

Chapter 4

Part II: Declassification Standards

Section 6 of the JFK Act establishes a framework for the Review Board to analyze agency claims for continued protection of assassination records. The Review Board's primary purpose, as outlined in section 7(b) of the JFK Act, is to determine whether an agency's request for postponement of disclosure of an assassination record, or information within an assassination record, meets the criteria for postponement set forth in section 6. Section 6 consists of an introductory clause, which establishes the "clear and convincing evidence" standard, and five subsections that set forth the criteria under which the Review Board can agree to postpone public disclosure of assassination-related information. The text of Section 6 is attached as Exhibit C.

Introductory Clause

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that --

Section 6(1): Intelligence agents, intelligence sources and methods, and other matters relating to the national security of the United States

. . . the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal --

- (A) an intelligence agent whose identity currently requires protection;*
- (B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or*
- (C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;*

CIA Issues

Intelligence Agents

CIA Officers

Names of CIA Officers who are still active or who retired under cover in

potentially risky circumstances were generally protected. Names of officers who were deceased or whose connection to the CIA was public knowledge were generally released throughout the collection. “CIA Employee” was used as substitute language, though when available, useful, and appropriate an alias or pseudonym was substituted.

Review Board members confronted the name issue in the first CIA document they reviewed but did not close the issue until two years later. The drawn out review of CIA employee names points to some of the challenges that existed in the process and to the seriousness with which those involved, both on the Review Board and at the Agency, approached the task at hand.

CIA began by defending the protection of employee names as a matter of policy. First, since many employees are “under cover,” the maintenance of that cover is critical to gathering intelligence. CIA contended that the identification of a name can identify the cover provider and jeopardize operations. Second, although the majority of names are of retired CIA employees, CIA has a confidentiality agreement with them. Many of these former employees objected to release of their former Agency affiliation, suggesting that such release might jeopardize business relationships or threaten personal safety. Initially, CIA wished to argue these as general principles for the protection of all employee names. But the Review Board determined that the merits of these arguments could only be determined on a case-by-case basis. Gradually the CIA began to provide supporting evidence of the postponement of individual names.

CIA’s initial refusal to provide evidence on individual names was met, not with the wholesale release of names by the Board, but with a firm but patient insistence that the Agency meet the requirements of the Act. Names of a few individuals who were of central importance to the JFK story were released early in the process, but for others the Board gave the Agency a number of additional opportunities to provide specific evidence. For example, December 1995 was the first name day, a Board meeting at which the Agency was to provide evidence for names encountered in records during the previous six to seven months. CIA offered a generalized blanket response. Realizing that the personal safety of individuals could be at issue, Board members gave CIA more time to provide evidence. Other name days were set in May 1996 and May 1997. As deadlines for submission of evidence approached, CIA agreed to release some of the names, but in most cases, continued to offer less than satisfactory evidence on those they wished to protect. By May of 1996 the position of the Board on names of CIA employees was as follows: There is a presumption that the true name of a CIA employee should be opened. However, the name should be protected if the individual retired under cover or abroad if the individual objects to the release, in which case the presumption shifts to release unless an individual is important to the assassination story. The name may also be postponed if the Agency is able to identify an ongoing operation in which the individual has been involved or if it can be demonstrated that the person is still active for the Agency. The Board gave the

Agency until May 1997 to provide evidence on the remaining names. Over the year, the list of pending names grew as review expanded from the Oswald 201 file to the Sequestered Collection.

When the name issue was finally resolved in July 1997, the names were viewed in two categories: those with high public interest and those with a reduced level of public interest. High public interest names included all those that appeared in the 201 file and those that appear frequently in the collection and/or considered important to understanding the assassination. Progress had already been made. Fifty-eight of the 83 names in the 201 file that had been pending at some point were released by this date. CIA had begun to provide specific and convincing evidence on names. The Board voted to protect a number of names and released a few additional names. Those names with lower public interest outside of the core collection were postponed with a reduced level of scrutiny than those more central to the assassination story.

Thus, the Review Board considered the names of CIA officers on a case-by-case basis when the individuals were seen as having high public interest as part of the story of the Assassination of President Kennedy. High public interest was determined by a substantive connection to the assassination story or by the appearance of the name in CIA's core assassination files, notably Oswald's 201 file. The Board demanded specific evidence of the need to protect the individual. It was presumed that employee names would be released if their identities were important to the assassination story unless the CIA could provide convincing evidence of the need for protection. This evidence included the current status and location of the individual and the nature of the work he or she did for the Agency.

This approach was the most practical given the limited time and resources available to complete review of the files. The Review Board would have preferred to review each name at the same high level of scrutiny. On the other hand, the CIA was compelled to release many more names than they would have desired. Though protracted and selective, the review of CIA employee names forced the CIA forced to take a careful look at them and weigh the need to postpone each name, and it allowed the Review Board to carefully weigh evidence on names of import.

Scelso

The true name of the individual known by the pseudonym of John Scelso was protected but will be opened in full on either May 1, 2001 or three months after the decease of the individual, whichever comes first.

The postponement of the true name of John Scelso was an instance when public interest was very high, but the evidence to support postponement outweighed it. John Scelso was a throw away alias used by the CIA employee who was head of WH3

during the period immediately after the assassination of President Kennedy. His name appears on hundreds of documents, many of which were the product of the Agency's extensive post-assassination investigation that spanned the globe. The Board was inclined to release Scelso's true name, but the Agency argued strongly against release.

As an interim step, "Scelso" was inserted as substitute language. CIA provided evidence on the current status of the individual, shared correspondence sent by him, and even arranged an interview between him and a Review Board staff member. At the May 1996 Board meeting, Board members determined that the evidence was persuasive, but still wanted to insure that his true name would be revealed as soon as was prudent. Their solution was the release in five years or upon his decease.

Identifying Information

Identifying information was approached using the same standards applied to true names. If it was determined that the identity of the officer required protection, specific identifying information was protected, however generic information may have been released.

Sources and Methods

Sources, Assets, Informants, Identifying information

Sources, Assets, Informants and the Identifying information that describes them were reviewed under standards similar to those for CIA officers. Names that carry a high level of public interest were subjected to close scrutiny. The Board protected the identity of foreign nationals unless they are of high public interest in relation to the assassination story, in which case CIA was required to provide specific evidence of the need to postpone. Sources, assets and informants in this country were protected if CIA could demonstrate that ongoing operations could be harmed by release of the individual's name. If none of these criteria could be met the name of the individual was released. In addition, names of individuals whose connection to the CIA was a matter of public knowledge, especially if previously released in US government records, were released.

The Board's decision to protect the name of Sources, assets, and informants in cases where the identity of the source is of reduced public interest was based on two factors: the concern that, since CIA sources generally live outside the United States, they risk harm if their identities were revealed. In records where the identity of the source is of possible public interest in relation to the assassination story or is important to understanding information related to the assassination, the CIA was required to provide additional evidence to support the protection of the source's identity. The Board protected the sources for ten years except in cases where it might be inferred that the source was committing treason. In these cases, the name and identifying information for the source was protected until 2017.

Pseudonyms

Pseudonyms were released with only a few exceptions. In some instances pseudonyms were used as substitute language for the individual's true name.

Crypts

Crypts or digraphs are generally releasable within the JFK collection and in related records. All US government crypts are released. "LI" crypts, especially those in the core files, are generally releasable. "AM" crypts are generally releasable. For all other crypts, the digraph is usually protected and the rest of the crypt is released. A few exceptions to these guidelines exist. For these, CIA was required to present specific evidence of the need to protect.

Early phases of the review of crypts highlighted the cultural differences between the Agency and the Review Board. For the Agency, crypts were an operational method that required protection despite the fact that CIA had years ago replaced most of the crypts at issue. For the Review Board, crypts, having been conceived as a code to obscure an identity or an operation discussed in a document, could presumptively be released without compromising the identity or the operation. Some push and shove in the early months of Board deliberations brought the two entities to a middle ground where CIA yielded to the release of most crypts and digraphs in the JFK context and the Review Board acknowledged that some sensitive crypts required protection.

Early in the review process the CIA argued for the protection of all crypts, even those such as ODENVY- the crypt for the FBI- which were no longer used and which had been inadvertently released in other records. The Board quickly rejected this postponement. For other crypts, the burden of proof was on the Agency, and they began to identify the crypts for the Board. Those that might be sensitive were tabled at the early meetings so that CIA could provide additional information. At one point CIA complained that the research necessary to identify all the crypts was cumbersome. But since the Act requires that agencies provide clear and convincing evidence, CIA continued to reveal the identities to the Board. Next, after the release of a number of LI-crypts -LI was the digraph for Mexico City at the time of the assassination- CIA argued for the postponement of all "LI" series crypts on the grounds that mosaicing would allow researchers to piece together the puzzle and discern the identity being protected by the crypt. The Board rejected this argument, and CIA provided more detailed evidence for crypts they considered more sensitive. When faced with crypts that refer to sensitive operations, the Board opted for a contextual treatment of crypts. Crypts for some sensitive operations may be released in many circumstances, but in other contexts when release of the crypt may reveal the sensitive operation, it was postponed.

The crypt-by-crypt review was productive and necessary for core records, but soon it

became clear that this would not be possible for the entire collection since hundreds or thousands of different crypts appear in the assassination related records of the CIA. The solution was the postponement of the digraph and release of the rest of the crypt for crypts outside of the LI, AM, and OD series. Thus, the majority of crypts in the collection were released in full or released with the digraph protected. Sensitive crypts for which CIA has provided convincing evidence are protected in full; For AM and LI crypts in non-core files, the digraph may have been protected when [a] the crypt appears next to a true name that has been released; [b] when the crypt appears next to specific identifying information; [c] when convincing evidence has been provided of the need to protect.

Slugline

The slugline is releasable according to the same criteria applied to crypts and digraphs.

The slugline is a routing action indicator, the components of which are crypts, that appears just a couple of lines above the text in CIA cables. At the very beginning of the review process, the CIA had argued to postpone the slugline even when the crypts in the slugline were released elsewhere. An example can be found in the slugline RYBAT GPFLOOR. RYBAT is a crypt that means secret, and GPFLOOR was the crypt CIA gave to Oswald in the post-assassination investigation. In a number of records CIA was willing to release the RYBAT indicators at the top and bottom of the record and GPFLOOR when it appeared in the text but requested postponement of the slugline RYBAT GPFLOOR. This was a knee jerk reaction by CIA. When asked why it should be postponed the response was a simplistic, CIA cannot reveal the slugline. The Agency had no reason to protect the slugline other than habit, and when the Act forced the CIA to consider this aspect of their culture of secrecy, the only reasonable response was release.

Surveillance Methods

CIA surveillance methods, the details of their implementation and the product produced by them are generally releasable in the context of the JFK story, except when convincing evidence has been provided that they are politically or operationally sensitive. When postponed, the language substituted for this type of redaction was "Surveillance Method," "Operational Details," or "Sensitive Operation."

Since surveillance, notably teletaps and photo operations, were a central part of the Oswald Mexico City story, the Review Board addressed them early in process during review of Oswald's 201 file. CIA attempted to defend postponement of surveillance as a current method that requires continued protection. The Board's response was that the fact CIA has used the type of surveillance methods employed in Mexico City is common knowledge and that officially acknowledging the use of these methods in

Mexico City in 1963 does not necessarily imply that the operations continue today. The Board concluded that the public interest far outweighed any possible risk to national security and directed release of the information. However, in records that may have revealed sensitive aspects of an operation, those aspects were postponed if CIA was able to provide specific and convincing evidence.

CIA Installations

All CIA installations related to the Mexico City story are releasable from 1960 through 1969. With the exception of a few installations for which CIA has provided convincing evidence of sensitivity, all remaining installations from the date of the Assassination to the publication of the Warren Commission Report are releasable in the context of the Assassination story. In Oswald's 201 file, again with the exception of a few installations for which CIA has providing convincing evidence of sensitivity, all installations are releasable from 01/01/61 through 10/01/64. Outside of these time frames, CIA installations are protected.

The Review Board chose substitute language for these postponements that will allow researchers to track individual CIA installations through the JFK collection without revealing the exact location of the installation. To accomplish this, the world was divided into five regions: Western Hemisphere, Western Europe, Northern Europe, East Asia/ Pacific, and Africa/ Near East/ South Asia. Then a number was added to each different location in the region. Thus, substitute language such as "CIA Installation in Western Hemisphere 1" serves as a place holder for a particular installation in all CIA related records in the collection.

From the beginning the Review Board displayed an inclination to release CIA installations. During first phase of review of CIA records, Review Board members examined documents related to the Mexico City story. In this context, they voted to release CIA installations over only minor objections from the Agency. But as the context broadened to the world wide sweep that the CIA made after the assassination, the location issue became more contentious. CIA argued for postponement but produced only a minimal amount of evidence to defend the postponements. Having been offered insufficient evidence, the Board voted for the release of all CIA installations that appeared in records they reviewed at the January 1996 meeting. CIA responded by assembling an appeal package. The suggestion of appeal sharpened the debate. Anticipating an appeal, Board members stressed the importance of communicating to the White House their frustration with the sketchy evidence initially provided. They wanted to make informed responsible decisions but were hampered by receipt of incomplete evidence. And Board members worried that precious time might be squandered on the review of just a few records if they could not obtain complete evidence in a timely manner. Further, since CIA records were among the first reviewed by the Board, they were concerned that their handling of CIA issues would be scrutinized by other agencies. Ultimately, the Agency provided a complete evidence

package that convinced the Board members of the sensitivity of a small number of CIA installations. However the Board believed that public interest related to the assassination story weighed heavily for release of CIA installations during a period of time that has arguable relevance to that story. Board members didn't want to make this an "Oswald issue," so they established a time frame broader than the Oswald story.

With the noted exceptions, CIA installations referenced in the 201 file were released from 01/01/61 through 10/01/61 and those that appear in the rest of the collection the were released from the date of the assassination to the end of the Warren Commission.

The installation issue exemplifies two recurring themes in the review process. The first is that layers of evidence that were slowly added by the Agency. The CIA would initially provide only minimal evidence of a postponement. Without clear and convincing evidence, the Board voted to release the information. The CIA then responded with a more comprehensive evidence packet sometimes accompanied by a threat of appeal to the president. While this pattern was frustrating and slowed the early stages of the review process, the larger issues were sorted out and addressed. CIA's reluctance to share complete information may have been motivated by a concern that they were sharing secrets beyond the immediate assassination story or a fear that the Review Board might not act responsibly with the information. But the submission of evidence became more dependable when CIA understood that the Board would use the evidence as mandated by the act and that such evidence was required if postponements were to be sustained. The second theme is that appeal to the president loomed large but was something that both the Agency and the Review Board wished to avoid. The Board was willing to review additional evidence even though they had given CIA ample opportunity to present it before they reviewed the records. This was motivated by a desire to accomplish a responsible review, but possibly also by a wish to avoid an appeal to the president. CIA provided the additional evidence, and often released additional information. The release may have been an admission that the information was not as sensitive as they had argued, but it may also have been an attempt to avoid appeal to the president. The check provided by appeal to the president was never utilized in the review of CIA records, but it did influence the review of those records.

Prefixes (Cable, Dispatch, Field Report)

Cable Prefixes, Dispatch Prefixes and Field Report Prefixes were released when the installations to which they refer were released and protected when the installation to which they refer were protected. Substitute language for cable prefixes parallels that was applied to CIA installations, for example: "Cable Prefix for CIA Installation in Western Hemisphere 1." Language for the other prefixes was "Dispatch Prefix" and "Field Report Prefix."

CIA Job Titles

CIA Job Titles were released except when their disclosure might reveal the existence of an installation that is protected or the identity of an individual that requires protection.

File Numbers

All file numbers that refer to Mexico City, except those for which CIA has provided convincing evidence of their sensitivity, are releasable. All remaining country identifiers (the first segment before the hyphen) are protected with the exception of all "15" and "19" files. 201 file numbers are generally releasable in the context of the JFK assassination story.

Domestic Facilities

References to domestic CIA facilities which are a matter of official public record were released. Domestic facilities not publicly acknowledged were protected if CIA provided evidence of their sensitivity or if they are of peripheral interest to the assassination story.

[Comment, Explanation]

Official Cover

In Congressional documents, cover information was released unless the information might reveal details of the scope of official cover or important details about the mechanisms of official cover that were not generally known to the public. Information was released if the CIA or another agency of the Executive Branch was able to demonstrate that it has taken affirmative official action to prevent the disclosure of such information in the past and that its release in a particular record would cause identifiable damage to national security. In Executive Branch documents and in documents derived from Executive Branch documents, substitute language such as "official cover" or "details of official cover" was used in lieu of the actual cover or the details of official cover. The cover status of certain high-profile individuals was released when disclosure has previously been permitted by affirmative official acts of the Executive Branch of the US government. Cover status of other individuals was disclosed only to the extent that they were important to the assassination story. They were handled on a case-by-case basis.

Substitute language: "Official Cover," "Details of Official Cover," "Location."

[Comment, Explanation]

FBI Issues

Foreign Counterintelligence Postponements

[review FBI appeals in SCIF and write the story of the FCI appeals]

After the FBI withdrew its objections to the Review Board's votes on foreign counterintelligence records, the FBI and the Review Board staff began to apply the following guidelines to all foreign counterintelligence postponements in the assassination records of the FBI.

Human Sources in Foreign Counterintelligence (Assets)

The Review Board evaluates the need to postpone the identity of human sources in foreign counterintelligence operations on a case-by-case basis. FBI assets represent a cross between an average FBI domestic informant and a CIA human source, although FBI assets arise with much lower frequency in FBI files than do domestic informants. The Review Board considers the following factors in evaluating whether to postpone or release the identity of a particular asset:

- (1) the significance of the information that the source provided to understanding the assassination;
- (2) the importance of the identity of the source to assessing the accuracy of the reported information; and
- (3) the significance of the threat of harm to the source from disclosure, considering at least the following:
 - (a) whether the source is a citizen of a foreign country;
 - (b) the type of information that the source provided;
 - (c) the amount of time that had passed since the source last provided information; and
 - (d) any specific evidence of harm or retaliation that might come to the source or his or her relatives.

As with CIA human sources, the Board was willing to protect the identities of FBI assets where the public interest in the identity of the asset and the information that the asset provided to the FBI was low. In assassination records that are more closely related to the events of the assassination, the Review Board released the identity of FBI assets.

In its position paper, the FBI defined "intelligence source" as "any individual who has provided or is currently providing information pertaining to national security matters, the

disclosure of which could reasonably be expected to result in damage to the FBI's intelligence and counterintelligence-gathering capabilities."

The FBI offers the following arguments in support of its request to keep intelligence sources' identities secret: (1) Review Board disclosure of intelligence sources would harm the FBI's ability to develop and maintain new and existing sources, because sources would reasonably believe that the Government would reveal their identities. (2) Review Board disclosure of intelligence sources may subject the sources, their friends, and their families to physical harm, ridicule, or ostracism.

[review meeting tapes to determine what Board actually thought of these arguments.]

Foreign Counterintelligence Activities Generally

As a general rule, the Review Board believes that most aspects of the FBI's foreign counterintelligence activities against Communist Bloc countries during the cold war are well-known the public, are of high public interest, and are not eligible for postponement pursuant to § 6(1) of the JFK Act.

In its position paper, the FBI defined "intelligence activities" as "intelligence gathering action or techniques utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest." The FBI's primary argument in support of its request for continued secrecy for intelligence activities was that disclosure of specific information describing intelligence activities would reveal to hostile entities the FBI's counterintelligence targets, measures, and priorities, thereby allow hostile entities to develop countermeasures.

[discussion of Board's response to FBI's general argument -- read meeting transcripts.]

To the extent that the information in the proposed redaction does not meaningfully contribute to the understanding of the assassination, the Review Board is more willing to allow the FBI to postpone direct discussions of FCI activities against non-Communist Bloc countries. With regard to the FBI's "Segregated Collections," the Review Board stated,

It is presumed that the FBI will, at least partially, carry over its post-appeal standards for disclosing foreign counterintelligence activities targeting Communist-bloc nations. To the extent that the HSCA subjects reflect foreign counterintelligence activities against other nations that have not been addressed by the Review Board in the "core" files, the FBI will be allowed to redact direct discussion of such activities, unless the information in the proposed redaction meaningfully contributes to the understanding of the assassination.

Technical Sources

In its appeals, the FBI requested that the President override the Review Board's decisions to release information in a number of documents that related to electronic intercepts of telephone and teletype communications involving Communist Bloc officials.

The FBI's use of non-human sources or methods (e.g., electronic surveillance and "black bag jobs") in foreign counterintelligence operations against Communist Bloc countries diplomatic establishments and personnel is, in many aspects, a matter of official public record. The FBI appealed to the President a number of Review Board decisions involving non-human sources or methods. The Review Board staff called to the attention of the President those prior disclosures that we believed were relevant to deciding the issues on appeal.

Originally, the FBI's position on appeal was that, at least in some cases, the symbol number and much of the information obtained from the corresponding source or method required postponement. In late 1996, the FBI withdrew the first two of its pending appeals, including some records in which the Review Board voted to release information obtained from a technical source. [discussion of Board's interpretation of withdrawal?]

Classified Symbol and File Numbers for Technical Sources (usually electronic surveillance, or ELSUR)

As a general rule, the Review Board agrees to postpone until the year 2017 symbol and file numbers for technical sources provided that the source is still properly classified pursuant to the current Executive Order. The Review Board releases classified symbol and file numbers for technical sources if the number has been previously released in a similar context, or if the source is of significant interest to the public. The Review Board agreed that the phrases, "source symbol number" and "source file number" would be adequate substitute language.

Information about Technical Sources

The Review Board releases all general information and some specific information (or operational details) regarding technical sources on Communist Bloc countries' diplomatic establishments and personnel. "General" information is information that the FBI obtains from its technical sources on Communist Bloc countries' diplomatic establishments and personnel, including transcripts from electronic surveillance. "Specific" information is information regarding installation, equipment, location, transmittal, and routing of technical sources. The Review Board evaluates "specific" information about technical sources on a case-by-case basis, agreeing to sustain postponements provided that the FBI proves that the "operational detail" at issue is

currently utilized and not officially disclosed.

For that material that does not contribute in a meaningful way to the understanding of the assassination, the Review Board releases as much information as possible about the FBI's use of technical sources in its foreign counterintelligence activities against non-communist bloc countries, but the Review Board will allow the FBI to protect the identity of the country that is the target of the FBI's surveillance. The Review Board is more willing to protect specific details regarding installation, equipment, location, transmittal, and routing of technical sources where the FBI can prove that the source currently requires protection and that the Government has not officially disclosed the source.

Other Classified File Numbers

The Review Board releases classified file numbers when they the file number reveals information about foreign counterintelligence activities against Communist Bloc countries. The Review Board has voted to protect classified file numbers where the FBI has provided particularly compelling evidence in support of its request for postponement. The primary factor that the Review Board considers in deciding to postpone a particular classified file number is whether the FBI can show that it has a current and ongoing need to protect the number.

For that material that does not contribute in a meaningful way to the understanding of the assassination, the Review Board agrees to protect classified file numbers for non-technical sources.

Information that Reveals an Investigative Interest in a Communist Bloc Diplomatic Establishment or Personnel

The Review Board releases information that reveals that the FBI has an investigative interest in Communist Bloc countries' diplomatic establishments or personnel. For example, the Review Board routinely releases case captions such as "FCI-R" (foreign counterintelligence-Russia), "FCI-Cuba," "FCI-Czechoslovakia," and "FCI-Poland."

As a general rule, the Review Board agrees to protect information that reveals that the FBI has an investigative interest in a non-Communist Bloc foreign diplomatic establishment or in foreign personnel. In those cases where the Review Board determines

[insert discussion of "Z-coverage" and covert examination of financial records and bank accounts as subsection of "investigative interest" section]

Section 6(2): Living Informants

. . . the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person

FBI Issues

Informant Postponements

The FBI initially offered sections 6(2) and 6(4) as justification for continued protection of informant identifying information. Section 6(2) clearly requires that the Bureau prove that the informant is living and that the informant faces a substantial risk of harm if the information is released. Because section 6(2) requires such specific evidence, the FBI quickly realized that section 6(4) offered a better rubric for requesting that the Board postpone informant names and identities.

So, the FBI categorically has decided to rely on Section 6(4) for informant postponements, and not Section 6(2) -- even though most of the records, as originally processed by the FBI, refer to both subsections in support of informant postponements.

Despite the Bureau's position that it need not prove that informants were alive, the standards set forth by section 6(2) clearly did affect on the Board's decision making on informants. See the analysis of section 6(4) below.

Section 6(3): Personal Privacy

. . . the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest

The Review Board began its document review work in its closed meeting on January 25, 1995. At that meeting, the Review Board discussed personal privacy information in four Warren Commission records, but did not vote on the four records at that meeting, opting instead to defer final decision on the records. On March 6th and 7th, 1995, the Review Board staff presented to the Review Board a briefing book on personal privacy postponements. The Board's General Counsel provided the Board with a memorandum that identified several types of information that would potentially implicate privacy concerns. The Review Board discussed the scope and intent of section 6(3) and how the personal privacy provisions of the JFK Act might apply to eighteen (18) sample documents. At the end of the meeting, the Review Board again decided that it would defer a vote on the records and on the personal privacy postponements in general.

CIA Issues
FBI Issues

During the course of the Review Board's work, the Board almost never agreed to sustain agency's requests for postponements on personal privacy grounds. The primary exception to the Review Board's policy to release records with privacy postponements is social security numbers. The Review Board determined that the public interest in disclosure of social security numbers was so small that any risk of harm would outweigh it. Accordingly, the Board routinely protects social security numbers throughout assassination records it reviews.

In one case, the FBI appealed to the President the Review Board's vote to release information that the FBI requested be postponed on personal privacy grounds.
[discussion of privacy appeal]

In the Segregated Collections, the FBI rarely requests that the Review Board sustain privacy postponements, and so the FBI unilaterally releases the information that would fall into the category of "personal privacy" information. In some Segregated Collection records, the Review Board agrees to postpone personal privacy information where agencies provide the Review Board with evidence that the person in question is alive, living in the same area, the public interest in the information is extremely low, and the individual would truly suffer a substantial intrusion of privacy if the Board releases the information. For example, the Review Board agreed to sustain the postponement of the identity of a 13 year old girl who was a rape victim. The girl in question was the niece of an organized crime figure (who was himself only of marginal relevance to the assassination story) and her story appeared in the organized crime figure's FBI file.

Section 6(4): Confidential Relationships Between Governments and Cooperating Individuals or Cooperating Foreign Governments

. . . the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest;

CIA Issues

FBI Issues

Informant Postponements

The Review Board considers a number of factors in determining whether to protect or release an informant's identity:

- (1) the significance of the information that the informant provided to understanding the assassination;
- (2) the importance of the identity of the informant to assessing the accuracy of the reported information; and
- (3) the significance of the threat of harm to the informant from disclosure, considering the following:
 - (a) whether the informant is still living;
 - (b) if the informant is still living, whether the informant is still living in the same area;
 - (c) the time period during which the informant provided information to the FBI;
 - (d) the type of information the informant provided;
 - (e) the level of confidentiality that existed between the FBI and the informant at the time that the informant provided the information;
 - (f) any specific evidence of possible harm or retaliation that might come to the informant or his or her relatives;

Although no one factor proved to be dispositive in every case, the Board considered certain factors to be more important than others in making decisions to release records.

For example, to the extent that the FBI confirmed that an informant is deceased, the Board released the informant's identity in all but one document in which the FBI made a convincing argument that the deceased informant's relatives would almost always release the informant's identity. Similarly, if disclosure of a particular informant's identity would shed substantial light on the events surrounding the assassination, the Board would release the informant's identity even where the FBI provided excellent evidence in support of its request to maintain the confidentiality of its relationship with the informant.

The Review Board first considered informant postponements in its meeting on May 2nd and 3rd, 1995. [fill in from transcripts.] The FBI's initial evidence in support of informant postponements consisted of a briefing that FBI officials gave to the Review Board, followed by the FBI's "position papers" on confidential informant postponements. In the position paper, the FBI distinguished among informants, explaining that the FBI has a number of different types of informants who are distinguishable according to the type of information they provide to the FBI and according to the level of confidentiality that existed between the FBI and the informant at the time that the informant provided the information.

[review meeting minutes, transcripts, and tapes to fill in FBI arguments and Board's discussions]

After hearing the FBI's general policy arguments, the Review Board followed the same approach that it did with all other postponement issues -- it informed the FBI that it interpreted the "clear and convincing" evidence standard to require the agencies to provide very specific evidence tailored to individual postponements . Eventually, the FBI eliminated general policy arguments from its evidence submissions and began to provide evidence in support of informant postponements on standard forms titled "Informant Postponement Evidence Form" (attached as Exhibit D). Once the Review Board received the FBI's specific evidence, it started to develop a group of guidelines for the review of informant postponements.

Effect of Prior Disclosure of Informant Relationship

Where a person's informant relationship with the FBI has already been made public, the Review Board continues to release the fact of the relationship.

If the name of an informant in a particular record had already been released in a context that *disclosed the informant relationship with the FBI*, then the staff recommended that the Review Board release the name. If an informant symbol number in a particular record had already been released in a context where the same informant symbol number was providing the same information as in the record at issue, the staff recommended that the Review Board release the symbol number.

As a practical matter, both the FBI and the Review Board made an effort to track the names and symbol numbers of FBI informants whose relationships with the FBI had already been made public. When Review Board staff members encountered informant names or symbol numbers that were eligible for postponement, staff members researched whether the name or symbol number had already been released. Similarly, the FBI maintains and checks an informant card file that tracks those informant names and symbol numbers that have been publicly disclosed and in what contexts.

Individuals Identified as People Who Requested that their Identity be Protected

Where an individual provides information to the FBI and requests that the FBI protect his or her identity, *but the FBI provides no evidence of an ongoing confidential relationship with the individual*, the FBI will release the name of the individual unilaterally.

When the FBI first began to present evidence to the Review Board in defense of its attempts to protect its informants, it asked that the Review Board protect the identity of any individual who either expressly or implicitly requested confidentiality when providing information to the Bureau. Persons who provide information in exchange for express promises of confidentiality may include neighbors or other acquaintances of a subject of

investigation, as well as employees of state and local governments, financial institutions, airlines, hotels, etc. . . . According to the FBI,

“Where such a promise is given, documents containing such information will contain the name of the person providing the information as well as language specifically setting forth the fact that confidentiality was requested. No file is opened on such persons and no symbol numbers are assigned to protect their identities.”

FBI Memorandum, FBI Informant/Confidentiality Postponements, p. 3.

Initially, the FBI’s policy was to protect “the identities of persons who gave the FBI information to which they had access by virtue of their employment,” regardless of whether “their providing the information . . . involve[d] a breach of trust,” provided that the person in question requested confidentiality. Moreover, the FBI implied that, even where a request for confidentiality is not explicit on the face of the document, the identities of such persons will be withheld in cases where their providing the information to the FBI involved a “breach of trust”: (e.g., a phone company employee who gives out an unlisted number.)

The Review Board rejected the FBI’s argument and voted to release the names pursuant to Section 6(4) of the JFK Act. Section 6(4) requires that the FBI provide clear and convincing evidence that disclosure would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual. That the individual lacks one of the Bureau’s many informant designations (e.g., PSI, PCI, panel source, established source, informant symbol number) suggests that the individual did not have an ongoing relationship with the FBI. To the extent that FBI believes that a particular “protect identity” source did have an ongoing relationship with the FBI, it may provide evidence to the Review Board of the relationship. Without the benefit of such evidence, the Review Board assumes that “protect identity” sources are not sources with an “understanding of confidentiality currently requiring protection.” The Review Board learned that FBI agents often offer confidentiality as a matter of course to interviewees, whether or not the individual requests or requires confidentiality. Eventually, the Review Board and the FBI agreed that the FBI would release the names of these individuals unilaterally.

Informant Names

“Named informants” includes people whose names appear in assassination records and who had some type of ongoing informant relationship with the FBI. The FBI records often refer to such informants as “PSIs” or “PCIs,” but “established sources,” “panel sources,” and others might fall into the category of “named informants.” The Review Board attempted to categorize informants according to the level of confidentiality that existed between the FBI and the informant. The Review Board’s general rules for different types of informants follow.

In those cases where the Review Board agrees to protect an informant's name and specifically-identifying information, the Review Board replaces the name with the substitute language "Informant Name" and the identifying information with the substitute language that specifically refers to the redacted information (e.g. phone number, street address, informant file number, informant symbol number.)

"Negative Contacts" (Informant provided no assassination-related information)

If the FBI confirms that the informant is still alive, the Review Board agrees to protect for ten (10) years the informant's name, and any specifically-identifying information (e.g., phone number, street address, "case number" part of file number, "numeric" portion of the informant's symbol number).

Once the FBI began to fill out the "Informant Postponement Evidence Forms," the Review Board and the FBI agreed that the FBI could adequately identify an informant as still living if the informant is identified through current information with a living person with the same name and other specifically identifying information, such as date of birth or social security number.

In those cases where the FBI can not confirm that the informant is still alive, the Review Board routinely releases the name and any accompanying identifying information.

With regard to the "negative contact" informant issue, the Review Board and the FBI struggled to decide how to treat handle these records that were of such low public interest. The large number of "negative contact" informant reports in the JFK assassination records at the FBI is due to the widespread and relatively comprehensive nature of the FBI's JFK assassination investigation. In the days following the President's death in 1963, the Director of the FBI requested that all FBI agents check with their informants in an effort to produce leads for the investigation. Of course, most of the FBI's informants knew little or nothing about the events surrounding the assassination, and so they provided "negative" reports. The Review Board clearly wished to provide to the public an accurate picture of the FBI's activities in the days following the assassination, but requiring the FBI to research each "negative contact" symbol number informant seemed unnecessary and of little to no public interest. Eventually, the FBI agreed that it would unilaterally release all unclassified negative contact symbol number informants (on the theory that, with no additional information from or about the informant, no researcher could ever determine the identity of the informant) and the Review Board agreed that it would protect those negative contact named informants (on the theory that, since they provided no information about the assassination, there was no point in recklessly releasing the identities of hundreds of FBI informants.)

"Positive Contacts" (Informant provides some

assassination-related information)

In those cases where the FBI can not confirm that the informant is still alive, the Review Board routinely releases the name and any accompanying identifying information.

The Review Board adopted a case-by-case approach to those informants that the FBI confirms as still living, considering the factors listed above. To the extent that the Review Board voted to postpone the identity of a positive contact informant, it voted to postpone it for ten (10) years.

Informant Symbol Numbers and File Numbers

As a general rule, the Review Board routinely agrees to postpone for ten (10) years the “numeric” portion of informant symbol numbers and the “case number” portion of informant file numbers, *provided* that the informant’s symbol number has not already been made public. The Review Board uses the phrases “informant symbol number” and “informant file number” as substitute language.

Routine exceptions to this rule occur in two types of documents: *First*, in documents that refer to an informant by both name and symbol (and/or file) number, the Review Board considers the symbol number to be specific information that might identify an informant; *Second*, the FBI agrees to unilaterally release the entire symbol number for “unclassified negative-contacts” -- those FBI informants who were asked about a particular subject, but had no “positive” information.

The non-routine exception to the general rule arises in documents in which the unredacted information in the document *unambiguously* identifies the informant. Such documents are not routine because the Board will not agree to protect the numeric portions of the informant’s symbol and file number in a document that otherwise reveals the informant’s identity.

When the FBI has an informant who provides “valuable and sensitive information to the FBI on a regular basis” (*quoting*, FBI position paper), the FBI may assign a “symbol number” to the informant. The informant does not know his or her symbol number. Rather, the symbol number is an internal number that allows an FBI agent to write reports about the informant and information that the informant provides to the FBI without writing the informant’s name. Most informant symbol numbers consist of three parts -- the prefix indicates the field office to which the informant reports (e.g. “NY” for New York, “DL” for Dallas, “TP” for Tampa), the numeric portion corresponds directly to a particular informant, and the suffix indicates whether the informant usually provides the FBI with information about criminal (C) or security (S) cases.

The Review Board came to believe that, in the majority of the FBI’s assassination records, disclosure of the numeric portions of the symbol number (and the numeric

portions of the corresponding informant file) were of little public interest. Rather than require the FBI to research the status of every symbol number informant, the Review Board determined that it would allow the FBI to protect the numeric portions of informant symbol numbers and file numbers, reserving the right to request evidence on any informant the Review Board considered to be of significant public interest.

In support of its argument to keep the symbol and file numbers for informants secret, the FBI argued that the “mosaic theory” justified postponement of any portion of an informant’s symbol number. The Review Board rejected the mosaic theory as the sole basis for postponement of symbol numbers, or for any other particular postponement issue, simply because the mosaic theory itself contains no limiting principle. However, the JFK Act requires the Review Board to balance any incrementally greater risk that the release of further information will lead to disclosure of (and harm to) the informant against the public interest in releasing the information. In striking this balance, the Review Board gave great weight to the public interest in the information provided. In the “core and related” files, the Review Board did not postpone the information provided by symbol number informants even though it would postpone the numeric portion of the symbol number.

The Review Board has consistently released the prefixes and suffixes of informant symbol numbers, even in cases where it sustains the “numeric” part of the symbol number.

Thus, for the hypothetical symbol number “NY 1234-C,” “NY” and “-C” would be released, even if the Review Board sustained postponement of the “1234.” After the Review Board’s action, researchers would know that the informant was run by the New York City field office and reported on criminal (rather than “security”) cases, but may not know the informant-specific numeric portion of the symbol number.

In the “core and related” files, the Review Board did not postpone any part of a “T-symbol” number. Rather, the FBI began to unilaterally release these “temporary symbols” under the JFK Act after the Review Board’s first few discussions about informant postponements.

With regard to unclassified “negative contact” symbol number informants, the FBI agreed to unilaterally release all unclassified negative contact symbol number informants, based on their belief that the definition of a “negative contact” symbol number informant is an informant about which no specifically identifying information appears in the document to identify the informant, so release of the symbol number would not risk disclosure of the individual’s informant relationship with the FBI.

Foreign Liaison Postponements

[need to review all appeal records and tell the story of appeal]

[then explain our current approach]

Section 6(5): Presidential Protection

the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

Postscript: Information Exempt from the JFK Act

Section 10: Materials Under Seal of Court

FBI Records

Grand Jury Material

Records Under Seal that are not Grand Jury records

Title III records (ELSUR after Congress passed Title III)

[other agencies]

Section 11(a): Tax Return Information

Internal Revenue Service Records

Social Security Administration Records

Tax Return Information in the Assassination Records of Other Executive Branch Agencies