

**THE ASSASSINATION RECORDS REVIEW BOARD RESPONSE TO
THE AUGUST 3, 1998, PETITION FOR POSTPONEMENT BY
THE FEDERAL BUREAU OF INVESTIGATION**

By its Petition for Postponement dated August 3, 1998 (“August 3 Petition”), the Federal Bureau of Investigation is appealing the determinations of the Assassination Records Review Board (“the Review Board”) to release four assassination records that are all identified under one record identification number.¹

The FBI invokes personal privacy as the basis for postponing these records. Part I below describes the records at issue. Part II below provides the historical background to place the records in context. Part III below explains why the JFK Act requires release of these records.

I. DESCRIPTION of the RECORDS at ISSUE

The records at issue can be described as follows:

Ex.	RIF Number	Description
1	124-10320-10228	Queens County, New York, District Attorney’s Office’s transcript of an unsigned and unnotarized witness statement by Phyllis Denise Golden dated February 1962.
2	124-10320-10228	Queens County, New York, District Attorney’s Office’s transcript of an unsigned and unnotarized witness statement by Elizabeth Lee Stephenson dated January 30, 1962.
3	124-10320-10228	Handwritten document that appears to be a list of instructions for performing painful acts to a man’s genitals. The document contains no names or dates. The FBI files state that this record was created by Mark Lane.
4	124-10320-10228	Front-view photograph of a nude man with dark hair and glasses, lying down. One of the man’s arms is behind his back. What appears to be the hand of another person is touching the man’s genitals. The FBI files state that the man depicted in the photograph is Mark Lane.

¹In making the appealed determinations, the Review Board acted pursuant to the authority granted by the *President John F. Kennedy Assassination Records Collection Act*, 44 U.S.C. § 2107 (Supp. V 1994) (“JFK Act”).

II. BACKGROUND

Mark Lane describes himself as “an author, lawyer, teacher, lecturer, and filmmaker,”² and his book *Rush to Judgment* is perhaps the most well-known critique of the Warren Commission Report. In addition, Mr. Lane is known to the public as a former New York State legislator and civil rights activist.

A. FBI’s pre-assassination file on Mark Lane.

The FBI began to collect information on Mr. Lane in 1954 because the Bureau identified Mr. Lane as a risk to national security due to his political participation in groups that the FBI had identified as being involved with the Communist Party. For example, Mr. Lane was a member of the National Lawyers Guild, and often gave speeches at meetings of groups such as the Emma Lazarus Federation of Jewish Women’s Clubs, the Emergency Civil Liberties Committee, and the Chicago Committee to Defend the Bill of Rights. Mr. Lane worked to abolish the House of Representatives Committee on Un-American Activities, and was arrested in Mississippi as a member of a group of “Freedom Riders.”

In 1962, when the FBI was conducting a routine background investigation on a woman who applied to become a member of the Peace Corps, the woman revealed that she had a sexual relationship with Mr. Lane.³ On its own initiative, the FBI delved into Mr. Lane’s personal life and learned that the Queens County, New York, District Attorney’s Office had conducted a sodomy investigation of Mr. Lane and that the District Attorney had collected certain records regarding Mr. Lane in the course of its investigation. Even though the Queens County District Attorney had determined that Mr. Lane had not committed any crime,⁴ the FBI took steps to obtain the material from the District Attorney in February 1963. The material that the FBI

²Mark Lane, *Plausible Denial*, from book jacket (1991).

³See Assassination Record Number 124-10320-10184.

⁴See Assassination Record Number 124-10320-10101, attached as Exhibit 5. According to FBI records, one of the witnesses came to the attention of the Queens County District Attorney’s Office because she owed a \$100 debt to a department store in Queens. The woman stated that she had received Mr. Lane’s assurances that he would pay the debt for her. When Mr. Lane did not pay her debt, the woman presented to the District Attorney the photograph and the handwritten instructions. The District Attorney’s office presented the information, along with the two witness statements to a grand jury, but did not obtain an indictment. FBI documents reveal that the FBI’s New York field office realized that the report contained conjecture and opinion on the part of the District Attorney and the Credit Manager of the department store. *Id.* Later, one of the witnesses recanted her original statements and the second witness refused to cooperate with the District Attorney. See Assassination Record Number 124-10320-10135.

obtained from the Queens County District Attorney consists of the four appealed records.

The FBI files show that the Bureau did not disseminate the private information regarding Mr. Lane to anyone outside the FBI prior to the assassination of President Kennedy.

B. Mark Lane's role in the Warren Commission investigation of the assassination of President Kennedy.

On November 29, 1963, one week after President Kennedy was killed in Dallas, and five days after Jack Ruby shot alleged assassin Lee Harvey Oswald, President Johnson established the President's Commission to Investigate the Assassination of President Kennedy (the "Warren Commission"). The FBI assisted the Warren Commission in its investigation.⁵

Several weeks later, on January 15, 1964, Mr. Lane appeared at a press conference with Marguerite Oswald, the mother of Lee Harvey Oswald. At that time, Mr. Lane and Mrs. Oswald announced that Mr. Lane would represent Lee Harvey Oswald's interests before the Warren Commission. In that capacity, Mr. Lane had extensive contact with the Commission, and often publicly criticized the Warren Commission's work and findings.

Mr. Lane's status as Lee Harvey Oswald's primary advocate in the months immediately following the assassination makes him a key player in the Warren Commission's history. But more central to the Warren Commission history is the account of how the government of the United States treated Mr. Lane while he was acting in his capacity as the official representative of the deceased Lee Harvey Oswald.

C. FBI considers dissemination of the Mark Lane materials to Governmental agencies.

Prior to January 15, 1964, the FBI's "Mark Lane" file contained approximately 20 documents. The day after Marguerite Oswald's and Mark Lane's announcement, the FBI's New York field office immediately distributed copies of the photograph to FBI headquarters and to the Dallas field office.⁶

Once the material from the Queens County District Attorney's Office found its way to FBI headquarters, Director Hoover immediately requested additional material from New York, for the specific purpose of potential dissemination to "Governmental agencies outside the Bureau" who might be interested in Mr. Lane.⁷ Moreover, the sodomy investigation became part

⁵President's Commission on the Assassination of President John F. Kennedy, 1964 Report xiii.

⁶See Assassination Record Number 124-10320-10180, attached as Exhibit 6.

⁷See Assassination Record Number 124-10320-10181, attached as Exhibit 7.

of the FBI's dossier on Mr. Lane, and the Bureau made reference to it and to the four records at issue in nearly every record it created concerning Mr. Lane.⁸

D. FBI disseminates Mark Lane materials to the Warren Commission.

FBI records show that Director J. Edgar Hoover instructed that these allegations about Mr. Lane be communicated secretly to the Chief Counsel of the Warren Commission, J. Lee Rankin⁹ and to Commission member Gerald Ford.¹⁰ In no instance did the Bureau inform Mr. Lane that these allegations were being disseminated to the very people before whom he was attempting to represent the interests of the accused.

In 1975, Tom Boggs, son of Hale Boggs, who was also a member of the Commission, told a Washington newspaper that his late father had given him copies of the FBI's dossiers on the Warren Commission's critics to store for safekeeping.¹¹ Tom Boggs reported that a compromising photograph and accompanying materials were part of the dossier on one prominent Warren Commission critic. He also specifically mentioned that he possessed a dossier on Mark Lane. According to his son, Hale Boggs felt that Director Hoover had disseminated the information so that members of the Warren Commission would know not to take Mr. Lane seriously.¹²

The FBI records, together with the evidence that Hale Boggs passed to his son for safekeeping shows that, due to Director Hoover's dissemination of the materials, members of the Warren Commission possessed the Mark Lane materials.

⁸*See, e.g.*, Assassination Record Numbers 124-10320-10025, 124-10320-10064, 124-10320-10097, 124-10320-10101, 124-10320-10104, 124-10320-10122, 124-10320-10135, 124-10320-10169, 124-10320-10219, 124-10322-10002, 124-10322-10003, 124-10322-10004, 124-10322-10005, 124-10322-10006, 124-10322-10007, and 124-10322-10008.

⁹*See* Assassination Record Numbers 124-10016-10098 and -10099, attached as Exhibit 8.

¹⁰*See* Assassination Record Number 180-10120-10013 (letter with enclosure from Cartha DeLoach to Gerald Ford dated Feb. 14, 1964), attached as Exhibit 9.

¹¹*Boggs' Son Tells of Files on Warren Panel*, Washington Star-News, January 31, 1975, at A4, attached as Exhibit 10.

¹²*Id.*

E. FBI disseminates Mark Lane materials to the White House.

Director Hoover also provided the four appealed records to President Johnson.¹³ An FBI memorandum, written in 1966, is entitled *Rush to Judgment*, and was apparently created by the Bureau in response to a request from the White House that the FBI provide to the White House whatever information it had collected on prominent Warren Commission critics. The memorandum summarizes Mr. Lane's political and personal activities. It describes Mr. Lane as "an attorney" who "has a long history of affiliation with Communist Party front groups and organizations which have been cited as subversive."¹⁴ The memorandum reports how Mr. Lane, among other things, (1) worked to abolish the House of Representatives Un-American Activities Committee, (2) criticized American policies in Vietnam, (3) was arrested in Mississippi as a member of a group of "Freedom Riders," and (4) worked to arrange for an independent inquiry into the assassination of President Kennedy. The most important paragraph of the 1966 memorandum for purposes of the instant appeal is the last paragraph, in which the FBI states,

The Office of the District Attorney, Queens County, New York, conducted an investigation of Lane in 1962 for alleged sodomy. In connection with this investigation, statements were taken from two women by the District Attorney's Office which related to obscene activities on the part of Lane. An obscene photograph of Lane and handwritten instructions by Lane relating to alleged perverted sexual acts of a sadistic and masochistic nature performed by the women on the person of Lane were also obtained during this investigation. Copies of these statements and a copy of the photograph and the handwritten instructions are attached hereto as enclosures.¹⁵

FBI records show that this memorandum became the boilerplate memorandum for the majority of future FBI documentation on Mr. Lane.

¹³See Assassination Record Number 157-10011-10132 (FBI Letter with enclosures to Marvin Watson dated Nov. 8, 1966), attached as Exhibit 11.

¹⁴See Assassination Record Number 177-10002-10183, attached as Exhibit 12.

¹⁵All four of the appealed records, and a transmittal letter, appeared in and were processed by the Presidential Library of Lyndon Baines Johnson. The records and envelopes in which the records have been stored bear Assassination Record Numbers 177-10002-10183, 177-10002-10187, 177-10002-10188, 177-10002-10189, 177-10002-10190, 177-10002-10191, 177-10002-10192, 177-10002-10193, and 177-10002-10195.

F. FBI sends anonymous letter to New York State Bar Association advising the Bar of the existence of the Mark Lane materials in the files of the Queens County, District Attorney's Office.

In February, 1964, the Director of the FBI directed the New York field office, who originally obtained the material on Mr. Lane, to submit "recommendations for confidentially or anonymously advising the press and/or the Fitness Committee of the State or City Bar Association of the existence of such records."¹⁶ In the note that follows the direction to the New York office, headquarters explains that Mark Lane is significant primarily because he "recently obtained considerable publicity as a result of his being retained by the mother of Lee Harvey Oswald . . . to represent her slain son before the Warren Commission." The note continues, "Lane has recently commenced a tour of various cities [sponsored by a left wing organization] where he has been alleging Oswald was not responsible for the assassination."¹⁷

In early March of 1964, the FBI's New York office, to its credit, reminded headquarters that Mr. Lane had not been indicted even after the District Attorney had presented the facts to the grand jury, and thus, the evidence would not be enough to support Mr. Lane's disbarment.¹⁸

By July of 1964, the New York office had changed its mind and had drafted an anonymous letter to the President of the New York Bar Association, revealing the existence of the records concerning Mr. Lane.¹⁹ Although Headquarters advised the New York office to delay sending the letter until after the Warren Commission finished its work, the New York office requested and received permission to send the letter in October, 1964.²⁰

The letter that the FBI penned and sent to the New York Bar is astonishing, and reads as follows,

Dear Sir:

Only my concern for the well-being of the New York legal fraternity and my country could impel me to write this letter. Anonymity is as distasteful to me as it must

¹⁶See Assassination Record Number 124-10320-10135, attached as Exhibit 13.

¹⁷*Id.*

¹⁸See Assassination Record Number 124-10320-10107, attached as Exhibit 14.

¹⁹See Assassination Record Number 124-10322-10003, attached as Exhibit 15.

²⁰*Id.* and Assassination Record Number 124-10322-10006, attached as Exhibit 16.

be to you and all honorable men, but necessity dictates my action.

There is in this city an attorney named Mark Lane, who is presently featured in news media as the legal counsel for Lee Harvey Oswald, killer of the late President Kennedy. Lane has interjected himself into the November assassination as the defender of Oswald and has been speaking all over the United States and, more recently, Europe on the “proof” he has of Oswald’s innocence. Lane for years, prior to the Kennedy murder, backed every left-wing and red cause in the New York area. That he is more of a Marxist than American is well-known in the New York legal circles.

I first met Lane several years ago when he lived on the Lower East Side (4th Street, I believe), during his political campaign for [Congress.] Shortly thereafter, I realized most of his friends and associates were “queer” and I had strong suspicions that Lane himself was a homosexual. This impression was not based on fact and I knew I could have been assuming too much. During these early days, however, I learned Lane had an extensive library of obscene film both in black and white and in color. On several occasions I was present when these films were shown to a mixed group consisting of males and females. Most of the films were directed at the homosexual and masochistic mind. Some still pictures of Lane were displayed to me showing Lane in a variety of sexual and lewd poses.

I later learned that Lane was involved in a sexual perversion case investigated by the Queens County District Attorney’s Office . . . involving several women and Lane himself. These records are available, I’m sure. I think this case was under investigation in 1962.

In my opinion, this man is an insult to the New York Bar Association and a blot on the American legal profession. I trust you will at least take some steps to determine for yourself the validity of the above information.

Very truly yours,
G.L.

The New York Office notes that “G.L.” are the initials of Gabriel Levenson, Lane’s roommate who the Bureau attempted to develop as an informant, but who refused to cooperate.

III. DISCUSSION

In defense of its desired postponements, the Bureau offers three basic arguments: *first*, the FBI argues that public disclosure of the records would invade the privacy of three individuals, *second*, the FBI argues that public disclosure of the records would cause obscene material to be publicly available; and *third*, the FBI argues that the public has no legitimate interest in the

release of the records, as they have “no relevance whatsoever” to the assassination or the Review Board’s responsibilities.

Underlying each of the Bureau’s three points is their statement that, “sexual activity among consenting adults is one of the most private of human relationships and . . . any intrusion into sexual intimacies by the government . . . is warranted only under the most compelling of circumstances.” August 3 Petition at 4.

In making these arguments, the Bureau omits the important fact that, in the mid-1960s, Director J. Edgar Hoover instructed that these scurrilous allegations about Mr. Lane be submitted to at least three different entities: the Warren Commission, the White House, and the New York Bar Association, as explained in the background section above.

The Review Board does not dispute the shocking nature of the photograph, the list of instructions, and the witness statements. But while the existence of these materials is shocking, the Review Board is far more shocked at the evidence showing that the FBI obtained, maintained, and distributed these materials. The Review Board believes that the full scope of governmental efforts to discredit Warren Commission critics should be disclosed to the public.

A. Standard for disclosure of information under the JFK Act.

According to the JFK Act, “all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure.” JFK Act § 2(a)(2). Indeed, “only in the rarest cases is there any legitimate need for continued protection of such records.” JFK Act § 2(a)(7). To the extent that an agency, such as the FBI, seeks to postpone the release of information, the JFK Act places the burden of proving the need for postponement on the agency. Congress required agencies to submit to the Board “clear and convincing evidence” in support of their proposed postponements. JFK Act §§ 6, 9(c)(1). Congress carefully selected this high standard because “less exacting standards, such as substantial evidence or a preponderance of the evidence, were not consistent with the legislation’s stated goal” of prompt and full release of information. H.R. Rep. No. 625, 102d Cong., 2d Sess., pt. 1, at 25 (1992).

Section 6(3) of the JFK Act directly addresses privacy postponements and explains that agencies must provide “clear and convincing evidence” that,

the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest.

The FBI has not proved that the public interest in disclosure of the records at issue is outweighed by the invasion of privacy.

B. The public interest in release of the records concerning Mr. Lane is extremely high.

The FBI argues that release of the four records at issue have “no relevance whatsoever” to President Kennedy’s assassination *or to the responsibilities of the Review Board*. In making these arguments, the FBI demonstrates a fundamental lack of understanding of Mr. Lane’s role in the assassination investigation, the significance of the FBI’s efforts to discredit Mr. Lane, and the Review Board’s mandate to disclose the complete facts regarding this episode.

Through a selective presentation of the facts -- the FBI makes no reference whatsoever to Mr. Lane’s status as Lee Harvey Oswald’s advocate before the Warren Commission *or to Director Hoover’s dissemination of these materials around Washington* -- the FBI represents that Mr. Lane was simply a critic of the FBI and of the assassination investigation. Mark Lane was, of course, one of the first and most prominent critics of the assassination investigation. Moreover, the FBI files on Mr. Lane reveal that, whether or not the FBI of the 1990s fully understands Mr. Lane’s relevance to the assassination story, the FBI of the 1960s absolutely understood how damaging his criticism could be. Director Hoover’s use of this information against one prominent critic should be disclosed, uncensored, to the public. The full scope of the FBI’s campaign to discredit Mark Lane is clearly a matter of high public interest, and the release of the materials at issue are squarely within the Review Board’s responsibilities.

1. The JFK Act was created precisely to inform the public of the type of abuses of government power that are revealed by the appealed records.

Congress charged the Review Board with the duty of “restoring the public’s confidence” that the government has released all of its materials relevant to the assassination.²¹ Thus, *no*

²¹*See, e.g., The Assassination Materials Disclosure Act of 1992: Hearing on S.J. Res. 282 before the Senate Comm. on Governmental Affairs, 102d Cong., 2d Sess. 1-2, 7, 11, and 33 (1992) (“Senate Hearings”) (“This bill is the result of a climate of suspicion and distrust that has grown over the years regarding the official explanation of the assassination of President Kennedy Disclosure of information is the only reliable way to maintain the public trust and to dispel distrust.” quoting statement of Senator John Glenn at 1); Assassination Materials Disclosure Act of 1992: Hearing on H.J. Res. 454 before the Subcomm. on Legislation and National Security of the House Comm. on Government Operations, 102d Cong., 2d Sess. 55 (1992) (statement of Rep. Louis Stokes) (“[T]he goal [in creating the Act] was to ensure a complete review and disclosure of files while at the same time satisfying the public that the Government was not covering up some conspiracy.”); S. Rep. No. 102-328, 102d Cong., 2d Sess. 1, 35 (1992) (“Senate Report”).*

matter how distasteful the Review Board finds the appealed materials, the Board recognizes that release of these materials is central to its mandate to disclose, unvarnished, the efforts of the FBI to discredit Mr. Lane by disseminating these highly personal materials.

The FBI's behavior with respect to Mr. Lane was clearly intrusive and outrageous. Public disclosure of the records would be warranted by the simple argument that disclosure of these specific records, and the public outrage that may accompany such a disclosure, may prevent the FBI from collecting and disseminating intimate personal information about American citizens.

2. Release of the photograph and list of instructions is necessary if Mr. Lane chooses to dispute the authenticity of the material and is an important component in understanding the extent to which the FBI was willing to slander its critics.

It is entirely possible that the photograph and the list of instructions are not what the witness statements purport them to be. The Review Board believes that Mr. Lane is entitled to dispute the authenticity of the photograph and the list of instructions. It is the Review Board's understanding the FBI has never shown the materials at issue to Mr. Lane. Without release of all four of the appealed documents, Mr. Lane will not have an opportunity to dispute the facts that the FBI has already used to smear his reputation. The person in the photograph may not even be Mr. Lane, and even if it is Mr. Lane, he may not have been a voluntary participant in the event.

Further, without the witness statements from the two women involved, the photograph and the list of instructions are meaningless, thus release of the witness statements is critical to understanding the story. The witness statements provide the only context by which the Bureau could have judged the authenticity of these materials and Mr. Lane's FBI file contains no evidence that the FBI attempted to determine whether the witnesses were credible individuals. Instead, what the FBI file does reveal is that the witnesses were motivated by a desire to have Mr. Lane provide money to them, and that they later recanted their statements. The Review Board believes that release of the materials would allow Mr. Lane an opportunity to challenge the authenticity of this material and clear his name, in the event that the FBI recklessly disseminated information about him that is very possibly not true.

Finally, although the Bureau is currently arguing that release of the textual story about Mr. Lane is sufficient, the Review Board believes that text cannot adequately describe the photograph. Director Hoover obviously also believed that the photograph, list of instructions, and witness statements were important elements in his campaign to smear Mr. Lane's reputation. Without the records at issue, Director Hoover's campaign to discredit Mark Lane would have had little teeth. Thus, in order to fully understand the FBI's actions, the Review Board believes that the four appealed records -- including the photograph -- must be released.

C. Mr. Lane's privacy interests have already been invaded, and given the FBI's demonstrated disregard for Mr. Lane's privacy interests, the FBI's arguments in favor of now protecting Mr. Lane's privacy are disingenuous.

J. Edgar Hoover's files on the personal lives of government officials and public figures are well-documented.²² The appealed records are already a part of that history.²³ The FBI has already violated Mr. Lane's privacy by circulating the materials at issue.

1. The FBI invaded Mark Lane's privacy in the records at issue when it acquired, distributed and retained the records in its efforts to discredit Mr. Lane.

An examination of the background section above and the records that the Review Board is attaching as exhibits to that section makes clear that *the FBI, not the Review Board*, invaded Mr. Lane's privacy.

First, the FBI took affirmative steps to acquire the photograph, the list of instructions and the witness statements even though the material does not appear to have been relevant to the FBI's security investigation of Mr. Lane. The FBI's file on Mr. Lane was a "security" file rather than a criminal file. Documentation of Mr. Lane's political activities and his involvements with groups that the FBI believed to be Communist Party front groups are typical of material that the FBI collected in its security investigations. But, the material regarding Mr. Lane's alleged sexual preferences or habits do not appear to be relevant to the national security of the United

²²Director Hoover's habit of collecting and selectively disseminating intimate personal information about public figures has been a matter of great concern to the public. In 1975, three years after Director Hoover's death, then Attorney General Edward Levi testified that J. Edgar Hoover "did keep secret files about Congressmen, Government officials and other citizens, that he did disseminate derogatory information, and that Presidents of both parties did misuse the Bureau." New York Times Editorial, *Files and Whispers*, New York Times, December 2, 1975. See also John M. Crewdson, *FBI, in Worst Crisis Ever, Looking to Its Next Director*, New York Times, January 1, 1977, 1, 13; John M. Goshko, *Hoover's Files Focus on Sex Scandals*, Washington Post, November 24, 1976, A1, A8 (describing Hoover's "Official and Confidential" files and noting that Hoover kept Washington, D.C. field office agents busy informing him of "immoral or criminal activities by diplomats, government employees, politicians, sports figures, socially prominent persons, senators, and congressmen.").

²³*Boggs' Son Tells of Files on Warren Panel*, Washington Star-News, January 31, 1975, at A4, attached as Exhibit 10.

States.

Second, the evidence clearly proves that, in its attempts to discredit Mr. Lane, the FBI itself previously distributed to people outside of the FBI the same records, including the photograph, that it now opposes releasing on privacy grounds. Although the FBI did consult Mr. Lane when it was preparing its appeal on the four appealed records, it did not consult Mr. Lane at the time that it disseminated the appealed records to the Warren Commission, the White House, and informed the New York Bar Association of the existence of the records.

The primary reason that the Review Board voted to release the records at issue is that the FBI's invasion of Mr. Lane's privacy in its effort to discredit Mr. Lane was so egregious. The FBI's tactics in this instance reveal a profound disregard for the privacy of American citizens. Despite its previous disregard for Mr. Lane's interest in not having these materials disseminated, the FBI now argues that release of the records would cause embarrassment to Mr. Lane. In fact, it is the FBI that will be embarrassed if the materials are released.

The FBI's previous actions with respect to these materials did not take into account the likelihood that Mr. Lane would be "humiliated and embarrassed." Rather, its previous dissemination of the material caused Mr. Lane to be humiliated without his knowledge. Given that the FBI has already caused harm to Mr. Lane with its distribution of the records at issue, its moralistic arguments serve only the Bureau's interest in protecting the Bureau itself from a complete and unvarnished disclosure of tactics it employed against critics of the Warren Commission.

2. Most of the story is available to the public, thus Mr. Lane and the two women who were involved have little remaining privacy to protect.

The FBI has already released to the public most of the information regarding the Queens County District Attorney's investigation. The textual story is, in large part, available to the public at the National Archives and Records Administration. The released documents describe the photograph, the list of instructions, and the witness statements. For instance, an FBI report that is open in full at the Archives, reads in relevant part,

In February, 1963, records of the Office of the District Attorney, Queens Count, New York City, reflected that in January, 1962, an investigation was conducted by that office concerning alleged sodomy charges against Mark Lane. These records disclosed that during this investigation, signed statements from two women were secured, which statements alleged perverted sexual acts of a sadistic and masochistic nature were performed by these individuals on the person of Mark Lane. An obscene photograph of a person described as Mark Lane was also secured.²⁴

²⁴See Assassination Record Number 179-40001-10335.

Other records now available to the public contain similar paragraphs.²⁵ Thus, the privacy interest that Mr. Lane had in keeping the story secret no longer exists.

D. The JFK Act requires release of the records.

Given that the JFK Act presumes disclosure of all assassination records, the Review Board cannot vote to postpone a record unless it believes that the potential invasion of personal privacy outweighs the public interest in release. JFK Act, § 6(3). The Review Board does not believe that the facts warrant postponement of the four records at issue. These four records are arguably among the most revealing records in the FBI's assassination records as to how the Bureau handled its relationship with the Warren Commission and its critics. And, the FBI has already so thoroughly invaded the privacy of the individuals involved that the privacy interests remaining, while present, are not enough to outweigh the public interest in release.

In its August 3 Petition, the FBI argues that, had the Review Board properly performed the balancing test set forth by § 6(3) of the JFK Act, it would have voted to protect the records on appeal. The FBI's tone suggests that the the Review Board is gleeful about the release of these records to the public, and argues that the Review Board's decision could not satisfy the purposes of the JFK Act, but rather, could only satisfy some prurient interest.

As the FBI is well aware, the Review Board fully considered the question about whether to release the appealed records. The nature of the records is such that no person would find it easy to make a determination to disseminate the records. The Review Board fully recognized that this was a sensitive and difficult issue. However, given the existence of the appealed records in the file, together with the documentation concerning the FBI's use of the material, the Review Board found, after weighing this issue very carefully, that the JFK Act requires release of the records.

The FBI refers to the Freedom of Information Act ("FOIA") case, *Siminoski v. FBI*, in which a California Federal district court found that the FBI appropriately withheld release of its investigations of lesbian and gay activities. Although the *Siminoski* case does relate to the FBI's voluminous files on the personal sexual practices of American citizens, the *Siminoski* case is otherwise irrelevant to the instant appeal. The JFK Act standard is different precisely because the public interest arm of the balancing test is tied to the relevance of the information to the assassination. In addition, Congress enacted the JFK Act, *inter alia*, for the express purpose of circumventing the FOIA, as releases of information under the FOIA were not sufficient to restore the public's confidence that all records relevant to the assassination of President Kennedy that

²⁵See Assassination Record Numbers 157-10011-10132, 179-40001-10367, 179-40007-10228, 180-10045-10046, 180-10045-10340, 180-10045-10446, and 180-10067-10283.

could be released were being released.

Moreover, the Review Board believes that the California court's decision in *Siminoski* may well have been different if the FOIA's privacy standard were the same as the JFK Act's privacy standard. In other words, the JFK Act presumes disclosure of *assassination records*, and only allows postponement in the event that the Review Board finds that the privacy interest outweighs the public's interest in knowing more about the assassination. If Congress passed a statute requiring the FBI to release all government records related to lesbian and gay activities in the United States -- and to release, in particular, those records that show how Federal law enforcement and intelligence agencies worked to hide the truth about lesbian and gay activities in the United States -- the California court may have ordered release of the *Siminoski* records. Likewise, the JFK Act, tailored as it is to release of records concerning a particular subject, requires release of the appealed materials.

The appealed records are of enormous public interest. An uncensored version of the materials is critical to understanding the FBI's actions with regard to Mr. Lane. The FBI has already acted to invade the privacy of the individuals involved. The individuals involved are entitled to know how the FBI handled this information. The privacy interests remaining are lessened by time and by previous infringements. Therefore, the JFK Act requires release.

IV. CONCLUSION

The Assassination Records Review Board respectfully requests that the President uphold the Board's formal determinations and release the information that the public, and the individuals referenced in these records, have a right to know.