

November 27, 1996

VIA COURIER

Mr. Deval L. Patrick
Assistant Attorney General
Civil Rights Division
United States Department of Justice
Tenth Street and Pennsylvania Ave., NW
Washington, D.C. 20530

Re: United States Department of Justice Civil Rights Division's Compliance
With the JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Patrick:

Since 1994, the Assassination Records Review Board ("Review Board") has been working with a number of Federal agencies, including the Civil Rights Division of the United States Department of Justice ("Civil Rights Division"), to locate and publicly release records related to the assassination of President Kennedy. These actions have been taken pursuant to The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"). We have been working with Nelson D. Hermilla, Chief of the Freedom of Information/Privacy Acts Branch, as the principal representative of the Civil Rights Division in connection with its compliance with the JFK Act and have appreciated Mr. Hermilla's cooperation.

The purpose of this letter is to request your agency's cooperation in assisting the Review Board in discharging its responsibility of assuring Congress and the American people that the goals of the JFK Act have been accomplished to the greatest reasonable extent. We want to assure the American people that the United States Government has identified, located, and released all records relating to the assassination of President Kennedy. Indeed, one of the paramount purposes of the JFK Act is to certify to the public that the United States Government is not withholding relevant materials related to the assassination. *See, e.g., Assassination Materials Disclosure Act*, H. R. Rep. No. 102-625, Part 1, 102d Cong. 2d Sess. (1992) ("The Federal Government's failure to release official materials has contributed to numerous conspiracy theories and fueled charges of government complicity in the assassination . . . a salutary purpose is served in opening these files [relating to the JFK assassination] to allay the suspicion of government cover-up.").

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The Review Board has recently considered how it, along with the relevant federal agencies, can best demonstrate to the American public that a thorough, good faith, and diligent effort has been made to locate and release all remaining assassination-related records within the control of the United States Government (and that the Government is not hiding any such materials from public disclosure). Pursuant to the Congressional mandate under the JFK Act to "create an enforceable, independent, and accountable process for the public disclosure of such records," 44 U.S.C. § 2107 (2) (a) (3), the Review Board seeks to have the relevant federal agencies provide a complete and specific accounting of their efforts to locate and release assassination-related records, including a full explanation for any destruction of such records.

Accordingly, the Review Board requests that each relevant agency adhere to the formal compliance program (hereinafter "JFK Act Compliance Program") outlined below and devised by the Review Board pursuant to its powers under Section 7(j)(1)(A), (B), (C), (D), and (F) of the JFK Act. We are also requesting, by separate letters, that the Criminal Division, Civil Division, and the Office of Information and Privacy participate in the compliance program outlined below. We hereby request that you undertake the following measures by the dates provided (these dates were set in view of the fact that the Review Board's operations currently are scheduled to expire on September 30, 1997):

1. Designation of Agency Compliance Official (or officials) and statement of intent to comply with the JFK Act. We request that by December 9, 1996 the Civil Rights Division designate an Agency Compliance Official who ultimately will be responsible for ensuring that the Division has complied with its obligations under the JFK Act, including the identification, location, and organization of assassination records and the transmission of those records to the National Archives. Although the Review Board assumes that Mr. Hermilla will serve in this position, we nevertheless await the Civil Rights Division's formal confirmation. If necessary, the Civil Rights Division may designate additional persons with knowledge of the measures that have been undertaken to locate assassination records.

We also request that by December 9, 1996, the agency convey its agreement to adhere to the compliance procedures outlined in this letter. To the extent that any compliance procedure described below appears to be unreasonable or to present difficulties that we may not have anticipated, please explain why and make alternate suggestions to us.

2. Initial Statement of Compliance. We request that the Agency Compliance Official

prepare, by January 6, 1997, an initial written statement of the agency's compliance with the JFK Act ("Statement of Compliance"), setting forth the steps that the agency has taken to locate and process assassination records. The Review Board recognizes that many of the relevant federal agencies, including the Civil Rights Division, have previously written letters to the Review Board apprising it of their progress at various stages of identifying and processing assassination records under the JFK Act. The Statement of Compliance, while it may include information previously reported to the Board, is to be the agency's comprehensive and final report to the American public of what it has done to locate records relating to the assassination. This Statement of Compliance shall include, to the fullest reasonable extent, the following information:

- a. A complete description of all steps that your agency took to identify and locate assassination records including, but not limited to, an identification of the major record collections and files that were consulted in the agency's search, any departmental file indices consulted, the names and titles of the persons who were responsible for conducting the searches, the physical locations of the records that were searched, the off-site storage facilities (*e.g.*, Federal Records Centers) searched, the specific steps that were taken to locate and retrieve materials in archives, and any other criteria used by the agency to locate assassination records.

We appreciate that the Civil Rights Division previously completed the Review Board's Assassination Records Survey and also provided the Review Board with a status report, by letter, of the Division's processing of assassination records under the JFK Act. *See* July 27, 1994 Letter from Deval L. Patrick and Nelson D. Hermilla to William Joyce enclosing the completed Assassination Records Survey; September 18, 1995 Letter from David G. Marwell to Mr. Hermilla and Mr. Hermilla's September 29, 1995 Letter Response (attached hereto). The Compliance Statement should, of course, contain the information reported in the Division's prior letter response. In addition, we ask that the Division provide any new information as to its compliance with the JFK Act.

- b. To the extent that any assassination-related records have been destroyed by the Division, DOJ or any DOJ official, a full

and specific explanation of the circumstances surrounding the destruction of such records. We acknowledge that the Civil Rights Division previously provided a written explanation for the destruction of certain assassination-related records. *See* October 26, 1995 Letter from David G. Marwell to Nelson D. Hermilla and Mr. Hermilla's March 4, 1996 Letter Response (attached hereto). This explanation should be included in the Statement of Compliance along with any other new information regarding this destruction or any other destruction of assassination related records.

- c. The status of remaining work that you can now identify that needs to be completed by the Division in order to comply fully with the JFK Act, including an identification of the categories of records that must be processed and transmitted to the National Archives, a description of any additional searches for files that must be done, and the projected date(s) for completion of these tasks.
3. Review Board Interview With Agency Compliance Official (or Officials). Shortly after the submission of the agency's written Statement of Compliance, we ask that the Agency Compliance Official (as well as any persons who helped prepare the Division's initial Statement of Compliance) be made available to the Review Board for an interview regarding the location of agency assassination records. The interview will be used as an opportunity to resolve any outstanding questions regarding the Division's search, including any follow-up tasks to be completed by the Division. The Review Board anticipates that these interviews will be conducted in January and February 1997.
4. Submission of Final Agency Declaration of Compliance. By July 1, 1997, the Division should expect to complete the process of identification, location, and declassification of its assassination records at which time it should submit to the Review Board a final declaration certifying, under oath, its compliance with the provisions of the JFK Act (the "Final Declaration of Compliance"). This final declaration shall set forth all of the information initially set forth in the initial Statement of Compliance and shall also supplement the initial Statement of Compliance by detailing any further steps that were conducted by the agency in identifying and locating assassination records. The agencies' Final Declarations of Compliance will be included in our final report to Congress.

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5. Compliance Depositions. Starting on or about August 1, 1997, the Review Board, pursuant to its statutory authority, may conduct depositions, under oath, of the Agency Compliance Official along with any other agency officials with responsibility for complying with the JFK Act. The decision to take a compliance deposition of an agency will be made on a case by case basis, taking into account the importance of the agency to the work of the JFK Act and the sufficiency of the agency's efforts to account fully for its compliance with the JFK Act. In the event that the Review Board decides to commence a compliance deposition of an agency, the responsible agency designee(s) will be expected to testify under oath with respect to any and all issues relating to the agency's record search, including the scope of the search, the identity of files searched, the destruction of any relevant records, and any other matters set forth in the Final Declaration of Compliance. Any person obligated to appear for a deposition under oath shall be fully entitled to obtain legal representation.

We look forward to receiving your initial response, by December 9, that designates your Agency Compliance Official and includes your statement regarding your position with respect to the provisions outlined in this letter. To the extent that you have any questions or suggestions regarding the Compliance Program, please do not hesitate to contact our General Counsel, T. Jeremy Gunn, at (202) 724-0088.

Thank you for your cooperation with our work.

Sincerely,

David G. Marwell
Executive Director

Enclosures

cc: The Honorable Janet Reno, Attorney General

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The Honorable Jamie S. Gorelick, Deputy Attorney General
The Honorable Stephen R. Colgate, Assistant Attorney General
for Administration

Mr. Nelson D. Hermilla, Chief,
Freedom of Information/Privacy Acts Branch,
Civil Rights Division