

DRAFT -- 5/28/96

BY HAND

May __, 1996

The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
United States Department of Justice
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Freeh:

I have received a copy of your May 28, 1996 letter to President Clinton regarding the Bureau's appeal of ARRB determinations for five additional FBI assassination records. The ARRB will address the merits of this appeal in due course. I write now to respond to the mischaracterization of the Review Board's "public comments concerning these appeals," with which you chose to close your May 28 letter to the President.

Your May 28 letter attributes to the Review Board alternative motives for issuing its May 15, 1996 release regarding the Bureau's appeal of May __. Your letter states that either the Review Board believed that our "arguments would be better received in another forum" or hoped "to bring public pressure to bear on the White House." A reading of our release (a copy of which is enclosed) belies both claims.

Our release did not contain any argumentation regarding the appealed documents. We firmly believe that the JFK Act compels disclosure of the records the Bureau chose to appeal on May __. Frankly, for the reasons set out in our May 23 submission to the White House, the arguments advanced by the Bureau for continued postponement under the JFK Act border on the frivolous. Yet we have not, and will not, comment publicly on the merits of issues which, under the JFK Act, await Presidential decision. Our statement of May 15 would have been a perfect vehicle to engage in public debate with the Bureau or to attempt to marshal "public pressure" against the White House: we chose not to do so.

Indeed, in issuing the May 15, 1996 release, we sought to comply with the letter and the spirit of the JFK Act in a way that would *not* interfere with the ultimate resolution of the appeal on its merits. Under the sequence of events mandated by the JFK Act, release of the records acted on by the Review Board at our March __, 1996 meeting had come due on _____. As also required by the JFK Act, the Review Board had published in the *[DATE] Federal Register* [CITE] notice of its

determination regarding each of the records voted on at the March __ meeting, including the records that the Bureau appealed on May __. We know from experience that interested members of the public cross-reference the *Federal Register* notice of determinations against the assassination records from a particular Review Board meeting actually made available to the public by the National Archives. Any discrepancies are noticed and legitimately questioned.

Thus, it was inevitable that it would come to light that these records are subject to a pending appeal. The only question was how this would happen: through a formal release providing clear answers to legitimate questions, or through a series of informal, *ad hoc* responses to inquiries as they arose. Because the latter option would carry a greater risk of misunderstanding, we believe that the Review Board took the more appropriate and responsible course in issuing the May 15 release.

Moreover, your May 28 letter neglects to mention that the May 15 release was issued *only after consultation with the Bureau and the White House*. During these consultations, the ARRB staff explained why such a release was appropriate, given the public procedures required by the JFK Act. The release we issued incorporated the only suggestion we received from the Bureau at that time. The Bureau did not then register the “deep concern” professed in your May 28 letter.

Finally, let me assure you that the Review Board desires nothing more than, in the words of your letter, “to address our genuine differences on the merits, pursuant to the legislation which created the Board.” Indeed, that is what the Review Board has done, and will continue to do.

Sincerely yours,

The Honorable John R. Tunheim
Chairman

Enclosure

cc (w/enclosure):

The Honorable William J. Clinton
The President
The White House
Washington, D.C.

The Honorable Warren M. Christopher
The Secretary of State

United States Department of State
Washington, D.C.

The Honorable Jamie S. Gorelick
The Deputy Attorney General
United States Department of Justice
Washington, D.C.