

MEMORANDUM

December 15, 1996

To: The Board

From: David G. Marwell
Executive Director

Subject: FY 1996 Report: Options for the Future

The following is a *rough* draft of the section of our annual report that is supposed to address recommendations for legislative action. Rather than advocate a particular approach to the final phase of the Board's activity, I have laid out three options. The Board will need to decide (in a public meeting) which option it wishes to pursue, but this approach to the annual report will lay out for Congress (and the public) three possible paths and their relative impact on our ability to complete our task.

DRAFT:

An obvious question facing the Board in its last mandated year of existence is whether it will be able to complete its work on time. Until now, the Review Board has been faithful to the time limits set by the Act. Unfortunately, the same cannot be said for the other components of the review process. Executive branch agencies and committees of Congress, almost without exception, have failed to review all of their records and make them available for the Board's review within the set time limits. Indeed, many have yet to complete even their initial review. The Senate Intelligence Committee, for example, has yet to process the complete holdings of its Church Committee files, and the FBI itself has claimed that it will be unable to complete its task before the end of the century despite a significant investment of resources. In the rare cases of appeal to the White House, the President has far exceeded the thirty-day appeal period, thereby leaving the Board and the FBI in doubt about important questions of precedent.

This lack of fidelity to the prescribed deadlines says (in most cases) as much or more about the ambitious time limits set by the Act as it does about the resolve and commitment of the parties involved. The Review Board has done its best to proceed in a practical and realistic fashion, and, with continued cooperation from most agencies and new efforts from others, will be able to complete its work in all but two areas within the three-year deadline. With the exception of the sequestered collection at the CIA (see page ___) and the FBI's HSCA collection (see page), the Board expects to have completed its review of assassination records identified by federal agencies, collected significant non-federal records, and identified and processed additional federal records not identified by the agencies. The Board will not, however, be able to complete the word-for-word, document-by-document review of the records that make up the so-called sequestered collections of the FBI and CIA.

The Board has undertaken two initiatives in approaching the final phase of its work: (1) Faced with the knowledge that it would not be able to complete the review of the sequestered collections within the three-year time frame, the Board instructed the staff to proceed with its review of these collections using

special guidelines (see page ____) designed to distinguish between records whose relevance to the assassination is clear and those not believed to be relevant. Applying these new standards will permit the staff to identify and review the most significant remaining records in order of priority.

(2) Beginning in November 1996, the Review Board embarked on its compliance program (see page ____) which is designed to document federal agency compliance with the Act. The compliance program will help us to organize our efforts in the final phase of our operation. Not only will it provide a record of the efforts on the part of the agencies, but it will allow for a comprehensive evaluation of completeness of the effort.

Options

The following options lay out three possible approaches for the final phase of the Board's activity.

Option 1: Board ceases operation on September 30, 1997

Should the Board cease operations at the end of this fiscal year the following projection indicates what will have been completed. All *Category I* agencies will be completed by September 30, 1996, and *Category II* agencies could be completed if the agencies involved make the appropriate effort.

Option 2: A three-month extension (the Board's life is extended until December 31, 1997)

The Board, because of a slower start-up than anticipated during its first year, had a budget carry-over of \$500,000, a sum that would be sufficient to fund a full quarter of Board operations without additional appropriation. Three additional months would increase the likelihood that the Board will complete all *Category II* collections.

Option 3: A one-year extension (the Board's life is extended until September 30, 1998)

A full year extension would permit the Board to complete its review of all of the most important records in the sequestered collections. A reorganization of the staff would place the focus on CIA and FBI. A smaller staff and reduced travel and related expenses would allow the Board to reduce its operating budget to 1.75 Million requiring an additional appropriation of 1.25 Million.

Post-Board Follow-through

Under each option, the question will need to be addressed of (1) how the Board's determinations will be enforced in the case of records containing postponements with board-set release dates, and (2) how Board guidelines will be implemented in the case of those records that had not been reviewed at the time the Board goes out of existence. The Board recommends that the National Archives be empowered to require agencies to continue transferring records consistent with the Review Board's formal determinations and established guidelines.