

Withdrawal/Redaction Sheet

Clinton Library

COPY

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY P1/b(1), P5
007. memo	Bill Leary to Marvin Krislov re: FBI Appeal of the JFK Review Board's Proposed Release of Nine FBI Documents (3 pages)	08/29/1995	P1/b(1), P5
008. memo	Bill Leary to Marvin Krislov re: FBI Appeal of the JFK Review Board's Proposed Release of Nine FBI Documents (3 pages)	08/29/1995	P1/b(1), P5
009. report	The Assassination Records Review Board's Response to the FBI's August 16, 1995 Letter (3 pages)	08/28/1995	P5 6103
010. letter	FBI Director Louis Freeh to President William J. Clinton re: FBI Appeal of JFK Assassination Records Review Board Determination Concerning Release of FBI Documents - August 8, 1995 (4 pages)	08/16/1995	P1/b(1), P5
011. note	Re: JFK Appeal (1 page)	n.d.	P1/b(1), P5

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3642

FOLDER TITLE:

[Assassination Records Review Board Reply to the FBI, August 8, 1995] [Binder]
[Folder 1] [1]

Kelly Hendren
2006-0528-F
kh546

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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COPY

ASSASSINATION RECORDS REVIEW BOARD'S RESPONSE
TO THE FBI'S AUGUST 16, 1995 LETTER REGARDING THE
FBI'S APPEAL OF FORMAL DETERMINATIONS
UNDER THE JFK ASSASSINATION RECORDS COLLECTION ACT

August 28, 1995

T. Jeremy Gunn, Esq.
Acting General Counsel and
Associate Director for
Research and Analysis

Philip D. Golrick, Esq.
Chief Analyst for FBI Records

David G. Marwell
Executive Director
Assassination Records Review Board
600 E Street, N.W.
Second Floor
Washington, D.C. 20530
(202) 724-0088

On August 16, 1995, the Federal Bureau of Investigation responded to the arguments submitted by the JFK Assassination Records Review Board regarding the Bureau's appeal of the Review Board's formal determination to open nine previously redacted documents.¹ The Bureau's letter only confirms its failure to meet its evidentiary burden to sustain its postponements under the JFK Act.

COPY

Informant issue

The primary issue in this part of the appeal is whether the release of information tending to identify persons who gave the Bureau information in the early 1960's would do genuine harm in 1995. The FBI has provided no evidence to support its assertions that it would.

"Particularized evidence." The August 16 letter mischaracterizes the issue on appeal. It is not whether the FBI must submit "particularized evidence" of a current need to protect an informant, but whether it must submit *any evidence at all*. The FBI still has offered no evidence whatsoever of the harms that assertedly would flow from releasing this thirty-year-old information. Instead, the August 16 letter once again restates the Bureau's internal institutional policies, and quarrels with the "particularized showing" requirement enunciated, not by the Review Board, but by the FBI's own Director in 1992. This quarrel is beside the point: unless the JFK Act's requirement of "clear and convincing evidence" can be satisfied merely by recitation of an agency's policy preferences, these documents must be released in full.

Willingly compromised informants. The Review Board's August 11 memorandum discussed how the FBI has released information indistinguishable from the type of information that it now claims must be withheld to protect informants. The FBI in its August 16 letter insisted that it had never intentionally compromised informants in prior releases. But the FBI's intentions, past or present, are irrelevant. Prior releases have, by the standards the FBI now seeks to apply, compromised many informant relationships, yet the FBI has not provided any evidence that these releases have harmed any informants or current investigations. The prior releases accordingly belie the claim that harm would result from releasing the appealed documents.

Foreign relations issue

In its first submission, the Bureau principally argued that the release of any of the foreign relations information at issue would cause "grave injury to the conduct of

¹On August 9, the FBI submitted its appeal of the Review Board's formal determinations regarding these documents and its arguments for continued postponement. The Review Board submitted its arguments on appeal by memorandum dated August 11. The FBI's August 16 letter responded to the August 11 memorandum.

United States foreign relations." FBI's Petition for Postponement, page 4. Yet the Review Board's August 11 memorandum showed that much of this information had already been officially released. The Bureau's August 16 letter does not deny any of the factual assertions made by the Review Board regarding these prior official releases.² Moreover, the Bureau's letter ignores the Review Board's challenge to show that any harm resulted from prior releases of the information -- effectively conceding that no harm resulted.

The FBI adduces just one reason why releasing the appealed documents would do "grave injury" where prior releases did none: regarding the appealed documents, the FBI sought, and was refused, the foreign government's prior consent to release. The FBI reasons that the harm to foreign relations that would follow from releasing information despite such refusal is so severe that postponement is justified. But this argument results in a paradox: if these documents had been released without consulting any foreign government, as apparently was done with the prior releases, there would have been no harm to foreign relations. Now, the FBI claims that its foreign consultations in and of themselves demonstrate that "grave injury" would result from release. By this logic, the possibility of any adverse effect would be "grave injury."

The unexplained desire of a foreign government to redact from thirty-five year-old documents information officially released elsewhere may provide reason to do so -- in the absence of competing considerations. But here there are *compelling* interests favoring disclosure. Neither the FBI, nor the State Department, nor any foreign government is charged with weighing the compelling interest in giving the American public a full historical record of the assassination of President Kennedy against reasons for continued secrecy. The Review Board bears that responsibility and has discharged it carefully. In so doing, it found no evidence of any harm to foreign relations that might even come close to outweighing the compelling interest in disclosure of these records.

Conclusion

The Review Board remains convinced that full release of the appealed documents is the only result consistent with the JFK Act. Accordingly, the Review Board respectfully urges that its formal determinations be upheld by the President.

²Page 19 of our August 11 memorandum inaccurately stated that the publicly-available version of a particular Record Identification Form identifies a foreign government agency. In fact, this entry appears as "RESTRICTED" on the version of this form available to the public.

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
			COPY
001a. letter	FBI Director Louis Freeh to President William J. Clinton re: Assassination Records (2 pages)	08/08/1995	P5
001b. report	Petition for Postponement Under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992 (10 pages)	ca. 08/08/1995	P1/b(1), P5
001c. memo	Re: Lee Harvey Oswald, Internal Security (1 page)	07/27/1960	P1/b(1)
001d. memo	Re: Lee Harvey Oswald, Internal Security (1 page)	09/27/1960	P1/b(1)
001e. cable	SAC to Director, FBI re: Jack Leon Ruby and Lee Harvey Oswald (2 pages)	11/26/1963	P1/b(1)
001f. cable	SAC to Director, FBI re: Arnold Johnson (2 pages)	12/16/1963	P1/b(1)
001g. report	FBI Report (3 pages)	12/16/1963	P1/b(1)
001h. report	FBI Report, incomplete copy (1 page)	12/16/1963	P1/b(1)
001i. cable	SAC to Director, FBI re: Assassination of President John F. Kennedy (3 pages)	12/13/1963	P1/b(1)
002. letter	David Marwell to President William J. Clinton re: Reply of the Assassination Records Review Board to the FBI's August 8, 1995 Appeal (2 pages)	08/11/1995	P5 6104
003a. report	Assassination Records Review Board Reply to the FBI's August 8, 1995 Appeal of Formal Determinations Under the JFK Assassination Records Collection Act (28 pages)	08/11/1995	P1/b(1), P5

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

FOLDER TITLE:

[Assassination Records Review Board Reply to the FBI, August 11, 1995] [Folder 2] [1]

Kelly Hendren
2006-0528-F
kh542

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Assassination Records Review Board

600 E Street NW • 2nd Floor • Washington, DC 20530

(202) 724-0088 • Fax: (202) 724-0457

COPY

August 11, 1995

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I have the honor of submitting to you the enclosed Reply of the Assassination Records Review Board to the Federal Bureau of Investigation's August 8, 1995 Appeal of Formal Determinations under The President John F. Kennedy Assassination Records Collection Act of 1992.

There are two principal points made in our Reply. First, the Federal Bureau of Investigation has failed to provide the "clear and convincing evidence" required by the JFK Act; and second, much of the information that the Bureau now wishes to redact has already been officially released by the Bureau. We respectfully request that you carefully consider the merits of the arguments raised in our Reply.

In making its formal determinations, the Board carefully considered the assassination records in question and determined that the public interest in the release of all of the information contained in them outweighed the insufficient evidence that the FBI had offered in support of continued secrecy. The Review Board has, and will, postpone the release of information in cases where the statutorily mandated "clear and convincing evidence" is supplied and that evidence outweighs the public interest in disclosure.

A copy of the enclosed Reply, classified SECRET, is being submitted under separate cover to Marvin Krislov, Associate Counsel at The White House.

Sincerely yours,

David G. Marwell
Executive Director

Enclosure

The President
August 11, 1995
Page 2

COPY

cc with enclosure: Secretary Warren Christopher
U.S. Department of State

Deputy Attorney General Jamie Gorelick
U.S. Department of Justice

Director Louis J. Freeh
Federal Bureau of Investigation

Marvin Krislov, Esq.
Associate Counsel to the President
The White House

cc without enc.: Members of the Board

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Matthew Gobush to Miles Lackey et al. re: Press on START/ABM (9 pages)	06/21/1999	P5
002. email	Maureen Tucker to Philip Crowley re: Press on START/ABM (9 pages)	06/21/1999	P5
003. email	Mara Rudman to John Caravelli re: Press on START/ABM (9 pages)	06/21/1999	P5
004. email	Mary Ann T. Silva to Carlos Pascual re: Yeltsin Memcon (11 pages)	06/22/1999	P1/b(1)
005. email	Antony Blinken to Mara Rudman re: Press on START/ABM (9 pages)	06/24/1999	P5
006. email	William Leary to Wendy Gray re: Package 0205 (4 pages)	01/18/2001	P5 6105

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Non-Record (Mar 97-Jan 01) ([Kennedy and Assassination])
 OA/Box Number: 630000

FOLDER TITLE:

[06/21/1999 - 01/18/2001]

Kelly Hendren
 2006-0528-F
 kh517

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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Exchange Mail

COPY

DATE-TIME 1/18/01 7:52:39 AM
 FROM Leary, William H. (RECORDS)
 CLASSIFICATION UNCLASSIFIED
 SUBJECT RE: package 0205 [UNCLASSIFIED]
 TO Gray, Wendy E. (NSA)

CARBON_COPY

TEXT_BODY Here it is.

-----Original Message-----

From: Gray, Wendy
 E. (NSA)
 Sent: Wednesday, January 17, 2001 6:50 PM
 To: Leary,
 William H. (RECORDS)
 Subject: package 0205 [UNCLASSIFIED]
 Importance: High

hi
 Bill! We need an electronic copy of your memo to Podesta. Please
 e-mail in the am. Thanks!

TRANSLATED_ATTACHMENT

jfkappeals~2001b1.doc

January 18, 2001

ACTION

MEMORANDUM FOR JOHN PODESTA/BETH NOLAN

FROM: BILL LEARY/PETER RUNDLET

SUBJECT: Kennedy Assassination Records Appeals

John Tunheim, former Chairman of the President John F. Kennedy
 Assassination Records Review Board wrote to John on December 4,
 2000, regarding two unresolved appeals of disclosure decisions made
 by the Board shortly before it went out of existence on September 30,

1998. The appeals were filed by the Secret Service and the President's Foreign Intelligence Advisory Board.

Our analysis of these two cases is presented most fully in the draft memorandum to the President.

COPY

Background

In June 1995, when the JFK Board was ready to begin ordering the release of documents, Tony Lake, Judge Mikva, and John Podesta sent a memo to the President outlining an approach to exercising Presidential review authority. It emphasized that the White House should not get involved except when a dispute involved important principles that could not be resolved between the Board and an appealing agency. The memo also acknowledged a strong disposition to recommend release while remaining open to arguments in favor of postponement. Based on the President's approval of the memo, we conveyed that message to the Board and to the CIA, FBI, and Secret Service.

Originally, we sought to resolve all disputes without a formal Presidential decision. At this point, however, it is clear that the two remaining disputes cannot be resolved by negotiation, particularly since the Board no longer exists.

The only two prior appeals were submitted by the FBI. The first FBI appeal involved foreign government information and sources information; the second involved information about counter-intelligence methods and highly personal information in one document. In both cases, after extensive contacts among the

parties, the FBI withdrew its appeal. In the case of the one document involving personal privacy, the Board agreed to redact the most sensitive information.

Secret Service Appeal

In 1998, Bill worked with Shelley Peterson of the Counsel's office and Jane Vezeris, the Deputy Assistant Director of the Secret Service's Office of Administration in an effort to find an acceptable compromise. We believed that we identified a reasonable compromise, as outlined in the attached draft memorandum to the President; however, we did not persuade the Board to accept the proposed compromise before it ceased to function. We have confirmed recently that the Secret Service continues to accept this compromise, and we continue to believe this is a reasonable solution which could and should be put into effect.

PFIAB Appeal

Since the Board's decision in this case was made on September 30, 1998, there is relatively little written analysis of the issues in dispute. Most of the exchanges between PFIAB and the Board at Tab II involve issues that are no longer disputed or relevant. The PFIAB appeal involves 18 packages totalling some 400 pages. All the documents have already been redacted to protect national security. Still disputed are the issues of relevance and deliberative process, as reviewed in the attached memorandum to the President.

COPY

We find the PFIAB's objections to releasing these documents less than compelling. Warren Rudman's January 4 memorandum to John does suggest some willingness to compromise. Although not stated explicitly, it appears that PFIAB is willing to agree to the release of any documents that they determine are relevant. ever, since PFIAB still disagrees fundamentally with the Board's definition of relevance, we cannot envision reaching consensus on that disagreement before January 20.

The draft memorandum at Tab I presents the case for a decision by the President to uphold the Board's decision. Alternatively, you could recommend that the President overrule the decision of the Board. We do not believe it is possible, at this late date, to fashion a compromise that splits the difference.

RECOMMENDATION

That you forward the attached memorandum to the President.

Attachments

Tab A Background on Secret Service Appeal

Tab B Background on PFIAB Appeal

Tab II Memorandum to the President

Tab A Incoming Tunheim Letter

Tab B Rudman Response

2

Unclassified With

~~TOP SECRET~~ Attachments

Unclassified With

~~TOP SECRET~~ Attachments

Unclassified With 0205

~~TOP SECRET~~

Attachments

Unclassified With

~~TOP SECRET~~ Attachments

COPY

Withdrawal/Redaction Sheet

Clinton Library

COPY

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	John Podesta and Beth Nolan to President William J. Clinton re: Kennedy Assassination Records Appeals (4 pages)	ca. 01/18/2001	COPY P1/b(1), P5
001b. memo	Bill Leary and Peter Rundlet to John Podesta and Beth Nolan re: Kennedy Assassination Records Appeals (3 pages)	01/18/2001	P5 6106

COLLECTION:

Clinton Presidential Records
NSC Records Management
([Kennedy and Assassination])
OA/Box Number: 4180

FOLDER TITLE:

0100205

Kelly Hendren
2006-0528-F
kh523

RESTRICTION CODES

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January 18, 2001

COPYACTION

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- Tab B Background on PFIAB Appeal
- Tab II Memorandum to the President
 - Tab A Incoming Tunheim Letter
 - Tab B Rudman Response

Withdrawal/Redaction Sheet

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001. letter	Peter Tarnoff to Louis Freeh re: 13 Documents (3 pages)	05/15/1996	P1/b(1), P5
002a. letter	FBI Director Louis Freeh to President William J. Clinton re: Assassination Records (2 pages)	05/10/1996	P5 4274
002b. petition	Petition for Postponement Under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992 (12 pages)	05/10/1996	P1/b(1), P5
002c. cable	SAC to Director, FBI re: American Press and Lee Harvey Oswald (2 pages)	11/24/1963	P1/b(1)
002d. cable	SAC to Director, FBI re: Zygmunt Broniarek (2 pages)	01/20/1964	P1/b(1)
002e. report	Re: Zygmunt Broniarek (2 pages)	01/20/1964	P1/b(1)
002f. cable	SAC to Director, FBI re: Lee Harvey Oswald (2 pages)	11/26/1963	P1/b(1)
002g. memo	Jennifer Sims to Robert Bryant re: JFK Assassination (2 pages)	04/03/1996	P1/b(1), P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

FOLDER TITLE:

Kennedy Records Review Board [1]

Kelly Hendren
2006-0528-F
kh533

RESTRICTION CODES

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2201(3).

RR. Document will be reviewed upon request.

COPY



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

~~SECRET~~

May 10, 1996

BY HAND

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20500

CLINTON LIBRARY PHOTOCOPY

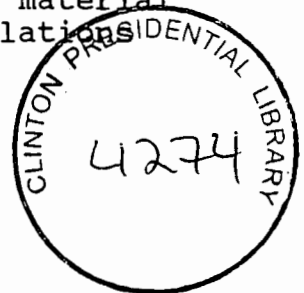
Dear Mr. President:

For the reasons set forth in detail in the enclosure, this letter requests that you exercise your authority, under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992, to postpone public disclosure of portions of thirteen documents ordered released by the Assassination Records Review Board. (U)

Consistent with the spirit of the Act, the FBI has cooperated extensively with the Board and made the broadest disclosure of documents in our history. Over 600,000 pages of material have been transferred to the National Archives, and we are working to transfer another 250,000. We have withheld very little, deferred to the Board whenever possible, and appealed on only one previous occasion. Nonetheless, when vital national interests would be compromised by the release of certain information we have asked the Board to postpone disclosure. Unfortunately, in this instance the Board has refused to accede to our request. (U)

Disclosure of the documents in question would reveal investigative or surveillance techniques used to gather important information from foreign countries. Disclosure of this material would compromise those techniques and impair foreign relations.

Classified by: 38556
Reason: 1.5(c)
Declassify on: X1



~~SECRET~~

~~SECRET~~ MATERIAL ATTACHED
UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

COPY

FBI/DOJ

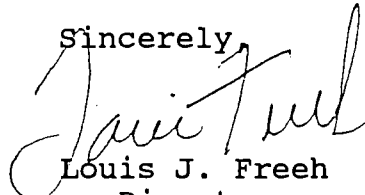
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The Honorable William J. Clinton

with the concerned countries. Those countries and others in which we have investigative interests will quickly take countermeasures once they realize the significance of the material at issue. Given the inevitable ramifications of such disclosures, the State Department considers release of these documents significantly prejudicial to foreign relations and supports our appeal. (U)

In our view, the gravity of the resulting injury to our intelligence gathering abilities and to our foreign relations far outweighs the interest served by making this information public. I must, consequently, appeal the release of this information.
(U)

Sincerely,


Louis J. Freeh
Director

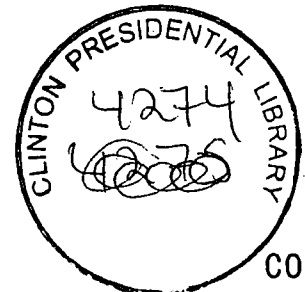
Enclosure

- 1 - Honorable Warren M. Christopher
The Secretary of State
U.S. Department of State
Washington, D.C.
- 1 - The Honorable Jamie S. Gorelick
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.
- 1 - Mr. David G. Marwell
Executive Director
Assassination Records Review Board
Washington, D.C.

CLINTON LIBRARY PHOTOCOPY

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~~SECRET~~ MATERIAL ATTACHED
UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	FBI Director Louis Freeh to President William J. Clinton re: Assassination Records (2 pages)	08/08/1995	P5 4275
001b. report	Petition for Postponement Under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992 (10 pages)	ca. 08/08/1995	P1/b(1), P5
001c. memo	Re: Lee Harvey Oswald, Internal Security (1 page)	07/27/1960	P1/b(1)
001d. memo	Re: Lee Harvey Oswald, Internal Security (1 page)	09/27/1960	P1/b(1)
001e. cable	SAC to Director, FBI re: Jack Leon Ruby and Lee Harvey Oswald (2 pages)	11/26/1963	P1/b(1)
001f. cable	SAC to Director, FBI re: Arnold Johnson (2 pages)	12/16/1963	P1/b(1)
001g. report	FBI Report (3 pages)	12/16/1963	P1/b(1)
001h. report	FBI Report, incomplete copy (1 page)	12/16/1963	P1/b(1)
001i. cable	SAC to Director, FBI re: Assassination of President John F. Kennedy (3 pages)	12/13/1963	P1/b(1)
002. letter	David Marwell to President William J. Clinton re: Reply of the Assassination Records Review Board to the FBI's August 8, 1995 Appeal (2 pages)	08/11/1995	P5
003a. report	Assassination Records Review Board Reply to the FBI's August 8, 1995 Appeal of Formal Determinations Under the JFK Assassination Records Collection Act (28 pages)	08/11/1995	P1/b(1), P5

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

FOLDER TITLE:

[Assassination Records Review Board Reply to the FBI, August 11, 1995] [Folder 2] [1]

2006-0528-F

kh542

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or
financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President
and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of
personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed
of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C.
2201(3).

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of
an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial
information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of
personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement
purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of
financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information
concerning wells [(b)(9) of the FOIA]



U.S. Department of Justice

Federal Bureau of Investigation

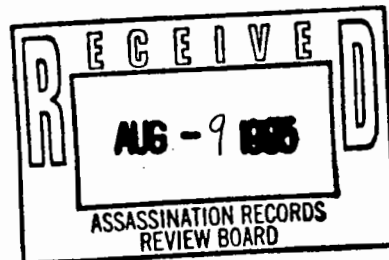
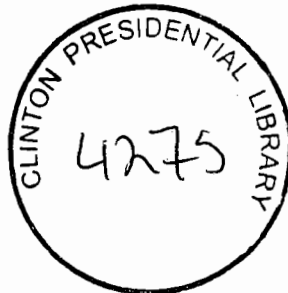
Office of the Director

Washington, D.C. 20535

August 8, 1995

CLINTON LIBRARY PHOTOCOPY

~~SECRET~~



The Honorable William J. Clinton
President of the United States
Washington, D.C. 20500

Dear Mr. President:

For the reasons set forth in detail in the enclosure, this letter requests that you exercise your authority, under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992, to postpone public disclosure of portions of nine documents ordered released by the Assassination Records Review Board.

Consistent with the spirit of the Act, the FBI has cooperated with the Board and made the broadest disclosure of documents in our history. Over 600,000 pages of material have been transferred to the National Archives, and we are working to transfer another 250,000. We have withheld only the minimum amount of information necessary to protect confidential sources, methods, and techniques. Notwithstanding this principled approach to fulfilling the FBI's obligations under the Act, the Board has refused our request to postpone disclosure of certain information, the release of which will seriously harm foreign relations and jeopardize important confidential relationships.

Five of the documents reveal cooperation with the United States by the federal police of a foreign nation with which we have a long-standing and continuing relationship. Officials of that government have advised the FBI that they are strongly opposed to release of the information, and that release without their authorization will seriously undermine our relationship. In my view, the gravity of the injury to the relationship between our two countries that would be caused by disclosure far outweighs the interest to be served by making the information in question public. I am advised that the State Department concurs in this view.

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UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

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The President

The four other documents contain the names of confidential informants or information from which the identities of such informants could be derived. Disclosure of this information would seriously subvert the integrity of the FBI's confidential informant program and, thereby, impede the Bureau's current and future ability to obtain information critical to the nation's security.

I must, consequently, appeal the release of this information.

Sincerely,

Louis J. Freeh
Director

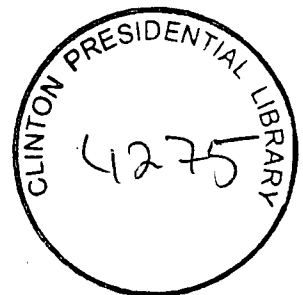
Enclosure

1 - The Honorable Warren M. Christopher
Secretary of State

1 - The Honorable Jamie Gorelick
Deputy Attorney General

(1) - Mr. David G. Marwell
Executive Director
Assassination Records Review Board

CLINTON LIBRARY PHOTOCOPY



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- 2 -

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	The Assassination Records Review Board Response to the May 28, 1996 Petition for Postponement by the Federal Bureau of Investigation (10 pages)	06/14/1996	P1/b(1), P5
002. report	The Assassination Records Review Board Response to the May 28, 1996 Petition for Postponement by the Federal Bureau of Investigation (10 pages)	06/14/1996	P1/b(1), P5
003a. letter	FBI Director Louis Freeh to President William J. Clinton re: Assassination Records (3 pages)	05/28/1996	P5 4277
003b. petition	Petition for Postponement Under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992 (9 pages)	ca. 05/28/1996	P1/b(1), P5, P6/b(6)
003c. cable	SAC to Director, FBI re: Assassination of President John Fitzgerald Kennedy and Mark Lane [partial] (1 page)	05/02/1968	P6/b(6)
003d. petition	Petition for Postponement Under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992, incomplete copy (1 page)	ca. 05/28/1996	P1/b(1)

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

FOLDER TITLE:

Kennedy Records Review Board [2]

Kelly Hendren
2006-0528-F
kh534

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

~~SECRET~~

May 28, 1996

BY HAND

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20500

CLINTON LIBRARY PHOTOCOPY

Dear Mr. President:

For the reasons set forth in detail in the enclosure, this letter requests that you exercise your authority, under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992, to postpone public disclosure of portions of five documents ordered released by the Assassination Records Review Board. (U)

As I indicated in my letter to you of May 10th, the FBI has cooperated extensively with the Board and made the broadest disclosure of documents in our history. We have withheld very little, deferred to the Board whenever possible, and appealed only when vital national interests would be compromised by the release of certain information. (U)

Classified by: 38556
Reason: 1.5(c)
Declassify on: X1



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FBI/DOJ

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CLINTON LIBRARY PHOTOCOPY

The Honorable William J. Clinton

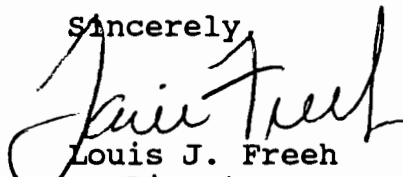
In this instance, we asked the Board to postpone disclosure of selected portions of 69 documents. The Board did accede to our request in a few cases but ordered most of the remaining documents to be disclosed in full. After carefully considering the interest of the public in disclosure against the harm that would result from release, we feel constrained to appeal the disclosure of information in five documents. (U)

Disclosure of information in four of the documents would reveal investigative or surveillance techniques used to gather important information from foreign countries. Disclosure of this material would compromise those techniques and impair foreign relations. Release of the information in the last document would severely invade the privacy interests of a private citizen and subject him to public ridicule and embarrassment with no discernable contribution to the public's understanding of the circumstances surrounding President Kennedy's assassination. (U)

I regret the necessity of appealing the disclosure of this information so soon after forwarding you our earlier appeal. I cannot in good conscience, however, permit this information to be made public without requesting you to fully consider the adverse ramifications of its release. (U)

I also want to express my deep concern about the Board's habit of making public comments concerning these appeals. At the time of our last appeal, the Board issued a press release, either believing that their arguments would be better received in another forum or hoping to bring public pressure to bear on the White House, and thus influence your decision-making. I believe it would be more appropriate to address our genuine differences on the merits, pursuant to the legislation which created the Board. (U)

Sincerely,


Louis J. Freeh
Director



Enclosure

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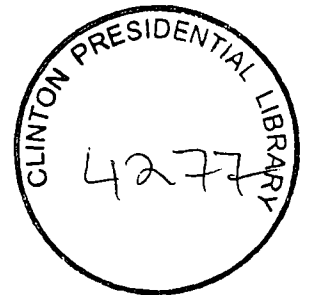
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UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

~~SECRET~~

The Honorable William J. Clinton

CLINTON LIBRARY PHOTOCOPY

- 1 - Honorable Warren M. Christopher
The Secretary of State
U.S. Department of State
Washington, D.C.
- 1 - The Honorable Jamie S. Gorelick
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.
- 1 - Mr. David G. Marwell
Executive Director
Assassination Records Review Board
Washington, D.C.



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UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. report	JFK Assassination Records Review (3 pages)	n.d.	P1/b(1), P5
001b. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)
002a. report	JFK Assassination Records Review (3 pages)	n.d.	P1/b(1), P5
002b. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)
003. letter	FBI Director Louis Freeh to President William J. Clinton re: Release of FBI Documents (6 pages)	06/03/1996	P5 4278
004. letter	FBI Director Louis Freeh to President William J. Clinton re: Release of FBI Documents (6 pages)	06/05/1996	P5 4279
005a. report	JFK Assassination Records Review (3 pages)	n.d.	P1/b(1), P5
005b. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)
006a. report	JFK Assassination Records Review (3 pages)	n.d.	P1/b(1), P5
006b. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)
007. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

CLINTON LIBRARY PHOTOCOPY

FOLDER TITLE:

Kennedy Records Review Board [3]

Kelly Hendren
2006-0528-F
kh535

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. letter	David Marwell to FBI Director Louis Freeh re: Response to May 28, 1996 Letter (3 pages)	05/29/1996	P5
009a. letter	David Marwell to President William J. Clinton re: FBI's Petition for Postponement (3 pages)	05/23/1996	P5 4280
009b. letter	David Marwell to President William J. Clinton re: FBI's Petition for Postponement (3 pages)	06/07/1996	P5 4281

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Clinton Presidential Records
National Security Council
Access Management (William Leary)
OA/Box Number: 3641

FOLDER TITLE:

Kennedy Records Review Board [3]

Kelly Hendren
2006-0528-F
kh535

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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DRAFT**CLINTON LIBRARY PHOTOCOPY**

June 3, 1996

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20050



Re: FBI Appeal of JFK Assassination Records
Review Board Determinations Concerning
Release of FBI Documents

Dear Mr. President:

After reviewing the Assassination Records Review Board's reply to my May 10th petition for postponement of disclosure of certain portions of thirteen FBI documents, I believe it necessary to offer the following additional comments for your consideration.

First, the Board dogmatically insists that neither the Bureau nor the State Department has produced any evidence to support our assertion that release of the data in question would compromise certain investigative techniques, prejudice foreign relations, or harm the national security. In making this argument, the Board overlooks the most telling evidence available to demonstrate such matters: the considered judgment of qualified professionals in both the State Department and the FBI.¹

In determining issues far less weighty, adjudicative tribunals have traditionally shown deference to the judgments exercised by qualified professionals.² While we do not presume to tell the Board that it would do well to follow these precedents, we do feel compelled to state unequivocally that the collective and considered views of the FBI and the State

¹ We have provided the Board and its staff with these opinions both orally and in writing.

² See, e.g., Washington v. Harper, 494 U.S. 210 (1990) (Court deferred to panel of medical and prison officials in determining the propriety of giving antipsychotic medicine to inmate against his will); Youngberg v. Romeo, 457 U.S. 307 (1982) (Court deferred to judgment of professionals regarding type of treatment that should be provided to involuntarily committed persons); Dept. of Navy v. Egan, 484 U.S. 518 (1988) (Court deferred to judgment of those charged with safeguarding national security on question whether a security clearance should be given to a particular employee); and Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985) (Court deferred to academic professionals on whether student should be allowed to retake entrance examination).

CLINTON LIBRARY PHOTOCOPY

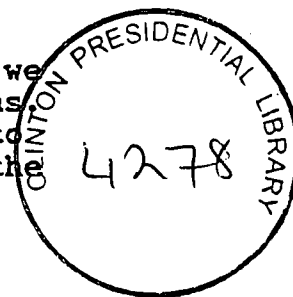
The Honorable William J. Clinton

Department are, indeed, evidence of considerable weight and value. The Government, after all, has reposed in the FBI and the State Department, respectively, responsibility for the conduct of our counter-intelligence operations and foreign relations. Our respective agencies employ the experts in these matters; if their opinions are of no moment, then no amount of evidence would convince the Board.

In reality, by totally discounting our professional judgments, the Board seeks to substitute its own assessments on matters which, to quote the Board from another context, it is "institutionally incompetent" to judge. For example, the Board on page 27 of its reply states: "The official release of further bits of data regarding FBI targeting of Cold War adversaries over thirty years ago is scarcely likely to upset current foreign relations." If this conclusion were the reasoned product of professionals in the Foreign Service at the State Department, then it would be entitled to due consideration, if not deference. Since, however, it is the surmise of an ad hoc body which didn't even exist during the Cold War and whose expertise is not in foreign relations, it is hardly compelling.

Second, the Board's argument that, because we have released similar information in other Assassination Records, we cannot now claim secrecy for the data at issue is disingenuous. As I noted in my cover letter to our petition, we have gone to great lengths to comply with the disclosure requirements of the Act. Whenever a document pertained directly to an event or character of some significance to the assassination, we have unfailingly erred on the side of disclosure. Thus, we have revealed information that we would have otherwise protected exactly because we felt that the spirit, if not the letter, of the Act required it. We did so because, in our view, the public interest in learning about the circumstances surrounding the assassination investigation outweighed our interests in keeping the information confidential. In short, when in doubt we have invariably tipped the balance in favor of disclosure.

Having done so, we should not and cannot be penalized when, as here, we seek to protect related information. If the Board's argument is correct that because we have once complied with the Act by releasing information we are forever foreclosed from seeking to protect related information, then the balancing test which Congress so carefully crafted in the Act is meaningless. This is so since the propriety of all disclosures would be effectively reduced to their lowest common denominator. Such an outcome would penalize those agencies that have tried in good faith to make the maximum permissible disclosures under the Act while simultaneously rewarding those who disclose the least.



CLINTON LIBRARY PHOTOCOPY

The Honorable William J. Clinton

Third, the Board's assertions that most of the information which we seek to protect is already in the public domain are inaccurate. The Board's rendition of materials to illustrate their point is simply misleading.

For example, the Board begins its analysis, at page three of its response, by concluding that, since J. Edgar Hoover told Congress that the FBI was using "every resource at its command" to counter the intelligence activities of Soviet bloc countries, every investigative tool which we had acknowledged using during the 1960's was already exposed. We respectfully disagree. Mr. Hoover's statements do not show how we employed particular investigative techniques, when we used them, the particular purposes to which they were put, what we learned, or any other detail of significance. Just as a military commander's statement that he will "resist with all available means" doesn't tell the enemy what units he has, what their capabilities and weapons are, the state of their training, what strategies and tactics he will use, what his orders and priorities are, and so forth, Mr. Hoover's statement provides no useful information to an adversary.

The Board's response is replete with similar generalities. For example, the general acknowledgement, cited at page six of the response, that we considered "every Russian-run" establishment in the United States to be engaged in covert intelligence collection is a far cry from confirming that we had such establishments under surveillance, from disclosing the details surrounding particular phone call and mail interceptions, or from revealing the results of a particular surveillance. Similarly, that the public record may show that we kept foreign establishments under surveillance does not reveal that we used fixed surveillance sites to do so, the location of such sites, how and when they were staffed, what we considered important enough to log and, by implication, what we didn't, and so forth.

We are not concerned about generalities of the type the Board relies upon; rather it is the disclosure of specifics that we are seeking to avoid since it is the particulars that give aid and comfort to our adversaries. This point is evident from the very materials that the Board cites in support of its position: "But you can't put those details in the charter other than in gross terms without giving the blueprint to the enemy on the way



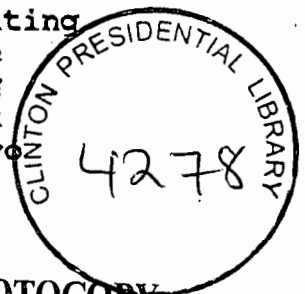
The Honorable William J. Clinton

we work,"³ or "Congressman, I can answer your questions in detail, but I would prefer to do it an executive session."⁴

Similarly, at page twelve of the response, the Board points to the congressional testimony of former Attorney General Ramsey Clark regarding wire intercepts as proof of previous official acknowledgement of using such techniques against foreign establishments and agents. Three points demonstrate the weakness of this conclusion. First, the testimony at issue does not reveal a single specific instance in which a wiretap of a named foreign establishment was approved. Second, the only particulars in this regard alluded to by the former Attorney General pertained to intercept requests which he had disapproved. Third, even though his testimony was of great weight, Mr. Clark, as a former official, was hardly in a position to officially confirm on behalf of the Government the details behind his testimony.

The point is that while the Board has gone to great lengths to produce examples of official public revelation of the material which we seek to protect, the best it has been able to produce are general statements of tangential relevance. Again, we are not concerned with generalities or what foreign governments, private authors,⁵ or the Restatement of Foreign Relations may surmise, but we are very interested in what we officially divulge and in protecting the details surrounding our covert investigative techniques.

Fourth, the Board's assertion that we could not possibly have a current interest in protecting techniques dating from the 1960's is simply wrong. True, counter-intelligence operations and foreign relations involve constantly changing techniques, events, and circumstances. The veracity of that statement, however, does not detract from the validity of two related and equally important points:



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³ H.R. 6588, The National Intelligence Act of 1980: Hearings Before the Subcomm. on Legislation of the H.R. Permanent Select Committee on Intelligence, 96th Cong., 2d Sess. 79 (1980), cited at footnote 11 of the Board's response.

⁴ Id. at p. 80.

⁵ The Board's citation to non-Governmental works for proof that a particular piece of information is in the public domain will turn into a self-fulfilling prophecy if the Board's rationale is adopted since, under that rationale, the Government cannot keep secret that which a private author prints.

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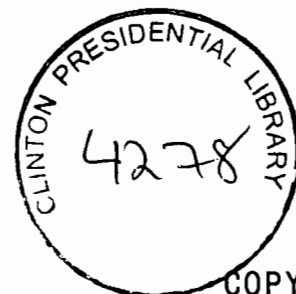
The Honorable William J. Clinton

(1) Notwithstanding technological advances on the part of the industrial nations of the world, many governments are decades behind in the manner in which they transmit funds and data, and communicate with their establishments and agents. We do still rely heavily on transoceanic cable intercepts, look-out logs, telephone intercepts, typewriter comparisons, and a dozen other "dated" methods of collecting intelligence. The Board should not assume that these methods are antiquated and of little value in today's computer and satellite world just because we employed them as long ago as the 1960's.

(2) Even though technologies change, the types of information that we seek do not. What we sought to learn from our adversaries 30 years ago from employing the surveillance techniques of that time, we still today have an interest in acquiring for similar, if not the same, reasons. Today's adversaries can and will benefit from finding out what our interests and priorities were back then since they can use such information to cogently estimate what our interests and priorities are now.

Fifth, the Board's assertion at page 20 of their response that we disagree with the State Department on the harm to bilateral relations that would result from release of the information in question is wrong. In preliminary discussions with the Board, we originally informed them that we were preparing to appeal a number of documents on behalf of the State Department because of its concern over the impact on bilateral relations that would result if those documents were released. The State Department withdrew its objections after the Board agreed to postpone release until later this summer. The State Department's views on the effect on bilateral relations of the release of the information now at issue was not affected by the Board's postponement decision. On the contrary, the State Department shares our views generally and took the trouble to write separately in support of our appeal.

Finally, we recognize that the data we have agreed to release in some cases makes it easier to deduce what we seek to protect in others. We have assumed that risk in a good faith effort to comply with the disclosure dictates of the Act. We believe, however, that the material we seek to safeguard is worth protecting. Counter-intelligence and foreign relations are, by their very nature, matters of subtlety and nuance. Both are important here.



The Honorable William J. Clinton

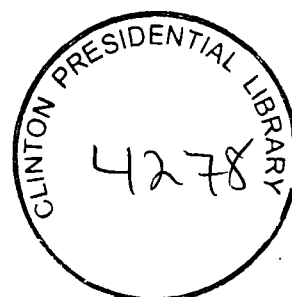
In closing, I want to assure you that neither the FBI nor the State Department has taken this appeal lightly. We have made every effort to cooperate and have considered carefully the arguments of the Board. Nonetheless, the issues here are of fundamental importance to our counter-intelligence operations and foreign relations. Our position on these matters is as consistent with the Act as it is with the authority reposed by the Constitution in the Executive for the conduct of foreign and counter-intelligence affairs. Adherence to the one will do no violence to the other if our request is granted.

Sincerely,

Louis J. Freeh
Director

- 1 - The Honorable Warren M. Christopher
Secretary of State
- 1 - The Honorable Jamie Gorelick
Deputy Attorney General
- 1 - Mr. David G. Marwell
Executive Director
Assassination Records Review Board

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U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

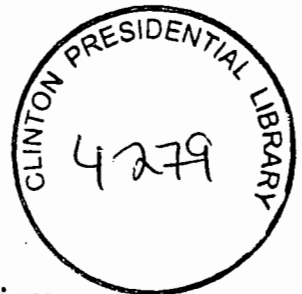
Washington, D.C. 20535

CLINTON LIBRARY PHOTOCOPY

June 5, 1996

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20500

Re: FBI Appeal of JFK Assassination Records
Review Board Determinations Concerning
Release of FBI Documents



Dear Mr. President:

After reviewing the Assassination Records Review Board's reply to my May 10th petition for postponement of disclosure of certain portions of thirteen FBI documents, I believe it necessary to offer the following additional comments for your consideration.

First, the Board dogmatically insists that neither the Bureau nor the State Department has produced any evidence to support our assertion that release of the data in question would compromise certain investigative techniques, prejudice foreign relations, or harm the national security. In making this argument, the Board overlooks the most telling evidence available to demonstrate such matters: the considered judgment of qualified professionals in both the State Department and the FBI.¹

In determining issues far less weighty, adjudicative tribunals have traditionally shown deference to the judgments exercised by qualified professionals.² While we do not presume to tell the Board that it would do well to follow these precedents, we do feel compelled to state unequivocally that the

¹ We have provided the Board and its staff with these opinions both orally and in writing.

² See, e.g., Washington v. Harper, 494 U.S. 210 (1990) (Court deferred to panel of medical and prison officials in determining the propriety of giving antipsychotic medicine to inmate against his will); Youngberg v. Romeo, 457 U.S. 307 (1982) (Court deferred to judgment of professionals regarding type of treatment that should be provided to involuntarily committed persons); Dept. of Navy v. Egan, 484 U.S. 518 (1988) (Court deferred to judgment of those charged with safeguarding national security on question whether a security clearance should be given to a particular employee); and Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985) (Court deferred to academic professionals on whether student should be allowed to retake entrance examination).

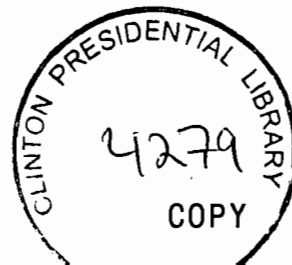
The Honorable William J. Clinton

collective and considered views of the FBI and the State Department are, indeed, evidence of considerable weight and value. The Government, after all, has reposed in the FBI and the State Department, respectively, responsibility for the conduct of our counter-intelligence operations and foreign relations. Our respective agencies employ the experts in these matters; if their opinions are of no moment, then no amount of evidence would convince the Board.

In reality, by totally discounting our professional judgments, the Board seeks to substitute its own assessments on matters which, to quote the Board from another context, it is "institutionally incompetent" to judge. For example, the Board on page 27 of its reply states: "The official release of further bits of data regarding FBI targeting of Cold War adversaries over thirty years ago is scarcely likely to upset current foreign relations." If this conclusion were the reasoned product of professionals in the Foreign Service at the State Department, then it would be entitled to due consideration, if not deference. Since, however, it is the surmise of an ad hoc body which didn't even exist during the Cold War and whose expertise is not in foreign relations, it is hardly compelling.

Second, the Board's argument that, because we have released similar information in other Assassination Records, we cannot now claim secrecy for the data at issue is disingenuous. As I noted in my cover letter to our petition, we have gone to great lengths to comply with the disclosure requirements of the Act. Whenever a document pertained directly to an event or character of some significance to the assassination, we have unfailingly erred on the side of disclosure. Thus, we have revealed information that we would have otherwise protected exactly because we felt that the spirit, if not the letter, of the Act required it. We did so because, in our view, the public interest in learning about the circumstances surrounding the assassination investigation outweighed our interests in keeping the information confidential. In short, when in doubt we have invariably tipped the balance in favor of disclosure.

Having done so, we should not and cannot be penalized when, as here, we seek to protect related information. If the Board's argument is correct that because we have once complied with the Act by releasing information we are forever foreclosed from seeking to protect related information, then the balancing test which Congress so carefully crafted in the Act is meaningless. This is so since the propriety of all disclosures would be effectively reduced to their lowest common denominator.



The Honorable William J. Clinton

Such an outcome would penalize those agencies that have tried in good faith to make the maximum permissible disclosures under the Act while simultaneously rewarding those who disclose the least.

Third, the Board's assertions that most of the information which we seek to protect is already in the public domain are inaccurate. The Board's rendition of materials to illustrate their point is simply misleading.

For example, the Board begins its analysis, at page three of its response, by concluding that, since J. Edgar Hoover told Congress that the FBI was using "every resource at its command" to counter the intelligence activities of Soviet bloc countries, every investigative tool which we had acknowledged using during the 1960's was already exposed. We respectfully disagree. Mr. Hoover's statements do not show how we employed particular investigative techniques, when we used them, the particular purposes to which they were put, what we learned, or any other detail of significance. Just as a military commander's statement that he will "resist with all available means" doesn't tell the enemy what units he has, what their capabilities and weapons are, the state of their training, what strategies and tactics he will use, what his orders and priorities are, and so forth, Mr. Hoover's statement provides no useful information to an adversary.

The Board's response is replete with similar generalities. For example, the general acknowledgement, cited at page six of the response, that we considered "every Russian-run" establishment in the United States to be engaged in covert intelligence collection is a far cry from confirming that we had such establishments under surveillance, from disclosing the details surrounding particular phone call and mail interceptions, or from revealing the results of a particular surveillance. Similarly, that the public record may show that we kept foreign establishments under surveillance does not reveal that we used fixed surveillance sites to do so, the location of such sites, how and when they were staffed, what we considered important enough to log and, by implication, what we didn't, and so forth.

We are not concerned about generalities of the type the Board relies upon; rather it is the disclosure of specifics that we are seeking to avoid since it is the particulars that give aid and comfort to our adversaries. This point is evident from the very materials that the Board cites in support of its position: "But you can't put those details in the charter other than in



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The Honorable William J. Clinton

gross terms without giving the blueprint to the enemy on the way we work,"³ or "Congressman, I can answer your questions in detail, but I would prefer to do it an executive session."⁴

Similarly, at page twelve of the response, the Board points to the congressional testimony of former Attorney General Ramsey Clark regarding wire intercepts as proof of previous official acknowledgement of using such techniques against foreign establishments and agents. Three points demonstrate the weakness of this conclusion. First, the testimony at issue does not reveal a single specific instance in which a wiretap of a named foreign establishment was approved. Second, the only particulars in this regard alluded to by the former Attorney General pertained to intercept requests which he had disapproved. Third, even though his testimony was of great weight, Mr. Clark, as a former official, was hardly in a position to officially confirm on behalf of the Government the details behind his testimony.

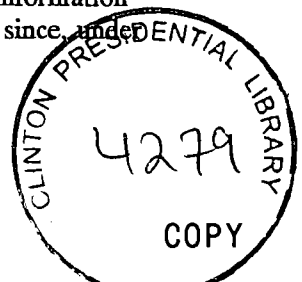
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The Honorable William J. Clinton

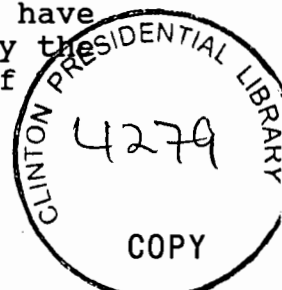
(1) Notwithstanding technological advances on the part of the industrial nations of the world, many governments are decades behind in the manner in which they transmit funds and data, and communicate with their establishments and agents. We do still rely heavily on transoceanic cable intercepts, look-out logs, telephone intercepts, typewriter comparisons, and a dozen other "dated" methods of collecting intelligence. The Board should not assume that these methods are antiquated and of little value in today's computer and satellite world just because we employed them as long ago as the 1960's.

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Finally, we recognize that the data we have agreed to release in some cases makes it easier to deduce what we seek to protect in others. We have assumed that risk in a good faith effort to comply with the disclosure dictates of the Act. We believe, however, that the material we seek to safeguard is worth protecting. Counter-intelligence and foreign relations are, by their very nature, matters of subtlety and nuance. Both are important here.

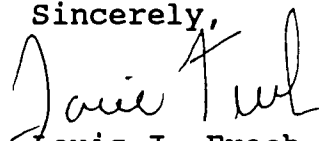
In closing, I want to assure you that neither the FBI nor the State Department has taken this appeal lightly. We have made every effort to cooperate and have considered carefully the arguments of the Board. Nonetheless, the issues here are of



The Honorable William J. Clinton

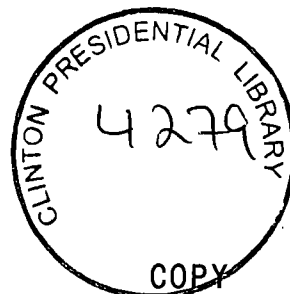
fundamental importance to our counter-intelligence operations and foreign relations. Our position on these matters is as consistent with the Act as it is with the authority reposed by the Constitution in the Executive for the conduct of foreign and counter-intelligence affairs. Adherence to the one will do no violence to the other if our request is granted.

Sincerely,


Louis J. Freeh
Director

- 1 - The Honorable Warren M. Christopher
Secretary of State
Washington, D.C. 20520
- 1 - The Honorable Jamie Gorelick
Deputy Attorney General
Washington, D.C.
- 1 - Mr. David G. Marwell
Executive Director
Assassination Records Review Board

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Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

~~SECRET~~

May 23, 1996

The President
The White House
Washington, D.C.

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Dear Mr. President:

I have the honor of enclosing herein a copy of "The Assassination Records Review Board Response to the May 10, 1996 Petition for Postponement by the Federal Bureau of Investigation." The Bureau is appealing the Review Board's formal determinations to release information in thirteen records related to the assassination of President Kennedy. The Department of State is joining the Bureau's Petition.

Although the Review Board is mindful of the extent to which the Bureau has released information under the The President John F. Kennedy Assassination Records Collection Act of 1992, it is our belief that, with respect to the thirteen records at issue, the Bureau and the State Department have chosen to assert general policy preferences rather than to provide the "clear and convincing evidence" that is required by the Act.

We believe that when the redactions at issue are carefully analyzed, with due regard to the information that is already a matter of public record, it will be clear that there are no meaningful "national security" or "foreign relations" concerns that warrant suppression of the information from the public.

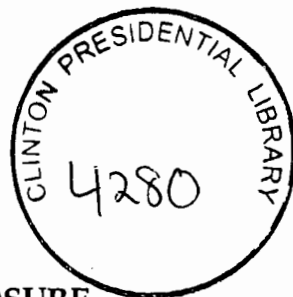
Under the controlling legislation, you have the:

sole and nondelegable authority to require the disclosure or postponement of such record[s] or information under the standards set forth in section 6, and the President shall provide the Review Board with an

This document contains derivatively classified information.
Because the information is drawn from numerous sources,
portion classification is impracticable.

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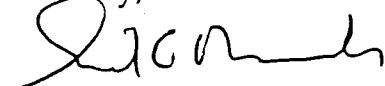
The President
May 23, 1996
Page 2

unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107, Sect. 9(d)(1) (Supp. V 1994).

We would be pleased to provide you and the White House Staff with any additional information that you require.

Sincerely,



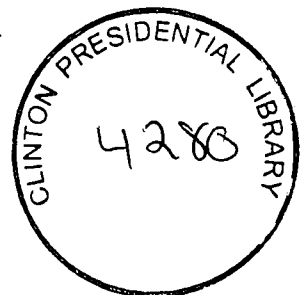
David G. Marwell
Executive Director

Enclosure

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cc: The Hon. Warren M. Christopher
The Secretary of State
U.S. Department of State
Washington, D.C.

The Hon. Louis J. Freeh
The Director
The Federal Bureau of Investigation
Washington, D.C.



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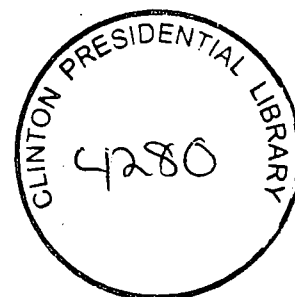
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The President
May 23, 1996
Page 3

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The Hon. Jamie S. Gorelick
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.

The Hon. Peter Tarnoff
Under Secretary of State for Political Affairs
U.S. Department of State
Washington, D.C.



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Assassination Records Review Board

600 E Street NW • 2nd Floor • Washington, DC 20530

(202) 724-0088 • Fax: (202) 724-0457

June 7, 1996

The President
The White House
Washington, D.C.

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Dear Mr. President:

The Assassination Records Review Board has received the FBI's letter of June 5, 1996 ("FBI Letter"), which addresses our Response to the May 10, 1996 Petition For Postponement ("Review Board Response"). We believe that our Response fully addresses most of the points in the FBI Letter, but wish to add a few observations.

First, the FBI Letter does not dispute that the Bureau itself, in the 1960s, publicly disclosed that its counterintelligence activities targeted the full range of Communist-bloc establishments (both commercial and diplomatic) operating in the United States.

Second, the FBI Letter does not provide "clear and convincing evidence" that disclosure would "interfere with the conduct of intelligence activities" JFK Act, 44 U.S.C. § 2107(6)(1)(B). This Section of the JFK Act obligates the Bureau to prove that continued postponement of the appealed information is necessary to avoid harming current intelligence-gathering. The Bureau did not respond to the Review Board's invitations to demonstrate current operational value in the redacted information, other than through general assertions that could be made with equal plausibility about *any* intelligence-related document.¹

Third, the FBI Letter does not respond to our showing that releasing the contested references to four of the five "sources or methods" at issue -- money tracing capabilities (Exhibits 1-6, Review Board Response at 4-6); lookout logs (Exhibit 7, Review Board Response at 7-9); mail cover (Exhibits 8-9, Review Board Response at 10-12); and fingerprint and typewriting analysis (Exhibit 13, Review Board Response at 19) -- would reveal no genuinely secret techniques. With regard to electronic surveillance (Exhibits 10-12), the FBI attacks our response for citing disclosures that are not "official" or "specific." FBI Letter at 4. The first objection simply ignores our citations to official sources such as the Church Committee (*see* Review Board Response at 13) and already-

¹For example: "Today's adversaries *can* and *will* benefit from finding out what our interests and priorities were back then since they can use such information to cogently estimate what our interests and priorities are now." FBI Letter at 5.

The President
June 7, 1996
Page 2

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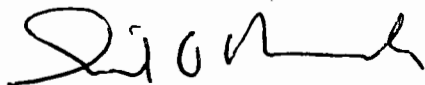
released FBI and CIA records of various intercepts (*see id.* at 16, 17 n.33; Exhibit 17). The objection based on "generality" is beside the point. The JFK Act does not require the Review Board to prove that the interception of a specific communication has already been officially disclosed. Rather, the agency seeking postponement must prove that disclosing such an intercept would harm current intelligence activities or foreign relations. The "general" disclosure of the FBI's extensive use of electronic surveillance against foreign establishments is relevant because it underscores the need for the FBI to show what harm would flow from disclosing a *particular* intercept. The Bureau has not attempted to do so here.

Fourth, the Review Board does not question the counterintelligence expertise of the FBI or the foreign relations expertise of the State Department, but it does question whether that expertise has been applied properly to the relevant question: whether the unique postponement criteria of the JFK Act are satisfied. The Act established the Review Board for the express purpose of independently evaluating agencies' arguments for continued secrecy under those criteria.² The Review Board carefully weighed the contentions of the FBI and the State Department and, for the reasons explained in our Response, found them insufficient to overcome the JFK Act's presumption of disclosure.

Fifth, the State Department's letter of May 15, 1996, advances several reasons to withhold the appealed information, but it does *not* assert that bilateral relations with those nations would be harmed.

We would be pleased to provide any additional information that you might request.

Respectfully submitted,



David G. Marwell
Executive Director



²See JFK Act § 2(a)(3) ("legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure" of assassination records); S. Rep. No. 328, 102d Cong., 2d Sess. 27 (1992) ("It is intended that the Review Board should make its own determinations and that its judgments will be shaped by its experience, knowledge, and expertise during the course of its work.").

The President
June 7, 1996
Page 3

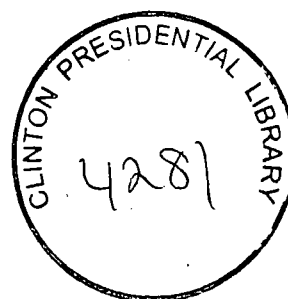
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cc: The Hon. Warren M. Christopher
The Secretary of State
U.S. Department of State
Washington, D.C.

The Hon. Louis J. Freeh
The Director
The Federal Bureau of Investigation
Washington, D.C.

The Hon. Jamie S. Gorelick
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.

The Hon. Peter Tarnoff
Under Secretary of State for Political Affairs
U.S. Department of State
Washington, D.C.



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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	Assassination Records Review Board Surreply to the United States Secret Service Appeal of the April 13, 1998 Formal Determinations (8 pages)	06/15/1998	P5	999✓
002. letter	United States Secret Service Director Lewis Merletti to Charles Ruff re: Appeal of May 26, 1998 (7 pages)	06/01/1998	P5	1000✓
003. report	JFK Assassination Records Review Secret Service Appeal by Bill Leary (3 pages)	06/16/1998	P5	100✓
004. letter	FBI Director Louis Freeh to President William J. Clinton re: Assassination Records (2 pages)	08/03/1998	P5	1002
005a. petition	Petition for the postponement of public disclosure of documents by FBI under section 9 (d) of the President John F. Kennedy Assassination and Records Act of 1992; contains personal information. (6 pages)	n.d.	P6/b(6)	
005b. briefing paper	Federal Bureau of Investigation JFKARCA Postponement Package; contains personal information pertaining to individuals determined by the FBI to have no connection with the assassination of President Kennedy or relative subsequent investigations. (23 pages)	n.d.	P6/b(6)	

COLLECTION:

Clinton Presidential Records
Counsel's Office
Shelli Peterson
OA/Box Number: 16447

FOLDER TITLE:

Kennedy Assassination Review Board

Eric Holzer
2006-0528-F
eh65

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

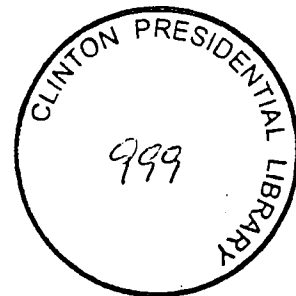
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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MEMORANDUM TO THE PRESIDENT

Assassination Records Review Board

Surreply

to the United States Secret Service Appeal

of the

April 13, 1998 Formal Determinations

June 15, 1998

T. Jeremy Gunn
Executive Director and
General Counsel

Kim A. Herd, Esq.
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MEMORANDUM TO THE PRESIDENT

Assassination Records Review Board Surreply to the United States Secret Service Appeal of the April 13, 1998 Formal Determinations

June 15, 1998

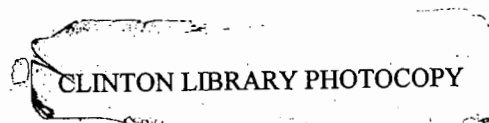
This memorandum responds to the new evidence and arguments raised by the Secret Service's June 1, 1998 letter to Charles F.C. Ruff ("USSS June 1 letter").¹ The Review Board believes that the Secret Service has now shifted its analysis to account for the fact that its prior representations to the Review Board are inaccurate and that much of the information it had sought to protect is already open to the public.

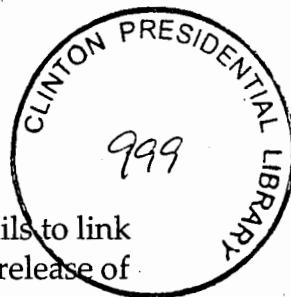
The Secret Service originally suggested that the information at issue is very sensitive and that serious harm would result from its release. *See* USSS Appeal at 1. Although the Secret Service persists in these arguments, the evidence continues to mount that the information is not as sensitive as the Secret Service originally represented; indeed much of it is already open to the public. And, even though the Review Board has shown that this supposedly sensitive information is already public, the Secret Service has failed to show that any of the predicted harms has in fact occurred.

In its June 1 letter, the Secret Service agreed to withdraw its appeal of two of the four records previously at issue.² Because the Secret Service has agreed to release all information in the remaining contested records -- except for the names of individuals -- the only issue now facing the President is whether these names should be released under the standards of the JFK Act. With all due respect to our sister agency, the new evidence and reformulated arguments supplied in its June 1 letter do not alter the basic fact that the Secret Service has failed to show, by the required "clear and convincing evidence," that these names should not be released. Indeed, we observe that the

¹The Review Board's principal arguments are found in its May 22 Reply, to which it continues to adhere. Although the Review Board disputes many of the statements contained in the June 1 letter, it will address only those that are germane to the Appeal.

²*See* Merletti to Ruff, June 1, 1998 at 1. The records now at issue are attached as Exhibits 3 and 4 of the Review Board's May 22, 1998 memorandum. Technically, there were five records originally at issue -- although two of the records were essentially duplicates. *See* ARRB Reply, May 22, 1998, at 1, 4.





fundamental problem in the Secret Service's briefing of the issues is that it fails to link its many points to the fact that the sole issue now facing the President is the release of names in two documents.³

I. The Arguments on Privacy Fail to Satisfy the Requirements of the JFK Act.

a. The Secret Service exaggerates the sensitivity of the information at issue.

The Secret Service originally advised the Review Board, as far back as April 1996, that the information now at issue is so sensitive that the Secret Service scrupulously protected it and limited its distribution solely to those who had a need to know within the intelligence division itself. In its own words, the Secret Service stated that it:

carefully safeguards the confidentiality of its protective intelligence files. These records have consistently been segregated from all other criminal investigative files of the Secret Service, and data therefrom is not co-mingled in the Service's criminal investigative computer database, is not shared with other law enforcement agencies through shared databases, is not maintained by the investigating Secret Service field offices as are other Secret Service criminal investigative files, is not generally available to the subjects of those records, and is not generally available to Secret Service employees outside the controlling headquarters division.

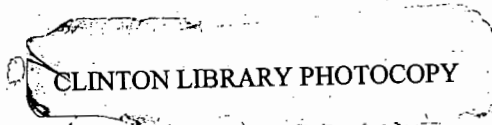
Letter from Jane Vezeris to David Marwell, April 15, 1996 at 3 (emphasis added).⁴

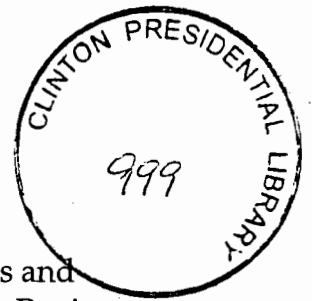
³For example, the Secret Service implies that the issue on appeal is, in part, the release of privileged communications rather than the release of names of persons who were kept on file by the Protective Research Section during the latter part of 1963. See, e.g., USSS Appeal at 7; USSS June 1 letter at 4. The Secret Service has failed, however, to identify even one privileged communication in the records at issue.

⁴The Secret Service enclosed a copy of this letter with its original appeal. See USSS Appeal Ex. 11, Attachment 3.

The Secret Service made a similar representation regarding their supposed segregation of mental health information from the Protective Research Section ("PRS") files a few months later:

As will become immediately apparent, significant dialogue within the mental health community revolves around a patient's right to privacy and





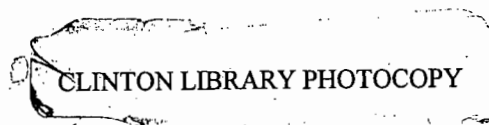
In response to the Secret Service's assertion that it carefully segregates and restricts, on a need-to-know basis, the information at issue in this appeal, the Review Board provided uncontradicted evidence that the Secret Service in fact publishes this same information and distributes it throughout its offices nationwide. See ARRB Reply at 7-9 and ARRB Ex. 6. Unlike its prior representations, which asserted that this information is closely held to those with a need to know at Headquarters, *The Record* apparently was available to all Secret Service employees, including those in such irrelevant areas as the Counterfeit Division and the Financial Crimes Division. Once its original representation was shown to be inaccurate, the Secret Service simply changed its position in the June 1 letter and asserted that it was appropriate to distribute this formerly "highly sensitive" and compartmented information to its offices throughout the country.

The Secret Service cannot have it both ways. It should not be able to assert that the proof of the sensitivity of this information is the fact that it is kept carefully compartmented, and when that assertion is exposed as inaccurate, then suggest that the real issue is whether the information was disseminated outside the Secret Service. The Review Board believes that if this information can be published and distributed to all Secret Service offices and agents throughout the United States -- including those who

within the Secret Service, it revolves around the sensitivity we demonstrate towards safeguarding mental health records. Clearly, the access we enjoy is a direct result of care our personnel have exhibited at the Headquarters and field office levels, over a protracted period, *by isolating and guarding against the release of sensitive personal data found in our protective intelligence records for purposes other than our protective intelligence mission.*

Letter from Jane Vezeris to David Marwell, November 13, 1996 at 9 (emphasis added). The Secret Service included a copy of this letter as an exhibit to its Appeal. See USSS Appeal Ex. 12.

The Review Board anticipates that the Secret Service might now state that the descriptions above apply to the PRS *investigative files* and not to the summary types of information in the documents at issue in this appeal or in its internal publication entitled *The Record*. If the Secret Service were to make such an assertion, it would be in flat contradiction to its repeated suggestions, both to the Review Board and to the mental health community, which asserts the equivalence of the information in the PRS files and those that the Review Board voted to release.





have no need to know about psychiatric information -- then it can and should be fully subject to the demanding standards of the JFK Act.⁵

b. The Secret Service itself opened *The Record*.

The Secret Service replies to the Review Board's additional argument that *The Record* is now open-in-full at the National Archives by suggesting that the National Archives erred in opening the documents without the permission of the Secret Service. In order to pass the blame to the Archives, the Secret Service ignores the unavoidable fact that its authorized representative, on March 4, 1981, signed a Standard Form 258 and agreed to open in full *The Record* for the years 1938 through 1959 without marking either box that would have placed restrictions on them. See ARRB Ex. 8 (boxes 5C and 5D).⁶ The Secret Service's suggestion to the Archives that it now close *The Record* or return it to the Secret Service is certainly inconsistent with the spirit of the President's own Executive Order 12958.⁷

c. The Secret Service failed to provide evidence of actual harm to individuals.

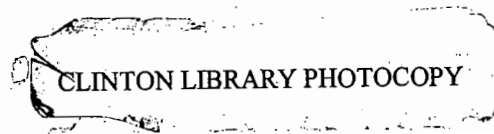
Prior to the Review Board's April 13 vote, the Secret Service was afforded the opportunity to submit specific evidence regarding persons who might be harmed by the release of their names. Unlike the FBI and the CIA, the Secret Service decided to rely on policy arguments and declined to provide any specific information that would show that any particular person would be harmed by the release of his or her name.⁸

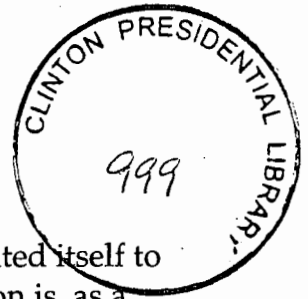
⁵The Secret Service has provided no evidence that it has taken any steps whatsoever to ensure that copies of *The Record* were kept in its offices or that there has ever been any attempt to ensure that employees did not take copies home with them or give them to others.

⁶The Secret Service is apparently suggesting that letters written in 1978, three years before it agreed to open *The Record* in full, should be taken to supersede the later document. The Review Board is aware of no theory of contract interpretation or interpretation of a last will and testament -- probably the two closest analogies -- that would support revising a document that is clear on its face and that has been uncontested for 17 years, based upon prior inconsistent statements.

⁷"Information may not be reclassified after it has been declassified and released to the public under proper authority." Section 1.8(c).

⁸In the FBI's first appeals to the President, more than two years ago, it also relied on policy arguments rather than specific evidence. After being advised by Judge Mikva





By following this risky strategy, the Secret Service essentially obligated itself to provide "clear and convincing" evidence that the release of such information is, as a matter of policy, an "an unwarranted invasion of personal privacy, and that the invasion of privacy is so substantial that it outweighs the public interest." JFK Act § 6(3). The Secret Service attempted to prove the existence of such a policy not by citing any relevant law, but by attaching letters from the mental health community.⁹ Although the Secret Service argued that as a matter of policy and practice such information was not available to the public, the Review Board provided several examples of where such information is already a matter of public record.

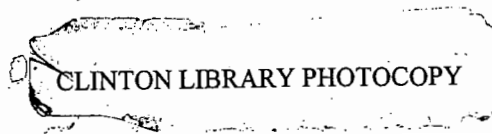
Now, six weeks after the Board voted on the records at issue, the Secret Service -- in its June 1 letter -- finally decided to provide a sketchy piece of information about one individual whom it alleges would be harmed by the release of his name in the context of an activity he undertook as a child. *See* USSS June 1 letter at 6. Such information is exactly the type of information that the Review Board encouraged the Secret Service to make available before it voted, but which the Secret Service declined to provide. The extremely vague manner in which the evidence is presented in this peculiar case, and the very late date at which it is presented, makes it impossible to be evaluated objectively.

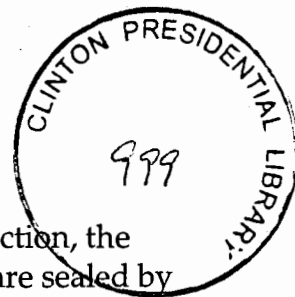
d. Commitment-hearing information may be open to the public.

In its Appeal, the Secret Service originally suggested that mental health records, of the type at issue here, are kept confidential and are not available to the public. *See, e.g.,* USSS Appeal at 6. The Review Board, with only a few hours work, was able to locate several civil commitment records in the District of Columbia -- the single most relevant jurisdiction -- on several of the very people whose names are at issue in this appeal. *See* ARRB Reply at 9-11. The information in these public records was more revealing than the sketchy information included in the records on appeal, a fact that the Secret Service has not yet denied. Thus, the core assumption on which the Secret Service initially relied, was contradicted in the very jurisdiction where the President lives and the Secret Service is headquartered.

that such arguments were not sufficient, and after thorough briefing on the issues, the FBI withdrew its appeals. The FBI now provides the Review Board with specific information on persons whose identity it wishes to protect. The Secret Service was advised of this prior to the time it made its decision to appeal.

⁹The Secret Service did refer to some privacy law which, as our Reply showed, is irrelevant under Section 11(a) of the JFK Act. *See* ARRB Reply at 6. Wisely, the Secret Service did not renew this argument in its June 1 letter.





Having had its original broad argument fall short in its home jurisdiction, the Secret Service now argues that "[i]n some [unspecified] states, the records are sealed by the court and may only be disclosed upon court order." USSS June 1 letter at 5. Although the Review Board agrees that this is likely true in some states, this fact, in and of itself, does not begin to satisfy the Secret Service's obligation to provide the evidence that the law in any of these unspecified states is relevant to any of the persons at issue in this appeal. Because the Secret Service has not even alleged that the laws in any of the unspecified states actually apply to individuals at issue in the two documents, it has not begun to satisfy its burden of proof.

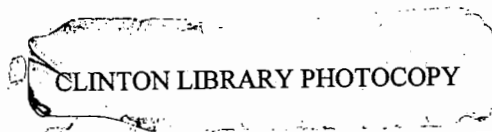
II. The Names at Issue are Relevant to the Assassination

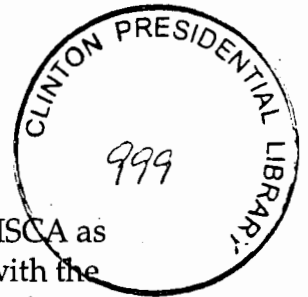
In its opening brief, the Review Board stated that the names at issue were those of the individuals who were identified as potential threats to President Kennedy and that two prior investigations of the assassination (the Warren Commission and the HSCA) believed that these names and documents were relevant for their investigations. See ARRB Reply at 1, 12-13.¹⁰ The Secret Service wisely did not dispute or challenge the Review Board's evidence on the prior interest of the Warren Commission and the HSCA. Rather, the Secret Service only challenged the Review Board's initial description of these records.¹¹ The Secret Service responded that "[i]t is important to note that upon investigation, the majority of these individuals were evaluated as not of protective concern." USSS June 1 letter at 2 (emphasis omitted). In making this argument, the Secret Service attempts to downplay the significance of the names. There are three problems with this attempted minimization:

First, as stated above, the Warren Commission and the HSCA, which were charged with investigating the assassination, previously rejected this position and examined the underlying records. See ARRB Reply at 12-13. The JFK Act itself defines

¹⁰Not only did these individuals come to the Secret Service's attention, they were located among the files of the PRS. In 1964, Robert Bouck testified before the Warren Commission that one of the functions of PRS was "the responsibility of attempting to detect persons who might intend harm to the President, and to control those persons or take such corrective measures as we can take security-wise on them" *Investigation of the Assassination of President Kennedy: Hearings Before the President's Commission on the Assassination of President Kennedy*, Vol. IV, at 297 (1964) (testimony of Robert Bouck).

¹¹The Review Board described them unremarkably as records that "identify people whom the Secret Service's Protective Research Section ("PRS") considered to be potential threats to President Kennedy" ARRB Reply at 1.





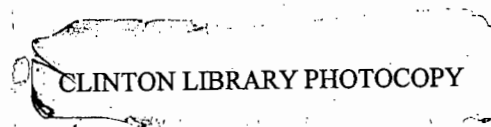
those records that were made available to the Warren Commission and the HSCA as "assassination records" that should be transferred to the National Archives with the presumption that they be opened in full. JFK Act, § 3(2); ARRB Reply at 5-6. The Review Board, like the Warren Commission and the HSCA, believes that the fact that a information on a school child was in the Secret Service's PRS files -- and that information on Lee Harvey Oswald was not -- is relevant to the assassination and a fact worth noting.

Second, the Secret Service elsewhere -- albeit inadvertently -- characterizes this same information quite differently from how it describes it here. When discussing the purpose of *The Record*, the Secret Service explains that it was "used as a means of communicating . . . significant cases of interest . . ." USSS June 1 letter at 4 (emphasis added). The Review Board does not understand how the Secret Service can plausibly argue that the information routinely published in *The Record* can pertain to "significant cases of interest" prior to the assassination, but that it became "insignificant" after President Kennedy was murdered.

Third, in making its argument that it has determined that many of the people identified were not involved in the assassination, the Secret Service is asking the Review Board and the American people to believe that its judgment regarding who was or was not involved in the assassination should be taken as dispositive. Under the JFK Act, it is neither the responsibility of the Review Board nor the Secret Service to identify the person or persons who ultimately were responsible for the assassination of President Kennedy. The Review Board is officially agnostic on this issue. It is, however, the business of the Review Board to identify the types of records that are "relevant" to the assassination. And, *using the very words employed by the Secret Service to describe the types of records at issue here*, these were "significant cases of interest" to the PRS and should be included in the JFK Collection.

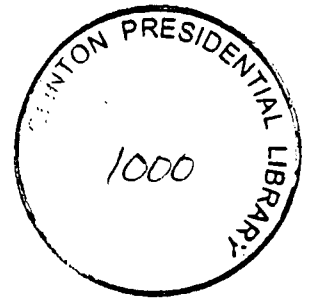
Conclusion

The Review Board respectfully requests that, in the spirit of the JFK Act, the President agree to release in full the two records now at issue. Not only has the Secret Service failed to meet its burden of proving, by clear and convincing evidence, that the information cannot be released, it has repeatedly "revised" its earlier representations about the sensitivity of the records and whether such information is already in the public domain.





DEPARTMENT OF THE TREASURY
UNITED STATES SECRET SERVICE



June 1, 1998

Mr. Charles F.C. Ruff, Esq.
Counsel
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

In an effort to seek resolution of differences with the Assassination Records Review Board, the Secret Service has carefully considered the Board's May 22, 1998, Memorandum to the President, "Assassination Records Review Board Reply to the United States Secret Service's Appeal of the April 13, 1998 Formal Determinations" (hereinafter referred to as the Board's Reply memorandum). Upon review, we are willing to concede to the release of two of the five documents. However, as for the remaining three documents, the Secret Service stands by our appeal of May 26, 1998, based on the issues we have articulated to you in our memorandum of that date.

Description of the Records in Issue

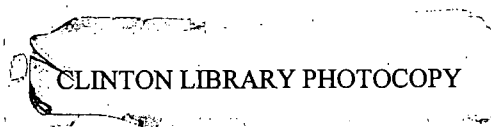
1. **RIF #180-10147-10275 - Dinneen and Conzelman's memorandum entitled: "Secret Service Index File and Commission Documents United States Archives"**

If, as stated by the Board, this material including the written annotations, is and has been open in full to the public, the Secret Service will no longer continue its opposition to the release of this document

2. **RIF #180-10087-10302 - Dinneen's memorandum of March 24, 1978 entitled: "Review of JFK Trip Files for 1963"**

The Secret Service will no longer continue its opposition to the release of this document.

3. **RIF #180-10065-10379 - 413 "Summary Sheets" prepared by HSCA staff**
4. **RIF #180-10147-10274 - Dinneen memorandum dated October 19, 1978 entitled: "Secret Service Protective Cases"**
5. **RIF #180-10103-10465 - Dinneen memorandum dated October 19, 1978 entitled: "Secret Service Protective Cases" (version of RIF #180-10147-10274)**



These are the documents that remain in issue and which form the basis of this appeal.



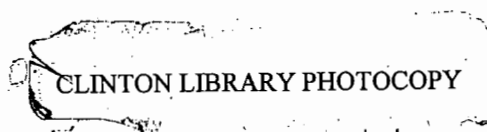
Summary of Secret Service Appeal Bases

We continue to feel very strongly that release of the data *with identifying information* clearly constitutes an unwarranted invasion of privacy that is so substantial that the personal embarrassment and stigma that will be caused by such release outweighs the public's interest in this particular information. Further, we are certain that the Board's disclosure to the public of the data with identifying information is an egregious violation of the spirit and intent of medical and mental health records confidentiality. And, we have unequivocal confirmation through the letters we have received that public disclosure of mental health and other private information will have a chilling effect on the Service's future abilities to obtain cooperation by members of the professional mental health community pursuant to protective intelligence investigations aimed at protecting the President and other Secret Service protectees. As such, we are very concerned that the Board's decision to release the data in question, if upheld, could likely compromise the effectiveness of our protective operations. Moreover, we respectfully disagree with the Board's conclusion that we have failed to demonstrate these arguments according to a standard of clear and convincing evidence. We refer you to our memorandum of May 26, 1998, for a full explanation of the bases for our appeal.

Clarification of Errors in the Board's Memorandum to the President

We believe the Board's Reply memorandum to the President contains certain inaccuracies and mischaracterizations of the facts and the issues. We wish to respond to some of the major inaccuracies herein in order to clarify any misimpressions that may have been created in the Board's Reply memorandum.

1. **Relevance of the Data to the JFK Assassination.** The Board states that the records at issue "identify people whom the Secret Service's Protective Research Section ('PRS') considered to be potential threats to President Kennedy, Vice-President Johnson, and their families, between March and December 1963" (page 1, Board's Reply memorandum). As a matter of clarification, these records pertain to individuals who came to Secret Service attention between March and December 1963. *It is important to note that upon investigation, the majority of these individuals were evaluated as not of protective concern.* Hence, for the cases whose identities we are trying to protect, there is simply an insufficient connection between them and the JFK assassination or any other viable threats against Secret Service protectees at that time. At best, therefore, the public interest in these cases would appear to be negligible and remote from the JFK assassination.
2. **Secret Service "Withholding" of Evidence.** The Board, in footnote 2 of its Reply memorandum, accuses the Secret Service of having withheld relevant evidence that the Board claims should have been provided in a timely manner. We are perplexed by this allegation.



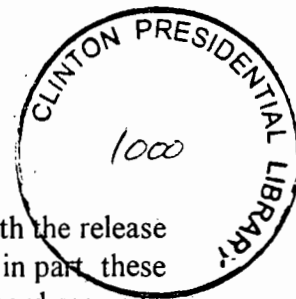
Specifically, with respect to the letters from mental health professionals that were included as attachments to our May 26, 1998, memorandum of appeal, the Secret Service provided to the Board four earlier versions of such letters of support in 1996. At that time, the Board evidently dismissed the significance of those letters and the issues raised by the mental health community as inconsequential to their consideration of the Secret Service's position. Relative to our references to priorities articulated by the White House Security Review Committee (WHSR), none of the Service's efforts to respond to the Committee's recommendations represents new information that was heretofore withheld from the Board. To the contrary, the WHSR efforts are introduced in our memorandum of May 26, 1998, to reinforce the importance of Secret Service initiatives to ensure collaborative relationships with the mental health community -- a matter that we have repeatedly addressed with the Board.

3. Disregard for the Concerns Expressed by Mental Health Organizations and Scholars. The Secret Service continues to be surprised at the limited attention the Board gives to the issues and concerns raised by the mental health organizations and scholars in their letters of support. These letters were contributed by the nation's preeminent mental health law policy experts and professional organizations. While the Secret Service acknowledges that the Board is clearly free to disagree with their positions and to question their understanding of the present issue, we believe one should be loathe to reduce their scholarly opinions and their advocacy for the rights of the mentally ill to "rhetoric." Even if the Board is unconcerned about individuals' rights to privacy and medical records confidentiality, these remain issues that are of central concern to the American people. We refer you to the letters themselves -- and the distinguished credentials of the writers -- to form your own conclusions about their relevance to this matter.
4. "Misconceptions" by Mental Health Professionals. In their Reply memorandum, the Board cites examples from the letters of support by mental health professionals that the Board claims suggests misconceptions about the nature of information that is at issue for public disclosure (see footnote 6, page 4, Board's Reply memorandum). The Board raised this very issue with us. In response to the Board's concern, and in order to dispel any confusion about the professionals' understandings about the type of information contained in the summary sheet data and in order to dispel any concerns about the Secret Service's characterization of this data to the mental health professionals, we forwarded excerpts from the actual summary sheet data to each of them. Attachment 1, a letter from Assistant Director Vezeris to Mr. Gunn dated May 13, 1998, provides follow-up correspondence from the mental health scholars and organizations that affirms the concerns they expressed in their original letters to Director Merletti following their review of excerpts from the actual summary sheet data.
5. Disclosure to the Secret Service by the Mental Health Community. In the Board's Reply memorandum, they state that they "cannot believe that there are many trained professionals who would jeopardize either the President or their own patients' well being by refusing to identify potential threats to the life of the President simply because certain names were released in 35 year-old records related to the assassination of President Kennedy" (page 15,

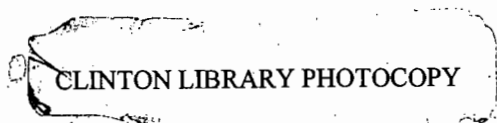
Board's Reply memorandum). Rather, the Board appears to *presume* a cooperative relationship between mental health professionals and the Secret Service whereby responsible clinicians routinely forward to the Secret Service the names of persons who pose a risk to the President. It is clear from the Board's Reply memorandum that they do not fully appreciate principles of privileged communication or mental health records confidentiality. For example, they insist that information contained in the summary sheet data is authorized for public disclosure by the very fact that the information has been released to the Secret Service (see footnote 8, page 6, Board's Reply memorandum). This is simply not so. A patient may consent to limited disclosure for release of information to the Secret Service; however, this has no bearing on the Service's authorization to subsequently re-release that information to others for unrelated purposes. Only the patient, as the holder of the privilege, has the authority to waive the privilege for a subsequent release. Also, the fact that specific therapists are not identified by name in the summary sheet data has no bearing on whether confidentiality of records would be violated pursuant to a subsequent release of that information.

6. Information in the Public Record. The Board's underlying argument is that the type of information the Secret Service seeks to protect is already in the public domain, and that the Secret Service itself is responsible for release of this information through volumes (up to the year 1959) of an internal Secret Service publication called The Record which was transferred to the National Archives and Records Administration (NARA) in 1981. It should be noted that while the Board indicates that the "Secret Service published exactly the same type of information that it now seeks to postpone" (page 8, Board's Reply memorandum), the Secret Service has never "published" this material for public access. We did convey this information in an internal publication called The Record which was used as a means of communicating policy or significant cases of interest to Secret Service field office personnel. Moreover, we did transfer volumes of The Record to NARA in 1981. Contrary to the Board's assertion, however, pursuant to a 1978 written memorandum of agreement between the Secret Service and NARA, any privacy information contained in The Record was to be expressly restricted from release to the public. Further, in light of the Board's assumption that The Record is publicly accessible, we have recently confirmed with NARA that Secret Service records, including The Record, do indeed have restrictions placed on them relative to public disclosure. A chronology of correspondence between the Secret Service and NARA that documents our agreements concerning the restrictions to public access to The Record are attached for your review (Attachments 2 through 6, respectively). The Board is simply in error when they assert that the Secret Service has ever consented to unrestricted release of The Record to the public. Hence, the Board's accusation that the Secret Service has been disingenuous with the mental health community relative to our disclosure of confidential mental health information is unfounded. Moreover, we have been advised by staff members at the Federal Records Center in Suitland, Maryland and at NARA in College Park, Maryland that other than requests from the JFK Board, they cannot recall any public requests for The Record.

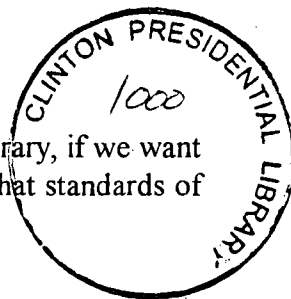
7. Public Access to Civil Commitment Records. Based on the Board's research initiatives to locate the mental health records of several subjects whom the Secret Service is seeking to protect, the Board has improperly concluded that civil commitment records are typically available for public review. While it is true that records of civil commitment are open to the public in the District of Columbia, this is not a universal policy that applies in all jurisdictions. In fact, the state statutes vary considerably with respect to public accessibility to the records of emergency evaluation petitions. In some states, the records are sealed by the court and may only be disclosed upon court order. In other states, they are open unless a Jane/John Doe status is requested by the respondent. In other jurisdictions, the records of proceedings are open to the public. Therefore, it is an extreme overgeneralization to presume that the data the Service is attempting to protect is routinely available through public records. Moreover, while some states allow for public access to civil commitment records, this can in no way be interpreted to mean that *all* mental health records and information are available to the public. Equally importantly, *none* of this information can be accessed without the patient's name. In fact, the Board's research in this regard vividly demonstrates the personal embarrassment that will ensue if the subject names are released. While personal information about these individuals may in fact be publicly available in some official files, as a practical matter, no one has had reason or incentive to disturb this information. If, however, the decision is made to release the subject names -- names, it bears repeating, of individuals who have no true relation to the JFK assassination -- that will no longer be true, and this extremely embarrassing information will be dredged up, further compounding the unwarranted invasion of personal privacy.
8. Destruction of Assassination Records by the Secret Service. In the Board's Reply memorandum, the Board chastises the Secret Service for what they term the "improper destruction" of assassination records. Specifically, these records refer to certain protective survey reports of Presidential domestic trips taken in 1963 that had been set for destruction by NARA pursuant to approved records disposition schedules. Prior to their destruction, the records were thoroughly reviewed by Secret Service and by NARA personnel to ensure that no documentation relating to the assassination of President Kennedy was included. It was not until *after* the records were destroyed that the Board advised in 1995 that these records had been reviewed by the House Select Committee on Assassinations (HSCA) and, therefore, were considered to be "assassination records" according to the definitions set forth in the JFK Act. Thus, a more accurate characterization would be that the destruction of these records by NARA was inadvertent and not conducted in defiance of the provisions of the JFK Act. At no time has the Secret Service intentionally destroyed any assassination records. Rather, we have sought to fulfill our obligations under the JFK Act in good faith. It should also be noted that we have provided to the Board most of the actual trip files themselves for Presidential travel taken in 1963, as well as the shift reports for November, 1963. A more detailed explanation surrounding this matter has been provided to the Board on numerous occasions, both orally and in writing. Although we think it has no relevance to this appeal, we would be happy to make that material available to your office at your request.



9. Invasion of Personal Privacy. It appears that the Board is fully comfortable with the release of the names of those who came to Secret Service attention in 1963 because, in part, these are 35 year old documents (see page 14, Board's Reply memorandum). The Board seems to suggest that because these records are old, there is somehow less of an importance attached to personal privacy concerns. The Secret Service does not share this attitude. As you will note by reviewing Attachment 1 of our May 26, 1998, appeal submission, a number of the summary sheets in RIF #180-10065-10379 pertain to juveniles who came to the attention of the Secret Service in 1963 due to an intended joke or other immature action. Using public source data, the Secret Service was recently successful in locating one of these subjects, who was in elementary school at the time of the incident. Presently, the individual is married and has a highly responsible position in a large corporation. The individual was advised of the current proceedings and told of the possibility that the summary sheet describing how the individual came to our attention might be transferred to NARA for public access. Upon learning this information, the individual became annoyed and very concerned. It was quite clear that the individual has concern for what effect this could have on that person's stature in the community, as well as for how it might affect this person's status, and possibly even continued employment, in the corporation. In keeping with the wishes of the individual, the Secret Service will not identify the party, but we do raise the encounter as only one example of how the release of this information could cause an unwarranted and ultimately detrimental invasion of privacy.
10. "Broadcasting" the Issue Among the Mental Health Community. Not only does the Board choose to ignore the documented impact of the release of the subject summary data on well established relationships between the Secret Service and the mental health community, the Board further criticizes the Secret Service for "broadcasting" the issue and thereby creating what *they believe* is an otherwise nonexistent problem. We are offended by their attempts at sensationalism. First, all of the major mental health professional organizations have expressed, through carefully prepared and thoughtful letters, what they anticipate will be very direct consequences of the Board's determination to release the records -- namely, pervasive obstacles to future attempts by the Secret Service to access information from mental health professionals that is pertinent to our protective mission. We feel that their perspectives should be afforded some degree of respect. Secondly, the Secret Service has not "broadcast" this issue to anyone. We have not engaged in any media or public relations campaign surrounding this matter. Nor have we in any way attempted to belittle the importance of the JFK Act, or to disparage the Board's mission. Rather, based on a history of collaborative relationships with these organizations and scholars, we have sought their assistance on an issue that has been at the core of our dealings together for a period of over ten years. In fact, if we withheld this matter from them, we would certainly be vulnerable to the very accusations of disingenuous conduct that the Board has already launched against us. We find it ridiculous to even suggest that by consulting with these entities we are creating whatever problems might ensue from the release of information. The Secret Service does not operate



under the principle of "what they don't know won't hurt them." To the contrary, if we want to maintain our credibility with the mental health community, we believe that standards of professional ethics encourage a more straightforward approach.



I hope that the above points will clarify any questions that may have arisen from the Board's Reply memorandum, and I trust that this correspondence will provide a useful supplement to the bases for our appeal, as developed in our May 26, 1998 memorandum. In an effort to seek a reasonable resolution to this matter, I will be available to meet with you at your earliest request.

Thank you for your consideration.

Sincerely,

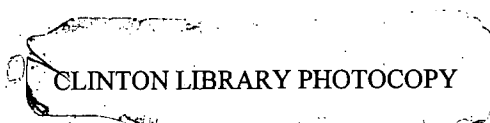
Lewis C. Merletti
Director

Attachments

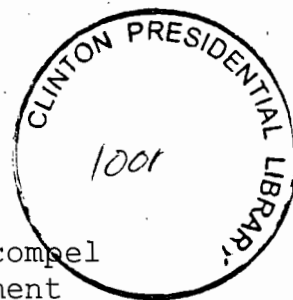
cc:

William H. Leary
National Security Council

T. Jeremy Gunn, Esq.
JFK Review Board



JFK Assassination Records Review
Secret Service Appeal

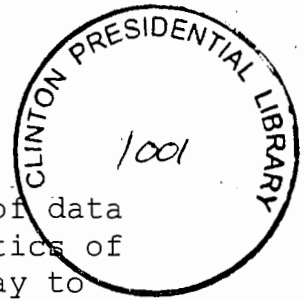


The JFK Act passed in 1992 clearly is intended to compel the release of virtually all previously withheld government records related to the assassination of the President. The Act states that "all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure." The most relief that any agency can seek is to postpone release of information until 2017, at which time everything is automatically released.

The standards required for postponing the release of information are extraordinarily high -- much higher than the normal FOIA standards, with one exception. The one exception is the postponement standard at issue in this appeal. The JFK Act language for protecting personal privacy is very similar to exemption (b)(6) of the FOIA. It allows the postponement of information that "could reasonably be expected to constitute an unwarranted invasion of personal privacy," while the FOIA requires a "**clearly** unwarranted invasion of personal privacy" in files such as medical files. The JFK Act also states that the invasion of privacy must be "so substantial that it outweighs the public interest."

In June 1995, when the JFK Board was ready to begin ordering the release of documents, Tony Lake, Judge Mikva, and John Podesta sent a memo to the President outlining an approach to exercising Presidential review authority. It emphasized that the White House should not get involved except when a dispute involved important principles that could not be resolved between the Board and an appealing agency. The memo also acknowledged a strong disposition to recommend release while remaining open to arguments in favor of postponement. Based on the President's approval of the memo, we conveyed that message to the Board and to the CIA, FBI, and Secret Service. Our overriding objective has been to avoid the necessity of a formal Presidential decision, which is a no-win proposition.

The only two prior appeals were submitted by the FBI. The first FBI appeal involved foreign government information and sources information; the second involved information about counter-intelligence methods and highly personal information in one document. In both cases, after extensive contacts among the parties, the FBI withdrew its appeal. In the case of the one document involving personal privacy, the Board agreed to redact the most sensitive information.



Current Secret Service Appeal

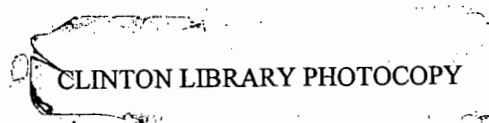
The information at issue in this appeal -- summaries of data about the mental state and other personal characteristics of individuals investigated by the Secret Service from May to December 1963 as potential threats to the President -- clearly has substantial public interest **and** a substantial potential to invade personal privacy. The Service's proposed compromise of releasing everything except individual names almost certainly would be accepted by all parties in any context but this one where any withholding fuels the suspicions of the conspiracy theorists.

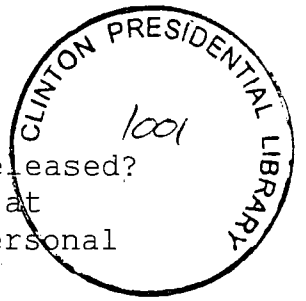
Two of the issues debated intensely by the Board and the Service are largely peripheral in my judgment. The Service's concern about maintaining its credibility with the mental health community is understandable. However, their argument of principle -- that this kind of information should never be made public -- overlooks the fact that the only question permitted by the law is when this information shall be released not whether. It must be released in full by 2017 at the latest. Surely the Service can explain to mental health professionals that this situation is unique and any releases of this data establish no binding precedent whatsoever, thus mitigating any chilling effect on their ability to obtain necessary information in the future.

On the other hand, the Board's assertions about possible prior release of this information should not be dispositive. Even if the Service did not previously protect this information as vigilantly as it might have (and would today), that should not undermine its ability to make the case now for protecting personal privacy.

In an effort to bridge the gap between the Board and the Secret Service, I would suggest we talk to the parties (separately or together) and pose the following questions:

1. The Service has indicated that it would agree to release the names of deceased individuals and those individuals who were a part of the JFK investigation. How many names would this entail? Is there any other logical basis for releasing some additional names? The Director says in his June 1 letter that "the majority of these individuals were evaluated as not of protective concern." Would they agree to release all other names?





2. Why does the Board believe that all names must be released?
Does the Board believe that none of the information at issue would constitute an unwarranted invasion of personal privacy?
3. What is the status of the underlying Secret Service records that are summarized in the 413 summary sheets.

Bill Leary
June 16, 1998



U.S. Department of Justice

Federal Bureau of Investigation



Office of the Director

Washington, D.C. 20535

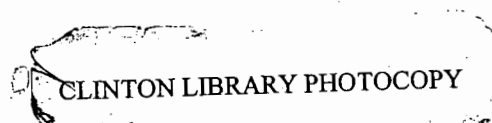
August 3, 1998

The Honorable William J. Clinton
President of the United States
Washington, D.C.

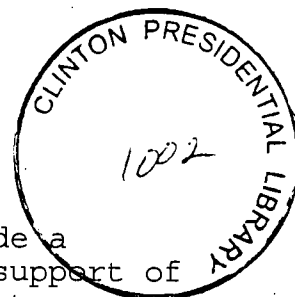
Dear Mr. President:

For the reasons set forth in detail in the enclosure, this letter requests that you exercise your authority, under Section 9(d) of the President John F. Kennedy Assassination Records Collection Act of 1992, to postpone the public disclosure of three documents and a photograph ordered released by the Assassination Records Review Board.

Consistent with the spirit of the Act, the Federal Bureau of Investigation (FBI) has cooperated extensively with the Board and made the broadest disclosure of documents in the Bureau's history. In this instance, however, release of these items would severely invade the privacy interests of three private citizens and subject them to public ridicule and embarrassment with no discernable contribution to the public's understanding of the circumstances surrounding President Kennedy's assassination or how that crime was investigated by the FBI. We are particularly concerned that the items, which have been marked "OBSCENE" for good reason, may be published on the Internet and will be available to minors following their release to the public. Moreover, we have been able to warn only one of the three persons whose character and reputation will be besmirched by the release of these items. The one person we have contacted strongly opposes the Board's decision to release this material.



The Honorable William J. Clinton

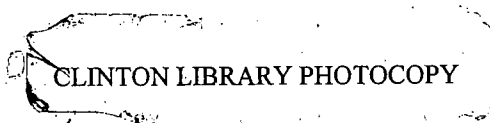


During the past three years the FBI has made a determined effort to work closely with the Board in support of its important responsibilities. We feel constrained to appeal this matter based on the firm belief that the disclosure of these items is a clearly unwarranted invasion of personal privacy which has no relevance whatsoever to President Kennedy's assassination or the responsibilities of the Board. Given these particular circumstances, I, therefore, must urge that you reverse the decision of the Board in this instance.

Louis J. Freeh
Louis J. Freeh
Director

Enclosure

- 1 - Honorable Eric H. Holder, Jr.
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.
- 1 - Ms. Laura Denk
Executive Director
Assassination Records Review Board
Washington, D.C.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Questions for the FBI, State Department and Assassination Records Review Board (1 page)	n.d.	P1/b(1)
002. letter	FBI Director Louis Freeh to President William J. Clinton re: FBI Appeal of Release; draft (6 pages)	06/03/1996	P5 1003

COLLECTION:

Clinton Presidential Records
Counsel's Office
Trey Schroeder
OA/Box Number: CF 865

FOLDER TITLE:

Assassination Records Review Board [Folder1]: Meeting, April 12, 1996

Kelly Hendren
2006-0528-F
kh537

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

DRAFT

June 3, 1996

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20050

Re: FBI Appeal of JFK Assassination Records
Review Board Determinations Concerning
Release of FBI Documents

Dear Mr. President:

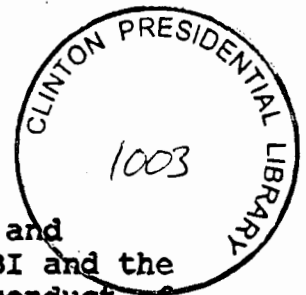
After reviewing the Assassination Records Review Board's reply to my May 10th petition for postponement of disclosure of certain portions of thirteen FBI documents, I believe it necessary to offer the following additional comments for your consideration.

First, the Board dogmatically insists that neither the Bureau nor the State Department has produced any evidence to support our assertion that release of the data in question would compromise certain investigative techniques, prejudice foreign relations, or harm the national security. In making this argument, the Board overlooks the most telling evidence available to demonstrate such matters: the considered judgment of qualified professionals in both the State Department and the FBI.¹

In determining issues far less weighty, adjudicative tribunals have traditionally shown deference to the judgments exercised by qualified professionals.² While we do not presume to tell the Board that it would do well to follow these precedents, we do feel compelled to state unequivocally that the collective and considered views of the FBI and the State

¹ We have provided the Board and its staff with these opinions both orally and in writing.

² See, e.g., Washington v. Harper, 494 U.S. 210 (1990) (Court deferred to panel of medical and prison officials in determining the propriety of giving antipsychotic medicine to inmate against his will); Youngeberg v. Romeo, 457 U.S. 307 (1982) (Court deferred to judgment of professionals regarding type of treatment that should be provided to involuntarily committed persons); Dept. of Navy v. Egan, 484 U.S. 518 (1988) (Court deferred to judgment of those charged with safeguarding national security on question whether a security clearance should be given to a particular employee); and Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985) (Court deferred to academic professionals on whether student should be allowed to retake entrance examination).



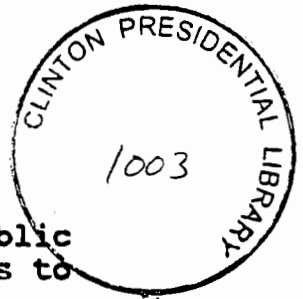
The Honorable William J. Clinton

Department are, indeed, evidence of considerable weight and value. The Government, after all, has reposed in the FBI and the State Department, respectively, responsibility for the conduct of our counter-intelligence operations and foreign relations. Our respective agencies employ the experts in these matters; if their opinions are of no moment, then no amount of evidence would convince the Board.

In reality, by totally discounting our professional judgments, the Board seeks to substitute its own assessments on matters which, to quote the Board from another context, it is "institutionally incompetent" to judge. For example, the Board on page 27 of its reply states: "The official release of further bits of data regarding FBI targeting of Cold War adversaries over thirty years ago is scarcely likely to upset current foreign relations." If this conclusion were the reasoned product of professionals in the Foreign Service at the State Department, then it would be entitled to due consideration, if not deference. Since, however, it is the surmise of an ad hoc body which didn't even exist during the Cold War and whose expertise is not in foreign relations, it is hardly compelling.

Second, the Board's argument that, because we have released similar information in other Assassination Records, we cannot now claim secrecy for the data at issue is disingenuous. As I noted in my cover letter to our petition, we have gone to great lengths to comply with the disclosure requirements of the Act. Whenever a document pertained directly to an event or character of some significance to the assassination, we have unfailingly erred on the side of disclosure. Thus, we have revealed information that we would have otherwise protected exactly because we felt that the spirit, if not the letter, of the Act required it. We did so because, in our view, the public interest in learning about the circumstances surrounding the assassination investigation outweighed our interests in keeping the information confidential. In short, when in doubt we have invariably tipped the balance in favor of disclosure.

Having done so, we should not and cannot be penalized when, as here, we seek to protect related information. If the Board's argument is correct that because we have once complied with the Act by releasing information we are forever foreclosed from seeking to protect related information, then the balancing test which Congress so carefully crafted in the Act is meaningless. This is so since the propriety of all disclosures would be effectively reduced to their lowest common denominator. Such an outcome would penalize those agencies that have tried in good faith to make the maximum permissible disclosures under the Act while simultaneously rewarding those who disclose the least.



The Honorable William J. Clinton

Third, the Board's assertions that most of the information which we seek to protect is already in the public domain are inaccurate. The Board's rendition of materials to illustrate their point is simply misleading.

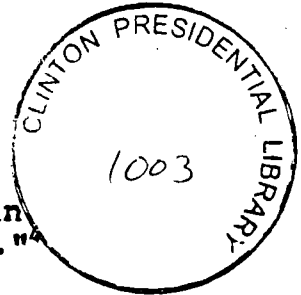
For example, the Board begins its analysis, at page three of its response, by concluding that, since J. Edgar Hoover told Congress that the FBI was using "every resource at its command" to counter the intelligence activities of Soviet bloc countries, every investigative tool which we had acknowledged using during the 1960's was already exposed. We respectfully disagree. Mr. Hoover's statements do not show how we employed particular investigative techniques, when we used them, the particular purposes to which they were put, what we learned, or any other detail of significance. Just as a military commander's statement that he will "resist with all available means" doesn't tell the enemy what units he has, what their capabilities and weapons are, the state of their training, what strategies and tactics he will use, what his orders and priorities are, and so forth, Mr. Hoover's statement provides no useful information to an adversary.

The Board's response is replete with similar generalities. For example, the general acknowledgement, cited at page six of the response, that we considered "every Russian-run" establishment in the United States to be engaged in covert intelligence collection is a far cry from confirming that we had such establishments under surveillance, from disclosing the details surrounding particular phone call and mail interceptions, or from revealing the results of a particular surveillance. Similarly, that the public record may show that we kept foreign establishments under surveillance does not reveal that we used fixed surveillance sites to do so, the location of such sites, how and when they were staffed, what we considered important enough to log and, by implication, what we didn't, and so forth.

We are not concerned about generalities of the type the Board relies upon; rather it is the disclosure of specifics that we are seeking to avoid since it is the particulars that give aid and comfort to our adversaries. This point is evident from the very materials that the Board cites in support of its position: "But you can't put those details in the charter other than in gross terms without giving the blueprint to the enemy on the way

The Honorable William J. Clinton

we work,"³ or "Congressman, I can answer your questions in detail, but I would prefer to do it an executive session."



Similarly, at page twelve of the response, the Board points to the congressional testimony of former Attorney General Ramsey Clark regarding wire intercepts as proof of previous official acknowledgement of using such techniques against foreign establishments and agents. Three points demonstrate the weakness of this conclusion. First, the testimony at issue does not reveal a single specific instance in which a wiretap of a named foreign establishment was approved. Second, the only particulars in this regard alluded to by the former Attorney General pertained to intercept requests which he had disapproved. Third, even though his testimony was of great weight, Mr. Clark, as a former official, was hardly in a position to officially confirm on behalf of the Government the details behind his testimony.

The point is that while the Board has gone to great lengths to produce examples of official public revelation of the material which we seek to protect, the best it has been able to produce are general statements of tangential relevance. Again, we are not concerned with generalities or what foreign governments, private authors,⁵ or the Restatement of Foreign Relations may surmise, but we are very interested in what we officially divulge and in protecting the details surrounding our covert investigative techniques.

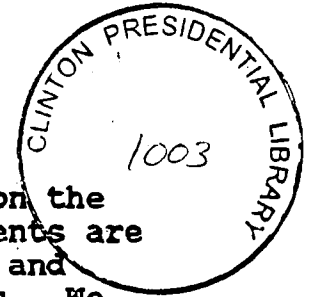
Fourth, the Board's assertion that we could not possibly have a current interest in protecting techniques dating from the 1960's is simply wrong. True, counter-intelligence operations and foreign relations involve constantly changing techniques, events, and circumstances. The veracity of that statement, however, does not detract from the validity of two related and equally important points:

³ H.R. 6588, The National Intelligence Act of 1980: Hearings Before the Subcomm. on Legislation of the H.R. Permanent Select Committee on Intelligence, 96th Cong., 2d Sess. 79 (1980), cited at footnote 11 of the Board's response.

⁴ Id. at p. 80.

⁵ The Board's citation to non-Governmental works for proof that a particular piece of information is in the public domain will turn into a self-fulfilling prophecy if the Board's rationale is adopted since, under that rationale, the Government cannot keep secret that which a private author prints.

The Honorable William J. Clinton

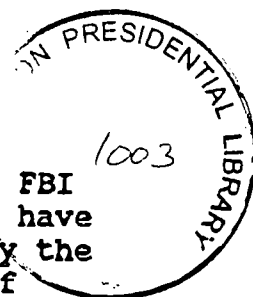


(1) Notwithstanding technological advances on the part of the industrial nations of the world, many governments are decades behind in the manner in which they transmit funds and data, and communicate with their establishments and agents. We do still rely heavily on transoceanic cable intercepts, look-out logs, telephone intercepts, typewriter comparisons, and a dozen other "dated" methods of collecting intelligence. The Board should not assume that these methods are antiquated and of little value in today's computer and satellite world just because we employed them as long ago as the 1960's.

(2) Even though technologies change, the types of information that we seek do not. What we sought to learn from our adversaries 30 years ago from employing the surveillance techniques of that time, we still today have an interest in acquiring for similar, if not the same, reasons. Today's adversaries can and will benefit from finding out what our interests and priorities were back then since they can use such information to cogently estimate what our interests and priorities are now.

Fifth, the Board's assertion at page 20 of their response that we disagree with the State Department on the harm to bilateral relations that would result from release of the information in question is wrong. In preliminary discussions with the Board, we originally informed them that we were preparing to appeal a number of documents on behalf of the State Department because of its concern over the impact on bilateral relations that would result if those documents were released. The State Department withdrew its objections after the Board agreed to postpone release until later this summer. The State Department's views on the effect on bilateral relations of the release of the information now at issue was not affected by the Board's postponement decision. On the contrary, the State Department shares our views generally and took the trouble to write separately in support of our appeal.

Finally, we recognize that the data we have agreed to release in some cases makes it easier to deduce what we seek to protect in others. We have assumed that risk in a good faith effort to comply with the disclosure dictates of the Act. We believe, however, that the material we seek to safeguard is worth protecting. Counter-intelligence and foreign relations are, by their very nature, matters of subtlety and nuance. Both are important here.



The Honorable William J. Clinton

In closing, I want to assure you that neither the FBI nor the State Department has taken this appeal lightly. We have made every effort to cooperate and have considered carefully the arguments of the Board. Nonetheless, the issues here are of fundamental importance to our counter-intelligence operations and foreign relations. Our position on these matters is as consistent with the Act as it is with the authority reposed by the Constitution in the Executive for the conduct of foreign and counter-intelligence affairs. Adherence to the one will do no violence to the other if our request is granted.

Sincerely,

Louis J. Freeh
Director

- 1 - The Honorable Warren M. Christopher
Secretary of State
- 1 - The Honorable Jamie Gorelick
Deputy Attorney General
- 1 - Mr. David G. Marwell
Executive Director
Assassination Records Review Board