

## EXECUTIVE SUMMARY

The Assassination Records Review Board was a unique solution to a unique problem. Although the assassination of President John F. Kennedy was the subject of lengthy official investigations, beginning with the Warren Commission in 1964, the public has continued to seek answers to nagging questions raised by this inexplicable act. These questions were compounded by the government penchant for secrecy. Fears sparked by the Cold War discouraged the release of documents, particularly those of the intelligence and security agencies. Even the records created by the investigative commissions and committees were withheld from public view. The assassination of President Kennedy has been shrouded in secrecy and mystery.

The suspicions created by government secrecy eroded confidence in the truthfulness of federal agencies in general and damaged their credibility. Finally, disturbed by the conclusions of the Oliver Stone movie, *JFK*, Congress passed the *President John F. Kennedy Assassination Records Collection Act of 1992* (JFK Act), mandating the gathering and opening of all records concerned with the death of the President.

The major purpose of the Review Board was to re-examine for release the records that the agencies still regarded as too sensitive to open to the public. Among its other tasks, therefore, Congress established the Review Board to help restore government credibility. To achieve this goal, Congress designed a truly unique entity.

Three provisions of the Act were at the heart of the design. First, Congress established the Review Board as an independent agency. Second, it consisted of five citizens, trained in history, archives and the law, who were not government employees but who had the ability to declassify government documents. Third, once the Board made the decision to declassify a document only the president could overrule its decision. Fortunately, Congress also gave the Board a sizable staff whose work was critical to its success.

The JFK Act passed by Congress on October 26, 1992, required all government agencies to search for the records in their possession concerned with the assassination and place them in the National Archives. The Act provided for the appointment of the Members of the Review Board within ninety days, but the transition between the Bush and Clinton administrations caused an 18-month delay between passage of the Act and the swearing-in of the Board Members. Only then could the Board hire staff and arrange for office space. This delay had two ramifications. First, the Act stated that the work of the Board was to be completed in three years, an unrealistic goal since more than 18 months had already elapsed. Second, agencies were sending documents to the National Archives before the Board established its guidelines for their release. Consequently and unfortunately, once the Review Board did provide guidance to the agencies, much of their initial work had to be revised, further slowing the processing and re-reviewing by the Board and its staff.

The Board's first task was to define the term "assassination record." The statutory definition, a record "related to the assassination of President John F. Kennedy," specifically included any record from the investigating agencies; records in the possession of the federal government and

any local or state government that assisted in the inquiry into the assassination. But, as noted in the Senate report, "it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records." Congress empowered the Board to determine whether a document was an assassination record and to cast a broad net for such records. Board members engaged in extensive discussion and sought advice from the public before finally issuing its broad definition.

The Review Board overcame its early challenges and, with the help of its able staff, developed guidelines for the release of documents. These served as the yardstick for both its staff and the federal agencies.

The Board's most important task was to review the information the agencies wished to postpone rather than release and to vote either to sustain the postponement or release the information. Since the Board was working in uncharted territory, it developed creative methods. Three review stages evolved over the four years of the Board's existence. First, the Board scrutinized each document with infinite care, and by choosing to meet often, made decisions on a document-by-document basis. It eschewed the more generic issue approach which was preferred by the agencies.

During the second stage, the Board delegated some routine decisionmaking to its Board staff, which proceeded with such care that even the slightest question about a document brought it to the Board's attention. Finally, agencies recognized the voting pattern of the Board and for purposes of efficiency began bypassing the review process on their own initiative and releasing records under the Board's guidelines. The Board's review process ultimately ensured that the Review Board scrutinized each piece of withheld information so that the American public would be confident that assassination records were open to the fullest extent possible.

The JFK Act established a stringent standard for postponing the opening of a record. Its minimal list of required postponements and emphasis on the bias toward disclosure separated it from either the Freedom of Information Act (FOIA) or the Executive Order that provides for disclosure of national security information. The Board proceeded cautiously as it examined its first documents under the provisions of postponement in Section 6 of the JFK Act. In particular, the Board balanced evidence for postponement against the public interest in release, bearing in mind the Act's "presumption of immediate disclosure." Before agreeing to postponement, the Board applied the stringent requirements for the "clear and convincing evidence" required by the Act. Decisions had to be made on names, dates, places, crypts, pseudonyms, file numbers, sources of information and the method by which it was obtained. Ultimately, the Board created a set of principles, a kind of "common law", that could be applied to many of the documents. Although the agencies often objected to the Board's decisions, they accepted both the statute and the Board's interpretation of it and, for the most part, cooperated.

The JFK Act specifically instructed the Review Board to go beyond the scope of previous inquiries. Since both the Board and its staff had high level security clearances, no agency could

prevent a search through every file. After locating files designated by the agencies, the Review Board staff members pursued new sources of assassination records. Most of the Review Board's additional requests for records went to the CIA and FBI, but there were also requests to the Secret Service, State and Defense Departments, National Security Agency and the President's Foreign Intelligence Advisory Board.

Given the massive volume of federal records, the search for additional records was time consuming and often frustrating. For every assassination record located and included in the collection, the staff literally reviewed hundreds of documents. The documents located through this search for additional records are among the most important in the collection. This report documents the Board's search for additional records and information.

The Review Board, in its effort to make the JFK Collection valuable to historians encouraged private citizens and organizations who possessed records of their own to donate them to the JFK Collection. The collection was significantly enriched by these donations. They included, for example, the desk diaries of former President Gerald Ford, the personal files of Jim Garrison, the New Orleans prosecuting attorney, notes taken during interviews with Lee Harvey Oswald by both a Dallas Police Captain and a former FBI agent, and films from individuals in Dallas and President Kennedy's friend, Dave Powers. They also include a donation of papers from the son of J. Lee Rankin, General Counsel of the Warren Commission, and the diary of Clay Shaw, the only person tried for the murder of John F. Kennedy (and quickly acquitted). The Review Board added to the collection, too, information from state and local offices and officials who were tied to the Oswald investigation.

The JFK Act also encouraged the Review Board to work with the State Department to include documents from foreign governments. The Board sought records from Russia, Belarus, Cuba and Mexico. For the most part, these attempts proved frustrating and fruitless owing to political and diplomatic constraints. Although many leads were pursued, only a few new records were obtained. This is a genuine loss to the historical completeness of the assassination records.

In the spirit of openness embodied in the JFK Act, the Review Board devoted a significant amount of time and resources listening to and corresponding with its various constituencies. It held a total of seven public hearings, one each in Dallas, Boston, New Orleans, and Los Angeles and three in Washington, DC. In addition, Board members participated in meetings of historical associations, spoke to public groups, and cooperated with assassination researchers and the Coalition on Political Assassination. Six groups of high school students from Noblesville, Indiana came to the Board to serve as interns during the summer months.

Twice, the Review Board called together a group of invited guests who are "experts" in their fields. The first conference was held in May 1995. It provided the Review Board and the staff with the opportunity to discuss prior investigative efforts that were thwarted due to lack of access to records. The participants provided the Board staff with recommendations for further searches. The second conference, held in April 1998, focused narrowly on the issue of document

declassification. This informative meeting helped Board Members to formulate recommendations for this final report.

From time to time the frequent and sustained contact with the public diverted the staff from its primary responsibilities - identifying and releasing records. However, the benefits far outweighed the costs. The Review Board received valuable leads from the public about the existence of other assassination records and, more important, received donations that enhanced the collection at the National Archives.

Finally, the Review Board staff implemented a program to ensure, to the fullest extent possible, that each agency complied with the JFK Act. A signed declaration was required from each agency, under penalty of perjury. This compliance statement described the record searches that it completed, records that it located, and other actions it took to comply with the law.

Before agencies submitted their Final Declarations of Compliance, the staff worked with them to resolve outstanding problems. In the compliance statement, each agency addressed the scope and adequacy of its search, the adequacy of its response to the requests for additional information, and the timeliness with which it processed its records for release. The Board and staff also decided to depose officials of agencies with poor records systems and those that failed to comply with the spirit of the Act.

The legacy of the JFK Review Board lies in the more than four million pages of records now in the National Archives and available to the public. These records include critical documentation on the events in Dallas, Lee Harvey Oswald, and the reactions of government agencies to the assassination. They also include documents that enhance the historical understanding of that traumatic event in recent American History by placing it in the broader context of political and diplomatic events.

With the passage of the JFK Act and the creation of the independent Review Board, Congress took a giant step toward rebuilding public confidence in the federal government. We urge the Congress, government agencies and the public to continue the effort to open documents under the provisions of the JFK Act. To that end, the Review Board makes the following recommendations:

*Recommendation 1:*

Future declassification initiatives concerning controversial events must depend on a genuinely independent body that reviews documents.

*Recommendation 2:*

Serious, sustained effort to declassify federal documents will require congressional legislation with clear standards of access, an enforceable review and appeals process, and a budget appropriate to implement the legislation.

*Recommendation 3:*

The Review Board “common law” of decisions, formed in the context of a “presumption of disclosure” and the “clear and convincing” evidence of harm criteria, should be applied to future declassification efforts. Perhaps parts of this “common law” might be codified to provide further guidance for declassifying federal records.

*Recommendation 4:*

Future declassification efforts should recognize the shortcomings of the JFK Act and work to avoid them.

*Recommendation 5:*

The problem of referrals for “third party equities” (classified information of one agency appearing in a document of another) must be addressed in future declassification activities by convening representatives of all agencies with interests in selected groups of important documents, and referring information to one another all at once. A second, complementary approach establishes uniform substitute language as a means of dealing with certain categories of recurring sensitive equities.

*Recommendation 6:*

Future declassification efforts, particularly those entailing a search for records, should incorporate a compliance program as an effective means of eliciting full cooperation in the search for records.

*Recommendation 7:*

To ensure that the provisions of the JFK Act are exercised after the Review Board passes out of existence, it is essential that *the National Archives have:*

- the authority and means to continue to implement Board decisions,
- an appeals procedure that puts the burden for preventing access on the agencies, and that
- the professional and public interest warrants the creation of joint oversight group (composed of representatives of the four organizations that originally nominated individuals to serve on the Review Board ) to facilitate the continuing execution of the provisions of the JFK Act.

*Recommendation 8:*

The Review Board model could be applied in certain extraordinary circumstances (such as, for example, the U.S. entry into World War II or perhaps in the war in Vietnam) where continuing controversy concerning government actions has been most acute and where an aggressive effort to release all “reasonably related” federal records would serve usefully to enhance historical understanding of the event.

*Recommendation 9:*

Both the Freedom of Information Act (FOIA) and Executive Order 12958 should be strengthened, the former to narrow the categories of information automatically excluded from disclosure, the latter to add “independent oversight” to the process of “review” when agency

heads decide that records in their units should be excluded from release. In addition, declassification efforts must be guided by a resolve to limit the period of time for which records might be classified, and, in both cases, substitute language must be used for all restrictions.

*Recommendation 10:*

A federal classification policy that substantially:

- *limits* the number of those in government who can actually classify federal documents,
- *restricts* the number of categories by which documents might be classified,
- *reduces* the time period for which the document(s) might be classified, and
- *increases* the resources available to the agencies and NARA for declassifying federal records is what is needed. Moreover, the most effective means of declassifying already restricted documents is the systematic declassification program mandated in the most recent Executive Order, though it surely needs far more resources and enforceable sanctions to be a truly successful effort.

**MAJOR ACCOMPLISHMENTS  
of ASSASSINATION RECORDS REVIEW BOARD**

- Reviewed and voted on over 27,000 previously redacted assassination records;
- Obtained agencies' consent to release an additional 33,000+ assassination records;
- Ensured that the famous "Zapruder Film" of the assassination belonged to the American people and arranged for the first known authenticity study of the Zapruder Film;
- Opened previously redacted CIA records from the Directorate of Operations;
- Released 99% of the "Hardway/Lopez Report" documenting the CIA's records on Lee Harvey Oswald's trip to Mexico City before the assassination;
- Conducted a three day audiotaped interview of former FBI Special Agent James P. Hosty, one of two agents who was responsible for the FBI's cases on Lee and Marina Oswald prior to the assassination;
- Acquired for public release two sets of original notes from Lee Harvey Oswald's interrogation in the Dallas Police Department taken by FBI Agent James Hosty and Dallas Homicide Division Captain Will Fritz (prior to the Board's existence, it was thought that no original notes existed);
- Clarified the controversial medical record of President Kennedy's autopsy and his treatment at Parkland Hospital by deposing 10 Bethesda autopsy participants and 5 Parkland Hospital treating physicians and conducting numerous unsworn interviews of Parkland and Bethesda personnel;
- Secured records relating to District Attorney Jim Garrison's prosecution of Clay Shaw for conspiracy to assassinate President Kennedy, including Shaw's diaries, records from Shaw's defense attorneys, investigative records from the District Attorney's office, and grand jury records;
- Obtained the full release of FBI documents that describe the FBI's attempts to track Oswald's activities in Europe prior to the assassination;
- Made available to the public all FBI and CIA documents from previous official investigations;
- Acquired for the American people film footage depicting events surrounding the

assassination, portions of which had never been seen before, including the Dallas television station KTVT outtakes of President and Mrs. Kennedy in Dallas and the aftermath of the assassination;

- Sponsored ballistics and forensic testing of Warren Commission Exhibit 567, the bullet “nose fragment” from the front seat of the Presidential limousine, (the HSCA Firearms Panel first recommended the testing in 1978, but the testing was not conducted until the Review Board existed);
- Permanently preserved *all* the autopsy photographs of President Kennedy in digitized form, and conducted sophisticated digital enhancement of selected, representative images;
- Reviewed IRS and Social Security tax, employment, and earnings records on Lee Harvey Oswald, the authenticity of which has been questioned by researchers who have not been allowed access to such material. Required IRS to prepare a releasable report without releasing tax return information, the disclosure of which is prohibited by Federal law.