

## REMARKS TO COPA CONFERENCE

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October 10, 1994

Washington, D.C.

Thank you Mr. Alcorn and thank you participants. I have read your agenda for this conference. It looks to be very interesting and informative.

I plan to speak only briefly today. As you know, the Assassination Records Review Board is at the very beginning of its work. As a result, there is very little of substance yet to discuss with you. After my remarks, I would be pleased to handle questions.

There are three reasons why I am here with you today:

First, I take very seriously the Review Board's responsibility to fully communicate with the research community and with the American public.

Second, I want you to understand who the Review Board is, what its responsibilities and powers are, what its plans are, and, indeed, what its limitations are.

Third, I want you to know that the Review Board would like your help, particularly in identifying records that will fall within the sweep of the JFK Records Collection Act and the jurisdiction of the Review Board.

The Assassination Records Review Board presents a unique and extraordinary opportunity. The Board is an independent agency with no ties to federal agencies that hold assassination records. The Board has the power to decide what records are declassified and made public. And, the Board has the opportunity to develop a very specialized expertise to supervise in a knowledgeable and professional manner the process of making public the records of the assassination of President Kennedy.

With many groups, I am asked to answer the question why. Why is there an Assassination Records Review Board?. The researchers know the answer to that question. First, different records have been sealed until different times. For example, the records of Congress were sealed until 2029. Second, FOIA is just not working to release many assassination records. Third, various executive orders had all but stopped the declassification of these records. Fourth, there has really been no accountability for the fate of assassination records. And, fifth, and probably most important, the public was demanding more answers.

The result was the President John F. Kennedy Assassination Records Collection Act of 1992. Although nearly two years have passed since enactment the entire process is moving forward. The creation of the JFK Access Collection at the National Archives, mandated by the

Act, has proceeded well. An incredible number of previously secret records have flowed into the National Archives and have been promptly released. The Director of the JFK Access Collection at the National Archives, Steve Tilley, is terrific. Steve and his staff have developed a quick document retrieval system and have handled an enormous demand for access.

The second part of the JFK Records Collection Act created the Assassination Records Review Board. The Review Board has three important roles:

- 1) an investigative role,
- 2) a quasi-judicial role, and
- 3) a historical preservation role.

Although the authority of the Board is broad, its roles are to be carried out with a very specialized focus: the records resulting to the assassination of President Kennedy. The Review Board is not a new Warren Commission.

The Review Board is not empowered to solve the mysteries surrounding President Kennedy's death. What the Review Board is empowered to do is to provide to the American people a complete record of whatever documentation exists regarding this national tragedy and its aftermath. Our responsibility is to provide a record securely preserved at the National Archives that is fully accessible to all.

That is an overview, now let me give you some details. The appointment of the Review Board was delayed primarily because of the change of administrations. And, a presidential appointment, qualification for the security clearances, and Senate confirmation of 5 individuals just plain takes time. I was first asked to undertake this assignment in June, 1993. I was nominated by the President in September, 1993 and confirmed by the U.S. Senate in February, 1994.

The Records Collection Act gave four professional organizations the opportunity to submit recommendations. They include:

The Organization of American Historians,  
The American Historical Association,  
The Society of American Archivists, and  
The American Bar Association.

President Clinton made four of his appointments from the recommendations submitted by these organizations.

Who are the members of the Assassination Records Review Board?

First, Dr. Henry Graff - Professor Emerus of History at Columbia University. Dr. Graff is a presidential historian of national stature and a prodigious author.

Second, Dr. Kermit Hall - Dean of College of Humanities at the Ohio State University. Dr. Hall is a widely known historian and author of outstanding books on the Constitution.

Third, Dr. William Joyce - Associate Librarian and Archivist at Princeton University. Dr. Joyce brings a very important archivist's perspective on the immense value of records preservation.

Fourth, Dr. Anna Nelson - Professor of History at American University. Dr. Nelson is an expert on access issues within the federal government.

And finally, myself, John Tunheim. I am the Chief Deputy Attorney General in the State of Minnesota. For better or for worse, the law requires one lawyer on the Review Board and I am that person.

This is a group of highly qualified individuals who are deeply committed to public access, and to the value of these records to future generations of Americans. In addition, the group is delightful to work with as a team.

The Review Board was sworn in in April by Justice Ruth Bader Ginsberg. We have spent the summer organizing our team and beginning to hire key staff. We have hired David Marwell as our Executive Director and Dave is here with me today. The Review Board felt extremely fortunate to hire him. He most recently directed the Berlin Document Center, managing a large staff and an enormous records collection. He oversaw the successful transfer of control of the Center to the German government. He also served with distinction in the Office of Special Investigations in the Department of Justice.

The Review Board is now merely ten days into our first Congressional appropriation and our office will soon be under construction. We will also soon be ready to announce the hiring of our remaining senior staff workers. In addition, the Review Board has begun preliminary discussions with federal agencies holding records.

By law, the Review Board is an independent agency and as a result, there is no large departmental budget for us to tap. I might add that we would have been six months further behind, but for the willingness of President Clinton to provide transition funding out of his White House budget. We have also used this time to obtain some very helpful changes in the JFK Records Collection Act. The most important change is that the Review Board will now have a full two years plus an additional year at the Board's discretion to complete its responsibilities. The sunset date will likely be October 1, 1997.

The Review Board's powers include:

First, the power to direct government offices to organize and transmit to the National Archives all "assassination records;"

Second, the power to inquire into all facts regarding government offices' handling of assassination records and to investigate additional information that may be required to fulfill these responsibilities;

Third, the power to compel testimony and documents from private persons, if those documents are relevant to the Review Board's responsibilities;

Fourth, the power to require an accounting regarding any destruction of assassination records; and

Fifth, the power to hold hearings, to administer oaths, to subpoena witnesses and documents and, importantly, to immunize witnesses.

Congress gave the Board explicit direction to: (1) seek to open sealed court records; (2) obtain the records of foreign government; and (3) give priority to records that have been the subject of FOIA litigation. This indeed is a remarkable set of powers that are to be exercised within the context of the board's two primary responsibilities: (1) the acquisition of records for the National Archives; and (2) the review of records, the release of which have been postponed by a government office.

With respect to the Review Board's acquisition power, the Board must further define the term "assassination record." This will be the focus of tomorrow's hearing. The Board will also seek to learn what records are relevant and where they are located. And, the Board will secure such records for the JFK Collection. Acquiring records may be by persuasion, by direction, or by subpoena. I hope that many of you can be of assistance to the Board in this effort.

With respect to the Review Board's review function, the Board will assume control of all assassination records, the release of which has been postponed by the agencies. The Board will establish a process by which it will make a determination of whether to release or to postpone release of a document or information within record.

The law sets up precise categories of information that may be subject to postponement. They include:

- disclosure of intelligence agents
- intelligence sources
- military defense issues and agreements with foreign governments.
- risk of harm to individual
- invasion of personal privacy
- intelligence gathering methods, and
- methods of protecting government officials.

But, and this is important, the Review Board must find by **clear and convincing evidence** that public interest in release is outweighed by the harm caused by release before it can postpone a record. In other words, there is broad discretion vested in the Board in all these determinations.

The Review Board can be overruled by the President for executive branch records and by the Congress for congressional branch records.

This is a significant and weighty declassification process that will take us some time. We are not going to begin review of records until our staff is in place, hopefully within the next four to six months. We are also required to provide significant reporting in the Federal Register, so everyone will know what we are up to.

In the next several months, the Review Board will

- 1) continue to build its staff,
- 2) conduct a series of public hearings as a way to communicate fully with the American public,
- 3) commence both the acquisition and the review process, and
- 4) clarify the definitions in the Act.

From you, the Review Board would like your advice on what records we should be seeking and their relevance. I promise you that we will follow up on any advice we receive. I hope that you will have a little more patience with us. We will be "staffed up" soon and ready to fully enforce the law.

There is a presumption written clearly into the law that is very important to emphasize to you today: The Act states:

"All governmental records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure."

The Review Board feels strongly that the public must be fully informed about the history surrounding the assassination. That principle will guide our determinations.

We are an independent federal agency and we will not rubber stamp anyone else's decisions. We are well aware of the enormous value of these records to scholars, to researchers and to a very interested public. Congress has set high standards for postponement. We will apply those provisions and apply them fairly. Please remember that we are a Review Board created for the express purpose of public disclosure, not secrecy.

Thank you very much.