

# Chapter 1: The JFK Act

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## Introduction

This Report is being submitted to the Congress of the United States and President William J. Clinton by the Assassination Records Review Board in compliance with Section 7(o)(2) of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Section 2107 (note), PL 102-526 (the “JFK Act”).

The Assassination Records Review Board (“Review Board”) is an independent federal agency created by the JFK Act to oversee the identification and release of records related to the assassination of President John F. Kennedy. The JFK Act was enacted on September 30, 1992, and signed into law by President George Bush on October 26, 1992. The five members of the Review Board were appointed by President William Clinton, confirmed unanimously by the U.S. Senate and sworn in on April 11, 1994.<sup>1</sup> The members of the Review Board are: the Honorable John R. Tunheim, Dr. Henry F. Graff, Dr. Kermit L. Hall, Dr. William L. Joyce, and Dr. Anna K. Nelson. At its first meeting on [date], 1994, the Review Board elected John Tunheim as its chairman. On July 21, 1994, the Review Board selected

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<sup>1</sup> John R. Tunheim and Kermit L. Hall were appointed on September 7, 1993; William L. Joyce and Anna K. Nelson on October 25, 1993, and Henry F. Graff on November 4, 1993.

Dr. David G. Marwell to be its Executive Director. Dr. Marwell served in this position until October 11, 1997 and was succeeded by T. Jeremy Gunn.<sup>2</sup> Dr. Gunn served as Executive Director until July 24, 1998, and was succeeded in turn by Laura A. Denk, who held the post for the duration of the Review Board's life.

The JFK Act established the Review Board for a period of two years from the date of enactment, with an option for a one-year extension to be voted by the Review Board should its work not be completed in the initial two-year period. Given the long delay between passage of the JFK Act and the swearing in of the Review Board, Congress decided to reset this three-year time clock. This was accomplished by the JFK Extension Act, approved by Congress on October 6, 1994.<sup>3</sup> The Review Board exercised its one-year extension option by unanimous vote on [date], thereby extending its life through the end of Fiscal Year 1997 (September 30, 1997). Congress subsequently enacted Public Law 105-25, extending the tenure of the Review Board for one final year (through the end of Fiscal Year 1998), and making September 30, 1998, the final sunset date for the agency.

The JFK Act represents a radical departure from the manner in which

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<sup>2</sup> Dr. Gunn was appointed Interim Executive Director on September 29, 1997, and installed as Executive Director on October 13, 1997.

<sup>3</sup> Public Law 103-345.

the federal government normally identifies and processes records for release to the American people. With this law Congress sought to provide an innovative response to a singular and troubling phenomenon: the conviction, apparently held by millions of Americans, that their own government was somehow involved in a conspiracy to cover up the truth about the murder of President John F. Kennedy.<sup>4</sup> At least in part, this conviction was founded on the knowledge that a vast trove of unreleased records regarding the assassination remained locked in government files, unavailable to the public. Driven by this perception of government secrecy, the pervasive skepticism regarding the various official explanations and investigations of President Kennedy's death had, by 1992, become profoundly corrosive of the body politic. A popular if controversial film dramatization of the circumstances surrounding the President's death, Oliver Stone's *JFK*, focused Congressional minds on this credibility gap even as it widened the chasm. On one level, the solution was self-evident. If the question had become an alleged cover-up, the answer surely lay in maximum disclosure: the only cure for secrecy-induced disbelief was openness. But how could Congress ensure that an effort to restore the credibility of government would itself be credible to the American people? The answer: a citizen board unconnected with previous investigative efforts, empowered as an independent agency

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<sup>4</sup> A November, 1993, Gallup poll found that, thirty years after the assassination, 81% of the American people believed there has been an official cover-up regarding President Kennedy's death. Cited by Anthony and Robbyn Summers in "The Ghosts of November," *Vanity Fair*, December, 1994, p. 88.

with unprecedented authority to identify and secure assassination records held anywhere in the government. Given sufficient time, resources, and inter-agency cooperation, Congressional sponsors of the JFK Act hoped such a body could successfully oversee the release of as many as two million pages of withheld assassination records spread across a multitude of disparate files and agencies. The charge of the Review Board was not to reinvestigate the assassination of President Kennedy, but to open records that Congress determined the American people have a right to see. To borrow a phrase from a contemporary culture shaped in no small measure by the events of November 22, 1963, the truth may or may not be out there. But at least the records should be. And once they are, every American can draw their own conclusions about what happened in Dealey Plaza, and why. As one key proponent of the JFK Act (and former Warren Commission staff attorney) testified during legislative hearings: “It is very important to put it all out there and let the chips fall where they may.”<sup>5</sup>

The Report which follows details the efforts of the Review Board to fulfill its statutory mandate to identify, process, and release records relating to the assassination of President John F. Kennedy. The remainder of this chapter provides a historical overview of the various assassination

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<sup>5</sup> Senator Arlen Specter, Hearing Before the Committee on Governmental Affairs, United States Senate, One Hundred Second Congress, Second Session, on S.J. Res. 282, *The Assassination Materials Disclosure Act of 1992*, p. 23.

investigations, the records they generated, and the mounting pressures for the release of those records. This survey includes a legislative history and section-by-section analysis of the JFK Act. Chapter 2 provides summary information about the Review Board and its workings: its membership and staff, a history of its meetings and hearings, its outreach efforts to the public, a chronicle of its earlier reports to Congress, etc. Chapter 3 speaks to the records themselves, and the process by which they have been reviewed. Chapter 3 also relates some of the problems encountered in the review process set up by the JFK Act, how those problems have been resolved, and how the review process might be improved. Chapter 4 explicates the specific criteria and standards for release of information which the Review Board followed in implementing the JFK Act. Chapter 5 reviews compliance with the JFK Act on an agency-by-agency basis. Chapter 6 relates the efforts made by the Review Board to locate and secure additional assassination records beyond those known to be held by federal agencies when the JFK Act was passed. These efforts include the discovery and pursuit of previously unknown federal records, outreach to state and local governments, and solicitations for records held in private hands. The final chapter, Chapter 7, summarizes the Review Board's findings. To the extent that the JFK Act offers a new paradigm for the treatment of important or controversial collections of records, Chapter 7 also recounts lessons learned and makes recommendations for the future handling of such records. The Report then concludes with various appendices containing relevant material

of potential interest (e.g. lists of staff members, depositions, interviews, donations to the JFK Collection at the National Archives; principal staff memos, etc.).

### **The Problem: A Legacy of Secrecy and Mistrust**

Thirty years after the motorcade in Dallas, it can reasonably be asked why Congress would see fit to establish yet another body dealing with President Kennedy's murder, albeit one concerned with opening records rather than reinvestigating the crime. The answer lies in the history and legacy of previous investigatory bodies. The relevant part of that legacy, for understanding the Review Board's origins and mission, has less to do with the conclusions of previous investigations than with how they generated, handled and disseminated records. A summary of the scope and time-frame of these investigations, and the records they created, is thus in order.

**Brief History of Assassination Investigations and Associated Records.** There have been two major investigations of the assassination: one conducted by the President's Commission on the Assassination of President Kennedy (known as the Warren Commission, after its Chairman, Chief Justice of the Supreme Court Earl Warren) in 1963-1964 and the other by the House Select Committee on Assassinations in 1976-1979. In 1975-1976, the assassination also became part of the writ of two major

investigations conducted into the domestic activities of the government's intelligence agencies. President Gerald Ford (a former Warren Commission member) established the Commission to Investigate CIA Activities Within the United States (known as the Rockefeller Commission, after its Chairman, Vice-President Nelson Rockefeller) in early January of 1975, only weeks before the U.S. Senate established its own Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee, after its Chairman, Senator Frank Church of Idaho). A third and parallel investigation into domestic intelligence activities was launched by the House of Representatives, which established its own Select Committee on Intelligence (the Pike Committee, after its second chairman) the following month. The Pike Committee's investigation also spilled over into assassination-related topics, although to a lesser degree than either the Rockefeller or Church inquiries. In addition to these efforts, certain standing committees of the House and Senate conducted smaller assassination-related inquiries at various times. Similarly, the executive branch from time to time conducted specific inquiries or reviews unrelated to any ongoing general investigation of the assassination (e.g. the Clark Panel, which examined autopsy photos and x-rays). The parameters of these investigations, and the pre-JFK Act status of their records, are capsulized below.

*Warren Commission.* The Warren Commission was established by

Executive Order No. 11130, issued by President Lyndon B. Johnson on November 29, 1963. The Commission held its first meeting on December 5, 1963, and terminated upon the issuance of its report on September 24, 1964. While relying in the main on the FBI as its investigative arm, the Commission and its staff nonetheless deposed or interviewed 552 witnesses during its ten-month existence and generated or gathered some 360 cubic feet of records, mostly textual but also including assassination artifacts and exhibits. Its massive report was published as a volume of 888 pages, supplemented ten weeks later by the release of an additional 26 volumes of published testimony (15 volumes) and exhibits (11 volumes), representing some 17,000 pages in all. Under guidelines then in force within the executive branch, the Commission's non-published records would not have been opened for 75 years. President Johnson, realizing the inappropriateness of that standard for the Commission's records, instructed the Justice Department to work with the National Archives and other relevant agencies in devising a scheme for a more expeditious treatment of unpublished Commission records. Accordingly, letters went out from the Attorney General to equity-holding agencies in 1965 requesting an immediate review of Warren Commission records. Moreover, the guidelines called for additional reviews in five and ten years' time (1970 and 1975, respectively), and then every ten years thereafter until all records were released.<sup>6</sup> In

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<sup>6</sup> There was a 1985 review which resulted in the release of additional records. The next mandated review, in 1995, began early (in 1991), in anticipation of Congressional action on JFK assassination records, and was then subsumed into the National Archives' broader JFK Act compliance efforts.

addition to these mandated reviews, the National Archives conducted supplementary reviews of certain Commission records in 1967-1968 and 1972-1973. Over time, the vast majority of Commission documents were released to the public through this review process. The initial review round opened about 65% of the Commission's records. By 1973, the National Archives estimated that eighty percent of the Commission's records had been released.<sup>7</sup> Two years later, the estimate had risen to ninety percent.<sup>8</sup> By 1992 and the legislative hearings on what would become the JFK Act, National Archives officials estimated that ninety-eight percent of Warren Commission records had been opened, leaving only some three thousand pages of national security and privacy-related records still withheld.<sup>9</sup> It should be noted that these statistics reference only those records (Commission or agency generated) in the Commission's own files, and do not include records generated and held by the agencies who assisted the Warren Commission in its investigation (e.g. the FBI or the CIA). The Warren Commission concluded that President Kennedy had been killed by a lone gunman, Lee Harvey Oswald, and that there was no credible evidence

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<sup>7</sup> *Inventory of the Records of the President's Commission on the Assassination of President Kennedy*, compiled by Marion M. Johnson, National Archives, 1973, p. 3.

<sup>8</sup> Dr. James B. Rhodes, Archivist of the United States, in testimony before the Subcommittee on Government Information and Individual Rights of the Government Operations Committee, U.S. House of Representatives, *National Archives - Security Classification Problems Involving Warren Commission Files and Other Records*, November 11, 1975, p.18.

<sup>9</sup> Hearing before the Committee on Governmental Affairs of the U.S. Senate on S.J.Res. 282, *The Assassination Materials Disclosure Act of 1992*, May 12, 1992, p. 156.

of a larger conspiracy.

*Early government reviews of autopsy material.* The photographs and x-rays taken at President Kennedy's autopsy were turned over to the government by a Deed of Gift from the Kennedy family on October 29, 1966. On November 1, 1966, two of the three doctors who performed the autopsy (along with the autopsy radiologist and photographer) assisted the National Archives in verifying and organizing the transferred material.<sup>10</sup> This review generated a draft inventory and a final inventory ("Report of Inspection"), both long since available to the public. On January 20, 1967, all three of the autopsy prosectors were present for another review of the photographs and x-rays.<sup>11</sup> This review also generated a report. On February 26 and 27, 1968, the photos and x-rays were again examined, this time by a panel of four pathologists (henceforth known as the Clark Panel) convened at the request of Attorney General Ramsey Clark. This panel wrote a report on their findings which was released a year later, on January 16, 1969, in the waning days of the Johnson administration (the report from the previous examination of January 20, 1967, was also released at this time). The main

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<sup>10</sup> The two prosectors present were Dr. James J. Hughes and Dr. J. Thornton Boswell; the radiologist was Dr. John Ebersole and the photographer was John Stringer. The final inventory was signed by all four on November 10, 1966.

<sup>11</sup> The third prosector, Dr. Pierre Finck, was not present the previous November but was present at this review (known as the "Military Review"). The three prosectors signed the report generated by this review on January 26, 1967.

significance of the Clark Panel's report was that it placed the entry location for the bullet which caused the President's fatal head wound some 100 centimeters higher on the back of the head than where it was judged to be by the autopsy prosectors.<sup>12</sup> Aside from this important exception, the Clark Panel largely validated the conclusions of the autopsy report.

*Rockefeller Commission.* The Rockefeller Commission was established by Executive Order No. 11828, issued by President Gerald R. Ford on January 5, 1975. The Commission released its report on June 16, 1975 and terminated that same month. The Commission's writ concerned illegal domestic activities on the part of the CIA. In the course of its work the Commission touched on several assassination-related topics, including the identity of the so-called three tramps, the possibility of CIA involvement in the assassination, and ballistic issues relating to the shots in Dealey Plaza.<sup>13</sup> The Commission concluded there had been no CIA involvement in the assassination, and that the President had not been hit by a shot fired from in front of the Presidential limousine. In accordance with practice at the time, President Ford retained Commission records as part of his personal papers when he left office.<sup>14</sup> President Ford subsequently donated these and other

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<sup>12</sup> One hundred centimeters is roughly equivalent to 4 inches. The Clark Panel placed the rear entry wound in the cowlick area.

<sup>13</sup> The Commission's assassination-related findings are covered in Chapter 19 of its Report, pp. 251-269.

<sup>14</sup> This practice was ended by the Presidential Records Act of 1978, 44 U.S.C. Sections 2201-2207

records back to the federal government by a December 13, 1976, Deed of Gift to his presidential library in Ann Arbor, Michigan. At the time of legislative consideration of the JFK Act, estimates of the volume of assassination-related records among the Commission's files ranged from 2,500 to 4,000 pages. Of these, approximately 95% of them were withheld.<sup>15</sup>

*The Church Committee.* The Church Committee was established by action of the U.S. Senate (S. Res. 21) on January 27, 1975, with a writ to investigate illegal domestic activities on the part of government intelligence agencies. The Committee formally terminated on May 31, 1976. In the course of its first six months of work the Committee's investigations uncovered new information about allegations of potential relevance to President Kennedy's assassination. The most notable of these allegations concerned the existence of government-directed assassination plots against Cuban Premier Fidel Castro in the 1960-1963 period. The existence of these plots was not communicated to the Warren Commission, even though former CIA Director Allen Dulles (a Warren Commission member) was

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(1994).

<sup>15</sup> Former President Gerald Ford publicly called for the release of Congressional and other assassination records in January of 1992, after the release of Oliver Stone's *JFK*. On the basis of President Ford's public stand, and in anticipation of Congressional action on JFK assassination records, the Ford Library moved to release clearly unclassified, assassination-related, material from Rockefeller Commission files even before passage of the JFK Act. Hence the 5% figure cited above.

aware of them. This and other issues led Committee member Senator Richard Schweiker to publicly call for a reinvestigation of the assassination in September of 1975. While the Committee did not go that far, it did authorize Senator Schweiker and another Committee member, Colorado Senator Gary Hart, to establish a subcommittee to examine the more limited issue of the performance of the intelligence agencies in conducting their investigations of the assassination. The subcommittee did not formally review the findings and conclusions of the Warren Commission; nor did it re-examine the physical evidence of the assassination. Nonetheless, the subcommittee interviewed or deposed more than fifty witnesses, acquired over five thousand pages of documentary evidence from intelligence agencies, and reviewed tens of thousands of additional pages.<sup>16</sup> Added to the prior work of the full Committee on related topics, this represented a significant lode of new assassination records. The full Committee issued an interim report in November of 1975 and several volumes of final reports in late April of 1976. The full Committee voted on May 26, 1976 to release the Hart-Schweiker subcommittee's 106-page report. The subcommittee's report, dated April 23rd, was duly released as Book V of the full Committee's Final Report on June 23, 1976. The Committee found the intelligence agencies deficient in their investigations of the President's murder but took

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<sup>16</sup> *The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies*, Book V, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate, 94th Congress, 2nd Session, S. Rpt. No. 94-755, 1976, p. 1.

no position on whether or not there had been an assassination conspiracy. When the Church Committee expired, its records were forwarded to the custody of its successor, the new and permanent Senate Select Committee on Intelligence.<sup>17</sup> Aside from the Church Committee's published reports, the Committee's records remained closed, and no release date was set for them. At the time of the JFK Act's consideration, it was estimated that there were approximately five thousand pages of assassination-related records in the Committee's files.<sup>18</sup>

*The Pike Committee.* On February 19, 1975 (three weeks after the Senate established the Church Committee), the House of Representatives created its own Select Committee on Intelligence to investigate domestic intelligence abuses, giving the Committee a deadline of January 31, 1976, for the issuance of its report. The Committee's chairman was Congressman Lucien N. Nedzi of Michigan. The Nedzi Committee, wracked by dissension and political disagreements, was slow to undertake its charge. Accordingly, on July 17, 1975, the House abolished it and established a new committee with the same name, instructions, and deadline, but with an enlarged membership and a new chairman, Congressman Otis Pike of New

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<sup>17</sup> The establishment of a permanent intelligence oversight committee had been a recommendation made by the Church Committee.

<sup>18</sup> *Assassination Materials Disclosure Act of 1992*, Report 102-625, Part 2, 102nd Congress, 2nd Session, p. 15. This was the House Judiciary's report on H.J. Res. 454.

York. The new Committee soon slid into an adversarial relationship with the executive branch over access to records, a problem later exacerbated by Committee-generated leaks to the news media. As a result, on January 29, 1976, the House of Representatives effectively voted not to release the Committee's report, even though a draft of it had already been leaked to *The Village Voice*. The Committee held its final meeting on February 11, 1976, its formal report unpublished.<sup>19</sup> The Pike Committee devoted far less time and resources to issues related to President Kennedy's assassination than did the Church Committee, but it undertook some work in the area. Its records were placed in the custody of the Permanent Select Committee on Intelligence, established by the House of Representatives in July of 1977. The indeterminate number of assassination records contained in Pike Committee files were closed, with no schedule for release, as Congress considered the JFK Act.

*The House Select Committee on Assassinations.* The House of Representatives approved H. Res. 1540, establishing the HSCA, on September 17, 1976. The Committee's charter called for a full-blown reinvestigation of President Kennedy's assassination, as well as an investigation of the assassination of Dr. Martin Luther King, Jr. The Committee's first chairman was Congressman Thomas N. Downing of

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<sup>19</sup> See *Investigating the Executive Intelligence: The Fate of the Pike Committee*, J. Leiper Freeman, Capitol Studies, U.S. Capitol Historical Society, Volume 5, Number 2, Fall 1977, pp. 103-118.

Virginia. Congressman Downing chaired the Committee through the end of the 94th Congress, less than four months.<sup>20</sup> The new 95th Congress approved H. Res. 222 on February 2, 1977, granting the Committee a temporary extension until March 31, 1977.<sup>21</sup> Congressman Henry B. Gonzalez of Texas, who had succeeded Congressman Downing as Chairman, resigned from the Committee in the first week of March and was succeeded in turn by Congressman Louis Stokes of Ohio on March 8, 1977. On March 30, 1977, the House approved H. Res. 433 authorizing the HSCA for the life of the 95th Congress (the end of 1978). The Committee's original Chief Counsel, Richard Sprague, resigned earlier that same day and his successor, G. Robert Blakey, was appointed on June 20, 1977. The Committee issued 542 subpoenas and took sworn testimony from 335 witnesses.<sup>22</sup> It held thirty-eight days of public hearings.<sup>23</sup> The HSCA formally terminated on December 31, 1978, though a small number of staff

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<sup>20</sup> Congressman Downing had not sought re-election in November of 1976 and was thus a lame-duck chairman from the start.

<sup>21</sup> At the beginning of the 95th Congress, on January 4, 1977, a unanimous consent request was introduced in the House of Representatives to consider H. Res. 9, a measure to reconstitute the Committee. An objection was heard to this request, however, and thus H. Res. 9 was instead referred to the House Rules Committee. The Rules Committee held hearings on the resolution, beginning on January 25, 1977, and approved an amended version of the resolution, which it reported to the House as H. Res. 222 on February 1, 1977. See *Report of the Select Committee on Assassinations*, Report 95-1828, Part 2, U.S. House of Representatives, 95th Congress, 2nd Session, March 29, 1979, p. 9.

<sup>22</sup> *The Last Investigation*, Gaeton Fonzi, Thunder's Mouth Press, New York (1994 paperback edition), p. 309.

<sup>23</sup> *Report of the Select Committee on Assassinations*, p. 19.

were kept on, into the new 96th Congress, to finish the writing of the Committee's report. The HSCA's report was dated March 29, 1979, and released on July 17, 1979. It was nearly 700 pages in length, with the body of the report on President Kennedy's murder comprising approximately 240 pages of this total. In addition to the report, the Committee also published twelve supporting volumes of testimony, documents, and exhibits (over 7300 pages in all) specific to the Kennedy phase of the investigation. The HSCA generated some 414,000 pages of records relating to the assassination of President Kennedy.<sup>24</sup> Except for those records reprinted in the report and supporting volumes, the HSCA's files were not released upon the Committee's termination, and under House rules were to remain closed for fifty years (until 2029). The closed records were under the control of the House Administration Committee (now known as the House Oversight Committee) in 1992 as the JFK Act was being considered. The HSCA concluded that President Kennedy was probably murdered as a result of a conspiracy and suggested the possibility that elements of Organized Crime were part of this conspiracy. At the same time, the HSCA concurred with the Warren Commission's findings that Lee Harvey Oswald fired the two bullets that hit the President, and that one of those bullets struck both President Kennedy and Governor John Connally of Texas (the so-called "single bullet theory").

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<sup>24</sup> House Report 102-625, Part 1, 102nd Congress, 2nd Session, *Assassination Materials Disclosure Act of 1992*, p. 13. This is the report of the House Committee on Government Operations on H.J. Res. 454.

*Other Congressional investigations.* In addition to investigations conducted by special committees and commissions, various standing committees of the Congress at one time or another examined aspects of the assassination story, both contemporaneously and subsequently. The House Un-American Activities Committee (HUAC), for instance, compiled a small number of pre-assassination records relating to Lee Harvey Oswald's activities in New Orleans, and briefly considered undertaking a post-assassination investigation, as well.<sup>25</sup> The Senate Internal Security Subcommittee (SISS, also known as the Eastland Committee, after the Chairman of both the Subcommittee and the full Judiciary Committee), which had taken an interest in both Castro's Cuba and the Fair Play for Cuba Committee prior to the assassination, also conducted some limited post-assassination inquiries into the President's murder. Except insofar as these Committees transmitted their findings to the Warren Commission, their investigative records remained under the control of successor Congressional committees and had not been released prior to consideration of the JFK Act. Later, in 1975, two House subcommittees held public hearings on issues relating to the treatment of assassination records.<sup>26</sup> While

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<sup>25</sup> According to one account, HUAC's Chief Investigator was present at the Dallas Police Department when Jack Ruby shot Lee Harvey Oswald.

<sup>26</sup> Congresswoman Bella Abzug of New York chaired a hearing of the Government Information and Individual Rights Subcommittee of the House Government Operations Committee (now known as the Government Reform and Oversight Committee) on security classification problems relating to Warren Commission records. Congressman Don Edwards of California chaired a

the latter two hearings were published, it was not known during consideration of the JFK Act whether or not additional and unpublished records lay in the committees' files.

*Records in non-federal or private hands.* The JFK Act also provided the Review Board with authority to seek out non-federal and privately held records for inclusion in the JFK Collection at the National Archives. Various local law enforcement agencies assisted the Warren Commission and FBI in their post-assassination investigation. Some local files contained relevant pre-assassination records, as well (in Dallas and New Orleans, in particular). New Orleans District Attorney Jim Garrison's investigation and trial of Clay Shaw for complicity in the assassination is a prominent example of non-federal investigative efforts that generated extensive assassination records. Other potential assassination records, however generated, ended up in private hands. Subject to time and resource constraints, the Review Board also made an effort to identify and secure as much of this indeterminate group of records as possible.

*Records held by executive branch agencies.* All of the major investigative efforts referenced were undertaken with the cooperation of the FBI and the CIA. In some cases they were simultaneously investigations *of* the FBI or

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hearing of the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee on the destruction of the so-called "Hosty note."

the CIA. A plethora of other agencies were also involved in most or all of these investigations; most notably the Secret Service, the State Department, and the Department of Justice. In addition to generating many records which found their way into the files of the investigative bodies they worked with, these executive branch agencies also generated a vast body of records which they retained in their own custody. At the time of legislative consideration of the JFK Act, for instance, the FBI had already released some 220,000 pages of assassination-related material under the Freedom of Information Act (FOIA). Nonetheless, the Bureau estimated that some 260,000 pages of additional assassination records remained withheld or unprocessed.<sup>27</sup> Similarly, at the same point in time, the CIA had released only some 11,000 pages of a lode which was estimated to contain between 250,000 and 300,000 pages of assassination records.<sup>28</sup> Other agencies with smaller caches of records had released varying percentages of their assassination-related holdings by 1992, depending upon the number and breadth of FOIA requests and/or suits they had been subject to.

**Circumstances of assassination invited public skepticism from the start.** President Kennedy's murder was a brazen act of violence carried out in broad daylight, in full view of numerous witnesses and law

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<sup>27</sup> Report on the *Assassination Materials Disclosure Act of 1992*, House Judiciary Committee, p. 12. See also pp. 59 and 67 of the Senate Governmental Affairs Committee's hearing on S. J. Res. 282.

<sup>28</sup> Report on the *Assassination Materials Disclosure Act of 1992*, House Judiciary Committee, p. 13.

enforcement agents. His traumatic death inevitably raised profound doubts in the minds of many Americans. In the collective soul-searching that followed the assassination, the enormity of the deed's consequences demanded, for some, a more compelling explanation than a lone gunman acting from motives that, to the extent they were understood at all, seemed confused and obscure. The alleged assassin's own murder two days later, on national television, further poisoned those minds predisposed to skepticism, suggesting as it did both a conspiracy and a cover-up. Even a step so widely welcomed as the establishment of the Warren Commission might be viewed with suspicion in the context of such doubts. The desire of the federal government to head off parallel investigations, calm domestic fears and defuse any potential international repercussions of the assassination was self-evident. To most, these considerations seemed not only explicable but prudent. But others assumed darker motives, and speculated whether the Commission's appointment meant that the fix was in. What seemed to most to be an August panel of distinguished Americans, appeared to some to be a collection of quintessential insiders who could not be relied upon to seek, let alone reveal, unpalatable facts. A small minority of observers at first, the ranks of the skeptics would grow over time, swelled first by incongruities in the Warren Commission's investigation and later (and increasingly) by a growing perception that the government had something to hide. After all, skeptics asked, how else to interpret the government's refusal to make *all* the records available, *right away*? So began a pattern

which would recur, with increasing vehemence, after each successive official investigation.

**Warren Commission provides early fodder for skeptics.**

Congressman, Warren Commission member, and future president Gerald Ford declared early on that “the monumental record of the President’s Commission will stand like a Gibraltar of factual literature through the ages to come.”<sup>29</sup> Three decades later, one of this century’s greatest American authors would liken the Commission’s work to “a dead whale decomposing on a beach.”<sup>30</sup> The juxtaposition of these similes, as well as their temporal distance from one another, tells a story about the changing perception of the Warren Commission’s work over time. And while neither is fully accurate, they concur, at least, on the issue of size. The Warren Commission’s work product was massive. The report itself ran 888 pages. The 26 volumes, published ten weeks after the report’s release (not soon enough for some critics), added another 17,000 pages to the total. The sheer size and scope of the published material provided substantial comfort to some, at least for a time. For others, the 26 volumes of hearings and exhibits, in particular, “became a species of Talmudic text begging for commentary and further elucidation.”<sup>31</sup> There was much to comment and elucidate upon. The 26

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<sup>29</sup> Quoted in Anthony and Robbyn Summers, *The Ghosts of November*, Vanity Fair, December, 1994, p. 88.

<sup>30</sup> Norman Mailer, *Oswald’s Tale: An American Mystery*, Random House, New York, 1995, p. 351.

<sup>31</sup> *Oswald’s Tale*, p. 351. Author Norman Mailer, like many before and after him, would find it “startling to discover, as one pans these government volumes for bits of gold, how much does gleam

volumes had been issued without a subject index. One critic, looking back, would later comment that the 26 volumes “were like a library without a card catalog. One had to plow through everything to find anything.” The conclusion he drew: “The chaos seem planned.”<sup>32</sup> Critics and researchers would have to wait until 1966 for an index, compiled by one of their own.<sup>33</sup> Dissection of the report and volumes proceeded nonetheless in the meantime. Critics and concerned observers quickly found ammunition with which to attack the Commission’s work. First, the Commission had been forced by time and resource constraints to rely mainly on the FBI to conduct the day-by-day investigation of the murder. Some wondered whether the fox was not guarding the chicken coop. Second, the Commission had failed to examine what was arguably the most critical evidence in the case: the photographs and x-rays taken at President Kennedy’s autopsy. The Commission had relied instead on artistic renderings of the photographs prepared by an illustrator working from verbal descriptions provided by the chief autopsy prosecutor. Some critics expressed outright incredulity: the

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in the sludge” (p. 352).

<sup>32</sup> David S. Lifton, *Best Evidence: Disguise and Deception in the Assassination of John F. Kennedy*, Carroll & Graff Publishers, Inc., New York (1988 paperback edition), p. 63. Even a critic of the critics, author Gerald Posner, concurs that the lack of a subject index made it “almost impossible to work effectively with the more than 1 million-plus words.” Mr. Posner found Sylvia Meagher’s index and so created his own. Gerald Posner, *Case Closed: Lee Harvey Oswald and the Assassination of JFK*, Anchor Books, Doubleday, New York, 1993 (paperback edition), p. 417.

<sup>33</sup> Sylvia Meagher, *Subject Index to the Warren Report and Hearings and Exhibits*, Scarecrow Press, New York, 1966.

failure to view the photographs and x-rays struck them as gross negligence. To them, this was no way to solve the crime of the century. Privately, some of the Warren Commission staff attorneys held similar views.<sup>34</sup> But Chairman Earl Warren felt strongly that these materials were too gruesome to allow into the public record: as he put it in one of the Commission's executive sessions, it "would make a morbid thing for all time." The Chief Justice believed the only way to ensure that the material stayed out of the public realm was for the Commission to forgo viewing it.<sup>35</sup> The Chief Justice's humanity and decency are placed in bold relief by this decision, but it was one that would occasion much controversy.<sup>36</sup> Having forgone the opportunity to review the autopsy photographs and x-rays, the Commission had to rely upon the autopsy report itself, as well as the testimony of the prosecutors. Here was a third field day for the critics. There had been confusion at Bethesda Naval Hospital about some of the President's

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<sup>34</sup> Most notably Arlen Specter. In a memo to Chief Counsel J. Lee Rankin, dated April 30, 1964, and captioned "Autopsy Photographs and X-Rays of President John F. Kennedy," Specter forcefully argued the case for examination of these autopsy materials.

<sup>35</sup> At the Warren Commission's Executive Session meeting of April 30, 1964 (the Chief Justice's admonition, quoted at the top of the page, was issued at this same meeting), Chief Counsel Rankin put forward a proposal for one Commission member and a doctor to examine the photos and x-rays "unofficially." The Chief Justice reluctantly acceded to this plan, but as far as is known it was never followed through with.

<sup>36</sup> The Chief Justice later indicated that he *had* seen the autopsy photographs himself. In a letter of February 23, 1967 to Arlen Specter, the Chief Justice wrote: "I saw them myself and they were horrible." This letter is in the Warren Papers at the Library of Congress. Later, in his posthumous memoirs, the Chief Justice wrote: "I saw the pictures... they were so horrible that I could not sleep well for nights." *The Memoirs of Earl Warren*, p. 371. When and under what circumstances the Chief Justice viewed the photographs, and with whom, is unknown.

wounds. A bullet hole in the front of his neck had been obscured by a tracheotomy done at Parkland Hospital in Dallas as doctors there struggled to save the President's life. The autopsy doctors at Bethesda were unaware of this fact when they began their examination of the President's body. As a result, they were puzzled by an entry wound in the upper back that had no apparent point of exit. Subsequently informed of the bullet hole in the President's neck, the dilemma was resolved by the autopsy report positing a transiting bullet that struck the President from behind, in his upper back/shoulder, and then passed through him, exiting out the front of his neck. Almost every part of this scenario would subsequently be challenged by critics. Moreover, critics could not understand why autopsy doctors had not sectioned the back wound in order to prove the transiting bullet scenario. They questioned inconsistencies in the various descriptions of the location of this wound. Similarly, they questioned the decision not to section the President's brain when it was examined at greater length in a supplemental autopsy some days later. The importance of these questions and others was magnified by the chief prosecutor's testimony that he had destroyed his autopsy notes and/or a first draft of the autopsy report prior to submitting his final report. Critics were also quick to point out the perceived differences between the testimony of the treating physicians at Parkland Hospital and the autopsy physicians at Bethesda over such issues as the location of the President's head wound, or whether the wound in the

front of the President's neck was an exit or entry wound.<sup>37</sup> Doubts about the medical evidence of the assassination were compounded for critics by the Commission's forensic conclusion that the President's back and neck wounds, and Governor Connally's back, chest, wrist and thigh wounds, were all caused by the same bullet. This "single-bullet theory" was the final straw for some. Nothing the Commission wrote, nothing the defenders of the Commission would say subsequently, could convince the critics that Commission Exhibit 399, the so-called "magic bullet" (almost invariably described as "pristine"), could have caused so many wounds while sustaining so little damage itself.<sup>38</sup> And if the single-bullet theory was incorrect, argued the critics, the whole case for Lee Harvey Oswald as the lone assassin fell apart. These are just a few major examples of the many issues separating the Warren Commission and its early critics, issues reflecting alleged discrepancies between the assassination story as presented in the Commission's report and facts sifted by the critics from the 26 volumes. Even *before* selected working papers of the Commission (not published in the report and 26 volumes) began to make their way into the waiting hands of the critics, a pattern had been established. And as additional records

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<sup>37</sup> The confusion and controversy over the front neck wound spread from Bethesda to the country at large quickly: in an early and memorable phrase, Richard Dudman of the *St. Louis Post-Dispatch* asked: "How could the President have been shot in the front, from the back?" "Uncertainties Remain Despite Police View of Kennedy Death," *St. Louis Post-Dispatch*, December 1, 1963, p. 16.

<sup>38</sup> A photo of C.E. 399 did not appear in the Report but was published subsequently in the 26 volumes.

dribbled out to the public, new questions would be raised and new skeptics created.

**Discrepancies between source documents and official conclusions exacerbate doubts and spur calls for openness.** As referenced earlier, the government was already moving in 1965 to release many of the Warren Commission's working papers and source documents. By early 1966 some of these records were beginning to arrive at the National Archives. In May of 1966 Edward Epstein's book, *Inquest*, was published. In August, Mark Lane's *Rush to Judgment* would follow. These two books were widely read and dominated the assassination debate in 1966-1967.<sup>39</sup> Epstein's book shattered the facade of unanimity carefully crafted by Chief Justice Earl Warren and depicted in the Commission's report, instead portraying a Commission riven to its last hours by disagreements over fundamental findings like the single-bullet theory and the degree of certainty with which the possibility of an assassination conspiracy could be dismissed. No matter that several staff and members subsequently repudiated Epstein's version of their interviews: the damage had been done. If even some Commissioners had doubts, why shouldn't ordinary citizens? If different conclusions could be drawn from the raw material of the Commission's investigation, why shouldn't *everyone* be able to access all the records and

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<sup>39</sup> Sylvia Meagher's *Accessories After the Fact*, published in 1967, would be less widely read but also influential.

make up their own minds? Epstein's book was also the first to reflect access to the FBI's Summary Report on the Assassination (provided to the Commission in early December, 1963) as well as the Bureau's Supplemental Report of January 13, 1964.<sup>40</sup> These were bombshells, as both contained analyses directly at odds with the Commission's findings (which explained, for the critics, why the reports had not been printed in the 26 volumes).<sup>41</sup> The FBI's reports posited a non-transit theory for the President's back and neck wounds. The reports did not subscribe to the single-bullet theory, instead postulating that Governor Connally was hit by a separate bullet. They placed the President's back/shoulder wound lower than the Commission and autopsy report had done. In short, as one researcher put it: "Among the most devastating critics of the Warren Report is the FBI."<sup>42</sup> How was this extraordinary divergence between the FBI documents and the Warren Commission's conclusions to be explained? In June, 1966, the National Archives located and released, at a researcher's request, what became known as the Sibert and O'Neill report. FBI Agents James W. Sibert and Francis X. O'Neill were present at the President's autopsy and

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<sup>40</sup> These two FBI reports became available at the National Archives in the first half of 1966, but Epstein enjoyed access to them eight months earlier than the rest of the assassination research community, having obtained them from an ex-Warren Commission staffer.

<sup>41</sup> It also explained why early (December 1963 and January 1964) articles in prestigious newspapers like the *New York Times* and *Washington Post* reflected a non-transit analysis of the President's wounds: their reporters had seen, or been briefed on, the FBI reports.

<sup>42</sup> Vincent Salandria as quoted in *Best Evidence*, p. 87.

wrote a single-spaced, five-page report of what they witnessed. Their report diverged in several very important respects from the autopsy report written by the chief prosecutor. The FBI's Summary Report of early December, 1963, was written without the benefit of the doctors' autopsy report and so reflected the eyewitness report of Agents Sibert and O'Neill. By the time of the FBI Supplemental Report in January, the Bureau had obtained a copy of the doctors' autopsy report but still chose to base its findings on the report of its own agents. The release of the Sibert and O'Neill report opened a rich vein of controversy which researchers and critics still mine to this day. But its importance in 1966 lay mainly in the momentum it gave to the growing interest in the autopsy photographs and x-rays. Surely these withheld records could sort out the confusing contradictions which had arisen relative to the assassination's medical evidence? Surely they could validate or debunk the Warren Commission's findings? Even some supporters of the Warren Commission's findings began think it had been a mistake not to examine this critical evidence.<sup>43</sup> But where *were* the photographs and x-rays? In mid-1966 no one in official Washington seemed to know. They were in the custody of the Secret Service until April 26, 1965, when they were turned over to the family of the late President. Also turned over were President Kennedy's brain and some slides of tissue sections from the autopsy. By the second half of 1966, pressure was

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<sup>43</sup> See, for instance, "What the Warren Commission Omits: Vital Documents", Jacob Cohen, *The Nation*, July 11, 1966.

building for the return of this evidence to official hands. In this and other instances, mounting criticism of the Warren Commission elicited a defensive reaction from officialdom, which in turn precipitated efforts to shore up Warren Commission orthodoxy. On October 29, 1966, the Kennedy family executed a Deed of Gift returning the autopsy photographs and x-rays to the custody of the federal government. The terms of the Deed effectively left control over access to the photographs and x-rays in the hands of the Kennedy family during the lives of the late President's siblings, widow and children. Significantly, the President's brain and tissue slide sections were not part of the Deed of Gift, and their ultimate disposition remains unknown.<sup>44</sup> The Deed of Gift restrictions, and the "disappearance" of the President's brain, provided new ammunition for critics. As referenced earlier, three separate official inspections of the photographs and x-rays followed upon the Deed of Gift: the first, two days after the transfer of the materials back to government custody, and two others subsequently (the "Military Review" of January 1967 and the Clark Panel of February 1968). The three inspections broadly validated the analysis and conclusions of the original autopsy report, as no doubt it was intended they should.<sup>45</sup> But, predictably, these official efforts were not enough to sustain, let alone

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<sup>44</sup> It is widely assumed that the late President's brother, Robert F. Kennedy, privately disposed of this material.

<sup>45</sup> The one major caveat to this general proposition, as noted earlier, is the Clark Panel's finding that the rear entry point for the bullet that caused the President's fatal head wound was located some 100 centimeters higher on the back of the skull than the autopsy doctors had reported.

restore, the dwindling credibility of the Warren Commission's report. The critics seemed stuck on an ever-accelerating treadmill of disbelief. First, they wanted the autopsy photographs and x-rays located and released, convinced that these would prove the autopsy report invalid. Then, when official reviews of the material instead supported the autopsy report, the critics cast doubt on the veracity of the reviewers or even on the authenticity of the x-rays and photographs themselves. Without making a judgment on the merits of these controversies, they highlight the dilemma which continued to bedevil the government in regard to assassination records. Given the already damaged state of official credibility, the government's ongoing refusal to open *all* assassination records *right away* inevitably left critics convinced that the important missing pieces of the assassination puzzle remained somewhere in the cache of *unopened* records still being withheld from the American people by their government. Officialdom insisted otherwise but, as the Warren Commission itself discovered, it was not easy to prove a negative. It became even more difficult in early 1967, when news of New Orleans District Attorney Jim Garrison's assassination investigation broke upon the country. The eventual indictment and trial of Clay Shaw for conspiracy to murder the President provided a credible platform and new momentum for critics and skeptics of the Warren Commission. Flamboyant and articulate, DA Garrison became a media sensation. Hailed as a courageous seeker after truth by some, and denounced as an irresponsible megalomaniac (and worse) by others, Jim

Garrison forever altered the assassination debate. Building on and adding to the work of early critics, Garrison's investigation widened the credibility gap on the assassination and further popularized a radical critique of the official version of President Kennedy's murder. In addition to generating a whole new body of assassination records, the Clay Shaw trial was also the venue for an important assassination record milestone: the first public showing of Abraham Zapruder's film footage of the assassination. While stills and frames of the film had appeared in *Life* magazine and, for that matter, in the Warren Report itself, no members of the general public had ever seen the entire film run in motion before. By all accounts, courtroom observers were stunned. With the subsequent 1969 acquittal of Shaw, however, a backlash ensued against Garrison and the critics of the Warren Commission. For a time, the critics were on the defensive. But by this point skepticism and suspicion about President Kennedy's murder ran deep in the public consciousness. And though briefly quiescent, the critics and controversy would be back, renewed in the mid-1970's by the exposure of illegal activities on the part of America's intelligence community.

**Rockefeller Commission and Church Committee resurrect assassination debate.** The social and political tumult of the 1960's and early 1970's manifested itself in an efflorescence of forms, among them an excess of enthusiasm on the part of the nation's intelligence agencies. Encouraged and even pressured by three successive Presidents, agency

charters were overstepped on more than one occasion. After some of these instances were dragged into the light of day in late 1974, President Gerald Ford appointed a commission (known as the Rockefeller Commission) to investigate suspect and illegal domestic activities on the part of the CIA. Not to be outdone, and skeptical of the executive branch's capacity for self-examination, the U.S. Senate shortly afterwards launched its own investigation in the form of a special committee (known as the Church Committee) whose writ extended beyond the CIA to the entire intelligence community. Given that the Rockefeller Commission was appointed by a former member of the Warren Commission, and that its Executive Director was a former Warren Commission staff attorney noted for his vehement defense of the Commission's conclusions, few expected it to break new ground on the assassination.<sup>46</sup> But its charter did require the Commission to investigate the possibility of the CIA's involvement in President Kennedy's death. No one was surprised when the Commission absolved the agency of any responsibility or involvement, concluded certain CIA operatives were not the so-called "three tramps," and ruled out the possibility of the President having been hit by a shot from the front. But the Rockefeller Commission nonetheless played a significant part in the resuscitation of the assassination debate. It was an opportunity for critics to try and sell their theories and wares. It was yet another government body to conduct an

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<sup>46</sup> Executive Director David W. Belin.

official review of the autopsy photos and x-rays.<sup>47</sup> And, most importantly, it was the venue for a showing of the Zapruder film. A photographer (and assassination critic) had produced an optically enhanced version of the film which was viewed by the Commission as part of its forensic review of the assassination.<sup>48</sup> The publicity generated attendant to the Commission's viewing of the film in February of 1975 led to the first national showing of the film on the television program *Goodnight America* on March 6, 1975. For the first time, the American public at large was able to see the famous film for themselves. The impact on the assassination debate was palpable. The non-expert conclusion drawn by many Americans who saw the film was that the President's fatal head wound had been caused by a shot *from the front*. The Warren Commission's credibility sustained another body blow. And not just among ordinary citizens. Separate viewings of the film were also arranged on Capitol Hill, most notably one on April 15, 1975, before the Virginia Congressional delegation.<sup>49</sup> Meanwhile, the Church Committee was bringing to light U.S. government assassination plots against foreign leaders,

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<sup>47</sup> On April 18, 1975, a panel of five medical specialists working with the Commission reviewed the photos and x-rays. Also present were Executive Director Belin, the Commission's General Counsel, and a stenographer. *Senate Committee on Governmental Affairs*, published hearing, pp. 172-173.

<sup>48</sup> The photographer was Mr. Robert J. Groden.

<sup>49</sup> Not long after this viewing, a respected member of that delegation, Congressman Thomas N. Downing, introduced a resolution in the House of Representatives to reopen the investigation of President Kennedy's death. Congressman Downing would later be named the first Chairman of the HSCA.

including Cuba's Fidel Castro during the critical 1960-1963 period. Some of these plots involved the use of Organized Crime figures as go-betweens and organizers. Replete though it was with implications for President Kennedy's death, this information had never been passed on to the Warren Commission by the intelligence agencies. These revelations led to an expansion of the Church Committee's inquiry into an assessment of the performance of the intelligence agencies in the investigation of the assassination. This phase of the investigation began late, was understaffed, and left significant loose ends dangling. Released in June of 1976 as Book V of the Church Committee's published volumes, the assassination-related findings of the Committee were nonetheless extraordinary. The Committee found the intelligence agencies (primarily the CIA and the FBI) deficient in their investigation of President Kennedy's death. For the critics, this was a major crack in the door. An official government body, albeit a Congressional committee, had found significant fault with the Warren Commission's chief investigators, the FBI and the CIA. The Church Committee findings lent tremendous momentum to those in the House of Representatives seeking to reopen the investigation into President Kennedy's killing. At the same time, from the standpoint of openness, the Church Committee was not a step forward: before all the records from the Warren Commission had been opened, a new investigation had created more closed ones.

**Stirrings in the House of Representatives.** In 1975, the House of Representatives conducted its own, less successful, review into the illegal domestic activities of the intelligence agencies (the Pike Committee). In addition, two standing committees of the House also held important hearings relating, specifically, to assassination *records*. Congressman Don Edwards' Civil and Constitutional Rights Subcommittee of the House Judiciary Committee conducted a hearing on the destruction of the so-called "Hosty note" which Lee Harvey Oswald had left at Dallas FBI headquarters for Special Agent James Hosty on November 6, 1963. After the assassination, Hosty destroyed the note on the instructions of his superior, Special Agent in Charge J. Gordon Shanklin, and its existence remained unknown outside the FBI for twelve years. Congresswoman Bella Abzug's Government Information and Individual Rights Subcommittee of the Government Operations Committee held a hearing and conducted staff research on issues relating to the status of Warren Commission records. The hearing focused specifically on issues of access and openness. The revelation of the Hosty note and its destruction confirmed for some their long-held belief that government agencies could not necessarily be trusted to safeguard potentially self-incriminating records. And the Abzug Committee hearings underlined that, left to its own devices and existing law, the executive branch would not likely act as quickly as some wished to open closed assassination records.

**The HSCA.** All of the Congressional activity of 1975 and the first half of 1976 culminated with the establishment by the House of Representatives of the House Select Committee on Assassinations in September of 1976. For critics and skeptics, it represented an opportunity they had feared would never come: an official, full-blown reinvestigation of the assassination, a chance to undo the mistakes of the Warren Commission and unearth the *real* truth behind the slaying of President Kennedy. Nor were such hopes limited to an isolated fringe. By this time, skepticism about the official explanation of the assassination had hardened in the minds of millions of Americans.<sup>50</sup> This skepticism had been fueled in part by what had become a small cottage industry of authors, lecturers, and volunteer assassination researchers, all making the case that the American people had been lied to about the murder of John F. Kennedy, and that living men still at large were responsible. Without these critics, it is unlikely the case would have ever been reopened. But also responsible was a government which had stonewalled the public on the release of germane records and had even been found out lying to *itself* about critical facts in the case. By 1976, cynicism regarding government pronouncements on the assassination was no longer, if it had ever been, simply the province of the professional critics or the psychically unbalanced. It was virulent and it was everywhere. In this

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<sup>50</sup> Doubts about the Warren Commission's findings were not restricted to ordinary Americans. Well before 1978, President Johnson, Robert Kennedy and four of the seven members of the Warren Commission itself all articulated, if sometimes off the record, some level of skepticism about the Commission's basic findings.

context, and with perhaps more hope than optimism, the nation embarked with the HSCA on another wrenching inquiry, while the critics prayed this time the investigators would get it right. The HSCA's controversial early months were marked by political squabbling and turf battles, resulting in turnover among both staff and Committee chairmen. Initially critic-friendly, the Committee eventually sought to establish some distance and (it thought) impartiality for its inquiry. Some critics reacted against their own early over-enthusiasm and retreated into outright opposition to the Committee; others cooperated but kept their options open. In the end, the Committee's report reflected an interesting mix of conclusions which only whetted researchers' appetite for the Committee's records. The HSCA concluded that President Kennedy's murder had probably been carried out by a conspiracy.<sup>51</sup> The Committee said it had been unable to identify the conspirators (other than Lee Harvey Oswald) or define the precise parameters of the plot. The Committee believed it possible, however, that elements of Organized Crime had been involved. The HSCA criticized the performance of the Warren Commission and investigative agencies like the FBI and the CIA, echoing in more polite prose what some of the critics had been saying for years. At the same time, the Committee concluded that Lee

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<sup>51</sup> The HSCA under Chief Counsel G. Robert Blakey had placed a high priority on what it regarded as hard scientific evidence. The conclusion of a probable conspiracy was thus based in large measure on a scientific analysis of acoustic evidence from Dealey Plaza that appeared to indicate that the President had been fired at four times, once from the front. This meant two shooters, which meant a conspiracy. The Committee's analysis of the acoustic evidence has since been challenged.

Harvey Oswald was indeed the President's killer. It also concluded that the single-bullet theory was sound and that all of Governor Connally's wounds and President Kennedy's back and neck wounds were caused by the same bullet. The HSCA also insisted, after examination, that the autopsy photos and x-rays in the National Archives were authentic. Despite these anti-critic stands, however, the HSCA in a very real sense validated their long struggle. The critics might take issue with much of the HSCA's work and some of its conclusions. They and others might be disappointed in the failure of the HSCA to uncover the perpetrators of its likely conspiracy. But, nonetheless, a congressional committee (the *government*, after all) found that there *was* a conspiracy, and that the Warren Commission *was* wrong. The HSCA concluded that the critics had been right, at least in their fundamental assertion of conspiracy. More importantly for the history of the JFK Act, the critics' calls for openness had also been validated. Nonetheless, the release of the HSCA's report was not the end of the story, especially insofar as assassination *records* were concerned. Under House rules the Committee's own unpublished records were sealed for fifty years, until 2029, and many in the assassination research community wanted them sooner than that. Even more than the Warren Commission, the HSCA had its full share of internal politics, disgruntled or disillusioned staffers, post-investigation book contracts, etc. All of which led in turn to selective leaks and ongoing controversy. Some ex-staffers claimed the HSCA report did not reflect their investigative work, and that information that did not conform with the

Committee leadership's preconceived conclusions was ignored or left out of the report and supporting volumes. One notable example was the differing importance ascribed to anti-Castro activist Antonio Veciana's testimony by the Committee's report, on the one hand, and the Committee investigator who had dealt extensively with Veciana on the other.<sup>52</sup> Four years after the HSCA report was issued, in April of 1983, a former member of the panel introduced legislation (House Resolution 160) to open the Committee's records.<sup>53</sup> The House Administration Committee held hearings on H. Res. 160, but the resolution never reached the floor of the House for a vote. The HSCA records, like the transcript of the hearing on H. Res. 160, remained closed. Another nine years would pass before Congress would vote on opening HSCA and other assassination records. The scheduling of the vote, when it came, had less to do with the ameliorative effect of time's passage than it did with a popular if controversial film. Oliver Stone's *JFK* would focus the attention of both the American people and Congress on the issue of assassination records.

**Distrust of government symptomatic of era.** Oliver Stone's film dramatization of the assassination of President Kennedy was viewed by

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<sup>52</sup> See Gaeton Fonzi, *The Last Investigation*.

<sup>53</sup> H. Res. 160 was introduced by Congressman Stewart McKinney of Connecticut. It was co-sponsored by four additional former members of the HSCA: Representatives Robert Edgar, Harold Sawyer, Harold Ford and Walter Fauntroy.

millions of Americans all too ready to believe the worst of their government. The film's impact can only be understood in terms of this long-standing and deep-rooted cynicism. After President Kennedy's traumatizing death came the expansion of the war in Vietnam, civil unrest, the assassinations of Robert F. Kennedy and Dr. Martin Luther King, the secret bombing of Cambodia, Watergate, domestic intelligence abuses, and more. By the 1970's, Americans had ceased to believe their government on any number of topics, not just the assassination of John F. Kennedy. Overlaying this credibility gap was a sense of hopelessness; a feeling that individual citizens had no power to impact the political, economic and social forces shaping their lives. Political scientists have developed a "political efficacy index" to measure the extent of public connection with, or alienation from, their government. The political efficacy index rose in the 1950's, peaking at 74% in 1960 (its highest level in forty years). By contrast, the 1960's saw this figure decline by 16 percentage points. By 1980 the figure was 53%; by 1990, 35%. Erosion of public trust in government was a major component of this decline. In 1964, 76% of the American people told pollsters their government could be trusted all or most of the time; by 1990 the percentage had dropped to 28%.<sup>54</sup> In 1991, audiences flocked to Oliver Stone's *JFK* and saw a film that, like the trial and district attorney it depicted, popularized

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<sup>54</sup> See *The National Election Studies*, University of Michigan, May 13, 1998. Nor was government the only institution to suffer a precipitous fall from public esteem during these years: all measured social institutions suffered similar declines.

a non-official, conspiracy-based version of the assassination story. After all that had transpired since the actual event, Stone's version was not a hard sell for many Americans. Just as relevant, many who saw the film were of a generation that had no personal recollection of the assassination; nor of some or all of the subsequent official investigations. For this age cohort, Stone's film was most if not all they had to go by in making sense of the tragedy. Moreover, whatever else the film's critics might take issue with, the information conveyed in the movie's closing trailer was true: in 1979 a congressional investigation *had* concluded that President Kennedy's death was the result of a probable conspiracy, and that investigation's records *were* closed until the year 2029. As Kevin Costner's Garrison quotes Tennyson in the final courtroom scene, urging the jurors not to desert their dying king, the real targets of the actor's lines were not with him in the courtroom, but were watching in the theater. References to the movie's impact recur again and again in the hearings on the proposed JFK Act, bearing witness not so much to a film's power as to a nation's cynicism and its desire to believe again.

### **The Solution: The JFK Act**

By 1992, the stage was set for reform and legislative action. An aroused public, a clear issue, and the existence at hand of available legislative remedies, all combined to make the JFK Act possible. Executive branch

agencies, though more insulated than lawmakers from public outrage, were also anxious to put the issue of assassination records behind them. A subsequent Senate report would state that “the records related to the assassination of President John F. Kennedy are the most publicly sought-after, unreleased records of our government.”<sup>55</sup> The trumpet’s notes had finally reached Jericho’s walls.

**Legislative history of JFK Act.** When the second session of the 102nd Congress opened in January of 1992, the impact of *JFK* could be measured by the introduction of several bills and resolutions mandating the opening of assassination records. Some dealt solely with HSCA records while others dealt with assassination records throughout the government.<sup>56</sup> None of this first round of proposals emanated from the Congressional leadership or enjoyed leadership backing. But they were an indication that opening assassination records was an idea whose time may have come. Meanwhile, other relevant and influential voices joined the call to open the government’s assassination records, perhaps most notably former President Gerald Ford, the last surviving member of the Warren Commission.<sup>57</sup> The

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<sup>55</sup> Report of the Senate Governmental Affairs Committee (Report 102-328) to accompany S. 3006, *The President John F. Kennedy Assassination Records Collection Act of 1992*.

<sup>56</sup> These early proposals were H.R. 4090, introduced by Congressman Trafficant of Ohio on January 3; H. Res. 325, introduced by Congressman Gonzalez of Texas (the second chairman of the HSCA) on January 22; H. Res. 326 and H.R. 4108, both introduced by Congressman DeFazio of Oregon on January 24.

<sup>57</sup> George Lardner, Jr. “Ford Urges House Leaders to Seek Release Of All Records on Kennedy

message was received: on March 26, 1992, identical leadership bills, H. J. Res. 454 and S. J. Res. 282, were introduced in the House and Senate respectively. The House resolution was introduced by Congressman Louis Stokes, former Chairman of the HSCA and a well-liked and highly-respected member of the House. Forty other members of the House co-sponsored the bill. The House resolution was referred jointly to four different committees: Judiciary, Rules, Government Operations, and House Administration. The Senate resolution was introduced by Senator David Boren of Oklahoma, who was then Chairman of the Senate Intelligence Committee. His bill had nine co-sponsors, notably the Senate Majority Leader, Senator George Mitchell of Maine, and Senator Arlen Specter of Pennsylvania (a former Warren Commission staff attorney). The Senate resolution was referred only to the Governmental Affairs Committee. The Congressional leadership had clearly decided to move the legislation forward. Within weeks of the introduction of the resolutions, hearings were held in both the House and Senate. The House Government Operations Committee held hearings on April 28th, May 15th and July 22nd. The House Judiciary Committee held a hearing on May 20th. In the Senate, the Governmental Affairs Committee held a hearing on May 12th. The tenor of these hearings made clear that there was a growing consensus in the Congress for passage of some sort of legislation. Concerns were expressed about particular aspects of the proposals before

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Assassination," *Washington Post*, January 30, 1992, p. A-12.

the committees, but there was unanimity on the need to release the records. Executive branch agencies were broadly supportive. The CIA and the FBI, in particular, committed themselves to full cooperation with Congress. Only the Justice Department, on behalf of the White House, raised serious concerns about the legislation. These had to do, first, with constitutional issues revolving around the appointment process and status of the proposed Review Board and, second, the proposed criteria for the continued withholding of certain types of information. The legislative debate made clear that existing mechanisms for the release of assassination records were not working. If Congress really wanted to see these records in the public realm, new statutory direction and authority was necessary. Hundreds of thousands of pages of assassination records had been successfully released (primarily by the FBI) under FOIA. But FOIA was an inadequate vehicle for the release of classified material, and much of what remained withheld fell into this category.<sup>58</sup> Similarly, Executive Order No. 12356 (“National Security Information”), issued under President Ronald Reagan, eliminated government-wide declassification and downgrading schedules previously in

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<sup>58</sup> Senator Boren testified that “if the process used by the Freedom of Information Act were successful in releasing these kinds of documents, they would already be released... The whole point of this legislation is to create new criteria and new procedures to maximize the release of information hitherto withheld by the government.” Testimony before the Senate Governmental Affairs Committee, *The Assassination Materials Disclosure Act of 1992*, May 12, 1992, p. 15. The JFK Act, in its “Findings, Declaration, and Purposes” section, states the legislation was necessary “because the Freedom of Information Act, as implemented by the executive branch, has *prevented* the timely public disclosure of records relating to the assassination of John F. Kennedy” (emphasis added).

place across the executive branch. Though not directed at assassination records, this order had the effect of dramatically slowing their release.<sup>59</sup> During the summer of 1992, committees in both the House and Senate reported favorably on the legislation.<sup>60</sup> The full Senate passed the legislation on July 27, 1992. The House of Representatives passed a somewhat different version on August 12, 1992. The differences between the House and Senate bills had not yet been resolved as the end of the legislative session drew near, so the House of Representatives took up and passed the Senate version on September 30, 1992, the date of enactment of what was now Public Law 102-526, The President John F. Kennedy Assassination Records Collection Act of 1992. President George W. Bush signed the bill into law on October 26, 1992, just days before the 1992 federal election, but left the appointment of the Review Board to his successor, President Clinton. President Clinton appointed the five members of the Review Board in the latter half of 1993 and, after Senate review and confirmation, they were sworn in on April 11, 1994. The JFK Act included a specific sunset date

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<sup>59</sup> E.O. 12356 “appears to offer little incentive for aggressive declassification of agency records. Indeed, the order encourages classifiers, when in doubt, to err on the side of classification and mandates reclassification.” Report of the House Judiciary Committee (House Report 102-625) on *The Assassination Materials Disclosure Act of 1992*, p. 17.

<sup>60</sup> The House Government Operations Committee approved the legislation in June (Report 102-625 I, June 29, 1992) and the House Judiciary Committee in August (Report 102-625 II, August 11, 1992). The Senate Governmental Affairs Committee approved legislation in July (Report 102-328, July 22, 1992). The Senate committee approved an amendment in the nature of a substitute; the bill forwarded to the full Senate for its consideration therefore had a new designation, S. 3006. This was the bill the full House eventually voted on in September.

(two years from the date of the statute's enactment) with an option for a one-year extension. This time-frame proved unrealistic, mainly due to the long lag between the date of enactment and the actual appointment, confirmation, and swearing in of the Review Board. Congress therefore decided to reset the time clock in 1994, passing the President John F. Kennedy Assassination Records Collection Extension Act of 1994 (Public Law 103-345, enacted October 6, 1994).<sup>61</sup> In 1997 Congress extended the life of the Review Board one final time, until September 30, 1998, through enactment of Public Law 105-25.<sup>62</sup>

**Key Provisions of the JFK Act.** The JFK Act provides that all records concerning the assassination of President Kennedy should carry “a presumption of immediate disclosure.” It requires that all such records be transferred to a single JFK Collection at the National Archives. The JFK Act defines five categories of information for which disclosure may be postponed, including national security, intelligence gathering, and privacy. But there must be “clear and convincing evidence” of some harm attendant on disclosure for any part of a record to be postponed for any length of time. The JFK Act required that all government agencies conduct an initial

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<sup>61</sup> The Extension Act had been introduced as H.R. 4569.

<sup>62</sup> Introduced as H.R. 1553 by the Chairman of the Government Reform and Oversight Committee, Congressman Dan Burton of Indiana, the bill was approved by the House on June 23, 1997 and by the Senate two days later. President Clinton signed the bill into law on July 3, 1997.

assessment of potential assassination records in their keeping, and that they then make determinations as to whether the disclosure of any of them should be postponed. Records to be immediately disclosed in full were sent directly to the National Archives. Any records in which postponements are requested are processed by an independent Review Board of five members, appointed by the President and confirmed by the U.S. Senate. The Review Board evaluates requested postponements by reference to general standards contained in the JFK Act and specific applications of the standards published by the Review Board. The Review Board can accede to an agency request for a postponement, grant it in part, or deny it altogether. The Review Board is required to make its rationale for each and every decision available to the public and the agencies. After the Review Board acts on a requested postponement, the record in question is forwarded to the National Archives, even if a temporary postponement has been granted. Any postponements are operative only until 2017, when the JFK Act requires that all records must be opened in full (there is an exception for records certified by the President for continued postponement). The JFK Act gives the Review Board broad powers to ensure agency compliance. The Review Board may direct agencies to provide identification aids and organize assassination records; it may direct agencies to forward records to the National Archives; it may obtain itself records that have been identified by government agencies, and it can direct agencies to carry out searches for additional assassination records beyond

those initially identified. The Review Board can hold hearings, administer oaths, take testimony, and subpoena witnesses or documents. The Review Board is also empowered to request the Attorney General to subpoena testimony, or records, from private individuals.

### **Section-By-Section Analysis of JFK Act. [RON]**