June 7, 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 continued postponement of the appealed information is necessary to avoid harming current intelligence-gathering. Rather than responding to the Review Board's invitation to demonstrate current operational value in the redacted information, the Bureau asserted a vague harm that could be asserted with equal plausibility about ***any*** intelligence-related document.[1]

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. The first objection simply ignores our citations to

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[1]For 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. Rather than offering this general assertion, the Bureau should have shown ***how*** the adversary could benefit from the disclosure.

official sources such as the Church Committee (*see* Review Board Response at 13) and already-released FBI and CIA records of various intercepts (*see id.* at 16, 17 n.33; Exhibit 17). The objection based on "generality" is beside the point. 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 agency seeking postponement must prove that disclosing such an intercept would harm current intelligence activities or foreign relations. 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 a ***particular*** intercept. The Bureau has not attempted to show any specific harm from the specific intercepts.

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 the Act's 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 would be pleased to provide any additional information that you might request.

Respectfully submitted,

David G. Marwell
Executive Director
cc: The Hon. Warren M. Christopher

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[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.").

The Secretary of State
U.S. Department of State
Washington, D.C.

The Hon. Louis J. Freeh
The Director
The Federal Bureau of Investigation
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The Hon. Jamie S. Gorelick
The Deputy Attorney General
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