

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 the Communist-bloc establishments that are now at issue.

Second, the FBI Letter does not provide "clear and convincing evidence" that disclosure would "interfere with the conduct of intelligence activities" JFK Act, 44 U.S.C. § 2107(6)(1)(B). The JFK Act obligates the Bureau to prove that release of the redacted information would harm intelligence-gathering activities. The Board invited the Bureau to identify any current operational interest in the redacted information. Instead of doing so, the FBI Letter simply repeats assertions of harm that could be made with equal plausibility about *any* intelligence-related activity.¹ The Bureau does not satisfy its burden by raising generally the specter of enemies reading documents, but by showing how releasing the information would have the alleged effect.

Third, the FBI Letter does not respond to our showing that releasing the contested references to four of the five "sources or methods" at issue -- money tracing capabilities (Exhibits 1-6, Review Board Response at 4-6); lookout logs (Exhibit 7, Review Board Response at 7-9); mail cover (Exhibits 8-9, Review Board Response at 10-12); and fingerprint and typewriting analysis (Exhibit 13, Review Board Response at 19) -- would not reveal any genuinely secret techniques. With regard to electronic surveillance (Exhibits 10-12), the FBI attacks our response for citing disclosures that are not "official" or "specific." FBI Letter at 4. In making this argument, the Bureau simply ignored

¹For example: "Today's adversaries can and will benefit from finding out what our interests and priorities were back then since they can use such information to cogently estimate what our interests and priorities are now." FBI Letter at 5.

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our citations to the Church Committee's disclosure of the number of wiretaps and the countries targeted by the taps. (*See* Review Board Response at 13. *See also id.* at 16, 17 n.33; Exhibit 17 (already-released FBI and CIA records of various intercepts)). The JFK Act does not require the Review Board to prove that the interception of a specific communication has already been officially disclosed. Rather, the the Bureau should prove a genuine harm that would come from disclosing a particular intercept (particularly where, as here, the the number of taps and the targets of those taps have been disclosed). The "general" disclosure of the FBI's extensive use of electronic surveillance against foreign establishments is relevant because it underscores the need for the FBI to show what harm would flow from disclosing the *particular* intercepts at issue. The FBI has not done so.

Fourth, 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.² 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. *Fifth*, 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.

We appreciate your attention to our arguments and trust that you will uphold the determinations of the Review Board.

Respectfully submitted,

David G. Marwell
Executive Director

²*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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