

June 6, 1996

The President
The White House
Washington, D.C.

Dear Mr. President:

The Assassination Records Review Board has received the FBI's letter of June 5, 1996 ("FBI Letter"), which addresses our Response to the May 10, 1996 Petition For Postponement ("Review Board Response"). We believe that our Response fully addresses most of the points in the FBI Letter, but wish to add a few observations.

First, the FBI Letter does not dispute that the Bureau itself in the 1960s publicly disclosed that its counterintelligence activities targeted Communist-bloc establishments.

Second, the FBI Letter fails to engage our principal "sources or methods" argument: the redactions at issue do not protect any methods that are genuinely "secret." The Board's Response specifically showed that the FBI's use of each of the five "sources or methods" in question has been officially disclosed, in the publicly available versions of the appealed records or elsewhere. The FBI Letter fails even to address the specific disclosures cited regarding money tracing capabilities (Exhibits 1-6, Review Board Response at 4-6); lookout logs (Exhibit 7, Review Board Response at 7-9); and mail cover (Exhibits 8-9, Review Board Response at 10-12) -- categories that together comprise nine of the thirteen appealed records.

The FBI Letter challenged one of our examples of public disclosure of FBI use of electronic surveillance: Ramsey Clark's testimony. *See* FBI Letter at 4; Review Board Response at 13. The FBI wishes to distinguish his testimony on the grounds that it did not "reveal a single specific instance" of tapping "a named foreign establishment," and that, as a *former* Attorney General, Mr. Clark could not speak officially for the United States. FBI Letter at 4. But the FBI Letter ignores our citation to the Church Committee's *official* disclosures of the scope and purpose of the FBI's electronic surveillance of foreign establishments in the 1960's, which amply confirm Mr. Clark's recollections. *See* Review Board Response at 13. Nor does the FBI Letter address the cited disclosures of *specific* intercepts from CIA taps of Soviet and Cuban embassies (*see* Review Board Response at 17 n.33 & Exhibit 17) and from one of the same FBI sources at issue in the appealed records (*see id.* at 16).

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As to typewriting and fingerprint analysis, the FBI asserts only that these techniques are still used. FBI Letter at 5. That is not the point. Exhibit 13 as it is now available to the public *already* reveals the FBI's use of these techniques. The redacted information identifies only a class of subjects for whom the FBI maintained fingerprint and typewriting samples in 1963. The FBI does not explain the operational necessity of withholding this information thirty-two years later or respond to our argument that, in any event, the information is already disclosed. *See* Review Board Response at 19.

Third, the Review Board does not question the counterintelligence expertise of the FBI or the foreign relations expertise of the State Department, but it does question whether that expertise has been applied properly to the relevant question: whether the postponement criteria of the JFK Act are satisfied. The Act established the Review Board for the express purpose of independently evaluating agencies' arguments for continued secrecy under those criteria.¹ The Review Board carefully weighed the contentions of the FBI and the State Department and, for the reasons explained in our Response, found them insufficient to overcome the JFK Act's presumption of disclosure.

Fourth, the State Department has not argued here that disclosure would harm bilateral relations with the nations directly concerned. The State Department's letter of May 15, 1996, advances several reasons to withhold the appealed information, but it does *not* assert that bilateral relations with those nations would be harmed.

* * *

If any further discussion would assist you in resolving the issues presented by the FBI's May 23, 1996 appeal, we shall be glad to provide it. We trust that, after reviewing the appealed records, the disclosure requirements of the JFK Act, and the parties' respective submissions, you will uphold the determinations of the Review Board.

Respectfully submitted,

David G. Marwell

¹*See* JFK Act § 2(a)(3) ("legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure" of assassination records); S. Rep. No. 328, 102d Cong., 2d Sess. 27 (1992) ("It is intended that the Review Board should make its own determinations and that its judgments will be shaped by its experience, knowledge, and expertise during the course of its work.").

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Executive Director

cc: The Hon. Warren M. Christopher
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The Hon. Jamie S. Gorelick
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