

December 13, 1994

TO: Assassination Records Review Board

FROM: Sheryl Walter

RE: Issues raised by postponement of informant information from FBI documents

This memo is intended to provide the Board with background information for its December 14 briefing by the FBI on its position regarding postponement of informant names, information from informant sources, or related material. Summarized below are statements in the statute and legislative history that illustrate how Congress addressed the question of how and to what extent informant material should be postponed. Also included is a summary of the Supreme Court's recent decision in Department of Justice v. Landano (113 S.Ct. 2014(1993)), in which the Court held that the government is not entitled to a presumption that all sources supplying information to the FBI in the course of criminal investigations are implicitly "confidential" sources whose identity or the information they provided must be kept secret. Finally, a brief analysis of the major points made in the FBI's memorandum (an advance draft of which was provided to Board staff) along with suggested questions, policy considerations and discussion issues is provided to assist the Board as it weighs these issues.

Statutory Framework and Legislative History

Section 6 of the JFK Collection Act of 1992 describes the conditions under which Congress intended that informant information may be properly postponed for release in the future. The Act makes clear that "postponement" presumes that the principle guiding the review of records in the collection is a presumption of disclosure, that records postponed will be disclosed in full within 25 years (absent intervention by the President) and the postponement standards are not to be construed as exemptions from disclosure.. S.Rep. NO. 102-328 at 20, 27. Postponements are to narrowly drawn to allow the release of a majority of the documents with a minimum of reactions, and the standard for accepting an agency's argument that any particular material should be postponed is that the agency demonstrate the need for postponement by "clear and convincing evidence. Id. at 27. Affirming the Senate report's position, The 1994 House Conference Report emphasizing Congress's displeasure with the past and current standards applied by agencies including the FBI which has resulted in "continued unjustified secrecy and concealment of these records [that] increases speculation about the assassination and fuels a growing distrust in the institutions of government." House Rep. 103-587 at 2.