

MEMORANDUM

May 1, 1997

To: Douglas P. Horne
cc: Joseph Masih, Jeremy Gunn, David Marwell
From: Christopher Barger
Subj: Problems with NSA documents included in first group for release
File No: 4.14.2.9

The NSA has delivered redacted versions of the initial 85 documents they submitted to us for our final review before they are delivered to NARA II. A careful review of those documents has revealed several problems which must be addressed before the documents can be transferred to the JFK collection. The problems involve a total of 22 documents and fall into three categories:

1. Documents the Board has never taken a final vote on
2. Documents in which the NSA has included classified information on the RIF
3. Documents in which there are apparent inadvertent releases or redactions

In explaining these issues in depth, I will provide the specific document numbers and briefly explain the nature of the problem in each where necessary.

1. Documents the Board has never taken a final vote on (6 documents).

In six cases, the NSA has provided us with redacted versions of documents which, while submitted for Board consideration, were never formally voted on by the Board. It is probable that NSA was merely trying to get the job done as completely as possible; nevertheless, we cannot release these six documents until the Board has formally voted on them. In each case, it appears that the document was presented to the Board in November 1996, only to have some clarification be requested or substitute language needed, and a formal vote was postponed until this could be done. In each case, I can find no evidence that this was done. (It is possible that Tim Wray could have initiated steps to address these problems, or even may have worked them out with NSA; however, I cannot find any such evidence, and given the SCI nature of the documents, I cannot call him and discuss them openly.

I also believe it highly unlikely that he would remember by document number which ones were "in the works.")

- *Document 144-10001-10050* contains FBI equities. NSA has informed us that they have no problem with its release, but needed to check with FBI. The final version they submitted to us has the FBI equity redacted. Solution: Call our NSA point of contact and ask if the referral was ever done. If so, we need verification of that and need to see the FBI's justification. If not, Kevin suggests that it would be most expedient if we merely refer it to

the FBI for NSA and go from there.

- *Document 144-10001-10056* is perhaps the most complicated document in this category. The overwhelming majority of the document contains information not believed relevant to the JFK assassination; only a few short paragraphs of the multi-page document are of concern to the Board. Originally, in the November 1996 meeting, some Board members questioned what the best substitute language would be for the large amounts of the document which would remain postponed. They tasked staff with developing better substitute language for those portions. The Board *did* reconsider this document in December 1996, but to the best of my ability to interpret the minutes, it appears that the Board's 5-0 vote was in support of substitute language *for the relevant portions of the document*. To the best of my ability, I cannot find any indication that suitable substitute language for the "not believed relevant" portions was ever accepted by the Board. This would need to be done before the documents could be released to the collection. Solution: I will listen to the December 17 tape and try to determine if substitute language for the "NBR" parts was discussed and somehow didn't make it into the minutes. If not, then, I will listen to the November tape to try and discern what the Board's concerns were, and write according substitute language, get it approved by NSA, and submit it to the Board at the earliest opportunity.
- *Document 144-10001-10076* was considered by the Board in November. However, Kermit Hall requested clarification of some of the substitute language proposed by NSA before he would vote; the other Board members agreed, and no vote was ever taken. [*Note: the question appears from the minutes to have been one of what the proper substitute language would be, not whether a requested postponement was justified under the JFK Act.*] The NSA has provided us with a version redacted as they suggested. Solution: Get the proper clarification on the proposed substitute language (I will listen to the tape to try and better understand the nature of Dr. Hall's question) from NSA, then submit that explanation to the Board at the next possible Board meeting. If the Board approves, then the document can be released as it stands to the JFK Collection, after we have entered the appropriate language in Review Track. If not, then NSA and ARRB staff will try to work out new substitute language.
- *Document 144-10001-10127* was seen by the Board at the November meeting; however, the document is virtually illegible. The Board was of the opinion that they could not vote on a document which they could not read, and asked for a better version of it, if one was available. To my knowledge, none was ever provided. The NSA has submitted a version of the document redacted as they requested. Solution: Request a clearer version of this document from NSA.
- *Document 144-10001-10136* again has a question of substitute language. We need to work suitable language out with NSA and submit it to the Board.
- *Document 144-10001-10138*. The NSA has submitted a redacted version to us. Upon

checking Review Track, I was puzzled to find that this document was not in Review Track, nor in the Review Track Archive. Upon further investigation, I learned that we apparently never received a blue-highlighted version of this document from NSA. I say this with confidence because: a) we never inserted the document into Review Track; b) the Board never voted on this document, even to approve NSA requests; and c) because no blue-highlighted version appears in the stack of documents stored in the safe. Apparently, the NSA never submitted to us their requested redactions; when they were preparing the documents for transmittal to us, they were working off of those requests and just passed it along with the rest. Solution: Call our NSA p.o.c. and request a blue-highlighted version of this document.

2. Documents in which the NSA has inadvertently placed classified information in the RIF (14 documents).

There are fourteen cases where the NSA requested certain information be redacted, the Board voted to uphold the redactions, and in the body of the document, the information is indeed redacted; however, in the subject line of the RIF, they have included the very information they requested us to withhold. There are two problems with this: the release of sensitive information, and more importantly, the way the Board would look for protecting information in a document that is released in the RIF. The documents are as follows:

<i>144-10001-10062</i>	<i>144-10001-10065</i>	<i>144-10001-10066</i>	<i>144-10001-10067</i>
<i>144-10001-10089</i>	<i>144-10001-10090</i>	<i>144-10001-10093</i>	<i>144-10001-10097</i>
<i>144-10001-10100</i>	<i>144-10001-10101</i>	<i>144-10001-10107</i>	<i>144-10001-10111</i>
<i>144-10001-10112</i>	<i>144-10001-10113</i>		

There are two possible scenarios for these documents; I have included a recommendation for Board action in each case.

A. The RIFs have not yet been made available to the public. If the RIFs have never been available to the public, no compromise has yet been made, and the ARRB staff can simply return the documents to NSA for more careful RIFing.

B. The RIFs have been made available to the public. If the RIFs have been available to the public at any point for any reason, whether at NARA or elsewhere, then the RIFs cannot be changed. At this point, I believe that the Board has no choice but to reconsider each of the documents and vote to release the information where it appears in the body of the document. This will save the Board legitimate embarrassment, and will remedy what is, after all, an NSA mistake.

I will call our NSA p.o.c. and determine whether these RIFs have ever been made available to the public; once I know the answer, I will let you know and wait for further instruction.

3. Documents where the NSA has made inadvertent releases or redactions (6 documents.)

In six cases, side-by-side comparison of the blue-highlighted version, the Board minutes, and the NSA's redacted version have revealed instances where there are inadvertent releases or protections. In four of these documents, the NSA requested a postponement, the Board approved the postponement, but the information was not redacted by the NSA in the final version. In one case, the NSA requested postponement of information, and the Board approved it; however, in a previous document, the information is released in substitute language written by the NSA itself. In the final case, the NSA never blue-highlighted a piece of information in their request, so the Board, though it approved all NSA requests in that document, did not approve that postponement; yet in the NSA's final version, they have redacted that information. The solution in each case is to call them to the attention of our NSA p.o.c. and have the appropriate changes made.

Group One:

144-10001-10067

144-10001-10089

144-10001-10092

144-10001-10097

Group Two: Information protected in 144-10001-10111 is included in NSA's substitute language for 144-10001-10110.

Group Three: There is an inadvertent release; also, there is a piece of information in the first paragraph that was neither requested nor Board approved for postponement. This document needs to be returned to NSA so that a properly redacted version can be submitted.

Conclusion

The next step, I believe, is to call our NSA point of contact and get the answers we need on these documents. Once this is done, and properly redacted versions of all documents are in our possession, we need to make sure Review Track is updated to reflect the nature of the documents as they will appear in the collection; then, we print out Final Determination Notices for each, attach them to the documents, and send them up to Steve Tilley at NARA. I await your direction.