

DRAFT Final/1997 Report

1. Introduction

This Report is submitted to the President of the United States, the leadership of the Congress, the Senate Governmental Affairs Committee, the House Government Reform and Oversight Committee, and the National Archivist by the Assassination Records Review Board in compliance with Section 9(f) of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (note), PL 102-526, (the "JFK Act").

The Assassination Records Review Board ("Review Board") is an independent Federal agency created by Section 7(a) of the JFK Act to oversee the identification and release of records related to the assassination of President John F. Kennedy. This Act, which was created at the urging of the American public, received broad bipartisan congressional support in 1992 when it was signed into law by President Bush. The five members of the Review Board were appointed by President Clinton, confirmed unanimously by the U. S. Senate, and sworn in on April 11, 1994. The JFK Act granted the Review Board the mandate and the authority to identify, secure, and make available, through the National Archives and Records Administration ("NARA"), records related to President Kennedy's assassination.

Section 9(f) of the JFK Act requires the Review Board to submit a report to Congress each year that accounts for the activities and progress of the Review Board, describes the status of agency compliance with the JFK Act, identifies "any special problems," and proposes "requests to Congress for additional legislative authority needs." The report that follows addresses each of the statutory requirements.

2. Background of the JFK Act.

A. Public Interest. The tragedy of the assassination of President John F. Kennedy shocked and saddened America and the international community. The record of events that led the President Kennedy's assassination on Nov. 22, 1963 have been compounded over the years by the lingering suspicion -- widely shared by the American people -- that the Federal government possessed secret records that revealed that the government knew much more about the assassination than it was willing to disclose publicly. Although many pledges were made, some as early as 1963, that the government would reveal all of its evidence related to the assassination, more than 30 years have passed with only portions of the record and the story disclosed.

From the beginning, the Federal government was responsible for the investigation of the assassination and for collecting records related to the assassination. In order to ensure that there would be a single investigation, President Johnson named seven distinguished Americans to the President's Commission

on the Assassination of President John F. Kennedy (the “Warren Commission”). Despite the early pledges to release all of the Warren Commission evidence to the public, and although the Warren Commission itself published 26 volumes of evidence, many of the records remained classified by 1992. Although records continued to be released pursuant to declassification and to FOIA suits, the public was still not privy to much of the evidence that had been available to the members of the Warren Commission.

After several previously unknown facts were revealed in the late 1960s and 1970s, including CIA assassination attempts on Fidel Castro and others, the scope of illegal domestic activities by the CIA and the FBI, and the first public viewing of the famous Zapruder motion picture that depicted the assassination, the House of Representatives decided that it should conduct new investigations into the assassinations of President Kennedy and Martin Luther King. Accordingly, the House Select Committee on Assassinations (HSCA) was formed in September 1976, to inquire into the two slayings.

In addition to these two major Federal investigations into the assassination of President Kennedy, other Federal investigatory bodies have dealt with the assassination to some degree. In January 1975, President Ford created the President's Commission on CIA Activities Within the United States (the “Rockefeller Commission”) to investigate allegations about domestic CIA activities. The Rockefeller Commission made some limited inquiries into the Kennedy assassination and related issues. Also in January 1975, Congress created the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the “Church Committee”) and the House Select Committee on Intelligence (the “Pike Committee”). Some of the work of these committees was related to the assassination. Book 5 of the Church Committee Report, for example, was devoted exclusively to the Kennedy assassination.

Although many records that had been reviewed by the HSCA, Rockefeller Commission, Church Committee, and Pike Committee were made available to the public, as of 1992 a significant number of records remained unavailable. Many FOIA requests had been filed in order to obtain access to the records resulting in continuing (and expensive) litigation brought by private citizens who sought to learn what their government knew about the Kennedy assassination but was unwilling to tell the American people.

B. Legislative History. In 1992, Congress wisely decided that it was time to bring an end to the suspicion and secrecy that surrounded the death of the 35th President. In order to show the American people that its government was fully prepared to release all of the evidence in its files, it enacted the JFK Act in 1992. The JFK Act was designed, in part, to be an innovative alternative to the existing mechanisms for the public release of records related to the assassination and to the conduct of U.S. government agencies. The JFK Act states that “the Freedom of Information Act, as

implemented by the executive branch, has *prevented* the timely public disclosure of records relating to the assassination . . .” (emphasis added). In addition, Executive Order No. 12356 on National Security Information was found by Congress to have excluded from the automatic declassification provision matters such as the identification of intelligence sources and methods, as well as informants, which form the core of the Kennedy assassination records that remain unavailable to the public. (Executive Order No. 12356 has been superseded by Executive Order 12958, which similarly protects sources and methods.) The Senate Committee on Governmental Affairs concluded that the creation of a Review Board was required to ensure an “independent and enforceable mechanism for disclosure under uniform standards for review.”

Section 7(a)(2) of the JFK Act provided that the President was to appoint Review Board members 90 days after the enactment of the statute, approximately January 25, 1993. The Review Board members, however, 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.)

The Review Board consisted of five members:

The Honorable John R. Tunheim, Chair
United States District Court Judge for the District of Minnesota

Dr. Henry F. Graff, Professor Emeritus of History at Columbia University

Dr. Kermit L. Hall, Dean, College of Humanities, and Professor of History and Law at The Ohio State University

Dr. William L. Joyce, Associate University Librarian for Rare Books and Special Collections at Princeton University

Dr. Anna K. Nelson, Distinguished Adjunct Historian in Residence at The American University.

C. Provisions of the Act. The JFK Act provides that: “All government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure.” Furthermore, the JFK Act requires that all assassination-related materials be transferred to a single collection at NARA to be known as the President John F. Kennedy Assassination Records Collection (“JFK Collection”).

The JFK Act required all Federal agencies to make an initial assessment of whether they possessed records relating to the assassination. The agencies themselves were to have conducted an initial review and to have identified *all* “assassination records” in their possession within 300 days of the enactment of the JFK Act. The agencies also were required to determine whether their records might be disclosed immediately or whether disclosure should be postponed. All records deemed by an agency as not suitable for immediate release are subject to evaluation by the Review Board. Once the Review Board completes its review of an agency's recommendation for postponement, all records, including those that have a postponed release date, are transferred to the NARA. The JFK Act requires that all assassination records must be opened by 2017, with the exception of records certified for continued postponement by the President.

The JFK Act defines five categories of information for which disclosure may be postponed, including national security, intelligence gathering, and privacy. The JFK Act presumes that in the overwhelming number of cases the information should be opened and emphasizes that such postponements should occur only in rare cases where the harm of the release outweighs the public interest in the disclosure of the information. However, the JFK Act also provides that the agencies shall have an opportunity to present to the Review Board information supporting their proposed postponements. The agencies have submitted a great deal of information to the Review Board in support of their proposed postponements. This process, which was properly established by Congress in the JFK Act, has nevertheless consumed a great deal of time both for the Review Board and the agencies.

I. Responsibilities. The primary responsibility of the Review Board as defined by Section 2(b)(2) of the JFK Act was the expeditious review and judicious public disclosure of classified government records and the subsequent transmission of those records to the JFK Collection at the National Archives. Section 7(I) of the JFK Act requires the Review Board to consider and render decisions on a determination by a Federal agency seeking to postpone the disclosure of assassination records. The Review Board was charged with determining whether a record constituted an assassination record and whether a record or particular information within a record qualified for postponement of disclosure under the JFK Act.

ii. Authority of the Assassination Records Review Board. According to the Senate report on the JFK Act, “the underlying principles guiding the legislation are independence, public confidence, efficiency and cost effectiveness.” To achieve these broad objectives, the JFK Act gave the Review Board specific powers, including the powers to:

- Direct government offices to provide identification aids and organize assassination records;
- Direct government offices to transmit assassination records to the National Archives;

- Obtain assassination records that have been identified and organized by a government office;
- Direct government offices to provide additional information, records, or testimony from individuals which the Review Board has reason to believe is required;
- Request the Attorney General to subpoena private persons to compel testimony, records, and other relevant information;
- Require any government office to account in writing for the destruction of any records relating to the assassination of President Kennedy;
- Receive information from the public regarding the identification and public disclosure of assassination records; and
- Conduct hearings, administer oaths, and subpoena witnesses and documents.

3. The Review Board

a. **Early History.** Early in its history, the Review Board created and established the standards for the release of thousands of previously secret government documents and files related to the assassination of President Kennedy. 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 on the questions of the definition of "assassination record" and the standards for postponements under Section 6 of the JFK Act. Accordingly, this slowed agency 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.

Furthermore, the JFK Act includes 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 prohibits 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 have the full three years Congress initially envisioned as being necessary to complete the job.

After overcoming the initial inherent delays caused by the JFK Act, the Review Board began releasing documents on June 6, 1995. Meeting approximately every three weeks, the Review Board has compiled an impressive and industrious record. In total, the Review Board has released 10,478 documents since June 1995. Among the records that previously were classified or unavailable that have now been reviewed and released by the Review Board are:

- Thousands of records from the CIA's official file on Lee Harvey Oswald and the assassination of President Kennedy;
- The controversial House Select Committee on Assassinations Staff Report on Oswald and Mexico City;
- The deposition transcript of "John Scelso" (pseudonym), who was the Chief of the CIA's division of the Western Hemisphere that was responsible for Mexico and who was the first person charged with the responsibility of investigating the assassination for the CIA;
- The original Marine Corps personnel file on Oswald;
- Copies of the official records of District Attorney Jim Garrison's investigation of the assassination;
- The private papers of J. Lee Rankin (General Counsel of the Warren Commission), Jim Garrison, and Edward Wegmann (the attorney who represented Clay Shaw in the Garrison probe);
- Thousands of records from the FBI's core and related files on the assassination; and
- Thousands of once-secret records of the HSCA investigation into the assassination of President Kennedy.

In addition, the Review Board secured and placed into the public record original outtakes of television film taken on the day of the assassination as well as motion picture film taken by presidential aide Dave Powers on President Kennedy's trip to Texas. The Review Board has also conducted extensive inquiries into the state of medical and forensics evidence related to the assassination.

B. The Staff of the Assassination Records Review Board. The Executive Director of the Review Board is Dr. David G. Marwell. The Review Board's staff ("ARRB staff") was composed of 25 full-time employees involved in management, administrative, analytic, and investigative duties. ARRB staff analysts reviewed records and made recommendations to the Review Board. Organized into three teams designated CIA, FBI, and Military Records, analysts developed the necessary working relationships with the agencies for which they were responsible. All team members developed subject matter expertise, which is essential in 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. ARRB staff investigators, who were primarily responsible for locating non-Federal records, had continued 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.

4. Reviewing the Records.

a. The Review Process.

The principal and most time-consuming component of the Review Board's work was reviewing records of Federal agencies and establishing guidelines for future review. Section 6 of the JFK Act established new guidelines for the release of information that go far beyond the standards established under the Freedom of Information Act. Perhaps most important, records processed under the JFK Act, unlike FOIA, carried with them the presumption that the information will be released. Despite this new presumption, the review of records was slowed and complicated by the complexity of the issues raised in the records and the time-consuming process of evaluating the records under the new standards.

Under the JFK Act, all Federal agencies were required to identify all assassination records in their possession and to identify the information in the records that could be released immediately as well as the information whose release would be "postponed" (*i.e.*, redacted) under Section 6 until the year 2017. The agencies then forward to the Review Board their recommendations for postponement

along with the evidence supporting such postponements. In order to be faithful to its obligations under the law, the Review Board analyzed cautiously and carefully the agencies' proposed postponements along with their evidence in support of the postponements. In essence, the Review Board was obligated to proceed through the initial round of proposed postponements on a word-by-word basis.

The JFK Act properly afforded Federal agencies the opportunity to provide evidence to the Review Board in support of recommended postponements. The Review Board believed that, in order to protect important national security secrets and safety concerns for informants and agents, the agencies needed 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, was very time consuming for both the agencies and the Review Board. Although the Review Board 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.

At first, the review process proceeded extremely slowly and the agencies were afforded ample opportunity to present their evidence. Over time, the Review Board began to standardize its interpretation of Section 6 of the JFK Act and the issues raised in the various documents. The process accelerated after the Review Board and the agencies became more familiar with the demands of the JFK Act. In a progressively increasing number of cases, records that initially contained proposed postponements were released through a "consent" process. In this consent process, the ARRB staff notified an agency that its proposed postponements were not likely to be approved by the Review Board and the agency thereupon voluntarily consented to the release of the information.

After the Board made a determination on the release of documents, notification of the Review Board's actions was sent to the President of the United States and the relevant Federal agencies. The President had 30 days to agree or disagree with the Review Board's decisions. During the Review Board's lifetime, few federal agencies appealed Review Board decisions to release documents. In cases in which Federal agencies appealed to the President, all appeals were subsequently withdrawn, validating the Review Board's wisdom and authority. Records released by the Review Board were transferred to NARA soon after the appeal period expired.

The U.S. Congress made clear, with the passage of the JFK Act, that it wanted to "ensure that there is an adequate opportunity for public input and participation" into Review Board activities.

Although the nature of the Review Board's work -- dealing with classified information -- required closed meetings, the Review Board continued to conduct open meetings and hearings whenever possible to fully inform the public of its actions and of the release of documents. During its lifetime,

the Review Board conducted 23 meetings in Washington, DC and conducted public hearings in Boston, Massachusetts, Los Angeles, California, New Orleans, Louisiana, and Washington, DC. On two occasions, Review Board public hearings were broadcast nationwide on C-SPAN.

The Review Board and ARRB staff focused on increasing the rate of records reviewed (see Appendix X), as well as identifying and locating additional records. The result was a consistent and dramatic increase in the number of records voted on by the Review Board, and the identification and acquisition of new records. The Review Board's accelerated hearing and review process has significantly expanded the historical record of the Kennedy assassination. **At the end of 1996, the collection totaled 1,290 cubic feet, equivalent to 3.3 million pages of documents.**

I. Agencies

The JFK Act is an innovative approach to how the Federal government can and should disclose classified information to its citizens. As with all new attempts to streamline government and to resolve issues in new ways, the Review Board was confronted by unanticipated difficulties that needed to be overcome. Although significant progress has been made to resolve the institutional and bureaucratic hurdles faced by the Review Board and the agencies, the development of this new program in uncharted terrain was more time-consuming than had been anticipated.

Prior to the JFK Act, the declassification of records was controlled almost exclusively by the Federal agencies that had created or obtained the records. Although the Freedom of Information Act provided a significant mechanism for the release of government information, it has not been an effective means for the release of classified information. Very few judges in FOIA litigation have been willing to order Federal agencies to release classified information that the agencies have argued should be closed.

The JFK Act was the first attempt to place the effective power of declassifying government records outside of the originating agencies. Although the Review Board itself technically cannot declassify Executive Branch records -- that power remains with the President -- the Review Board has become the first body with the significant authority to require agencies to justify redactions in their records. The only agency to have appealed Review Board determinations, the FBI, ultimately withdrew all of its appeals prior to a presidential decision. In this sense, the Review Board essentially became the principal agent for determining what classified information should be released to the public.

The novel mechanisms of the JFK Act have caused agencies to rethink and to revise their earlier approaches to releasing classified information. This rethinking and reevaluation has been a difficult and time consuming process for the agencies involved, particularly the FBI and CIA. There is no

doubt that many people in the agencies have strongly resisted this important declassification effort. But it is equally clear that, for the most part, the agencies as a whole have made strong and significant efforts to cooperate with the Review Board to bring about the goals of the JFK Act. Although the work has not been smooth, easy, or swift, most of the agencies are helping to satisfy the Congress' goals.

The Review Board has had a different experience with each agency that it has encountered. In every case, there has been a period of education during which the agencies have learned the nature of their responsibilities under the Act, while the Review Board has learned about the particular needs and sensitivities of the agencies. The two over-arching problems have been first, identifying and locating assassination records, and second, determining the proper standard for the postponement of the release of information in agency records. Brief descriptions of the status of the compliance of Federal agencies with the JFK Act are provided below.

Federal Bureau of Investigation -- The FBI has devoted more resources towards complying with the JFK Act and has released more records than has any other agency. The FBI also is the only agency to have appealed Review Board determinations to the President, a process that entailed a notable expenditure of resources of the Review Board and FBI in the briefing of the issues to the President. But by subsequently withdrawing its appeals, the FBI also demonstrated its willingness to reconsider earlier decisions and has continued, throughout the process, to cooperate with the Review Board.

Review and Processing of FBI Assassination Records

The Review Board has worked with FBI documents continuously throughout FY 1996. To date, the Review Board has voted on postponements claimed in more than 1,300 FBI records. The FBI also has agreed to release in full an additional 1,600 assassination records that previously were available only in redacted form, rather than submit to the Review Board evidence in support of its redactions. When it has chosen to ask the Review Board to uphold claimed postponements, the FBI has significantly improved in making timely and pertinent evidence submissions.

Establishing and applying disclosure standards for FBI records proved to be a protracted and difficult process. The largest body of postponements claimed by the FBI concerned confidential informants and Sections 6(2) and 6(4) of the JFK Act. On December 14, 1994, the Review Board received its first briefing by FBI officials on the Bureau's reasons for wishing to withhold information tending to identify informants. In the months that followed, the Review Board members and staff learned much from the FBI about how the Bureau handled informants and informant reports in the 1960's, and explained to the FBI its reasons for believing that the JFK Act required more particular consideration of current circumstances before the Review Board could sustain informant postponements. Although

the FBI and the Review Board identified a number of postponements that both agreed should be released under the JFK Act, they were unable to resolve larger issues.

When the Review Board first voted on a set of informant postponements in July 1995, the FBI sought protection of its informants as a class, rather than provide evidence regarding individual informants. The Review Board voted to open these postponements and the FBI exercised its right to appeal to the President. In August 1995, the FBI and the Review Board thoroughly briefed the White House on the appealed issues. The FBI subsequently provided information about these informants and the Review Board thereupon reconsidered its prior determinations in the light of this evidence. The FBI then released the records in accordance with the Review Board's determinations rather than renew its appeals to the President.

Since that time, the FBI and the ARRB staff have worked to ensure that information relevant to informant postponements is efficiently provided. Nevertheless, a period of ten months and a labor-intensive appeal had been required to establish the type of evidence needed to support continued postponement.

The second largest group of postponements in FBI records involve the FBI's "foreign counterintelligence" ("FCI") activities and Sections 6(1)(B) and 6(1)(C) of the JFK Act. At the request of the FBI, the Review Board delayed consideration of these postponements until 1996, in order to give the Bureau and the Department of State sufficient opportunity to review this set of issues. When, in 1996, the Review Board voted to open a number of FCI postponements, the FBI, with the support of the Department of State, noticed for appeal over a hundred of these determinations to the President. The issues presented on appeal were exhaustively briefed in May 1996, with supplementary papers filed later in the year. In December 1996, the FBI advised the White House and the Review Board that it was withdrawing all of the records from the briefed FCI appeals in the light of comparable official releases identified by the Review Board. While it now appears that the most important issues regarding FCI postponements have been resolved, another lengthy appeal process had been required to reach that resolution.

By a significant margin, the FBI has identified more assassination records than any other Federal agency. As a result, although the FBI has devoted substantial resources to implementing the JFK Act, more than 200,000 pages of assassination records still remain unprocessed. At the current rate, the FBI will not have completed its processing of these records until after the scheduled termination of the Review Board's mandate at the end of Fiscal Year 1997. In view of these resource and time constraints, the Review Board is taking steps to ensure that it focuses on those FBI records of greatest use and interest to the public. Within the body of unprocessed assassination records, the ARRB staff is identifying subjects of highest interest, so that the FBI can process these subjects next. The FBI has fully cooperated in this effort.

Identification of Additional FBI Records and Information

The Review Board has continued its efforts to locate additional FBI assassination records by making several requests for records and information. The FBI has assisted in this effort by giving Review Board members access to requested files. The FBI has, on the whole, been extremely cooperative and helpful to the Review Board and has provided the information requested.

Central Intelligence Agency -- Throughout the past year, the Review Board has experienced a high level of cooperation with the Central Intelligence Agency. The CIA has proved willing to release records of great operational sensitivity on issues of immediate relevance to the Oswald story as well as to a wide variety of other releases in documents that are less closely connected to the JFK assassination or to Oswald. In addition, the CIA has taken upon itself to release in full to NARA large numbers of previously redacted documents from its Oswald file and JFK records. The CIA efforts to cooperate with the spirit of the JFK Act were solidly demonstrated by its willingness, under Review Board auspices, to send a team of reviewers to the JFK Library in Boston to clear for release a large body of Cuba-related records from President Kennedy's National Security Files. It appears to the Review Board that the declassification process has produced more internal agency difficulties for the CIA than for any other Federal agency. The identification, discussion, and resolution of issues pertaining to classified information has imposed a significant challenge on the CIA and on the Review Board. Although the CIA has not agreed with many Review Board determinations, it nevertheless has undertaken significant efforts to cooperate with the Review Board to satisfy the standards of the JFK Act.

Review and Processing of CIA Assassination Records

Unlike the FBI, the CIA did not employ the presidential appeal process to clarify issues in dispute. The CIA met extensively with the Review Board, providing detailed evidence in support of the proposed postponements. The ultimate outcome, not unlike that with the FBI, was an identification of the truly important issues. The contrast between the initial postponements taken by the CIA and the formal determinations made by the Review Board and ultimately accepted by the CIA is dramatic indeed. The time and energy invested in the process, however, was significant.

In December 1996, the CIA transferred many of the records from the HSCA Sequestered Collection to a secured space adjoining the Review Board offices. The close proximity to the Review Board will increase the efficiency of record review.

Identification of Additional CIA Records and Information

The Review Board has initiated a number of requests to the CIA for additional information and records. Although the CIA has repeatedly stated its intention to fulfill these requests, many have been long outstanding. The Review Board expects that these requests will be promptly and fully satisfied during the upcoming year.

U. S. Secret Service -- The Review Board's experience with the Secret Service offers an instructive example of the difficult process of education demanded by the JFK Act. In March of 1995, the Secret Service reported to the Review Board that it believed it had effectively satisfied its responsibilities under the JFK Act. Although the Review Board has no reason to question the sincerity of this early representation, it is now clear that the Secret Service was far from finished. Although the Review Board and the Secret Service had a difficult first year in sorting out their comparative responsibilities, the Review Board notes the significant improvement in the cooperation of the Secret Service during this past year. Although much work remains to be done, and some important differences in interpretation of the JFK Act need to be resolved, the Review Board looks forward to a mutually cooperative relationship with the Secret Service during the upcoming year.

Review and Processing of Secret Service Assassination Records

Over the past twelve months, the Secret Service has developed a system for its internal review of records and submission of documents and disks both to the Review Board and to the JFK Collection at the National Archives. Since October 1995, the Secret Service has processed approximately 500 records referred from the HSCA collection at Legislative Archives. Of those 500 records, the Secret Service forwarded approximately 450 records without postponements to the JFK Collection and submitted more than 50 items with postponements to the Review Board. Four documents are still under consideration by both the Review Board and the Secret Service. The Review Board continues to be engaged in discussions regarding specific requirements under the JFK Act with the Secret Service.

Identification of Additional Secret Service Records and Information

Time consuming and careful review of Secret Service activities by the Review Board produced a series of requests for additional records and information that, in turn, led to the identification of additional relevant assassination records. In response to the first eight requests for additional information from the Review Board, the Secret Service has submitted more than 1,500 pages of material. Three requests are still outstanding, and a few documents from the submitted material are still under review. The Review Board will be following up some of these responses with additional requests in the coming year. The Secret Service has forwarded material from Chief Rowley's files, letters from the public, and protective information (including trip reports, administrative files, and Warren Commission memoranda) from the 1963-1964 period.

Department of the Treasury (excluding IRS, Customs Service, ATF, and Secret Service) -- Prior to being contacted by the Review Board, "Main Treasury" had identified no assassination records under the JFK Act. ARRB staff members requested access to specified Treasury records and, last fiscal year, identified assassination records among Treasury files held at the Federal Records Center at Suitland, Maryland. The Review Board has directed Treasury to transfer these records to the National Archives for inclusion in the JFK Collection, as well as to locate additional records that may contain assassination-related materials. The identification of assassination related documents in Treasury files is an example of the Review Board's ongoing effort to identify additional documents and of the need for an extension of the Review Board's mandate.

Internal Revenue Service -- The JFK Collection at NARA includes three boxes of closed IRS records that were made available to the Warren Commission. These records apparently include original Oswald tax return forms and other records that are of substantial interest if they could be disclosed publicly. Section 6103 of the Internal Revenue Code generally prohibits public disclosure of confidential tax returns. Although Section 11(a) of the JFK Act provides that the Act generally supersedes all other law with respect to disclosure of assassination records, it specifically states that the Act does *not* take precedence over Section 6103 of the Internal Revenue Code. The Review Board is engaged in discussions with the IRS to determine whether there is a legal means by which these records could be disclosed.

Within these legal constraints, the IRS and the Review Board have worked together to ensure that the JFK Collection is as complete as possible. For example, the IRS has already agreed that tax return information may become part of the JFK Collection if the taxpayer (or his surviving spouse or descendant) consents in writing to disclosure of the information. After receiving this assurance from the IRS, the Review Board contacted Marina Oswald Porter and asked for her consent to release of the tax return records. Although she requested that the Review Board pursue certain records, and although the Review Board is in the process of seeking those records, she has thus far been unwilling to take the simple step that would enable the documents to be released promptly.

Customs Service -- The Customs Service is in the final stages of its work with the Review Board to implement the JFK Act. Under generally applicable retention policies, most Customs Service records are authorized for destruction after 20 years. However, the ARRB staff identified more than 100 boxes of Customs Service records from the 1950s through the 1970s at the Washington National Records Center at Suitland, Maryland. This year, Customs officials and ARRB staff members reviewed more than 100 boxes containing these records, and identified a small number of assassination records. In August 1996, Customs advised the Review Board that it has concluded its search of field offices and that those offices that had located assassination records had sent them to Customs headquarters for review under the JFK Act.

Customs is now preparing electronic identification aids for all of its assassination records and will transfer the records to the National Archives when these aids are completed. Customs has advised that it does not anticipate seeking postponements in any of these records. Finally, Customs has approved release in full of all assassination records referred to it by other agencies.

Bureau of Alcohol, Tobacco and Firearms (ATF) -- To date, ATF has sent no records to NARA for inclusion in the JFK Assassination Records Collection. After some initial difficulties in establishing a point of contact, ATF responded to the Review Board's inquiries by stating that it had searched its records and found nothing related to the assassination of President Kennedy. The Review Board followed up with specific requests targeting particular individuals and events of interest to the Warren Commission and HSCA investigations, as well as to private researchers. In response to these requests, ATF identified one assassination record. ATF advises that other responsive records it once may have had were probably destroyed prior to the passage of the JFK Act pursuant to records disposition schedules generally applicable to ATF investigative files.

Department of Justice (excluding INS, FBI, and DEA) -- The Review Board has established points of contact within the Office of Information and Privacy (for records of the DOJ leadership), the Criminal Division, the Civil Rights Division, and the Civil Division. Each of these offices has transferred records to the National Archives for inclusion in the JFK Assassination Records Collection. In addition, the Office of Legal Counsel is processing for inclusion into the JFK Collection relevant documents from that office, including documents relating to legal issues that arose regarding the Warren Commission. DOJ has also allowed the ARRB staff to review microfilmed copies of DOJ records located at the John F. Kennedy Presidential Library in order to determine to what extent these records may fall within the purview of the JFK Act. We understand that some of these records now exist only on microfilm. DOJ has also responded promptly to Review Board requests for information and referrals of records from the HSCA and other agencies.

Immigration and Naturalization Service -- More than any other Federal agency, the INS has thus far failed to meet its obligations under the JFK Act. Although the INS -- like all agencies -- believes that it has insufficient resources to comply with the Act, all other similarly situated agencies have made much greater efforts to comply with the spirit and the letter of the law. The INS has repeatedly failed to meet agreed-upon deadlines.

As of November 1, 1996, the INS had not transferred any of its own assassination records to the Review Board or to NARA. Although the INS had reviewed its own equities in third agency documents and returned them to the appropriate agencies, it had not completed any of its own review. Beginning in November 1996, the INS finally began the process of transferring records to NARA with its shipment of INS files for several individuals, none of which contained any postponements. It

recently transferred to NARA the original Lee Harvey Oswald and Marina Oswald Porter files. More recently, the INS failed to adhere to its November 4, 1996 promise that it would complete the review and transfer process by February 1, 1997.

Drug Enforcement Administration -- The DEA has not, on its own initiative, identified any records of its own for inclusion in the JFK Assassination Records Collection. However, the DEA has responded cooperatively to Review Board requests to locate and retrieve files potentially containing assassination records. The ARRB staff is reviewing retrieved records so that the Review Board may determine how the JFK Act should be implemented with respect to these records. To date, this effort has concentrated on files responsive to HSCA requests for information, but records potentially relating to the assassination that postdate the HSCA also have been identified. Under its generally applicable records disposal policies, the DEA destroys investigative files after twenty-five years. As a result, ARRB staff has not identified any records potentially related to the assassination dating before the 1970s.

U. S. Postal Service -- The Postal Service has identified in response to the JFK Act a number of records, principally relating to postal inspector's investigation of the mail-order purchase of the rifle that, the authorities concluded, was used to kill President Kennedy. However, the Postal Service has not yet transferred any of these records to the National Archives for inclusion in the Collection.

Department of Defense -- The Department of Defense (including its many components and the military services) (collectively "DOD"), identified few assassination records on its own initiative. DOD has nevertheless been cooperative with the efforts of the Review Board to locate assassination records. When such records have been located, DOD has been willing to release the records with few redactions. For example, DOD released, without postponements, the 45 previously withheld HSCA documents that contain DOD equities.

The many components of the armed services have required extensive support and follow-up in their efforts to comply with the Act. Military records are distributed among a wide variety of entities, and their records are scattered among numerous repositories. Military records include those of the Office of the Secretary of Defense, the individual services (Army, Air Force, Navy and Marine Corps), the Joint Staff, and individual DOD agencies such as the National Security Agency (NSA) and the Defense Intelligence Agency (DIA). The records of each service or agency are organized separately; each sets its own standards for which records will be retained, which will be destroyed, and what the destruction schedule will be; and each stores its records in one or more archival repositories which often lack any centralized index or catalogue. Additionally, the sheer magnitude of DOD records (which is several times greater than that of CIA, FBI and Secret Service put together) makes it extraordinarily difficult to identify and locate assassination-related records.

As a consequence, a major problem in the search for military records involves simply finding assassination-relevant materials within so many large, separately-managed records collections. Unlike the FBI and the Secret Service, the Department of Defense and the military services did not play a role in investigating the assassination. Consequently, while those other agencies often have records holdings clearly marked "JFK Assassination" or "Assassination Investigation," DOD entities do not. Instead, individual DOD documents referring to the assassination are generally to be found (if at all) buried in collections dealing primarily with other topics. Finding these records among the voluminous military records holdings is no easy task, since detailed subject headings for old file collections are frequently so vague (hundreds of boxes marked "General Office Files, 1963") as to be useless.

Further exacerbating this problem was the initial difficulty in educating DOD records managers on what broad topics or records groups should be searched in detail in the hopes of uncovering information that might have had some bearing on the assassination. For example, records dealing with domestic surveillance of possible "subversives" by military intelligence units in Texas and Louisiana (and which led to the creation of a pre-assassination file on Oswald by an Army intelligence unit based in San Antonio) may shed additional background information on the Kennedy assassination. Such connections were not necessarily apparent, however, to the people who did the initial search of DOD records: they were not themselves experts on the assassination and tended, therefore, to limit their search to documents directly related to the president's assassination in Dallas on November 22, 1963. An important component of the ARRB's work with DOD has been to broaden the search for files to other related topics to see if they will yield information that will broaden our understanding of the assassination and its historical context.

Yet another difficulty in assuring a thorough search of military records arises from the way in which such records are stored. For the most part, the initial records search done by each service and agency in compliance with the JFK Act focused on records currently in its custody. Significantly, however, these efforts generally failed to search the stored records that are under the service or agency's legal control, but that are no longer in its custody: namely, records stored at archival repositories like the Federal Records Center in Suitland, Maryland. These records have not yet been accessioned by NARA and thus remain the property of the individual service or agency that created them. (To access these records, one must obtain permission from the owning service or agency, not NARA.) This initial failure to search Suitland records was a serious omission inasmuch as many records from the early 1960's are located there. To give just two examples, both the Defense Intelligence Agency and the Navy's former Office of Naval Intelligence have substantial records holdings at Suitland from the 1962-64 era; neither of these voluminous collections was searched for assassination-relevant material in response to the Review Board's initial request.

The ARRB staff received and reviewed two packages of assassination-related documents from the Office of the Secretary of Defense (OSD). The first, an unclassified package, contained information regarding FOIA requests previously processed by OSD. The second package, which was classified, contained six documents (totaling approximately 130 pages) related to U.S. policy toward Cuba in 1962-63. Of the classified documents, three have now been cleared for full release. The three remaining documents have been cleared by State, CIA, Army and OSD, but have redactions proposed by the Joint Staff. The ARRB staff will meet with the Joint Staff records manager to request reconsideration of Joint Staff redactions to facilitate voluntary declassification and consent release of all documents. If such consent is not obtained, the records will be sent to the Review Board for its review and formal determinations.

Approximately 20 Joint Staff or Joint Chiefs of Staff documents have been identified for immediate release without postponements. The ARRB staff has identified additional historical documents (chiefly within J-3 Special Operations Division) as possibly assassination-related. Review of these records is ongoing.

In one of the more interesting and successful activities related to military records, the ARRB staff located the microfilm records of the Pentagon Telecommunications Center. These records consist of all regular cables either originated by or addressed to senior Army officials or Army agencies in the Pentagon. Documents in this collection include records from all of the military services as well as some from the CIA, State Department, and other agencies. DOD has assisted the ARRB staff in locating, reviewing and partially declassifying documents of relevance to the assassination. To date, more than 300 documents (all of which are either incoming or outgoing messages in the 1962-64 time frame) have been photocopied for declassification, referral and possible Review Board action. Personnel from the Army's Center of Military History in Washington, DC, and the Military History Institute at Carlisle Barracks, Pennsylvania, have been particularly helpful in searching for and declassifying Army records.

With the help of the ARRB staff, the Army located, reviewed and cleared for release without postponement the Army Corps of Engineers documents related to the JFK grave site. Other components of the Army have been helpful as well. The Historical Office of the Army's Intelligence and Security Command (INSCOM) assisted the ARRB staff in locating Army intelligence files previously accessioned by NARA and held in NARA's classified storage. A review of these records is ongoing. They include military intelligence records of persons of interest to assassination researchers.

In addition, Army declassification will begin soon on six cartons of Top Secret and Secret documents found by the ARRB staff at NARA. These documents pertain to military policies and activities involving Cuba during 1962-64.

The Air Force located, reviewed and cleared for release without postponement approximately ten assassination-related documents. Additional classified records currently are being reviewed. In an interesting discovery, the Air Force canvass of subordinate commands yielded a ledger entitled "Log of Events" and "Death of JFK" that appears to be a record of incoming and outgoing messages, orders, and reports kept by an unknown individual assigned to the headquarters or operations section of the 1254th ATW at Andrews Air Force Base. This book contains handwritten entries from November 22 to November 25, 1963, describing actions related to the return of Air Force One from Dallas to Andrews and other activities. It will be transferred to NARA without redactions.

The Navy and Marines have provided the Review Board with the least substantive feedback of all the services. After several calls, however, the Review Board was finally able to secure Oswald's original personnel and medical records for transfer to NARA. The Navy also provided two cartons of documents (previously open to the public) concerning USMC operational planning during the Cuban Missile Crisis in 1962. The ARRB staff is continuing its work to ensure that the Navy and Marines locate any existing assassination-related records, particularly records relating to Oswald, who had served in the Marines.

ARRB staff and National Security Agency (NSA) officials met throughout FY 1996 to identify and prepare documents for the Review Board. Throughout this process, NSA officials showed sensitivity and responsiveness to the Review Board's goals. Because of the secrecy and sensitivity of NSA activities, record identification had to be carried out by selected members of the ARRB staff with appropriate security clearances and often involved review of files at NSA headquarters in Fort Meade, Maryland. NSA officials also provided a series of candid, comprehensive briefings for the Review Board and ARRB staff on NSA procedures, capabilities, and record holdings. These briefings were of great assistance to the Review Board when it later came time to consider declassification of NSA documents in light of the peculiar challenges faced by NSA. As a result, in December 1996, the Review Board released approximately 80 NSA documents (primarily communications intercepts) with minimal redactions.

Department of State -- The Department of State not only maintains assassination-related records of its own, but also supports the Review Board's efforts at locating and obtaining foreign records. Although the Department has performed well in complying with the act as far as its own records are concerned, it has failed to provide adequate support in its other area of responsibility. The Review Board experienced unusual and unacceptable delays in the transmission and transfer of cable communications to and from U.S. embassies abroad. These delays, in some cases, may have significantly compromised the Review Board's ability to obtain assassination records held by foreign governments.

With the exception of its handling of cables, the Department of State has provided a high level of

cooperation and has continued to release, in full, most of its records related to Oswald or the JFK assassination. In addition, State actively participated in the Review Board's joint-agency review of Cuba-related records at the JFK Library, clearing for release most of those records containing Department of State equities.

Presidential Libraries -- The Review Board has received cooperation from the three Presidential libraries that house significant collections of assassination-related materials. The President John F. Kennedy Library initially undertook a survey of its collections and forwarded to the JFK Collection at College Park copies of a number of records of interest from the Kennedy administration. Pursuant to follow-up inquiries from the Review Board, the Library has made its facilities available for several trips by the Review Board and the staff. The staff is in the process of undertaking a comprehensive review of the Library's collections in an attempt to locate additional assassination-related records. Through the efforts of the Review Board, and with the excellent cooperation of the Kennedy Library, the CIA, and the State Department, 20,000 pages of Cuban-related records have been declassified and released from several collections at the Library. The ARRB staff anticipates completing its comprehensive review of the Library's collections in mid-Spring. The ARRB staff is also conducting a review of 44 rolls of microfilm that contain Department of Justice records from the Kennedy administration. The Kennedy Library has continued to release additional records from the Kennedy administration, including tape recordings, as well as private collections, including the pending release of the papers of Evelyn Lincoln, who was the personal secretary to President Kennedy.

The Lyndon B. Johnson Library and the Gerald R. Ford Library were among the earliest institutions to complete their initial review, processing, and forwarding of copies of assassination records to the JFK Collection. The staffs of both libraries have responded to the requests of the Review Board. The Review Board is currently awaiting shipments of unredacted copies of records so that it may render its formal determinations on the proposed postponements.

National Archives and Records Administration -- Mr. Steven D. Tilley, who is the Chief of the JFK Collection at NARA, has been of invaluable assistance to the Review Board and the ARRB staff. He and his office have provided easy and expedited access to JFK records for the staff. Although it is the Review Board's impression that he would greatly profit by receiving additional staff support and resources, he has provided helpful and willing assistance throughout the process. The Review Board has also received the cooperation of other areas within NARA, including the General Counsel's Office, the Still and Motion Picture Branch, and many other areas. The Review Board is concerned, however, that -- other than records in the JFK Collection -- not all records that have been transferred to NARA have been reviewed for assassination-related materials.

House Select Committee on Assassinations -- The collection of documents created by the

HSCA was turned over to the Review Board and the National Archives. Reviews by third party agencies continued in 1996 with the Review Board voting to release 154 HSCA documents and nearly 2,000 released with agency consent. Many of these records are being made available to the public for the first time.

Senate Select Committee on Intelligence -- The staff of the Senate Select Committee on Intelligence submitted to NARA 40 boxes of documents compiled by the Church Committee. The SSCI staff thereupon reported that the submission of these documents completed its compliance requirements with the JFK Act. A review of those documents disclosed, however, that many documents referenced in the Church Committee report on the Kennedy assassination were not included in the submitted material. The SSCI staff, citing the complexities in dealing with other unrelated congressional issues, has not yet completed its response to the Review Board's request to submit the missing documents for review.

ii. Review Board

b. Federal Records

I. The Core Files

Significantly, all of the remaining documents contained in the CIA's Lee Harvey Oswald "201" file were released in part or in full in 1996 under the Review Board's direction. These include 781 documents released with the consent of the Agency.

ii. The Sequestered Collections

In its review of the FBI's "Core and Related Files" and the CIA's "Oswald 201 File," the Board subjected every requested redaction to a rigorous test: did the evidence of the harm that would result from the release of the information outweigh the public interest in the information?

In contemplating its review of the CIA's "Sequestered Collection" and the FBI's "HSCA Collection," which collectively can be referred to as those agencies' "Segregated Collections," the Board recognized that it needed to develop a different approach, one that would take into account the varied degree of relevance of individual records to the assassination. These records are those that were segregated from the agency's filing system at the conclusion of the HSCA investigation. The Sequestered Collection ranged from records of direct relevance to the assassination to others for which the Review Board is unable to identify any relevance.

Only in this way could the Board ensure that it would appropriately expend its resources. As a first step, the Board carefully analyzed each collection in order to determine what priority should be assigned to the categories of records. In addition, the Board developed a set of guidelines for the review of these records which recognized that some categories of records did not require the intensive word-by-word review that had been the rule for the core collections. The development of these guidelines began with the August 6, 1996 public hearing and culminated in their adoption at the October 16, 1996 Review Board meeting. Under these guidelines, the ARRB staff distinguished between records whose relevance to the assassination was clear and those not believed to be relevant (or "NBR"). Applying these new standards permitted the ARRB staff to identify and review the most significant remaining records in order of priority.

These detailed guidelines reduced the loss of valuable Review Board and ARRB staff time expended to review, on a word-by-word basis, those documents that have a remote relationship, if any, to the Kennedy assassination. Those documents identified as relevant to the assassination were reviewed word-by-word. These standards of relevance were designed to ensure that the greatest number of true assassination records was properly identified, reviewed, and made public in the JFK Collection at NARA.

5. Collecting the Records

- a. Additional Records and Information.
- b. Local Records
- c. Private Records
Hosty Records

6. Clarifying the Records

- a. The Medical Questions
- b. The Photo Questions
- c. Military Issues
NSA
Military intercepts

7. Compliance Program

8. Lessons Learned

9. Results and Recommendations

10. Appendices