

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) The member may be reinstated or granted other appropriate relief by order of the court.

(h) COMPENSATION OF MEMBERS.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) DUTIES OF THE REVIEW BOARD.—(1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions—

(A) whether a record constitutes an assassination record; and

(B) whether an assassination record or particular information in a record qualifies for postponement of disclosure under this Act.

14-00000

(j) POWERS.—(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to—

(A) direct Government offices to complete identification aids and organize assassination records;

(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent;

(C)(i) obtain access to assassination records that have been identified and organized by a Government office;

(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and

(iii) request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;

(D) require any Government office to account in writing for the destruction of any records relating to the assassination of President John F. Kennedy;

(E) receive information from the public regarding the identification and public disclosure of assassination records; and

(F) hold hearings, administer oaths, and subpoena witnesses and documents.

(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

(k) WITNESS IMMUNITY.—The Review Board shall be considered to be an agency of the United States for purposes of section 6001 of title 18, United States Code.

(l) OVERSIGHT.—(1) The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board and the disposition of postponed records after termination of the Review Board, and shall have access to any records held or created by the Review Board.

(2) The Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(m) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

(n) INTERPRETIVE REGULATIONS.—The Review Board may issue interpretive regulations.

(o) TERMINATION AND WINDING UP.—(1) The Review Board and the terms of its members shall terminate not later than 2 years after the date of enactment of this Act, except that the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within that 2-year period.

(2) Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate

14-00000

accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

SEC. 8. ASSASSINATION RECORDS REVIEW BOARD PERSONNEL.

(a) EXECUTIVE DIRECTOR.—(1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall—

(A) serve as principal liaison to Government offices;

(B) be responsible for the administration and coordination of the Review Board's review of records;

(C) be responsible for the administration of all official activities conducted by the Review Board; and

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) STAFF.—(1) The Review Board may, in accordance with the civil service laws but without regard to civil service law and regulation for competitive service as defined in subchapter 1, chapter 33 of title 5, United States Code, appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform its duties.

(2) A person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate for the staff shall qualify for the necessary security clearance prior to being approved by the Review Board.

(c) COMPENSATION.—The Review Board shall fix the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed

14-00000

the rate payable for level V of the Executive Schedule under section 5316 of that title.

(d) ADVISORY COMMITTEES.—(1) The Review Board shall have the authority to create advisory committees to assist in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 9. REVIEW OF RECORDS BY THE ASSASSINATION RECORDS REVIEW BOARD.

(a) CUSTODY OF RECORDS REVIEWED BY BOARD.—Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) STARTUP REQUIREMENTS.—The Review Board shall—

(1) not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register; and

(2) not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act.

(c) DETERMINATIONS OF THE REVIEW BOARD.—(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not an assassination record; or

(B) a Government record or particular information within an assassination record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an assassination record, the Review Board shall seek to—

(A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and

(B) determine, in consultation with the originating body and consistent with the standards for postponement under this Act, which of the following alternative forms of disclosure shall be made by the originating body:

(i) Any reasonably segregable particular information in an assassination record.

(ii) A substitute record for that information which is postponed.

(iii) A summary of an assassination record.

(3) With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing—

(A) a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings

14-00000

conducted by the Review Board with regard to specific assassination records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

(d) PRESIDENTIAL AUTHORITY OVER REVIEW BOARD DETERMINATION.—

(1) PUBLIC DISCLOSURE OR POSTPONEMENT OF DISCLOSURE.—After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, or of any information contained in an assassination record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

(2) PERIODIC REVIEW.—Any executive branch assassination record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4.

(3) RECORD OF PRESIDENTIAL POSTPONEMENT.—The Review Board shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records.

(e) NOTICE TO PUBLIC.—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the Review Board or initiated by the President, the House of Representatives, or the Senate, including a description

14-00000

of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.

(f) REPORTS BY THE REVIEW BOARD.—(1) The Review Board shall report its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity.

(2) The first report shall be issued on the date that is 1 year after the date of enactment of this Act, and subsequent reports every 12 months thereafter until termination of the Review Board.

(3) A report under paragraph (1) shall include the following information:

(A) A financial report of the expenses for all official activities and requirements of the Review Board and its personnel.

(B) The progress made on review, transmission to the Archivist, and public disclosure of assassination records.

(C) The estimated time and volume of assassination records involved in the completion of the Review Board's performance under this Act.

(D) Any special problems, including requests and the level of cooperation of Government offices, with regard to the ability of the Review Board to operate as required by this Act.

(E) A record of review activities, including a record of postponement decisions by the Review Board or other related actions authorized by this Act, and a record of the volume of records reviewed and postponed.

(F) Suggestions and requests to Congress for additional legislative authority needs.

(G) An appendix containing copies of reports of postponed records to the Archivist required under section 9(c)(3) made since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—

(1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board

14-00000

determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glaynoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

(c) JUDICIAL REVIEW.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.

(d) EXISTING AUTHORITY.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—To the extent that any provision of this Act establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 12. TERMINATION OF EFFECT OF ACT.

(a) PROVISIONS PERTAINING TO THE REVIEW BOARD.—The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).

(b) OTHER PROVISIONS.—The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

(b) INTERIM FUNDING.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Act.

SEC. 14. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

Speaker of the House of Representatives pro tempore

~~Vice President of the United States and~~ President of the Senate pro tempore

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I certify that this Act originated in the Senate.

Walter J. Stewart

Secretary.

14-00000

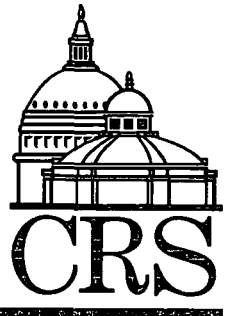
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CRS Report for Congress

President John F. Kennedy Assassination Records Disclosure: An Overview

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Government Division

March 3, 1993



Congressional Research Service • The Library of Congress

14-00000

CONTENTS

A PRESIDENTIAL ASSASSINATION 2

OFFICIAL INVESTIGATIONS 3

RECORDS ACCESS BARRIERS 9

CREATING A NEW PROCEDURE 13

STATUTE OVERVIEW 17

IMPLEMENTATION 21

SELECT BIBLIOGRAPHY 23

14-00000

PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS DISCLOSURE: AN OVERVIEW

SUMMARY

The assassination of President John F. Kennedy in Dallas, Texas, on November 22, 1963, resulted in various investigations of the incident and surrounding circumstances by Federal, State, and local authorities as well as some special inquiry bodies, such as the Presidentially-appointed commission chaired by Chief Justice Earl Warren. Later, other official entities, such as the House Select Committee on Assassinations, probed the assassination anew. From all of these investigations and examinations there resulted a cache of data, records, files, and, in some instances, electronic and multi-media material. Access to these holdings was sought by various elements of the public for a multiplicity of reasons. Over time, some unpublished documents were disclosed. Other holdings, however, for reasons of security classification, law enforcement investigation, and personal privacy, remained officially sequestered. In 1991, a filmed dramatization of President Kennedy's assassination heightened public interest in the tragedy and explanations of its occurrence. Various conspiracy theories, contentions, and unsubstantiated stories about the event have arisen during the past 30 years. Because these were troubling to many Americans, Congress legislated procedures and conditions for the independent review and expeditious disclosure of heretofore unreleased official records relevant to the assassination of President Kennedy. This was accomplished with the President John F. Kennedy Assassination Records Collection Act of 1992 which established a review board to examine all relevant materials with a view to their public disclosure and maintenance at the National Archives and Records Administration for public examination.

14-00000

PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS DISCLOSURE: AN OVERVIEW

The tragic loss of President John F. Kennedy in a Dallas, Texas, assassination on November 22, 1963, resulted in various investigations of the incident and surrounding circumstances by Federal, State, and local authorities. Some special inquiry bodies, such as the Presidentially-appointed commission chaired by Chief Justice Earl Warren also conducted inquiries. In subsequent years, as some law enforcement agencies continued their investigations of the case, other official entities probed the assassination anew. For some, such as the House Select Committee on Assassinations, initially mandated in 1976, the assassination was a major aspect of the panel's fact-finding mission. For others, such as the Commission to Investigate CIA Activities Within the United States, created in 1975, the assassination was tangentially related to or only a part of their focus. From all of these investigations and examinations there resulted a cache of data, records, files, and a small quantity of electronic and multi-media material. Access to these holdings was sought by various elements of the public for a multiplicity of reasons. Over time, some unpublished documents were disclosed. Almost all of the Warren Commission records, for example, have been released. Other holdings, however, for reasons of security classification, law enforcement investigation, and personal privacy, remained officially sequestered.

A 1991 filmed dramatization of President Kennedy's assassination and surrounding circumstances heightened public interest in the tragedy and explanations of its occurrence. Subsequently, former President Gerald Ford, the only surviving member of the Warren Commission, publicly asked leaders of the House of Representatives to seek release of all records concerning the assassination.[1] Furthermore, various conspiracy theories, contentions, and unsubstantiated stories about the event and those involved in its perpetration, which had arisen during the past 30 years, were troubling to many Americans.[2] In response, Congress legislated procedures and conditions for the independent review and expeditious disclosure of heretofore unreleased official records relevant to the assassination of President Kennedy. The vehicle for these arrangements was the President John F. Kennedy Assassination Records Collection Act of 1992.[3]

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[1] George Lardner, Jr. Ford Urges House Leaders to Seek Release Of All Records on Kennedy Assassination. *Washington Post*, January 30, 1992, p. A12.

[2] See U. S. Library of Congress. Congressional Research Service. *The Assassination of President John F. Kennedy: Conspiracy Theories* by Suzanne Cavanagh. CRS Report 92-270 GOV. March 10, 1992.

[3] 106 Stat. 3443.

14-00000

A PRESIDENTIAL ASSASSINATION

The thirty-fifth President of the United States, John Fitzgerald Kennedy, was shot at approximately 12:30 p.m. on November 22, 1963, while riding in a motorcade through Dealey Plaza in downtown Dallas, Texas. President Kennedy was fatally wounded; Texas Governor John Connally, riding in the same open automobile with the President, Mrs. Kennedy, and his own wife, was injured. Doctors at Parkland Memorial Hospital, to which the wounded President was rushed, quickly discovered he had suffered a massive wound in the rear portion of his head. Shortly thereafter, at 1:00 p.m. (C.S.T), after all heart activity had ceased and the Last Rites of the Roman Catholic Church were administered by a priest, John F. Kennedy was pronounced dead and his demise was reported by the news media. Most Americans near or at adult age on that historic and tragic day would forever remember their personal circumstances at the time of learning about the President's assassination.

Vice President Lyndon B. Johnson and his wife were accompanying President and Mrs. Kennedy on their Dallas visit. At Parkland, the Vice President was informed of the President's death. Thereafter, he left the hospital under close guard, and proceeded to the Presidential aircraft, Air Force One, located at Love Field. On the plane, Lyndon Johnson took the Presidential oath at 2:38 p.m. (C.S.T.). The aircraft soon departed for Washington, D. C., with Mrs. Kennedy and the body of the late President aboard.

Air Force One arrived at Andrews Air Force Base outside of Washington at 5:58 p.m. (E.S.T.) and President Kennedy's body was transported to the National Naval Medical Center in nearby Bethesda, Maryland, where an autopsy was performed. The following day, the President's body lay in state in the East Room of the White House. The casket was moved the next day, a Sunday, to the Capitol where an estimated 300,000 people passed through the Rotunda in tribute to the fallen Chief Executive. On Monday, in a procession with full honors, the President's body was moved to Saint Matthew's Roman Catholic Cathedral for a Pontifical Requiem Mass, and then to Arlington National Cemetery for burial.

Meanwhile, on the day of the President's assassination, Dallas Police arrested a suspect in the killing, Lee Harvey Oswald, who was also a suspect in the shooting of a patrolman. When questioned by Dallas officers as well as agents of the Federal Bureau of Investigation and the United States Secret Service, Oswald denied having anything to do with the murder of President Kennedy or the Dallas policeman. He was subsequently advised formally at 7:10 p.m. on November 22 that he was charged with the slaying of the patrolman. Several hours later, shortly after 1:30 a.m. on the following day, Oswald was also charged with assassinating President Kennedy. The next day, Sunday, as Oswald was being transferred from the city jail to an armored truck which was to transport him to the Dallas County Jail, he was suddenly shot by an assailant at approximately 11:20 a.m., in the glaring light of television news cameras. He quickly lost consciousness, was rushed to Parkland Memorial Hospital, and was pronounced dead at 1:07 p.m.

14-00000

Oswald's assassin was Jack Ruby, a local nightclub operator. Arrested at the scene and jailed by Dallas police, Ruby told interrogators that he had killed Oswald in a temporary fit of depression and rage over President Kennedy's death. He denied having any prior connection with Oswald or any involvement in the President's killing. Indicted by the State of Texas for Oswald's murder on November 26, 1963, Ruby was found guilty on March 14, 1964, and was sentenced to death. On appeal, the verdict was reversed and a new trial was ordered by the Texas Court of Criminal Appeals on October 5, 1966. However, while awaiting retrial, Jack Ruby died of cancer at Parkland Memorial Hospital on January 3, 1967.

OFFICIAL INVESTIGATIONS

The assassination of President Kennedy was investigated or examined immediately by Texas police authorities as well as the Federal Bureau of Investigation and the United States Secret Service, and, subsequently, other Federal entities. A special study commission, chaired by Chief Justice Earl Warren, was impaneled by President Johnson with a directive, E.O. 11130 of November 30, 1963.[4] At least one other such body—the Commission to Investigate CIA Activities Within the United States, chaired by Vice President Nelson Rockefeller and established with E.O. 11828 of January 4, 1975[5]—also explored aspects of the Kennedy assassination. Between 1975 and 1978, two special congressional committees—the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, which was chaired by Senator Frank Church, and the House Select Committee on Assassinations, which was principally chaired by Representative Louis Stokes—also reviewed the Kennedy assassination.

The various investigations, examinations, and reviews of the assassination of President Kennedy resulted in the production and collection of a vast quantity of records and evidentiary materials by Federal entities. The Warren Commission, for example, generated its own original records and received pertinent materials from Federal agencies, such as the F.B.I. The Commission's research, records, and evidence were later reviewed by the House Select Committee on Assassinations, which itself generated original records and received additional material from other official and unofficial sources. Consequently, due to the manner and timeframes in which Federal inquiries into and reviews of President Kennedy's assassination were conducted, most collections of records on the matter held by Federal entities contained documentary materials that were produced by sources other than themselves. In brief, there were Federal records that were shared on both an inter- and intra-branch basis.

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[4] 3 C.F.R., 1959-1963 Comp., p. 795.

[5] 3 C.F.R., 1971-1975 Comp., pp. 933-934.

14-00000

According to material supplementing congressional testimony by the Archivist of the United States,[6] and other sources,[7] the following collections of Federal records pertaining to the assassination of President Kennedy existed at the time a subcommittee of the House Committee on the Judiciary was considering proposed legislation providing for the expeditious disclosure of records relevant to the Kennedy assassination.

Federal Bureau of Investigation. The F.B.I. holdings include 499,431 pages of pertinent documents, 223,689 pages of which have been made available to the public. During congressional testimony in May of 1992, the Bureau's Deputy Director indicated that a special task force had been created a few weeks earlier to expedite greater disclosure of records relating to the assassination.[8] He also provided the following breakdown of F.B.I. records "relating in some way to the assassination."

> 1. The FBI has four "core files" that relate directly to the investigation of the assassination, our cooperation with the Warren Commission, and the investigations of Lee Harvey Oswald and Jack Ruby. There are approximately 499,000 pages in these files. Because of the very liberal standards used for processing these documents, most of the information in these files was released pursuant to the Freedom of Information Act in 1978 and is available in the FBI's public reading room. . . .
>
> 2. In addition, the FBI has several other much smaller files as a result of other related investigations such as the investigation of Marina Oswald [the wife of Lee Harvey Oswald]. These files comprise approximately 22,000 pages. . . . (M)uch of this information has already been released to the public.[9]

United States Secret Service. The Secret Service collection consists of approximately 11,000 pages of records, as well as several audio-visual items, almost all of which are duplicated in the publicly available holdings of the Warren Commission. Scattered records have been exempted from disclosure under the Freedom of Information Act in the past for reasons of security classification, personal privacy, and law enforcement investigation.[10]

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[6] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992.* Hearing, 102d Congress, 2d session. May 20, 1992. Washington, U. S. Govt. Print. Off., 1992, pp. 80-81.

[7] Associated Press. JFK: The Files. *Washington Post*, June 1, 1992, p. A17.

[8] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, pp. 93, 97.

[9] *Ibid.*, pp. 94, 100-101.

[10] See 5 U.S.C. 552(b)(1), (6), and (7) (1988).

14-00000

Central Intelligence Agency and the Federal Intelligence Community. The C.I.A. compiled a file on Lee Harvey Oswald before the assassination of President Kennedy. That material was made public in mid-May of 1992.[11] The C.I.A. has approximately 250,000 to 300,000 pages of additional pertinent material, about 11,000 pages of which have been made public through F.O.I. Act requests. In his May 1992, testimony before the Senate Committee on Governmental Affairs concerning proposed legislation providing for the expeditious disclosure of records pertaining to the assassination of President Kennedy, the Director of Central Intelligence summarized relevant actions he had recently taken, saying:

> Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and methods.[12]
>
> This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older and national intelligence estimates on the former Soviet Union that are 10 years old or older.[13]
>
> In addition to the systematic review of 30-year-old documents, I have directed the history staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.
>
> Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am happy to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal

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[11] See George Lardner, Jr. CIA Opens Pre-Dallas File on Oswald. *Washington Post*, May 14, 1992, p. A8; Washington At Work—The Kennedy Assassination: Getting at History. *Washington Post*, May 20, 1992, p. A21.

[12] The Director of Central Intelligence is statutorily "responsible for protecting intelligence sources and methods from unauthorized disclosure." 50 U.S.C. 403(d)(3) and 403g (1988).

[13] Regulations for the new C.I.A. Historical Review Program appear in U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992.* Hearing, 102d Congress, 2d session. May 12, 1992. Washington, U. S. Govt. Print. Off., 1992, pp. 184-191.

14-00000

deletions and is being transferred to the National Archives for release to the public.[14]

Describing the Agency's assassination records holdings in a prepared statement, the Deputy Director of Central Intelligence told a House subcommittee:

> This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination. Unfortunately, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized—all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.[15]

Concerning other agencies of the Federal Intelligence Community, the Deputy Director's statement said:

> The FBI will describe its holdings separately, which I assume include both intelligence and law enforcement records. The National Security Agency and the State Department's Bureau of Intelligence and Research report, after a preliminary search, that they have identified a relatively small amount of material responsive to previous inquiries by the Warren Commission, the Church Committee, and the House Select Committee on Assassinations. The Defense Intelligence Agency, which did not come into existence until 1961, has identified no assassination material to date, and it anticipates that any holdings it might have would be minimal because its mission at the time of the Kennedy assassination focused upon foreign order of battle.[16]

Department of State. According to supplemental material accompanying the Archivist's May, 1992, testimony before a subcommittee of the House Committee on the Judiciary, some 7,000 pages of pertinent records in two case files had been recently transferred to the National Archives and Records Administration by the Department of State. Although this collection had not been systematically reviewed at the time of his testimony, the account indicated that the transferred documents appeared to be duplicates of those in the publicly available holdings of the Warren Commission.[17]

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[14] *Ibid.*, p. 51.

[15] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, p. 114.

[16] *Ibid.*, p. 116.

[17] *Ibid.*, p. 80.

14-00000

Department of Justice. Apart from the records of the F.B.I. noted earlier, case files of the Criminal Division of the Department of Justice reportedly contain approximately 65,000 pages of material. According to the supplemental account accompanying the Archivist's prepared statement for a subcommittee of the House Committee on the Judiciary, "Most of these records are letters from the general public, constituent mail forwarded by members of Congress, and responses from the Department and the FBI." Some 11,000 pages of this material have been previously exempted from disclosure for reasons of personal privacy and law enforcement investigation when sought pursuant to the F.O.I. Act.[18]

President's Commission on the Assassination of President Kennedy. The Warren Commission presented its report and 26 volumes of appendices to President Johnson on September 24, 1964. These documents were published by the Government Printing Office and made available for public purchase. The Commission ceased operations and its records—363 cubic feet of material, including audio-visual items—were transferred to the National Archives. Approximately 98 percent of this collection subsequently has become open to the public. Records exempted from disclosure under the F.O.I. Act were protected for reasons of security classification, specific statutory restrictions, personal privacy, and law enforcement investigation.[19]

Commission to Investigate CIA Activities Within the United States. Mandated to determine whether any C.I.A. domestic activities exceeded the Agency's statutory authority, the Rockefeller Commission was tasked, within its general mission, to investigate allegations concerning the presence of C.I.A. employees or agents in Dallas at the time of President Kennedy's assassination or of their involvement in the murder. The panel's June 16, 1975, report, while indicating that a staff inquiry had been made concerning the allegations, noted that "a full review" of the report of the Warren Commission had not been undertaken. "Such a task," in the panel's view, "would have been outside of the scope of the Executive Order establishing this Commission, and would have diverted the time of the Commission from its proper function." Consequently, the panel limited itself "to determining whether there was any credible evidence pointing to CIA involvement in the assassination of President Kennedy."[20] It concluded that "there was no credible evidence of any CIA involvement."[21]

Upon presenting its report to the President, the Rockefeller Commission ceased operations. Its records, most of which were highly classified, were retained by President Ford and, in accordance with prevailing practice at the time, were taken away by him as part of his Presidential papers when he left the

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[18] *Ibid.*

[19] *Ibid.*

[20] U. S. Commission to Investigate CIA Activities Within the United States. *Report to the President.* Washington, U. S. Govt. Print. Off., 1975, p. 251.

[21] *Ibid.*, p. 269.

14-00000

White House.[22] They were subsequently returned to the custody of the Federal Government in accordance with a December 13, 1976, deed of gift in which President Ford donated his congressional, Vice Presidential, and Presidential papers to a Presidential library created in his name on the campus of the University of Michigan in Ann Arbor and operated by the National Archives.[23] The deposited Rockefeller Commission collection consisted of 23 linear feet of materials, 2,500 pages of which related to the panel's investigation into matters surrounding the Kennedy assassination. Public access to these highly classified records has been limited by the Ford deed of gift.[24]

Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (The Church Committee). Established by S. Res. 21 on January 27, 1975, the Church Committee was tasked with conducting an investigation of the extent, if any, of improper or unethical activities engaged in by Federal intelligence agencies. In carrying out its mandate, the Committee assessed the performance of the intelligence community in examining circumstances surrounding the assassination of President Kennedy. The Committee subsequently "developed evidence which impeaches the process by which the intelligence agencies arrived at their own conclusions about the assassination" and found that the intelligence agencies were "deficient" in their support of the Warren Commission.[25] When the Church Committee went out of existence on May 31, 1976, its records came under the custody and into the possession of the successor Senate Select Committee on Intelligence. Approximately 5,000 papers in the Church Committee collection pertain to the Kennedy assassination, but have not previously been made available for public examination by the Senate.

House Select Committee on Assassinations. Initially chartered by H. Res. 1540 on September 17, 1976, the Assassinations Committee was mandated to conduct a broad investigation of the circumstances surrounding the death of President Kennedy in 1963 and Dr. Martin Luther King, Jr., in 1968. In the former case, much of the Committee's efforts centered on reviewing the findings of the Warren Commission and evaluating the evidence presented to it by official entities. A number of findings and recommendations were subsequently offered

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[22] This practice was ended by the Presidential Records Act of 1978, 92 Stat. 2523, 44 U.S.C. 2201-2207 (1988).

[23] See U. S. Library of Congress. Congressional Research Service. *Federal Presidential Libraries* by Harold C. Relyea. CRS Report 90-595 GOV. December 14, 1990.

[24] U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, pp. 357-361, 384-412, 419-427.

[25] U. S. Congress. Senate. Select Committee to Study Governmental Operations with Respect to Intelligence Activities. *Final Report—The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies.* S. Rept. 94-755, 94th Congress, 2d session. Washington, U. S. Govt. Print. Off., 1976, pp. 6-7.

14-00000

by the Select Committee.[26] When the Committee went out of existence at the end of the 95th Congress, custody of its records passed to the Clerk of the House. Approximately 414,000 pages of the Committee's 747,000-page collection were created or collected by the panel's Kennedy task force. The operative House standard at the time of the expiration of the Assassinations Committee sealed all unpublished committee records for 50 years. A 1983 effort by five former members of the Assassinations Committee to accelerate the release of the panel's files was unsuccessful due to the failure of their reform resolution (H. Res. 160) to be reported from committee.

RECORDS ACCESS BARRIERS

Efforts by the public to gain access to records deriving from Federal investigations and examinations of the assassination of President Kennedy and surrounding events have been frustrated by several complications. Operative since July of 1967, the Freedom of Information Act provides any person—individual or corporate, regardless of citizenship—with access to identifiable, unpublished, existing records of the Federal departments and agencies without having to demonstrate a need or even a reason for such a request.[27] The burden of proof for withholding material sought by the public is placed upon the Government. However, the statute specifies nine categories of information which may be withheld from disclosure.[28] Among these stated exemptions to the rule of disclosure are protections for: (1) information properly classified for national defense or foreign policy purposes as secret under criteria established by an executive order; (2) data specifically excepted from disclosure by a statute which either requires that matters be withheld in a non-discretionary manner or which establishes particular criteria for withholding or refers to particular types of matters to be withheld; (3) personnel, medical, and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy; and (4) certain kinds of investigatory records compiled for law enforcement purposes.[29] These four exemptions tended to be the ones most often invoked by the agencies in support of their withholding of assassination materials sought pursuant to the F.O.I. Act. Disputes over the accessibility of records may be ultimately settled in Federal court.

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[26] See U. S. Congress. House. Select Committee on Assassinations. *Report of the Select Committee on Assassinations.* H. Rept. 95-1828, 95th Congress, 2d session. Washington, U. S. Govt. Print. Off., 1979.

[27] See 5 U.S.C. 552 (1988).

[28] See U. S. Congress. House. Committee on Government Operations. *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records.* H. Rept. 102-146, 102d Congress, 1st session. Washington, U. S. Govt. Print. Off., 1991.

[29] The full list of exemptions may be found at 5 U.S.C. 552(b)(1)-(9).

14-00000

Among those testifying before the Senate Committee on Governmental Affairs during that panel's consideration of legislation providing for the expeditious disclosure of records relevant to the assassination of President Kennedy was James H. Lesar, an F.O.I.A. attorney and president of the Assassination Archives and Research Center located in Washington, D. C. Describing the Center as "a private, non-profit organization which collects, preserves, and disseminates information and materials on political assassinations, . . . which is funded by membership dues and donations from the public," Mr. Lesar identified the security classification of assassination records as a major obstacle to their release under the F.O.I. Act. He also gave some illustrations from his practice showing "the inadequacies of the FOIA and the enormous frustration which accrues to those who attempt to use it to obtain information about the Kennedy assassination. These examples," he told the Committee, "reveal a pattern of delay, costly litigation, and untrue representations by the Government."[30] In conclusion, he said:

> These stories that I have related are unusual only because the requesters actually went to court to fight the CIA and FBI. Most requesters cannot afford the time or money to litigate their FOIA requests against these agencies. You might be tempted to conclude from the general absence of litigation that the FOIA is working just fine. The opposite is true. The FOIA has been severely damaged by the 1984 amendments eliminating access to CIA operational files[31] and by the 1986 amendments to Exemption 7 which applies to law enforcement records,[32] as well as by a string of decisions in the Supreme Court and the U. S. Court of Appeals for the District of Columbia which have greatly expanded the amount of material which can be withheld from the public.[33]

Public access to unpublished congressional records was also very limited. The House Select Committee on Assassinations went out of existence at the expiration of the 95th Congress. During its two-year investigation, the Select Committee amassed approximately 414,000 pages of records pertaining to the

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[30] U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, p. 74; four case studies appear in *Ibid.*, pp. 74-76, 80-82.

[31] See 98 Stat. 2209; 50 U.S.C. 431-432.

[32] 100 Stat. 3207-48; also see Harold C. Relyea. U. S. Freedom of Information Act Reforms—1986. *Journal of Media Law and Practice*, v. 9, March, 1988, pp. 6-12.

[33] U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, p. 77.

Kennedy assassination.[34] Transcripts of its open hearings and a final report were published by the Government Printing Office. However, its other records remained unavailable to the public. These materials were transferred to the National Archives and were sealed from public access for 50 years, until the year 2029, in accordance with the operative standards of the House of Representatives at that time.[35]

Despite this time restriction on public access to the Select Committee's unpublished records, interested persons could request to see them by writing to the Clerk of the House. Although there was—unlike the provisions of the F.O.I. Act—no temporal requirement concerning a response deadline, it was at least the Clerk's policy to reply in a timely manner, whether the response was positive or negative. However, because security classified material and agency records were a large part of this reserved collection, access was accordingly limited. Furthermore, there was a logistical question of permitting access at the legislative reference branch of the National Archives or retrieving the records for examination on Capitol Hill, with appropriate supervision in either case. In brief, it was not a satisfying experience for many requestors.

In 1983, a former member of the Select Committee, Representative Stewart McKinney, citing the public's right to know about the circumstances surrounding the death of President Kennedy, introduced a resolution, H. Res. 160, providing for the accelerated release of the panel's files.[36] Four other members of the Select Committee—Representatives Robert Edgar, Harold S. Sawyer, Walter Fauntroy, and Harold Ford—co-sponsored the resolution. Referred to the House Administration Committee, it never came to the House floor for a vote; and, although hearings were held on the proposal, the transcript was not published.

In the Senate, the Select Committee to Study Governmental Operations with Respect to Intelligence Activities—known as the Church Committee, which was established on January 27, 1975—examined various aspects of intelligence community operations, including its performance in assisting in investigations of the assassination of President Kennedy. Specifically, the Church Committee

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[34] U. S. Congress. House. Committee on Government Operations. *Assassination Materials Disclosure Act of 1992.* H. Rept. 102-625 Part I, 102d Congress, 2d session. Washington, U.S. Govt. Print. Off., 1992, p. 13.

[35] The House rule governing the preservation and availability of noncurrent records of the House was changed in the 101st Congress. See, U. S. Congress. House. *Constitution, Jefferson's Manual and Rules of the House of Representatives.* Rule XXXVI. H. Doc. 101-256, 101st Congress, 2d session. Washington, U.S. Govt. Print. Off., 1991, p. 724. The new rule requires that the Clerk of the House transfer noncurrent records of the House to the National Archives; investigative records remain under seal for 50 years and routine records for 30 years.

[36] See *Congressional Record*, v. 129, April 13, 1983, p. 8520.

14-00000

studied the extent to which the intelligence agencies assisted the Warren Commission by providing information necessary to conduct its investigation.

The Church Committee found that the intelligence community did not provide sufficient data to the Warren Commission about U.S. operations against Cuba. Furthermore, it recommended that its successor, the Senate Select Committee on Intelligence, investigate the possibility that senior officials of the C.I.A. and F.B.I. might have made a conscious decision not to disclose potentially important information in this area to the Warren Commission. Before the Church Committee went out of existence on May 31, 1976, it forwarded all of its files pertaining to this aspect of its investigation—approximately 5,000 pages of records—to the Senate Select Committee on Intelligence.[37]

When the Church Committee concluded its investigation and published its hearing transcripts and final report, there was no Senate rule governing the disposition of committee records. In practice, each committee had its own agreement with the National Archives concerning noncurrent materials. On June 24, 1980, the Senate adopted a resolution, S. Res. 474, which provided that any records of the Senate, or of any Senate committee, shall not be available to the public for 20 years and, in the case of investigative files, for 50 years.

A third area of access difficulties concerns donated papers—records provided to the Federal Government under a deed of gift setting temporal or other access conditions which restrict their availability to the general public. In testimony before a subcommittee of the House Committee on the Judiciary, the Archivist of the United States offered the following pertinent remarks:

> In accordance with 44 U.S.C. 2107 and 2111, the National Archives has accepted under deed of gift a wide variety of historical, donated historical materials. The Kennedy autopsy photographs and x-rays are in this category. So are the files of the Rockefeller Commission held by the Gerald R. Ford Library. This donation was in keeping with legal practices prior to 1978 when the Presidential commissions were regarded as personal to the President because they provided advice directly to him.
>
> The deed of gift for this highly classified Rockefeller Commission file specifies that *access will be granted for any legitimate governmental function*. Access has been granted for at least three previous governmental investigations. . . .
>
> In addition, there are collections of personal papers in some of the Presidential libraries received under the authority of 44 U.S.C. 2107 and 2111, and they may contain documentary materials falling within the broad definition of assassination materials.[38]

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[37] H. Rept. 102-625 Part 1, p. 13.

[38] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, p. 73 (emphasis added).

14-00000

The Library of Congress also had relevant donated papers in its manuscript collections, some of which were accessible to the public only with the permission of the donor.[39]

While the difficulties of gaining donor permission to examine private records deposited in public institutions were well understood, the Archivist offered a caution concerning access legislation which might override donor agreements involving assassination materials. The National Archives, he said, "is concerned that unless existing donation agreements are honored and donors are consulted before access and publication, the Congress may inadvertently discourage future donations of similar historical material and thereby damage compilation of the complete and accurate historical record."[40]

CREATING A NEW PROCEDURE

Legislation providing for the expeditious disclosure of records relevant to the assassination of President Kennedy was introduced in the House as H. J. Res. 454 on March 26, 1992, by Representative Louis Stokes, former chairman of the House Select Committee on Assassinations, with 40 initial co-sponsors.[41] In testimony before a subcommittee of the House Committee on the Judiciary considering the proposal, Representative Stokes explained his reasons for offering the legislation.

> This resolution was introduced because of the renewed public interest and concern over the records pertaining to the assassination of President John F. Kennedy.
>
> The House committee which I chaired, in the course of its investigation, had at one time or the other in its possession approximately 370 cubic feet of files. Among the materials contained in these files were classified and unclassified materials on loan from Federal agencies, materials generated by committee staff, materials on loan from private individuals, transcripts of committee open session hearings and meetings, and from executive sessions hearings and meetings.
>
> There has been considerable debate about these records, including accusations that these records, if released, would contain evidence of a government coverup or complicity of government agencies in the assassination of President Kennedy.

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[39] See U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, pp. 462-477

[40] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, pp. 73-74.

[41] *Congressional Record*, v. 138, March 26, 1992, pp. H1984-H1986 (daily edition).

14-00000

> I can assure you, Mr. Chairman, members of this committee, that nothing could be further from the truth. No member of our committee nor member of our staff participated in any coverup of the truth.
>
> Mr. Chairman, I am committed to the principle that Americans are entitled to know the truth about the assassination of President Kennedy and feel that Congress should do its best to allay fears of the American people in this regard. The American public deserves to know the factual truth about this important event in this Nation's history.[42]

An identical companion measure was introduced in the Senate as S. J. Res. 282 on March 26, 1992, by Senator David Boren, chairman of the Select Committee on Intelligence, with nine initial co-sponsors.[43] Among these was Senator Arlen Specter, who had been a staff member of the Warren Commission. In sponsoring the legislation, Senator Boren said, in both his floor statement introducing the measure and later committee hearings on it, he felt, as a general principle, that "the intelligence community should make available its records after the passage of a reasonable amount of time when current sources and methods would no longer be compromised."[44]

As introduced, the Assassination Materials Disclosure Act provided for the creation of a temporary Assassination Materials Review Board. It was to be composed of five "distinguished and impartial private citizens," who were to be selected by the division of the United States Court of Appeals for the District of Columbia established under 28 U.S.C. 49. This section originally mandated the selection of so-called Independent Counsels or Special Prosecutors, such as the ones who lately have pursued illegalities stemming from the Watergate incident and the Iran-Contra affair. According to the Stokes-Boren proposal, members of the Review Board were to be deemed to be inferior officers of the United States within the meaning of section 2 of Article II of the Constitution.[45] Furthermore, the Review Board was authorized to, "without regard to the civil service laws and regulations, appoint and terminate an Executive Director and such other additional personnel as are necessary to enable the Review Board to perform its duties."

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[42] U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, p. 33.

[43] *Congressional Record*, v. 138, March 26, 1992, pp. S4392-S4397 (daily edition).

[44] *Ibid.*, p. S4392; U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, p. 14.

[45] This section reads, in relevant part, "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

14-00000

The Assassination Materials Disclosure Act prescribed that all relevant records and materials pertinent to the assassination of President Kennedy would be initially reviewed by the Executive Director of the Review Board. This official would determine if items (1) could be publicly released; (2) should be referred to the Board, for reasons of privacy or other complex conditions, for a determination as to their public availability; or (3) should be postponed for release, subject to Review Board approval. In the first instance, decisions by the Executive Director to release materials could be appealed by agencies to the Review Board for reconsideration. Ultimately, the Review Board would decide (1) the disclosure of materials, subject to a Presidential override, with notice to the public and Congress; and (2) postponement of release to a specific date, with notice to the public and Congress.

In the House, H. J. Res. 454 was referred jointly to the Committees on House Administration, Government Operations, Rules, and the Judiciary. Two panels, the Committees on Government Operations and the Judiciary, held public hearings, conducted mark-ups, and issued reports on differing versions of the original proposal.[46] In the Senate, S. J. Res. 282 was referred only to the Committee on Governmental Affairs, which held a hearing on the measure, revised and expanded it, and reported this new version (S. 3006).[47] Various objections to the original text of the joint resolution were heard by the committees, including those of the Department of Justice, which indicated the proposal, as introduced, "would not be consistent with the objectives of the Administration."[48] Among the criticisms of the proposal that were offered by witnesses were the following:

- using a somewhat unusual and constitutionally suspect process for the appointment of Review Board members (to achieve independence) instead of the more traditional procedure of Presidential appointment and Senate confirmation of such officials;

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[46] See U. S. Congress. House. Committee on Government Operations. *Assassination Materials Disclosure Act of 1992.* H. Rept. 102-625 Part 1, 102d Congress, 2d session. Washington, U. S. Govt. Print. Off., 1992; U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992.* H. Rept. 102-625 Part 2, 102d Congress, 2d session. Washington, U. S. Govt. Print. Off., 1992.

[47] U. S. Congress. Senate. Committee on Governmental Affairs. *The President John F. Kennedy Assassination Records Collection Act of 1992.* S. Rept. 102-328, 102d Congress, 2d session. Washington, U. S. Govt. Print. Off., 1992.

[48] See U. S. Congress. Senate. Committee on Governmental Affairs. *The Assassination Materials Disclosure Act of 1992*, pp. 263-271; also see U. S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, pp. 82-92.

14-00000

- vesting too much responsibility and discretionary authority (and perhaps too much work) in the Executive Director of the Review Board, who might also more properly be a Presidential appointee;

- insulating from the President the decisions of the Review Board concerning the public release of heretofore undisclosed executive branch records, limiting the President's authority to protect such records to the standards set forth in the legislation, and requiring, contrary to the separation of powers doctrine, that the President submit to Congress copies of any assassination material that he blocks from release by the Review Board; and

- defining "assassination material" so broadly that agencies are not afforded adequate guidance for determining practical limits to the universe of relevant records, so loosely that custodial rights governing some materials, such as executive branch records found in the collections of pertinent House and Senate investigating committees, are overlooked, and so imprecisely that relevant materials of the Rockefeller Commission on CIA Activities Within the United States escape coverage.

The Senate version of the legislation, revised and reported by the Committee on Governmental Affairs as The President John F. Kennedy Assassination Records Collection Act of 1992 (S. 3006), was approved on July 22, 1992.[49] Disagreements over the differing provisions of two reported revisions of the measure delayed final action in the House,[50] which passed a version on August 12 relying upon the selection of Review Board members pursuant to the Independent Counsel authority (28 U.S.C. 49).[51] However, conferees were not quickly appointed and the House-passed measure was not formally sent to the Senate until September 21 when the 102d Congress was rapidly moving toward final adjournment.[52] With time running out, the House adopted the Senate-passed bill on September 30.[53]

President Bush signed S. 3006 into law on October 26, 1992.[54] Saying, "I fully support the goals of this legislation" and that he was "pleased" that it

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[49] *Congressional Record*, v. 138, July 22, 1992, pp. S10360-S10368 (daily edition).

[50] See Action Urged On JFK Data. *Washington Post*, July 23, 1992, p. A20.

[51] *Congressional Record*, v. 138, August 12, 1992, p. H8091 (daily edition).

[52] George Lardner, Jr. JFK Records Bill Runs Into Logjam On Capitol Hill. *Washington Post*, September 22, 1992, p. A19.

[53] *Congressional Record*, v. 138, September 30, 1992, pp. H9911-H9918 (daily edition).

[54] 106 Stat. 3443.

14-00000

"avoids the chief constitutional problems raised by earlier versions of the bill," the President noted that "it still raises several constitutional questions." These were enumerated as follows:

> First, S. 3006 sets forth the grounds on which the release of documents may be postponed, but this list does not contemplate nondisclosure of executive branch deliberations or law enforcement information of the executive branch . . . , and it provides only a narrow basis for nondisclosure of national security information. My authority to protect these categories of information comes from the Constitution and cannot be limited by statute. Although only the most extraordinary circumstances would require postponement of the disclosure of documents for reasons other than those recognized in the bill, I cannot abdicate my constitutional responsibility to take such action when necessary. The same applies to the provision purporting to give certain congressional committees "access to any records held or created by the Review Board." This provision will be interpreted consistently with my authority under the Constitution to protect confidential executive branch materials and to supervise and guide executive branch officials.
>
> Second, S. 3006 requires the Board to report to the President and the Congress. If the bill were interpreted to require simultaneous reports, S. 3006 would intrude upon the President's authority to supervise subordinate officials in the executive branch. I will construe the provisions to require that the Board report to the President before it reports to the Congress.
>
> Third, the bill purports to set the qualifications for Board members, to require the President to review lists supplied by specified organizations, and to direct the timing of nominations. These provisions conflict with the constitutional division of responsibility between the President and the Congress. The President has the sole power of nomination; the Senate has the sole power of consent.
>
> I note also that S. 3006 provides that, upon request of the Board, courts may enforce subpoenas that the Attorney General has issued at the Board's urging. I sign this bill on the understanding that this provision does not encroach upon the Attorney General's usual, plenary authority to represent the agencies of the United States, including the Board, whenever they appear in court.[55]

STATUTE OVERVIEW

As enacted into law, the President John F. Kennedy Assassination Records Collection Act of 1992 generally provides for the independent review of

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[55] *Weekly Compilation of Presidential Documents*, v. 28, November 2, 1992, pp. 2134-2135.

14-00000

government records relating to the assassination of President Kennedy with a view to their public release. Furthermore, it requires the assembly of copies of all such records, whether available for public examination now or at a later time, in a special collection maintained by the National Archives and Records Administration. However, it does not take precedence over deeds governing access to, or transfer or release of, gifts and donations of records to the United States Government. The Archivist is directed to begin establishing the Kennedy assassination records collection not later than 60 days after the enactment of the statute, and is responsible for ensuring the physical integrity, original provenance, and security of all records within it. Continuing oversight jurisdiction with respect to this records collection is vested in the House Committee on Government Operations and the Senate Committee on Governmental Affairs.

The statute indicates that, as soon as practicable after its enactment, each Government office shall begin identifying and organizing their records relating to the assassination of President Kennedy and preparing for their transmission to the Archivist for inclusion in the special collection. In so doing, offices are directed not to destroy, alter, or mutilate any such record or withhold, react, postpone for subsequent disclosure, or reclassify any assassination record previously made available or disclosed to the public. However, not later than 300 days after the enactment of the statute, Government offices shall begin a review to identify records in their custody or possession which are actually assassination records. Of these, they are also to determine which ones have been previously disclosed officially or made available publicly in a complete and unredacted form, which ones were produced by a third agency or another Government office (and transmit same or copies of same to these parties), and which ones are covered by the standards for postponement of public disclosure under the Kennedy assassination records collection statute. Previously released assassination records and information are provided to the Archivist for the special collection. Materials which are of uncertain status as to being assassination records or which a Government office has determined are assassination records which may be postponed, in whole or in part, for public disclosure, are to be organized and made available to the Assassination Records Review Board established by the statute.

The disclosure of assassination records, in whole or in part, may be postponed "if there is clear and convincing evidence that—"

> (1) the threat to the military defense, intelligence operations, of conduct of foreign relations of the United States posed by the public disclosure of the assassination [record] is of such gravity that it outweighs the public interest, and such public disclosure would reveal—
>
> (A) an intelligence agent whose identity currently requires protection;
>
> (B) an intelligence source or method which is currently utilized, or reasonably expected to be

14-00000

> utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or
>
> (C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;
>
> (2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;
>
> (3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;
>
> (4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or
>
> (5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and the public disclosure would be so harmful that it outweighs the public interest.[56]

The statute establishes a temporary independent agency, to be known as the Assassination Records Review Board. This panel is composed of five citizens, who are to be appointed by the President "after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association." These appointees are subject to Senate confirmation, "shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances," and "shall qualify for the necessary security clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate."[57] A vacancy on the Board is to be filled in the same manner as an original appointment. Board members

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[56] 106 Stat. 3449.

[57] 106 Stat. 3450.

14-00000

may be removed only for specific cause; a removed member may obtain judicial review of the action through civil suit in the District Court for the District of Columbia and may be reinstated or granted other appropriate relief by order of the court.

Board members elect a chair from among themselves at their initial meeting. They serve for the total period of the Board's functioning—two years from the date of the enactment of the Kennedy assassination records collection statute, with a possible one-year extension of this mandate if the Board members, by majority vote, determine that such additional time is needed in order to complete their work. In general, the duties of the Review Board are to "consider and render decisions" on determinations by Government offices as to whether or not materials constitute assassination records and whether or not an assassination record, in whole or in part, qualifies for postponement of disclosure under the statute. In performing these duties, the Board is empowered to exercise certain authority, including: directing Government offices to complete records identification aids and to organize assassination records; obtaining access to assassination records that have been identified and organized by a Government office; requiring a Government office to account in writing for the destruction of assassination records; and obtaining from Government offices and the public such additional information, records, or testimony as may be needed to fulfill the Board's functions and responsibilities under the statute. The Board is authorized to hold hearings, administer oaths, subpoena witnesses and documents, and issue interpretive regulations.

The Review Board appoints and is assisted by an Executive Director and a staff. Each of these individuals "shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy." In addition, the Executive Director is to be "a distinguished professional."[58] All supporting personnel must satisfy the requirements for necessary security clearances. The Executive Director may be removed by the Board for specific cause. Other staff members, who may be hired without regard to civil service law and regulation for competitive service, apparently may be removed by the Board as it deems necessary. The Board is also authorized to create such advisory committees as it may need to assist it in fulfilling its responsibilities.

Not later than 90 days after its members are appointed, the Review Board must publish in the *Federal Register* a schedule for the review of all assassination records and, not later than 180 days after the enactment of the Kennedy assassination records collection statute, must begin its review operations. In all cases where the Board approves the postponement of public disclosure of an assassination record, it is directed to seek the disclosure of segregable portions, substitutes, or summaries of the document. These efforts are to be reported to the Archivist.

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[58] 106 Stat. 3453.

14-00000

Upon determining that an assassination record shall be publicly disclosed, contrary to the judgment of a Government office, or postponed for disclosure and held in protected status within the special collection maintained by the National Archives, the Review Board notifies the head of the originating body of its determination and publishes a copy of its ruling in the *Federal Register* within 14 days after making its decision. Contemporaneous notice of the determination is also made to the President regarding executive branch records and to the statute's oversight committees in the case of legislative branch materials. This notice is to include a written, unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any of the postponement standards specified in the statute.

Within 30 days after receiving the Review Board's determination and notice, the President may override the Board's decision regarding executive branch records—probably by imposing a postponement of disclosure or setting a longer postponement period than prescribed by the Board. In so doing, the President provides the Review Board with an unclassified, written certification of his action and the justification for same, including the applicable grounds for postponement as specified in the Kennedy assassination records collection statute. The Review Board subsequently publishes this Presidential certification, upon receipt, in the *Federal Register* along with any accompanying statement or other materials transmitted by or on behalf of the President with regard to postponement of the disclosure of assassination records.

The Review Board is required to publish periodic notices in the *Federal Register* summarizing postponements of assassination records disclosures. It is also obligated to issue approximately yearly reports concerning its activities and operations. The statute also indicates that the Board may enlist the assistance of the Attorney General in pursuit of the release of information relevant to the assassination of President Kennedy that is held under court seal or an injunction of secrecy of a grand jury. Another provision states that the Secretary of State should contact the government of the Republic of Russia "and any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information."

IMPLEMENTATION

By the time of the inauguration of President William Jefferson Clinton, only modest efforts had been made to implement the Kennedy Assassination Records Collection Act. President Bush left the task of appointing the members of the Assassination Records Review Board to his successor. Preliminary efforts by the National Archives and Records Administration to begin assembling the special collection of Kennedy assassination records were slowed somewhat by management changes at the agency late in 1992 and the announced departure of Archivist Don Wilson in early 1993.[59]

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[59] See Bill McAllister. Archivist Reshuffles Staff, Pledges to Improve Agency. *Washington Post*, November 24, 1992, p. A19; George Lardner, Jr. U. S. Archivist to Quit, Run Bush Library. *Washington Post*, February 13, 1993, p.

14-00000

Elsewhere, at the Gerald R. Ford Presidential Library, archivists, responding to former President Ford's public statements on the need to open materials in government custody relating to the assassination of President Kennedy, reportedly have processed pertinent portions of the records of the Commission on CIA Activities Within the United States. As a result, "most of the materials directly related to the Kennedy assassination are available" for examination.[60]

Coincidently, the John F. Kennedy Presidential Library, responding to calls for greater disclosure of its holdings pertaining to the assassinated President, reportedly is in the process of releasing information contained in 248 hours of secretly taped Oval Office conversations and 12 hours of recorded telephone conversations to which President Kennedy was a party. This action was prompted, in part, by recent complaints by British author Nigel Hamilton, who published the first of a projected three-volume biography of John F. Kennedy in 1992.[61]

Further developments in implementation of the Kennedy Assassination Records Collection Act will occur in the months ahead.

A5. Management changes at the National Archives were prompted by criticisms expressed in U. S. Congress. Senate. Committee on Governmental Affairs. *Serious Management Problems at the National Archives and Records Administration.* S. Prt. 102-108, 102d Congress, 2d session. Washington, U. S. Govt. Print. Off., 1992.

[60] "JFK": The Fallout. *Gerald R. Ford Foundation Newsletter*, Fall, 1992, p. 7.

[61] Christopher B. Daly. Library Moving to Release JFK Tapes. *Washington Post*, February 3, 1993, p. A5.

14-00000

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14-00000

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14-00000

[SUSPEND THE RULES AND PASS THE RESOLUTION, H.J. RES. 454, WITH AN AMENDMENT]

Note: Amendment consists of a complete substitute for the text.

102D CONGRESS
2D SESSION

H. J. RES. 454

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1992

Mr. STOKES (for himself, Mr. CONYERS, Mr. BROOKS, Mr. ROSE, Mr. HAMILTON, Mr. MOAKLEY, Mr. FAZIO, Mr. HORTON, Mr. TRAFICANT, Mr. WELDON, Mr. CLAY, Mr. CAMPBELL of Colorado, Mr. ROHRABACHER, Mr. AUCOIN, Mr. PICKETT, Mr. LEACH, Mr. MILLER of California, Mr. JACOBS, Mr. CLEMENT, Mr. WYLIE, Mrs. SCHROEDER, Mr. SERRANO, Mr. MCNULTY, Mr. MARTINEZ, Mr. SANTORUM, Mr. LEWIS of Florida, Mr. SHARP, Mr. DREIER of California, Mr. KOPETSKI, Mr. BEREUTER, Mr. EMERSON, Mr. WAXMAN, Mr. HEFLEY, Mr. PETERSON of Florida, Mr. GILMAN, Mr. BACCHUS, Mr. SKAGGS, Ms. SLAUGHTER, Mr. SLATTERY, Mr. ABERCROMBIE, and Mr. MINETA) introduced the following joint resolution; which was referred jointly to the Committees on House Administration, Government Operations, Rules, and the Judiciary

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JOINT RESOLUTION

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Assassination Materials Disclosure Resolution of 1992".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Legitimate confidentiality concerns based upon national security, personal privacy, law enforcement, and other recognized interests diminish over time.

(2) There is a compelling public interest that all government records be eventually made available to the public.

(3) There is a compelling public interest that all materials concerning the assassination of President John F. Kennedy be made available to the public at the earliest possible date.

(4) Executive Order 12356, National Security Information, as implemented by the executive branch, has precluded the timely release of materials relating to the assassination of President Kennedy.

(5) Section 552 of title 5, United States Code (popularly known as the "Freedom of Information Act"), as implemented by the executive branch, has failed to secure the timely release of materials relating to the assassination of President Kennedy.

14-00000

(6) The President's Commission on the Assassination of President Kennedy and the President's Commission on CIA Activities in the United States were Federal agencies whose records are subject to Federal records laws.

(7) Only in the rarest cases is there any legitimate need for continued secrecy or classification of materials relating to the assassination of President Kennedy.

(8) The legitimacy of any government in a free society depends on the consent of the people.

(9) The ability of a government in a free society to obtain the consent of the people is undermined to the degree that the people do not trust their government.

(10) The disclosure of records in the possession of the Government relevant to the assassination of President John F. Kennedy will contribute to the trust of the people in their government.

(b) PURPOSE.—The purpose of this joint resolution is to make available to the public all materials relating to the assassination of President Kennedy at the earliest possible date.

SEC. 3. DEFINITIONS.

For the purposes of this joint resolution:

14-00000

(1) The term "Archivist" means the Archivist of the United States.

(2) The term "assassination material"—

(A) means any record that is determined by the Review Board under section 6(b) to be an assassination material; and

(B) does not include any item donated by the family of President Kennedy to the National Archives pursuant to the deed of gift dated October 29, 1966.

(3) The term "Collection" means the President Kennedy Assassination Materials Collection established under section 4.

(4) The term "Court" means the division of the United States Court of Appeals for the District of Columbia Circuit established under section 49 of title 28, United States Code.

(5) The term "custodian of records" means—

(A) the Committee on House Administration of the House of Representatives, for records of the House Committee;

(B) the Select Committee on Intelligence of the Senate, for records of the Senate Committee;

(C) the Archivist of the United States, for records of the President's Commission on the Assassination of President Kennedy and records of the President's Commission on CIA Activities in the United States; and

(D) the executive branch official designated by the head of an executive agency, for each executive agency which has any record of an official investigation in its possession.

(6) The term "executive agency"—

(A) has the meaning given to the term "agency" by sections 551(1) and 552(f) of title 5, United States Code; and

(B) includes the Executive Office of the President, the Executive Office of the Vice President, and all components thereof.

(7) The term "Executive Director" means the Executive Director of the Review Board appointed under section 10(c).

(8) The term "House Committee" means the Select Committee on Assassinations of the House of Representatives.

(9) The term "National Archives" means the National Archives and Records Administration and

all components thereof, including the Presidential Libraries.

(10) The term "originating body" means the executive agency, Presidential commission, or Presidential or Congressional committee that created a record or obtained a record from a source other than another entity of the Federal Government.

(11) The term "public interest" includes the compelling public interests found by the Congress in section 2(a)(2) and (3).

(12) The term "record" includes—

(A) a document, book, paper, map, or photograph;

(B) machine readable, computerized, digitized, or electronic information, regardless of the medium on which it is stored; and

(C) any other documentary material, regardless of its physical form or characteristics.

(13) The term "record of an official investigation"—

(A) means any record that was created, obtained, or generated by—

(i) a review of the assassination of President Kennedy conducted by any of—

(I) the President's Commission on the Assassination of President Kennedy (popularly known as the Warren Commission);

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the President's Commission on CIA Activities in the United States (popularly known as the Rockefeller Commission);

(VI) the Senate Committee; and

(VII) The House Committee;

(ii) any activity conducted by an executive agency in support of a review or activity described in subparagraph (A); and

(iii) any other activity determined by the Review Board to be relevant to the assassination of President Kennedy; and

(B) includes any record that the Review Board determines relates in any manner or degree to the assassination of President John F.

Kennedy, that was created, obtained, or generated by an executive agency.

(14) The term "Review Board" means the Assassination Materials Review Board established by section 10(a).

(15) The term "Senate Committee" means the Select Committee to Study Governmental Operations With Respect to Intelligence Activities of the Senate.

SEC. 4. PRESIDENT KENNEDY ASSASSINATION MATERIALS COLLECTION.

(a) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this joint resolution, the Archivist shall establish in the National Archives a collection which shall be known as the "President Kennedy Assassination Materials Collection".

(b) CONTENTS.—The Collection shall consist of—

(1) all records transferred under section 5(a)(1);

(2) all assassination materials transferred under section 5(c);

(3) determinations and recommendations submitted under section 6(f);

(4) all statements submitted under section 7(c)(2);

(5) all summaries transmitted under section 7(d); and

(6) such other records relating to the assassination of President Kennedy as the Archivist considers appropriate.

(c) PUBLIC AVAILABILITY.—The Archivist shall make available for public inspection and copying all records in the Collection.

(d) PRINTING AND DISSEMINATION OF ASSASSINATION MATERIALS.—

(1) SELECTION.—The National Historical Publications and Records Commission shall promptly provide for the selection and preparation for publication of materials in the Collection that are of broad historical interest.

(2) PRINTING AND DISTRIBUTION.—The Public Printer shall—

(A) make such materials available for distribution and sale under chapter 17 of title 44, United States Code;

(B) make such materials available through the Depository Library Program, under chapter 19 of title 44, United States Code; and

(C) in carrying out subparagraphs (A) and (B), use appropriate and cost-effective tech-

nology, including, to the extent practicable, publication of such materials in a multi-media electronic format.

SEC. 5. TRANSFER OR AVAILABILITY OF RECORDS OF OFFICIAL INVESTIGATIONS.

(a) EXECUTIVE AGENCY RECORDS.—

(1) TRANSFER TO ARCHIVIST.—The head of each executive agency may transfer to the Archivist for inclusion in the Collection each record of an official investigation for which the agency is a custodian of records.

(2) AVAILABILITY TO REVIEW BOARD.—On the date which is 60 days after the date of the enactment of this joint resolution, the head of each executive agency shall make available to the Review Board each record of an official investigation for which the agency is a custodian of records and which has not been transferred from the agency to the Archivist under paragraph (1).

(b) CONGRESSIONAL RECORDS.—Not later than 60 days after the date of the enactment of this joint resolution, the Archivist shall make available to the Review Board each record of an official investigation for which the Committee on House Administration of the House of

Representatives or the Select Committee on Intelligence of the Senate is a custodian of records.

(c) OTHER TRANSFER OF ASSASSINATION MATERIALS.—The custodian of records for a record of an official investigation shall, after the date which is 30 days after the date of the receipt of a recommendation of the Review Board under section 6(b) with respect to the record and by no later than 60 days after that date of receipt, transfer the record to the Archivist for inclusion in the Collection if—

(1) the Review Board determines under section 6(b) that the record is an assassination material;

(2) the Review Board recommends under section 6(b) that the record should be transferred to the Archivist for inclusion in the Collection; and

(3) that transfer and inclusion is not postponed in accordance with section 7(b).

SEC. 6. REVIEWS BY REVIEW BOARD.

(a) REVIEWS OF TRANSFERRED MATERIALS.—The Review Board shall review—

(1) each record of an official investigation made available under section 5(a)(2) or (b); and

(2) all other records available to the Review Board that it has reason to believe are relevant to the assassination of President Kennedy.

(b) DETERMINATIONS AND RECOMMENDATIONS.—

(1) IN GENERAL.—Upon completing a review under subsection (a) with respect to a record, the Review Board shall—

(A) determine whether the record is an assassination material; and

(B) in the case of an assassination material and based on the criteria set forth in section 7(a), submit to the custodian of records and, if different, the originating body for the material a recommendation that the record—

(i) should be transferred to the Archivist for inclusion in the Collection; or

(ii) qualifies for postponement under that section.

(2) CONTENTS.—Each determination and each recommendation of the Review Board shall—

(A) identify the record that is the subject of the determination or recommendation; and

(B) set forth the basis for the determination or recommendation.

(c) DETERMINATION OF ASSASSINATION MATERIAL.—The Review Board shall determine under subsection (b) that a record is an assassination material unless the Review Board determines by clear and convincing

14-00000

evidence that the record does not have any relevance to the assassination of President Kennedy.

(d) PRESUMPTION FOR TRANSFER.—The Review Board shall recommend under subsection (b)(1) that an assassination material should be transferred to the Archivist for inclusion in the Collection, unless there is clear and convincing evidence that the material qualifies for postponement under section 7(a).

(e) REVIEW OF PORTIONS THAT CAN BE SEGREGATED.—If the Review Board determines that an assassination material qualifies for postponement under section 7(a), the Review Board shall separately review and make final recommendations under this section with respect to any portion of the material that can be reasonably segregated.

(f) SUBMISSIONS TO ARCHIVIST.—The Review Board shall submit to the Archivist for inclusion in the Collection—

(1) each determination under subsection (b)(1)(A) that a record of an official investigation is not an assassination material; and

(2) each recommendation under subsection (b)(1)(B) that an assassination material qualifies for postponement.

14-00000

SEC. 7. POSTPONEMENT OF TRANSFER OF ASSASSINATION MATERIAL.

(a) QUALIFICATION FOR POSTPONEMENT.—Assassination material qualifies for postponement under this subsection only if one or more of the following criteria are met:

(1) The threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public availability of the assassination material is of such gravity that it outweighs the public interest in disclosure of the assassination material, and such public availability would reveal—

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized or reasonably expected to be utilized by the United States Government and which has not been officially disclosed, and the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations, or conduct of foreign relations of the United States, the public availability of which would

14-00000

demonstrably impair the national security of the United States.

(2) The public availability of the assassination material would disclose the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to such person.

(3) The public availability of the assassination material could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest in disclosure of the assassination material.

(4) The public availability of the assassination material would constitute an unjustified violation of an express, documented understanding of confidentiality between a Government agent and a cooperating individual or a foreign government.

(5) The public availability of the assassination material would disclose a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and that public availability would be so harmful that it outweighs the public interest.

(b) POSTPONEMENT.—The transfer of assassination material to the Archivist for inclusion in the Collection shall be postponed for purposes of section 5(c)(3) notwithstanding any recommendation of the Review Board, if—

(1) in the case of assassination material for which the originating body is the Senate Committee, the Senate certifies that the material qualifies for postponement under subsection (a) by agreeing to a resolution to that effect—

(A) by a majority of members present and voting; and

(B) by not later than 30 days after the date on which the Review Board submits a recommendation under section 6(b) with respect to the material;

(2) in the case of assassination material for which the originating body is the House Committee, the House certifies that the material qualifies for postponement under subsection (a) by agreeing to a resolution to that effect—

(A) by a majority of members present and voting; and

(B) by not later than 30 days after the date on which the Review Board submits a rec-

ommendation under section 6(b) with respect to the material; and

(3) in the case of assassination material for which the originating body is an executive agency, the President certifies to the Review Board by not later than 30 days after the date on which the Review Board submits a recommendation under section 6(b) with respect to the material that the material qualifies for postponement under subsection (a).

(c) CERTIFICATION BY PRESIDENT.—

(1) AUTHORITY NONDELEGABLE.—The authority of the President to certify under subsection (b)(3) may not be delegated to any other person.

(2) STATEMENT.—If the President makes a certification under subsection (b)(3) for an assassination material, the President shall—

(A) submit to the Committee on House Administration of the House of Representatives, to the Select Committee on Intelligence of the Senate, and to the Archivist for inclusion in the Collection a written statement that—

(i) identifies the assassination material with specificity; and

(ii) sets forth the basis for the certification, including the criteria under sub-

14-00000

section (a) under which the material qualifies for postponement; and

(B) publish the statement in the Federal Register by not later than 10 days after the date of that submission.

(d) SUMMARY OF POSTPONED ASSASSINATION MATERIALS.—The Review Board may, after consulting with the custodian of records and, if different, the originating body for an assassination material the transfer of which is postponed under this section, prepare and transmit a summary of the assassination material to the Archivist for inclusion in the Collection.

SEC. 8. MARKING AND REVIEW OF POSTPONED MATERIALS.

(a) MARKING.—The Review Board shall—

(1) mark any portion of assassination material that is not transferred to the Archivist for inclusion in the Collection pursuant to section 5(c), in accordance with a system of identification established by the Review Board; and

(2) append to that portion a statement of the Review Board designating a specified time at which, or a specified occurrence following which, the material shall be reconsidered for inclusion in the Collection pursuant to the criteria set forth in section 7(a).

(b) TRANSFER.—The Review Board shall transfer all assassination material marked under subsection (a), and all appendices thereto, to the Archivist.

(c) REVIEW.—The Archivist shall, by not later than the time or the occurrence specified under subsection (a)(2) for an assassination material—

(1) review the assassination material and any appendices thereto; and

(2) resubmit the assassination material to the Review Board, if it is still in existence, or to the originating body, if the Review Board has terminated.

SEC. 9. PUBLIC AVAILABILITY OF OTHER INFORMATION.

(a) MATERIALS UNDER SEAL OF COURT.—The Review Board may request the Department of Justice to petition, or through its own counsel may petition, any court in the United States or a foreign country to make publicly available any information relevant to the assassination of President Kennedy that is held under seal of the court.

(b) GRAND JURY MATERIALS.—

(1) PETITIONS.—The Review Board may request the Attorney General to petition, or through its own counsel may petition, any court in the United States to make publicly available any information relevant to the assassination of President Kennedy

that is held under the injunction of secrecy of a grand jury.

(2) TREATMENT UNDER FEDERAL RULES.—A petition under this subsection is deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(c) AUTOPSY MATERIALS.—The Review Board shall, pursuant to the terms of the deed of gift dated October 29, 1966, seek access to the autopsy photographs and x rays donated to the National Archives by the family of President Kennedy. The Review Board shall, as soon as practicable, submit to the Speaker of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the status of those records and on access to those records by individuals consistent with the deed of gift.

(d) COOPERATION OF EXECUTIVE BRANCH.—

(1) ATTORNEY GENERAL.—The Attorney General shall assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury.

(2) SECRETARY OF STATE.—The Secretary of State shall, as soon as possible—

(A) contact the Government of the Republic of Russia and seek the public availability of all records of the Government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), that are relevant to the assassination of President Kennedy; and

(B) contact any other foreign government that may hold information relevant to the assassination of President Kennedy, and seek the public availability of such information.

(3) OTHER EXECUTIVE AGENCIES.—The head of each executive agency shall cooperate fully with the Review Board to seek the public availability of all information relevant to the assassination of President Kennedy.

SEC. 10. ASSASSINATION MATERIALS REVIEW BOARD.

(a) ESTABLISHMENT AND FUNCTIONS.—There is established as an independent agency a board which shall be known as the "Assassinations Materials Review Board". The Review Board shall perform such functions as are assigned to it by this joint resolution.

(b) APPOINTMENT.—

(1) IN GENERAL.—The Court shall, within 90 days after the date of enactment of this joint resolution, appoint, without regard to political affiliation, 5 distinguished and impartial private citizens to serve as members of the Review Board.

(2) VACANCIES.—A vacancy on the Review Board shall be filled in the same manner as the original appointment was made under paragraph (1).

(3) INFERIOR OFFICERS.—The members of the Review Board are deemed to be inferior officers of the United States within the meaning of section 2 of article II of the Constitution.

(4) CHAIRPERSON.—The members of the Review Board shall elect 1 of its members as chairperson at its initial meeting.

(c) EXECUTIVE DIRECTOR.—The Review Board shall appoint an individual of integrity and impartiality to serve as Executive Director of the Review Board.

(d) LIMITATION.—A person who is employed by the Government or who has been employed by any intelligence or law enforcement agency of the United States Government, or who has had any involvement with any review referred to in section 3(13)(A)(i) or (ii) may not serve as

a member of the Review Board or as the Executive Director.

(e) RECOMMENDATIONS.—Prior to appointing any person to be a member of the Review Board, the Court may solicit and consider the recommendations of diverse representatives of general and scholarly interest in assassination materials, including the American Political Science Association, the American Society of Newspaper Editors, the Organization of American Historians, the National Security Archive, the Organization of American Historians, the Society of American Archivists, the Association of American Publishers, the Center for National Security Studies, the American Historical Society, and the American Newspaper Publishers Association.

(f) COMPENSATION.—

(1) PAY.—Members of the Review Board and the Executive Director shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) TRAVEL EXPENSES.—Members of the Review Board shall be allowed reasonable travel ex-

penses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under chapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(g) REMOVAL.—

(1) IN GENERAL.—No member of the Review Board or the Executive Director shall be removed from office, other than for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's or Executive Director's duties.

(2) REPORT.—Within 10 days after any date on which a member of the Review Board is removed from office, the Court shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(h) OVERSIGHT.—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the offi-

cial conduct of the Review Board. The Review Board shall cooperate with the exercise of such oversight jurisdiction.

(i) SUPPORT SERVICES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide administrative and support services to the Review Board on a reimbursable basis, including office space and clerical and personnel support.

(2) DETAILS.—At the request of the Executive Director, the head of an executive agency shall detail employees of the agency to assist the Review Board in carrying out this joint resolution. Any employee detailed to the Review Board shall be detailed without reimbursement, and without interruption or loss of civil service status or privilege.

(3) SERVICES.—The Review Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(j) INTERPRETIVE GUIDELINES.—The Review Board may issue interpretive guidelines to assist in implementing the purposes of this joint resolution.

(k) TERMINATION.—

(1) IN GENERAL.—The Review Board shall terminate on the date which is 2 years after the date of the enactment of this joint resolution, except the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within such 2-year period.

(2) NOTICE OF TERMINATION.—At least 30 days before completing its work, the Review Board shall provide written notice to the President and the Congress of its intention to terminate its operations at a specified date.

(3) TRANSFER OF REVIEW BOARD RECORDS.—Upon its termination, the records of the Review Board shall be transferred to the Archivist in accordance with section 2107(2) of title 44, United States Code.

(l) ACCESS TO RECORDS.—

(1) ACCESS OF REVIEW BOARD AND EXECUTIVE DIRECTOR.—An executive agency shall upon request promptly provide to a Member of the Review Board, the Executive Director, or their designee, access to any record requested by the Review Board.

(2) MAINTENANCE OF CONFIDENTIALITY.—Any person who obtains access under this joint resolution

to any record that is restricted by law for reason of national security or otherwise—

(A) shall maintain the same level of confidentiality for that record as is required of the head of the originating body for the record; and

(B) shall be subject to the statutory penalties for unauthorized disclosure or use that apply to officers and employees of the originating body for the record.

(m) POWERS.—The Review Board shall have authority to hold hearings, administer oaths, and subpoena witnesses and documents, and its subpoenas may be enforced in any appropriate Federal court by the Department of Justice acting pursuant to a lawful request of the Review Board.

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.—Any provision of this joint resolution that requires public availability of a record—

(1) shall take precedence over any other law (except paragraph (2)) that would otherwise prohibit such public availability, including any judicial decision, common law doctrine, Executive order, or executive agency regulation; and

(2) shall not apply to any record that is subject to a deed of gift governing access to, transfer of, or release of the record.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this joint resolution shall be construed to eliminate or limit—

(1) any right to file a request for an assassination material, with any executive agency other than the Review Board;

(2) any right to seek judicial review pursuant to section 552 of title 5, United States Code, of the decision of such an agency with respect to such a request; or

(3) any requirement that such an agency make available to the public in accordance with that section any assassination material.

(c) EXISTING AUTHORITY.—Nothing in this joint resolution revokes or limits any existing authority or obligation of the President, any executive agency, the Senate, the House of Representatives, or any other entity of the Federal Government, to make publicly available records in its possession, custody, or control.

SEC. 12. CONGRESSIONAL RULEMAKING AUTHORITY.

Sections 5(b) and 7(b)(1) and (2) are adopted—

(1) as an exercise of the rulemaking authority of the House of Representatives and the Senate; and

(2) recognizing the constitutional prerogative of each House of the Congress to modify its rules relating to the procedures of that House.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this joint resolution, to remain available until expended.

(b) INTERIM FUNDING.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this joint resolution.

14-00000

General Counsel
92-01611

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
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OCA 0700-92
27 March 1992

MEMORANDUM FOR: General Counsel
Chief, DCI History Staff
Vice Chairman/NIC
Chief/IMS/DO

FROM: David M. Pearline
Deputy Director for Legislation
Office of Congressional Affairs

SUBJECT: Assassination Disclosure Act of 1992

1. Attached for your review and comment is the Joint Resolution introduced yesterday by Congressman Stokes and Senator Boren that would establish procedures for declassifying records related to the assassination of JFK. The Resolution in the House will be referred to the Rules Committee, Government Operations Committee and the Judiciary Committee. In the Senate, the Resolution will be referred to Government Affairs Committee.

2. The Resolution has the following key elements:

a. It establishes an Assassination Material Review Board composed of five private citizens, appointed by the D.C. Circuit Court of Appeals, and mandates that all executive agencies turn any assassination material they may possess over to the Executive Director of the Board. Unless there is clear and convincing evidence that the material falls within certain stated exemptions, the Executive Director would then turn the material over to the Archivist for release to the public. An executive agency may appeal to the Review Board the decision by the Executive Director to release assassination material.

b. Disclosure of information may be postponed if it would reveal an intelligence agent; an intelligence source or method which is currently utilized or reasonably expected to be utilized, by the US Government; or any matter currently relating to military defense, intelligence operations or the conduct of foreign relations of the US and the threat posed by disclosure of such information outweighs any public interest in the disclosure. Other

grounds for postponing disclosure include invasion of the privacy of a living person, breach of a promise of confidentiality, and disclosure of a security or protective procedure used by the Secret Service.

c. Any material that falls within the above stated categories would be referred by the Executive Director to the Review Board which would then make a decision whether to release the document in full or in part. The presumption would be in favor of releasing the documents, unless the Board determined that there was clear and convincing evidence that the document was protected by the exemptions. The Review Board would also have the option of releasing to the public a summary of the document, or inserting substitutions for information that otherwise could not be released.

d. An executive agency is given 60 days to appeal to the President a decision by the Review Board to release a record, particular information in a record, a summary of a record or a substitution for particular information. The President may prevent the Review Board from releasing the material if he certifies that the materials falls within exemptions described above. The President may not delegate this authority, and must submit to the appropriate committee in the House and to the SSCI a written statement setting forth the reasons for denying release of the information and a complete copy of the material at issue. In addition, the President must publish in the Federal Register a notice that he has taken such action, and a description of the size and nature of assassination material at issue. The Executive Branch is not given any opportunity to appeal a decision to release material originated by the House, Senate or Warren Commission.

e. Whenever a final decision has been made to postpone release of material, the Review Board is required to turn the information over to the Archivist along with a statement as to a specific time or specific occurrence that would trigger reconsideration of the decision not to release the material. The Archivist would then be placed under a continuing duty to review the material for release to the public.

f. The Review Board may subpoena assassination material from agencies and compel the attendance of witnesses at hearings. Subpoenas may be enforced in

14-00000

SUBJECT: Assassination Disclosure Act of 1992

Federal court by the Department of Justice acting pursuant to the request of the Board. At the request of the Review Board, executive agencies are required to detail to the Board such employees as may be necessary to carry out the functions of the Board. Oversight of Board activities is to be carried out by the SSCI and by an appropriate committee of the House. The term of the Review Board shall be two years, with an option to extend for another year.

3. We are in the process of analyzing this Resolution and putting together comments that we can use in discussing the Resolution with the staff of the relevant committees. I would, therefore, appreciate receiving any comments you have on the Resolution by 2 April.

David M. Pearline

Attachment:
As stated

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SUBJECT: Assassination Disclosure Act of 1992

OCA/LEG/DPearline:me/rw/37915 (27 March 1992) OCA 0700-92

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102d Congress

2d Session

H.J. Res.____

IN THE HOUSE OF REPRESENTATIVES

Mr. Stokes introduced the following joint resolution; which was referred to the the Committee on _____

JOINT RESOLUTION

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Joint Resolution may be cited as the "Assassination Materials Disclosure Act of 1992".

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSE.

(a) FINDINGS AND DECLARATIONS.-The Congress finds and declares that-

14-00000

(1) the legitimacy of any government in a free society depends on the consent of the people;

(2) the ability of a government in a free society to obtain the consent of the people is undermined to the degree that the people do not trust their government;

(3) the disclosure of records in the possession of the Government relevant to the assassination of President John F. Kennedy will contribute to the trust of the people in their government;

(4) the disclosure of records in the possession of the Government relevant to the assassination of President John F. Kennedy should proceed as expeditiously as practicable; and

(5) all records in the possession of the Government relevant to the assassination of President John F. Kennedy should be released to the public at the earliest opportunity, except where clear and convincing justification exists for postponing the disclosure of such records to a specified time or following a specified occurrence in the future.

(b) PURPOSE.- The purpose of this Joint Resolution is to secure the expeditious disclosure of records relevant to the assassination of President John F. Kennedy as soon as practicable consistent with the public interest.

SEC. 3. DEFINITIONS.

In This Joint Resolution:

(1) "Archivist" means the Archivist of the United

14-00000

States.

(2) "Assassination material" means a record that relates in any manner or degree to the assassination of President John F. Kennedy, that was created or obtained by the House Committee, the Senate Committee, the Warren Commission, or an Executive agency or any other entity within the Executive branch of the Government, and that is in the custody of the House of Representatives, the Senate, the National Archives, or any other Executive agency, but does not include (A) material to the extent that it pertains to personnel matters or other administrative affairs of a congressional committee, the Warren Commission, or any entity within the Executive branch of the Government; or (B) the autopsy materials donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those materials, which are addressed in subsection 10(b) of this Joint Resolution.

(3) "Committee" means the House Committee or Senate Committee.

(4) "Executive agency" means an Executive agency as defined in subsection 552(f) of title 5, United States Code.

(5) "House Committee" means the Select Committee on Assassinations of the House of Representatives and the Permanent Select Committee on Intelligence of the House of Representatives acting under this Joint Resolution

14-00000

with respect to assassination materials in the custody of the House of Representatives.

(6) "National Archives" means the National Archives and Records Administration.

(7) "Originating body" means the Executive agency, commission, or congressional committee that created the particular record or obtained the particular record from a source other than another entity of the Government, or the custodian of records of that agency, commission, or committee for purposes of this Joint Resolution. For purposes of this Joint Resolution, (A) the custodian of records of the Select Committee on Assassinations of the House of Representatives is the Permanent Select Committee on Intelligence of the House of Representatives; (B) the custodian of records of the Select Committee to Study Governmental Operations With Respect to Intelligence of the Senate is the Select Committee on Intelligence of the Senate; and (C) the custodian of records of the Warren Commission is the Archivist of the United States.

(8) "Record" includes a book, paper, map, photograph, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(9) "Review Board" means the Assassination

Material Review Board established under section 5.

(10) "Senate Committee" means the Select Committee to Study Governmental Operations With Respect to Intelligence of the Senate and the Select Committee on Intelligence of the Senate acting under this Joint Resolution with respect to assassination materials in the custody of the Senate.

(11) "Warren Commission" means the President's Commission on the Assassination of President John F. Kennedy.

SEC. 4. PUBLIC DISCLOSURE OF MATERIALS BY CONGRESS AND THE EXECUTIVE BRANCH.

(a) IN GENERAL.- Except for assassination material or particular information in assassination material the disclosure of which is postponed under section 8, all assassination materials shall be transferred to the National Archives and made available for inspection and copying by the general public as soon as practicable.

(b) FEES FOR COPYING.- The Archivist shall charge fees for copying and grant waivers of such fees pursuant to the standards established by section 552 of Title 5, United States Code.

(c) PRINTING AND DISSEMINATION OF ASSASSINATION MATERIALS.- (1) The Archivist may provide copies of assassination materials of broad public interest to the Government Printing Office, which shall print copies for sale

14-00000

to the public.

(2) Assassination materials printed by the Government Printing Office pursuant to this subsection shall be placed in libraries throughout the United States that are Government depositories in accordance with the provisions of Chapter 19 of Title 44, United States Code.

SEC. 5. ASSASSINATION MATERIALS REVIEW BOARD.

(a) ESTABLISHMENT.- There is established as an independent agency a board to be known as the Assassination Materials Review Board.

(b) APPOINTMENT.- (1) The division of the United States Court of Appeals for the District of Columbia Circuit established under section 49 of title 28, United States Code, shall, within 90 calendar days of the date of enactment of this Joint Resolution, appoint, without regard to political affiliation, 5 distinguished and impartial private citizens, none of whom are presently employees of any branch of the Government and none of whom shall have had any previous involvement with any investigation or inquiry relating to the assassination of President John F. Kennedy, to serve as members of the Review Board.

(2) A vacancy on the Review Board shall be filled in the same manner as the original appointment was made under paragraph (1).

(3) The members of the Review Board shall be deemed to be inferior officers of the United States within the meaning of section 2 of article II of the Constitution.

(c) CHAIR.- The members of the Review Board shall elect 1 of its members as chair at its initial meeting.

(d) COMPENSATION OF MEMBERS.- (1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(e) STAFF.- (1) The Review Board may, without regard to the civil service laws and regulations, appoint and terminate an Executive Director and such other additional personnel as are necessary to enable the Review Board to perform its duties. The individual appointed Executive Director shall be a person of integrity and impartiality who is not a present employee of any branch of the Government and has had no previous involvement with any investigation or inquiry relating to the assassination of President John F. Kennedy.

(2) The Review Board may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of

14-00000

title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(3) At the request of the Executive Director, Executive agencies, including the National Archives and other originating bodies within the Executive Branch, shall detail to the Review Board such employees as may be necessary and appropriate to carry out the review required by this Joint Resolution. Any employee detailed to the Review Board for this purpose shall be detailed without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) The Review Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(f) INAPPLICABILITY OF CERTAIN LAWS.- The following laws shall not apply to the Review Board:

(1) Subchapter II of chapter 5 of title 5, United States Code.

(2) Chapter 7 of title 5, United States Code.

(3) Section 3105 and 3344 of title 5, United States Code.

14-00000

(g) DUTIES.- The Review Board shall consider and render decisions on referrals by the Executive Director and appeals as provided in section 7 for a determination-

(1) whether a record constitutes assassination material subject to this Joint Resolution; and

(2) whether a record or particular information in a record qualifies for postponement of disclosure under this Joint Resolution.

(h) REMOVAL.- (1) A member of the Review Board may be removed from office, other than by impeachment and conviction, only by the action of the President or the Attorney General acting on behalf of the President, and only for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, the Attorney General shall promptly submit to the division of the court that appointed the members of the Review Board, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal.

(B) The division of the court, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives shall make available to the public a report submitted under subparagraph (A), except that

14-00000

the division of the court or either judiciary committee may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court, for the District of Columbia.

(B) A member of the division of the court that appointed the members of the Review Board may not hear or determine a civil action or an appeal of a decision in a civil action brought under subparagraph (A).

(C) The member may be reinstated or granted other appropriate relief by order of the court.

(i) OVERSIGHT.- (1) The appropriate committee of the House of Representatives and the Select Committee on Intelligence of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board, to include access to any records held or created by the Review Board, and the Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) The Review Board shall submit to the Congress such statements or reports on the activities of the Review Board as the Review Board considers to be appropriate in addition to the notifications required by subsection 8(g).

14-00000

(j) SUPPORT SERVICES.- The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis. The Archivist shall provide support services for the Review Board to include, as necessary, office space, clerical support, and personnel support, on a reimbursable basis.

(k) INTERPRETIVE REGULATIONS.- The Review Board may issue interpretive regulations.

(l) TERMINATION. - (1) The Review Board and the terms of its members shall terminate within two years of the date upon which the Board is formally constituted pursuant to this Joint Resolution and begins operations. Provided that, if the Review Board has not completed its work pursuant to this Joint Resolution within such two-year period, it may, by majority vote, extend its term for an additional one-year period for such purpose. Any additional extension of the Review Board and the terms of its members shall be authorized by the Congress.

(2) At least 30 calendar days prior to the completion of its work, the Review Board shall provide written notice to the President and the Congress of its intention to terminate its operations at a specified date.

SEC. 6. GROUNDS FOR POSTPONEMENT OF DISCLOSURE.

Disclosure to the general public of assassination material or particular information in assassination material

14-00000

may be postponed if its release would --

(1) reveal --

(A) an intelligence agent;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States;

and the threat to the military defense, intelligence operations or conduct of foreign relations of the United States posed by its disclosure is of such gravity that it outweighs any public interest in its disclosure.

(2) constitute an invasion of privacy of a living person, whether that person is identified in the material or not, and that invasion of privacy is so substantial that it outweighs any public interest in its disclosure;

(3) constitute a substantial and unjustified violation of an understanding of confidentiality between a Government agent and a witness or a foreign government; or

(4) disclose a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or other Government agency responsible for protecting Government officials, and that disclosure is so harmful that it outweighs any public interest in its disclosure.

14-00000

SEC 7. REVIEW OF MATERIALS BY THE EXECUTIVE DIRECTOR

(a) RELEASE OF ALL ASSASSINATION MATERIALS TO THE EXECUTIVE DIRECTOR - . Each Executive agency, including the National Archives, shall make available to the Executive Director all assassination materials, as defined in section 3, in its possession, including but not limited to, in the case of the National Archives, the records of the Warren Commission, the House Committee, and the Senate Committee. Where the agency is uncertain if a record is assassination material, it shall make that record available to the Executive Director. The Executive Director shall have the authority and responsibility, where circumstances warrant, to inquire of any Executive agency as to the existence of further records that may be assassination materials beyond those made available by that agency, to obtain access to such records, and to recommend that the Review Board subpoena such records in the event of denial of such access.

(b) EXECUTIVE DIRECTOR RESPONSIBILITY- . The Executive Director shall have responsibility for reviewing all records that are made available by Executive agencies, including the National Archives, pursuant to subsection 7(a).

(c) CONSULTATION BY EXECUTIVE DIRECTOR - . The Executive Director may consult with the originating body for advice and information in reaching a decision with respect to the disclosure or nondisclosure of

14-00000

assassination materials.

(d) PRESUMPTION FOR RELEASE.- In the absence of clear and convincing evidence that an assassination material or particular information within an assassination material falls within the exemptions established in section 6 of this Joint Resolution, the Executive Director shall direct that the assassination material or particular information be released pursuant to subsection 7(e)(1).

(e) EXECUTIVE DIRECTOR DECISION -- After review of each record, the Executive Director shall, as soon as practicable after the date of enactment of this Joint Resolution, either --

(1) notify the originating body or bodies that the record is assassination material that is appropriate for release in its entirety pursuant to the standards established in this Joint Resolution. In such event, the Executive Director shall transmit the record to the Archivist and the Archivist shall make the record available for inspection and appropriate copying by the public, unless within 30 calendar days of notification an originating body files a notice of appeal with the Review Board. PROVIDED that any record that, in the judgment of the Executive Director, arguably falls within subsection 6(2), shall automatically be referred to the Review Board pursuant to subsection 7(e)(2)(D); or

14-00000

(2) refer the record to the Review Board, accompanied by a written determination, indicating one of the following:

(A) that, in the Executive Director's judgment, the record is not assassination material;

(B) that, in the Executive Director's judgment, the record is assassination material that qualifies for postponement of disclosure under Section 6 or contains particular information that qualifies for postponement of disclosure under Section 6;

(C) that full Review Board investigation and/or Review Board judgment appears appropriate for a determination as to whether the record or particular information in the record qualifies for postponement of disclosure under Sec. 6 and thus that this determination shall be vested in the Review Board rather than the Executive Director; or

(D) that, in the Executive Director's judgment, the record arguably falls within subsection 6(2) and thus that the determination as to whether the record qualifies for postponement of disclosure shall be vested in the Review Board rather than the Executive Director.

14-00000

SEC. 8. DETERMINATIONS BY THE REVIEW BOARD.

(a) APPEALS AND REFERRALS -- The Review Board shall review and apply the standards for release set forth in this Joint Resolution to

(1) all records that are the subject of appeals pursuant to Sec. 7(e)(1); and

(2) all records referred to the Review Board by the Executive Director pursuant to Sec. 7(e)(2).

(b) PRESUMPTION FOR RELEASE.- In the absence of clear and convincing evidence that an assassination material or particular information within an assassination material falls within the exemptions established in section 6 of this Joint Resolution, the Board shall direct that the assassination material or particular information be released pursuant to subsection 8(h).

(c) POWERS.- The Review Board shall have authority to hold hearings, administer oaths, and subpoena witnesses and documents, and its subpoenas may be enforced in any appropriate Federal court by the Department of Justice acting pursuant to a lawful request of the Review Board.

(d) ADDITIONAL MATERIALS.- The Review Board shall have the authority and responsibility, where circumstances warrant, to inquire of any Executive agency as to the existence of further records that may

14-00000

be assassination materials beyond those made available by that agency, to obtain access to such records, and to use its subpoena power in support of this authority.

(e) WITNESS IMMUNITY.- The Review Board shall be considered an agency of the United States for purposes of section 6001 of title 18, United States Code.

(f) REVIEW BOARD DETERMINATIONS -- After review of each record, the Review Board shall determine whether such record is assassination material, and, if so, whether such assassination material, or particular information in the assassination material, qualifies for postponement of disclosure pursuant to section 6. Any reasonably segregable particular information in an assassination material shall be considered for release after deletion of information in that assassination material that qualifies for postponement of disclosure. Where an entire assassination material qualifies for postponement of disclosure pursuant to section 6, the Board may, after consultation with the orginating body and if consistent with and to the extent consistent with section 6, create and prepare for release a summary of the assassination material in order to provide for the fullest disclosure feasible. Where particular information in an assassination material qualifies for postponement of disclosure pursuant to section 6, the Board may, after consultation with the originating body and if consistent with and to the extent consistent with

14-00000

section 6, create and prepare for release appropriate substitutions for that information in order to provide for the fullest disclosure feasible.

(g) DECISIONS TO POSTPONE -- Where the Board determines that a record is not assassination material, or that a record, or particular information in the record, qualifies for postponement of disclosure pursuant to section 6, the Board shall transmit to the originating body written notice of such determination, together with a copy of the record at issue, and, if the originating body is an Executive agency, a copy of such notice and of the record shall be transmitted to the appropriate committee of the House of Representatives and the Select Committee on Intelligence of the Senate. Such notice shall contain a statement of the reason or reasons for the Board's decision. Any decision of the Board that a record is not assassination material, or that disclosure of a record or particular information in a record should be postponed pursuant to section 6, shall not be subject to judicial review.

(h) DECISIONS TO RELEASE

(1) NON-EXECUTIVE AGENCY MATERIAL -- In the case of records for which the originating body is the Warren Commission, the House Committee, or the Senate Committee, where the Review Board determines that a record is assassination material, and that a record, particular information in a record, a summary of a

14-00000

record, or a substitution for particular information in a record is appropriate for release pursuant to this Joint Resolution, the Review Board shall transmit the record, particular information, summary, or substitution to the Archivist, and the Archivist shall make such record, particular information, summary, or substitution available for inspection and copying by the public. The Review Board's decision to release shall not be subject to review by the President or any other entity of the Government and shall not be subject to judicial review.

(2) EXECUTIVE AGENCY MATERIAL -- In the case of records for which the originating body is an Executive agency, excluding the Warren Commission, where the Review Board determines that a record, particular information in a record, a summary of a record, or a substitution for particular information in a record is appropriate for release pursuant to this Joint Resolution, the Review Board shall transmit to the originating body written notice of its determination. In such event, the Review Board shall transmit the record, particular information, summary, or substitute to the Archivist, and the Archivist shall make such material available for inspection and appropriate copying by the public, unless, within 60 calendar days of the date on which the Board has notified the originating body, the President has certified to the Review Board and the Archivist that the material

14-00000

qualifies for postponement of disclosure pursuant to section 6, in which case release of the material shall be postponed, and this decision shall not be subject to judicial review. The President shall not delegate this authority to any other official or entity.

(i) PRESIDENTIAL NOTICE TO CONGRESSIONAL COMMITTEES -- Whenever the President makes a certification pursuant to subsection 8(h)(2), the President shall submit to the appropriate committee of the House of Representatives and the Select Committee on Intelligence of the Senate a written statement setting forth the reason or reasons for superseding the Board's determination and a complete copy of the material at issue.

(j) BOARD NOTICE TO PUBLIC -- Every 60 calendar days, beginning 60 calendar days after the date on which the Review Board first postpones release of any assassination material pursuant to section 8(g), the Board shall make available for public inspection and copying a notice of all such postponements determined over the 60-day period, including a description of the size and nature of each assassination material concerned and the ground or grounds for postponement.

(k) PRESIDENTIAL NOTICE TO PUBLIC -- In any case in which a determination of the Board to release assassination material is superseded by the President pursuant to this subsection, the President shall within

14-00000

10 calendar days publish in the Federal Register notice of such action, including a description of the size and nature of the assassination material concerned and the ground or grounds for postponement.

(l) IMMUNITY FROM SUIT. - No person shall have a cause of action against members, employees or detailees of the Review Board arising out of any action or failure to act with regard to assassination material under this Joint Resolution.

(m) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE - . That portion of subsection 8(h)(1) that permits the Review Board to release materials for which the originating body is the House Commitee or the Senate Committee without the concurrence or approval of any congressional body is enacted by the Congress -

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 9 -- MARKING AND REVIEW OF MATERIALS TRE DISCLOSURE OF

14-00000

WHICH IS POSTPONED --

(a) MARKING -- With respect to each assassination material or particular information in assassination material the disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been released to the public pursuant to subsection 8(h), the Review Board shall append to the material (1) all records of proceedings conducted pursuant to this Joint Resolution and relating to the material and (2) a statement of the Review Board designating, based on a review of the proceedings and in conformity with the decisions reflected therein, a specified time at which or a specified occurrence following which the material may appropriately be reconsidered for release pursuant to the standards established in this Joint Resolution. The Review Board shall then transfer the material and appendices to the Archivist for placement in the Archives under seal.

(b) REVIEW -- The sealed assassination materials transferred by the Review Board pursuant to this section shall remain subject to the standards for release established by this Joint Resolution. It shall be the continuing duty of the Archivist to review the sealed assassination materials and the documents appended thereto pursuant to this section and to resubmit assassination materials to the Review Board, if it is still in existence, or to the originating body, if the Review Board has been abolished, whenever it appears to the Archivist that review may be appropriate.

14-00000

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.- (1) The Review Board may request the Department of Justice to petition, or through its own counsel petition, any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition, or through its own counsel petition, any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Joint Resolution shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) AUTOPSY MATERIALS -- The Review Board shall, pursuant to the terms of the applicable deed of gift, seek access to the autopsy photographs and x-rays donated to the National Archives by the Kennedy family under the deed of gift. The Review Board shall, as soon as practicable, submit to the appropriate committee of the House and the Select Committee on Intelligence of the Senate a report on the status of these materials and on access to these materials by individuals consistent with the deed of gift.

14-00000

(c) SENSE OF CONGRESS.- It is the sense of Congress that-

(1) The Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) The Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest..

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.- (1) Where this Joint Resolution requires release of a record, it shall take precedence over any other law, judicial decision construing

14-00000

such law, or common law doctrine that would otherwise prohibit such release.

(b) FREEDOM OF INFORMATION ACT.- Nothing in this Joint Resolution shall be construed to eliminate or limit any right to file requests with any Executive agency other than the Review Board or seek judicial review of the decisions of such agencies pursuant to section 552 of title 5, United States Code.

(c) EXISTING AUTHORITY.- Nothing in this Joint Resolution revokes or limits the existing authority of the President, any Executive agency, the Senate, or the House of Representatives, or any other entity of the Government to release records in its possession.

SEC. 12. TERMINATION OF EFFECT OF JOINT RESOLUTION.

The provisions of this Joint Resolution which pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to subsection 5(1). The remaining provisions of this Joint Resolution shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination materials have been made available to the public in accordance with this Joint Resolution.

14-00000

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.- There are authorized to be appropriated such sums as are necessary to carry out this Joint Resolution, to remain available until expended.

(b) INTERIM FUNDING.- Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Joint Resolution.

SEC. 14. SEVERABILITY.

If any provision of this Joint Resolution or the application thereof to any person or circumstance is held invalid, the remainder of this Joint Resolution and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

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Central Intelligence Agency

Washington D C 20505

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CIA SPECIAL COLLECTIONS
RELEASE IN FULL
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13 April 1992

Mr. Bernard H. Martin
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

This is in response to your request for the views of the Central Intelligence Agency on Senate Joint Resolution 282, the "Assassination Materials Disclosure Act of 1992", and the corresponding House Joint Resolution 454 ("the resolutions").

The Central Intelligence Agency fully supports the fundamental premise underlying this legislation--that efforts should be made to declassify and make available to the public as expeditiously as possible government documents relating to the assassination of President Kennedy. In fact, the Director of Central Intelligence (DCI) has recently established and staffed a new unit within CIA responsible for review and declassification of documents of historical interest, including the JFK-related files, as part of the Agency's program of increased openness. However, several provisions of the resolutions raise serious concerns, as outlined below, and CIA cannot support them as currently drafted. Our comments will focus upon specific CIA concerns; many general issues raised by the resolutions are better addressed by the White House or the Department of Justice.

Initially, the resolutions are focussed on "records" rather than the information contained in them. We are concerned that the Agency would not have the opportunity to object to release of CIA information contained in documents originated by Congress or the Warren Commission. Under the resolutions, documents originated by these entities can be released by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies. Similarly, there is no mechanism that would allow

14-00000

the Agency to object to release of its information contained in documents originated by other agencies or departments. The resolutions should provide that the agencies which originate information have the opportunity to review that information prior to its release. Otherwise, an anomalous situation could be created in which documents originated by the Executive Branch would be withheld while documents originated by Congress containing the same Executive branch information would be released.

The resolutions' broad definition of "assassination material" is also troublesome. The resolutions define "assassination material" as a record that relates "in any manner or degree to the assassination." This unbounded definition could cover a range of material beyond that which has been traditionally associated with the JFK assassination. This broad definition, coupled with the Review Board's powers to request additional information from Executive agencies, and the fact that the Board makes the determination of what is assassination material, could lead to a new investigation of the assassination, rather than review of existing files for declassification purposes. Such an inquiry could well stray into sensitive areas that are unrelated to the assassination.

The question of proper scope of the Review Board's charter is a difficult one, and we do not mean to suggest that reasonable requests for materials should be denied simply because they were not made by a previous Presidential Commission or Congressional Committee. However, there should be a provision whereby Board requests for additional materials that an agency believes are unrelated to the assassination could be appealed--perhaps to the President.

The resolutions contain no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its Executive Director/staff elements. Absent security procedures and facilities that met Executive branch standards, agencies would be unable to provide classified assassination materials to the new body or its staff.

The resolutions provide a 30 day period for appealing decisions by the Executive Director to release information. This may not provide sufficient time for meaningful review of what could prove to be large volumes of material at one time--particularly where some documents may require coordination with other agencies. We suggest that the

14-00000

resolutions be amended to provide that agencies may file for an automatic 30 day extension to consider whether an appeal is necessary before material is publicly disclosed.

We believe that the Executive Director of the Review Board should have substantive expertise with respect to protection of intelligence or law enforcement information readily available so that the initial decisions on whether to release documents are made on an informed basis. Under the resolutions, neither Board members nor the Executive Director may be government employees or have any background in the assassination investigations. Because of this restriction, these individuals are unlikely to have any familiarity with the documents at issue and may well have no expertise in intelligence or law enforcement equities. While the Executive Director may request detailees from Executive agencies and may consult with originating agencies, there is no requirement that he do so. An Executive branch agency with knowledge of the information at stake and potential harms (or lack thereof) likely to result from release of the information may have no involvement in the process until after an initial determination has been made to disclose the information. Requiring that the staff informally consult with agencies originating the information or mandating detailees from the affected agencies (within reasonable limits--particularly if details are to be nonreimbursable) would ensure that relevant expertise is brought to bear as part of the initial decision-making process.

The Board's broad powers to subpoena witnesses and documents and hold hearings under the resolutions could conflict with the DCI's statutory duty to protect sensitive intelligence sources and methods from unauthorized disclosure. We believe the Board should be required to consult with the DCI on issues like whether a hearing should be closed, or whether a subpoena could be narrowed, if intelligence equities are involved. Disagreements could be appealed to the President.

Section 6 of the resolutions, which outlines the grounds for postponement of public release of a document, may not be adequate to protect Agency interests in certain respects. For example there is no provision for postponing release of Executive privilege/deliberative process, attorney-client, or attorney work-product information. Such privileges could always be waived in the public interest, but as the resolutions are currently drafted, they would be wholly unavailable.

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While such privileges are not likely to arise with respect to factual information directly related to the JFK assassination, they could well arise with respect to other documents swept up in the resolutions' broad definition of assassination materials. We also believe that "intelligence agent" under section 6(1)(A) of the resolutions should be defined with reference to the Intelligence Identities Protection Act so as to protect the identity of covert employees of the Agency.

The Congressional oversight mechanism established for Board activities also may conflict with the existing rules for oversight of intelligence activities. The resolutions provide for congressional oversight of the Review Board and its activities by the "appropriate" House committee and the SSCI, although we have reason to believe that the resolutions may be amended to remove the SSCI from oversight responsibilities. Under the resolutions, the committees would obtain copies of all material that were not released. Thus, the resolutions are likely to involve non-intelligence oversight committees in the review of sensitive CIA information that would not be released to the public. Congress enacted the Intelligence Oversight Act of 1980 in part to reduce the number of congressional committees with access to sensitive CIA information. Expanding the number of committees with access to our information would be of concern, especially if the Review Board seeks new documents minimally-related to the assassination.

Finally, each resolution specifically provides that it does not affect FOIA actions. We would suggest that the resolution explicitly stay responses to FOIA requests related to assassination materials while the Review Board is conducting its business. The resolutions clearly have a more liberal standards for public disclosure of information than does the FOIA, and the public is likely to get assassination materials more expeditiously if agencies are permitted to focus their resources on supporting the work of the Review Board.

We appreciate the opportunity to comment on the assassination materials resolutions. Please contact Vicki Pepper of my staff at (703) 482-6126 with any questions or comments concerning the Agency's position on these resolutions.

Sincerely,

Stanley M. Moskowitz
Director of Congressional Affairs

14-00000

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

Gary E. Foster
Director
Public and Agency Information
(703) 482-7778

13 May 1992

DCI TESTIMONY AT JFK ASSASSINATION HEARING

The DCI testified yesterday at a Senate Governmental Affairs Committee hearing on the Assassination Materials Disclosure Act of 1992. This is a joint resolution sponsored by Senator David Boren and aimed at providing a comprehensive process ultimately leading to the release of all materials held by the United States Government regarding the assassination of President John F. Kennedy. The DCI will essentially repeat this testimony on 15 May for a similar joint resolution sponsored in the House of Representatives by Congressman Louis Stokes.

Perhaps no public event in our lifetime has had the impact of the murder of President Kennedy. We have all heard reckless accusations against the Agency in connection with that terrible event, and we all have an interest in an accurate history of it. For that reason we are circulating the full text of the DCI's testimony.

At the end of the attached text, you will also find a reply by the DCI during the ensuing question-and-answer period when Senator William Cohen asked about the jeopardy that might be caused by revealing the identity of a source so long after the fact or even if the source were deceased.

Gary E. Foster

Attachments

14-00000

STATEMENT OF
ROBERT M. GATES
DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE THE COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

12 May 1992

14-00000

Mr. Chairman, I am here today at your request to provide my views on Senate Joint Resolution 282, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution—that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of John F. Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am glad to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal deletions and is being transferred to the National Archives for release to the public. This is, I acknowledge, a small fraction of what we have, but it is an earnest of my commitment to begin review for declassification immediately of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and I anticipate that many of these will be released shortly.

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As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many documents as possible. In fact, I recently approved new CIA declassification guidelines for our Historical Review Program which specifically direct a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart.

To understand the magnitude of the effort involved in reviewing these documents for declassification, it is important to place them in some context. The CIA's collection of documents related to the assassination of President Kennedy consists of approximately 250,000-300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination. Unfortunately, and for reasons I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized—all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. I have prepared a chart that illustrates this point.

As you can see, prior to President Kennedy's assassination CIA held only a small file on Lee Harvey Oswald that consisted of 33 documents (approximately 110 pages), some of which originated with the FBI, State Department, the Navy, and newspaper clippings. Only 11 documents originated with the CIA. I have brought along a copy of Oswald's file as it existed before the assassination so that you can see first-hand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions, and we are providing them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1962. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald—some 33,000 pages—most of which CIA received from other agencies after November 22, 1963.

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You have asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40% of the documents originated with the FBI, and about 20% originated from the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 73 reels of microfilm. The microfilms in part overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27% of the documents originated with a variety of other U.S. government agencies, private organizations, and foreign and American press.

Although our holdings do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review and, as I said earlier, at my direction, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

The CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than the CIA. However, we have already taken the necessary steps to lift the sequestration, coordinate with other agencies and begin the process of declassification. If necessary, I will ask the House for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents.

While I expect a large amount of material can be declassified under our program, I assume that there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of Agency employees. These files contain fitness reports (performance evaluations), medical evaluations and credit checks on individual CIA officers.

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Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by Congress and signed by the President regarding the JFK papers, to enhance public confidence and provide reassurance that CIA has not held back any information relevant to the assassination, I will appoint a panel of distinguished Americans from outside of government to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and I am personally committed to making it work. Even in this time of diminishing resources within the Intelligence Community, I have directed the allocation of 15 full-time positions to expand the History Staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to get these papers declassified and released, and to open what remains classified to outside, non-governmental review. It is against this background that, in response to this Committee's request, I cite our technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only Intelligence Community concerns; I will defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with my statutory responsibility to protect intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff.

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Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of **CIA information** contained in **documents** originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed.

These are technical problems that I believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

But, again, whatever the future course of the legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate with any mechanism established by the Congress and the President to declassify all of this material.

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Mr. Chairman, let me close with a comment on why I am personally committed to get these documents out. Like all Americans old enough to recall that terrible day in November 1963, as several members of the committee have alluded to, I also remember where I was and what I was doing. I was a college student at William and Mary. I can remember how the word spread like wildfire between classes of that horrible event. I made my way to Washington that weekend and stood at the intersection of Constitution and Pennsylvania Avenues where I waited for hours to watch the president's funeral cortege. I will never forget it.

I entered public service less than three years later, heeding President Kennedy's inaugural call, a call I think many in my generation heard. He said then: Now the trumpet summons us again, not as a call to bear arms, though arms we need, not as a call to battle, though in battle we are, but as a call to bear the burden of a long twilight struggle, year in and year out, rejoicing in hope, patient in tribulation, a struggle against the common enemies of man—tyranny, poverty, disease, and war itself.

Mr. Chairman, the only thing more horrifying to me than the assassination itself is the insidious perverse notion that elements of the American government, that my own agency, had some part in it. I am determined personally to make public or to expose to disinterested eyes every relevant scrap of paper in CIA's possession in the hope of helping to dispel this corrosive suspicion. With or without legislation, I intend to proceed. I believe I owe that to his memory. Thank you.

SENATOR COHEN: Okay. I'm going to give you a chance in a moment, Judge Sessions. I just want to move on quickly, because we have Mr. James—I think, Lazar—who's going to be testifying shortly and I will not be here for that either. But he questions the issue of intelligence sources, that the bill provides that disclosure can be postponed if the release of that information would reveal an intelligence asset. And Mr. Lazar suggests that number one, that should apply only if that particular agent is living; and then secondly, even if living, that the burden would be upon the agency to present by clear and convincing evidence, that disclosures of the identity of that particular agent would in fact present a danger to him or to his family, I assume, or serious damage could result from the disclosure of his identity.

Could you, number one, give us some instance in which disclosure of a deceased intelligence agent or asset would be contrary to our national security interests? And then secondly, address the issue of clear and convincing evidence that the agent being alive, that he might be jeopardized by that disclosure?

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GATES: At the root of effective intelligence work is our ability to deal with people who are willing to provide us with information and to assure them of confidentiality and that their identity will be protected. The Congress has recognized that. The Congress has even recognized the importance of protecting the covert identities of American case officers dealing with such foreign agents.

I believe that we have an obligation to protect the confidentiality of our sources, regardless of the amount of time that has passed. And I believe that if the agent is deceased, that we also have to take into account the potential considerations for that agent's family. There are many countries in the world today, in which despite whatever political changes have taken place, families of those who have defected or who have proven to be agents or who are revealed to have been agents are persecuted or mal-treated or where their life becomes much more difficult, and I think we have an obligation to these people.

I think you—I think we are not in a position of saying "never." But I think that any decision with respect to revealing the identity of a source or an agent, even 20 or 30 years after the information was reported is one that has to be taken with enormous care and deliberation, one that must involve knowledge of the particular circumstances involved, both at the time the information was received and the circumstances of the agent and his family.

In short, so important is the ability to protect the confidentiality of sources that a decision to reveal that identity would have to be the result of the most careful consideration.

14-00000

CIA SPECIAL COLLECTIONS
RELEASE AS SANITIZED

OCA 3097-92
5 October 1992

MEMORANDUM FOR: Director, CSI
Chief/LIT/OGC

FROM: David M. Zinn
Legislation Division
Office of Congressional Affairs

SUBJECT: Congress Passes JFK Bill

Congress on 30 September passed the Senate version of the President John F. Kennedy Assassination Records Collection Act of 1992, calling for the public disclosure of government documents related to the assassination of President Kennedy. The key features of the bill are as follows:

- The bill requires government agencies, including CIA, to transmit their respective JFK assassination records to the National Archives for public disclosure within 300 days of enactment of the bill unless the records qualify for "postponement." Government offices that hold JFK assassination records created by another office should transmit those records to the originating office rather than to the Archives.

- Disclosure of an assassination record may be postponed for various reasons, including, where there is clear and convincing evidence that disclosure would identify:

  (a) an intelligence agent whose identity currently requires protection;
  (b) an intelligence source or method which is currently utilized or reasonably expected to be utilized by the USG; or
  (c) a confidential USG source who would face a substantial risk of harm if exposed.

In many cases, postponement is justified only if the potential harm to national security also outweighs the public interest in disclosure.

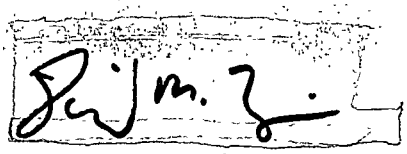
14-00000

SUBJECT: Congress Passes JFK Bill

- The bill creates a Review Board--composed of 5 individuals appointed by the President with the advice and consent of the Senate--to review agency decisions to postpone the disclosure of records. Records determined by government agencies to qualify for "postponement" must be made available to the Board within 300 days of enactment of the legislation. If the Board agrees with an agency's determination to postpone disclosure, the records will be forwarded to a protected collection at the Archives.

- The bill authorizes the President to override a Review Board decision that executive branch records must be publicly disclosed.

The Administration has expressed its support for the bill, and the President is expected to sign it into law. A copy of the bill is attached to this memorandum.



David M. Zinn

Attachment

SUBJECT: Congress Passes JFK Bill

OCA/LEG/DZinn:gh/x37913 (5 October 1992) (OCA 3097-92)

Distribution:
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President signs this bill, the files will be open, and together as a Nation we can move forward.

I would like to commend my colleagues on their efforts on behalf of this bill. In particular, Mr. HORTON, MR. STOKES, AND MR. BROOKS all deserve recognition for their hard work to make sure this bill becomes law.

Mr. STOKES. Mr. Speaker, I rise in strong support of Senate Resolution 3006, the Assassination Materials Disclosures Act of 1992, the conference report on legislation I introduced earlier this year to expedite release of files pertaining to the assassination of President John F. Kennedy. We would not be here today, acting on this initiative, had it not been for the leadership of certain individuals whose determination to enact this bill this year has been steadfast. Several of my colleagues in the House are deserving of special mention.

First, I want to recognize the distinguished gentleman from Michigan and chairman of the Committee on Government Operations, JOHN CONYERS, for the tireless efforts his committee undertook in deliberating this legislation. I also want to commend the gentleman from Texas [Mr. BROOKS], the distinguished chairman of the Committee on the Judiciary, for the tremendous work put forth to guide this legislation through his committee. The gentleman from Massachusetts [Mr. MOAKLEY], the distinguished chairman of the Committee on Rules, and the gentleman from North Carolina [Mr. ROSE], the distinguished chairman of the Committee on House Administration are also to be complimented for their efforts in assisting in the enactment of this measure. I want to thank these individuals for the many courtesies each of them extended to me throughout this process. I also want to express my sincere appreciation to Speaker FOLEY who, from the very beginning, supported my desire to prepare and to introduce this bill, and whose office helped guide our efforts during the most critical moments.

I want to also recognize the work of our Senate colleagues, the distinguished chairman of the Senate Government Affairs Committee and my personal friend from Ohio, Senator GLENN, for the leadership he showed in guiding this bill through the Senate and the distinguished chairman of the Senate Select Committee on Intelligence, Senator DAVID BOREN, who cosponsored this measure in the Senate.

Mr. Speaker, I would be remiss if I did not take this opportunity to express my deep gratitude to Prof. G. Robert Blakey of the Notre Dame University Law School, the former counsel of the House Select Committee on Assassinations, who worked closely with all parties involved in these deliberations. Let the record show that he graciously contributed his services pro bono.

I also want to express my heartfelt appreciation to the staffs of the House Committee on Government Operations, Committee on the Judiciary, Committee on Rules, the Committee on House Administration, the Senate Government Affairs Committee, and the Senate Intelligence Committee, who along with Leslie Atkinson, Joyce Larkin, and other members of my staff diligently reviewed thousands of documents and deftly reached a compromise on this important piece of legislation we bring before the House today.

Mr. Speaker, it is no small feat that I stand before this body in support of a measure that I began to draft over 9 months ago. Since the first of the year, when this issue resurfaced in the public eye, countless hours have been devoted to hearings, meetings, and negotiations by Members of Congress, staff and Federal agencies. This is not to mention the numerous obstacles that we had to overcome. My office alone has handled over 3,000 letters and at various times been totally inundated with telephone calls on this issue. Who would have imagined that, after nearly 30 years, one issue could continue to generate so much controversy and demand so much time and effort? These sentiments have been echoed by numerous individuals who have been involved in the deliberations of this measure.

And while this measure represents the culmination of many months of intense debate for most of the parties involved, for me it is the culmination of work that I began nearly 16 years ago when I chaired the House Select Committee on Assassinations.

Mr. Speaker, as you know, the House Select Committee on Assassinations, after months of deliberations released a comprehensive 12-volume report that detailed its investigation into the assassination of President John F. Kennedy. After completing its investigation on March 29, 1979, the committee filed its final report with the House of Representatives. Our committee released everything that it had the time and the resources to release, and all other records were placed in the National Archives under a House of Representatives rule—rule XXXVI—requiring that all unpublished records routinely be sealed for 30 to 50 years.

Although, the select committee provided the American people with a significant amount of previously unreleased data, agencies and organizations such as the CIA, FBI, Secretary Service, the State Department, and the Department of Justice, continued to maintain hundreds of thousands of unreleased documents. Because the public's search for knowledge and truth concerning information on the Kennedy assassination remained unabated after the release of the select committee's report, I deemed it in our national interest to produce the bill that we are deliberating today.

Mr. Speaker, this bill will not completely satisfy all the concerns relative to the release of these documents. However, I am proud that we have developed a good piece of legislation forged with the best interests of all concerned parties in mind. The true value and merit of their legislation is that it will open up to the American public historic documents relating to the assassination of an American President heretofore unreleased. They are entitled to judge for themselves the question of conspiracy and complicity. Above all, they must be satisfied that there was no coverup by their government. By our action today we restore confidence in the phrase, government of the people, by the people, and for the people.

Mr. Speaker, the action taken by this body today will bring to a close another chapter in American History. I am pleased that it was my legislation that guided our Nation in the right direction 30 years after the tragic assassination of a great American President.

Mr. FISH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill as follows:

S. 3006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "President John F. Kennedy Assassination Records Collection Act of 1992".

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

(2) all government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

(5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

(6) legislation is necessary because Executive Order No. 12356, entitled "National Security Information," has stimulated excessive classification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

(7) most of the records relating to the assassination of President John F. Kennedy are eligible to be, and ought to be, released to the public, and only in the rarest cases is there any legitimate need for continued protection of such records.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

SEC. 3. DEFINITIONS.

In this Act:

(1) "Archivist" means the Archivist of the United States.

(2) "Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of—

(A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission");

(B) the Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission");

(C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee");

(D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives;

(E) the Select Committee on Assassinations (the "House Assassinations Committee") of the House of Representatives;

(F) the Library of Congress;
(G) the National Archives and Records Administration;
(H) any Presidential library;
(I) any Executive agency;
(J) any independent agency;
(K) any other office of the Federal Government; and
(L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy,

but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records.

(3) "Collection" means the President John F. Kennedy Assassination Records Collection established under section 4.

(4) "Executive agency" means an Executive agency as defined in subsection 552(f) of title 5, United States Code, and includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President, or any independent regulatory agency.

(5) "Government office" means any office of the Federal Government that has possession or control of assassination records, including—

(A) the House Committee on Administration with regard to the Select Committee on Assassinations of the records of the House of Representatives;

(B) the Select Committee on Intelligence of the Senate with regard to records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and other assassination records;

(C) the Library of Congress;

(D) the National Archives as custodian of assassination records that it has obtained or possesses, including the Commission to Investigate the Assassination of President John F. Kennedy and the Commission on Central Intelligence Agency Activities in the United States; and

(E) any other executive branch office or agency, and any independent agency.

(6) "Identification aid" means the written description prepared for each record as required in section 4.

(7) "National Archives" means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

(8) "Official investigation" means the reviews of the assassination of President John F. Kennedy conducted by any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

(9) "Originating body" means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

(10) "Public interest" means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy.

(11) "Record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(12) "Review Board" means the Assassination Records Review Board established by section 7.

(13) "Third agency" means a Government agency that originated an assassination record that is in the possession of another agency.

SEC. 4. PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) IN GENERAL.—(1) Not later than 90 days after the date of enactment of this Act, the National Archives and Records Administration shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the assassination of President John F. Kennedy, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The Archivist shall prepare and publish a subject guidebook and index to the Collection.

(2) The Collection shall include—

(A) all assassination records—

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act;

(ii) that are required to be transmitted to the National Archives; or

(iii) the disclosure of which is postponed under this Act;

(B) a central directory comprised of identification aids created for each record transmitted to the Archivist under section 5; and

(C) all Review Board records as required by this Act.

(b) DISCLOSURE OF RECORDS.—All assassination records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the National Archives within 30 days after their transmission to the National Archives.

(c) FEES FOR COPYING.—The Archivist shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

(d) ADDITIONAL REQUIREMENTS.—(1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives using appropriations authorized, specified, and restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Information Security Oversight Office, shall ensure the security of the postponed assassination records in the Collection.

(e) OVERSIGHT.—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the Collection.

SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF ASSASSINATION RECORDS BY GOVERNMENT OFFICES.

(a) IN GENERAL.—(1) As soon as practicable after the date of enactment of this Act, each Government office shall identify and organize its records relating to the assassination of President John F. Kennedy and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) No assassination record shall be destroyed, altered, or mutilated in any way.

(3) No assassination record made available or disclosed to the public prior to the date of enactment of this Act may be withheld, redacted, postponed for public disclosure, or reclassified.

(4) No assassination record created by a person or entity outside government (excluding names or identities consistent with the requirements of section 6) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) CUSTODY OF ASSASSINATION RECORDS PENDING REVIEW.—During the review by Government offices and pending review activity by the Review Board, each Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review;

(2) transfer is necessary for an administrative hearing or other Review Board function; or

(3) it is a third agency record described in subsection (c)(2)(C).

(c) REVIEW.—(1) Not later than 300 days after the date of enactment of this Act, each Government office shall review, identify, and organize each assassination record in its custody or possession for disclosure to the public or review by the Review Board, and transmission to the Archivist.

(2) In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are assassination records;

(B) determine which of its assassination records have been officially disclosed or publicly available in a complete and unredacted form;

(C)(i) determine which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office; and

(ii) transmit to a third agency or other government office those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Review Board all assassination records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by this Act;

(G) give priority to—

(i) the identification, review, and transmission of all assassination records publicly available or disclosed as of the date of enactment of this Act in a redacted or edited form; and

(ii) the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the Review Board any additional information and records that the Review Board has reason to believe it re-

quires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of assassination records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) IDENTIFICATION AIDS.—(1)(A) Not later than 45 days after the date of enactment of this Act, the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid for use with each assassination record subject to review under this Act.

(B) The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system of electronic records by Government offices that are compatible with each other.

(2) Upon completion of an identification aid, a Government office shall—

(A) attach a printed copy to the record it describes;

(B) transmit to the Review Board a printed copy; and

(C) attach a printed copy to each assassination record it describes when it is transmitted to the Archivist.

(3) Assassination records which are in the possession of the National Archives on the date of enactment of this Act, and which have been publicly available in their entirety, without redaction, shall be made available in the Collection without any additional review by the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) SUBMISSION TO THE NATIONAL ARCHIVES.—Each Government office shall—

(1) transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement by the Review Board or upon completion of other action authorized by this Act, all assassination records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) CUSTODY OF POSTPONED ASSASSINATION RECORDS.—An assassination record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required in section 4(e)(2).

(g) PERIODIC REVIEW OF POSTPONED ASSASSINATION RECORDS.—(1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).

(2)(A) A periodic review shall address the public disclosure of additional assassination records in the Collection under the standards of this Act.

(B) All postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed assassination records shall serve to downgrade and declassify security classified information.

(D) Each assassination record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25 years after the date of enactment of this Act, unless the President certifies, as required by this Act, that—

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) FEES FOR COPYING.—Executive branch agencies shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

SEC. 7. ESTABLISHMENT AND POWERS OF THE ASSASSINATION RECORDS REVIEW BOARD.

(a) ESTABLISHMENT.—There is established as an independent agency a board to be known as the Assassinations Records Review Board.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of government records related to the assassination of President John F. Kennedy.

(2) The President shall make nominations to the Review Board not later than 90 calendar days after the date of enactment of this Act.

(3) If the Senate votes not to confirm a nomination to the Review Board, the President shall make an additional nomination not later than 30 days thereafter.

(4)(A) The President shall make nominations to the Review Board after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

(B) If an organization described in subparagraph (A) does not recommend at least 2 nominees meeting the qualifications stated in paragraph (5) by the date that is 45 days after the date of enactment of this Act, the President shall consider for nomination the persons recommended by the other organizations described in subparagraph (A).

(C) The President may request an organization described in subparagraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board—

(A) shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and none of whom shall have had any previous involvement with any official investigation or inquiry conducted by a Federal, State, or local government, relating to the assassination of President John F. Kennedy;

(B) shall be distinguished persons of high national professional reputation in their respective fields, who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ordering and facilitating the review, transmission to the public, and public disclosure of records related to the assassination of President John F. Kennedy and who possess an appreciation of the value of such material to the public, scholars, and government; and

(C) shall include at least 1 professional historian and 1 attorney.

(c) SECURITY CLEARANCES.—(1) All Review Board nominees shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(2) All nominees shall qualify for the necessary security clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate.

(d) CONFIRMATION HEARINGS.—(1) The Committee on Governmental Affairs of the Senate shall hold confirmation hearings within 30 days in which the Senate is in session after the nomination of a Review Board members.

(2) The Committee on Governmental Affairs shall vote on the nominations within 10 days in which the Senate is in session after the confirmation hearings, and shall report its results to the full Senate immediately.

(3) The Senate shall vote on each nominee to confirm or reject within 14 days in which the Senate is in session after reported by the Committee on Governmental Affairs.

(e) VACANCY.—A vacancy on the Review Board shall be filled in the same manner as specified for original appointment within 30 days of the occurrence of the vacancy.

(f) CHAIRPERSON.—The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) REMOVAL OF REVIEW BOARD MEMBER.—(1) No member of the Review Board shall be removed from office, other than—

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) The member may be reinstated or granted other appropriate relief by order of the court.

(h) COMPENSATION OF REVIEW BOARD MEMBERS.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) DUTIES OF THE REVIEW BOARD.—(1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions—

(A) whether a record constitutes an assassination record; and

(B) whether an assassination record or particular information in a record qualifies for postponement of disclosure under this Act.

(j) POWERS.—(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to—

(A) direct Government offices to complete identification aids and organize assassination records;

(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent;

(C)(i) obtain access to assassination records that have been identified and organized by a Government office;

(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and

(iii) request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;

(D) require any Government office to account in writing for the destruction of any records relating to the assassination of President John F. Kennedy;

(E) receive information from the public regarding the identification and public disclosure of assassination records; and

(F) hold hearings, administer oaths, and subpoena witnesses and documents.

(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

(k) WITNESS IMMUNITY.—The Review Board shall be considered to be an agency of the United States for purposes of section 6001 of title 18, United States Code.

(l) OVERSIGHT.—(1) The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board and the disposition of postponed records after termination of the Review Board, and shall have access to any records held or created by the Review Board.

(2) The Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(m) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

(n) INTERPRETIVE REGULATIONS.—The Review Board may issue interpretive regulations.

(o) TERMINATION AND WINDING UP.—(1) The Review Board and the terms of its members shall terminate not later than 3 years after the date of enactment of this Act, except that the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within that 3-year period.

(2) Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

SEC. 8. ASSASSINATION RECORDS REVIEW BOARD PERSONNEL.

(a) EXECUTIVE DIRECTOR.—(1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall—

(A) serve as principal liaison to Government offices;

(B) be responsible for the administration and coordination of the Review Board's review of records;

(C) be responsible for the administration of all official activities conducted by the Review Board; and

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) STAFF.—(1) The Review Board may, in accordance with the civil service laws but without regard to civil service laws and regulation for competitive service as defined in subchapter I, chapter 33 of title 5, United States Code, appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform its duties.

(2) A person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate for the staff shall qualify for the necessary security clearance prior to being approved by the Review Board.

(c) COMPENSATION.—The Review Board shall fix the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(d) ADVISORY COMMITTEES.—(1) The Review Board shall have the authority to create advisory committees to assist in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 9. REVIEW OF RECORDS BY THE ASSASSINATION RECORDS REVIEW BOARD.

(a) CUSTODY OF RECORDS REVIEWED BY BOARD.—Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) STARTUP REQUIREMENTS.—The Review Board shall—

(1) not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register; and

(2) not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act.

(c) DETERMINATIONS OF THE REVIEW BOARD.—(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not an assassination record; or

(B) a Government record or particular information within an assassination record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an assassination record, the Review Board shall seek to—

(A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and

(B) determine, in consultation with the originating body and consistent with the standards for postponement under this Act, which of the following alternative forms of disclosure shall be made by the originating body:

(i) Any reasonably segregable particular information in an assassination record.

(ii) A substitute record for that information which is postponed.

(iii) A summary of an assassination record.

(3) With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing—

(A) a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings conducted by the Review Board with regard to specific assassination records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

(d) PRESIDENTIAL AUTHORITY OVER REVIEW BOARD DETERMINATION.—

(1) PUBLIC DISCLOSURE OR POSTPONEMENT OF DISCLOSURE.—After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, or of any information contained in an assassination record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

(2) PERIODIC REVIEW.—Any executive branch assassination record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4.

(3) RECORD OF PRESIDENTIAL POSTPONEMENT.—The Review Board shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records.

(e) NOTICE TO PUBLIC.—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the Review Board or initiated by the President, the House of Representatives, or the Senate, including a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.

(f) REPORTS BY THE REVIEW BOARD.—(1) The Review Board shall report its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity.

(2) The first report shall be issued on the date that is 1 year after the date of enactment of this Act, and subsequent reports every 12 months thereafter until termination of the Review Board.

(3) A report under paragraph (1) shall include the following information:

(A) A financial report of the expenses for all official activities and requirements of the Review Board and its personnel.

(B) The progress made on review, transmission to the Archivist, and public disclosure of assassination records.

(C) The estimated time and volume of assassination records involved in the completion of the Review Board's performance under this Act.

(D) Any special problems, including requests and the level of cooperation of government offices, with regard to the ability of the Review Board to operate as required by this Act.

(E) A record of review activities, including a record of postponement decisions by the Review Board or other related actions authorized by this Act, and a record of the volume of records reviewed and postponed.

(F) Suggestions and requests to Congress for additional legislative authority needs.

(G) An appendix containing copies of reports of postponed records to the Archivist required under section 9(c)(3) made since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—

(1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to, or transfer or release of gifts and donations of records to the United States Government.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any Executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

(c) JUDICIAL REVIEW.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.

(d) EXISTING AUTHORITY.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—To the extent that any provision of this Act establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but appli-

cable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 13. TERMINATION OF EFFECT OF ACT.

(a) PROVISIONS PERTAINING TO THE REVIEW BOARD.—The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).

(b) OTHER PROVISIONS.—The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

(b) INTERIM FUNDING.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Act.

SEC. 15. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

The Senate bill was ordered to be [illegible] time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 3 days in which to revise and extend their remarks, and include extraneous matter, on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REQUESTING THE PRESIDENT TO RETURN H.R. 3379, WITH RESPECT TO AUTHORITIES OF ADMINISTRATIVE CONFERENCE, AND PROVIDING FOR ITS REENROLLMENT

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 366) requesting the President to return the enrolled bill (H.R. 3379) with respect to the authorities of the Administrative Conference, and providing for its reenrollment with technical corrections, and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 366

Resolved by the House of Representatives (the Senate concurring), That the President of the United States is requested to return to the House of Representatives the enrolled bill (H.R. 3379) with respect to the authorities of the Administrative Conference. The Clerk of the House is authorized to receive such bill if it is returned when the House is not in session. Upon the return of such bill, the action of the Speaker of the House of Representatives and the Acting President pro tempore of the Senate in signing it shall be deemed rescinded and the Clerk of the House shall reenroll the bill with the following corrections:

Strike "574" and insert "594".

In the title of the bill, strike "574" and insert "594".

Mr. BROOKS (during the reading). Mr. Speaker, I ask unanimous consent that the concurrent resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

□ 1410

Mr. FISH. Mr. Speaker, reserving the right to object, I do so for the purpose of yielding to the gentleman from Texas [Mr. BROOKS], chairman of the committee, to explain the technical corrections.

Mr. BROOKS. Mr. Speaker, I would say to my distinguished friend, the gentleman from New York [Mr. FISH], that the purpose of this resolution is to correct a technical error in the bill, H.R. 3379, relating to the Administrative Conference of the United States. It makes no substantive change in the bill; it just resolves a difficulty that occurred in the other body.

Mr. FISH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. TORRES). Is there objection to the request of the gentleman from Texas?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 2, NEIGHBORHOOD SCHOOLS IMPROVEMENT ACT

Mr. FORD of Michigan. Mr. Speaker, I call up the conference report on the Senate bill (S. 2) to promote the achievement of national education goals, to measure progress toward such goals, to develop national education standards and voluntary assessments in accordance with such standards, and to encourage the comprehensive improvement of America's neighborhood public schools to improve student achievement, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Friday, September 25, 1992, at page H-9507.)

The SPEAKER pro tempore. The gentleman from Michigan [Mr. FORD] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent to yield the time of the majority for control to the chairman of the subcommittee and the author of the bill, the gentleman from Michigan [Mr. KILDEE].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. KILDEE] is recognized for 30 minutes.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Kildee asked and was given permission to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, the conference agreement on the Neighborhood Schools Improvement Act is a compromise between the House and Senate bills.

It retains the House emphasis on systemwide reform, recognizing that sustained improvements will not occur without coordinated changes in all parts of the education system.

At the same time, it includes provisions from the Senate bill directing most of the funds to local schools once reform plans have been developed at the State and school district levels.

As in the House bill, systemic reform proposals would be developed at the State and local levels by panels made up of representatives of the many entities which have a stake in improving schools.

These stakeholders include Governors, State legislators, parents, and representatives of education, business, and other community leaders.

However, the plan requirements have been significantly streamlined to focus primarily on the key elements of systemic reform.

These elements include identifying high goals for student achievement and ensuring that State and local curricula, assessments, and teacher-training programs support the attainment of those goals.

At the school district level, funds may be used for developing and carrying out districtwide reform plans including school restructuring.

As I mentioned earlier, once the systemwide reform plan has been developed, the majority of the funds go to support reform activities in local schools.

14-00000

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

THE WHITE HOUSE

Office of the Press Secretary
(Paducah, Kentucky)

For Immediate Release October 27, 1992

STATEMENT BY THE PRESIDENT

Today I am signing into law S. 3006, the "President John F. Kennedy Assassination Records Collection Act of 1992." This legislation provides for the review and, wherever possible, the release of records about the assassination of President Kennedy that have not yet been made public. I fully support the goals of this legislation.

In the minds of many Americans, questions about President Kennedy's assassination remain unresolved. Although the Government already has released many thousands of documents, the existence of additional, undisclosed documents has led to speculation that these materials might shed important new light on the assassination. Because of legitimate historical interest in this tragic event, all documents about the assassination should now be disclosed, except where the strongest possible reasons counsel otherwise.

While I am pleased that this legislation avoids the chief constitutional problems raised by earlier versions of the bill considered by the Congress, it still raises several constitutional questions. First, S. 3006 sets forth the grounds on which the release of documents may be postponed, but this list does not contemplate nondisclosure of executive branch deliberations or law enforcement information of the executive branch (including the entities listed in sections 3(2)(G) through (K)), and it provides only a narrow basis for nondisclosure of national security information. My authority to protect these categories of information comes from the Constitution and cannot be limited by statute. Although only the most extraordinary circumstances would require postponement of the disclosure of documents for reasons other than those recognized in the bill, I cannot abdicate my constitutional responsibility to take such action when necessary. The same applies to the provision purporting to give certain congressional committees "access to any records held or created by the Review Board." This provision will be interpreted consistently with my authority under the Constitution to protect confidential executive branch materials and to supervise and guide executive branch officials.

Second, S. 3006 requires the Board to report to the President and the Congress. If the bill were interpreted to require simultaneous reports, S. 3006 would intrude upon the President's authority to supervise subordinate officials in the executive branch. I will construe the provisions to require that the Board report to the President before it reports to the Congress.

Third, the bill purports to set the qualifications for Board members, to require the President to review lists supplied by specified organizations, and to direct the timing of nominations. These provisions conflict with the constitutional division of responsibility between the President and the Congress. The President has the sole power of nomination; the Senate has the sole power of consent.

more

(OVER)

14-00000

I note also that S. 3006 provides that, upon request of the Board, courts may enforce subpoenas that the Attorney General has issued at the Board's urging. I sign this bill on the understanding that this provision does not encroach upon the Attorney General's usual, plenary authority to represent the agencies of the United States, including the Board, whenever they appear in court.

S. 3006 will help put to rest the doubts and suspicions about the assassination of President Kennedy. I sign the bill in the hope that it will assist in healing the wounds inflicted on our Nation almost 3 decades ago.

GEORGE BUSH

THE WHITE HOUSE,
October 26, 1992.

# # #

14-00000

Public Law 103-345
103d Congress

An Act

Oct. 6, 1994
[H.R. 4569]

To extend and make amendments to the President John F. Kennedy Assassination Records Collection Act of 1992.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

President John F. Kennedy Assassination Records Collection Extension Act of 1994.
44 USC 2107 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "President John F. Kennedy Assassination Records Collection Extension Act of 1994".

SEC. 2. EXTENSION OF ACT.

Section 7(o)(1) of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended—

(1) by striking "2 years after the date of enactment of this Act" and inserting "September 30, 1996"; and

(2) by striking "2-year".

SEC. 3. AMENDMENTS RELATING TO REVIEW BOARD POWERS.

Section 7(j)(1) of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended—

(1) in subparagraph (E) by striking "and" after the semicolon;

(2) in subparagraph (F) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(G) use the Federal Supply Service in the same manner and under the same conditions as other departments and agencies of the United States; and

"(H) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.".

SEC. 4. AMENDMENTS RELATING TO REVIEW BOARD PERSONNEL.

(a) SECURITY CLEARANCE FOR REVIEW BOARD PERSONNEL.—Section 8 of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended by adding at the end the following:

"(e) SECURITY CLEARANCE REQUIRED.—An individual employed in any position by the Review Board (including an individual appointed as Executive Director) shall be required to qualify for any necessary security clearance prior to taking office in that position, but may be employed conditionally in accordance with subsection (b)(3)(B) before qualifying for that clearance.".

(b) APPOINTMENT AND TERMINATION OF STAFF, GENERALLY.—Section 8(b) of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended by striking "(b) STAFF.—" and all that follows through the end of paragraph (1) and inserting the following:

"(b) STAFF.—(1) The Review Board, without regard to the civil service laws, may appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform the duties of the Review Board.".

(c) REVIEW BOARD ADMINISTRATIVE STAFF.—Section 8(b)(2) of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended—

(1) by striking "A person" and inserting "(A) Except as provided in subparagraph (B), a person"; and

(2) by adding at the end the following:

"(B) An individual who is an employee of the Government may be appointed to the staff of the Review Board if in that position the individual will perform only administrative functions.".

(d) CONDITIONAL EMPLOYMENT OF STAFF.—Section 8(b)(3)(B) of the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) is amended to read as follows:

"(B)(i) The Review Board may offer conditional employment to a candidate for a staff position pending the completion of security clearance background investigations. During the pendency of such investigations, the Review Board shall ensure that any such employee does not have access to, or responsibility involving, classified or otherwise restricted assassination record materials.

"(ii) If a person hired on a conditional basis under clause (i) is denied or otherwise does not qualify for all security clearances necessary to carry out the responsibilities of the position for which conditional employment has been offered, the Review Board shall immediately terminate the person's employment.".

(e) COMPENSATION OF STAFF.—Section 8(c) of the President John F. Kennedy Assassination Records Collection Act of 1992 (21 U.S.C. 2107 note) is amended to read as follows: 44 USC 2107 note.

"(c) COMPENSATION.—Subject to such rules as may be adopted by the Review Board, the chairperson, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, may—

"(1) appoint an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule; and

"(2) appoint and fix compensation of such other personnel as may be necessary to carry out this Act.".

Public Law 102-526
102d Congress

An Act

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

Oct. 26, 1992
[S. 3006]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

President John F. Kennedy Assassination Records Collection Act of 1992.
44 USC 2107 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "President John F. Kennedy Assassination Records Collection Act of 1992".

44 USC 2107 note.

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

(2) all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

(5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

(6) legislation is necessary because Executive Order No. 12356, entitled "National Security Information" has eliminated the declassification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

(7) most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

44 USC 2107 note.

SEC. 3. DEFINITIONS.

In this Act:

(1) "Archivist" means the Archivist of the United States.

(2) "Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of—

(A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission");

(B) the Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission");

(C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee");

(D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives;

(E) the Select Committee on Assassinations (the "House Assassinations Committee") of the House of Representatives;

(F) the Library of Congress;

(G) the National Archives and Records Administration;

(H) any Presidential library;

(I) any Executive agency;

(J) any independent agency;

(K) any other office of the Federal Government; and

(L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy,

but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records.

(3) "Collection" means the President John F. Kennedy Assassination Records Collection established under section 4.

(4) "Executive agency" means an Executive agency as defined in subsection 552(f) of title 5, United States Code, and includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President, or any independent regulatory agency.

(5) "Government office" means any office of the Federal Government that has possession or control of assassination records, including—

(A) the House Committee on Administration with regard to the Select Committee on Assassinations of the records of the House of Representatives;

(B) the Select Committee on Intelligence of the Senate with regard to records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and other assassination records;

(C) the Library of Congress;

(D) the National Archives as custodian of assassination records that it has obtained or possesses, including the Commission to Investigate the Assassination of President

John F. Kennedy and the Commission on Central Intelligence Agency Activities in the United States; and

(E) any other executive branch office or agency, and any independent agency.

(6) "Identification aid" means the written description prepared for each record as required in section 4.

(7) "National Archives" means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

(8) "Official investigation" means the reviews of the assassination of President John F. Kennedy conducted by any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

(9) "Originating body" means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

(10) "Public interest" means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy.

(11) "Record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(12) "Review Board" means the Assassination Records Review Board established by section 7.

(13) "Third agency" means a Government agency that originated an assassination record that is in the possession of another agency.

SEC. 4. PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. 44 USC 2107 note.

(a) IN GENERAL.—(1) Not later than 60 days after the date of enactment of this Act, the National Archives and Records Administration shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the assassination of President John F. Kennedy, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The Archivist shall prepare and publish a subject guidebook and index to the collection. Printing.

(2) The Collection shall include—

(A) all assassination records—

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act;

(ii) that are required to be transmitted to the National Archives; or

(iii) the disclosure of which is postponed under this Act;

(B) a central directory comprised of identification aids created for each record transmitted to the Archivist under section 5; and

(C) all Review Board records as required by this Act.

(b) DISCLOSURE OF RECORDS.—All assassination records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the National Archives within 30 days after their transmission to the National Archives.

(c) FEES FOR COPYING.—The Archivist shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

Historic preservation.

(d) ADDITIONAL REQUIREMENTS.—(1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives using appropriations authorized, specified, and restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Information Security Oversight Office, shall ensure the security of the postponed assassination records in the Collection.

(e) OVERSIGHT.—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the Collection.

44 USC 2107 note.

SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF ASSASSINATION RECORDS BY GOVERNMENT OFFICES.

(a) IN GENERAL.—(1) As soon as practicable after the date of enactment of this Act, each Government office shall identify and organize its records relating to the assassination of President John F. Kennedy and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) No assassination record shall be destroyed, altered, or mutilated in any way.

(3) No assassination record made available or disclosed to the public prior to the date of enactment of this Act may be withheld, redacted, postponed for public disclosure, or reclassified.

(4) No assassination record created by a person or entity outside government (excluding names or identities consistent with the requirements of section 6) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) CUSTODY OF ASSASSINATION RECORDS PENDING REVIEW.—During the review by Government offices and pending review activity by the Review Board, each Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review;

(2) transfer is necessary for an administrative hearing or other Review Board function; or

(3) it is a third agency record described in subsection (c)(2)(C).

(c) REVIEW.—(1) Not later than 300 days after the date of enactment of this Act, each Government office shall review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist.

(2) In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are assassination records;

(B) determine which of its assassination records have been officially disclosed or publicly available in a complete and unredacted form;

(C)(i) determine which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office; and

(ii) transmit to a third agency or other Government office those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Review Board all assassination records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by this Act;

(G) give priority to—

(i) the identification, review, and transmission of all assassination records publicly available or disclosed as of the date of enactment of this Act in a redacted or edited form; and

(ii) the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of assassination records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) IDENTIFICATION AIDS.—(1)(A) Not later than 45 days after the date of enactment of this Act, the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid for use with each assassination record subject to review under this Act.

(B) The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system of electronic records by Government offices that are compatible with each other.

(2) Upon completion of an identification aid, a Government office shall—

(A) attach a printed copy to the record it describes;

(B) transmit to the Review Board a printed copy; and

(C) attach a printed copy to each assassination record it describes when it is transmitted to the Archivist.

(3) Assassination records which are in the possession of the National Archives on the date of enactment of this Act, and which have been publicly available in their entirety without redaction, shall be made available in the Collection without any additional review by the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) TRANSMISSION TO THE NATIONAL ARCHIVES.—Each Government office shall—

Public information.

(1) transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement by the Review Board or upon completion of other action authorized by this Act, all assassination records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) CUSTODY OF POSTPONED ASSASSINATION RECORDS.—An assassination record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required in section 4(e)(2).

(g) PERIODIC REVIEW OF POSTPONED ASSASSINATION RECORDS.—(1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).

(2)(A) A periodic review shall address the public disclosure of additional assassination records in the Collection under the standards of this Act.

Federal Register, publication.

(B) All postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed assassination records shall serve to downgrade and declassify security classified information.

(D) Each assassination record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25 years after the date of enactment of this Act, unless the President certifies, as required by this Act, that—

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) FEES FOR COPYING.—Executive branch agencies shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS. 44 USC 2107 note.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

SEC. 7. ESTABLISHMENT AND POWERS OF THE ASSASSINATION RECORDS REVIEW BOARD. 44 USC 2107 note.

(a) ESTABLISHMENT.—There is established as an independent agency a board to be known as the Assassinations Records Review Board.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political President.

affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Government records related to the assassination of President John F. Kennedy.

(2) The President shall make nominations to the Review Board not later than 90 calendar days after the date of enactment of this Act.

(3) If the Senate votes not to confirm a nomination to the Review Board, the President shall make an additional nomination not later than 30 days thereafter.

(4)(A) The President shall make nominations to the Review Board after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

(B) If an organization described in subparagraph (A) does not recommend at least 2 nominees meeting the qualifications stated in paragraph (5) by the date that is 45 days after the date of enactment of this Act, the President shall consider for nomination the persons recommended by the other organizations described in subparagraph (A).

(C) The President may request an organization described in subparagraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board—

(A) shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and none of whom shall have had any previous involvement with any official investigation or inquiry conducted by a Federal, State, or local government, relating to the assassination of President John F. Kennedy;

(B) shall be distinguished persons of high national professional reputation in their respective fields who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ensuring and facilitating the review, transmission to the public, and public disclosure of records related to the assassination of President John F. Kennedy and who possess an appreciation of the value of such material to the public, scholars, and government; and

(C) shall include at least 1 professional historian and 1 attorney.

(c) SECURITY CLEARANCES.—(1) All Review Board nominees shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(2) All nominees shall qualify for the necessary security clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate.

(d) CONFIRMATION HEARINGS.—(1) The Committee on Governmental Affairs of the Senate shall hold confirmation hearings within 30 days in which the Senate is in session after the nomination of 3 Review Board members.

Reports.

(2) The Committee on Governmental Affairs shall vote on the nominations within 14 days in which the Senate is in session after the confirmation hearings, and shall report its results to the full Senate immediately.

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this Act.

(3) The Senate shall vote on each nominee to confirm or reject within 14 days in which the Senate is in session after reported by the Committee on Governmental Affairs.

(e) VACANCY.—A vacancy on the Review Board shall be filled in the same manner as specified for original appointment within 30 days of the occurrence of the vacancy.

(f) CHAIRPERSON.—The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) REMOVAL OF REVIEW BOARD MEMBER.—(1) No member of the Review Board shall be removed from office, other than—

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

Federal Register, publication. President. Reports.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) The member may be reinstated or granted other appropriate relief by order of the court.

(h) COMPENSATION OF MEMBERS.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) DUTIES OF THE REVIEW BOARD.—(1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions—

(A) whether a record constitutes an assassination record; and

(B) whether an assassination record or particular information in a record qualifies for postponement of disclosure under this Act.

(j) POWERS.—(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to—

(A) direct Government offices to complete identification aids and organize assassination records;

(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent;

(C)(i) obtain access to assassination records that have been identified and organized by a Government office;

(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and

(iii) request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;

(D) require any Government office to account in writing for the destruction of any records relating to the assassination of President John F. Kennedy;

(E) receive information from the public regarding the identification and public disclosure of assassination records; and

(F) hold hearings, administer oaths, and subpoena witnesses and documents.

(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

(k) WITNESS IMMUNITY.—The Review Board shall be considered to be an agency of the United States for purposes of section 6001 of title 18, United States Code.

(l) OVERSIGHT.—(1) The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board and the disposition of postponed records after termination of the Review Board, and shall have access to any records held or created by the Review Board.

(2) The Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(m) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

(n) INTERPRETIVE REGULATIONS.—The Review Board may issue interpretive regulations.

(o) TERMINATION AND WINDING UP.—(1) The Review Board and the terms of its members shall terminate not later than 2 years after the date of enactment of this Act, except that the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within that 2-year period.

Reports.

(2) Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate

accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

SEC. 8. ASSASSINATION RECORDS REVIEW BOARD PERSONNEL. 44 USC 2107 note.

(a) EXECUTIVE DIRECTOR.—(1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall—

(A) serve as principal liaison to Government offices;

(B) be responsible for the administration and coordination of the Review Board's review of records;

(C) be responsible for the administration of all official activities conducted by the Review Board; and

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) STAFF.—(1) The Review Board may, in accordance with the civil service laws but without regard to civil service law and regulation for competitive service as defined in subchapter 1, chapter 33 of title 5, United States Code, appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform its duties.

(2) A person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate for the staff shall qualify for the necessary security clearance prior to being approved by the Review Board.

(c) COMPENSATION.—The Review Board shall fix the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed

14-00000

the rate payable for level V of the Executive Schedule under section 5316 of that title.

(d) ADVISORY COMMITTEES.—(1) The Review Board shall have the authority to create advisory committees to assist in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

44 USC 2107 note.

SEC. 9. REVIEW OF RECORDS BY THE ASSASSINATION RECORDS REVIEW BOARD.

(a) CUSTODY OF RECORDS REVIEWED BY BOARD.—Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

Federal Register, publication.

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) STARTUP REQUIREMENTS.—The Review Board shall—

(1) not later than 90 days after the date of its appointment; publish a schedule for review of all assassination records in the Federal Register; and

(2) not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act.

(c) DETERMINATIONS OF THE REVIEW BOARD.—(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not an assassination record; or

(B) a Government record or particular information within an assassination record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an assassination record, the Review Board shall seek to—

(A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and

(B) determine, in consultation with the originating body and consistent with the standards for postponement under this Act, which of the following alternative forms of disclosure shall be made by the originating body:

(i) Any reasonably segregable particular information in an assassination record.

(ii) A substitute record for that information which is postponed.

(iii) A summary of an assassination record.

(3) With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing—

(A) a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings

conducted by the Review Board with regard to specific assassination records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made. Federal Register, publication.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

(d) PRESIDENTIAL AUTHORITY OVER REVIEW BOARD DETERMINATION.—

(1) PUBLIC DISCLOSURE OR POSTPONEMENT OF DISCLOSURE.—After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, or of any information contained in an assassination record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

(2) PERIODIC REVIEW.—Any executive branch assassination record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4.

(3) RECORD OF PRESIDENTIAL POSTPONEMENT.—The Review Board shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records. Federal Register, publication.

(e) NOTICE TO PUBLIC.—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the Review Board or initiated by the President, the House of Representatives, or the Senate, including a description Federal Register, publication.

14-00000

of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.

(f) REPORTS BY THE REVIEW BOARD.—(1) The Review Board shall report its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity.

(2) The first report shall be issued on the date that is 1 year after the date of enactment of this Act, and subsequent reports every 12 months thereafter until termination of the Review Board.

(3) A report under paragraph (1) shall include the following information:

(A) A financial report of the expenses for all official activities and requirements of the Review Board and its personnel.

(B) The progress made on review, transmission to the Archivist, and public disclosure of assassination records.

(C) The estimated time and volume of assassination records involved in the completion of the Review Board's performance under this Act.

(D) Any special problems, including requests and the level of cooperation of Government offices, with regard to the ability of the Review Board to operate as required by this Act.

(E) A record of review activities, including a record of postponement decisions by the Review Board or other related actions authorized by this Act, and a record of the volume of records reviewed and postponed.

(F) Suggestions and requests to Congress for additional legislative authority needs.

(G) An appendix containing copies of reports of postponed records to the Archivist required under section 9(c)(3) made since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

44 USC 2107 note.

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—

(1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board

14-00000

determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glaynoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

SEC. 11. RULES OF CONSTRUCTION.

44 USC 2107 note.

(a) PRECEDENCE OVER OTHER LAW.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

(c) JUDICIAL REVIEW.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.

(d) EXISTING AUTHORITY.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—To the extent that any provision of this Act establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 12. TERMINATION OF EFFECT OF ACT.

44 USC 2107 note.

(a) PROVISIONS PERTAINING TO THE REVIEW BOARD.—The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).

14-00000

(b) OTHER PROVISIONS.—The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.

44 USC 2107 note.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

(b) INTERIM FUNDING.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Act.

44 USC 2107 note.

SEC. 14. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

Approved October 26, 1992.

LEGISLATIVE HISTORY—S. 3006 (H.J. Res. 454):

HOUSE REPORTS: No. 102-625, Pt. 1 (Comm. on Government Operations) and Pt. 2 (Comm. on the Judiciary) both accompanying H.J. Res. 454.
SENATE REPORTS: No. 102-328 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 138 (1992):
July 27, considered and passed Senate.
Aug. 11, 12, H.J. Res. 454 considered and passed House.
Sept. 30, S. 3006 considered and passed House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):
Oct. 26, Presidential statement.

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14-00000

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IN THE FOLLOWING

Analysis of the President John F. Kennedy Assassination Records Collection Act of 1992
June 6, 1995

T. Jeremy Gunn

14-00000

Introduction 3

Part I: Statutory Duties of the Review Board 3

Part II: Statutory Powers of the Review Board 7

Enumeration of all powers 7

Subpoena power 8

Immunity power 10

Power to order federal offices to comply with the JFK Act 10

Power to require government offices to transfer records to the Review Board 11

Part III: Review Procedures, Voting, Quorums, and Transfer of Records to NARA 11

A. Review Board Quorum and Voting Requirements 12

B. Statutory Constraints on Postponement Decisions 13

C. Review Board Reporting Requirements 15

D. The Role of the President (Executive Branch Records) 15

E. The Role of the Congress (Legislative Branch Records) 17

F. Transfer of Records to NARA 18

14-00000

Part IV: Responsibilities of Government Offices under the JFK Act 18

Obligations of all government offices possessing assassination records 18

Specific obligation of Presidential and other libraries to comply with the JFK Act 19

General obligations to cooperate with the Review Board 19

Specific obligations of Justice and State to cooperate with the Review Board 19

14-00000

Introduction

This memorandum analyzes the principal duties, responsibilities, and procedures of the Assassination Records Review Board (Review Board) and other government offices under the President John F. Kennedy Records Collection Act of 1992 (the "JFK Act" or "the Statute"). Because the JFK Act establishes the duties and powers of the Assassination Records Review Board, it is important to understand the scope of the Statute's provisions and anticipate its potential pitfalls. This memorandum -- which is based principally on an analysis of the JFK Act and its Senate Report[1] -- identifies: (a) the statutory provisions governing the Review Board's duties, including ***all*** of the Board's reporting obligations under the Statute; (b) the Board's powers under the JFK Act; (c) the statutory procedures governing the review process;[2] and (d) the responsibilities of other governmental entities to further the goals of the Statute.[3]

Part I: Statutory Duties of the Assassination Records Review Board

The JFK Act does not systematically set forth the duties of the Review Board. Rather, the description of the Board's duties are interspersed among several different statutory

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[1]S. Rep. No. 102-328, 102d Cong., 2d Sess. (1992) ("Senate Report"), *reprinted in part*, in 1992 U.S.C.C.A.N. 2965. The Senate Report provides, *inter alia*, a section-by-section analysis of the final Senate version of the JFK Act.

[2]This memorandum does not address the substantive guidelines pertaining to postponements that are addressed in Section 6.

[3]This memorandum is designed to identify comprehensively the issues that are of immediate importance and concern to the Board. Accordingly, some important statutory provisions that are not of immediate concern are not discussed. For example, there is no discussion of the qualifications or appointment of Board members (Sec. 7(b)), removal of Board members (Sec. 7(g)), definitions (unless they pertain to the review process or the powers of the Board) (Sec. 3), or provisions pertaining to the hiring of staff (Sec. 8(b)).

14-00000

provisions.[4] With the exception of the Board's procedural duties related to the review process, which will be described in Part III below, the remaining duties (including reporting obligations) of the Board are as follows:

First, the Board should publish a schedule for review of records in the Federal Register. "The Review Board shall . . . not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register." Sec. 9(b)(1). The Statute does not disclose the meaning of "schedule" -- that is whether it is a list or a time-frame. Assuming an enactment date of October 6, 1994,[5] a "schedule" should have been published by January 2, 1995. Although the Review Board does not have sufficient information to draft or to describe with particularity such a schedule, it would be advisable to prepare promptly a general schedule so that the Board will come into compliance as soon as possible with this provision of the Statute.

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[4]The sections of the JFK Act may be described as follows:

Section 1	Short Title
Section 2	Findings, Declarations, and Purposes
Section 3	Definitions
Section 4	Creation and Implementation of the JFK Collection at NARA
Section 5	Government Office Responsibilities (identify, review, and transfer records)
Section 6	Grounds for Postponement of Assassination Records
Section 7	Establishment and Powers of Review Board
Section 8	Review Board Staff
Section 9	Review of Records by the Review Board
Section 10	Records Under Seal; Foreign Records
Section 11	Rules of Statutory Construction
Section 12	Termination of the JFK Act
Section 13	Appropriations
Section 14	Severability Clause

[5]Several of the Board's reporting obligations are triggered by the date of enactment of the Statute. In addition to the requirement to publish a schedule raised above, another such example is that the Board's first annual "report shall be issued on the date that is 1 year after the date of enactment of this Act . . . ." Sec. 9(f)(2). Technically, the date of enactment was October 26, 1992, although this memorandum will assume that the "date of enactment" for the Board's purposes -- although not for the purposes of the obligations of other government offices -- was October 6, 1994, the date the technical amendments were enacted. Pub.L. 103-345 §§ 2 to 5, 108 Stat. 3128-3130.

14-00000

Second, the Board should have begun its review of records by the first week of April, 1995. "The Review Board shall . . . not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act." Sec. 9(b)(2). Technically, the Board has begun its review – although it has as of yet made no final decisions. In order to comply with the "spirit" of the Statute, the Board should begin making decisions promptly.

Third, the Board must submit four ongoing reports regarding the results of its decisions to postpone or to release information. The Board has four separate reporting requirements for describing the ongoing results of its decisions. First, the Board is required to report the results of its decisions on a document-by-document basis to the government office whose records it is reviewing as well as to the President (or to Congress in the case of legislative records). Second, the results of decisions must be reported in the *Federal Register* within 14 days of the date of the decision. Third, the Board must make a monthly summary report in the *Federal Register*. Fourth, the Board must prepare a document-by-document report to be submitted to NARA that describes the decision-making process for each record. Sec. 9(c)(3).

Fourth, the Board must produce an Annual Report to Congress. The Board must submit an Annual Report to Congress on the anniversary of the enactment of the legislation. Thus the Board's first Annual Report is due on or before October 6, 1995. The Annual Report must include information on the following topics: (a) finances; (b) progress made on review; (c) estimates for completion of the review; (d) any special problems (including the degree of cooperation of government agencies); (e) a record of the volume of records reviewed and a summary of decisions; (f) an explanation of any additional needs of the Review Board; and (g) an appendix containing copies of reports of postponed records. Sec. 9(f)(3).

Fifth, the Board must produce a Final Report. "Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act." Sec. 7(o)(2).

Sixth, the Board must inform the President and Congress in advance of the termination of its activities. The Review Board must give Congress 90 days notice of the anticipated termination date for its operations. Sec. 9(f)(4).

Seventh, the Board must transfer its own records to NARA. "[A]ll Review Board records" are to be transferred to NARA. Sec. 4 (a)(2)(C). See also 7(l) and 7(o)(3). The Statute is silent on the question whether the Review Board must prepare Record Identification Forms (or Identification Aids) for its own records prior to their

14-00000

submission to NARA.

Eighth, the Review Board is under the Oversight Jurisdiction of the Appropriate Senate and House Committees. The Review Board operates under the continuing oversight jurisdiction of House and Senate committees. Sec. 7(l).

Part II: Statutory Powers of the Review Board.

The powers granted to the Review Board are not listed in any single section of the Statute, but are instead interspersed throughout. The Review Board's powers will first be enumerated below, followed by a more detailed discussion of the four most significant powers: the subpoena power; the power to grant immunity; powers to order federal agencies to comply with the Statute; and the power to require the transfer of records to the Review Board.[6]

Enumeration of powers. The JFK Act grants the Review Board the authority to:

(1) "direct Government offices to complete identification aids and organize assassination records" Sec. 7(j)(1)(A).

(2) "direct Government offices to transmit to the Archivist assassination records" Sec. 7(j)(1)(B); see also Sec. 9(1).

(3) "direct Government offices" to provide ***"substitutes and summaries of [postponed] assassination records"*** Sec. 7(j)(1)(B) (emphasis added).

(4) "obtain access to assassination records that have been identified and organized by a Government office" Sec. 7(j)(1(C)(i).

(5) "direct a Government office to . . . make available additional information, records, or testimony from individuals" and, "if necessary[,] investigate the facts surrounding additional information, records, or testimony from individuals" provided that the "Review Board has reason to believe" that obtaining such additional information "is required to fulfill its functions and responsibilities under this Act." Sec. 7(j)(1)(C)(ii).

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[6]The Board is given some additional authority that is not important for present purposes, such as the power to "receive information from the public," "use the Federal Supply Service" and "use the United States mails . . . ." Sec. 7(j)(E), (G), and (H). The Review Board also may use the services of GSA. Sec. 7(m).

14-00000

(6) "request the Attorney General to subpoena private persons to compel testimony, records, and other information" Sec. 7(j)(1)(C)(iii) (see discussion below).

(7) "require any Government office to account in writing for the destruction of any records relating to the assassination" Sec. 7(j)(1)(D).

(8) "hold hearings, administer oaths, and subpoena witnesses and documents." Sec. 7(j)(1)(F) (see discussion below)..

(9) grant immunity to witnesses. Sec. 7(k)[7] (see discussion below).

(10) issue interpretive regulations. Sec. 7(n).

(11) extend its tenure by one additional year from September 30, 1996 to September 30, 1997. Sec. 7(o)(1).

(12) create advisory committees Sec. 8(d)(1).

(13) require Government offices to transfer assassination records to the Review Board. Sec. 5(b); Sec. 5(c)(2)(E); Sec. 9(a) (see discussion below).

(14) "request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination . . . ." Sec. 10(a)(1) (see discussion in Part IV below).

(15) "request the Attorney General to petition any court in the United States to release any information relevant to the assassination . . . that is held under the injunction of secrecy of a grand jury." Sec. 10(b)(1).[8] (see discussion in Part IV below).

Subpoena power. The JFK Act is ambiguous with respect to the Review Board's subpoena powers. The Statute refers to the subpoena power in two provisions. The Statute first states that the Review Board has the authority to ***"request the Attorney General to subpoena private persons to compel testimony,*** records, and other information" Sec. 7(j)(1)(C)(iii) (emphasis added). This provision may be read in one of

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[7]Items (1) through (9) are also identified in the Senate Report 42-43.

[8]Such requests are deemed to constitute "a particularized need" under Rule 6 of the Federal Rules of Criminal Procedure. Sec. 10(a)(2)(B).

14-00000

two different ways. It could be read to give the Board authority only to request the assistance of the Attorney General, but not to have the authority to issue subpoenas on its own behalf. The second way of reading the provision is that the Board has the power to issue subpoenas on its own authority *and* that it may request the Attorney General to provide assistance to the Board in issuing such subpoenas.

The second provision of the Statute that addresses the subpoena power provides that the Board may "hold hearings, administer oaths, ***and subpoena witnesses and documents.***" Sec. 7(j)(1)(F) (emphasis added). This second provision is also ambiguous. There are at least three different ways that it could be read. First, it could be read in tandem with the earlier provision, meaning that the Board may issue subpoenas only with the Attorney General's authorization. Second, it could mean that the Board may issue subpoenas on its own authority, but only as ancillary to holding hearings. Finally, the provision could be a simple and direct grant of authority to the Review Board to issue subpoenas.

Although the Statute on its face does not clearly require or exclude any of these interpretations, the Senate Report provides useful guidance in its statement that the Review Board has the full power to issue subpoenas on its own authority and that the role of the Attorney General is simply to provide additional assistance to the Board. The Senate Report interprets the JFK Act as providing that: "[T]he Review Board . . . ***has the authority to subpoena private persons and to enforce the subpoenas through the courts.***"[9]

Because the Senate Report speaks clearly, and because it can be read consistently with the Statute,[10] the Review Board may reasonably conclude that it may issue subpoenas on its own authority and that the role of the Attorney General is to provide assistance to the Board.[11] However, because there is a degree of ambiguity in the Statute, it would be prudent for the Board to reach an understanding with the Attorney General prior to the issuance of its first subpoena.

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[9]Senate Report 19 (emphasis added).

[10]Under federal law, an agency is entitled to "substantial deference" when interpreting its own enabling legislation, provided that its interpretation is "reasonable."

[11]Moreover, it should perhaps be noted that the grant of the subpoena power to an agency, such as the Board, implies that the power may be extended to the staff when acting in accordance with the Board's authority. See Administrative Procedure Act, 5 U.S.C. 556(c).

14-00000

Immunity power. The Board is granted the power to immunize witnesses from criminal prosecution. Sec. 7(k). This is an important power that can be very useful in eliciting testimony from reluctant witnesses. Because granting of immunity may affect the prosecutorial function, it would be advisable to consult in advance with the Attorney General regarding the manner and procedures for immunizing witnesses.

Power to order federal offices to comply with the JFK Act. The Board is given the authority to order government offices within the executive and legislative branches to comply with the terms of the JFK Act.[12] Thus the Board may "direct a Government office to . . . make available additional information, records, or testimony from individuals" and, "if necessary[,] investigate the facts surrounding additional information, records, or testimony from individuals" provided that the "Review Board has reason to believe" that obtaining such additional information "is required to fulfill its functions and responsibilities under this Act." Sec. 7(j)(1)(C)(ii).

The Senate Report speaks of this particular power as being "extremely important to the proper implementation and effectiveness of the Act because it provides the Review Board with the authority to seek the fullest disclosure possible by going beyond the information and records which government offices initially chose to make available to the public and the Review Board."[13] The Report further presumes that all government offices should "comply expeditiously to satisfy the Review Board's request and need for access."[14] The Senate Report summarizes this by stating that: "the Review Board has the ***authority to direct any government office to produce additional information*** and records which it believes are related to the assassination."[15]

Although the Board is granted the power to order government offices to comply, there remains the question of what measures are available to the Board in order to enforce compliance. The Statute does not, however, answer this question. Under general provisions of federal law, one agency does not have the power to seek judicial relief against another agency unless it is specifically granted power to do so in its enabling

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[12]The Statute defines "government office" as "any office of the Federal Government that has possession or control of assassination records" (Sec. 5), which would seem to extend to the judiciary as well. However, the specific examples listed in Section 5 are all from the executive and legislative branches.

[13]Senate Report 31.

[14]Senate Report 31.

[15]Senate Report 19 (emphasis added).

14-00000

legislation. The JFK Act does not clearly provide the Board with such power. In the absence of any statutory provision, inter-agency legal disputes are traditionally resolved by seeking the opinion of the Attorney General.[16] "The issuance of an Attorney General's opinion is frequently used to settle inter-agency disputes .... Professor Peter Strauss states: 'Once the agencies have received advice from the Attorney General, they may lack the means to generate valid litigation that would test its correctness ....'"[17]

Power to require government offices to transfer records to the Review Board. Government agencies are to maintain custody of their own records during the review process *unless* "the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review" or "transfer is necessary for an administrative hearing or other Review Board function ...." Sec. 5(b). See also 5(c)(2)(E); Sec. 9(a). Agencies also are instructed to make records available for the Review Board's inspection. Sec. 5(b) and 5(c)(2)(E-F); 5(c)(2)(H) – including any records about which there is any uncertainty as to whether they are assassination records. Sec. 5(c)(2)(F). Agencies also must "[m]ake available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act." Sec. 5(c)(2)(H).

Part III: Statutory Guidance on Review Procedures and Transfer of Records to NARA.

The JFK Act establishes general guidelines for the procedures to be followed in reviewing records. The basic procedures are relatively straightforward: government offices that possess assassination records are to locate and review the records to determine what can be released and what should be postponed. The postponed records are then to be made available to the Review Board for its independent assessment. But there are many questions left unanswered. For example, agencies are allowed to present "clear and convincing evidence" in order to sustain their postponements, but no

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[16]The President could, of course, solve the *political* aspects of an inter-agency dispute by ordering the relevant agency to comply with his directives.

[17]William F. Fox, Jr., *Understanding Administrative Law* 60 (2d ed. 1992) (quoting Peter Strauss, *An Introduction to Administrative Justice in the United States* 101 n.152 (1989)).

14-00000

mechanism is established for when and how such evidence should be presented.[18]

The JFK Act provides two types of guidance relating to the review process. ***First,*** the Statute provides substantive guidance relating to postponements. ***Second,*** the Statute explains the basic procedural steps that follow from the Review Board's decisions. This memorandum addresses only the procedural steps established by the Statute.[19]

A. Review Board Quorum and Voting Requirements.

The JFK Act does not directly address quorum or voting requirements for Board meetings. The sole relevant guidance from the Act is its repeated statement that it ***presumes*** disclosure, which suggests that a ***majority*** of the members of the Board would need to vote ***for a postponement*** (rather than requiring a majority to vote for a release) in order for the postponement to be sustained.[20]

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[18]Given the absence of clear statutory guidance on the question of when agencies should be able to present their evidence, it would be appropriate for the Review Board to consult with the government offices to determine efficient, fair, and reasonable procedures to afford opportunities to present evidence. The Senate Report offers the following guidance: "to the extent possible, consultation with the government offices creates an understanding on each side as to the basis and reasons for their respective recommendations and determinations." Senate Report 31.

[19]The substantive rules relating to postponement decisions will be addressed in a separate memorandum.

[20]See, for example, "The underlying principles guiding the legislation are independence, public confidence, efficiency and cost effectiveness, speed of records disclosure, and enforceability. In order to achieve these objectives, the Act creates a presumption of disclosure upon the government, and it establishes an expeditious process for the review and disclosure of the records." Senate Report 17.

The JFK Act is, however, silent on several procedural issues affecting internal Review Board decisionmaking, including: (a) whether Board voting must be by a majority or supermajority; (b) whether the statutory presumption of disclosure necessarily implies that a majority (or supermajority) must vote ***against*** release rather than requiring a majority (or supermajority) to ***favor*** release: (c) whether the statutory presumption favoring disclosure implies that a "tie vote" requires release of information; (d) what constitutes a quorum for the purpose of decisions on the release of information and for other purposes; (e) whether the Board may delegate some or all of its postponement

The Administrative Procedures Act, which regulates agency rulemaking and establishes federal agency notice and publication requirements, does not establish rules governing agencies' internal rulemaking and voting requirements, although the Sunshine Act does establish some limited voting requirements related to decisions on holding meetings.[21] Similarly, Executive Order 12,866 (Sept. 30, 1993), exempts from reporting requirements those rules that "are limited to agency organization, management, or personnel matters . . . ."[22] Accordingly, the significant legal restriction on the Board's internal voting procedures, quorum requirements, and other internal operating procedures, is that they be reasonable and rational.[23]

It would be advisable for the Review Board to establish voting and quorum requirements as soon as practicable. Although the law does not require the formal establishment of voting and quorum requirements, it would probably be advisable for the Board to establish such rules (subject to later revision or amendment) and to make the rules and procedures available for public inspection in the Reading Room.

B. Statutory Constraints on Postponement Decisions.

The Statute provides that when postponements are sustained in whole or in part, the Board must nevertheless disclose as much information as possible -- including through the use of substitute language. The Statute requires that whenever a record cannot be

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decisions to subcommittees of the Board; (f) whether a roll-call is required; and (g) whether the votes of the individual members must be recorded.

[21]The relevant portion of the Administrative Procedure Act provides that the reporting requirements that pertain to most federal rulemaking procedures do not apply to an agency's "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice . . . ." 5 U.S.C. 553(b)(A). The Administrative Procedures Act contains some quorum and voting requirements with respect to noticing meetings. 5 U.S.C. 552b.

[22]Exec. Order No. 12,866.

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

14-00000

disclosed in its entirety, the Review Board shall attempt to "provide for the disclosure of segregable parts, substitutes, or summaries of such a record." Sec. 9(c)(2)(A). These substitutes shall be performed "in consultation with the originating body and consistent with the standards for postponement under this Act . . . ." Sec. 9(c)(2)(B). Although this language provides that the substitutes shall be drafted in consultation with the agencies, the Statute does not disclose when, how, or under what circumstances such consultations should take place.[24] The Senate Report nevertheless presumes that because the Statute mandates broad disclosure, the need for such summaries will be infrequent.

> While it is intended that government office[s] shall have the ability to issue such substitutes or summaries in lieu of an actual record, this practice should be limited to the rarest cases if ever, with the understanding that the release of information other than official records will perpetuate public distrust and undermine public confidence in the government's responsibility to disclose the assassination records.[25]

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[24]The Statute requires that:

> all postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

Sec. 5(g)(2)(B). The Statute does not state which entity bears the responsibility for drafting written explanations for continued postponements. Because the requirement is placed in Section 5 of the JFK Act, it would appear that the obligation would belong to the Government office that was in possession of the records in question. The specific provision in which the requirement appears, Subsection (g), is titled "Periodic review of postponed assassination records." Thus the location of the requirement within the Statute, the title of the section, and the subtitle of subsection all point to the requirement of drafting the written description for the reason for the postponement as adhering to the Government office where the record originated. Although neither the language nor the location of the subsection obligates the Review Board to undertake the responsibility, it may, as a practical matter, be advisable for the Review Board to accept the burden.

[25]Senate Report 45.

14-00000

C. Review Board Reporting Requirements.

Once the Review Board has made its decision, it must report the results to the government office whose record has been reviewed, to the President (or Congress), to NARA, and in the *Federal Register.* (See Part I above.) The Board must not only report its decisions in a timely manner, but it must report specific types of information about its decisions.

Timing of reports. After a decision is made to postpone or to release a document, "the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." Sec. 9(c)(4)(A). At the same time (*i.e.*, within 14 days), the Review Board must give notice regarding its decisions to the President (for Executive Branch records) or to the Congressional oversight committees (for Legislative Branch records). Sec. 9(c)(4)(B). In addition, there must be ongoing monthly reports to the *Federal Register.*

Content of the Reports to the President, Congress, and the originating office. The Report to the President (or Congress) and to the originating office "shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6." Sec. 9(c)(4)(B).

Content of monthly reports in the Federal Register. There must be a "Notice to the Public" of decisions once every 30 days in Federal Register. (Sec. 9(d)(3)). These notices must include "a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon." Sec. 9(e).

Content of the Report to NARA. For ***each*** postponed record, the Board must send a Report to the Archivist containing the following information: (a) a description of actions; and (b) a specified time or occurrence for the record to be opened. (Although the Statute requires a form for NARA and for the Agencies, it appears that the forms could easily be consolidated so as to include the relevant information and prevent unnecessary duplication.)

D. The Role of the President (Executive Branch Records).

The Statute provides no clear guidance with respect to the mechanics of Presidential review of Board decisions. It is frequently assumed in discussions of the JFK Act that the President's role is that of route of appeal for an agency that is displeased with a

14-00000

decision by the Board. This is not, however, what the Statute provides. According to the Statute, the President possesses the full power and authority to make all decisions for both postponement and disclosure of executive branch records.[26] According to the Statute, once the Board makes a

> formal determination . . . ***the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record*** or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision with 30 days . . . stating the justification for the president's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid . . . .

Sec. 9(d)(1) (***emphasis added***).[27] This language clearly suggests that it is not the Board that makes decisions, subject to appeal by the President, but it is the President that makes decisions after having been informed of the Board's "formal determination." The Senate Report makes the same point: "the President has the sole and nondelegable authority to require the disclosure or postponement of such record or information

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[26]The provision acknowledging presidential authority over executive branch records intentionally excluded the President from any responsibility over legislative branch records. Senate Report 32. The Senate Report recognizes that there might be a dispute between the President and the Congress with respect to identifying records as executive or congressional:

> For example, within the files of the House Select Committee on Assassinations (HSCA) there are staff notes [that] rely in part on information obtained or developed by the CIA. Under the 'third agency' rule in the Act, the CIA could choose to recommend that the Review Board postpone those portions which it identifies as originating at the CIA. If the Review Board declined the recommendation and the President sought to override the determination, the President would be limited to postpone those sentences or words which were originated or developed by the CIA. The remainder of the document would have to be publicly disclosed.

Senate Report 32.

[27]Postponement decisions made by the President continue to be subject to periodic review and downgrading. Sec. 9(d)(2).

14-00000

under the standards set forth in section 6, and the President must provide the Review Board with an unclassified written certification specifying his decision within 30 days after the Review."[28]

Although the Statute requires the President to be faithful to the requirements of section 6 of the Act when making his decisions, there is no procedural mechanism either to ensure that the President fulfills this responsibility or that he complies within the statutorily mandated 30 day period.

Given these constraints, it would seem advisable for the Review Board to begin negotiations with the White House for the disposition of records once the Board has made its "formal determination." It may be that the White House, which no doubt does not want to be distracted from its other duties by confronting the task of a document-by-document review, will be willing adopt a procedure that effectively ratifies the Board's decision within thirty days *unless* an agency makes a particularized appeal. The Statute does not seem to require the President to make such an agreement, but it would seem to be consistent with the Statute, to be time and effort efficient, and to spare all parties needless confusion.

Once the Review Board is notified of the President's decision, it must memorialize that decision on the record form that it forwards to NARA. Sec. 9(d)(3).

E. The Role of the Congress (Legislative Branch Records).

Unlike Executive Branch records, where the President retains final decisionmaking authority, legislative records are not subject to further procedural review by Congress. Although Congress must be notified of the Board's decisions, it does not have a role comparable to that which the President retains for executive branch documents. The Review Board's decisions are thus automatic, with one important exception: Congress retains the power to pass a resolution in both houses to limit the Review Board's actions. The Senate Report explains that "[f]or congressional records, in the event that the Congress disagrees with a determination by the Review Board, each House would be required to adopt a resolution to change or create a rule governing the disposition of its records at issue."[29] This suggests that Congress will remove itself from the

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[28]Senate Report 46.

[29] Senate Report 18. Elsewhere the Report explains this in somewhat different terms: when documents contain both executive and legislative equities, the President may protect only executive branch interests. "The remainder of the document would

14-00000

document-by-document review process, but could undercut the Review Board's decisions if it becomes sufficiently disturbed by the Board's decisions.

F. Transfer of Records to NARA.

Once the executive and legislative branch records decisions are final, the Board is required to transfer the ***original records*** and identification forms directly to NARA. Sec. 4 (d)(2). The Senate Report clearly anticipates that ***all*** originals will be transferred to the JFK Collection, regardless of whether there are continuing postponements. "The Committee believes that such review should occur at a single facility. That will be most effectively achieved by bringing the review committee to the documents and not vice versa. . . . [T]here is less likelihood of loss or destruction, and therefore ease of access at a single central location."[30]

The records at NARA will be subject to periodic and continuing review, even after the Review Board ceases to operate. The periodic review will be conducted jointly by NARA and the originating body. "All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B)." Sec. 5(g)(1). For congressional records, the House and Senate committees "shall have continuing oversight jurisdiction with respect to . . . the disposition of postponed records after termination of the Review Board." Sec. 7(l). The Act "shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with the Act." Sec. 12(b).

Part IV: Statutory Responsibilities of Government Offices under the JFK Act

Obligations of all Government offices possessing assassination records. The Statute required all government offices possessing assassination records to "review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist." Sec. 5(c)(1). This provision effectively ordered agencies to have completed the review process by August, 1993. The Senate Report is even more explicit: "Government offices holding assassination records are required to begin organizing and reviewing such records

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have to be publicly disclosed." Senate Report 32.

[30]Senate Report 25.

14-00000

upon enactment and have this work completed within ten months of enactment."[31]

Specific Obligation of Presidential and Other Libraries to Comply with JFK Act. The Statute instructs Presidential libraries to give priority to processing assassination records. Sec. 5(c)(3). According to the Senate Report, the JFK Act "specifically requires the directors of presidential libraries to expedite the review of all assassination records and make them available to the Review Board as required by this Act. It is incumbent on the presidential libraries to determine which of its records may qualify as 'assassination records', regardless of whether the records were conveyed to the government by a deed or gift or donation . . . ."[32]

General Obligations to Cooperate With the Review Board. In addition to their statutory obligations to identify and review assassination records, it is the sense of Congress that "all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest." Sec. 10(b)(3).

Specific Obligations of Justice and State to Cooperate With the Review Board. The Department of Justice and the Department of State are given particularized responsibilities to assist the Review Board. The Attorney General is to assist in issuing subpoenas, obtaining court records, and obtaining Grand Jury testimony under seal. Sec. 10(a)(1)-(2) and 10(b)(1). The Statute also provides that it is "the sense of Congress" that the Secretary of State should assist the Review Board in obtaining records from foreign governments. Sec. 10(b)(2).

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[31]Senate Report 18. See also *ibid* at 38, 39 (300 days).

[32]Senate Report 26.

14-00000

From the Desk of Robert J. Eatinger

NOTE FOR: J. Barry Harrelson @ DA
FROM: Robert J. Eatinger @ DCI
DATE: 06/14/95 06:14:47 PM
SUBJECT: ARRB Questions

The JFK Assassination Records Review Board (ARRB) has indicated that they wish to take possession of the original records from CIA in order to conduct their review of the postponements sought by the Agency those records. Further, the ARRB has stated that the JFK Act (44 USC 2107 note) gives them the responsibility for transferring records to the National Archives and Records Administration, not the originating agency. You asked me to review the JFK Act and comment on these positions.

The JFK Act provides that the original records are to be held by the originating agency unless physical transfer is required to let the Board do its job. The Act states at section 9(a):

> Pending the outcome of the Review Board's review activity, a Government office shall retain custody of assassination records for purposes of preservation, security, and efficiency, unless--
>
> (1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or
>
> (2) such transfer is necessary for an administrative hearing or other official Review Board function.

You should see also Section 5(b) of the Act which reposes in the originating agencies the responsibility to retain assassination records pending review activity by the ARRB.

I understand that the Board believes that the process of it coming to CIA to review the records may not be working well. It may then be arguing that it cannot adequately perform its function of reviewing unless it has the records. Unfortunately, if the Agency disagrees for security reasons, there is no arbiter set forth in the Act.

On the second issue, the JFK Act is clear. The Board does not transfer records to NARA. The powers of the Board are set forth in section 7(j) of the Act. In that section, the Board has the power to "direct Government offices to transmit to the Archivist assassination records as required under this Act..." Further, Section 9(c), which discusses determinations of the Board provides that "(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that ..." Section 5(e) of the JFK Act provides the actual responsibility to transfer records to NARA to the originating agencies, not to the ARRB.

Section 7(i) sets forth the duties of the Review Board and it does not list the transfer of assassination records to NARA. Its duties are only to render decisions whether records are assassination records under the Act, and whether information in an assassination record qualifies for postponement under the Act.

Thus, if the ARRB is arguing that it must take custody of the original records in order to meet its duty to transfer those records to NARA it is wrong. The statute clearly contemplates that the records remain with the originating agency in normal circumstances and only that the ARRB can direct its transfer once it has ruled on postponements.

CC: Paula A. Sweeney

(o) of this section shall be completed by October 1, 1995.

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PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR Part 1926 is revised to read as follows.

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable, and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911, also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygience facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by October 1, 1995.

* * * * *

[FR Doc. 95–15790 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC05

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: Information collection requirements in the final regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB–3), Washington, DC, 20202–5400. Telephone (202) 708–9408. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the William D. Ford Federal Direct Loan Program were published on December 1, 1994 (59 FR 61664). Compliance with information collection requirements in these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements on December 7, 1994. Those requirements will therefore become effective with the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

2. Sections 685.204, 685.206, 685.209, 685.213, 685.214, 685.215, 685.301, 685.302, 685.303, 685.309, and 685.401 are amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0672)

[FR Doc. 95–15844 Filed 6–27–95; 8:45 am]

BILLING CODE 4000–01–P

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Chapter XIV

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board.

ACTION: Final regulations.

SUMMARY: These final interpretive regulations provide guidance on the interpretation of certain terms included in the President John F. Kennedy Assassination Records Collection Act of 1992 and on implementation of certain of the statute's provisions. The final interpretive regulations make effective the proposed interpretive regulations previously published by the Assassination Records Review Board (Review Board). The Review Board revised the proposed interpretive

14-00000

regulations after considering public comment received in writing and through testimony at public hearings convened by the Review Board.

EFFECTIVE DATE: These interpretative regulations are effective June 28, 1995.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (as amended) (JFK Act), established the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) at the National Archives and Records Administration (NARA). In establishing a process for public disclosure of all records relating to the assassination, Congress created an independent Federal agency, the Assassination Records Review Board, that consists of five citizens appointed by the President and confirmed by the Senate in 1994. Under the JFK Act, the Review Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107.7(i)(2)(A). Congress intended that the Review Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S. Rep. 102–328, 102d Cong., 2d Sess. (1992) at 21. These final interpretive regulations, a proposed version of which were published at 60 FR 7506–7508 (Feb. 8, 1995), comply with that mandate.

The Review Board's goal in issuing this guidance is to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." S. Rep. 102–328, *supra* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies began to organize and review records responsive to the JFK Act even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The final interpretive regulations are intended to identify comprehensively the range of records reasonably related to the assassination of President Kennedy and investigations undertaken in its aftermath. The final interpretive regulations are also intended to aid in the consistent, effective, and efficient implementation of the JFK Act and to establish procedures for including assassination records in the JFK Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.

Notice and Comment Process

The Review Board sought public comment on its proposed interpretive regulations and set a thirty-day period, which ended on March 10, 1995, for the purpose of receiving written comments. The Review Board also heard testimony at public hearings on aspects of the proposed interpretive regulations. In addition, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and to be affected by the Review Board's work, particularly those that either created or now hold assassination records, and to the appropriate oversight committees in Congress. The Review Board also sent notices of the proposed interpretive regulations and request for comments to many organizations and individuals who have demonstrated an interest in the release of materials under the JFK Act or who have engaged in research into the assassination of President Kennedy.

The Review Board received written comments on the proposed interpretive regulations from four Federal agencies, three state and local government entities, and twenty-one private individuals and organizations with an interest in the Review Board's work. Federal agencies providing written comments include the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), NARA, and the Department of State. State or local government entities providing written comments include the Dallas (Texas) County Commissioner's Court, the Dallas County Historical Foundation, and the City of Dallas Records Management Division of the Office of the City Secretary.

Prior to publication of the proposed interpretive regulations, the Review Board heard testimony at a public hearing held at the Review Board's offices on December 14, 1994, from representatives of NARA on the question of including artifacts in the scope of the term "assassination record." After publication of the proposed interpretive regulations and before expiration of the comment period, the Review Board heard testimony at a public hearing on March 7, 1995, from the FBI and from several individuals and representatives of private organizations on their views regarding the text of the proposed interpretive regulations. Copies of all written comments received and transcripts of public testimony on the proposed interpretive regulations were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the public upon request.

At a public meeting held on May 3, 1995, for which notice was timely published in the Federal Register pursuant to the provisions of the Government in the Sunshine Act, the Review Board considered a final draft of these interpretive regulations. That discussion draft incorporated many of the comments received by the Review Board on the proposed interpretive regulations. The Review Board unanimously voted to adopt the text of the discussion draft as its final interpretive regulations. The approved text is, with a few minor corrections that do not change the substance, published here.

Response to Comments

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed interpretive regulations. Nearly all of the commentators expressed support for what they characterized as the proposed interpretive regulations' comprehensiveness and flexibility. All comments submitted were carefully studied and considered by the Review Board. Submitters made both substantive and technical suggestions, many of which were incorporated into the interpretive regulations as issued here in final form. The summary below includes the principal substantive comments received and the Review Board's responses thereto.

Comment: The proposed language of § 1400.1(a) is unduly restrictive because the phrase "may have led to the assassination" requires at least a potential causal link to the assassination. Moreover, determining whether there is a causal link would require the Review Board to evaluate the validity of competing accounts of what

14-00000

led to the assassination of President Kennedy

Response: A number of commentators put forward criticisms along these lines. Some of these commentators suggested that some form of a "reasonably related" standard be substituted for the "may have led to" language, while others suggested alternative formulations (e.g., "that may shed light on the assassination"). In adopting and eventually applying a "reasonably related" standard, the Review Board does not seek to endorse or reject any particular theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination and investigations into it. The Review Board believes that § 1400.1(a), as now worded, advances that effort and will promote a consistent broad interpretation and implementation of the JFK Act.

Comment: The proposed language of § 1400.1(a) is too broad and open-ended. A more specific nexus to the assassination of President Kennedy should be required.

Response. As its text and legislative history make clear, the JFK Act contemplates that the Review Board extend its search for relevant records beyond what has been compiled or reviewed by previous investigations. It is inevitable, therefore, that the Review Board must exercise judgment in determining whether such records constitute "assassination records." The Review Board regards its "reasonably related" standard as sufficient to ensure that agencies are not overburdened with identifying and reviewing records that, if added to the JFK Assassination Records Collection, would not advance the purposes of the JFK Act.

Comment: Section 1400.1 should specifically include as assassination records any records pertaining to particularly identified individuals, organizations, events, etc.

Response: The Review Board determined that, in almost every case, the types of records commentators sought to add were already adequately covered by § 1400.1 as proposed. Accordingly, the Review Board declined to include records or record groups at the level of specificity urged by these commentators because doing so might limit the scope of the interpretive regulations as applied initially by other agencies, or otherwise might prove duplicative or confusing. However, the Review Board welcomes and encourages suggestions from the public as to specific records or record groups that may constitute assassination records, and intends to pursue such leads, including those provided in the written comments to the proposed interpretive regulations.

Comment: Section 1400.2(a) is vague and overly broad in describing the scope of additional records and information.

Response: The Review Board has added language to clarify that the purpose of requesting additional records and information under § 1400.2(a) is to identify, evaluate, or interpret assassination records, including assassination records that may not initially have been identified as such by an agency. The Review Board also has added language to indicate that it intends to implement this section through written requests signed by its Executive Director. The Review Board contemplates that, with regard to such requests, its staff will work closely with entities to which such requests are addressed to implement the JFK Act effectively and efficiently.

Comment. The scope of additional records and information should specifically include records and information that:

—describe agencies' methods of searching for records;
—describe reclassification, transfer, destruction, or other disposition of records; or
—do not constitute assassination records, but have the potential to enhance, enrich, and broaden the historical record of the assassination.

Response: To the extent that the inclusion of records and information of the types described would assist the Review Board in meeting its responsibilities under the JFK Act, the Review Board has adopted the suggested language.

Comment. The scope of "assassination records" under § 1400.1 and "additional records and information" under § 1400.2 should not extend to state and local government or to private records that are not in the possession of the Federal government.

Response: The Review Board considered such comments carefully, but concluded that the terms of the JFK Act preclude the narrower reading of the Review Board's responsibilities urged by such comments. Section 1400.6 allows the Review Board, in its discretion, to accept copies in lieu of originals. The Review Board believes that this flexibility addresses the concerns of some commentators about the removal of original records already housed, for example, in state or local archives.

Comment: Section 1400.3 should include as sources of assassination records and additional records and information individuals and corporations that possess such material even if not obtained from sources identified in paragraphs (a) through (e) thereof, and should specifically include individuals and corporations that contracted to provide goods or services to the government.

Response: The Review Board has added paragraph (f) to this section in response to these comments. The Review Board has concluded that, in view of paragraph (f), specifically identifying government contractors or other private persons would be unnecessary and redundant.

Comment. NARA contended that § 1400.4 should not include artifacts among the types of materials included in the term "record." Treating artifacts as "records" would be contrary to NARA's accustomed practice and the usage of the term "records" in other areas of Federal records law and would result in substantial practical difficulties.

Response: The Review Board has carefully considered NARA's objections to the inclusion of artifacts as "records," but decided that this inclusion is necessary to achieve the purposes of the JFK Act. The Review Board notes that artifacts that became exhibits to the proceedings of the Warren Commission have long been in the custody of NARA, and decided that those artifacts should remain in the JFK Assassination Records Collection. The Review Board further believes that the unique issues of public trust and credibility of government processes that prompted enactment of the JFK Act require that artifacts be included within the JFK Assassination Records Collection. The strong support that commenting members of the public gave to this position reinforces this conclusion. The Review Board included in its proposed regulations, and retained in § 1400.7(b)–(c) of the final interpretive regulations, language intended to address NARA's concerns about potential copying requirements and preservation issues unique to artifacts.

Comment: Section 1400.5 should be modified to allow agencies to withhold from the JFK Assassination Records Collection material that is not related to the assassination of President Kennedy, even though it appears in a record that contains other material that is related to the assassination of President Kennedy.

Response: It remains the intent of this section to make clear to agencies that, as a rule, entire records, and not parts thereof, are to become part of the JFK Assassination Records Collection. The purpose of requiring that records be produced in their entirety is to ensure

that the context and integrity of the records be preserved. Only in rare instances will the Review Board assent to withholding particular information within an assassination record on the ground that such information is not relevant to the assassination. Section 1400.5 has been modified to clarify that, although the Review Board may allow this practice in extraordinary circumstances, this determination is within the sole direction of the Review Board.

Comment: The discussion of originals and copies in § 1400.6 is, in various respects, unclear and confusing.

Response: The Review Board made extensive changes to this section to address these concerns and to achieve greater internal consistency. The Review Board's intent in this section is to express its strong preference for including original records in the JFK Assassination Records Collection, but also its understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the Collection.

Comment: Section 1400.6 should be clarified as to whether "record copies" of Federal agency may be included in the JFK Assassination Records Collection.

Response: The Review Board has modified § 1400.6(a)(1) to clarify that the Review Board may determine that record copies may be included in the Collection.

Comment: The Catalog of Assassination Records (COAR) described in § 1400.8 should consist of, or be replaced by, the database and finding aids prepared by the Federal agencies in possession of assassination records.

Response: This and other comments received regarding the proposed § 1400.8 indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the Review Board decided to replace the term "Catalog of Assassination Records" with the term "Notice of Assassination Record Determination" (NARD), and to redraft this section to clarify the Review Board's intent to use the NARD mechanism simply to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the JFK Act as assassination records (*e.g.*, records reviewed by the HSCA) or identified by Federal agencies in their own searches, certain other records also are assassination records to be included in the JFK Assassination Records Collection.

Section by Section Analysis

Scope of Assassination Record

As discussed above with regard to the public comments, subparagraph (a) of § 1400.1 has been modified to adopt a "reasonably related" standard and the term "Catalog of Assassination Records" has been replaced with "Notice of Assassination Record Determination" in subparagraph (b)(3). The final interpretive regulations also incorporate suggested technical changes, including edits for clarification and revision of this section's title to make it more precise.

Scope of Additional Records and Information

The title of § 1400.2 was revised to conform to the new title of § 1400.1. Additional editing changes were made for clarity. A new subpart (6) was added to subparagraph (a) and a new subparagraph (f) was added after consideration of comments that noted the potential exclusion of certain categories from the scope of this section in the proposed interpretive regulations. The Review Board has added language in the final interpretive regulations to clarify that the purpose of this section is to aid in identifying, evaluating or interpreting assassination records, including assassination records that may not initially have been identified by an agency. The Review Board also has added language to suggest that it intends to implement this section through written requests signed by the Review Board's Executive Director.

Sources of Assassination Records and Additional Records and Information

A new subparagraph (g) was added to § 1400.3 after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs.

Types of Materials Included in Scope of Assassination Record and Additional Records and Information

No substantive change has been made to § 1400.4 as it appeared in the proposed interpretive regulations.

Requirement That Assassination Records be Released in Their Entirety

Language has been added to § 1400.5 to permit the Review Board, in its sole discretion, to allow release of only part of an assassination record where such partial release is sufficient to comply with the intent and purposes of the JFK Act.

Originals and Copies

Extensive changes were made to § 1400.6 for reasons of clarity and internal consistency. The Review Board also incorporated in the final interpretive regulations language clarifying that "record copies" of Federal agency records may be included in the JFK Assassination Records Collection and addressing the important issue of preservation requirements. In this respect, the Review Board sought to treat records in various media in a means appropriate to the unique characteristics of each medium.

Additional Guidance

In the light of comments received, the Review Board extensively revised § 1400.7. Subparagraph (d), as it appeared in the proposed interpretive regulations, has been broken into three subparagraphs—new subparagraphs (d), (e), and (f)—to avoid potential confusion and to add clarity. The intent of these subparagraphs is to make clear that all files on an individual, event, organization or activity are to be made available to the Review Board regardless of the labels on the files, where the records may be found, or whether they reflect the true name or identifier of the individual, event organization, or activity.

Subparagraphs (b) and (c) § 1400.7 were included in the proposed interpretive regulations and retained in the final interpretive regulations in order to address concerns expressed by NARA regarding the inclusion of artifacts in the scope of the material deemed "assassination records." By including these subparagraphs, the Review Board wishes to make it clear that it believes the JFK Act establishes unique standards as to the records to be included in the JFK Assassination Records Collection. By including artifacts as a type of "assassination record," the Review Board seeks to fulfill its mandate from Congress to assemble all materials reasonably related to the assassination in the JFK Assassination Records Collection. It is not intended that the inclusion here of artifacts for purposes of implementing the JFK Act should be construed to affect the implementation of other records laws. Subparagraph (c) is intended to ensure that all artifacts in the collection are preserved for posterity and that public access be provided to those artifacts in a manner consistent with their preservation. The Review Board encourages NARA to set out in writing the terms and conditions under

which access to such materials shall be allowed.

Implementing the JFK Act—Notice of Assassination Records Determination

The Review Board has replaced the term "Catalog of Assassination Records" that appeared in the proposed interpretive regulations and redrafted § 1400.8 to clarify the Review Board's intent. In the final interpretive regulations, the Review Board substitutes the term NARD for prior references to a "catalog."

Paperwork Reduction Act Statement.

The regulation is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does to contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U S C 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U S C 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121.

Review by OMB

This regulation has been reviewed by OMB under Executive Order 12866.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records

Accordingly, the review Board hereby establishes a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (JFK ACT)

Sec.

1400.1 Scope of assassination record.
1400.2 Scope of additional records and information.
1400.3 Sources of assassination records and additional records and information.
1400.4 Types of materials included in scope of assassination record and additional records and information.
1400.5 Requirement that assassination records be released in their entirety.
1400.6 Originals and copies.
1400.7 Additional guidance.
1400.8 Implementing the JFK Act—Notice of Assassination Record Designation

Authority. 44 U.S.C. 2107.

§ 1400.1 Scope of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act,

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials),

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 Scope of additional records and information

The term *additional records and information* includes

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the Federal Government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations,

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such

14-00000

records from sources identified in paragraphs (a) through (e) of this section.

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

(d) sound and video recordings;

(e) machine readable information in any form, and

(f) artifacts.

§ 1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in § 2107.6 of the JFK Act, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the JFK Act.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) established under the JFK Act, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Review Board may determine that record copies of government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Review Board may determine that a true and accurate copy of a record in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information), may be placed in the JFK Assassination Records Collection, and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section, is authorized by the Review Board to be included in the JFK Assassination Records Collection, the Review Board may require that a copy be certified if, in its discretion, it determines a certification to be necessary to ensure the integrity of the JFK Assassination Records Collection. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection, the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the JFK Assassination Records Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the JFK Act, the term *copy* means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or to preclude copies of any electronic assassination records from being reformatted electronically in order to conform to different hardward and/or software requirements of audiovisual or machine readable formats if such is the professional judgment of the National Archives and Records Administration.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the JFK Act, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely to the JFK Assassination Records Collection and to implement fully the terms of the JFK Act and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) Whenever artifacts are included in the JFK Assassination Records Collection, it shall be sufficient to comply with the JFK Act if the public is provided access to photographs, drawings, or similar materials depicting the artifacts. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records relating to that person that use or reflect the true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person.

14-00000

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records, pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym

§ 1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

(a) A Notice of Assassination Record Designation (NARD) shall be the mechanism for the Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all NARDs will be published in the Federal Register within 30 days of the decision to designate such records as assassination records.

(c) In determining to designate such records as assassination records, the Review Board must determine that the record or group of record will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: June 22, 1995

David G. Marwell,

Executive Director Assassination Records Review Board.

[FR Doc. 95-15819 Filed 6-27-95; 8:45 am]

BILLING CODE 6820-TD-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC14

National Capital Region Parks; Special Regulations; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction to final regulations

SUMMARY: This document contains a correction to the final regulations which were published Friday, April 7, 1995 (60 FR 17639). The regulations limit the sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers and set standards for sites, stands and structures used in such sales within National Capital Region Parks.

EFFECTIVE DATE: May 8, 1995

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. (202) 619-7223

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains one error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication on Friday, April 7, 1995 (60 FR 17639) of the final regulation, FR Doc. 95-8599, for National Capital Region, is corrected as follows:.

In the FR Doc. 95-8599, appearing on page 17649 in the issue of Friday, April 7, 1995, the words "the introductory text of" need to be added after the word "revising" that appears in the first column, beginning on the ninth line, which now reads "2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:" is corrected to read "2. Section 7.96 is amended by revising the introductory text of paragraph (k)(2) to read as follows:"

Dated: June 22, 1995

Rick Gale,

Acting Chief, Hunger Activities Division

[FR Doc. 95-15741 Filed 6-27-95; 8:45 am]

BILLING CODE 4310-70-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-1-FRL-5249-5]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is extending the attainment date for the Hancock and Waldo Counties, a marginal ozone nonattainment area in Maine to November 15, 1994. This extension is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993. This notice also updates tables in 40 CFR 52.1024 and 40 CFR 81.320 concerning attainment dates in the State of Maine.

EFFECTIVE DATE: This extension becomes effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone. 617-565-3244

SUPPLEMENTARY INFORMATION: On Feb. 22, 1995 (60 FR 9813), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed extending the attainment deadline for ozone for Hancock and Waldo Counties, and asked for public comment. No comments were received.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of Federal Register notices, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 56694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994)

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 56694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three year period is 1991-93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump

14-00000

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

DRAFT

12 December, 1998

Memo for the Record

Subject: JFK Records Review Project and Lessons Learned

The CIA's JFK Collection is made up primarily of records pulled together for the Warren Commission, House Select Committee on Assassinations (HSCA) and the Assassinations Records Review Board (ARRB). It contains a significant amount of duplication and non-JFK related material. The current index is flawed and contains gaps. Release standards were liberal; basically only source identities and information, names of agents, employees under cover, Agency locations and foreign liaison activities were redacted. There is no evidence in the Collection to indicate that the Warren Commission conclusions were wrong.

I. Background (1992-1995)

The setting up of the Historical Review Program by DCI Gates in early 1992 coincided with growing interest in Congress to require federal agencies to declassify records related to the assassination of President Kennedy. DCI Gates decided to start declassification process before Congress passed legislation:

* testified before Congress on 12 May 1992 about CIA`s new openness policy and announced the declassification of the first folder of Oswald's 201 (also known as the pre-assassination file).

* six boxes of the Oswald's 201 were reviewed and transferred to NARA by Oct. 1992.

The John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) was signed 26 October 1992:

* it called for Presidential-appointed Assassination Records Review Board composed of non-government individuals;

* established "a presumption of immediate disclosure" for records relating to the assassination.

For first two years of its existence, the Historical Review Program focused primarily on the review of JFK assassination records:

14-00000

* there were two major releases of Agency records (August 1993 and August 1994) of approximately 227,000 pages;

* joint HRG/DO teams reviewed additional assassination related collections at National Archives (Warren Commission), the SSCI (Church Committee and the Ford Presidential Library (Rockefellow Commission) plus numerous referrals from other federal agencies (FBI, State, Army, etc.).

Due to delays in the appointment of its members and the time required to hire and clear a staff, the ARRB did not actually begin reviewing documents until May 1995. It became clear in immediately that the ARRB would require the release of far more information than the Agency had released in the 1992-94 review. In mid-1995 HRG began a re-review of the previously released sanitized documents:

* approximately 80% of the 227, 000 pages release in 1993-94 contained deletions

* resources were taken from other projects and added to JFK project to meet Board's monthly deadlines.

II. The JFK Act and the ARRB

Mandated review and declassification projects can be two-edged swords. The JFK Act forced the Agency to review records that should have been opened years ago. The legal requirement to presume release, backed up by an independent review, resulted in the opening of documents that clearly would not have been released under other programs. However, the Act and the Review Board created by the Act imposed unrealistic deadlines, inflexible standards and procedures which created a major drain on all Agency review resources and had an over-all negative effect on the Agency's release program.

Unrealistic Deadlines: The release dates set by the Act did not take into account the start-up time and costs (searches, inventorying and indexing) of a project of this magnitude, nor the time it would then take for a page-by-page review and sanitization of classified documents. For example, initial indexing of the collection was done on a crash basis using overtime employees and resulted in a flawed database. The revising, re-indexing and updating of that database took several thousand man-hours and continues today.

Mandated Procedures: NARA's and ARRB's interpretation of the law created a time-consuming, labor-intensive review process that meant an inordinate amount of time was spent by

14-00000

both the Agency and Board staff on issues which were marginal to the story and to processing decisions by the Board. For example:

a. Under the JFK Act every piece of paper in the collection was considered a "unique" assassination record. The result is a staggering amount of chaff and duplication. For example, one cable was files and processed 58 times in the collection.

b. The ARRB required that all sanitized documents be reviewed by the Board and that each postponement (deletion) be acted on individually. Even after the Board changed procedures and accepted staff recommendations instead of reviewing each document, the detailed tracking, recording and coding of every deletion within each document required processing resources well beyond what would be considered reasonable for such a project. A most sanitized documents contained multiple deletions (one contained more than 1600 deletions and many over 100).

Inflexible Standards: The level of evidence required by the Board to postpone what was generally considered protectable information was extremely high and usually required documentation of "current harm". Defenses based on general principles such as official cover or sources and methods were not acceptable. This required the Agency to dedicate significant resources to prepare evidence to support recommended postponements. Again, much time was spent on issues that were marginal to the JFK story. For example, several major evidence packages involving several offices and presentations by senior agency officers and officials were needed to secure Board agreement to protect Agency physical locations and names of employees and other persons not related to the JFK story.

Three times during the six years of the project, including most of this past year, the JFK review effectively shut down all other aspects of the Historical Review Program and had to borrow additional resources from other offices and review projects to meet deadlines. The JFK review will continue to require a significant portion of HRP's resources through FY99.

III. The Process and Lessons Learned

There are a number of basic lessons from the JFK review that are applicable to other historical/systematic review projects:

* We need reviewers with broad Agency experience, which can be either managerial or substantive.

14-00000

* We need to establish early on what information is already in the public domain and address the issue of "official release" in the context of each project.

* Develop a strategy/policy with the IROs concerning the release of information. Be smart about it; do not accept stonewalling by them on relevant information that can be released. At the same time, avoid confrontations with them on marginal or non-relevant information.

* On-site Directorate reviewers are the most effective way to handle the internal coordination requirements of a large project. Without the DO's JFK team on site it would have been impossible to complete the JFK project.

* Develop guidelines and processes for coordinating Third Agency documents; include other agencies in discussions; do not drop documents into the black hole of other agencies' FOIA offices without this advance discussion.

* Maintain written, up-to-date, project-specific declassification guidelines. This is no small task. A "declassification guide" must be flexible; no guide can anticipate all the issues which will arise in a review. After six years, we were still revising the JFK guidelines in the last month of the project.

* In establishing deadlines, allow sufficient time to do a thorough, professional job as required by the project activities (see Unrealistic Deadlines above).

* Ensure we have adequate support people for routine processing tasks; declassification involves both tough substantive analysis--and a lot of routine processing.

* If possible, inventory/index all materials before the review and processing begins. Experienced indexers are a must. Identification of duplicate documents should be a key part of any inventory or index.

IV ARRB Requests for Additional Information and Records

(see attached draft)

Attachment I. Description of the JFK Collection

Attachment II. [being drafted-will be available 17 Dec a.m.]

[statistical summary of collection including size and status of documents (RIFs, SANs, DIFs, NBR, etc.)]

14-00000

3. How a Request was Worked Following receipt of a request and HRP tasking the responsible Agency component(s) to conduct a search, the materials found were first reviewed by HRP staff members before access was provided to the ARRB staff. ARRB staff then reviewed the documents and materials and identified those which it believed were relevant to their inquiry and these materials were placed in the normal queue to be reviewed and processed for release. However, the mere identification of materials did not equate to automatic release. Rather, if particularly sensitive information was involved, negotiations took place and, on occasion, a written statement about the materials was provided for release vice the actual document(s).

4. The Agency's written responses to each request - either a letter or memoranda - included, of course, the fact the materials designated were to be processed for release according to then current guidelines. The ARRB staff then wrote its own version of the request, search, and response. Both of these are a part of the public record on this project.

5. Lessons learned: A number of things surfaced as HRP worked to complete these requests which required considerable explanation, negotiation, and resolution.

a. First among these was the fact there existed an outside Board which asked for information and carefully monitored the responses (a very powerful external Board with subpoena authority), without doubt caused documents and information to be found and made available that would not have been provided to an internal declassification project.

b. Second, for any large project such as JFK to be successful, there is an absolute requirement that each directorate and independent office identify two responsible persons -- a senior management official who can ensure that deadlines (particularly deadlines established by an external

14-00000

authority) are met; and, a senior focal point officer who has the substantive knowledge and background to both locate all relevant material and make decisions on its sensitivity.

c. Third, the individuals identified and appointed in sub-paragraph "b" next above must be fully versed in the guidelines which pertain to each specific project. They cannot rely on FOIA or other guidelines as to the depth of their searches or the conditions governing release/ redaction/denial of materials.

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DRAFT: Section ~~III~~ IV, ARRB Requests for Additional Information and Records

1. Unlike most declassification projects, the Agency's involvement in the JFK Project was governed by the dictates of a Federal statute, the JFK Act, and the powers it vested in the Board it established -- the Assassination Records Review Board (ARRB). In particular, under Section 7, the Act armed the ARRB with the authority to dig for records and information, specifically:

> ...(1) The Review Board shall have the authority to act in a manner prescribed under this Act, including authority to --
>
> * * *
>
> (C)(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities;
>
> * * *
>
> (F) hold hearings, administer oaths, and subpoena witnesses and documents.

This substantial authority provided the ARRB and its staff with almost unlimited access to Agency records and personnel. It also was the basis for a number of specific requests from the Board to the Agency for additional information, document searches and explanatory papers. HRP designated this ARRB activity, "Special Requests." During its existence the ARRB sent to the Agency fifty-three special requests, CIA 1-16 and CIA-IR 1-37.

2. Categories of Requests: 16 53

14-00000

(53 Special Request)

Needed

Although each request had unique characteristics, all began as a request by the Board or an ARRB staff member on behalf of the board for information. The requests fell generally into five broad categories as follows:

a. Requests for **access** to basic information which would help the board understand the CIA, its organizational structure and how it operated around the time of the assassination which included: Requests for organizational charts, briefings, mission statements, etc.; review of over ___ histories of CIA offices and projects; a review of the so-called "Breckinridge files;" and, a search for an IG index of Oswald reports.

b. Requests about **methodologies** which included: How cable traffic was handled at HQ during the relevant time period; the existence and use of the inter-agency source registry; and, the assignment and use of alias's pseudonyms, crypts, etc.

c. Requests for **subject specific** matters which included: The Mexico City Station annual reports; the existence of DRE monthly reports; Oswald's pre assassination files; and, a search for any documents or information detailing the Agency's involvement in transporting and processing the Zapruder film.

d. Requests for **project specific** information and files, which included: Requests for information and files on AMWORLD, QKENCHANT, an index to the HTLINGUAL materials, and the Mexico City electronic surveillance tapes.

e. Requests for **individual specific** information and files, which included both CIA and CIA associated individuals and non-CIA individuals: Information on individuals with JMWORLD; detailed information on Sylvia Duran; a determination of the identify of a particular "George Bush;" and, the files on William Pawley.

14-00000

Attachment I

if need O

Oswald Files

Pre-assassination file" 201 file --approximately 40 documents that existed at the time of the assassination. Released in 1992 with minimal deletions.

DO 201 File (Approximately 25,000 pages): Agency's primary file for documents dealing with the assassination or mentioning Oswald; the file is still active. Contains pre-assassination documents; materials collected after the assassination and during the Warren Commission investigation; Mexico City files, Garrison investigation materials plus other documents related to the assassination or Oswald received over the years. A microfilm copy of file as it existed in 1978, was sequestered by the House Select Committee on Assassination (HSCA).

The DO's original (record copy) 201 was transferred to HRG in early 1992; a declassified version was released in August 1993; it was re-released with fewer deletions in 1996 under the authority of the ARRB . Additional documents, filed into the 201 after the its transfer to HRG, were released in September 1998.

Office of Security File (pages): Contained key Oswald documents, FBI investigative reports, newspaper clipping. This file, primarily duplicative, was reviewed by the HSCA, but a copy was not sequestered with the rest of the Agency's "JFK" collection. The file surfaced as a result of an ARRB request in 1997. A declassified version of the file was released in 1998.

DCD "A" File: A microfilm copy of this file was in the sequestered collection. The ARRB requested that the original file by reviewed for release.

Marina Oswald's 201 file. A copy of this file was in the sequestered collection. The ARRB requested that the original file be reviewed for release.

The ARRB directed that the classified originals of all documents from the Oswald files be transferred to NARA for secure storage. These documents were transferred to NARA in October 1998.

The Sequestered Collection

At the end of its investigation, the HSCA directed that all materials (files, documents, memos, notes, tapes, etc.) collected or prepared in response to its investigation be sequestered. This included files made available for review, but not reviewed by the HSCA staff.

JFK boxes 1-63 (hardcopy): These boxes are the core of the Agency's JFK collection. They are the working files/materials of the HSCA staff and reflects the wide range of issues pursued by the Committee. In addition to Agency documents, they include approximately 30,000 pages of notes, letter and memos created by the HSCA or its staff. The boxes are a combination of files on subjects and persons of interest to HSCA including documents prepared by the Agency as a result of the investigation, eight boxes of security files and Mexico City cable chrono files. The boxes contain a significant amount of duplication (most of the Oswald 201 documents appear multiple

14-00000

times in this part of the collection. A declassified version was released in August 1993, then re-released under ARRB in 1997.

JFK Microfilm (72 reels): These reels are copies of Agency files that were made available to HSCA staff. Although the HSCA interest usually focused on a small portion of a file, the Committee sequestered the compete file. The microfilm includes approximately 25 reels of 201 files, 6 reels of Office of Personnel files, 14 reels of Anti/Castro - Cuban exile material, extensive files on Nosenko and operational and production files from Mexico City. The microfilm also contains copies of all the Oswald files except for the security file.

14-00000

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SECTION: IN THE NEWS

LENGTH: 12335 words

HEADLINE: HEARING OF THE NATIONAL SECURITY, INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE SUBCOMMITTEE OF THE HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

SUBJECT: ASSASSINATIONS RECORDS REVIEW BOARD REAUTHORIZATION
CHAIRED BY REPRESENTATIVE DENNIS HASTERT (R-IL)
2154 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

BODY:

REP. HASTERT: The Subcommittee on National Security, International Affairs and Criminal Justice will come to order. This hearing will focus on a very important piece of legislation, HR 1553, the John F. Kennedy Assassination Records Review Board Reauthorization Act. This bill was introduced by Chairman Dan Burton on May 8, 1997 and included in original cosponsors ranking minority member Henry Waxman and Congressman Louis Stokes, our first witness for today, also who chaired the House Select Committee on Assassinations.

In 1992, 30 years after the assassination, nearly one million pages of records compiled by official investigations still had been not made public. Congress decided to set up a process for reviewing and releasing to the public the records surrounding the Kennedy assassination. The result was that on October 26, 1992, President Bush signed into law Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992.

The original act provided a three-year timetable for the review board to complete its work. Unfortunately, extensive delays in the appointment of board members delayed the review board's work from the very beginning. In 1994, the Congress extended the 1992 law's termination date for one year, until September 30th, 1996. The review board subsequently exercised its authority into the statute to continue operating for one additional year.

The review process has proved to be more complex and time- consuming than

14-00000

anticipated. And although we believe that Congress should not indefinitely continue funding federal entities that were intended to be temporary, Chairman Burton and this subcommittee support the request for a one-year extension of the board's reauthorization. I believe that by releasing these documents to the public we serve an important public right to know and advance the cause of total accountability to the people of this country.

At this time I would like to recognize the gentleman from Wisconsin, Mr. Barrett.

REP. THOMAS M. BARRETT (D-WI): Thank you, Mr. Chairman. I'm honored to welcome

my esteemed colleague, Representative Louis Stokes, to testify before this subcommittee. We are fortunate to be able to draw on your experience in this area.

Over 30 years ago this country was shocked by the assassination of President Kennedy in a way that it had not been shocked since the bombing of Pearl Harbor or the bombing or Hiroshima. Yet today we are still prying papers out of the government about that assassination.

The legislation that created the Assassination Review Board broke new ground by establishing the principle that there should be a presumption of public access to government information. That legislation was necessary because administration after administration had failed to release documents. That should not be. The Assassination Review Board has released millions of pages that could have otherwise remained locked in government file drawers. We are here today to extend the authorization of this board because the process of making government information public has been more complex and time-consuming than anticipated. I am not criticizing the work of the board or the dedication of its members. I am, however, critical of the fact that we are still fighting with our government to allow public access to government documents. Congress has passed laws and resolutions reiterating the principles of public access that were laid down when this country was founded. Administration after administration has worked to thwart that access. I applaud President Clinton for his efforts to declassify xdocuments, but we need to do much more.
I hope that every employee at the Office of Management and Budget, and every agency in the government will pay attention to what this board has accomplished. It is the refusal to allow public access that breeds suspicion of the government. It is the thwarting of public access that causes the public to mistrust government officials. If we are to turn the tide of mistrust and suspicion, it will be done by opening the doors of access. Today is one step in that process, but there is much more work to be done.
Thank you.
REP. HASTERT: Are there any other members wishing to make an opening statement? If not, our first witness this morning is fellow Congressman Lou Stokes, who served as the chairman of the House Select Committee on Assassinations from 1976 to 1979, and is a cosponsor of this important bill.
And, Mr. Stokes, we want to say welcome, and thank you for your fine work in this area. And please proceed with your opening statement.
REP. LOUIS STOKES (D-OH): Thank you very much, Mr. Chairman. Mr. Barrett, Mr. Turner, Mr. LaTourette.
Mr. Chairman, I'd like to submit my written testimony for the record, and if I may, I'd like to just summarize my testimony.
REP. HASTERT: Without objection.
REP. STOKES: Thank you.
It seems, Mr. Chairman, it was not as long as it is, but actually it's been 20 years; it was in 1977 when I was appointed as chairman of the House Select Committee on Assassinations. We were authorized at that time and directed to complete an investigation surrounding the assassination and the death of President John F. Kennedy. We completed, as you've already stated, our

14-00000

investigation in 1979. And on March 28th of that year, we filed our final report. In addition to it, 12 volumes of evidentiary material, printed by the Government Printing Office, was made available to the American public. In addition to this, we conducted 18 days of public hearings and an additional two days of public policy hearings.

Prior to the committee running out of both time and money, we had released everything that we had the time and resources to release. All of our other records were placed in the National Archives, under a House of Representatives rule which existed at that time, Rule 36, requiring such unpublished records routinely to be sealed for 30 to 50 years. The records of our committee relative to this investigation consisted of 935 boxes, which we turned over to the National Archives. Then, over the years, a considerable public debate about these records has ensued, including accusations that these records, if released, would contain evidence of a government cover-up, or complicity of government agencies in the assassination of President Kennedy.

14-00000

A great deal of this was fueled in 1992 by a movie entitled "JFK." That movie contained many distortions of the facts and circumstances surrounding the death of our president. As a result of that movie, my office was deluged with thousands of letters and telegrams by Americans calling for the release of these sealed files.

As a member of Congress, and a former chairman of that committee, I deemed it important not to have the good work of our committee impugned by such baseless accusations. Our committee had attempted to conduct its investigation into the assassination of the president, and to present the results of that investigation to the Congress and to the American people in a thorough and dignified manner in keeping with the memory of this great president.

Consequently, in 1992, I introduced, and the House and Senate passed, PL 102-526, a bill entitled The President John F. Kennedy Assassination Records Collection Act of 1992. That law created the Assassination Records Review Board, which mandated and authorized that board to identify, secure, and make available all records related to the assassination of President Kennedy. It was our intention, Mr. Chairman, that everything that could be released from every agency, every court record, anywhere they existed -- that those records be released to the American people.

Under the law, the board had until October 1, 1996, to fulfill its mandate, plus an additional year, at the board's discretion.

We were very fortunate to have a very distinguished panel appointed. This panel was appointed by President Clinton 18 months after the law was enacted here by the Congress -- a considerable delay in the appointment of this panel. But we were very fortunate to have persons such as Chairman Tunheim, Dr. Henry Graff, Dr. Kermit Hall, Dr. William Joyce, Dr. Anna Nelson, and an outstanding executive director, David Marwell.

Under this panel, they have now released more than 10,000 previously secret government documents.

They have released a report, which I would urge all the members of the committee to read, if they have an opportunity, because I think you will see the extensive amount of work in which they have been involved.

They now need one additional final year in order to complete their work. Their work during this period of time will be primarily to secure the release of documents from the CIA and the FBI. Those are the two main agencies left from which they still have a considerable number of documents to be released.

Mr. Chairman, in closing I think that it's important that we complete this work in an orderly manner with full and complete disclosure to the American people, that they will feel that they know everything that their government knows about

the assassination of their president. And I would urge the support and passage of this legislation sponsored by Chairman Burton, of which I am one of the original co-sponsors.

I'd be pleased to answer any questions.

REP. HASTERT: Thank you, Chairman -- or, Mr. Stokes. And I really appreciate the work that you've done here. I have just two brief questions. Actually, three. Do you believe that the Ford Review Board is up and running smoothly now?

REP. STOKES: Absolutely. In spite of the delay of 18 months they have done just a yeoman's amount of work. It's just been almost incomparable to realize how much they have done. And to their credit, they feel that if given just this one additional year that they will complete the work.

REP. HASTERT: And do you believe that this process is consistent with the goals of your original legislation in 1992?

REP. STOKES: Yes, I do, Mr. Chairman.

REP. HASTERT: And then you are confident, as you said before, that the review board can finish its task by September 30th, 1998.
REP. STOKES: I am just very confident that -- in projecting the fact that they can do this work with one year. And when they say themselves as they will say to you when they appear, this'll be one final year.
REP. HASTERT: Thank you very much, and thank you for your testimony.
REP. STOKES: Thank you, Mr. Chairman.
REP. HASTERT: The gentleman from Wisconsin.
REP. BARRETT: Thank you, Mr. Chairman.
I don't have a lot of questions, either. I just want to compliment you, Congressman Stokes, for the fine job that you have done.
REP. STOKES: Thank you.
REP. BARRETT: And just one question. Do you think in the unfortunate and hopefully unlikely scenario that there are future assassinations in the future that this was a good way to approach this problem, the panel that you served? Do you think that you have accomplished what you intended to accomplish?
REP. STOKES: Mr. Barrett, at the time that we undertook this panel and Congress passed the act to create this panel, 85 percent of the American people believed that someone other than Lee Harvey Oswald had participated in the assassination of President Kennedy. A national poll had told us that. There were boundless rumors and myths. People were writing numerous books and things of that sort. And as a consequence of it, I think that putting this panel together and permitting this type of investigation I think was very helpful. I think it allayed many of the rumors and myths that grew up and abounded around the assassination of our president.
However, I don't think that it put to bed everything. We uncovered many things. For instance, we pointed up many of the things that the Warren Commission had not done properly. And we were able to destroy many of the myths, such as the umbrella man theory and things of that sort. But we couldn't put everything to bed. We had begun that investigation 15 years after the assassination of the president. I think had we been given this type of investigation immediately after it had occurred, it would have been a different result. But many of the witnesses had died. Evidence had disappeared. As you can see now, there were materials which we were not able to get even within that two-year period before we went out of existence.
And so as a consequence of it, I think we did an outstanding job. No one has ever been able to refute any of the work that we did. No one has been able thus far to say anything was ever covered up from the American people. And so to that degree, I think that it performed a good service for the American people.

REP. HASTERT: Okay, thank you very much.
The gentleman from Ohio.
REP. STEVEN LATOURETTE (R-OH): Thank you, Mr. Chairman. Mr. Chairman, I want to
thank you for having this hearing today and for also expediting the markup on 1553, and give praise to the co- sponsors, our chairman, Mr. Burton, Mr. Waxman, and also to Congressman Stokes.
The editorial comment I would make is I'm always amazed each succeeding day that I serve in Congress at the rich history that a number of our colleagues have, and to now have our fine colleague from Ohio, Congressman Stokes from Cleveland, here and talk about his previous work on the House Select Committee on Assassinations. Although many members in the House remember his service, I would venture to say there are a number of people back home that don't know all of the things that you've done during your many years of service to this Congress and this country.
Just as an example, the other day I found out -- and I don't know if you're a

lawyer or not, Mr. Chairman, but I found out that Congressman Stokes -- well, you're lucky you're not a lawyer, but I am, and I'm proud to be a lawyer.
I found out that Congressman Stokes was responsible for a ruling called Terry versus Ohio, and you might have heard of a "Terry Frisk and Search," and I didn't know that till the other day, that Congressman Stokes had a hand in that, and so, again, we find Congressman Stokes showing up again, sharing his expertise with the country.
Lou, the one question I would have, deals with, in both your written testimony, and then also your observations to Congressman Baird's question. You talked about the "JFK" movie, and all of the rumors and innuendoes and the public polls. And you still run into people -- as I'm sure -- I still run into people that aren't convinced that Lee Harvey Oswald acted alone on that November day in Dallas.
And part of it has to do, I think, with, after your commission met, and now the legislation in '92, and a little delay in getting everybody in place in the review board. Do you think it was necessary, after you've reviewed the documents in this case, that we waited, as a government, 34 years to make these documents available? Was there something impinging upon the national security that you found or discovered that made it necessary for the government to wait 34 full years before releasing this information, and hopefully dispelling some of those rumors?
REP. STOKES: Thank you very much, Mr. LaTourette, firstly for your nice remarks. But it's a good question, because not many people realize that this was not -- when we sealed these records for the period 30 to 50 years, this was not done because of anything relative to this particular investigation. That was a House rule in existence at that time, that applied to any committee that, when it completed its work and filed its final report, if they had documents which had not been released publicly, under that House rule, they had to be sealed for 30 to 50 years. The same applied to the other part of that investigation which we conducted, which was to investigate the assassination of Dr. Martin Luther King Jr., which was a companion part of our investigation. So that applied to that one also.
But as a result of it, in compliance with the House rule, it just sort of sat there until things were stirred up by that "JFK" movie and it sort of brought things to the head.
REP. LATOURETTE: Okay. The principles behind your '92 legislation, the Assassination Records Collection Act -- obviously, now we collect records differently than we did before. A lot of them are electronically stored. Do you think that we can use that act as a vehicle, should another tragedy -- God forbid we should ever have such another tragedy in this country, but should

14-00000

another tragedy such as this occur, could we use the lessons learned in the model of this review board to prevent the significant time lag between the date of event and the eventual release of documents for public review?

REP. STOKES: I would hope, Mr. LaTourette, that we have learned some lessons. Firstly, here in the Congress we'd no longer have such a rule in effect, and that will help us, I think, tremendously.

But also, I think, by the agencies now working with a review panel of this sort and realizing that many of the type of documents which they will cite to you in their testimony -- for instance, there's a very interesting document that they will talk about, where the whole page, with the exception of just the date and the name of a country -- everything was redacted. And under their work, that whole page has been released, and everyone can read that.

What you do by that is that you're to allay all the suspicion as to what really has been redacted and people can really see. And then you can't have the kind of rumors and myths that grow up around it.

And I think and hope that in the event of such an occurrence in the future -- which all of us hope would never occur -- that our agencies will realize that this has been a good example of how we could allay some of the fears and suspicions that the American people have around the manner in which we conduct this type of thing.
REP. LATOURETTE: Thank you very much, Congressman Stokes, for your expertise --
REP. STOKES: Thank you.
REP. LATOURETTE: -- and thank you, Mr. Chairman, for yielding.

REP. HASTERT: Thank you.
And at this time I recognize the gentleman from Texas.
REP. JIM TURNER (D-TX): Thank you, Mr. Chairman.
And all I would add is to also compliment you, Mr. Stokes, for your many years of work on this effort. I too stand somewhat in awe at the number of years of service and your contributions to this body.
REP. STOKES: Thank you.
REP. TURNER: And I know the Congress and the American people are grateful for the years of service you've provided not only on this issue, but on many other issues to which you've contributed.
And I also want to thank those who've served on this panel, because I'm sure it is a time-consuming endeavor to carry out this task.
Thank you, Mr. Chairman.
REP. HASTERT: Thank you, Mr. Turner.
Thank you, Mr. Stokes.
REP. STOKES: Thank you.
REP. HASTERT: The second panel, come forward, please.
Our distinguished second panel includes four witnesses: Mr. John Tunheim, the chair of the Assassination Records Review Board; Mr. Steven Tilley, the chief of the John F. Kennedy Assassination Records Collection at the National Archives. We also have Mr. Max Holland, the author and contributing editor of the Wilson Quarterly; and Mr. Bruce Hitchcock, an historian and teacher at Noblesville High School in Indiana, our distinguished chairman's home state.
And I also would say that, at this time, Mr. Burton would have wanted to be here to make a few comments. He is not here yet. We may entertain that at any time. So, if you gentlemen would please stand, and -- (witnesses are sworn in). Thank you. Let the record show that the witnesses answered in the affirmative.
And we start with you, Mr. Tunheim.
JOHN TUNHEIM (Chair, Assassination Records Review Board): Thank you, Mr. Chairman. I, too, would like to submit my written testimony for the record and

just give a brief summary to members of the subcommittee today.
I'd like to thank the subcommittee for this opportunity to testify today in favor of House bill 1553. And I'd also like to note our thanks to Congressman Stokes for his leadership on this issue and his guidance in the important effort to release the records relating to the tragic assassination of President Kennedy.
The review board is confident that the additional time requested and provided by Congressman Burton's bill will allow us to complete our work and submit a truly complete final report to the Congress, to the president and to the American public. I'd like to thank Chairman Burton for introducing the bill and Congressman Waxman and Stokes for co-sponsoring the bill that is before the subcommittee today. And I also appreciate, Mr. Chairman, your role in chairing this hearing today and assisting in this effort.
One of the other members of the review board is present with us today -- I'd like to introduce her -- Dr. Anna Nelson, who is the distinguished adjunct

historian in residence at the American University and is seated in the row directly behind me. Dr. David Marwell, the executive director of the review board, is also here, as are a number of staff members who are very professional and very dedicated and have done their work for us very well.

The review board, Mr. Chairman, began releasing records in July of 1995, pursuant to the act passed by Congress. And thus far, the board has acted specifically to transfer more than 14,000 documents to the JFK collection at the National Archives. That collection, as Mr. Tilley will tell the subcommittee shortly, now contains more than 3.7 million pages' worth of material.

I'd like to show one brief and rather dramatic example of the work that the review board is doing. Congressman Stokes mentioned this issue in his testimony. This involves one particular record. This is the "before" version, the record that was available to the public up until several years ago. You probably cannot see it from here, but it is a document that was sent from the FBI's representative in Paris to Director Hoover on October 12, 1960. That is indicated at the top of the memorandum. The subject, as indicated, is Lee Harvey Oswald: Internal Security. And then it says Re: Paris Letter 9-27- 60. And the remainder of the entire document is blacked out. And not surprisingly, a document like this dated three years prior to the assassination of President Kennedy, a document sent to J. Edgar Hoover attracted a great deal of interest among researchers who saw it because everything was blacked out underneath. The speculation that individuals had about this was great.

Well, the board aggressively pursued the release of this information, initially ordering its release. The FBI appealed that decision to the president. Subsequently we worked out with them, including an aggressive effort to contact Swiss authorities who were the subject of this particular document. I met personally with the Swiss ambassador to the United States to ask for his assistance in obtaining Swiss approval to release it.

And here is the record that is now released to the American public at the National Archives. All of the material is released. And what it indicates was the FBI was interested in whether Oswald was indeed attending a college in Switzerland during that period of time. And the document tells about the investigation that Swiss authorities did to determine whether Oswald was, indeed, enrolled. He was someone who the FBI was following because of his interest in defecting to the Soviet Union. That's a good example of the type of work that the review board is doing: pursuing individual releases of information that has long been redacted from the public.

The board has worked closely with federal agencies. The vast majority of the records are at the CIA and the FBI. We have completed the review of the core collections in both of those agencies and significant numbers of materials have

14-00000

been released.

The board has also been aggressive in identifying and acquiring significant assassination-related records that have been in the hands of private citizens and local governments. Just a couple of examples:

The papers of J. Lee Rankin, who was the chief counsel to the Warren Commission, have now been released through the efforts of the review board. Virtually all of the records of the prosecution in New Orleans of Clay Shaw was also released. And I'm announcing for the first time today that the review board has just acquired the original personal papers of Clay Shaw. He was the individual prosecuted in New Orleans in 1969, the only individual prosecuted for the assassination of President Kennedy. That will add another dimension to this story. This is an example of his diary, which the board has just obtained, and will be released as soon as we can process the materials. It's very interesting. It's his diary from the day that he was arrested, on March 1st, 1967 and his feelings about Oswald on that particular day.

Despite the best estimate, Mr. Chairman, that this job could be done in three years, we cannot finish our work by the end of this fiscal year. We're confident that in the additional year we will be able to get through the records, which will largely involve the sequestered collections at the CIA and at the FBI -- records sequestered by the House Select Committee on Assassinations. I'd be happy to answer any questions, Mr. Chairman, that you and the members have.

REP. HASTERT: Thank you. We'll hold all the questions until the end of the testimony.

MR. TUNHEIM: Very well.

REP. HASTERT: Mr. Tilley?

STEVEN TILLEY (Chief, Access and Freedom of Information Staff, National Archives and Records Administration): Mr. Chairman, I am Steven Tilley, and I'm the chief of the Access and Freedom of Information Staff at the National Archives and Records Administration. And I wish to thank you for the opportunity to testify today on behalf -- for the National Archives in support of HR 1553.

I'm appearing today in my capacity of NARA's chief of the President John F. Kennedy Assassination Records Collection. In that role, I am charged with implementing NARA's responsibilities under the act, and I serve as NARA's liaison to the Assassination Records Review Board. And it's my understanding that my written statement will be made part of the record, therefore, I'll be brief in my remarks.

Mr. Chairman, this month marks the 20th anniversary of the closing of the office of the Watergate Special Prosecution Force. I oversaw the closing of that office and supervised the transfer of those records to the National Archives. Most of my career at the National Archives since then has been involved with working with sensitive records. And in 1993, I became the chief of the JFK Collection, and I've served in that capacity ever since.

When the review board members were confirmed by the Senate in April of 1994, my staff and I began to work with the board, and later with the board staff, to provide information on the records in the JFK Collection, the development and use of NARA's data base, our contacts and discussions with other agencies involved in searches for assassination records, and the existence of assassination records in the custody of private repositories or individuals.

The review board and NARA have maintained an excellent working relationship through the three years of the board's existence, and I'd like to think that this close relationship has in some way contributed to the success of the review board.

NARA enthusiastically supports passage of HR 1553 to extend the review board's authorization.

14-00000

The board needs the time designated in this bill to complete its important work in making available as complete a historical record as possible concerning the assassination of President Kennedy.

I would like to briefly offer for your consideration some statistics and facts to demonstrate the success of the board. The JFK Assassination Records Collection has grown to more than 1,600 cubic feet of records, or approximately 3.75 million pages from more than 30 different government offices. These numbers are a testament to the work of the board in obtaining the cooperation of the entire federal government as well as private donors in this important task.

For the information of the committee, Mr. Chairman, I've attached to my testimony a copy of the register of the collection, which lists the major groups of federal records and private papers along with a supplemental listing of FBI records.

Not only has the collection increased dramatically in size; the significance

of the records in the collection cannot be underestimated. In addition to the records of numerous executive branch agencies and offices, the records of relevant congressional committees, related court cases, and records donated by private entities are also available in the collection.

This rich documentation is searchable electronically, giving researchers the ability to seek out documents concerning a topic, person or event, or even individual documents, not only at NARA's College Park facility but from their own personal computer through the Internet.

Finally, Mr. Chairman, public demand for these records is the ultimate evidence of the value of this collection. Reference requests have risen in number every year since the collection opened with new records in August of 1993. This year we have already received over 600 written inquiries, an increase of over 30 percent from this period of time last year. The number of inquiries on our computer Web site is also steadily increasing. Since March 1996, when the assassination records database was made available through the Internet, it has been accessed over 100,000 times by the public.

Due to the exceptional work of the Assassination Records Review Board, great progress has been made on making available as complete a record as possible in the history of the assassination of John Kennedy. Without the focus, integrity and expertise of the review board, the collection would not have the size, quality or public demand witnessed today.

However, there is still much to do. NARA supports passage of HR 1553 so this important work can be completed.

That concludes my statement, Mr. Chairman. I'll be glad to answer any questions.

REP. HASTERT: Thank the gentleman.

Mr. Holland?

MAX HOLLAND (Author, contributing editor of Wilson Quarterly): Thank you, Mr. Chairman. I'd like to make a brief statement summarizing my testimony.

Nearly 75 years after President Lincoln's assassination, a chemist-turned-author named Otto Eisenschiml provoked a national furor with his 1937 book, "Why Was Lincoln Murdered?" Eisenschiml claimed one of the most important events in American history was still a mystery. And Eisenschiml claimed to have uncovered the truth: President Lincoln was the victim of a conspiracy organized by his secretary of war, Edwin Stanton, who was allegedly opposed to the president's program for a charitable post-war reconstruction of the South.

When pressed, Otto Eisenschiml openly admitted that he had no evidence to support his case. At the same time, it was precisely the documentary record that enabled critics to prove that Eisenschiml's book was just another in a long line of lunatic theories about the first assassination of an American president.

14-00000

Here lies, I submit, the long-term importance of the work being carried out by the AARB. The meaning of the raw data being unearthed by the review board will probably not be appreciated any time soon by the generations sentient when President Kennedy was murdered in Dallas, but if these generations cannot come to terms with history as it happened in their lifetimes, then at the very least, they have an obligation to hand over, insofar as possible, a complete and thorough documentary record. Citizens will need that record to rebut the Otto Eisenschimls of the next century, not that there is any dearth of them now. I strongly support without qualification extension of the review board for another year and full funding of its operations. Bringing its work to an abrupt end would not only diminish the investment of time and resources already made; in all likelihood, it would throw the whole initiative into chaos. Not least of all, gutting the effort now would surely create ineradicable suspicion about the federal government's intentions in the first place. I'd like to spend the balance of my time describing the three areas where I thank the review board

had made its greatest contributions. The first has to do with the Warren Commission. The review board's labors have resulted in many new documents that I believe will eventually remove the stigma that has been attached to the commission, which is probably the most unfairly reviled and/or ridiculed entity ever created by the federal government.

These records paint a sobering portrait of our federal government during a very traumatic time. It's not the idealized versions depicted in civics text books nor the demonized version featured on talk radio. It's the real federal government: imperfect, plodding, riven by ambition, distrust, rivalries, compartmentalized by secrecy, working at cross-purposes or in ignorance, simultaneously guided by the most banal bureaucratic instincts and the most elevated national concerns. Somehow, through all of that, it does struggle and manage to do the right thing.

Besides the Warren Commission, I think the work of the review board has made a very substantial contribution towards understanding the operations of the intelligence community. The assassination necessarily caused what could only be termed a mobilization of the U.S. intelligence community's far-flung resources. The government had to determine that weekend who was responsible and whether the assassin or assassins had any co-conspirators either foreign or domestic. Consequently the records being released now constitute a gold mine of information about domestic and foreign intelligence operations at the midpoint of the cold war. These records not only shed new light on what the government knew 34 years ago; the release is an object lesson in why they were kept secret for all those years. They do not contradict the federal government's official conclusion at stated in the Warren report. Rather, the documents were kept secret because they disclosed or tended to disclose ongoing intelligence sources and methods.

With the release of these documents, the intelligence community's record in the wake of the assassination can finally be assessed with some fairness and thoroughness. The fact is that the information provided by the FBI, CIA and other agencies was instrumental to preventing the United States government from overreacting when the circumstantial public evidence was highly suggestive of a link between Lee Harvey Oswald and a foreign power.

The last area in which the review board has made a -- perhaps its greatest contribution has to do with whole issue of secrecy and disclosure. The balance between secrecy and disclosure has always been in favor of secrecy, especially since World War II, controlled by laws highly deferential to the equities of the interested government agencies. The five citizens who serve on the review board decided that if their mandate was to have any meaning it was imperative to pierce this veil. They had to get at categories that had been classified here

14-00000

before, including information derived from intelligence sources and methods. While some historians have been critical of the resources devoted to this particular effort, I like to believe that a breakthrough had to be achieved somewhere, and in fact, the records pertaining to President Kennedy's assassination make an excellent demonstration project of what can now be released. The lines drawn by the review board should prove helpful as the government undertakes to declassify the vast body of records generated during the Cold War.

Finally, I'd like to say the entire history of the federal government's efforts in the wake of the assassination, including the experience of the review board, serves as a cautionary tale. Perhaps it will enable the government to strike a better balance between secrecy and disclosure in the future, for there exists no better example of the heavy wages of doubt, suspicion and public cynicism exacted by secrecy than the Kennedy assassination experience.

Thank you, Mr. Chairman.

REP. HASTERT: I thank the gentleman.
And now, Mr. Hitchcock, I'd like to welcome you especially. A gentleman from Ohio asked me a little while ago if I was an attorney. Indeed, I was not an attorney, I happened to be a history teacher for 16 years before I ever got into politics. So it's certainly a noble trade, and happy that you're here. I know the chairman wanted to introduce you personally, but he couldn't make it this afternoon.
You have contributed students, I understand, a clerk for this commission, and have been involved in it at a very high degree. So we welcome you and listen to your testimony.
BRUCE HITCHCOCK (Teacher, Noblesville High School, Indiana): Thank you, Mr. Chairman. And I, too, would ask that my written statement be entered into the record and I will briefly summarize.
REP. HASTERT: Without objection, all written statements will be entered into the record.
MR. HITCHCOCK: Thank you.
My name is Bruce Hitchcock and I am a teacher at Noblesville High School located in Noblesville, Indiana, which is a community approximately 20 miles north of Indianapolis. I am currently completing my 28th year in secondary education. My teaching assignment has primarily been in the areas of United States history, American government, and international relations.

And I want to express my appreciation to the committee for affording me the honor and privilege of being here today and permitting me to make some brief remarks concerning an issue about which I have very strong convictions not only as a citizen, but as an educator.
In the spring of 1994, I assigned my Honors United States history class a project studying the assassination of President John F. Kennedy. This project culminated in the students placing the Warren Commission Report on trial. Half of the class represented the prosecution and half the class defended the Warren Commission Report. The class became quite interested in, and many would say obsessed with this subject. The project resulted in a trial which became quite intense and divisive, so much so that the class had to have a party at the end of the semester to rekindle friendships. They became so fascinated with the subject of the assassination that they requested an opportunity to travel to Washington, DC during the summer following their graduation to do additional research.
From that modest class assignment developed an internship opportunity with the JFK Assassination Records Review Board. To date, four student groups from

14-00000

Noblesville High School have interned with the review board, with the fifth scheduled for the week of June 16th of this year. When this group completes its work, a total of 56 of our students will have participated in this unique and truly educational opportunity.

I might add that except for the first group, succeeding student groups have studied, researched and prepared for their internship on their own time, outside normal class meetings. The most recent group to participate did so over spring break. The fact that students wanted to spend their vacation working with government records reflects the interest that the JFK assassination has for students.

In my 28 years of teaching, I have never had a topic create as much interest as the assassination of President Kennedy. It is a mystery, and it provides an excellent research opportunity, as well as a chance for students to be actively involved in learning.

Since November 22nd, 1963, there have been many who have believed, and still

believe the government did conceal, continues to conceal, and will continue to conceal the truth. If the review board is permitted time to complete its work, it will assist in defusing the last two charges. We cannot prevent the speculation that someone did conceal the truth. But the argument that a cover-up continues, and will continue, can at least be defused, or discouraged. What has been lost cannot be replaced. However, what still exists can be made public. We should have access, and our students should have access to the information and documents still in existence. This is an opportunity for the United States government to provide a credible response to public interest. The review board established by the Congress, is actually a group of citizens telling the government what to do, and what to release. An opportunity exists, in this era of skepticism, to restore some credibility and trust in the government.

In his recent book, "The Approaching Fury," author Stephen B. Oates quotes John Furling as saying, "Events by themselves are unimportant. It is the perception of events that is crucial."

Perhaps in 1997, the most important aspect concerning the assassination of President Kennedy, is the perception, shared by many, of a conspiracy involving individuals and agencies of the United States government. Do we not owe our young people the opportunity to form the most accurate perception possible? Do we not owe them the chance to see as much of the truth intact as can be assembled?

It seems to me that we owe this generation, and all succeeding generations, the opportunity to question, to study, and to form opinions on the basis of information they can view independently, without solely relying on the opinions of others. Oftentimes, while I'm in the classroom, I observe students who have opinions, but little to substantiate them. Congress has a chance before it in some small way -- or maybe in some large way -- to at least provide them with more information, so that they may have their turn in determining what the JFK assassination means.

We have been affected by this event. For 34 years we have been affected. The 56 students from Noblesville High School have, as have countless others, been affected by the events of November 22nd, 1963.

The study of this event has the public interest. It is an event to which the public and students can relate. It touches people.

As an aside, last week an article was published in the Indianapolis Star. I have a copy with me today. Regarding our school's ongoing JFK assassination project. Within a day of its publication I received phone calls from a gentleman offering 500 pages of documents for our use. And from a former teacher calling me with information regarding some scholarship opportunities. I also received a call

14-00000

from ABC News Nightline. And yesterday before leaving Noblesville High School received a call from Atlanta, Georgia offering information.

The subject of the call from Nightline was seeking information as to what Noblesville High School students were doing with regard to the study of the assassination. Together I think these calls reflect continued local and national interest in continuing the probe into what happened in Dallas. Congress has the opportunity to lay the facts before the American public and permit a more reasoned, rational and fact-based account and discussion of the assassination. I would hope that the committee would take into consideration the fact that the review board had a one-year delay before truly becoming operational, that it is making a one-time request for an extension, that the review board has been on task and on budget, that the review board has conducted its business in a professional and non-partisan manner, and in 1992, when the act was passed by this Congress and signed by President Bush, the enormity of the task was not

14-00000

and could not be fully appreciated.
An opportunity exists to complete a task which I believe is overwhelmingly supported by the American public, and it is important that this mission and mandate authorized by Congress be completed. I would like to end with just a couple of quotes, one from former Senator Bob Dole, who said in a different context, this is not about only who we are. It is about have we made a difference. This is a chance to make a difference. And as former President Reagan often said, if not us, who, and if not now, when?
After 34 years it is time to let the public know the facts that remain. To do less would be a tragedy and a travesty. As an educator I believe that our most important task is to provide our young people the most complete story of who we are and why we are who we are. We have an opportunity to work towards the accomplishment of that goal. It is an opportunity, I believe, we cannot afford to miss.
In his last speech in Fort Worth on November 22nd, 1963, President Kennedy said, we would like to live as we once lived, but history will not permit it. History can only be served by permitting the public to see the evidence.
Mr. Chairman, as a further aside, if I might just have a few seconds. Reflective of our students' interest in this event, I have my honors government classes perform a project for the model Congress. One of the students this year -- they could write a bill on whatever subject they wished, and one student who worked with the review board last year introduced House concurrent resolution 1 in support of the review board, and concludes, after all the whereas's, the Congress of the United States firmly supports the assassination records review board in all endeavors leading to the collection, review and release of the documents regarding the assassination of President Kennedy and supports the extension of the life of the ARRB for an additional fiscal year.
Thank you, Mr. Chairman.

REP. HASTERT: We thank the gentleman and thank the panel. Now, I recognize the gentleman from Wisconsin, Mr. Barrett.
REP. BARRETT: Mr. Hitchcock, can you give us the name of that student so we can make him or her an honorary co-sponsor? Might as well get the name in the record.
MR. HITCHCOCK: Abigail Meyer, M-e-y-e-r.
REP. BARRETT: Judge Tunheim, you mentioned that you were releasing some materials from Clay Shaw's diary and perhaps other things. Is there any information in here that you find particularly interesting?
MR. TUNHEIM: Mr. Barrett, I've not had a chance to go through it. We've just gotten these materials in the last week through some aggressive efforts on our

staff. The page that I cited to you is interesting in that he made the notation in there and it's a portion of it in his own handwriting that it was perhaps unfortunate that he had never met Oswald because then he might have possibly been a tiny footnote in history, an ironic statement given the role that he played in the trial.

We've not had a chance to analyze it thoroughly yet. It does contain his reactions to events as they were going on around him during the course of the prosecution and certainly supports his view that he was not involved whatsoever in the assassination, which ultimately was the view of the jury that acquitted him.

REP. BARRETT: For my benefit, as a person who has not been immersed in this issue at all. You just mentioned it took some aggressive work from your staff to get this released. Can you tell me what that entailed, where it was, why it was so difficult to get this information?

MR. TUNHEIM: Certainly. Part of this, this is an investigation into where

records are. The bulk of our work has been with federal agencies that hold assassination records. But we've also, at the direction of Congress in the bill that was passed, entertained a search for records wherever they might be. Records that are in private hands are not records that we can subpoena and take from people, so we have to find where they are.
Staff members go out, talk to people, encourage them to donate those records to the American public, to the National Archives. That was done in this case. We received a tip that an individual had records that were left over from Mr. Shaw, and staff went and talked to the person, spent time with the person, encouraged them to share those records with the American public, and that's how it was developed.

REP. BARRETT: How do you determine which assassination records you can disclose now and which just have to wait?
MR. TUNHEIM: Well, there's a standard that's set up by the act. There's first of all a presumption that all records should be public. That presumption has governed what the board has done throughout the process. But then there's a standard where the board has to weigh the public interest in a particular record or information with the potential harm that might be caused by release of the material.
The standards that we look at are, are there national security interests such as disclosure of an intelligence agent whose name hasn't been disclosed and whether that person perhaps may be in some danger if that name was released publicly. Does it disclose a method of protecting the president that is not generally known today, so therefore it might be a threat to the president. Are there personal privacy considerations that are involved.
I will tell you that when all is said and done, a very, very tiny percentage of information gets redacted under the standards that we are applying, and the process of going through the records has led the board to arrive at a number of policy decisions which the agencies by and large are now following in their own review of records, and therefore decisions that we had to make two years ago now we don't have to make because the agency is following the advice of the board made on earlier records.
REP. BARRETT: As long as there are some records that are not being released, do you think that we will inevitably face criticism from some people in the American public that there is still some sort of cover-up? I make reference to Mr. Holland's comments about a book being written 75 years after President Lincoln's assassination.
Will the time ever come, do you think, when all records will be released?

MR. TUNHEIM: I think it will, Mr. Barrett. The board is releasing every record. The question is whether certain information on these records gets redacted or not. For every redaction we are attaching a specific release date. Some of the dates are five years in the future. The law that was passed which established the review board provided that all records that are redacted, all information redacted will be released in 2017 unless whoever is president at that time makes a specifics determination that the record cannot be released because of some continuing national security concern.

So we expect that virtually all of the information by 2017 will be released but a very high percentage, in the 99.999 range is being released right now.

REP. BARRETT: Mr. Tilley, in your written statement you indicate that the collections currently consist of 3.75 million pages. What's your estimate of how many more records need to be reviewed?

MR. TILLEY: Well, it's hard to say because there is still a good deal of material that's being reviewed by agencies at this time. But we have located

some records at the National Archives that are still under review, such as the Secretary of Army's records dealing with Operation Mongoose, the campaign to destabilize the Cuban government in the period after the Bay of Pigs.
Other records have been located at other agencies. I received a call from the Customs Bureau today and they will be turning over their assassination records to me hopefully this afternoon. After this hearing is over I'll be picking up the records they've located.
So it's tough to say how much is still out there but I think there's still going to be another considerable amount of material, probably will be added to the collection before this process is finished.
REP. BARRETT: Millions of pages?
MR. TILLEY: Oh, no. I would say probably, if we had another half a million pages, that might be the extent of it. But what's interesting and fascinating about this process is that we continue to turn up records where we did not know there were records before. As agencies are aware of this effort, they have come to the board. And the board is responsible for a lot of this by their aggressive work with federal agencies. But I don't see us ever doubling the collection again, but I think we will add a significant amount of material in the weeks and years ahead.
REP. BARRETT: Thank you. Thank you, Mr. Chairman.
REP. HASTERT: Mr. Tunheim, I have just a very short question. You mentioned the movie that came out, JFK, and Mr. Oliver Stone's work in there. Did Mr. Stone ever have any questions of your work at all, or did he do research?
MR. TUNHEIM: Mr. Stone has been very supportive of the work of the review board. He testified before the Congress when this bill was passed initially, encouraging broad release of the records. He sent a representative to one of our public hearings who testified and spoke very favorably about the work of the board. So he's been strongly supportive and we've appreciated that support.
REP. HASTERT: Why have you waited to this point in the process to begin reviewing the CIA and FBI records?
MR. TUNHEIM: Well, we've been reviewing CIA records and FBI records from the very beginning, Mr. Chairman. The volume of records in those agencies is really significant. We have completed the entire review of the core collections of those agencies and those are numbers, between the two agencies, it's more than a million pages of records.
What we are doing right now are delving into what's called the sequestered collection in both of these agencies. Within the CIA these are records that the House Select Committee on Assassinations asked to be sequestered, taken away from their files and kept in a secure place for future review. The House Select Committee did not have time to review these records carefully. Some of them are

14-00000

highly relevant to the assassination, others are not. Within the CIA there are about 62 boxes of material and 72 reels of microfilm.

In the FBI in the same kind of sequestered collection is about 280,000 pages of records. Those records are the focus of the review board's work over the next year, if we get the extension.

REP. HASTERT: Let me ask the same question I asked the previous panel. Do you think that you can finish your work by the end of the fiscal year 1998?

MR. TILLEY: Mr. Chairman, I'm confident that the board can complete its work. Members of the review board are confident. We will make every effort to ensure that it gets done. In fact, we intend to provide to your staff a timeline which sets out our anticipation of how we will review these records over the next year.

We have set up a review process that we're working on right now that's moving quickly and we are confident that the work can be done. We were set up to be a temporary board and no one on the board wishes this effort to take a long

time. We need to get the information to the American public.
REP. HASTERT: Thank you very much. Mr. Hitchcock, I want to ask you, bringing students into the real realm of research and learning in that respect, how important is it that records like this be made available to the public so that folks like yourself can have the availability for students?
MR. HITCHCOCK: I think, Mr. Chairman, it is extremely important for not only teachers of history and historians but also for future students and future generations. One of the things so special about our relationship with the review board has not only been an opportunity for students to travel to Washington, and they pay their own way and they do their own research on their on time. But it has helped change opinions in many cases by students about not only the assassination but about government, politics, agencies and people who work for the government.
I cannot overstate the importance this has had for the 43 thus far, and soon to be 56, students from Noblesville High School who have had this research opportunity, that have been able actually to see, handle original documents, to work with documents, to see firsthand the evidence that exists. To have that opportunity is something that no teacher, no classroom, no film, no laser disk, nothing in the classroom can simulate such interest and focus as this trip to Washington DC, the review of documents, the working with people that we've had the opportunity to be with at the review board on a firsthand basis.
It is just something that cannot be duplicated, or as I said, simulated in any classroom anywhere in the country. It's just been a fantastic opportunity and will provide students in the future with a place to go to find those records, to look at the records, to look at the documents, and be at least assured that as much as is available and is in existence can now be made available to them as ordinary citizens of this country, whether they be students at a university, students at a high school, or in their just curiosity and interest as American citizens.
I don't think it can be overstated the impact that this will have in helping bridge that gap of skepticism, if this is the correct way to say it, that exists. I just cannot imagine what the many conspiracy theorists out there would think if the review board has to finish its stay without completing its work.
REP. HASTERT: Thank you. The gentleman from Ohio.
REP. LATOURETTE: Thank you, Mr. Chairman.

And Mr. Chairman, I would begin by indicating that my earlier query about your legal training was not meant to be an affront, and I should have recognized that your learned demeanor was that of a --
REP. HASTERT: Not at all.

14-00000

REP. LATOURETTE: Mr. Howe, I don't have a question but I'm glad you told the story of Otto Eisenschiml because somewhere in the back of my mind I remember a book or movie called the Lincoln conspiracy and I was certain that Secretary Stanton had something to do with the demise of our sixteenth president, so I'm glad you brought that up.

Mr. Tunheim, I do want to ask you a follow-up question to what we were talking to Congressmen Stokes about and I was fascinated by the document that you held up. When I was in the prosecution business and we had a public records law in Ohio which was new on the books, we found that law enforcement agencies always wanted to take a big black magic marker and redact everything. It was my view that that led to more conjecture, rumor, suspicion than not, and I think this document that you brought forward, knowing that it came from the Swiss federal police, that would give, I think, some cause to believe that Mr. Oswald had some Swiss bank account and was squirreling away money from foreign nationals as part of a conspiracy.

When you un-redact it, if that's really a word, you find out like so many other people he apparently registered for the Albert Schweitzer College for the fall semester of 1960 and didn't show up. Nothing sinister or unusual in that at all.
The question I have is, when you were testifying you indicated that the FBI originally appealed the decision to not--or to withdraw the redaction of this particular document. You also indicated that the vast majority of documents that you have left to review during this renewal period are located at the CIA and the FBI in the sequestered section, I assume.
Are you any unusual difficulties with either of those agencies in terms of cooperation as you attempt to get to a public release of what should be appropriately publicly released?
MR. TUNHEIM: Well, Mr. LaTourette, the answer -- the question is, no, we're not receiving any degree of difficulty with those agencies right now. They are committed to this process. They are supportive of the effort to keep the process going for one additional year.
The CIA has not appealed decisions that the review board has made. We've got a good working relationship with the people within that agency who are doing their work. The FBI appealed a significant number of our decisions, but now all of those appeals have been withdrawn. And we've got a working relationship with the FBI that I think has been constructive and professional and is working quite well.
The FBI initially opposed release of the document that I held up and appealed the decision because they had contacted, in a general way, the Swiss federal police and asked whether this record could be released, and the answer was no. Our follow-up through the ambassador is showing what really this document was all about, led to some wiser approach to the particular issue. And sometimes it takes additional work like that to accomplish the release of important materials.
REP. LATOURETTE: And the last question I would have is Congressman Stokes expressed the view that perhaps the fine work of this review board -- should another review board setting be required in the future to review another situation similar to this, that you may be breaking down some of the barriers in terms of suspicions that the intelligence community may have about do we need to, you know, stick to the script and have a page that has all black magic marker on it? Do you find that the lessons learned in this review board will be instructive to us as we move forward and think of ways of dealing with the release of documents in the future?
MR. TUNHEIM: I think that's a very good question. And we have found through this effort, being the first group, an independent group outside of an agency, to have this degree of control over the declassification process. The process

at first was rough and difficult and fraught with suspicion. That has changed. There's been a sea change as these agencies have realized that release of this information is not going to harm our national security, that perhaps it's time simply to trust the American people with access to important information about their government. And I think everyone has learned important lessons from this process. It's a process that, while time- consuming, has worked very well for this set of records.

REP. LATOURETTE: And in that regard and in that vein, have you at the review board put together sort of an instruction or an operating manual to be left behind for future such endeavors?

MR. TUNHEIM: Well, we certainly will. We have -- virtually all of our work has been computerized so that we have an extensive record of exactly how we've approached all these issues. We do intend, in our final report, to make recommendations on how this effort can be extended in the future to other areas if the Congress so wishes.

REP. LATOURETTE: Thank you for answering my questions. Thank you for your fine work. And thank you, Mr. Chairman.
REP. : Thank you. I had a couple of questions. I read your testimony as I was listening to the other two. I'm sorry I was late. I wanted to ask Mr. Holland; were there credible historians who at this point were still questioning the assassination in the Warren Commission and the information that came out before this commission existed, before these documents came out?
MR. HOLLAND: Basically, most historians have stayed away from it because they regard it as a tar baby. So there are actually surprisingly few. By historians, you mean professors at universities. Surprisingly few have written about it, because they just see it as a morass, and how are you going to possibly figure out what happened? So my answer would be -- and, you know, credible is in the eye of the beholder.
But there's actually remarkably few, and that's one of my arguments is that you have to -- it is time to insert it back into history. It did happen during the Cold War, and that exerted a tremendous influence over what the government did. Right after the assassination, it was a precipitating element of the formation of the Warren Commission that the Cold War was ongoing, and they worried about -- to be frank, they worried about congressional committees holding hearings and disclosure of sources and methods, such as the fact that Oswald had gone to Mexico City and been observed by photographic surveillance, and how was that going to be handled by a congressional committee? So I do believe it has to be inserted into historical context. That's probably been the element that's been missing all this time.
REP. : So you believe one of the elements of this commission is it'll bring out of pulp -- pop culture -- pulp culture was a bad choice of words -- pop culture and in more mainstream because more documents are there, less questions. It can now be analyzed. And also, you seem to hint that we'll gain as much, not necessarily that there's a lot of new information on the assassination, but that we're going to learn a lot about how our government worked and a lot of the interrelationships, and that may be, in fact, more use to the historians than any questions they had remaining about the assassination.
MR. HOLLAND: I think -- my own particular view is that besides, you know, being an investigation of three crimes -- the murder of President Kennedy, the assault on Governor Connally and the murder of Officer Tippett (sp), and then the murder of Oswald, so four crimes -- the Warren Commission is a fantastic lens to view the operation of the government circa 1963-64, because they had an overriding mandate.
But yet they were going up against agencies such as the FBI and CIA with

entrenched interests, and especially Hoover's FBI was sort of a wonder to behold. You dealt with it very gingerly. So it's a great -- and the FBI had not been second-guessed since Hoover became director. This was the first time. And you can't underestimate what that meant in terms of the difficulties it posed for the commission. Now, I maintain they still came to the right conclusion, but the fact is that they had a lot of trouble with the FBI.

REP. : One of the questions here is it took so many years to get to this point. In looking at what future commissions might do, how much of that, do you think, can be overcome? In other words, how much of this was the Hoover FBI, say, and how much of this is institutional that in the first 10 years you'd have so many agents active in the field, ongoing operations, in the first 20 years there's still some -- can we accelerate the process?

What have we learned from this as to -- obviously this is one that particularly anybody in the '60s era was a defining event, so it's an extraordinary assassination. But what have we learned for investigations in the future? Do

you believe the CIA and FBI will release information sooner? And if so, presumably they'll still be redacted, which still could lead to Oliver Stone movies and Lincoln conspiracy books and all sorts of things.

MR. HOLLAND: Mr. Chairman, I think that the fact that these records are 30 years old has helped in obtaining their release. It's not information about the assassination per se that agencies have objected to releasing. It's more who said what to who, who's an intelligence agent and who's an informant for the FBI, those kinds of issues. And there will still be institutional reluctance to release any of that information.

I hope that through this process we can demonstrate to the public and to these agencies that this information can be released to the public, that the public can be trusted with information like this. There will still be a need for secrecy to a certain extent, but certainly not with the broad brush/black pen approach of the past.

REP. : We first learned -- I was elected in '94, and our first experience in this committee was with Waco, where we had similar questions and still had some information that wasn't able to be released. We're certainly having that ongoing debate with the administration right now, because it gets far beyond the initial investigation. In the course of Travelgate we discovered the data bank. And, of course, with the data bank you discover the code, and then you find out that the code leads to this. Pretty soon you're off into other investigations. That's going to be an ongoing problem. Do you believe, in the end, that this will have silenced most critics?

MR. HOLLAND: In my view, Mr. Chairman, it will silence some. It will perhaps provoke others.

We're many years after an event that was investigated in a different era. There were many mistakes made at the time that cannot be corrected at this stage in time. But I think when the review board is done with its work, one thing we should be able to prove to the American people is that the federal government is no longer keeping secrets from them relative to the Kennedy assassination. I think that will be a very significant development.

Whether all the questions will be resolved or not, that's a question for historians in the future who will review these materials and will make their determinations. This is like a gigantic puzzle with a lot of pieces missing. We are putting some of those pieces in, small pieces and large pieces. But there's a lot of pieces of the puzzle that will never be found.

REP. : I want to ask one last question, and that's options of dealing with acquiring the Zapruder film. Is that going to be a cost additional to what you're requesting? Do you have options on how to pay for that? What's the

14-00000

status of that?
MR. HOLLAND: Well, the Zapruder film, as the chairman is aware, the review board designated that as an assassination record about a month or so ago. We felt that that decision was determined by the Congress in the passage of the JFK Records Collection Act when it said that all records in the possession of the National Archives are assassination records and should be included in this collection.
Recognizing the potential cost of a film like this, we did set forth a 16-month period before the taking would take place, so that the Congress could address this issue and make appropriate determinations that the Congress wished to make those determinations. The board did feel that that decision had been made for it by the Congress in the earlier act and that it is the most significant piece of evidence of one of the most significant crimes in our nation's history. So, therefore, the original has an intrinsic value, and it should belong forever to the American public.

We are hopeful that the Zapruder family will agree eventually to donate that film to the American public. We have no assurances of that at this point. But we did set the time frame far out in the future so that the Congress can review this issue and make its own determinations if it so wishes. REP. : Do you have any additional questions? With that, I thank you all for --
REP. LATOURETTE: Mr. Chairman, if I could beg your indulgence and just ask one more question, if I may.
Mr. Tunheim, if I might, my previous question about difficulty with the CIA and FBI. Sometimes I don't make things broad enough. And I guess my query would be, it's been brought to my attention that perhaps there's been some difficulty in obtaining records from the other body. Is there any agency within the federal government that you're having difficulty in terms of cooperation that would impede your ability to complete your work in a timely fashion, as envisioned by this legislation?
MR. TUNHEIM: Mr. LaTourette, I have not seen any evidence currently that anyone is deliberately stonewalling us, so that when we go away, they will put the records back into the files. We had some significant problems early in the process, just really because agencies didn't understand what this was all about and didn't understand what the law really provided for. So it took some time. It's taken some time, for example, with the Secret Service to get them to the point of realizing their obligations under the act. They do now, and they've been very cooperative and easy to work with. But this has been a learning process for all of the agencies, and I feel at the current time there are no impediments among any of the agency partners that we're dealing with to completing the review of the records on a timely basis.
REP. LATOURETTE: Thank you. I thank the chair for your indulgence.
REP. : I thank you all for your testimony and appreciate your coming today. For procedural purposes, I'll now close this hearing -- the hearing is adjourned -- and open a subcommittee markup on HR 1553, markup of the John F. Kennedy Record Review Board Reauthorization Act. The hearing is now open.
If there are no opening statements, the subcommittee will now proceed to the consideration of the bill as amended. Without objection, the first reading of the bill is dispensed with and the bill will be considered for amendment at any point. Do any members wish to be recognized to offer an amendment? Hearing none, the question is on favorable reporting of the bill, HR 1553, the John F. Kennedy Assassination Records Review Board Reauthorization Act. All those in favor say "Aye."
MEMBERS: Aye.
REP. : Opposed, "No." In the opinion of the chair, the ayes have it. It goes fast. The question now comes, will the subcommittee report the bill to the full

committee? All those in favor, say "Aye." MEMBERS: Aye.
REP. : Opposed, "No." In the opinion of the chair, the ayes have it. The bill moves forward to the full committee. There is no other business before the subcommittee. We now stand adjourned. Thank you all for your hard work.
~END~

14-00000

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

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

14-00000

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

14-00000

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

14-00000

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.

14-00000

* 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 [illegible] 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;

14-00000

* 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

14-00000

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

14-00000

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.

14-00000

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

14-00000

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

14-00000

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.

Assassination Records Review Board
Document Sample
Record Number: 124-10023-10236

Before

Redacted version of document available before Board action

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA
American Embassy
Paris 8, France

Date: October 12, 1960

To: Director, FBI (105-82555)

From: Legat, Paris (105-1067)

SECRET

Subject: LEE HARVEY OSWALD
INTERNAL SECURITY - R

Classified by 9803
Declassify on: OADR
Re: JFK

Re Paris letter 9/27/60.

[redacted]

RUC
2 - Bureau
1 - Paris
NWP:mas
(3)

REC 41 105-82555-10

EX 109

9 OCT 18 1960

59 OCT 26 1960

Classified by 2640
Exempt from ... Category 1
Date of Declassification Indefinite

SECRET

After

Unredacted version of document available after Board action

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA
American Embassy
Paris 8, France

DECLASSIFIED BY SAS/SLD/CL ... ON: 11/4/95 (Per Swiss Federal Police) DATE 11/4/95

SECRET

Date: October 12, 1960

To: Director, FBI (105-82555)

From: Legat, Paris (105-1067)

Subject: LEE HARVEY OSWALD
INTERNAL SECURITY - R

11/6/92
Classified by 9803
Declassify on: OADR
Re: JFK

Re Paris letter 9/27/60.

The Swiss Federal Police furnished the following report on October 1, 1960: (S)(U)

The investigation at the "Albert Schweitzer College" located at Churwalden, Switzerland, revealed that OSWALD actually had announced his planned attendance at this school for the course beginning in the Fall of 1959. Inquiry at the college revealed that he has not arrived there up to the present time. He had originally written a letter from Moscow indicating his intention to attend there. A letter which was addressed to him at this address by his mother was returned to her since his whereabouts are unknown to the college. The Swiss Federal Police advised that it is unlikely that he would have attended the course under a different name. The Swiss Federal Police advised that courses for the Fall of 1960 commence on October 2, 1960, and that it is possible that the school may now receive further correspondence from OSWALD. At the present time, there is no record of a person possibly identical with the subject who is registered for the courses beginning October 2. (S)(U)

The Swiss Federal Police advised that if further information comes to the attention of the Albert Schweitzer College, they will be advised and they in turn will advise us. (S)(U)

RUC
2 - Bureau
1 - Paris
NWP:mas
(3)

REC 41 105-82555-10

EX 109

9 OCT 18 1960

59 OCT 26 1960

Classified by 2640
Exempt from ... Category 1
Date of Declassification Indefinite

SECRET

4-00000

20 JUL 1992

Calendar No. 552

102D CONGRESS *2d Session*	SENATE	REPORT 102-328

THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3006

TO PROVIDE FOR THE EXPEDITIOUS DISCLOSURE OF RECORDS RELEVANT TO THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY



JULY 22 (legislative day, JULY 20), 1992.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
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Calendar No.

102D CONGRESS
2d Session

SENATE

REPORT
102-321

THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992

JULY 22 (legislative day, JULY 20), 1992.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 3006]

The Committee on Governmental Affairs, to which was refe the bill (S. 3006) to provide for the expeditious public disclosur all records related to the assassination of President John F. Ke dy, having considered the same, reports favorably thereon with amendment in the nature of a substitute and recommends that bill, as amended, do pass.

CONTENTS

I. Text of Bill
II. Committee Action
III. Purpose and Summary
IV. Background and Need for Legislation
V. Major Provisions
VI. Section-by-Section Analysis
VII. Regulatory Impact
VIII. Cost Impact

I. TEXT OF BILL

Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "President John F. Kennedy As sination Records Collection Act of 1992".

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and clares that—

14-00000

(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

(2) all government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

(5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

(6) legislation is necessary because Executive Order No. 12356, entitled "National Security Information" has eliminated the declassification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

(7) most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

SEC. 3. DEFINITIONS.

In this Act:

"Archivist" means the Archivist of the United States.

"Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of—

(A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission");

(B) The Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission");

(C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee");

(D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives;

(E) the Select Committee on Assassinations (the "Ho
Assassinations Committee") of the House of Represen
tives;
(F) the Library of Congress;
(G) the National Archives and Records Administrati
(H) any Presidential library;
(I) any Executive agency;
(J) any independent agency;
(K) any other office of the Federal Government; and
(L) any State or local law enforcement office that pro
ed support or assistance or performed work in connect
with a Federal inquiry into the assassination of Presid
John F. Kennedy,

but does not include the autopsy records donated by the K
nedy family to the National Archives pursuant to a deed of
regulating access to those records, or copies and reproducti
made from such records.

"Collection" means the President John F. Kennedy Assa
nation Records Collection established under section 4.

"Executive agency" means an Executive agency as defined
subsection 552(f) of title 5, United States Code, and inclu
any Executive department, military department, Governm
corporation, Government controlled corporation, or other
tablishment in the executive branch of the Government,
cluding the Executive Office of the President, or any indepe
ent regulatory agency.

"Government office" means any office of the Federal G
ernment that has possession or control of assassinat
records, including—

(A) the House Committee on Administration with reg
to the Select Committee on Assassinations of the record
the House of Representatives;
(B) the Select Committee on Intelligence of the Sen
with regard to records of the Senate Select Committee
Study Government Operations with Respect to Intellige
Activities and other assassination records;
(C) the Library of Congress;
(D) the National Archives as custodian of assassinat
records that it has obtained or possesses, including
Commission to Investigate the Assassination of Presid
John F. Kennedy and the Commission on Central Int
gence Agency Activities in the United States; and
(E) any other executive branch office or agency, and
independent agency.

"Identification aid" means the written description prepa
for each record as required in section 4.

"National Archives" means the National Archives
Records Administration and all components thereof, includ
Presidential archival depositories established under sect
2112 of title 44, United States Code.

"Official investigation" means the reviews of the assassi
tion of President John F. Kennedy conducted by any Presid
tial commission, any authorized congressional committee,
any Government agency either independently, at the requ

14-00000

of any Presidential commission or congressional committee, or at the request of any Government official.

"Originating body" means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

"Public interest" means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy.

"Record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

"Review Board" means the Assassination Records Review Board established by section 7.

"Third agency" means a Government agency that originated an assassination record that is in the possession of another agency.

SEC. 4. PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) IN GENERAL.—(1) Not later than 60 days after the date of enactment of this Act, the National Archives and Records Administration shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the assassination of President John F. Kennedy, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The Archivist shall prepare and publish a subject guidebook and index to the Collection.

(2) The Collection shall include—

(A) all assassination records—

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act;

(ii) that are required to be transmitted to the National Archives; or

(iii) the disclosure of which is postponed under this Act;

(B) a central directory comprised of identification aids created for each record transmitted to the Archivist the under section 5; and

(C) all Review Board records as required by this Act.

(b) DISCLOSURE OF RECORDS.—All assassination records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the National Archives within 30 days after their transmission to the National Archives.

(c) FEES FOR COPYING.—The Archivist shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards es tablished by section 552(a)(4) of title 5, United States Code.

(d) ADDITIONAL REQUIREMENTS.—(1) The Collection shall be pre served, protected, archived, and made available to the public at th National Archives using appropriations authorized, specified, an restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Informatio Security Oversight Office, shall ensure the security of the post poned assassination records in the Collection.

(e) OVERSIGHT.—The Committee on Government Operations o the House of Representatives and the Committee on Governmenta Affairs of the Senate shall have continuing oversight jurisdictio with respect to the Collection.

SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL AR CHIVES, AND PUBLIC DISCLOSURE OF ASSASSINATIO RECORDS BY GOVERNMENT OFFICES.

(a) IN GENERAL.—(1) As soon as practicable after the date of en actment of this Act, each Government office shall identify and or ganize its records relating to the assassination of President John F Kennedy and prepare them for transmission to the Archivist for in clusion in the Collection.

(2) No assassination records shall be destroyed, altered, or muti lated in any way.

(3) No assassination record made available or disclosed to th public prior to the date of enactment of this Act may be withheld redacted, postponed for public disclosure, or reclassified.

(4) No assassination record created by a person or entity outsid government (excluding names or identifies consistent with the re quirements of section 6) shall be withheld, redacted, postponed fo public disclosure, or reclassified.

(b) CUSTODY OF ASSASSINATION RECORDS PENDING REVIEW.— During the review by Government offices and pending review activ ity by the Review Board, each Government office shall retain custo dy of its assassination records for purposes of preservation, securi ty, and efficiency, unless—

(1) the Review Board requires the physical transfer o records for purposes of conducting an independent and impar tial review;

(2) transfer is necessary for an administrative hearing o other Review Board function; or

(3) it is a third agency record described in subsection (c)(2)(C)

(c) REVIEW.—(1) Not later than 300 days after the date of enact ment of this Act, each Government office shall review, identify an organize each assassination record in its custody or possession fo disclosure to the public, review by the Review Board, and transmis sion to the Archivist.

(2) In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are assassination records

(B) determine which of its assassination records have beer officially disclosed or publicly available in a complete and un redacted form;

(C)(i) determine which of its assassination records, or particu lar information contained in such a record, was created by a third agency or by another Government office; and

14-00000

(ii) transmit to a third agency or other government office those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Review Board all assassination records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by this Act;

(G) give priority to the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of assassination records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) IDENTIFICATION AIDS.—(1)(A) Not later than 45 days after the date of enactment of this Act, the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid for use with each assassination record subject to review under this Act.

(B) The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system of electronic records by Government offices that are compatible with each other.

(2) Upon completion of an identification aid, a Government office shall—

(A) attach a printed copy to the record it describes;

(B) transmit to the Review Board a printed copy; and

(C) attach a printed copy to each assassination record it describes when it is transmitted to the Archivist.

(3) Assassination records which are in the possession of the National Archives on the date of enactment of this Act, and which have been publicly available in their entirety without redaction, shall be made available in the Collection without any additional review by the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) TRANSMISSION TO THE NATIONAL ARCHIVES.—Each Government office shall—

(1) transmit to the Archivist, and make available to the public not later than 300 days after the date of enactment of this Act, all assassination records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement by the Review Board or upon completion of other action authorized by this Act, all assassination records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) CUSTODY OF POSTPONED ASSASSINATION RECORDS.—An assassination record the public disclosure of which as been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the Archives as required in section 4(e)(2).

(g) PERIODIC REVIEW OF POSTPONED ASSASSINATION RECORDS.—(1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).

(2)(A) A periodic review shall address the public disclosure of additional assassination records in the Collection under the standards of this Act.

(B) All postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed assassination records shall serve to downgrade and declassify security classified information.

(D) Each assassination record shall be publicly disclosed in full and available in the Collection no later than the date that is 25 years after the date of enactment of this Act, unless the President certifies, as required by this Act, that—

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, or conduct of foreign relations; and

(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) FEES FOR COPYING.—Executive branch agencies shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

14-00000

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that it outweighs the public interest, and such public disclosure would reveal;

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or,

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agency and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

SEC. 7. ESTABLISHMENT AND POWERS OF THE ASSASSINATION RECORDS REVIEW BOARD.

(a) ESTABLISHMENT.—There is established as an independent agency a board to be known as the Assassinations Records Review Board.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Government records related to the assassination of President John F. Kennedy.

(2) The President shall make nominations to the Review Board not later than 90 calendar days after the date of enactment of this Act.

(3) If the Senate votes not to confirm a nomination to the Rev Board, the President shall make an additional nomination not l than 30 days thereafter.

(4)(A) The President shall make nominations to the Rev Board after considering persons recommended by the Ameri Historical Association, the Organization of American Histori the Society of American Archivists, and the American Bar Assc tion.

(B) If an organization described in subparagraph (A) does not ommend at least two nominees meeting the qualifications state paragraph (5) by the date that is 45 days after the date of en ment of this Act, the President shall consider for nomination persons recommended by the other organizations described in paragraph (A).

(C) The President may request an organization described in paragraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board:

(A) shall be impartial private citizens, none of whom is p ently employed by any branch of the Government, and non whom shall have had any previous involvement with any cial investigation or inquiry conducted by a Federal, State local government, relating to the assassination of Presi John F. Kennedy;

(B) shall be distinguished persons of high national profess al reputation in their respective fields who are capable of e cising the independent and objective judgment necessary to fulfillment of their role in ensuring and facilitating the rev transmission to the public, and public disclosure of record lated to the assassination of President John F. Kennedy who possess an appreciation of the value of such materia the public, scholars, and government; and

(C) shall include at least 1 professional historian and 1 at ney.

(c) SECURITY CLEARANCES.—(1) All Review Board nominees s be granted the necessary security clearances in an accelera manner subject to the standard procedures for granting such cl ances.

(2) All nominees shall qualify for the necessary security cl ance prior to being considered for confirmation by the Commi on Governmental Affairs of the Senate.

(d) CONFIRMATION HEARINGS.—(1) The Committee on Governn tal Affairs of the Senate shall hold confirmation hearings withi days in which the Senate is in session after the nomination Review Board members.

(2) The Committee on Governmental Affairs shall vote on nominations within 14 days in which the Senate is in session a the confirmation hearings, and shall report its results to the Senate immediately.

(3) The Senate shall vote on each nominee to confirm or re within 14 days in which the Senate is session after receiving report from the Committee on Governmental Affairs.

(e) VACANCY.—A vacancy on the Review Board shall be fille the same manner as specified for original appointment withi days of the occurrence of the vacancy.

14-00000

(f) CHAIRPERSON.—The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) REMOVAL OF REVIEW BOARD MEMBER.—(1) No member of the Review Board shall be removed from office, other than—

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) The member may be reinstated or granted other appropriate relief by order of the court.

(h) COMPENSATION OF MEMBERS.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) DUTIES OF THE REVIEW BOARD.—(1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions—

(A) whether a record constitutes an assassination record; and

(B) whether an assassination record or particular information in a record qualifies for postponement of disclosure under this Act.

(j) POWERS.—(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to—

(A) direct Government offices to create identification aids and organize assassination records;

(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes s
summaries of assassination records that can be publicly
closed to the fullest extent;

(C)(i) obtain access to assassination records that have b
identified and organized by a Government office;

(ii) direct a Government office to make available to
Review Board, and if necessary investigate the facts surrou
ing, additional information, records, or testimony from indi
uals, which the Review Board has reason to believe is requi
to fulfill its functions and responsibilities under this Act;

(iii) subpoena private persons to compel testimony, reco
and other information relevant to its responsibilities un
this Act;

(D) require any Government office to account in writing
the destruction of any records relating to the assassinatio
President John F. Kennedy;

(E) receive information from the public regarding the ide
fication and public disclosure of assassination records; and

(F) hold hearings, administer oaths, and subpoena witne
and documents.

(2) A subpoena issued under paragraph (1)(C)(iii) may be enfor
by any appropriate Federal court acting pursuant to a lawful
quest of the Review Board.

(k) WITNESS IMMUNITY.—The Review Board shall be considere
be an agency of the United States for purposes of section 600
title 18, United States Code.

(l) OVERSIGHT.—(1) The Committee on Government Operation
the House of Representatives and the Committee on Governme
Affairs of the Senate shall have continuing oversight jurisdict
with respect to the official conduct of the Review Board and
disposition of postponed records after termination of the Rev
Board, and shall have access to any records held or created by
Review Board.

(2) The Review Board shall have the duty to cooperate with
exercise of such oversight jurisdiction.

(m) SUPPORT SERVICES.—The Administrator of the General S
ices Administration shall provide administrative services for
Review Board on a reimbursable basis.

(n) INTERPRETIVE REGULATIONS.—The Review Board may issue
terpretive regulations.

(o) TERMINATION AND WINDING UP.—(1) The Review Board
the terms of its members shall terminate not later than 2 ye
after the date of enactment of this Act, except that the Rev
Board may, by majority vote, extend its term for an additiona
year period if it has not completed its work within that 2-y
period.

(2) Upon its termination, the Review Board shall submit rep
to the President and the Congress including a complete and a
rate accounting of expenditures during its existence, and shall c
plete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board sh
transfer all of its records to the Archivist for inclusion in the
lection, and no record of the Review Board shall be destroyed.

SEC. 8. ASSASSINATION RECORDS REVIEW BOARD PERSONNEL.

(a) EXECUTIVE DIRECTOR.—(1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall—

(A) serve as principal liaison to Government offices;

(B) be responsible for the administration and coordination of the Review Board's review of records;

(C) be responsible for the administration of all official activities conducted by the Review Board; and

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) STAFF.—(1) The Review Board may, in accordance with the civil service laws but without regard to civil service law and regulation for competitive service as defined in subchapter 1, chapter 33 of title 5, United States Code, appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform its duties.

(2) A person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate for the staff shall qualify for the necessary security clearance prior to being approved by the Review Board.

(c) COMPENSATION.—The Review Board shall fix the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(d) ADVISORY COMMITTEES.—(1) The Review Board shall have the authority to create advisory committees to assist in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 9. REVIEW OF RECORDS BY THE ASSASSINATION RECORDS REVIEW BOARD.

(a) CUSTODY OF RECORDS REVIEWED BY BOARD.—Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) STARTUP REQUIREMENTS.—The Review Board shall—

(1) not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register; and

(2) not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act.

(c) DETERMINATIONS OF THE REVIEW BOARD.—(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not an assassination record; or

(B) a Government record or particular information within an assassination record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an assassination record, the Review Board shall seek to—

(A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and

(B) determine, in consultation with the originating body and consistent with the standard for postponement under this Act, which of the following alternative forms of disclosure shall be made by the originating body:

(i) Any reasonably segregable particular information in an assassination record.

(ii) A substitute record for that information which is postponed.

(iii) A summary of an assassination record.

(3) With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing—

(A) a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceed-

14-00000

ings conducted by the Review Board with regard to specific assassination records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

(d) PRESIDENTIAL AUTHORITY OVER REVIEW BOARD DETERMINATION.—

(1) PUBLIC DISCLOSURE OR POSTPONEMENT OF DISCLOSURE.—After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, or of any information contained in an assassination record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

(2) PERIODIC REVIEW.—Any executive branch assassination record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the Collection set forth in section 4.

(3) RECORD OF PRESIDENTIAL POSTPONEMENT.—The Review Board shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records.

(e) NOTICE TO PUBLIC.—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the

Review Board or initiated by the President, the House of Repre sentatives, or the Senate, including a description of the subjec originating agency, length or other physical description, and eac ground for postponement that is relied upon.

(f) REPORTS BY THE REVIEW BOARD.—(1) The Review Board sha report its activities to the leadership of the Congress, the Commi tee on Government Operations of the House of Representatives, th Committee on Governmental Affairs of the Senate, the Presiden the Archivist, and the head of any Government office whos records have been the subject of Review Board activity.

(2) The first report shall be issued on the date that is 1 year afte the date of enactment of this Act, and subsequent reports every 1 months thereafter until termination of the Review Board.

(3) A report under paragraph (1) shall include the following infor mation:

(A) A financial report of the expenses for all official activ ties and requirements of the Review Board and its personne

(B) The progress made on review, transmission to the Archi vist, and public disclosure of assassination records.

(C) The estimated time and volume of assassination record involved in the completion of the Review Board's performanc under this Act.

(D) Any special problems, including requests and the level o cooperation of government offices, with regard to the ability o the Review Board to operate as required by this Act.

(E) A record of review activities, including a record of post ponement decisions by the Review Board or other related ac tions authorized by this Act, and a record of the volume o records reviewed and postponed.

(F) Suggestions and requests to Congress for additional legis lative authority needs.

(G) An appendix containing copies of reports of postponec records to the Archivist required under section 9(c)(3) mad since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—

(1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

14-00000

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glaynoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any Executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

(c) JUDICIAL REVIEW.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.

(d) EXISTING AUTHORITY.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—To the extent that any provision of this Act establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 12. TERMINATION OF EFFECT OF ACT.

(a) PROVISIONS PERTAINING TO THE REVIEW BOARD.—The pro
sions of this Act that pertain to the appointment and operation
the Review Board shall cease to be effective when the Revie
Board and the terms of its members have terminated pursuant
section 7(o).

(b) OTHER PROVISIONS.—The remaining provisions of this A
shall continue in effect until such time as the Archivist certifies
the President and the Congress that all assassination records ha
been made available to the public in accordance with this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated su
sums as are necessary to carry out this Act, to remain availab
until expended.

(b) INTERIM FUNDING.—Until such time as funds are appro
ated pursuant to subjection (a), the President may use such sun
as are available for discretionary use to carry out this Act.

SEC. 14. SEVERABILITY.

If any provision of this Act or the application thereof to ar
person or circumstance is held invalid, the remainder of this A
and the application of that provision to other persons not similar
situated or to other circumstances shall not be affected by the i
validation.

II. COMMITTEE ACTION

S.J. Res. 282 was introduced by Senators Boren (for himself, M
Mitchell, Mr. Specter, Mr. Murkowski, Mr. Bradley, Mr. DeConcin
Mr. Glenn, Mr. Metzenbaum, Mr. Wofford, and Mr. Cohen) c
March 26, 1992, and referred to the Committee on Government
Affairs.

Hearings were held on May 12, 1992. Testimony was receive
from Senator David Boren, Senator Arlen Specter, and Represent
tive Louis Stokes; Robert M. Gates, Director of the Central Intel
gence Agency, and William Sessions, Director of the Feder
Bureau of Investigation; Ernest May, Professor, Kennedy School
Government; Athan Theoharis, Professor, Department of Histor
Marquette University, and James Lesar, President, the Assassin
tion Archives and Research Center.

On June 25, 1992, the Committee on Governmental Affairs a
proved by a voice vote adoption of the amendment in the nature
a substitute offered by Senator Glenn.

III. PURPOSE AND SUMMARY

S.J. Res. 282, as amended, creates a process to publicly disclo
all records related to the assassination of President John F. Kenn
dy. The underlying principles guiding the legislation are indepen
ence, public confidence, efficiency and cost effectiveness, speed
records disclosure, and enforceability. In order to achieve these ob
jectives, the Act creates a presumption of disclosure upon the go
ernment, and it establishes an expeditious process for the revie
and disclosure of the records. The Act creates numerous requir
ments to ensure that the public will be enabled to make its ow

14-00000

observations, judgments, and determinations with regard to the history of the assassination and related matters. In order to provide for the most comprehensive disclosure of records related to the assassination of President Kennedy, the Act empowers an independent review board with the authority to request any additional information or records from relevant government agencies and congressional committees. Finally, the determinations of the review board are reviewable and enforceable in a court of law.

These purposes and objectives were carefully addressed during the development of the new legislation. The "President John F. Kennedy Assassination Records Collection Act" ("the Act") reflects the many recommendations and ideas developed from the hearings, meetings with affected government agencies, and views expressed by members of the public experienced in efforts to access records from relevant agencies in general, and with particular emphasis upon the assassination of President Kennedy. The bill also reflects the considerable research and expertise of the Committee staff with regard to the law and policy of public access to government information.

The legislation establishes the President John F. Kennedy Assassination Records Collection at the National Archives. The Collection will be made known and accessible to the public by the creation of a subject guidebook and index to the records created by the National Archives. The Collection will include all publicly available assassination records at the National Archives at the time of enactment (e.g. public records of the Warren Commission); all assassination records released by government offices pursuant to the Act; all postponed records as part of the "protected" Collection; and all postponed records as they become publicly disclosed in the future. The public will also be able to request reproduction of records from originating government agencies.

Government offices holding assassination records are required to begin organizing and reviewing such records upon enactment and have this work completed within ten months of enactment. During this time, the government offices will determine whether records qualify as "assassination records" and then whether they recommend to the Review Board that public disclosure of certain records be postponed for reasons of national security, confidentiality, and privacy, as established in the Act. All assassination records which are not recommended for postponement must be made immediately available to the public through the government office and by transmission to the National Archives. Records recommended for postponement are required to be reviewed by an independent Assassination Records Review Board, which makes determinations for release or postponement.

In the case of executive branch records and information, the President has the authority to override the Review Board's determinations with regard to release or postponement. For congressional records, in the event that the Congress disagrees with a determination by the Review Board, each House would be required to adopt a resolution to change or create a rule governing the disposition of its records at issue. Such rule-making authority is preserved by the Act. Finally, all postponed records undergo periodic review and must be disclosed in full no later than twenty-five years after

the date of enactment unless, in the case of executive branc records, the President demonstrates that public disclosure wi result in an identifiable harm to the national security, intelligenc operations, or foreign relations of the United States.

The Assassination Records Review Board is an independer agency within the executive branch. The five-member Revie Board will be appointed by the President with the advice and co sent of the United States Senate. The confirmation hearings will t conducted by the Committee on Governmental Affairs. The Act r quires that the Review Board include at least one historian an one attorney, and that each member is a national recognized pr fessional in his or her field. The legislation requires that prior making the appointments, the President is required to consider re ommendations from the American Historical Association, the Org nization of American Historians, the Society of American Arch vists, and the American Bar Association.

To ensure a comprehensive search and disclosure of assassinati records, particularly to enable the public to obtain information a records beyond the scope of previous official inquiries, the Revie Board has the authority to direct any government office to produ additional information and records which it believes are related the assassination. It has the authority to subpoena private perso and to enforce the subpoenas through the courts.

The Review Board is authorized for a two-year period and it m be extended by a majority vote of the Review Board for up to additional year. The Review Board could decide to extend it exi ence to less than one year if that is the time determined as nec sary to complete its work. Annual financial reports and other pe odic reports are required to be provided to the Congress. The ports must include statements of progress, the level of cooperati of government offices and agencies, and the possible need for ad tional time or authority from Congress.

IV. BACKGROUND AND NEED FOR LEGISLATION

On November 22, 1963, President John F. Kennedy was assas nated. It was a tragic and defining moment in American histo The desire by the American public to understand who assassinat President Kennedy, and why, has resulted in several official inv tigations and a broad spectrum of private inquiries and schol ship. Unfortunately, in the eyes of the public, each investigati and inquiry served to raise additional questions, and did so wh increasing the volume of secret government records about the sassination. In 1992, the public demand, fostered by increa media attention, the opening of secret files by changing gove ments around the world, and other factors, culminated in the cognition by the Congress and the Executive Branch that records related to the assassination of President Kennedy should fully disclosed.

In addition to the legislation considered by the Committee, its counterpart considered by the House Committee on Governm Operations, four other related, though more limited, measu were introduced in the House of Representatives in 1992. Two b mandating the release of all Kennedy assassination investigat

records were H.R. 4090, introduced January 3, 1992, and H.R. 4108, introduced January 24, 1992. Two House resolutions directing the unsealing of the records of the Select Committee on Assassinations were H. Res. 325, introduced January 22, 1992, and H. Res. 326, introduced January 24, 1992.

The Committee shares the belief in the importance of disclosing the records. It believes that all government records related to the assassination of President Kennedy should be preserved for historical and governmental purposes; that all such records should carry a presumption of immediate disclosure; and that all such records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination.

The Committee also closely examined the issue of whether legislation was necessary and concluded that it was. While disclosure of the records could be achieved through a non-statutory approach—by each House of the Congress passing a resolution pertaining to its records, and the President issuing an executive order to the same effect—a statute is necessary to ensure an independent and enforceable mechanism for disclosure under uniform standards for review.

In addition, the Committee found that legislation is necessary because congressional records related to the assassination would not otherwise be subject to public disclosure until at least the year 2029 (with uncertain disclosure of related classified executive branch records); because the Freedom of Information Act, as implemented by the Executive Branch, has impeded the timely public disclosure of the assassination records; because Executive Order 12356, "National Security Information," has eliminated the government-wide schedules for declassification and downgrading of classified information and has prevented the timely public disclosure of assassination records; and because most of the records related to the assassination of President Kennedy are at least 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records.

The release of records and materials in the possession of the federal government pursuant to the legislation will significantly expedite public access to this information. Although certain records related to the assassination of President Kennedy have been made available over time to the public, the legislation will create opportunities for the public to review records which might otherwise not be possible for several decades. Importantly, the public will be enabled to make their own observations and judgments based on first-hand access to previously undisclosed records.

In addition to the above discussion, the Appendix of this report contains a thorough description and summary of the records of the presidential commissions and congressional committees which investigated the assassination of President Kennedy.

V. MAJOR PROVISIONS

The requirements of the "President John F. Kennedy Assassination Records Collection Act" are written in a detailed manner to ensure that its implementation is effective and efficient. In addition, it is important to emphasize and clarify the legislative intent and importance of particular provisions of the Act.

Defining assassination records

"Assassination records" are defined in Section 3. The definition of "assassination records" is a threshold consideration for the successful implementation of the Act. Its scope will be the barometer of public confidence in the release of assassination records. While the records of past presidential commissions and congressional committees established to investigate the assassination of President Kennedy are included as assassination records under this Act, it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records. While such records are valuable, they reflect the views, theories, political constraints, and prejudices of past inquiries. Proper implementation of this Act and providing the American public with the opportunity to judge the surrounding history of the assassination for themselves, requires including not only, but going beyond, the records of the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees.

The term "assassination record" was not more specifically defined by the Committee because to do so before more is known about the universe of records would have been premature, and would have further injected the government between the records and the American public. There is a sufficient volume of known assassination records to organize and review at the outset. However, it is intended that the Review Board issue guidance to assist in articulating the scope or universe of assassination records as government offices and the Review Board undertakes their responsibilities. Such guidance will be valuable notwithstanding the fact that government offices will begin to organize and review their records before the Review Board is established. Government offices are required to begin the review and disclosure of records upon enactment to expedite public access to the many records which do not require additional review or postponement. However, the ultimate work of the Review Board will involve not only the review of records recommended for postponement, but requiring government offices to provide additional information and records, where appropriate. Guidance, especially that developed in consultation with the public, scholars, and affected government offices, will prove valuable to ensure the fullest possible disclosure and create public confidence in a working definition that was developed in an independent and open manner.

Autopsy Records

The Act specifically excludes from the definition of "assassination records" the autopsy records and copies or reproductions made from such records donated by the Kennedy family pursuant to a deed of gift executed on October 29, 1966. These records include the autopsy photographs and X-rays of President Kennedy. The Committee believes that this exclusion is a sound policy. The Committee believes that there is a compelling justification for protecting the privacy of the Kennedy family from the unwarranted

14-00000

intrusion that would be raised by public disclosure of the autopsy records conveyed by the deed.

The Committee has carefully examined the deed of gift, which is operative throughout the lifetime of the survivors of the late President Kennedy. The deed in no way restricts access to official government investigators concerned with the assassination. Other members of the public may obtain access to the autopsy photographs and X-rays only with the express written permission of the Kennedy family or their legal representative. The Committee found that since the time of the donation, that public access has been granted judiciously and fairly, and that those best qualified to review and make use of the records have been granted access to the records. It is believed that this practice can and should continue as set forth by the terms of the deed and will rightfully balance the needs for access by professionals with the privacy protection intended by the terms of the deed.

Lastly, the provision also serves to restore to the original autopsy records donated by the Kennedy family to the National Archives any reproductions or copies of such records. This provision specifically governs all reproductions or copies made by official investigative committees or for other purposes, including those created by or for the House Select Committee on Assassinations (HSCA). During its hearings, the Committee was provided a "protocol" or summary inventory of the HSCA records prepared by the National Archives. The "protocol" revealed that the HSCA records contain Kennedy autopsy photographs and X-rays which were duplicated from the original records conveyed by the Kennedy deed. This is true despite a clear and documented understanding between the attorney for the Kennedy family and the National Archives, set forth in an August 15, 1977, memorandum by the National Archives general counsel. This memorandum required that all reproductions or copies of the autopsy records be returned to the original collection. It is intended that the Kennedy autopsy records contained in the HSCA records should be restored to the original collection of such records in the National Archives and treated as Kennedy autopsy records which are exempt from disclosure under the Act.

The President John F. Kennedy Assassination Records Collection and the National Archives and Records Administration

The legislation is designed and retitled to achieve the single most important purpose of the Act: public access to the assassination records. The records related to the assassination of President John F. Kennedy are the most publicly sought-after, unreleased records of our government. It is necessary to ensure that our nation's public access laws apply in full to these records. In Section 4, the Act requires the Archivist to establish the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration [National Archives]. Furthermore, the Archivist, the National Archives, and presidential libraries have specific responsibilities with regard to public access and disclosure, as well as for providing guidance to government offices whose records are the subject of the Act.

Subject Guidebook and Index

Section 4(a) requires that the Archivist create a subject guid book and index so that the public may identify and make reques for assassination records in the Collection. It is intended that th guidebook and index, or parts thereof, be made publicly availab on a cumulative basis. In addition, it is intended that the Archivi ensure that copies of the completed guidebook and index are di tributed nationally to ensure access to the Collection through r quests for reproduction of documents.

Identification or Finding Aid

In Section 5(d)(B)(1)(A) the Archivist is required to develop a identification aid for all assassination records. The purpose of th identification aid is to serve as a communication tool. It is intende to provide a uniform method for identifying records and create th clearest possible communication between government offices, orig nating bodies, the Review Board, and others. A final purpose of th identification aid is to serve as a finding aid to those in the Natior al Archives who will be archiving and preparing the subject guid book of the assassination records. The Archivist's responsibilitie with regard to the identification aid are solely for the preparatio of a standard form that can be used easily and effectively for th above purposes by all government offices. Each government offic must use the identification aid as required by this Act, and the A chivist may not alter or amend those requirements in any way b any additional guidance or regulation.

Fees for Reproduction of Records

The Archivist's responsibilities with regard to making the Collec tion accessible to the public includes the Committee's concern ove the cost of records reproduction. It is intended that the Nationa Archives, along with other executive agencies, are required t make copies of assassination records available to the public at reasonable cost. Additionally, the Act requires that the fee waive provisions of the Freedom of Information Act be applied by the Na tional Archives, executive agencies, and all originating bodies in cluding the Congress. The fee waiver provisions are essential provi sions of law which have served an important purpose of easing an facilitating public access to government records.

In developing the legislation, the Committee carefully considere the cost of reproduction of the assassination records charged to th public and the application of the Freedom of Information Act fe waiver requirements to the National Archives other governmen offices which possess assassination records. Just as the definition o the term assassination records is the threshold test for public confi dence in the scope of disclosure resulting from the Act, public access itself is the single most important purpose of the Act.

For example, it has been the experience of certain researchers, including the Assassination Archives and Records Center, that it is more expensive to obtain copies of records related to the assassina tion of President Kennedy from the National Archives than from the originating agencies such as the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI). The Commit

14-00000

tee examined this concern by investigating the cost of obtaining copies of records at the National Archives and at agencies including the CIA and the FBI. The Committee specifically sought to determine the cost of reproduction of records which are "on the shelf" and for which no search is required.

The Committee confirmed that it is more expensive for the public to obtain "on the shelf" records at the National Archives than at originating agencies. This is the result to two factors: Pricing policy and application of the fee waiver provisions of the Freedom of Information Act (FOIA). The National Archives charges the public a higher price for reproduction and does not honor the fee waiver provisions of the FOIA in the belief that it is exempt from such provisions.

The Committee determined that the pricing policy of the CIA and the FBI are identical. Where no search is required, the first one-hundred pages are free, and additional copies cost ten cents per page—regardless of whether the public takes delivery in person at the agency or by mail. In comparison, the National Archives charges the public ten cents per page for copies of records which are requested in person, and twenty-five cents per page for copies of records requiring mailing. The result has been that the National Archives has created a burden on the public to shop around government for the least expensive means of obtaining copies of records. As a result of these findings, and the National Archives determination to continue to charge more for records reproduction than agencies who comply with the Freedom of Information Act fee schedule requirements and guidelines, the Act provides in Section 5(h) that the public may also seek copies of "assassination records" from the originating agencies.

The Committee next determined that it is less expensive for the public to obtain copies of records at originating agencies than at the National Archives because the agencies fee waiver provisions of the FOIA. Again, the Committee was especially concerned with the history of access to "on the shelf" records related to the assassination of President Kennedy. The Committee examined the National Archives claim that it is exempt from such provisions of the FOIA, the influence that this interpretation has had on the cost of records to the public, and the impact of such a policy on uniform and reasonable access and public disclosure costs under this Act.

The Committee determined that application of the FOIA fee waiver provisions are particularly essential with regard to the records related to the assassination of President John F. Kennedy. First, the National Archives is covered by the Freedom of Information Act, there is no exception to this requirement in law, and to create such an exception would undermine the application of the nation's foremost means of public access and government accountability at the nation's foremost repository of government records. Second, without applying the FOIA fee waiver provision to the Kennedy assassination records the National Archives would be acting in a manner which undermines that law. Simply put, the public would lose its rights under the Freedom of Information Act as soon as any record is transferred to the National Archives. Third, as with its pricing policy, its policy with regard to the FOIA

[illegible] upon the public by requiring

that it shop around the government for the least expensive mea of records reproduction.

The Committee believes that it is necessary to require the app cation of the FOIA fee waiver provisions to public requests f records contained in the President John F. Kennedy Assassinati Records Collection because to do otherwise would seriously confli with the purposes and intent of public access and disclosure und the Act. While the Congress cannot specify the exact cost of reco reproduction under the Act, it is clearly intended that the costs reasonable and that the FOIA fee waiver provisions apply at all ecutive agencies including the National Archives.

Information Security

Another area of responsibility of the Archivist has to do with formation security. The Act requires that the Collection inclu records which are publicly available under the Act as well as thc which are postponed. The purpose behind housing postpon records at the National Archives is threefold: First, even thou postponed, these records are not exempt, and are therefore a p of the Collection to be disclosed. Second, the Act requires perio review of postponed records, in addition to the review specifica designated by the Review Board. The Committee believes that su review should occur at a single facility. That will be most effecti ly achieved by bringing the review committee to the docume and not vice versa. Third, there is less likelihood of loss or destr tion, and therefore ease of access at a single central location.

The Act requires that the Archivist consult with the Informat Security Oversight Office with regard to the protection of p poned records. This is required because during the course of de opment of the legislation several agencies expressed reluctance providing the original or even reproductions of classified or oth wise confidential information to the National Archives. An ass ment of the National Archives information security program the Information Security Oversight Office (ISOO) was requested Senator Glenn. The results confirmed the concerns of governm agencies. For the five year period between August 1987 and Ma 1992, Mr. Steven Garfinkel, Director of ISOO, identified 85 vi tions of improper disclosure and handling of classified informat by the National Archives at 10 different facilities including Main Archives Building. Mr. Garfinkel stated that the Nati Archives "has not devoted or does have sufficient resources devote to its information security program." He added that the tional Archives "currently has only one full-time information s rity specialist." Mr. Garfinkel cited overcrowding of docume commingling of classified and unclassified records, and other tors is the security problems at the National Archives.

The requirement in the Act for consultation between ISOO the National Archives is essential to the Archives fulfilling the sponsibilities in the Act for archiving and protecting postpo records. Failure in developing and properly implementing the ommendations of ISOO, and addressing concerns of affected a cies, will prevent the transmission of postponed records to the tional Archives.

Publications and Reprints of Documents

The original legislation gave the Archivist the authority to identify records for reproduction and sale by the Government Printing Office. The substitute approved by the Senate Committee on Governmental Affairs does not include this provision. First, it is believed that by requiring the Archivist to complete a subject guidebook and index to the Collection, the public will be best served by having this detailed document-by-document guide. It is expected that this guidebook and index will be nationally distributed and provide the public with the best access to particular records. Second, estimates of the volume of records in the Collection will exceed one million pages, and it is unlikely that the Archivist would consider it feasible to seek multiple reproductions of bound volumes containing all the documents ultimately released. Third, the Act serves to facilitate public disclosure, not to interpret, edit, or evaluate relevant records. To do otherwise would effectively authorize an official government editor, deciding for the American public which documents are "important" and once again interposing the government between the assassination of President Kennedy and the American public. The Archivist retains existing authority to making records available for reprinting and sale by the Public Printer, but such action should be undertaken with the aforestated considerations in mind.

Presidential Libraries

In Section 2, the Act includes presidential libraries within the definition of the National Archives, and in Section 5(C)(3) it specifically requires the directors of presidential libraries to expedite the review of all assassination records and make them available to the Review Board as required by this Act. It is incumbent on the presidential libraries to determine which of its records may qualify as "assassination records", regardless of whether the records were conveyed to the government by a deed or gift or donation, and where appropriate, be reviewed under the standards for postponement of the Act, not the more restrictive standards of the Freedom of Information Act or an executive order on information classification.

This provision reflects the existence of relevant records at presidential libraries, particularly, though not exclusively to include, the Lyndon B. Johnson Presidential Library in Austin, Texas, and the Gerald R. Ford Presidential Library in Ann Arbor, Michigan. Each of these presidential libraries received pertinent records by deeds of gift or donation, but which have either been made publicly available or which are in the process of being made publicly available. Specific sets of records which should be made immediately available for public disclosure, review by the Review Board, and inclusion in the Collection as set forth by this Act.

In development of the legislation, the Committee contacted the Ford and Johnson presidential libraries with regard to the public availability of its holdings. In the case of the Lyndon B. Johnson Presidential Library, the particular provision requiring expedited review, availability to the Review Board, and public disclosure was developed in consultation with its Director.

For the Lyndon B. Johnson Presidential Library, this provisi requires the expedited review, availability to the Review Boar and public disclosure of all assassination records, and in particul the relevant portions of the 3,095 tape recorded conversations the library's possession. These recordings were made by Preside Johnson, and were donated to the library by his former person assistant Mildred Stegall in 1973.

For the Gerald R. Ford Presidential Library, this provision r quires the expedited review, availability to the Review Board, ar public disclosure of all assassination records, and in particular tl records of the Rockefeller Commission related to the investigatic of the assassination.

Standards for postponement

Section 6 establishes the grounds for postponement of public di closure of assassination records. It is important to emphasize th postponement means that the records will be publicly available ar publicly disclosed at some point in the future, and that the stan ards for postponement are not exemptions from disclosure. Fu thermore, it is intended that the standards operate as discretio ary, not compulsory, requirements for disclosure. The underlyin principle for applying the standards for postponement remains th presumption of disclosure established by the Act. Any postpone records or information should be narrowly drawn to enable the m jority of any record to disclosed immediately, so that the redactio is minimal, and subject to review and disclosure in the near futur It is intended that the Review Board should make its own determ nations and that its judgments will be shaped by its experienc knowledge, and expertise during the course of its work. In additio it is important to emphasize that postponement requires that ther be "clear and convincing evidence" that particular standards fo postponement are triggered. Certain clarifications, however, ma be useful to assist in providing the perspectives of the governmen the Congress, and the public.

Intelligence Agents, Sources, or Methods

Section 6(1)(A) permits postponement if the disclosure woul "reveal an intelligence agent whose identity currently requires pro tection." Concerns over the breadth of this provision have bee raised by representatives of government agencies and experience researchers, and have been considered in development of the provi sion.

Intelligence Agents

One of the earliest concerns was whether the identity of a de ceased intelligence agent could be postponed. The government stressed that at times this might be necessary if the disclosure would create a risk of physical harm to surviving family members, especially if any of the survivors are currently employees of a U.S. intelligence organization. In addition, the government stressed that the fact of someone's employment with a U.S. intelligence or coun terintelligence organization may have been a secret that requires continued protection. This is related to an additional concern about the definition of an "intelligence agent." The government believes

14-00000

that it is a term of art and that it should extend to a "domestic or foreign intelligence or counterintelligence asset, collaborator, foreign liaison contact, or covert employee of a United States intelligence organization, where the identity of any of these currently require protection."

From the perspective of some experienced researchers concerning the assassination of President Kennedy, the term "intelligence agent" should not apply to deceased agents. They believe that the majority of records related to such individuals are at least thirty years old and do not require continued protection.

The Committee decided that the Review Board should make its own determinations, and in so doing should consult with the affected agencies, as well as be receptive to the views of the public. In determining whether or not the identity of a deceased agent should be disclosed, the Review Board may wish to consider the impact on survivors as a legitimate question, but the Review Board should satisfy itself as to the basis and need for such an assertion as grounds for postponement. The question of the breadth of the term "intelligence agent" raises a different set of questions. Potentially, the coverage of all individuals employed in an intelligence or counterintelligence capacity by the united States could become extremely wideranging and serve to defeat the presumption of disclosure and purpose of the Act. The Committee hesitates to adopt such a broad definition of "intelligence agent." However, when the Review Board is required to make determinations about the identities of "intelligence agents" it should consider the breadth of responsibilities and assignments which might fall into this category. Again, the Review Board should satisfy itself as to the basis and need for such an assertion as grounds for postponement.

Intelligence Sources and Methods

Section 6(1)(B) permits postponement of an "Intelligence source or method which is currently utilized, or reasonable expected to be utilized." Some researchers experienced in the difficulty of accessing records related to the assassination of President Kennedy have raised concerns over the scope of this provision because in the past "intelligence sources" have included newspapers and libraries, and because "intelligence methods" have included photography and listening devices on telephones. The Review Board should consider a variety of factors related to the need to postpone disclosure of intelligence sources and methods, including the age of the record, whether the use of a particular source or method is already well known by the public (e.g. that the Soviet Embassy in Mexico City was bugged during the alleged visit of Lee Harvey Oswald), and whether the source or method is inherently secret, or whether it was the information it collected which was secret.

Understanding of Confidentiality

Section 6(4) permits postponement if disclosure would "compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or foreign government, and public disclosure would be so harmful that it outweighs the public interest." The government has argued that all such confidentiality requires withholding

to preserve the integrity the promise of confidentiality made by a government agency to a witness in order to obtain testimony or information.

In applying this postponement standard the Review Board should consider: Whether there is an express written confidentiality agreement, whether that agreement is express or implied, whether it is written or unwritten, and the exact restrictions regarding the scope and duration of confidentiality; whether the agreement currently requires protection; whether a witness or informant or confidential source is deceased; and whether the government is seeking postponement purely because it believes all such records should be withheld, or because of the informant's express desire that the understanding not be made public. In all cases where the Review Board is considering postponement, it should keep the withheld information to an absolute minimum, and ensure that the postponement is narrowly drawn is for the shortest possible duration. In so doing, the Review Board should release as much information from the records as is possible.

Priority of reviewing existing Freedom of Information Act requests

Section 5(2)(b)(G) requires that government offices give priority to the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act are the subject of litigation under the Freedom of Information Act. This provision is intended to stop the continued expenditures by the government and private individuals related to litigation over records which will be specifically subject to the Act, and reviewed under different, and in most cases more liberal disclosure standards. An effort to disclose the pertinent records to these requestors will assist in responding to those who have sought access to the assassination records over the longest period of time. A continued delay in release of such records will only serve to undermine confidence by those members of the public whose past interest resulted in the Freedom of Information Act litigation. It is intended that the government offices identify and begin review of such records as a priority upon enactment of the legislation.

Appointment of the Review Board

The Committee first considered the approach proposed in the original legislation. This involved the appointment of an "Assassination Materials Review Board" in the same manner in which independent counsels are selected. This selection process is contained in the Ethics in Government Act, where it provides a method of independently determining the propriety and lawfulness of conduct by government officials. Under this provision the Attorney General of the United States must request the appointment of an independent counsel by a special judicial panel chaired by the Senior Judge of the Federal District Court for the D.C. Circuit.

The Committee carefully reviewed the use of this provision for the creation of the Review Board. The Committee determined that while this approach could possibly enhance the independence of the Review Board and the public confidence in the process, several other factors mitigated against this approach. The Committee

found that the added responsibilities for the Review Board would divest the Court's resources and time from its primary responsibilities under the Independent Counsel law. The Committee was also concerned that the judicial panel lacked the experience and expertise to select individuals who are nationally recognized professionals in the fields of history, archiving, and public access to information.

With these concerns in mind, the Committee chose an alternative approach to the appointment process while giving significant weight to the need for independence, public confidence, and accountability.

Section 7 establishes the Assassination Records Review Board. The Review Board will stand as the symbol and barometer of public confidence in the review and release of the government's records related to the assassination of President Kennedy. The independence of the Review Board will be rightfully judged by the public at its inception. The President is given the authority to appoint the members of the Review Board. Several provisions are intended to provide as much independence and accountability as is possible within our constitutional framework. These include the requirements that the members be confirmed by the United States Senate, that the President consider the recommendations of four private organizations with expertise in the areas of history, archiving, and the law, and that at least one of the members of the board be a historian and another be an attorney. The qualifications are also intended to maintain public confidence by requiring that the board members be nationally recognized professionals in their field. The organizations chosen to make recommendations was restricted to historians, archivists, and attorneys because the records are historical records and historians will want the complete record to form the historical time and context surrounding the assassination; archivists because such background will provide insights and an appreciation for records management and the ultimate disposition of the records in the Collection; and attorneys because of legal issues which may arise in the implementation of the Act, and because of the combined skills of advocacy and judgment. All of these qualifications will be required in the role of a Review Board member, although the President is free to make his own decisions, and similarly other organizations and members of the public are also free to volunteer their recommendations.

The approach presented in the legislation was developed out of a desire to satisfy the public demand for an independent entity which is not controlled by either the Congress or the President. These are essential and vital principles to prevent a conflict of interest and ensure efficient, speedy, and full disclosure of records to the American public.

Review Board authority to request additional information and records

In Section 7(j)(C)(ii) the Act provides the Review Board with the authority to "direct a Government office to make available to the Review Board and if necessary investigate the facts surrounding the disposition of additional information, records, or testimony from individuals, which the Review Board has reason to believe is

required to fulfill its functions and responsibilities under this A
This provision is extremely important to the proper implemen
tion and effectiveness of the Act because it provides the Revi
Board with the authority to seek the fullest disclosure possible
going beyond the information and records which government
fices initially chose to make available to the public and the Revi
Board. At the same time, executive branch agencies are fear
that this power will be abused and result in too great a burden
search for potential records and information.

In exercising its authority the Review Board should act on a r
sonable basis in requesting additional information or records. It
also intended that the Review Board explore the need for such
quests through public comments, hearings, advisory committees,
other means. It is intended that the Review Board consult with t
affected government offices regarding such requests, and that
such offices comply expeditiously to satisfy the Review Board's
quest and need for access.

The Committee has considered requests from the Administrati
to narrow the Review Board's authority in this area. However, t
Committee believes that it would be inconsistent with the purpo
of the Act to prematurely limit the scope of this authority. The
propriate scope of such requests and searches should be determi
by the Review Board as it conducts its work and becomes more
perienced and knowledgeable about the assassination records
seeks, and more certain of the level of cooperation of governme
agencies. It is expected that in conducting such requests for ad
tional information and records the Review Board consider wheth
the records are reasonably related to the history surrounding t
assassination of President Kennedy, and that the Review Boa
and its staff be guided by the principle of the need to prote
sources, methods, and confidential matters as set forth under t
standards in Section 6 of this Act.

Review Board consultation with the public and government offic

Section 8 sets forth the responsibilities of the Review Board. It
intended that the Review Board should consider and consult, whe
appropriate, with members of the public and with affected age
cies. This is essential for purposes of serving the public interest
ensuring the fullest public disclosures of records in an independe
and accountable manner, as well as appreciating the government
interests at stake. The Review Board may wish to hold hearings,
establish other forums to ensure that there is an adequate opport
nity for public input and participation.

Furthermore, with regard to government offices which hold a
sassination records, consultation and dialogue is important
ensure that communication is clear and that the work of t
Review Board progresses with efficiency and effectiveness. It is im
portant that the provisions requiring notice of determinations a
in compliance with the Act, and that to the extent possible, consu
tation with the government offices creates an understanding o
each side as to the basis and reasons for their respective recon
mendations and determinations.

Limitations of presidential postponement

Section 9(d)(1) recognizes the President's authority to override the determinations of the Review Board; however, the provision expressly limits such authority to an assassination record or "information contained in an assassination record, obtained or developed solely within the executive branch." This prohibition is intended specifically to restrict the President from having any control or authority over legislative branch records or information. For example, within the files of the House Select Committee on Assassinations (HSCA) there are staff notes rely in part on information obtained or developed by the CIA. Under the "third agency" rule in the Act, the CIA could choose to recommend that the Review Board postpone those portions which it identifies as originating at the CIA. If the Review Board declined the recommendation and the President sought to override the determination, the President would be limited to postpone those sentences or words which were originated or developed by the CIA. The remainder of the document would have to be publicly disclosed.

Rules of construction

Deeds of Gift. Section 11(a) addresses the need to abide by the terms of deeds of gift and donation of records to the federal government. With the exception of the autopsy records which are excluded from the Act, this provision does not intend to exclude other donated records from the scope of assassination records, and all such records made publicly available are to be included in the Collection as established by this Act. It is particularly important that all such records, especially when classified, are considered "assassination records" under the Act so that any declassification review is done under the new standards of this Act, and not the more restrictive standards of the Freedom of Information Act and the executive order on security classified information.

During the development of the legislation, the Committee sought to determine the nature and extent of donations and gifts of "assassination records." It found that records and rights in such records have been transmitted by former Presidents, government officials, and private citizens to government institutions including the Library of Congress, the National Archives, and the presidential libraries. The Committee also familiarized itself with the legal instruments of as many of the gifts and donations as possible, and worked directly with the affected institutions to determine the extent to which such records had been made public or could be made public. When necessary, the Committee requested that the individual, persons, or entities in controlling access to such records make them publicly available.

While many of the records were donated by former Presidents or their families, allowable in part because the Presidential Records Act did not exist until the presidency of Ronald Reagan, certain other individuals have also donated records. The personal papers of former Representative Hale Boggs, a Warren Commission member, were donated to the National Archives by his widow the former Representative Lindy Boggs. In another case, the personal papers of the attorney Elmer Gertz, including the papers related to Gertz's

defense of Jack Ruby, were donated by Mr. Gertz to the Library Congress. Mr. Gertz required personal written permission access to these records. The Committee contacted Mr. Gertz and quested that he open these records to the public and remove t access restrictions. Mr. Gertz agreed without hesitation.

In another example, the Lyndon B. Johnson Library was conta ed with regard to public access to relevant portions of the mc than 3,000 tape recordings of conversations of Lyndon B. Johns as Vice President and President of the United States. The Libra Director, Harry Middleton, was contacted and was asked abc making public these tapes and other records which might viewed as related to the assassination. Mr. Middleton stated th although it was unclear whether anyone else's authority was quired to do so, he obtained permission from Mrs. Lyndon B. Joh son in 1990 to begin processing the tapes for public disclosure. was determined that the project could be completed within the month period for records review under the Act.

In a final example, the Committee contacted the Gerald R. Fo Presidential Library in order to determine the status of the Rock feller Commission records. Although the Commission devoted a r atively small portion of its time addressing a few questions abo the assassination of President Kennedy, the Ford bequest contai the largest and most complete set of Rockefeller Commissi records. President Ford had personally required anyone who us the records, including the Department of Justice who investigat criminal wrongdoing, to return the records to him personally. Tl Committee found that by June, 1992, the Ford Presidential Libra had made the Rockefeller Commission records related to the assa sination publicly available, and that other related, but still class fied, records were available for declassification by originating age cies.

To the extent that there are other "assassination records" whic have been donated to the federal government, it is intended th the Review Board fully explore such records and governing leg instruments, and where possible seek the waiver or necessary pe mission to open the records to the American public.

Title 5 Public Access Provisions and Judicial Review

Sections 11 (b) and (c) address the application of the Freedom Information Act, and judicial review with regard to activities pu suant to the Act. In the original legislation, the authors chose t exempt the Review Board and the activities authorized by the bil from a number of laws dealing with government accountability These included the Freedom of Information Act, the Governmen in the Sunshine Act, the Administrative Procedures Act, and judi cial review. This would have the effect of exempting the personne records of past investigative commissions or committees, eve though the very same records of the Warren Commission hav been publicly available for at least twenty years. The Committe believes that this is inconsistent with the operative principle of a affirmative presumption of public disclosure.

At the hearings of the Committee, the two original sponsors o the legislation in the Senate, Senator David Boren and Senato Arlen Specter, both called for the application of our nation's law

14-00000

ensuring openness and accountability, including the Freedom of Information Act and judicial review. Such laws, as well as the Government in the Sunshine Act, offer adequate protections in the events that meetings need to be closed for reasons of national security, as well as other reasons including personal privacy. However, such exemptions require public notice and this is entirely consistent with the extra level of sensitivity to the accountability and credibility of the Review Board. The applicable laws in Title 5 have been restored to the Act, as has judicial review.

Existing Authority

Section 11(d) provides that nothing in the Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession. This provision is intended to make clear that, although the entities of the Government are required to disclose all assassination records are not covered by the standards for postponement in Section 6, they are not required to withhold or postpone disclosure of assassination records simply because those records are covered by these standards. If an agency or congressional committee has other statutory or inherent authority to release a record, it may do so even though the record would be qualified for postponement for disclosure under the Act. Thus, with respect to the assassination records, the Act sets a floor, but not a ceiling, as to what is to be disclosed. At the same time, nothing in the Act alters any existing rights or duties with respect to public disclosure of materials that are not assassination records.

VI. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title.

The name of the Act is changed from the Assassination Materials Disclosure Act to the President John F. Kennedy Assassination Records Collection Act of 1992 to reflect its particular purpose, scope, and added priorities.

Sec. 2. Findings, declarations, and purposes.

Section 2 details the congressional findings, declarations, and purposes that are to guide the implementation and administration of the law. It is found and declared that all Government records related to the assassination of President Kennedy should be preserved for historical and governmental purposes, that they should carry a presumption of immediate disclosure, and that they should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination. Legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records. It is also necessary because congressional records related to the assassination of President Kennedy would not otherwise be subject to public disclosure until at least the year 2029; because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President Kennedy; and because Executive Order No. 12356, enti-

tled "National Security Information", has eliminated the declassification and downgrading schedules relating to classified information and has prevented the timely public disclosure of records relating to the assassination of President Kennedy. Finally, most of the records related to the assassination of President Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records.

The purposes of the law, as indicated in the section, are to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration and to require the expeditious transmission of assassination records to the Archivist and public disclosure of such records.

Sec. 3. Definitions.

1. A definition of "Archivist", to mean the Archivist of the United States, is provided.

2. The term "Assassination record" is clarified to mean a record that is related to the assassination of President Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of (A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission"); (B) the Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission"); (C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee"); (D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives; (E) the Select Committee on Assassinations (the "House Assassinations Committee") of the House of Representatives; (F) the Library of Congress; (G) the National Archives and Records Administration; (H) any Presidential library; (I) any executive agency; (J) any independent agency; (K) any other office of the Federal Government; and (L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President Kennedy, but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records.

3. A definition of "Collection" is added and means the President John F. Kennedy Assassination Records Collection established under section 4.

4. The term "executive agency" means an executive agency as defined in subsection 552(f) of title 5, United States Code, and includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President, or any independent regulatory agency.

5. "Government office", another added term, means any office of the Federal Government that has possession or control of assassination records, including (A) the House Committee on Administration with regard to the Select Committee on Assassinations of the records of the House of Representatives; (B) the Select committee

14-00000

on Intelligence of the Senate with regard to records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and other assassination records; (C) the Library of Congress; (D) the National Archives as custodian of assassination records that it has obtained or possesses, including the Commission to Investigate the Assassination of President John F. Kennedy and the Commission on Central Intelligence Agency Activities in the United States; and (E) any other executive branch office or agency, and any independent agency.

6. As used in the law, "Identification aid" means the written description prepared for each record as required in section 4.

7. "National Archives" means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

8. As used in the law, "Official investigation" means the reviews of the assassination of President Kennedy conducted by any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

9. The term "Originating body" means the executive agency, Government commission, congressional committee, or other governmental entity that created a record of particular information within a record.

10. A definition of "Public interest" is added and means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President Kennedy.

11. As used in the law, "Record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

12. Reference to the "Review Board" means the Assassination Records Review Board established by section 7.

13. Another newly added term, "Third agency", means a Government agency that originated an assassination record that is in the possession of another agency.

Sec. 4. President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration.

The law provides generally that, not later than 60 days after the date of its enactment, the National Archives and Records Administration must begin establishing a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist ensures the physical integrity and original provenance of all collection records. The Collection consists of copies of all Government records relating to the assassination of President Kennedy, transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The term "original provenance" is a term of art among archivists and in this application is intended to preserve and archive records ac-

cording to their point of origin (e.g., CIA records remain archive with CIA records, legislative branch records remain archived wit legislative branch records) even though the public is provided wit access to a "collection" of records related to the assassination c President Kennedy through a unified subject matter guidebook an index. The Archivist prepares and publishes a subject guideboo and index to the collection. It is intended that the subject guid book and index be prepared and made available as it is accumula ed, and not waiting for public dissemination until the Collection j ultimately complete. Over time, it is intended that successive ed tions of the guidebook and index will be published and update Furthermore, it is intended that copies of the guidebook and inde will be made available to depository libraries.

Furthermore, the Collection includes (A) all assassination record that have been transmitted to the National Archives or disclosed t the public in an unredacted form prior to the date of enactment c the law, that are required to be transmitted to the National A chives, or the disclosure of which is postponed under the law; (B) central directory comprised of identification aids created for eac record transmitted to the Archivist under section 5; and (C) a Review Board records as required by the law.

The term "unredacted" or "redacted" in this Act refers t records or parts of records which have been publicly released b the government in an edited version in which any part of a recor is "blacked out" or is otherwise excised from a document.

All assassination records transmitted to the National Archive for disclosure to the public are included in the Collection and mus be available to the public for inspection and copying at the Natio al Archives within 30 days after the transmission to the Nationa Archives.

The Archivist is authorized to charge fees for copying assassina tion records and to grant waivers of such fees pursuant to th standards established by section 552(a)(4) of title 5, United State Code, a provision of the Freedom of Information Act.

The Collection is preserved, protected, archived, and made avai able to the public at the National Archives using appropriation authorized, specified, and restricted for use under the terms of th law.

The National Archives, in consultation with the Information Se curity Oversight Office, ensures the security of the postponed assa sination records in the Collection.

The Committee on Government Operations of the House of Re resentatives and the Committee on Governmental Affairs of th Senate are vested with continuing oversight jurisdiction with re spect to the Collection.

Sec. 5. Review, identification, transmission to the National A chives, and public disclosure of assassination records by Go ernment offices.

Section 5(a) generally provides that, as soon as practicable afte the date of enactment of the law, each Government office identifie and organizes its records relating to the assassination of Presiden Kennedy and prepares them for transmission to the Archivist fo inclusion in the Collection.

No assassination record shall be destroyed, altered, or mutilated in any way.

No assassination record made available or disclosed to the public prior to the date of enactment of the law may be withheld, redacted, postponed for public disclosure, or reclassified. [The term "unredacted" or "redacted" is defined in section 4 of this section-by-section analysis.]

No assassination record created by a person or entity outside of Government (excluding names or identities consistent with the requirements of section 6) may be withheld, redacted, postponed for public disclosure, or reclassified.

Section 5(b) indicates that, during the review by Government offices and pending review activity by the Review Board, each Government office retains custody of its assassination records for purposes of preservation, security, and efficiency, unless the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review; transfer is necessary for an administrative hearing or other Review Board function; or it is a third agency record described in subsection (c)(2)(C).

Section 5(c) provides that, not later than 300 days after the date of enactment of the law, each Government office reviews, identifies, and organizes each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist. In carrying out this requirement, a Government office (A) determines which of its records are assassination records; (B) determines which of its assassination records have been officially disclosed or publicly available in a complete and unredacted form [the term "unredacted" or "redacted" in this Act is defined in section 4 of this section-by-section analysis]; (C) determines which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office, and transmits to a third agency or other Government office those records, or particular information contained in those records, or complete and accurate copies thereof; (D) determines whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under the law, and specifies on the identification aid required by subsection (d) the applicable postponement provision contained in section 6; (E) organizes and makes available to the Review Board all assassination records identified under subparagraph (D), the public disclosure of which, in whole or in part, may be postponed under the law; (F) organizes and makes available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by the law; (G) gives priority to the identification, review, and transmission, under the standards for postponement set forth in the law, of assassination records that on the date of enactment of the law are the subject of litigation under section 552 of title 5, United States Code; and (H) makes available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under the law.

The Director of each archival depository established under section 2112 of title 44, United States Code, expedites review, for

public disclosure, of assassination records in the possession and c
tody of the depository, and makes such records available to t
Review Board as required by the law.

Section 5(d) specifies that, not later than 45 days after the date
enactment of the law, the Archivist, in consultation with the a
propriate Government offices, prepares and makes available to
Government offices a standard form of identification or finding a
for use with each assassination record subject to review under t
law. The Archivist ensures that the identification aid program
established in such a manner as to result in the creation of a u
form system of electronic records by Government offices that a
compatible with each other. Upon completion of an identificati
aid, a Government office (A) attaches a printed copy to the recc
it describes; (B) transmits a printed copy to the Review Board; a
(C) attaches a printed copy to each assassination record it descril
when it is transmitted to the Archivist. Assassination recor
which are in the possession of the National Archives on the date
enactment of the law, and which have been publicly available
their entirety without redaction, are made available in the Coll
tion without any additional review by the Review Board or anotl
authorized office under the law, and are not required to have su
an identification aid unless required by the Archivist.

Section 5(e) provides that each Government office transmits
the Archivist, and makes available to the public, not later than 3
days after the date of enactment of the law, all assassinati
records that can be publicly disclosed, including those that are pu
licly available on the date of enactment of the law, without any
daction, adjustment, or withholding under the standards of the la
and transmit to the Archivist, upon approval for postponement
the Review Board or upon completion of other action authorized
the law, all assassination records the public disclosure of which h
been postponed, in whole or in part, under the standards of t
law, to become part of the protected Collection.

Section 5(f) indicates that an assassination record, the public d
closure of which has been postponed, shall, pending transmission
the Archivist, be held for reasons of security and preservation
the originating body until such time as the information securi
program has been established at the National Archives, as requir
in section 4(e)(2).

Section 5(g) requires periodic review of all postponed or redact
records by the originating agency and the Archivist, consiste
with the recommendations of the Review Board under secti
9(c)(3)(B). [The term "unredacted" or "redacted" in this Act is c
fined in section 4 of this section-by-section analysis.] A perioc
review must address the public disclosure of additional assassin
tion records in the Collection under the standards of the law. A
postponed assassination records determined to require continu
postponement must have an unclassified written description of t
reason for such continued postponement. Such description is pr
vided to the Archivist and published in the Federal Register. T
periodic review of postponed assassination records serves to dow
grade and declassify security classified information. Finally, ea
assassination record is publicly disclosed in full, and available
the Collection no later than the date that is 25 years after the da

14-00000

of enactment of the law, unless the President certifies, as required by the law, that continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, or conduct of foreign relations, and the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

Section 5(h) authorizes executive branch agencies to charge fees for copying assassination records and to grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code, a provision of the Freedom of Information Act.

Sec. 6. Grounds for postponement of public disclosure of records.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of the law if there is clear and convincing evidence that:

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that it outweighs the public interest, and such public disclosure would reveal (A) an intelligence agent whose identity currently requires protection; (B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

Sec. 7. Establishment and powers of the Assassination Records Review Board.

Section 7 establishes the Assassinations Records Review Board as an independent agency. The President, by and with the advice and consent of the Senate, appoints, without regard to political affiliation, 5 citizens to serve as members of the Review Board to ensure

and facilitate the review, transmission to the Archivist, and publi disclosure of Government records related to the assassination President Kennedy. The President makes nominations to th Review Board not later than 90 calendar days after the date of e actment of the law.

If the Senate votes not to confirm a nomination to the Revie Board, the President makes an additional nomination not lat than 30 days thereafter.

The President makes nominations to the Review Board after co sidering persons recommended by the American Historical Associ tion, the Organization of American Historians, the Society American Archivists, and the American Bar Association. If one these organizations does not recommend at least 2 nominees mee ing the stated qualifications by the date that is 45 days after th date of enactment of the law, the President considers for nomin tion the persons recommended by the other specified organization The President also may request a specified organization to subm additional nominations.

Persons nominated to the Review Board (A) must be imparti private citizens, none of whom is presently employed by an branch of the Government, and none of whom shall have had an previous involvement with any official investigation or inquiry co ducted by a Federal, State, or local government, relating to the a sassination of President Kennedy; (B) must be distinguished pe sons of high national professional reputation in their respectiv fields who are capable of exercising the independent and objectiv judgment necessary to the fulfillment of their role in ensuring an facilitating the review, transmission to the public, and public di closure of records related to the assassination of President Kenn dy and who possess an appreciation of the value of such material the public, scholars, and government; and (C) must include at lea 1 professional historian and 1 attorney.

All Review Board nominees are to be granted the necessary sec rity clearances in an accelerated manner subject to the standa procedures for granting such clearances. Furthermore, all nom nees must qualify for the necessary security clearance prior being considered for confirmation by the Committee on Gover mental Affairs of the Senate.

The Committee on Governmental Affairs of the Senate holds co firmation hearings within 30 days in which the Senate is in sessic after the nomination of 3 Review Board members. The Committe votes on the nominations within 14 days in which the Senate is session after the confirmation hearings, and reports its results the full Senate immediately. The Senate then votes on each nom nee to confirm or reject within 14 days in which the Senate is session after receiving the report from the Committee on Gover mental Affairs.

A vacancy on the Review Board is filled in the same manner specified for original appointment within 30 days of the occurren of the vacancy.

The members of the Review Board elect one of its members chairperson at its initial meeting.

No member of the Review Board is to be removed from offic other than by impeachment and conviction; or by the action of th

President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal, the President must submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal. Furthermore, the President must publish in the Federal Register a report on the removal, except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. The member may be reinstated or granted other appropriate relief by order of the court.

A member of the Review Board is compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board. A member of the Review Board also is allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

Regarding duties and responsibilities, the Review Board considers and renders decisions on a determination by a Government office to seek to postpone the disclosure of assassination records. In carrying out this task, the Review Board considers and renders decisions as to whether a record constitutes an assassination record; and whether an assassination record or particular information in a record qualifies for postponement of disclosure under the law.

The Review Board has the authority to act in a manner prescribed under the law, including authority to (A) direct Government offices to complete identification aids and organize assassination records; (B) direct Government offices to transmit to the Archivist assassination records as required under the law, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent; (C) obtain access to assassination records that have been identified and organized by a Government office; direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding the disposition of additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under the law; and subpoena private persons to compel testimony, records, and other information relevant

to its responsibilities under the law; (D) require any Governme office to account in writing for the destruction of any records rel ing to the assassination of President Kennedy; (E) receive inform tion from the public regarding the identification and public disc sure of assassination records; and (F) hold hearings, administ oaths, and subpoena witnesses and documents. Such a subpoe may be enforced by any appropriate Federal court acting pursua to a lawful request of the Review Board. Also, the Review Boa shall be considered to be an agency of the Untied States for pu poses of section 6001 of title 18, United States Code, and may iss interpretive regulations regarding its duties and responsibilities.

The Committee on Government Operations of the House of Re resentatives and the Committee on Governmental Affairs of tl Senate have continuing oversight jurisdiction with respect to tl official conduct of the Review Board and the disposition of po poned records after termination of the Review Board, and ha access to any records held or created by the Review Board. Tl Review Board, in turn, has the duty to cooperate with the exerci of such oversight jurisdiction.

The Administrator of the General Services Administration pr vides administrative services for the Review Board on a reimburs ble basis.

The Review Board and the terms of its members terminate n later than 2 years after the date of enactment of the law, exce that the Review Board may, by majority vote, extend its term fo an additional 1-year period if it has not completed its work withi that 2-year period. Upon its termination, the Review Board submit reports to the President and the Congress, including a complet and accurate accounting of expenditures during its existence, an must complete all other reporting requirements under the law Upon termination and winding up, the Review Board transfers al of its records to the Archivist for inclusion in the Collection, an no record of the Review Board shall be destroyed.

Sec. 8. Assassination Records Review Board personnel.

Section 8 provides support personnel for the Review Board. No later than 45 days after the initial meeting of the Review Board the Review Board appoints one citizen, without regard to politica affiliation, to the position of Executive Director. This individua must be a private citizen of integrity and impartiality who is a dis tinguished professional and who is not a present employee of an branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassina tion of President Kennedy. A candidate for Executive Director is t be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clear ances, and must quality for the necessary security clearance prior to being approved by the Review Board.

The Executive Director serves as principal liaison to Government offices, is responsible for the administration and coordination of the Review Board's review of records and for the administration of all official activities conducted by the Review Board, but has no au thority to decide or determine whether any record should be dis closed to the public or postponed for disclosure.

14-00000

The Executive Director is not to be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

Additionally, the Review Board may, in accordance with the civil service laws, but without regard to civil service law and regulation for competitive service as defined in subchapter 1, chapter 33 of title 5, United States Code, appoint and terminate other personnel as are necessary to enable the Review Board and its Executive Director to perform its duties. A person appointed to the staff of the Review Board must be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President Kennedy. Each staff candidate is to be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances, and must qualify for the necessary security clearance prior to being approved by the Review Board.

The Review Board fixes the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

The Review Board also is authorized to create advisory committees to assist in fulfilling the responsibilities of the Review Board under the law. Any advisory committee created by the Review Board is subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Sec. 9. Review of records by the Assassination Records Review Board.

Section 9 specifies conditions and arrangements for the Review Board's examination of assassination records, beginning with custody considerations. Pending the outcome of the Review Board's review activity, a Government office retains custody of its assassination records for purposes of preservation, security, and efficiency, unless the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review or such transfer is necessary for an administrative hearing or other official Review Board function.

The Review Board, not later than 90 days after the date of its appointment, publishes in the Federal Register a schedule for review of all assassination records, and, not later than 180 days after the date of enactment of the law, begins its review of assassination records pursuant to the provisions of the law. It is intended that two priorities be established by government offices as they begin their review of assassination records: All assassination records which have been previously released in a redacted form, and all assassination records which were the subject of Freedom of Information Act litigation at the time of enactment. As the public is already familiar with previously released records, it is essential

that the fullest possible disclosure of these records be obtained by the public as early as possible. As stated elsewhere, the importance of making the review and disclosure of records at issue in Freedom of Information Act litigation is to expedite public access, and stop the continued expense to the government, taxpayers, and Freedom of Information Act requesters involved in the legal battles over disclosure.

The Review Board directs that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that a Government record is not an assassination record or a Government record or particular information within an assassination record qualifies for postponement of public disclosure under the law. It is intended that all records approved for full disclosure in an unredacted form should be transmitted immediately to the Archivist and made available to the public.

In approving postponement of public disclosure of an assassination record, the Review Board seeks to provide for the disclosure of segregable parts, substitutes, or summaries of such a record, and determines, in consultation with the originating body and consistent with the standards for postponement under the law, which of the following alternatives forms of disclosure shall be made by the originating body: (1) any reasonably segregable particular information in an assassination record; (2) a substitute record for that information which is postponed; or (3) a summary of an assassination record. A "substitute record" is a record which accurately reflects the contents of a record requiring protection to such an extent that the actual record, even in a redacted form, and cannot be released. A summary is an outline or profile of a record which cannot be released even in a redacted form. While it is intended that government office shall have the ability to issue such substitutes or summaries in lieu of an actual record, this practice should be limited to the rarest cases if ever, with the understanding that the release of information other than official records will perpetuate public distrust and undermine public confidence in the government's responsibility to disclose the assassination records.

With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board creates and transmits to the Archivist a report containing a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings conducted by the Review Board with regard to specific assassination records; and a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under the law.

Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board

14-00000

notifies the head of the originating body of its determination and publishes a copy of the determination in the Federal Register within 14 days after the determination is made. Contemporaneous notice is made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in the law in the case of legislative branch records. Such notice must contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

Specification is made of Presidential authority over Review Board determinations. After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, or of any information contained in a assassination record, obtained or developed solely within the executive branch, the President has the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President must provide the Review Board with an unclassified written certification specifying his decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under the law, stating the justification for his decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

Any executive branch assassination record postponed by the President is subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4. The term "downgrading" refers to reducing the level of information classification, for example, from TOP SECRET to SECRET to CONFIDENTIAL to DECLASSIFIED.

The Review Board must, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of the release of assassination records.

Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board must publish in the Federal Register a notice that summarizes the postponements approved by the Review Board or initiated by the President, the House of Representatives, or the Senate, including a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.

The Review Board reports its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity. The first report is issued on the date that is 1 year after the date of enactment of the law, and subsequent reports every 12

months thereafter until termination of the Review Board. Su
report must include (A) a financial report of the expenses for
official activities and requirements of the Review Board and
personnel; (B) the progress made on review, transmission to the A
chivist, and public disclosure of assassination records; (C) the es
mated time and volume of assassination records involved in t
completion of the Review Board's performance under the law; (
any special problems, including requests and the level of coope
tion of Government offices, with regard to the ability of the Revi
Board to operate as required by the law; (E) a record of review a
tivities, including a record of postponement decisions by the Revi
Board or other related actions authorized by the law, and a reco
of the volume of records reviewed and postponed; (F) suggestio
and requests to the Congress for additional legislative authori
needs; and (G) an appendix containing copies of reports of po
poned records to the Archivist required under section 9(c)(3) ma
since the date of the preceding report under this subsection.

At least 90 calendar days before completing its works, t
Review Board must provide written notice to the President and t
Congress of its intention to terminate its operations at a specifi
date.

Sec. 10. Disclosure of other materials and additional study.

Section 10 provides guidance regarding the release of assassir
tion records outside of the immediate purview of the Review Boa
It may request the Attorney General to petition any court in t
United States or abroad to release any information relevant to t
assassination of President Kennedy that is held under seal of t
court. The Review Board also may request the Attorney General
petition any court in the United States to release any informati
relevant to the assassination of President Kennedy that is he
under the injunction of secrecy of a grand jury. The section in
cates, in this instance, that a request for disclosure of assassinati
materials under the law shall be deemed to constitute a showing
particularized need under Rule 6 of the Federal Rules of Crimin
Procedure.

In addition, three sense of the Congress provisions specify th
(1) the Attorney General should assist the Review Board in go
faith to unseal any records that the Review Board determines to
relevant and held under seal by a court or under the injunction
secrecy of a grand jury; (2) the Secretary of State should conta
the Government of the Republic of Russia and seek the disclosu
of all records of the Government of the former Soviet Union, i
cluding the records of the Komitet Gosudarstvennoy Bezopasnos
(KGB) and the Glaynoye Razvedyvatelnoye Upravleniye (GRU), re
evant to the assassination of President Kennedy, and contact ar
other foreign government that may hold information relevant
the assassination of President Kennedy and seek disclosure of su
information; and (3) all executive agencies should cooperate in fu
with the Review Board to seek the disclosure of all information re
evant to the assassination of President Kennedy consistent wit
the public interest.

14-00000

Sec. 11. Rules of construction.

Section 11 sets forth the rules of construction regarding the statute.

When the President John F. Kennedy Assassination Records Collection Act requires transmission of a record to the Archivist or public disclosure, it is to take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

Nothing in the statute is to be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code, which is the Freedom of Information Act.

Nothing in the law is to be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under the statute.

Nothing in the law revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

Finally, to the extent that any provision of the statute establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is to be deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules, and with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

Sec. 12. Termination of effect of act.

The section provides that the provisions of the law that pertain to the appointment and operation of the Review Board cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o). The remaining provisions of the law, however, continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with the statute.

Sec. 13. Authorization of appropriations.

The section authorizes to be appropriated such sums as are necessary to carry out the law, to remain available until expended. Until such time as funds are appropriated pursuant to the foregoing proviso, the President is authorized to use such sums as are available for discretionary use to carry out the law.

Sec. 14. Severability.

Specification is made that, if any provision of the law or the application thereof to any person or circumstance is held invalid, the remainder of the statute and the application of that provision to other persons not similarly situated or to other circumstances is not affected by the invalidation.

VII. REGULATORY IMPACT

Rule 26.11b of the Standing Rules of the Senate requires the report accompanying each bill or joint resolution of a public character to contain an evaluation of the regulatory impact of the legislation. The evaluation must include the four elements listed below.

1. An estimate of the number of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses. S. 3006, would not result in any additional regulation to any individuals or businesses.

2. A determination of the economic impact of such regulation on the individuals, consumers, and businesses affected. Not applicable.

3. A determination of the impact on the personal privacy of individuals affected. S. 3006, establishes clear standards for the protection of personal privacy. Under Section 6(3), assassination records may be postponed "public disclosure of the record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest" in disclosure. In addition, the application of other standards for disclosure may result in the postponement [under Section 6(1)(A)] of "an intelligence agent whose identity currently requires protection" as well as postponement [under Section 6(2)] of "the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person." These standards are specifically intended to reduce the unwarranted or unreasonable impact on the personal privacy of individuals in a manner consistent with the requirements for public disclosure of records by the legislation.

4. An estimate of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the legislation, including estimates of the amount of time and financial cost required of affected parties, as well as reasonable estimates of the recordkeeping requirement that may be associated with the legislation. No additional paperwork is imposed on the public by S. 3006.

VIII. COST IMPACT

Letter from the Congressional Budget Office

JULY 14, 1992.

Hon. JOHN GLENN,
Chairman, Commission on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 3006, the President John F. Kennedy Assassination Records Collection Act of 1992, as ordered reported by the Senate

Committee on Governmental Affairs on June 25, 1992. We estimate that implementing this resolution would cost the federal government about $4.5 million a year from 1993 through 1995, assuming appropriation of the necessary funds. This resolution would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

S. 3006 would create, as an independent agency, the Assassination Records Review Board to consist of five members appointed by the President. After federal agencies have had 300 days to release to the National Archives any unedited assassination records for public inspection, the board would have the authority to examine any remaining records held by a federal agency or by the Congress that the board determines are related to the assassination of President Kennedy. The board would then decide whether the records should be transferred to the National Archives to be available to the public or whether public release should be postponed for national security or privacy reasons. Depending on the source of the records, the House, the Senate, or the President would be able to postpone the availability of records that the board considers appropriate to make public. The board would be able to hire an Executive Director and additional personnel as needed. It would have two years to complete its work, but would be authorized to continue for a third year before it would terminate.

CBO expects that the board would use all three years allowed to conduct its review. The primary expense stemming from this review would be the cost of employees hired by the board and those at several federal agencies which would have to read through the 1 million or so pages of documents relating to President Kennedy's assassination that are still not released. Based on information from the National Archives and other affected agencies about the likely process and timing for reviewing the records, we estimate that it would take about 40 employees at federal agencies to conduct the initial review of records in the allotted 300 days, at a cost of about $2 million in fiscal year 1993. We estimate that the board would need a staff of up to 35 employees to review all the records within the required three-year period, at a cost of about $1.8 million annually. In addition, agencies that currently hold the records would need to assign staff to conduct a parallel review so that the President can decide whether to postpone the release of records that the board decides should be released. Such a parallel review could require the equivalent of up to 35 employees, representing about $1.8 million in annual staff resources.

The review board itself would require additional appropriations of about $0.6 million annually for the director, a counsel, support staff, overhead, and the cost of board meetings. In addition, the National Archives, which eventually would receive all the releasable records into a President John F. Kennedy Assassination Records Collection, would spend about $0.6 million over the next three years to compile a subject guide index to the records in the collection to assist the public in locating records.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is James Hearn, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Congressional Budget Office—cost estimate summary

1. Bill number: S. 3006.
2. Bill title: President John F. Kennedy Assassination Records Collection Act.
3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs on June 25, 1992.
4. Bill purpose: To authorize the appropriation of $4.5 million a year in 1993, and 1994, and 1995 for the expedited review and public disclosure of records related to the assassination of President John F. Kennedy. The legislation requires existing agencies and staff to fulfill responsibilities under the Act, and in addition creates the Assassination Records Review Board as an independent agency in the executive branch.
5. Estimated cost to the Federal Government: $4.5 million. Basis of estimate: See letter above.
6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: James Hearn.
10. Estimate approved by: Robert D. Reischauer.

APPENDIX

Chronology and Background Information About the Records of Presidential Commissions and Congressional Committees Which Investigated the Assassination of President John F. Kennedy

The Warren Commission: November 29, 1963–September 24, 1964.
The Rockefeller Commission: January 5, 1975–July 6, 1975.
The Church Committee: January 27, 1975–May 31, 1976.
The House Assassinations Committee: October 17, 1976–December 31, 1977.

THE WARREN COMMISSION

Summary

Creation and Appointment of Members: President Lyndon B. Johnson.

Purpose: To Investigate the Assassination of President John F. Kennedy.

Date of Creation: November 29, 1963.

Date of Termination: September 24, 1964.

Date of Report: September 24, 1964.

Release of Records: By National Archives and Records Administration. Ninety-eight percent complete. Twenty-six volumes of hearings and testimony, on September 24, 1964.

Additional release of records including documents, studies, and materials from other Federal and State agencies: 360 cubic feet of records and related material, approximately 1,000 boxes. In mid-1992, approximately 3,000 pages of national security and privacy protected material remained withheld pending scheduled review in 1995. The Archivist requested agencies to conduct an earlier review in 1992.

Cost of Inquiry: $10 million.

On November 29, 1963, seven days after the assassination of President John F. Kennedy, President Lyndon B. Johnson issued Executive Order 11130 creating the Commission to Investigate the Assassination of President John F. Kennedy.[1] On September 24, 1964, the Commission presented its report and twenty-six volumes of appendices to the President including fifteen volumes of hear-

[1] Earl Warren, Chief Justice of the United States (Chairman), and its members included two United States Senators, Richard Russell and John Sherman Cooper; two members of the House of Representatives, Gerald R. Ford and Hale Boggs; former Director of Central Intelligence, Alan W. Dulles; and a former Commissioner of Germany and attorney, John McCloy.

14-00000

ings testimony and eleven volumes of exhibits. During its ten-month existence, the cost of the Commission exceeded $10 million.[2]

The Commission relied directly on Federal and State investigative agencies to carry out its investigations. The "records" of the Commission therefore, are a combination of its own work and activities, along with numerous reports and related records from other agencies. According to the "Inventory of the Records of the President's Commission on the Assassination of President Kennedy" compiled by the National Archives, there are approximately 360 cubic feet of records and related material (an estimated 1,000 boxes).[3] These include the minutes of Commission and staff meetings, agenda, proceedings, transcripts of testimony, depositions, and affidavits; correspondence and memorandums; summary reports relating to the assassination and to Lee Harvey Oswald, prepared by the Federal Bureau of Investigation, the Secret Service, the Central Intelligence Agency, other Federal agencies, State authorities, and private citizens. In 1965, agencies whose materials comprise the Commission records first met to review agency records, and establish a schedule for future review. At that time 80% of all material was released. Future review was conducted in 1970, 1975, and other reviews are scheduled to occur in 1995 and every ten years thereafter. Approximately 98% of all records have now been made publicly available. The remaining 2% constitutes approximately 3,000 pages of security classified and privacy protected documents. The 1995 review has been now scheduled to take place in 1992, and the National Archives expects the number of withheld materials to be reduced to 500 pages.[4] In addition to the Warren Commission records, the National Archives maintains Secret Service files with 12–15 boxes, mostly paper documents, a copy of the Zapruder film, and radio tapes of reports of the assassination. The Archives also has certain records of the Department of Justice Criminal Division case file which is predominantly mail and letters received by the Department along with constitutent letters referred to the Department by Members of Congress. Lastly, the Ford Presidential Library has documents from the Military District of Columbia with regard to funeral arrangements for President Kennedy.

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[2] Report of the Select Committee on Assassinations, U.S. House of Representatives. 95th Congress, 2d Session, March 29, 1979. p. 18, n.4.

[3] Inventory of the Records of the President's Commission on the Assassination of President Kennedy. Record Group 272. Compiled by Marion M. Johnson. The National Archives. Washington. 1973. p. 3.

"Investigative reports submitted by the Federal Bureau of Investigation, the Secret Service, and the Central Intelligence Agency; various kinds of documents such as income tax returns, passport files, military and selective service records, and school records relating to Lee Harvey Oswald and Jack Ruby; transcripts of testimony, deposition, and affidavits of witnesses; correspondence; manuals of procedures of federal agencies; administrative memorandums; records relating to personnel; fiscal records; agenda, proceedings, and minutes of Commission meetings and minutes of staff meetings; exhibits; tape recordings, newspapers and press clippings and films; indexes; drafts and printer's proofs of the Report and Hearings of the Commission; a chronology of events in the lives of Oswald, Ruby, and others, 1959–1963; records relating to the interrogation and trial of Jack Ruby; and other records . . . They include all records of the Commission except an undetermined quantity of fiscal records and personnel folders in the custody of the General Services Administration [presumably transferred to the Archives following independence in 1985] . . . Related material is also in Record Group 200, National Archives Gift Collection (Columbia Broadcasting System news films of programs relating to the Report of the Commission broadcast in 1965 and 1967, including scripts for the 1967, and X-rays and photographs relating to the autopsy of President Kennedy)."

[4] Statement by Mary Ronan, National Archives and Records Administration, April 8, 1992, in discussions with Committee staff.

THE ROCKEFELLER COMMISSION

Summary

Creation and Appointment of Members: President Gerald F Ford.

Purpose: To Investigate Allegations of Illegal Domestic CIA Ac tivity.

Date of Creation: January 5, 1975.

Date of Termination: By July 6, 1975.

Date of Report: June 6, 1975.

Release of Records: Unreleased. Approximately 4,000 pages c materials, including Commission materials and classified agenc records reviewed by the Commission, are held by the Gerald F Ford Presidential Library. Additional material may be held b agencies whose records were reviewed by the Commission includin the CIA, FBI, and the Department of State. Relevance to Kenned Assassination: President Gerald R. Ford created the Rockefelle Commission to investigate CIA activities in the United State President Ford's Executive Order creating the Commission did nc address the Kennedy assassination, but the Commission devoted small part of its work to the subject. The Commission attempted t answer two questions related to connections between the CIA an possible participants in the assassination (E. Howard Hunt, Fran Sturgis, Lee Harvey Oswald, and Jack Ruby). The Commission a tempted to answer one question unrelated to the CIA: Whether th President was killed by a bullet shot from a front trajectory. Th Commission conclusion for each concern was in the negative.

Cost of Commission: Not available.

On January 5, 1975, President Gerald R. Ford (himself a membe of the Warren Commission) issued Executive Order 11828, creatin a Commission on CIA Activities Within the United States. Th Commission was established several days after President Ford re ceived a report which he had requested from the Director of Cen tral Intelligence (DCI) on allegations of a number of serious allega tions that the Central Intelligence Agency conducted illegal activ ties within the United States violating the rights of private cit zens. The mandate of the Commission was to determine whethe any CIA domestic activities exceeded the agency's statutory autho ity and to make appropriate recommendations. President Ford ap pointed the Commission Chairman, Vice President Nelson Rocke feller, the Commission members, and the Executive Director.[5]

Although President Ford did not address the assassination c President Kennedy in his executive order creating the Rockefelle Commission, either directly or by reference, the Commission's in

[5] Nelson Rockefeller, Vice President of the United States, Chairman; John T. Connor, Chai man of the Board, Chief Executive Officer, Allied Chemical Corporation, and former Secreta of Commerce under President Lyndon B. Johnson; C. Douglas Dillon, Managing Director Dillon, Reed, & Co. Inc., an investment banking firm, and former Secretary of the Treasu under Presidents Kennedy and Johnson, former Ambassador to France, and Under Secretary State under President Dwight D. Eisenhower; Erwin N. Griswold, attorney, former Solicit General under Presidents Johnson and Nixon, former Dean of the Harvard Law School; La Kirkland, Secretary-Treasurer of the AFL-CIO; Lyman L. Lemnitzer, General USA Retired, a former Chairman of the Joint Chiefs of Staff; Ronald Reagan, political commentator, form President of the Screen Actors Guild, and former Governor of California; Edgar F. Shannon, J Commonwealth Professor of English, and former President of the University of Virginia. David W. Belin, Executive Director.

14-00000

vestigation pursued three primary lines of inquiry related to the assassination. These included: (1) Whether "E. Howard Hunt and Frank Sturgis, on behalf of the CIA, personally participated in the assassination." (2) Whether "the CIA had connections with Lee Harvey Oswald or Jack Ruby, or both of them, and that those connections somehow led to the assassination." (3) Whether President Kennedy was struck in the head by a bullet from his right front, rather than from his rear as believed by the Warren Commission. The Commission's conclusion in each of these inquiries was in the negative.[6]

The Commission held weekly hearings during its six month existence, however, the Commission chose not to open its sessions to the public for reasons of the sensitivity of the CIA's intelligence and counterintelligence activities, and national security. The Commission's Report does not address the disposition of its records, whether the CIA records reviewed were ever transferred outside the agency for purposes of review, the review of records from other agencies, or the whereabouts of Commission records such as interviews with CIA personnel and other sources. The former Executive Director of the Commission, stated that he had no knowledge of where the Commission's records were sent, and that his own Freedom of Information Act request made in 1975 to disclose the Commission's records was denied.[7]

The existence and scope of relevant records is not fully known by the Committee. Archivists at the Ford Presidential Library state that President Ford donated Rockefeller Commission records to the Library as part of his personal papers. Approximately 4,000 pages of this material pertains to the investigation of the Kennedy assassination. Such material has been identified through existing finding aids, file marking, and efforts by Ford Library archivists to trace subjects and names discussed in these materials to other source material used and developed by the Commission. These materials can be divided between records related to the work of the Commission on the assassination specifically, and the work of the Commission and other agencies with regard to Cuba and Fidel Castro. The Commission records ranges from administrative files to the Zapruder film, and includes depositions, official and unofficial transcripts of interviews and testimony, and other materials. The agency records include a variety of classified documents, including

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[6] Report to the President by the Commission on CIA Activities Within the United States. June 1975. pp. 251, 269. Chapter 19 of the Report "Allegations Concerning the Assassination of President Kennedy" appears on page 251 through 269. The Commission's conclusion in Chapter 19 states: "Numerous allegations have been made that the CIA participated in the assassination of President John F. Kennedy. The Commission staff investigated these allegations. On the basis of the staff's investigation, the Commission concluded there was no credible evidence of ant CIA involvement" (page 269). With regard to the investigation of whether President Kennedy may have been shot from the front direction, the Commission hired four medical specialists to examine the autopsy photographs, x-rays, the President's personal effects, as well as available films of the assassination. Earlier in Chapter 19, the Commission states with regard to trajectory of a bullet which struck the President: "On the basis of the investigation conducted by its staff, the Commission believes that there is no evidence to support the claim that President Kennedy was struck by a bullet fired from either the grassy knoll or any other position to his front, right front or right side, and that the motions of the President's head and body, following the shot that struck him in the head, are fully consistent with that shot having come from a point to his rear, above him and slightly to his right." (p. 264).

[7] Ibid at Preface, p. XI. Rockefeller Commission Executive Director David Belin made these statements when contacted by telephone on April 23, 1992, by Ms. Susanne Cavanaugh, Congressional Research Service, Library of Congress.

interagency materials, and records of specific agencies. The Ford Library is attempting to make the Commission records available to the public at the Library in June 1992. The Ford Library is not planning to seek declassification and release of the agency material, but will follow its established procedures of offering researchers at list of such records, and then seeking agency declassification at the researchers' request.

THE CHURCH COMMITTEE

Summary

Creation and Appointment of Members: United States Senate.

Purpose: To Investigate Unethical Activities of U.S. Intelligence Community.

Date of Creation: January 27, 1975.

Date of Termination: May 31, 1976.

Date of Report: Senate Report No. 94-775. 94th Cong., 2d Session, 1976.

Release of Records: Records in custody of Senate Select Committee on Intelligence. No records released. No disclosure date set. Records not subject to Senate rules governing access to non-current Senate records. Records of the Church Committee include those pertaining to its investigation of performance of intelligence agencies in investigating the assassination and assisting the Warren Commission: Interviews and depositions of witnesses, documentary evidence from agencies acquired by the Committee, and documentary evidence reviewed at agencies. Relevance to Kennedy Assassination: The Church Committee investigated "the performance of the intelligence agencies in conducting their investigation of the assassination and their relationships to the Warren Commission."

Cost of Inquiry: Not Available.

On January 27, 1975, the Senate established by S. Res. 21, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. The Select Committee was chaired by Senator Frank Church (D-IDAHO), and was created to conduct an investigation into the extent, if any, of improper, or unethical activities engaged in by agencies charged with carrying out intelligence or surveillance to gain intelligence for the Federal Government. In carrying out its mandate, the Church Committee assessed the performance of the intelligence agencies in investigating the assassination of President Kennedy and in assisting the Warren Commission in its investigation. The Committee did not review the Warren Commission, its findings, conclusions, or physical evidence. The Committee concluded that "both the CIA and the FBI failed in, or avoided carrying out, certain of their responsibilities in this matter." The Committee went on to say, however, that this finding "does not lead to the conclusion that there was a conspiracy to assassinate President Kennedy." [8]

[8] "The Investigation Of The Assassination Of President John F. Kennedy: Performance Of The Intelligence Agencies." Book V. Final Report of the Select Committee To Study Governmental Operations With Respect To Intelligence Activities. United States Senate. 94th Congress, 2d Session. S. Rpt. No. 94-755. April 23, 1976. pp. 1,2.

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14-00000

The Church Committee, which went out of existence on May 31, 1976, forwarded all of its files pertaining to its investigation to the Senate Select Committee on Intelligence. The Senate Intelligence Committee has never administratively transferred these records to the National Archives through the office of the Secretary of the Senate. They remain under the custody of the Senate Intelligence Committee, with the majority, and perhaps the entirety, of the records maintained in a secure storage area at the National Archives. Until they are transferred administratively to the Archives, they are not subject to S. Res. 474 that clarifies procedures for access to non-current Senate records at the National Archives. The existence of records relevant to the assassination of President Kennedy is reflected in a statement by the Select Committee in its Report: "In the course of this investigation, more than 50 witnesses were either interviewed or deposed. Literally tens of thousands of pages of documentary evidence were reviewed at the agencies and more than 5,000 pages were acquired. In addition, the Committee relied on a great deal of testimony taken during the course of its investigation of alleged plots to assassinate foreign leaders, especially testimony of knowledge relating to these plot." [9]

THE HOUSE ASSASSINATIONS COMMITTEE

Summary

Date of Creation: September 17, 1976.

Date of Termination: December 31, 1977.

Date of Report: March 29, 1979. House Report No. 95–1828. Additional 12 volumes of testimony, documents, and exhibits re: JFK assassination also published by the Committee.

Release of Records: Scheduled for release in 2029.

Relevance to Kennedy Assassination: The Committee investigated two assassinations: President John F. Kennedy and Martin Luther King, Jr. A subcommittee was created to investigate the assassination of President Kennedy.

Cost of Inquiry: $5.5 million.

On September 17, 1976, the House of Representatives established, by H. Res. 1540, the House Select Committee on Assassinations (HSCA). The Committee was extended until March 31, 1977 by H. Res. 222, and was further extended for the duration of the 95th Congress by H. Res. 433, adopted on March 30, 1977.[10] During the

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The Select Committee voted to release this section of its report on May 28, 1976. Senators Frank Church (D-ID), Philip A. Hart (D-MI), Walter F. Mondale (D-MN), Walter D. Huddleston (D-KY), Robert Morgan (D-NC), Gary Hart (D-CO), Howard H. Baker, Jr. (R-TN), Charles McC. Mathias (R-MD), and Richard Schweiker (R-PA) voted to approve its release. Vice Chairman, Senator John G. Tower (R-TX) and Senator Barry Goldwater (R-AZ) voted against its release. The report was reviewed and declassified by the appropriate executive agencies.

[9] Id. at p. 1.

[10] Louis Stokes (D-OH), Chairman, Richardson Preyer (D-NC), Walter E. Fauntroy (D-DC), Yvonne Brathwaite Burke (D-CA), Christopher J. Dodd (D-CT), Harold Ford (D-TN), Floyd J. Fithian (D-IN), Robert W. Edgar (D-PA), Samuel L. Devine (R-OH), Stewart B. McKinney (R-CT), Charles Thone (R-NE), Harold S. Sawyer (R-MI). Subcommittee on the Assassination of John F. Kennedy chaired by Richardson Preyer.

30 months between the creation of the Committee in 1976 and the release of its report in 1979, its cost exceeded $5.5 million, and it used the services of over 250 people.[11]

The House Assassinations Committee was directed "to conduct a full and complete investigation and study of the circumstances surrounding the assassination and death of President John F. Kennedy" and "to determine whether there was full disclosure and sharing of information and evidence among agencies and departments of the U.S. Government during the course of all prior investigations into those deaths." The House Assassinations Committee reviewed the finding of the Warren Commission, evaluating the evidence presented to that Commission by official bodies, including the FBI and the intelligence community. The Kennedy phase of the investigation addressed charges related to the pro- and anti-Castro Cuban connections, the "single-bullet theory," the involvement of organized crime, the alleged complicity of the CIA, the FBI, and the Secret Service. The Committee criticized these agencies for the manner in which they assisted the Warren Commission. The House Assassinations Committee agreed in some respects with the Warren Commission, but departed from its conclusions in its finding that "* * * on the basis of the evidence available to it, that President John F. Kennedy was probably assassinated as a result of a conspiracy." [12] The Committee went out of existence with the expiration of the 95th Congress (1977).[13] The Committee's report was published on March 29, 1979, a year and one-half after the Committee completed its investigation. Along with the report, the Committee published 12 volumes of testimony and exhibits, totaling over 7300 pages of material, specifically related to its investigation of the assassination of President Kennedy.

Custody of its files passed to the House Permanent Select Committee on Intelligence. Its files were deposited at the National Archives, where, in accordance with prevailing rules of the House of Representatives, they are sealed for fifty years, until the year 2029. A resolution to provide for the accelerated release of the House Assassination Committee's files, H. Res. 160, was introduced on April 13, 1983, by former HSCA member, the late Representative Stewart McKinney, and cosponsored by four former members of the Committee. However, the bill was never reported to the House floor for

[11] Report of the Select Committee on Assassinations, U.S. House of Representatives. 95th Congress, 2d Session, March 29, 1979. p. 18, n.4.

[12] The Committee criticized the performance of those three agencies, saying that "the Secret Service was deficient in the performance of its duties; the FBI performed with varying degrees of competency in the fulfillment of its duties; and the CIA was deficient in its collection and sharing of information both prior to and subsequent to the assassination." House Report No. 95-1828, pp. 1, 2.

[13] The two year investigation entailed a cost of $5.5 million dollars. See, "The Assassination of President John F. Kennedy: Conspiracy Theories." No. 92-270 GOV. Congressional Research Service, Library of Congress. March 10, 1992. p. 8.

14-00000

a vote.[14] In addition to the legislation presently before this Committee, additional House legislation has been introduced in the 102d Congress with regard to release of the records of the House Assassination Committee.[15]

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[14] The resolution was co-sponsored by four other former members of the HSCA: Representatives Robert Edgar, Harold S. Sawyer, Walter Fauntroy, and Harold Ford.

[15] H. Res. 325. January 22, 1992. Representative Gonzalez. To provide for the release for public use of records of the former Select Committee on Assassinations.

H. Res. 326. January 24, 1992. Representative DeFazio. Requiring that the records of the Select Committee on Assassinations of the 94th and 95th Congresses be made available for public use.

H.R. 4090. January 3, 1992. Representative Traficant. To require the Government-held information pertaining to the assassination of John F. Kennedy be made available to the general public.

H.R. 4108. January 24, 1992. Representative DaFazio. To direct the Archivist of the United States to make available for public use the records of the Warren Commission. [Note: See above section summarizing Warren Commission records. The vast majority of all Warren Commission records have been available to the public at the National Archives for 27 years.]