

MEMORANDUM

January 29, 1996

TO: The Board

FROM: David G. Marwell
Executive Director

SUBJECT: The State of the Board

Having now completed eight months of our review of assassination records, it is appropriate to take stock and to evaluate where we are and where we need to go. What follows are my personal observations on the state of our review, and specific recommendations and proposals to improve this process so that we can come closer to accomplishing our overall mission. I have relied on input from the staff in preparing this memo, but its conclusions and most of its observations are my own.

The attached spreadsheet represents the best estimate we have for postponed records in collections currently under review as well as our estimates for those collections yet to come. I believe that we should set as a goal the completion of the FBI Core and Related Files, CIA Oswald 201 File, and the HSCA Numbered Files by the end of this fiscal year. Accomplishing this goal will require a dramatic increase in the Board's production. We will have to review at a rate that will exceed an average of 1100 records for each of the next eight months. As daunting as these numbers appear, they pale in comparison to the review rate that will need to be reached in the Board's last year if we are to succeed in reviewing the remaining estimated 66,000 records from the CIA's Sequestered Collection and the FBI's HSCA Collection. One thing is absolutely certain: we cannot achieve these review rates and complete our mandate unless we make changes in the way we conduct our business.

At this point, it is clear that several problems have hampered our effectiveness over the past eight months, the most important of which is the *lack of a framework for Board decisions*. With the exception of some very practical decisions on how to handle recurring issues such as FBI informant symbol numbers and CIA cryptonyms, the Board appears to approach each document on its individual merits. Evidence of a rigorous, consistent, and principled approach to the review is often difficult to find. I am certain that I could have done more to facilitate this process and have been frustrated by my lack of success.

You will recall that before the Board began the formal review of records, we made three presentations relating to the three major postponement issues (privacy, informants, and sources and methods) and proposed a strategy to elicit from the Board the guidance that is a prerequisite for an effective, efficient, and consistent staff review of records.

Specifically, for each of the major postponement issues, we presented a matrix reflecting the types of issues within each of the postponement areas as well as the two major variables involved in a postponement decision—public interest in the information and harm resulting from the release of the information. At that time, after lengthy discussion, the Board decided that it was not comfortable reaching decisions in this manner.

Faced with this situation, and realizing the difficulty of making categorical decisions in the abstract, we decided to begin the review of documents, hoping that a clear “common law” would emerge. It was hoped that, with experience, the Board would develop positions on the major postponement issues that would reveal themselves by examining, after the fact, the body of decisions made by the Board. Unfortunately, what has emerged is a picture that is not only confusing at times, but has failed to provide the kind of guidance that the staff—and the agencies—need.

Only in the area of privacy postponements was the Board able to provide clear guidance (i.e., as a rule, no privacy postponements would be sustained except those for Social Security Numbers and, as a recent modification, the current addresses of Secret Service Agents). This policy has led, among other things, to the release of medical and psychiatric histories as well as unsubstantiated allegations of unconventional sexual behavior and child abuse. The Board has been consistent in applying this standard for privacy issues, and consequently has dealt with a relatively large number of such documents in a short period of time. In the case of informants and sources and methods, however, no corresponding clarity exists.

Two major questions underlie much of the confusion: (a) How does the Board assess the public interest in any given document? and (b) What will the Board accept as evidence of harm? These questions will take on even more importance as we complete the review of the FBI’s Core and Related Files and the CIA’s Oswald 201 file and move into the large collection of records from both agencies that were requested and reviewed by the HSCA. Many of these records are of more recent vintage than the 30-plus-year-old investigative records, and many find their relevance to the assassination defined solely by the interest shown in them by the HSCA.

Public Interest

A general rule seems to have emerged that any document produced within a certain (as yet undefined) time period around the date of the assassination possesses a high public interest

regardless of its content.¹ There is no similar clarity for records that fall outside the period of temporal proximity. For example, the Board has voted to reject an agency postponement for a record that is dated nine years before the assassination and has no arguable nexus to it because the record was so *unimportant*. We need clear guidelines on how to approach the question of assessing the public interest.

Evidence of Harm

Assertions by the agencies that harm will result from the release of information has, as a general rule, been rejected by the Board as sufficient evidence of harm. However, the Board has not provided clear guidance on what it *will* accept as clear and convincing evidence. In the case of FBI informant records, for example, the Board has postponed the name of a deceased informant whose surviving spouse claimed a fear of embarrassment or harassment, while, on the other hand, releasing the identities of some living informants who have expressed virtually identical concerns.

Another concern is what might, in some circumstances, appear to be a lack of fidelity to the JFK Act. Reasons stated on the record for making particular decisions do not always square with the statute. For example, a postponement is sometimes not sustained because it is felt that the redaction itself (*i.e.*, the black mark on the paper) is “provocative.” The record of our meetings is filled with comments like: “He *deserves* to have his name revealed.” The Board needs to be more mindful of basing its decisions more firmly on the statute and less on personal reactions to the documents.

What makes some of these problems all the more frustrating is the fact that the important focus of the Board is sometimes being shifted to the margins. In most cases, all of the interested parties (Board, agencies, public) agree that “important” assassination records should be open in full. Disagreements increase the further one gets from the core issues of the assassination and its investigation. The unfortunate result is that the Board’s resources and those of the agencies are expended in inverse proportion to the importance of the information at issue. Records that are relatively unimportant and details that are at best trivial often dominate our efforts, consume vastly disproportionate amounts of time, and distract us from the important work that we should be accomplishing.

Proposals for a More Effective Review Process

¹There was one exception of a CIA document from Mexico City, dated November 22, 1963, that the Board did postpone in full because of its irrelevance to the assassination.

Given the volume of records that we must process, the Board must reduce—indeed minimize to the extent possible—the number of records that receive individual attention. The following four proposed steps will streamline the review process and give us a chance to complete our task.

1. The Board should decide on (and communicate to the staff) a framework that guides its decisions.

The Board's decisionmaking up to this point has been based on an intense and time-consuming discussion of individual records. If we are to succeed, this kind of discussion must be reserved only for the most important issues. The Board's challenge now is to refine the guidelines so that the staff can apply them consistently and efficiently. The Board must rely on the staff to apply its guidelines and to determine which records require the focus of Board attention and which do not.

The following are offered as suggestions for the kind of concrete guidelines that would allow the staff to make confident recommendations and allow the agencies to use their resources more effectively. I am not necessarily advocating that the Board accept any of these guidelines, but offer them solely as examples that address some of the issues.

For Informants:

- 1) The identity of active informants will be protected

- 2) The identity of any inactive informant who is still living and who still resides in the same geographical area will be postponed for ten years

For Stations:

- 1) All stations mentioned in documents related to the assassination with a date that falls between the assassination and the issuing of the Warren Commission Report shall be released.

- 2) Stations outside this window that the CIA still wishes to protect that are: (a) incidental to the meaning of the document (*i.e.*, distribution list) or (b) contained in a document that is incidental to the assassination, will be replaced by a geographic substitution.

For the Names of CIA Officers:

- 1) The disclosure of the names of living CIA employees who have retired under cover will be postponed when the CIA provides evidence that they are retired under cover and would be harmed by the release of their names

2. Members of the Board should spend more time on reviewing records individually.

This idea, which originated with the Board, has gotten off track, in part, I think, because of logistical and organizational problems. In an effort to solve some of these difficulties and to support Board members in their review, I am prepared to

(a) make the office and appropriate staff available on weekends; and

(b) send staff members with records to visit with Board members at their homes or offices.

3. The Board should make more and better use of consent agendas.

As more and more decisions become routine, the Board should exploit the consent agenda as a powerful tool. After issuing clear guidelines, the Board should consider delegating to the staff the authority to place records involving straight-forward issues on a consent agenda. Similarly, the Board should make use of subcommittees to address the placement of more complicated issues on consent agendas.

4. The Board should employ Notation Voting for some records decisions.

The Board should consider accepting the notation vote of a majority of the Board as binding for a certain class of records, for example, releases. An innovation such as this could take the focus off of formal meetings and permit the review of records to become a continuous process.