

Dear Mr. President:

I am writing to you in regard to Director John Deutch's letter to you dated February 8, 1996, regarding Central Intelligence Agency's appeal of three formal determinations made by the Assassination Records Review Board.

The Agency's appeal was made long after the period prescribed by the governing statute, the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (Supp V 1994) ("JFK Act"). This tardy appeal places the Review Board in an extremely difficult position. On the one hand, fidelity to the process established by the JFK Act would ordinarily require the Review Board to oppose vigorously the Agency's untimely and irregular appeal. But, on the other hand, the Review Board seeks to have its decisions (as well as the President's) made in light of the best available evidence regarding the significance of any possible harm either to the foreign relations of the United States or to individuals.

We note that the arguments made on appeal include information on harm to our national security that was not fully provided to the Review Board at the time of its original decision, and that the appeal also intimates that there is additional information that was requested by the Review Board but that was not provided. The Agency's attempt to provide new evidence at this late date distorts the procedures set up by the JFK Act and necessarily places the Review Board in the inappropriate position of having made decisions without all of the relevant facts being made available.

The three documents at issue in the Agency's appeal were the subject of careful decisions by the Review Board, which evaluated all of the evidence provided by the Agency. In each case, the Agency was notified of the Board's decisions within fourteen days. Under the JFK Act, these records ordinarily should have been available in the National Archives within thirty days of the notification to the Agency. In each case, after the Agency failed to file a timely appeal, the documents were processed for public access and transferred to the National Archives for release.

If we were to consider seriously the merits of the Agency's dire warning of the harm that would result from the release of the information in these documents, then we must also consider the fact that the lengthy delay suggests that the significance of the harm apparently was not so obvious that the Agency could make an informed and timely decision regarding the merits of an appeal.

The Board takes seriously its dual responsibilities of making important information about the assassination of President Kennedy available to the public while at the same time protecting legitimate concerns of national security. The process cannot work as Congress intended, however, if the Board does not have all relevant evidence at the time it makes its determinations.

Given the level of concern asserted by the Agency and the existence of possibly relevant new information, the Board considers it only prudent to delay responding to the appeal until its next scheduled meeting.

Sincerely,

JRT