

## MEMORANDUM

January 25, 1996

TO: The Board

FROM: David G. Marwell  
Executive Director

SUBJECT: The State of the Board

We have now completed seven months of the 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 the Board. I have relied on input from the staff in preparing this memo, but its conclusions and most of its observations are my own.

One thing is absolutely certain—we will not be able to complete our mandate unless we change the way we conduct our business.

### *Problems:*

#### Lack of Framework

You will recall that prior to the formal review of records, we made three presentations relating to the three major postponement issues (privacy, informants, and sources and methods) and suggested a strategy for establishing the guidance required for effective staff review of records. For each of the major postponement issues, we presented a matrix reflecting the types of issues within each major postponement area 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. The Board was not comfortable reaching decisions in this manner.

Faced with this situation, and realizing that it is difficult to make 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 if one examined the body of decisions that the Board made. What has emerged is a picture that is confusing at times and that fails to provide much-needed guidance to the staff or to the agencies.

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 seen, among other things, the release of medical and psychiatric histories as well as unsubstantiated allegations of unconventional sexual behavior and child abuse.

In the case of FBI documents, principally involving informant issues, the Board has been unclear in providing guidance on how much weight should be accorded concerns expressed by informants or surviving relatives in interviews by the FBI. For example, the Board has postponed the name of a deceased informant whose surviving spouse feared embarrassment or harassment, while, on the other hand, virtually identical concerns expressed by living informants themselves have not always persuaded the Board to postpone release of their identities. Similarly, the Board has been inconsistent in its handling of informants who provided no information related to the assassination or information only tenuously related to the assassination. Such inconsistencies send a confusing message to the staff and to the FBI. These inconsistencies may be exposed on a future FBI appeal and make it more difficult for us to make persuasive arguments.

In the case of CIA documents, the Board reached in my view an extremely practical and appropriate solution for the handling of crytonyms. Unfortunately, the guidance on stations and true names has been less satisfying.

### **Trivialization**

In most cases, the parties (Board, staff, agencies, public) involved in the work of the Board agree that key assassination records should be open in full. Disagreements increase the farther 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. Unimportant records or trivial details dominate our efforts and distract us from the important work that we should be accomplishing.

### **Fidelity to the Statute**

Reasons stated on the record for making particular decisions do not always square with the statute. Often a postponement is not sustained because it is felt that the redaction itself is provocative. The record is filled with comments like: "He *deserves* to have his name revealed..."

### **Solutions:**

#### **A. The Board must reduce the number of records that are subject to discussion**

1. Decide on (and communicate to the staff) a framework that guides decisions.

a. The Board's decision making to this point has been based on an intense discussion of individual records.

b. Examples of type of guidance that would be useful:

Informants:

1) The identity of active informants will be protected

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

Stations:

1) All stations mentioned in documents 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) are 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.

Names of CIA Officers:

1) Names of living CIA employees who have retired under cover will be postponed

2. Spend more time on the individual review of records

a. We will make the office and appropriate staff available on weekends

b. We will send a staff member with the records to you at a convenient place and time

3. Make more and better use of consent agendas

a. Delegate some decisions to staff

b. Use Subcommittees

4. Notation Voting

*a.* Consider accepting the notation vote of a majority of the Board as binding for a certain class of records (e.g., *releases*).

B. The Board must develop and abide by a policy on reconsiderations.