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## **Chapter 2: Assassination Records Review Board and Staff**

[DRAFT, G:\PRESS\PRESS98\FINALRPT.WPD, June 30, 1998]

### **The Assassination Records Review Board and Staff**

“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 Governments records related to the assassination of President John F. Kennedy.”

--The President John F. Kennedy Assassination Records Collection Act of 1992.

The JFK Act also stipulates that the President should make the nominations to the Review Board after considering the recommendations of the American Historical Association, the Organization of American Historians, The Society of American Archivists, and the American Bar Association. These recommendations were made, and the five members of the Board were appointed by President Clinton, confirmed by the United States Senate, and sworn in on April 11, 1994.

The Honorable John R. Tunheim was recommended to the President by the American Bar Association. He was later nominated by the Review Board Members to serve as Chairman. Judge Tunheim is currently a United States District Court Judge in the District of Minnesota, and is the former Chief Deputy Attorney General of the state of Minnesota. Judge Tunheim worked in the Office of the Attorney General for 12(?) years.....He holds a J.D. from the University of Minnesota Law School, and a B.A. from Concordia College.

Dr. Henry F. Graff is a Professor Emeritus of History at Columbia

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University, where he was employed as an Instructor to Full Professor from 1946-1991. Dr. Graff was recommended to the President by the White House. He served as the Chairman of the History Department from 1961-1964. Dr. Graff was also a Senior Fellow of the Freedom Forum Media Studies Center from 1991-1992. He holds a Ph.D. and a Masters degree from Columbia University, and a B.S. from City College, New York.

Dr. Kermit L. Hall is the Dean of the College of Humanities, and Professor of History and Law at The Ohio State University. He was recommended to the President by the Organization of American Historians. Dr. Hall was previously the Dean of the College of Arts and Sciences and Professor of History and Law at the University of Tulsa. Prior to that he held teaching positions at the University of Florida, Wayne State University, and Vanderbilt University. Dr. Hall holds a Ph.D. from the University of Minnesota, is a Master of Study of Law, Yale University Law School, M.A. from Syracuse University, and a B.A. from The University of Akron.

Dr. William L. Joyce, recommended to the President by the Society of American Archivists, is currently the Associate University Librarian for Rare Books and Special Collections at Princeton University. Dr. Joyce was formerly the Assistant Director for Rare Books and Manuscripts the New York Public Library. Dr. Joyce also held positions at the American Antiquarian Society, initially as the Curator of Manuscripts, and later as the Education Officer. He holds a Ph.D. from the University of Michigan, a M.A. from St. John's University, and a B.A. from Providence College.

Dr. Anna K. Nelson is the Distinguished Adjunct Historian in Residence at the American University. She was recommended to the President by the American Historical Association. Dr. Nelson has been a professor at the American University since 1986, however, she has taken leaves of absence to serve as the Distinguished Visiting Professor at Arizona State University, and Adjunct Associate Professor in History at Tulane University. Dr. Nelson was also the Director of the History and Public Policy Program at George Washington University from 1980-1982. She holds a Ph.D. from George Washington University, a M.A. and a B.A. from the University of Oklahoma.

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**Assassination Records Review Board Staff**

The JFK Act required that, “A person appointed to the staff 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” (JFK Act, section 8, (b)(2)). These stipulations in the JFK Act slowed down considerably the process of assembling a staff, as well as the process of educating the staff about the agencies and relevant issues (See page XX).

One of the first tasks performed by the Review Board members was the selection of an Executive Director. The Board members hired Dr. David G. Marwell. Dr. Marwell served as the Review Board’s Executive Director from August 1994 to September 1997. Prior to working at the Review Board, he served as the Director of the Berlin Document Center. He is the former Chief of Investigative Research in the Office of Special Investigations at the Department of Justice. He holds a Ph.D. in History from the State University of New York at Binghamton and a B.A. in English from Brandeis University. In the fall of 1994, Dr. Marwell assembled a senior staff consisting of a General Counsel, an Associate Director for Research and Analysis, and Associate Director for Communications, and an Associate Director for Administration.

After the departure of Dr. Marwell, the Review Board members appointed Dr. T. Jeremy Gunn as its Executive Director. He served as the Review Board’s Associate Director for Research and Analysis since November 1994, in addition to serving as General Counsel since January 1996. Dr. Gunn was an attorney for the Washington law firm of Covington & Burling from 1988 until he joined the Review Board staff. He is a graduate of Boston University Law School and received a Ph.D. from Harvard University.

The Review Board's staff (See Appendix A) consisted of approximately 24-30 full-time employees at any given time throughout the

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mandate of the Review Board, and the staff members were involved in management, administrative, analytic, and investigative duties. Review Board staff analysts identified and reviewed records and made recommendations to the Review Board. Organized into three teams, FBI, CIA, and Military, analysts had to develop the necessary working relationships with the agencies for which they were responsible. All team members developed subject matter expertise, which was essential to the review of records and in supporting the Review Board members in their determinations. Moreover, analysts carried out the important assignment of determining whether additional records should be requested from agencies. Review Board staff investigators, who were primarily responsible for locating non-Federal records, had much success in identifying and locating significant collections of records in private hands and arranging for their donation to the JFK Collection at the National Archives. Furthermore, investigators played a critical role in locating former government employees who were subsequently interviewed regarding the possible existence and location of additional assassination records.

### **Definition of an “assassination record”**

In order for the Review Board to begin the declassification of records related to the assassination of President Kennedy, it first had the task of establishing the definition of an “assassination record.”

### **JFK Act, § 7(n)**

#### *Interpretive Regulations*

The Review Board may issue interpretive regulations.

### **Senate Report, p. 21**

#### *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

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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

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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.

### **House Report, p. 33**

Section 10(j) [of the House version of the JFK Act] authorizes the Review Board to issue interpretive guidelines to assist in implementing the purposes of this joint resolution. The Committee does not intend for the Review Board to engage in notice and comment rulemaking as contemplated by the Administrative Procedure Act in issuing its interpretive guidelines. The Committee does encourage consultation by the Review Board with a variety of diverse representatives of general and scholarly interest in assassination materials, including those identified in Section 10(e).

It is the Committee's intent that with a minimum of formality the Review Board shall promptly adopt and make publicly available any necessary interpretive guidelines. Among the topics which the Review Board may wish to address in such guidelines are coordination with executive branch agencies, security procedures, and personnel clearance procedures. **It is the Committee's intent that the Review Board exercise broad discretion in the management of its affairs through interpretive guidelines, but any delay in issuing such guidelines should not be allowed to delay the release of assassination materials.**

### **Nominations of Graff, Tunheim, Nelson, Joyce, and Hall**

After the nomination hearings, Congress asked every Review Board

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nominee to provide written responses to the following questions:

*Question 7*

The definition of “assassination records” contained in the Records Review Act establishing this Board was intentionally left very broad. What kinds of criteria and factors will you use in determining whether or not a document or other item will fall within the definition?<sup>1</sup>

*Question 8*

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<sup>1</sup>*Answers to Question 7*

**Graff:** Plainly any document that directly or tangentially deals with the Assassination will be subsumed under the head of “assassination record.” but I believe that some documents and classes of documents will have to be labeled such on an *ad hoc* basis.

**Tunheim:** It is my view that the Board should more fully understand the scope of the potential

records before attempting to define the term. I favor a broad definition in order to fulfill the clear intent of Congress. One important criteria will be the extent to which the record adds to the public understanding of the events and characters involved in the assassination and its aftermath.

**Nelson:** My sense at this point is that the Board should encourage this broad definition of records while we establish the parameters of the issue. Defining the records is the perfect topic for public hearings. Most individuals who have extensively studied the available information have opinions on this matter. In addition, the index of names from the [HSCA] report, and the subject index in the National Archives will help clarify the issues for us. I’m sure the Board will spend considerable time on this issue because of its importance to the work of the Board.

**Joyce:** The definition of “assassination records” will be a major challenge for the REVIEW BOARD to

resolve in a workable manner. In my view, the REVIEW BOARD will need to establish criteria addressing: (a) the temporal proximity of the record in relation to the assassination, (b) the content of the record relative to the assassination, and (c) the relation of the record to important factors and issues perceived to be related to the assassination.

**Hall:** The statute creating the REVIEW BOARD defines an assassination record as [statutory definition]. These materials are certainly, therefore, the core of what constitutes the “assassination records” that the Board is duty bound to treat. Any of these materials that are held in private hands are also covered by the statute and are subject to its provisions. In general, I think that the Board should take a broad view of what constitutes an assassination record within the terms of statute.

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Many assassination records will likely be in the possession of private citizens, some of whom may be unwilling to permit disclosure. How far should the Board venture to seek out assassination records from these sources?<sup>2</sup>

*Question 9*

You have significant powers under the Board to reasonably

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<sup>2</sup>*Answers to Question 8:*

- Graff:** I believe that the Board must respect the privacy of citizens who choose to maintain it by withholding materials. Still, I hope that we will be able to exercise considerable persuasion on such people, in the interest of history and public service.
- Tunheim:** I firmly believe that the Board has an obligation to seek out assassination records from all sources; public and private. The goal of Congress in passing S. 3006 was to ensure broadest possible disclosure of the records relating to the assassination. The fact that a document exists only in private hands should not deter the Board in any way from seeking to compel its transmission to the National Archives.
- Nelson:** The Board has an obligation to examine the records of former public officials who participated in any aspect or phase of investigation concerning the assassination, or of former public officials closely allied with Kennedy, as well prosecutors, etc. The Board should tread carefully when seeking papers from those who were always private citizens. Papers of individuals who were likely to have played a large role and that may be rich in information may be worth pursuing. In other instances, the peripheral nature of the individual may not be worth the legal problems in obtaining them. In general, this will have to be a flexible policy.
- Joyce:** Through fair and impartial application of the criteria developed by the REVIEW BOARD and keeping in mind always the express purposes of the enabling legislation, I believe that the REVIEW BOARD should be as aggressive as it needs to be to achieve disclosure of relevant records. That also applies to records held by private citizens, if such records are within the purview of the legislation.
- Hall:** Personal materials kept by private individuals of events surrounding the assassination pose difficult issues. There is, for example, the question of whether such materials have been "taken" as private property under the statute. Moreover, a diary maintained by a private individual living, let us say, in Nome, Alaska, that recounted his or her reaction to the assassinations surely not covered by the statute. If, however, a private individual has any of the kinds of materials cited in the statute, then these materials do fall under the Board's purview and are subject to disclosure. Private individuals should not be in the position of holding public records that bear on the assassination. Public officials that maintained private records relating to the assassination, to the extent that those records fall within the bounds of the statute, might also be susceptible to disclosure.
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search for assassination records. For example, the Board may administer oaths and subpoena and grant immunity to witnesses.

(b) To what extent would you propose compelling disclosure of a record from private and foreign sources?<sup>3</sup>

### House Judiciary Committee Hearings from May 20, 1992

Did not find anything.

### Green Book

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<sup>3</sup>*Answers to Question 9(b):*

**Graff:** I would hope to proceed as earnestly as possible within the law and the protection of privacy to compel disclosure.

**Tunheim:** Compelling disclosure of a record from a private and foreign sources would depend

largely on the importance of the record for fully understanding the assassination and its aftermath. If in the judgment of the Board, the record is significant, and not reviewable in a public agency, the Board should utilize a broad standard for compelling such disclosure.

**Nelson:** As an historian, I have never had the experience of serving on a group that had such powers. Fortunately, the Board has a member from the ABA whose expertise will be essential on these matters. Currently, I think the Board should consider use of all its powers, including offering immunity, compelling disclosure from private and foreign sources and disclosing information under seal of a court. I also think the Board should be very cautious in using these powers. Before resorting to legal confrontation, the Board should make every effort to reach agreement through negotiation. In addition, the Board should weight the value of the information to be gained and exert all its powers when there is some indication that information is vital.

**Joyce:** In light of the broad powers of the REVIEW BOARD to search reasonably for assassination records, I believe: (b) the Board might propose disclosure of a record by private and foreign sources, though I would seek legal guidance as to what steps would be necessary (much less desirable!) to compel such disclosure.

**Hall:** If the material fell under the statutory provision for an assassination record, then the Board should compel its disclosure, or at least consider whether it should be postponed for disclosure.

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Sen. Glenn at 2

I believe the major issues include, first, how will agencies and others who hold records define the universe of, quote, “relevant” Kennedy assassination materials. It is important to be able to go beyond the frame of reference of previous inquiries of Commissions and Committees, but the question must be asked, where will the search for documents end. In other words, what is relevant?

Sen. Boren at 16

One involves setting the boundaries of, quote, “assassination material.” The joint resolution defines the term “assassination material” as “a record that relates in any manner or degree to the assassination of President John f. Kennedy.” Given the wide ranges of theories that have developed as to who killed President Kennedy and why, many types of records arguably relate in some way to the assassination. What records regarding, for example, Cuba, Vietnam, and organized crime should be covered? This matter requires careful consideration.

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I do, however, suggest that the Committee, either in the Joint Resolution itself or in report language, set more precise parameters defining “assassination material,” or else direct the Review Board to do so promptly after it is established. Otherwise, we may end with widely varying interpretations by the various records agencies and committees as to what documents should be forwarded to the Review Board executive director.

The final definition of an “assassination record” was published in the Federal Register on [DATE] and appeared as follows:

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Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992.

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 regulations after considering public comment received in writing and through testimony at public hearings convened by the Review Board.

EFFECTIVE DATE: This interpretive regulation is effective [Insert date of publication in the FEDERAL REGISTER].

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, sec. 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 was published at 60 FR 7506-7508 (Feb. 8, 1995), comply with that mandate.

As the Supplementary Information accompanying the proposed interpretive regulations stated, the Review Board's goal in issuing this

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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 have already begun 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.

60 FR 7506. 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

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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 numerous federal agencies, state and local government entities, and individuals. Federal agencies providing written comments include the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), NARA, and the Department of State. State and 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.

Numerous private citizens with an interest in the Review Board's work also submitted comments.

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, the text published here.

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### 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 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

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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 whom 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

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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 these 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 requires that artifacts be included within the JFK Assassination Records

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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 discretion 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 records 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

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§ 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

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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 (e) 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

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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) of § 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 materials 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 may 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."

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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 not 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. Whatever economic impacts may result to small entities were already considered by Congress in enacting and amending the FOIA or by OMB in promulgating the Uniform Fee Schedules and Guidelines.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.  
Accordingly, the Review Board hereby proposes to establish 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.
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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 Sec. 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 inter-agency 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

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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 records from sources identified in subparagraphs (a) through (e) of this section;
  - (g) Persons, including individuals or corporations, who have themselves created or have obtained such records from sources other than those identified in subparagraphs (a) through (e) of this section;
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- (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 Sec. 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
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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 above, 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 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,

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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 hardware 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 their true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person.

(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,

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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.

In determining that a record or group of records meets the definition of assassination records, the Review Board must determine that the record or

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group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

### **Hearings, Conferences, and Meetings**

The Senate report of The President John F. Kennedy Assassination Records Collection Act of 1992 stated that " the underlying principles guiding the legislation are independence, public confidence, efficiency and cost effectiveness."

In order to achieve these objectives, the Act gave the Board the specific powers to, among others:

- \* receive information from the public regarding the identification and public disclosure of assassination records; and
- \* hold hearings, administer oaths, and subpoena witnesses and documents.

**Hearings.** In an effort to gather as much information as possible from the American public about the existence and location of "assassination records," the Review Board conducted a total of seven public hearings in Dallas, Washington, D.C. (3), Boston, New Orleans, and Los Angeles. The Review Board believed that in order to ascertain what materials existed throughout the country, it was important to hold such hearings outside of Washington, D.C., and in key cities. At each hearing the Review Board invited members of the public to testify, and these witnesses provided input about materials related to the assassination of President Kennedy. [For a list of all witnesses, see XX].

**Experts Conferences.** The Review Board also held two 'Experts Conferences' in Washington, D.C. For the first such conference, held in May 1995, the Review Board invited individuals that played a role in past investigations into the assassination. These experts provided information to the Review Board and staff about .....

In April 1998, the Review Board held another conference, this time focusing more on the declassification of documents in general.

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**Meetings.** The majority of the Review Board's regular meetings were held in Washington, D.C., and were closed to the public. These meetings were held 1-2 times each month in order for the Review Board to review classified documents and to make determinations about these documents. The Review Board held XX closed meetings and processed for release XXXXXXXX documents. All of these documents are now a part of the JFK Collection at the National Archives and Records Administration.

While the majority of the Review Board's meetings were closed to the public, the Review Board did hold XX public meetings under the Sunshine Act. Contrary to public hearings, where the Review Board would hear testimony from witnesses, members of the public could observe the Board at work, when not discussing classified documents. These meetings provided the Review Board the opportunity to discuss in public topics such as the status and disposition of the Zapruder film (see file XX), documents containing "no believed relevance" (NBR) to the assassination, and the final report.

### **Summary of Board's actions on Records**

As of the completion of its mandate, the Review Board processed XXXXXXX documents, consisting of both records voted on by the Board, in addition to consent releases. All of these documents are now a part of the JFK Collection at the National Archives and are available to the public.

In total, the Review Board released XXXX FBI documents, XXXX CIA documents, XXXX Army, NSA, libraries. The Board voted to release XX% of these documents in full, and XX% in part. Of the documents postponed in part, X% contain fewer than 5 redactions [check with Peter.] (See Chapters 3, 4, 5, and 6.)

### **Outreach**

The Review Board maintained contact on a regular basis with members of the public who requested to be placed on our mailing list. The Review Board had a regular mailing list as well as an electronic list, and the total number of

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recipients on the lists combined grew to approximately 1,000. Members of the public on the Review Board's mailing list received press releases, updates on the Review Board's activities, meeting results, information about documents transferred to the JFK Collection, and information about Federal Register notices.

**Appearances at conferences.** On October 20, 1996, David Marwell, Executive Director, updated the research community on the activities of the Review Board during the 1996 conference of the Coalition on Political Assassinations (COPA). Dr. Marwell informed the researchers of the Review Board's actions in FY 1996, and provided a preview of the Review Board's agenda for 1997. The presentation concluded with a question and answer period. On October 21, 1996, the Review Board held an Open House for the public and the research community. Open House attendees were given access to newly released documents, the Review Board video library, and a tour of Review Board offices.

On January 6, 1996, the Review Board made a presentation at the annual meeting of the American Historical Association (AHA) in Atlanta, Georgia. The Review Board provided background information and updates regarding its mandate. Approximately 100 AHA members attended, and the Review Board provided time for a question and answer period.

On March 28, 1996, the Review Board made a presentation at the Organization of American Historians (OAH) Conference. One-hundred OAH members attended the session and heard the Review Board provide a brief introduction, and then continued with a lengthy question and answer period regarding specific Board actions.

On August 29, 1996, the Review Board and REVIEW BOARD Executive Director David Marwell attended the annual meeting of the Society of American Archivists in San Diego. The Review Board gave a presentation about its activities, and Marwell made a presentation about the Review Board on a panel about access issues and U.S. Government information.

In May 1998, Review Board Executive Director T. Jeremy Gunn spoke to students and faculty at Stanford University. Dr. Gunn spoke about the declassification process, particularly its problems and solutions.

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**Submissions to newsletters and journals.** Several times a year, Review Board Chairman Tunheim submitted Review Board updates to journals and newsletters that serve the research community. Chairman Tunheim provided articles about the Review Board to the *AARC Quarterly*, *Open Secrets*, and *Probe*, all of which serve researchers and are circulated worldwide. In addition, REVIEW BOARD Executive Director David G. Marwell, General Counsel and Associate Director for Research and Analysis, T. Jeremy Gunn, and Associate Director for Communications, Thomas E. Samoluk, participated in an extensive, in-depth interview about the Review Board with the editor of *Probe*.

**Special outreach project.** In April 1996, Review Board Chairman John Tunheim, REVIEW BOARD Executive Director David Marwell and Associate Director for Communications Tom Samoluk visited Dallas to tour assassination-related sites and determine fertile areas for additional documents. The tours included the Sixth Floor Museum at the former Dallas School Book Depository, a review of the Dallas Municipal Archives, and discussions with local newspapers to appeal for assassination-related documents, photographs or motion picture film taken by amateur photographers. This trip resulted in the Review Board's acquisition of the "Veazey film" (See Chapter 6).

**High School interns.** During its tenure the Review Board hosted six groups of students from Noblesville High School in Noblesville, Indiana. The students, along with their history teacher, Mr. Bruce Hitchcock, came to the Review Board offices to serve as interns. The students worked diligently and provided the Review Board staff with invaluable assistance in creating databases and processing declassified documents for release to the American public. Mr. Hitchcock also played an important role in the Review Board's extension of one year, as he provided testimony to the National Security, International Affairs, and Criminal Justice Subcommittee in support of the Review Board's request for a one-year extension.

**Reports to Congress.** Following the passage of H.R. 1553 (see below) the Review Board was required by the Committee on Government Reform and Oversight to provide monthly reports regarding its status and projected completion of its mandate. Beginning in August 1997, each month the Review

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Board sent updates to the Committee Chairman, Congressman Dan Burton (R-IN). (See file 10.9).

### **Request to Congress for additional year**

When Congress drafted the JFK Act, it estimated that the Review Board would complete its mandate in three years. There were, however, a number of delays in the early phase of the Board's operation that affected the ability of the Board to meet the deadline set by Congress.

Although the JFK Act was signed into law in October 1992, the Board was not sworn in until April 1994. While Congress passed the JFK Extension Act in 1994 to reset the clock and to give the Board a full three-year mandate, it did not foresee the impact of the agencies operating without the guidance of the Review Board. During the 18-month period between the passage of the Act and the appointment of the Review Board, some government agencies proceeded with independent reviews of their files in the absence of Review Board guidance. Unfortunately, these agencies had to revise a significant amount of work once the necessary Review Board guidance was available.

In addition, the JFK Act contains certain provisions that considerably slowed the early phase of the Review Board's operation and delayed the point at which it could operate effectively in its review of records. As an independent agency, the Board had to locate and construct office space that was suitable for the storage of classified material. At the same time, the Board had to hire a staff and get it cleared at the Top Secret level. Significantly, there is a provision in the JFK Act that prohibited the Review Board from hiring (or detailing) individuals employed by other Federal agencies. As a result of these built-in delays, the Review Board did not even have the full three years Congress initially envisioned as being necessary to complete the job.

The Review Board was entrusted by Congress with the significant responsibility of ensuring, to the best of its ability, that the historical and documentary record relating to the assassination of President Kennedy is complete and fully available to the American people. The Review Board worked diligently and carefully to comply with the provisions of the JFK Act,

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painstakingly reviewing records and evaluating complex evidence submitted by agencies in support of postponing the release of these records. The Review Board's scrupulous attention to detail and careful weighing of national security concerns have required a significant amount of time that it believes was not foreseen by the drafters of the JFK Act.

The JFK Act was unduly optimistic regarding the time that would be required to fulfill the Review Board's mandate as set forth by Congress. Neither Congress nor anyone else could have sufficiently appreciated the volume and complexity of work that would be required for the Review Board to complete the work mandated by Congress. As a result of the Review Board's protracted start-up, a budget carryover of no-year funds from its first year was sufficient to fund a full quarter of continued operation. The Review Board consequently required only \$1.6 million of additional funds to continue operating for one additional year.

Three unforeseen difficulties impeded the Review Board in completing the workload created by Congress. The first was the inability of Federal agencies, particularly the CIA and FBI, to review and process the statutorily-defined "assassination records" in the time allotted and to make them available for Review Board action. Section 5(c)(1) of the JFK Act provided that all Federal agencies should complete their review and identification of "assassination records" within 300 days of the date the law went into effect (October 26, 1992). Accordingly, all agencies should have completed the initial identification and review process by approximately September 1, 1993. In fact, no agency had completed its review at that point.

The second impediment was the delay in the appointment and staffing of the Review Board. Section 7(a)(2) provided that the President was to appoint Review Board members 90 days after the enactment of the statute, that is by approximately January 25, 1993. In fact, the Review Board members were not appointed by the President and confirmed by the Senate until April 11, 1994. (During this 90-day period the Bush administration was replaced by the Clinton administration. Although the delay caused by the change in administration is fully understandable, it significantly affected the schedule originally contemplated by Congress.) Because of the lateness of the appointment of the Review Board,

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Federal agencies were unable to obtain the early guidance of the Review Board on the questions of the definition of “assassination record” and the standards for postponements under Section 6 of the JFK Act. Accordingly, much work of the agencies needed to be revised, which, in turn, slowed down their processing and re-reviewing of assassination records. In addition, the protracted start-up of the Review Board, which resulted from certain statutory restrictions and requirements, prevented the Review Board from being able to engage in the efficient review of records until the second half of its first year.

Finally, and importantly, the JFK Act properly affords the agencies the opportunity to provide evidence to the Review Board in support of recommended postponements. The Review Board believes that, in order to protect important national security secrets and safety concerns for informants and agents, the agencies need to have every reasonable opportunity to present evidence about the importance of redacted information. This process, which is an important component of the JFK Act, has been very time consuming for both the agencies and the Review Board. Although it could have acted much more swiftly by not affording the agencies the opportunity to collect and provide evidence, the Review Board would have neglected its duties to make informed judgments.

In summary, the agencies, for different reasons, had not completed the work assigned to them by the JFK Act. The Review Board attributed such delays by the CIA and the FBI not to any intended disregard or disrespect for the law, but to an enormous volume of work that they had not been able to complete within the short deadlines provided by Congress. The Review Board believed that in order for it to be faithful to its historical responsibility and commitment to release to the public all known assassination records, it required an additional year.

Therefore, it recommended to Congress that the JFK Act be extended for one year by amending Section 7(o)(1) by striking “1996, 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 period” and inserting “1998.”

### **Passage of H.R. 1553**

On May 8, 1997, H.R. 1553 was introduced by Congressman Dan Burton (R-IN). H.R. 1553, a bill that would amend the JFK Act to provide one additional year

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for the Review Board to complete its work, was cosponsored by Congressman Louis Stokes (D-OH) and Congressman Henry Waxman (D-CA).

On June 4, 1997, there was a hearing on H.R. 1553 before the National Security, International Affairs, and Criminal Justice Subcommittee, of the House Government Reform and Oversight Committee. The Honorable Louis Stokes, Review Board Chairman Judge John R. Tunheim, writer Max Holland, and teacher Bruce Hitchcock all testified in support of H.R. 1553. On July 3, 1997, President Clinton signed H.R. 1553 into law, thus extending the authorization of the Review Board for one additional year, to September 30, 1998..

**In case I need to list witnesses at hearings.....**

*Washington, D.C.*

*Tuesday, October 11, 1994*

Witnesses:

Page Putnam Miller, James H. Lesar, Mark S. Zaid, Charles J. Sanders

John Newman, Daniel Acorn, Peter Dale Scott, John Judge, William Kelly

Harrison Livingstone, Max Holland, Martin Barkley, Daryll Weatherly

*Dallas, Texas*

*Friday, November 18, 1994*

Witnesses:

Jim Marrs, David J. Murrah, Adele E.U. Edisen, Gary Mack, Robert Vernon, Thomas Wilson, Wallace Milam, Beverly Oliver Masseur, Steve Osborn, Philip Tenbrink, John McLaughlin, Gary L. Aguilar, Hal Verb, Thomas Meros, Lawrence Sutherland, Joseph Backes, Martin Shackelford, Roy Schaeffer, Kenneth Smith

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*Boston, Massachusetts*  
*Friday, March 24, 1995*

Witnesses:

George Michael Evica, Philip H. Melanson, Edgar Tatro, Priscilla Johnson McMillan, Dick Russell, Richard Trask, Steven D. Tilley

*New Orleans, Louisiana*  
*Wednesday, June 28, 1995*

Witnesses:

The Honorable Lindy Boggs, The Honorable Harry F. Connick, Sr., Wayne Everard, Michael L. Kurtz, Stephen Tyler, Cynthia Anne Wegmann, Steven D. Tilley

*Washington, DC*  
*August 6, 1996*

Witnesses:

John Pereira, J. Barry Harrelson, T. Jeremy Gunn, Steven D. Tilley

*Los Angeles, California*  
*Tuesday, September 17, 1996*

Witnesses:

Robert Tanenbaum, Eric Hamburg, Wesley Liebeler, James Rankin,

David Belin, James DiEugenio, David Lifton, Steve Tilley

*Washington DC*  
*Wednesday, April 2, 1997*

Witnesses:

T. Jeremy Gunn, Robert Brauneis, James Lesar, Josiah Thompson, Moses Weitzman, Richard Trask, Art Simon, Debra Conway

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