

BY HAND DELIVERY

September 8, 1998

Randy Deitering
Acting Executive Director
President's Foreign Intelligence Advisory Board
Old Executive Office Building--Room 340
Washington, DC 20502

Re: PFIAB Records and the JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Deitering:

I am enclosing a complete set of the PFIAB records that the Review Board staff has marked to reflect its recommendations to the Review Board. As promised, the enclosed records reflect the review of all government offices that had equities in the records except, of course, PFIAB. Pursuant to our discussions, the Review Board will vote on these recommendations at their meeting scheduled for September 14, 1998.

The Review Board has considered your request that we describe, in writing, the relevance of each PFIAB record to the assassination, the public interest that will be served if the Review Board releases the record, and the extent to which the information included in the record is not available from other sources. I am not enclosing with this letter the writing that you request.

The *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act) clearly gives the Review Board the authority to designate government records as assassination records and require government offices to process the records for transmission to the National Archives and Records Administration.

Section 9(c)(1) of the JFK Act reads, in relevant part,

The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the absence of clear and convincing evidence that--(A) a government record is not an assassination record; or (B) a government record or particular information within an assassination record qualifies for

postponement of public disclosure under this Act.

The JFK Act presumes that assassination records will be disclosed unless agencies provide the Review Board with clear and convincing evidence that they should not be disclosed. The PFIAB apparently reads the Act to mean exactly the opposite. According to PFIAB, the Act says that assassination records will *only* be disclosed if the *Review Board* provides clear and convincing evidence that they should be disclosed.

As you may know, the Review Board has reviewed and released thousands of the government's assassination records since 1994. If PFIAB's reading of the JFK Act were accurate, and the JFK Act indeed required the Review Board to provide *in writing* clear and convincing evidence of (1) the relevance of every assassination record to the assassination, and (2) the public interest that would be served by the release of every assassination record, the Board would never have been able to complete its work.

However, even though the JFK Act does not require the Review Board to assist government offices in understanding the relevance of records to the assassination, the Review Board *has* assisted PFIAB in understanding the relevance of its records. On May 27, 1998, former Executive Director T. Jeremy Gunn wrote to PFIAB Counsel Frank W. Fountain and explained both the requirements of the JFK Act *and the relevance of PFIAB records to particular assassination-related subjects*. In addition, the Review Board met with PFIAB Chairman Warren Rudman on August, 25, 1998, and discussed with him the relevance of PFIAB records to assassination-related subjects, and further explained that the information contained within the PFIAB records is not available from other sources in that form.

We encourage you to refer to the terms of the JFK Act, Jeremy Gunn's May 27, 1998, letter to Frank Fountain, and your notes from your August 25, 1998, visit to the Review Board's offices for answers to the requests that you make in your letter. If you or your staff have any further questions, please feel free to contact me.

Sincerely,

Laura Denk, Esq.
Executive Director

Enclosure

cc: Mr. Samuel Berger, Assistant to the President for National Security Affairs
Mr. Charles F. C. Ruff, Counsel to the President