

June 16, 1997

VIA FACSIMILE & FIRST-CLASS MAIL

Mr. Walter E. Dellinger
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Main Justice Building
Tenth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20530

Re: United States Department of Justice Office of Legal Counsel Compliance with the
JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Dellinger:

I am writing to request that the Office of Legal Counsel ("OLC") for the Department of Justice ("DOJ") provide the Assassination Records Review Board ("Review Board") with certain formal assurances that it has located, and will be releasing, all records relating to the assassination of President Kennedy that are within its possession, custody, or control.

Since 1994, the Review Board has been working with a number of Federal agencies, including the OLC and other divisions of DOJ, to locate and publicly release records related to the assassination of President Kennedy. These actions have been taken pursuant to The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"). We appreciate the cooperation and assistance that OLC, particularly Mr. Paul Colborn and Ms. Betty Farris, has extended in working with the Review Board.

The purpose of this letter is to request the OLC's cooperation in assisting the Review Board in discharging its responsibility of assuring Congress and the American people that the goals of the JFK Act have been accomplished to the greatest reasonable extent. We want to assure the American people that the United States Government has identified, located, and released all records relating to the assassination of President Kennedy. Indeed, one of the paramount purposes of the JFK Act is to certify to the public that the United States Government is not withholding relevant materials related to

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the assassination. *See, e.g., Assassination Materials Disclosure Act*, H. R. Rep. No. 625, Part 2, 102d Cong. 2d Sess. 9 (1992) (“The Federal Government’s failure to release official materials has contributed to numerous conspiracy theories and fueled charges of government complicity in the assassination . . . [A] salutary purpose is served in opening these files [relating to the JFK assassination] to allay the suspicion of government cover-up.”).

The Review Board has recently considered how it, along with the relevant Federal agencies, can best demonstrate to the American public that a thorough, good faith, and diligent effort has been made to locate and release all remaining assassination-related records within the control of the United States Government (and that the Government is not withholding any such materials from public disclosure). To make this showing to the public, the Review Board has requested the relevant Federal agencies to provide a complete and specific accounting of their efforts to locate and release assassination-related records, including a full explanation for any destruction of such records. Such requests have been directed specifically to the Civil, Criminal, and Civil Rights Divisions of the Department of Justice, as well as the Office of Information & Privacy (“OIP”) at Justice. Since the OLC does have certain papers relating to the assassination, the Review Board seeks to have the OLC account for its compliance under the JFK Act.

Accordingly, pursuant to its Congressional mandate under the JFK Act to “create an enforceable, independent, and accountable process for the public disclosure of such records,” 44 U.S.C. § 2107 (2) (a) (3), the Review Board has been requesting the relevant agencies to adhere to the formal compliance program (hereinafter “JFK Act Compliance Program”) outlined below and devised by the Review Board pursuant to its powers under Section 7(j)(1)(A), (B), (C), (D), and (F) of the JFK Act. We hereby request that the OLC also participate in this program and undertake the following measures by the dates provided (these dates were set in view of the fact that the Review Board’s operations currently are scheduled to expire on September 30, 1997):

1. Designation of Agency Compliance Official (or Officials) and Statement of intent to comply with the JFK Act. We request that, by July 7, 1997, the OLC designate a Compliance Official who ultimately will be responsible for ensuring that the OLC has complied with its obligations under the JFK Act, including the identification, location, and organization of assassination records and the transmission of those records to the JFK Assassination Records Collection (“JFK Collection”) at the National Archives and Records Administration (“NARA”). If necessary, the OLC may designate more than one person with knowledge of the measures that have been undertaken to locate assassination records. We assume that either Paul Colborn, or Betty Farris, or both, will be designated as the Compliance Officials since we have worked wiith

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them, but we will your formal designation.

We also request that, by July 7, 1997, the OLC convey its agreement to adhere to the compliance procedures outlined in this letter. To the extent that any compliance procedure described below appears to be unreasonable or to present difficulties that we may not have anticipated, please explain why and make alternate suggestions to us.

2. Initial Statement of Compliance. We request that the Compliance Official prepare, by August 4, 1997, an initial written statement of the OLC's compliance with the JFK Act ("Initial Statement of Compliance"), setting forth the steps that the OLC has taken to locate and process assassination records. The Review Board recognizes that many of the relevant Federal agencies, including the OLC, have previously explained what they have done to identify and process assassination records under the JFK Act. The Statement of Compliance, while it may include information previously made available by the OLC to the Review Board, is to be the preliminary version of the OLC's Final Declaration of Compliance to the American public of what it has done to locate records relating to the assassination (*see* item number 4 below). This initial Statement of Compliance shall include, to the fullest reasonable extent, the following information:

- a. A complete description of all steps that the OLC has taken to identify and locate assassination records including, but not limited to, an identification of the major record collections and files that were consulted in the OLC's search, any departmental file indices consulted, the names and titles of the persons who were responsible for conducting the searches, the physical locations of the records that were searched, the specific steps that were taken to locate and retrieve materials in archives, and any other criteria used by the OLC to locate assassination records.

We appreciate that, in a prior meeting, the OLC has previously advised the Review Board as to certain steps it was taking to locate and process assassination records under the JFK Act. *See* Dec. 13 Letter from Ronald G. Haron of the Review Board to Paul Colborn of the OLC. (Attachment A hereto).

- b. To the extent that any assassination-related records have been destroyed by the OLC, or any OLC official, a full and specific explanation of the circumstances surrounding the destruction of such records.
 - c. The status of remaining work that you can now identify that needs to be completed by the OLC in order to comply fully with the JFK Act, including an identification of the categories of records that must be processed and transmitted to the National Archives, a description of any additional searches for files that must be done, and the projected date(s) for completion of these tasks.
3. Review Board Interview With Compliance Official (or Officials). Shortly after submission of the OLC's initial Statement of Compliance, we will ask that the OLC's Compliance Official (as well as any persons who helped prepare the OLC's initial Statement of Compliance) be made available to the Review Board for an interview regarding the OLC's search for, and identification of, assassination records. The interview will be used as an opportunity to resolve any outstanding questions regarding the OLC's search, including any follow-up tasks to be completed by the OLC. The Review Board anticipates that this interview will be conducted in August 1997.
 4. Submission of Final Declaration of Compliance. By September 9 1997, the OLC should expect to complete the process of identification, location, and declassification of its assassination records at which time it should submit to the Review Board a Final Declaration certifying, under oath, its compliance with the provisions of the JFK Act (the "Final Declaration of Compliance"). This Final Declaration shall set forth all of the information initially set forth in the initial Statement of Compliance and shall also supplement the initial Statement of Compliance by detailing any further steps that were conducted by the OLC in identifying and locating assassination records. The Review Board intends to include the Final Declarations of Compliance of the various federal agencies in its final report to Congress.
 5. Compliance Depositions. Starting in early September 1997, the Review Board, pursuant to its statutory authority, may conduct depositions, under oath, of the Compliance Official along with any other OLC officials with responsibility for complying with the JFK Act. The decision to take a compliance deposition of a federal agency or other organization will be made on a case by case basis, taking into

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account the importance of the agency to the work of the JFK Act and the sufficiency of the agency's efforts to account fully for its compliance with the JFK Act. In the event that the Review Board decides to commence a compliance deposition of the OLC, the responsible designee(s) will be expected to testify under oath with respect to any and all issues relating to the OLC's record search, including the scope of the search, the identity of files searched, the destruction of any relevant records, and any other matters set forth in the Final Declaration of Compliance. Any person obligated to appear for a deposition under oath shall be fully entitled to obtain legal representation.

We look forward to receiving your initial response, by June 30, that designates your Compliance Official and includes your statement regarding your position with respect to the provisions outlined in this letter. To the extent that you have any questions or suggestions regarding the Compliance Program, please do not hesitate to contact our General Counsel, T. Jeremy Gunn, at (202) 724-0088.

Thank you for your cooperation with our work.

Sincerely,

David G. Marwell
Executive Director

Enclosure

cc: Paul Colborn, Special Counsel,
Office of Legal Counsel