

Assassination Records Review Board

600 E Street NW ■ Second Floor ■ Washington, DC 20530

MEMORANDUM

August 3, 1995

TO: *Jack Tunheim*

FROM: *David G. Marwell*
Executive Director

SUBJECT: *Continued Service on the Board*

I am enclosing a memorandum from Jeremy Gunn that addresses the legal issues relating to your serving as both a Federal Judge and a member of the Review Board. Jeremy argues convincingly that there is no Federal law, constitutional concern, or ethical cannon that would bar your continuing to serve on the Board after your confirmation as a Federal Judge. I would like to address in this memo the practical implications of a decision that would force you to resign from the Board.

The Review Board has just completed its first phase of operation. We are now a functioning organization with a complete infrastructure. Through a long and arduous process, the Board has been able to define the important issues that confront it and has developed policies and procedures to address them. The serious discussions, consensus-building, and accumulation of vast amounts of technical and historical knowledge has provided the Board with a common basis for approaching the review of records and the evaluation of evidence proffered by other Federal Agencies.

We have only two more years to complete a hugely complex and daunting task. There is absolutely no margin for the kind of disruption that would follow the removal and replacement of the Board's Chair. I know that I underestimated the amount of time it would take to get the Board to its current position of a functioning review panel able to handle the large volume of redacted records that await us. I know that I am not overestimating the impact of your leaving the Board if I suggest that our work would suffer a setback of many months. With only five members on the Board, the role of any given member has significant weight. As the Chair, you play an even greater role than that of your colleagues. Were you to vanish from the scene—even if you could be replaced immediately—our ability to complete our work on time would be significantly compromised.

Given the security requirements of our legislation, finding a replacement for you and getting him or her through the confirmation and clearance process will take a great deal of time. If everything went as quickly as possible, it would take a minimum of several months. Experience suggests it would take closer to a year. This delay, combined with the delays associated with the learning curve described above, would consume more than half of our remaining time. To accomplish what our legislation requires, we need 100% of all of our resources 100% of the time.

It strikes me that the arguments are clear. Since there is no legal or ethical bar to your remaining on the Board, and given the practical implications of your departure, it would be both unnecessary and extremely unwise to require you to step down.

August 3, 1995

Memorandum to Jack Tunheim

Attachment: Jeremy Gunn's Memorandum dated August 2, 1995

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