Chapter 4:
The Review Board's Guidelines for Releasing and Postponing Information Under the JFK Act

A. Introduction

When it first assembled, the Review Board faced the daunting task of setting the standard for the declassification of hundreds of thousands of federal records. These records included those under the purview of the CIA's Directorate of Operations (DO), which traditionally has been exempt from declassification review.[1] In addition to the raw intelligence material included in the DO's files, CIA records also included sensitive records from the Counterintelligence Staff, the Office of Personnel, and Security. The Board also confronted the task of reviewing records from the National Security Agency, most of which were classified at the "Sensitive Compartmented Information" (SCI) level and had never previously been subject to any review outside of NSA. The Review Board ultimately reviewed for declassification some of the most secret records from many other agencies and offices, including FBI source files and Protective Research Section files of the Secret Service.

Although confronted with this daunting challenge, the Review Board effectively received little guidance either from past governmental experience or from Congress in the legislative history behind the JFK Act. **[short explanation as to why little guidance from FOIA, DOE, Ex. Order. NARA.]**

1. Section 6 of the JFK Act and its legislative history

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[1]The Directorate of Operations (DO), which in the 1960s was the Directorate of Plans, is the covert part of CIA.

Congress also provided little guidance for the review of records beyond the words of Section 6 of the JFK Act itself. The words of Section 6 proved, however, to be of significant importance to the Review Board and for the accomplishment of its work. As applied by the Review Board, the words of Section 6 established an entirely new standard for the release of governmental information:

JFK Act Section 6: Grounds for postponement of public disclosure of records.

> 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 --
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> (1) 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 –
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> (A) an intelligence agent whose identity currently requires protection;
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> (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
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> (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;

(2) 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;

(3) 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;

(4) 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;

(5) 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.

2. The Review Board's approach to review of records

[Took the words of the statute seriously.]
[Issued guidelines.]

B. Guidelines for Release and Postponement of Information

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 information in postponement of disclosure of 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.

[tjg renumber]

Standard of Proof: Clear and Convincing Evidence

Text from Section 6:

> *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:*

Review Board guidelines. For each recommended postponement, the JFK Act requires an agency to submit "clear and convincing evidence" that one of the specified grounds for postponement is present.[2] The Review

[2]JFK Act, §§ 6, 9(c)(1).

Board required agencies to submit specific facts in support of each postponement, according to the Review Board's guidelines for each postponement type.

Commentary. Although the FBI and the CIA in particular argued that the clear and convincing evidence standard could be satisfied by a general explanation of those agencies' positions in support of postponements, the Review Board determined that the clear and convincing evidence requirement was a document-specific one. Thus, the Board required agencies to present evidence that was tailored to individual postponements within individual documents.

The JFK Act clearly required agencies to provide "clear and convincing evidence" in support of its postponements, but it did not establish a mechanism for when and how such evidence should be presented. The legislative history provides a clue as to Congress' intent: "[T]o the extent possible, consultation with the government offices creates an understanding on each side as to the basis and reasons for their respective recommendations and determinations."[3] The Review Board did consult with Government offices to determine fair, efficient, and reasonable procedures for presenting evidence.

The Review Board began its review of assassination records by considering pre-assassination records on Lee Harvey Oswald. In an attempt to arrive at consistent decisions, the Board asked the staff to present the records on an issue-by-issue basis. In the case of the FBI records, the Review Board's views on the "clear and convincing evidence" standard came to light according the following chain of events. First, the Review Board slated a group of FBI records for review and notified the FBI of the meeting date at which it intended to vote on the records. The Review Board invited the FBI to present its evidence. Second, the FBI requested that it be allowed to brief the members of the Review Board. At the briefing, the FBI presented its position to the Board -- both in an oral presentation and in a

[3]S. Rep. No. 328, 102 Cong., 2d Sess. 31 (1992).

"position paper." The FBI's "position papers" (attached) summarized the FBI's general policy preferences in support of continued classification of certain categories of information. Third, the Review Board staff researched existing law on each of the FBI's "positions" and determined that the arguments that the FBI put forth in support of its JFK Act postponements were essentially the same arguments that the FBI offers to courts in support of its FOIA decisions. Of course, in legislating the declassification standards of the JFK Act, Congress intended for the JFK Act standards, and *not* the FOIA standards -- to apply. Aware of Congressional intent, the Review Board finally rejected the FBI's general policy preferences on the basis that the arguments did not constitute the "clear and convincing" evidence necessary to support a request for a postponement under Section 6. The FBI did appeal the Review Board's decisions to the President, but the Review Board's document-specific interpretation of the "clear and convincing" evidence standard ultimately prevailed.

"Rule of Reason." Of course, some assassination records are of great interest to the public. With regard to records that had a close nexus to the assassination, the Review Board was extraordinarily strict in its application of the law. For example, the Review Board voted to release in full nearly all of the information in the FBI's pre-assassination Lee Harvey Oswald file and the **[is there a CIA or other agency file we could use as an example here? The Lopez Report?]** because of the high public interest in that material. With regard to the FBI files, the FBI believed that its arguments were compelling enough to merit appeals to the President on nearly all of the Review Board's decisions on the pre-assassination Lee Harvey Oswald records. The FBI, the Review Board, the White House Counsel's Office, and ultimately the State Department spent a substantial portion of time resolving the issues that arose in the appeal process, and for those important records that were at issue, the Review Board considered its time well-spent. The Review Board similarly dealt with other key records and spent as much time as was necessary to deliberate and decide upon those records.

The postponement-by-postponement review at each Review Board meeting proved to be a rather slow process. In its January 1995 meeting, the Review Board reviewed, considered, and then did not vote on, four (4)

Warren Commission records. While the Review Board did need time to develop its policies, the Board's pace had to increase over time. In an effort to streamline its work, the Review Board consulted with Federal agencies such as the CIA and FBI to work out an approach for review of records that would allow the Review Board to make informed decisions, but not require agencies to spend hundreds of hours locating evidence for and providing briefings on each postponement within an assassination record.

The first step to developing a reasonable approach was for the Review Board to formulate general rules for sustaining and denying postponements. The Review Board's "guidance" to its staff and the agencies became a body of rules -- a Review Board "common law" -- which this chapter describes in Part B. Once the Review Board notified an agency of its approach on a particular type of postponement, the agency learned to present only those facts that the Review Board would need to make a decision. For example, with regard to FBI informants, the Review Board notified the FBI of what it considered to be the relevant factors in its decision-making. In other words, it defined for the Bureau what it considered to be "clear and convincing" evidence." Then, the Review Board worked with the FBI to create a one-page form titled an "Informant Postponement Evidence Form" that the FBI could use to provide evidence on an informant. The form allowed the FBI to simply fill in the answers to a series of questions about the informant in question, which in turn allowed the Review Board to focus on those facts that it deemed to be dispositive in a particular document. This approach had the added benefit of providing some consistency to the Review Board's decision-making.

A large number of records that the JFK Act defined as "assassination records" proved to be of very low public interest.[4] For those documents that were of little or no public interest, the Review Board modified its standards in two ways: *First*, for those records that truly had no apparent

[4]The JFK Act required the Review Board to process all records that were "made available" to the Warren Commission and the Congressional Committees that investigated the assassination, whether or not the records were used by the Commission or the committees. Many of these records, while interesting from a historian's perspective, are not closely related to the assassination.

relevance to the assassination, the Review Board designated the records "not believed relevant" ("NBR.") The "NBR" guidelines allowed the Review Board to remove irrelevant records from further consideration. Records that the Review Board designated "NBR" were virtually the only groups of records that the Review Board agreed to postpone in full. Thus, the Review Board was always extremely reluctant to designate records "NBR" and only did so on **[need to count NBR memos]** occasions. *Second*, for those records that were not immediately relevant, but shed at least some light on issues that the Congressional Committees that investigated the assassination explored as potentially relevant to the assassination, the Review Board created the "Segregated Collection Guidelines[5]." The Segregated Collections records, although marginally relevant, were not appropriate for "NBR" designation, as the "NBR" Guidelines would have resulted in withholding records in full. Instead, the Board passed the "Segregated Collection Guidelines," which ensured that the Review Board staff would review every page of the marginally relevant records, but would not require agencies to present the same amount of evidence in support of postponements. Where the Review Board's standards differed between core files and Segregated Collection files, the guidelines set forth below note the distinction.

Thus, throughout its tenure, the Review Board sought to be vigorous in applying the law, but, in order to complete its work, found it necessary to employ a "rule of reason."

1. Intelligence agents

Text from Section 6(1)(A):

[5] The regulations that the Review Board adopted on November 13, 1996, define "Segregated Collections" to include the following: (1) FBI records that were requested by the House Select Committee on Assassinations ("HSCA") in conjunction with its investigation into the assassination of President Kennedy, the Church Committee in conjunction with its inquiry into issues relating to the Kennedy assassination, the other Congressional Committees (such as the Pike and Rockefeller Committees) that investigated issues related to the assassination; (2) CIA records including the CIA's Sequestered Collection of 63 boxes as well as one box of microfilm records and the microfilm records (box 64) and several boxes of CIA staff "working files."

> *. . . clear and convincing evidence that 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*

a. CIA Officers

Review Board guidelines. 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.

Commentary. Review Board members confronted CIA employee names 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," CIA argued that 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 is bound by a confidentiality agreement to protect the relationship. Many of these former employees

objected to release of their former Agency affiliation, complaining that it violates this agreement and 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. But 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 presumption shifts to protect, if the individual retired under cover or abroad or if the individual objects to the release of his or her name when contacted. (CIA agreed to attempt to contact former employees.) . 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. In instances when the individual was important to the Assassination story further evidence was required to sustain a postponement. 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, Board 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.

b. "John Scelso" (pseudonym)

Review Board guidelines. 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.

Commentary. 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.

c. Information identifying CIA officers

Review Board guidelines. 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, but generic information released.

Commentary. This postponement was viewed as part of the CIA officer issue. Only that identifying information that was specific enough that it might reveal an identity that merited protection was redacted.

2. "Sources and methods"

Text of Section 6(1)(B) and (C):

> *. . . clear and convincing evidence that 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 --*
>
> *(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;*

a. CIA Sources

Review Board guidelines. 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 jeopardized or individual harmed by release of a name. If none of these criteria could be met the name 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.

Commentary. 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 Untied 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.

b. CIA pseudonyms

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

Commentary. Very early in the review process it was determined that, since pseudonyms were a sort of throw away identity, they could be released. The Agency offered little resistance to this release, a decision that CIA may have regretted in some instances later in the review. However, on the few occasions when CIA was able to demonstrate that release of a pseudonym was particularly sensitive, the Board sustained the postponement.

c. CIA cryptonyms

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

Commentary. Early phases of the review of cryptonyms highlighted the cultural differences between the Agency and the Review Board. For the Agency, cryptonyms were an operational method that required protection

despite the fact that CIA had years ago replaced most of the cryptonyms at issue. For the Review Board, cryptonyms, 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 cryptonyms and digraphs in the JFK context and the Review Board acknowledged that some sensitive cryptonyms required protection.

Early in the review process the CIA argued for the protection of all cryptonyms, even those such as ODENVY- the cryptonym 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 cryptonyms, the burden of proof was on the Agency, and CIA began to identify the cryptonyms 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 cryptonyms 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-cryptonyms -LI was the digraph for Mexico City at the time of the assassination- CIA argued for the postponement of all "LI" series cryptonyms 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 cryptonyms they considered more sensitive. When faced with cryptonyms that refer to sensitive operations, the Board opted for a contextual treatment of cryptonyms. Cryptonyms for some sensitive operations were released in many circumstances, but in other contexts when release of the cryptonym may reveal the sensitive operation, they were postponed.

The "crypt-by-crypt" review was productive and necessary for core records, but soon it became clear that this approach would not be possible for the entire collection since hundreds or thousands of different cryptonyms

appear in the assassination related records of the CIA. The solution was the postponement of the digraph and release of the rest of the cryptonym for cryptonyms outside of the LI, AM, and OD series. Thus, the majority of cryptonyms in the collection were released in full or released with the digraph protected. Sensitive cryptonyms for which CIA has provided convincing evidence are protected in full; For AM and LI cryptonyms in non-core files, the digraph may have been protected when [a] the cryptonym appears next to a true name that has been released; [b] when the cryptonym appears next to specific identifying information; [c] when convincing evidence has been provided of the need to protect.

d. CIA Slugline

Review Board guidelines. The slugline is releasable according to the same criteria applied to cryptonyms and digraphs.

Commentary. The slugline is a routing action indicator, composed of cryptonyms, 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 cryptonyms in the slugline were released elsewhere. An example can be found in the slugline RYBAT GPFLOOR. RYBAT is a cryptonym that means secret, and GPFLOOR was the cryptonym 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 defended 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.

e. CIA surveillance methods

Review Board guidelines. 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."

Commentary. 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 would reveal nothing about the type, scope or location of CIA operations 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.

f. CIA foreign installations

Review Board guidelines. All CIA installations related to the Mexico City story are releasable from 1960 through 1969. All remaining installations are releasable in the context of the Assassination story from the date of the Assassination to the publication of the Warren Commission Report, with the exception of a few installations for which CIA has provided convincing evidence of sensitivity,. In Oswald's 201 file, again with the exception of a few installations for which CIA has provided 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.

Commentary. 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 refer 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. Responding to CIA's 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 incomplete information. And the Board 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, Board members 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 driven 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 must be produced 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.

g. CIA domestic facilities

Review Board guidelines. 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.

Commentary. Very few CIA domestic facilities were at issue in the

review of CIA Assassination records. The vast majority are a matter of public record. For those that the Board postponed, they did so grudgingly, only after the CIA supplied strong evidence of a need to protect.

h. CIA prefixes (cable, dispatch, field report)

Review Board guidelines. 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."

Commentary. There was little specific debate on cable, dispatch and field report prefixes. They were considered during deliberations on the CIA installations to which they refer.

i. CIA job titles

Review Board guidelines. 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.

Commentary. CIA job titles were not generally viewed as requiring postponement, but the context in which they appeared did on occasion demand the redaction of the job title to protect other information that was protected.

j. CIA file numbers

Review Board guidelines. 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.

Commentary. The release of file numbers, particularly 201 file numbers, was another type of postponement that was released early in the review process with little resistance by the CIA. And as with pseudonyms, there were occasions later in the process when the Agency wished to sustain 201 numbers. On the rare occasion, the Board did sustain this type of postponement when the CIA was able to provide convincing evidence of a need to protect.

k. CIA official cover

Review Board guidelines. Official Cover was treated differently In records that were generated by Executive Branch agencies such as the CIA, than it was In documents created by Congressional entities, such as the HSCA. 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. In Congressional records, 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, subject to review on a case-by-case basis.

Commentary. When the issue of official cover was first considered by the Review Board, Board members viewed it as an open secret which they were prepared to release in JFK records. The Agency had a much different

perspective and was prepared to defend this issue to the President. After a long process of briefings and negotiations, the above solution was reached, a solution which is, frankly, a fig leaf through which anyone who knows the specifies of official cover can see.

l. Alias documentation

Review Board guidelines. The details of alias documentation were protected, but the existence and use of such documents was released. Thus, the specific pieces of identification that the CIA made available to its people and the means of producing that identification were redacted.

Commentary. The CIA defended the postponement of alias documentation as a currently utilized intelligence method that is vital to performance of intelligence operations. Further, the Agency argued that release of this information would add little, if anything, to the assassination story. Largely accepting this argument, Review Board members viewed the specifics of alias documentation to be of reduced public interest in terms of the Assassination story and did not insist that the Agency provide specific evidence on each piece of identification. Though releasing the names of a small percentage of the of the items of alias documentation might be possible without threatening the performance of CIA operations, the Board weighed the resources that would be required to research each item against the low pubic interest and concluded that such an effort would not be productive.

m. Human sources in FBI foreign counterintelligence

Review Board guidelines. The Review Board evaluates the need to postpone the identity of human sources in foreign counterintelligence operations on a case-by-case basis. Where the human source was a *foreign national*, the Review Board generally agreed to protect the individual's identity *unless* the individual's name is already known to the foreign government at issue. Where the human source was a *United States citizen interacting with foreign government officials,* the Review Board sometimes released the identity of the individual if the public interest in the informant was high. Where the human source was a *United States citizen interacting with other United States citizens*, the Review Board tended to treat the source more like other domestic

informants.

Commentary. 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 offered 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.

The Review Board's interpretation of the "clear and convincing" evidence standard required it to reject the FBI's general policy arguments, and instead required the FBI to present asset-specific evidence of harm that explained the particular harm that the FBI expected the asset to face if his or her identity was disclosed. As a general rule, the Review Board usually protected the identities of foreign nationals who could be prosecuted in their home countries for espionage. Likewise, where the asset was a United States citizen interacting with foreign government officials, the Review Board considered whether the individual was in a position of trust with the foreign government and whether he or she might be in danger if the relationship with the FBI were disclosed. Unlike the above-referenced scenarios, the source who was a *United States citizen interacting with other United States citizens* was generally evaluated according to the Board's domestic informant standards.

n. FBI foreign counterintelligence activities

Review Board guidelines. As a general rule, the Review Board believed that most aspects of the FBI's foreign counterintelligence ("FCI") 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)(B)-(C) of the JFK Act.

Commentary and overview of FCI appeals. The FBI's assassination records contain information that reveal many of the FBI's foreign counterintelligence activities during the cold war period. Beginning in late 1995, the Review Board considered how it could release as much information as possible without jeopardizing operations that still require protection.

In March and April of 1996, the Review Board considered and voted on a group of FBI records relating to the FBI's FCI Activities. In response to the Review Board's "Requests for Evidence" on the FCI records, the FBI had provided its "position paper" on FCI activities. 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 FCI targets, measures, and priorities, thereby allowing hostile entities to develop countermeasures.

Sections 6(1)(b) and (c) of the JFK Act provided the standard for postponement. In addition, the JFK Act's legislative history instructed the Review Board to consider a variety of factors related to the need to postpone disclosure of intelligence sources and methods, including the age of the record, whether the use of a particular source or method is already well-known by the public, . . . and whether the source or method is inherently secret, or whether it was the information it collected which was secret.[6]

The Review Board considered the FBI's evidence and weighed it against the public interest in the records. After careful consideration, the

[6]S. Rep. No. 328, 102 Cong., 2d Sess. 2977 (1992).

Review Board decided to release foreign counterintelligence information in seventeen (17) records. The Board's primary reason for releasing the records was its belief that the FBI's evidence did not enumerate specific harms that would result from disclosure.

On May 10 and 28, 1996, the FBI appealed to the President 17 records -- all relating to the FBI's surveillance of officials and establishments of four Communist countries -- the Soviet Union, Cuba, Czechoslovakia, and Poland -- during the 1960s. The FBI's overarching arguments were that disclosure of the information would reveal sensitive sources and methods that would compromise the national security of the United States, and that disclosure of the targets of the surveillance -- the four Communist countries -- would harm the foreign relations of the United States.

The FBI sought to postpone five types of source and method capabilities: tracing of funds, physical surveillance (lookout logs), mail cover, electronic surveillance, and typewriter and fingerprint identification. The Review Board's response briefs to the President dealt with each source or method in turn. Specific details regarding the appeal of each issue are discussed below.

In response to the FBI's overarching argument that disclosure of the information would reveal sensitive sources and methods and compromise the *national security*, the Review Board responded that if the national security would be harmed by release of this information, the harm would have already occurred, since the FBI had already released both the identities of the target countries *and* the sources and methods that the FBI used in its operations. In response to the FBI's arguments that disclosure of the targets of the surveillance would harm the *foreign relations* of the United States, the Review Board responded in three parts: *one,* the information that the FBI sought to protect is widely available in the public domain, from both official government sources and secondary sources, so if foreign relations are harmed by disclosure of the information, then the harm has already occurred; *two,* the FBI simply did not prove its argument that it may have violated international law or "diplomatic standards" by employing the sources or methods at issue as the FBI did not cite the laws or treaties to which it

referred and the Review Board could not locate any laws or treaties that were in effect at the time that the records were created; and *three,* despite the FBI's assertion to the contrary, the Review Board had evidence that other governments *do* acknowledge that, in past years, they conducted foreign counterintelligence operations against other countries.

The Review Board believed that the FBI and the State Department had not provided evidence of a "significant, demonstrable harm" to current foreign relations or intelligence work. Thus, the Board asked the President to deny the FBI's and the State Department's requests for postponement. The White House did not expressly rule on the appeals. Instead, after several meetings involving representatives from the Review Board, the FBI, and the White House, the White House directed the FBI to provide the Review Board with specific evidence in support of its postponements. The White House requested the Review Board to reconsider the Bureau's specific evidence. The FBI, in turn, 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.

After more negotiations, the Review Board and the FBI agreed that the Bureau would generally treat foreign counterintelligence activities against Communist Bloc countries as "consent releases." In those few cases where the Bureau believed that foreign counterintelligence activity against Communist-Bloc countries still required protection, the Bureau submitted for the Board's determination postponement-specific evidence.

To the extent that the information in the proposed redaction did not meaningfully contribute to the understanding of the assassination, the Review Board allowed 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.

o. FBI surveillance of diplomatic targets

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

On the contrary, the Review Board generally agreed to protect information that reveals that the FBI has an investigative interest in a non-Communist Bloc foreign diplomatic establishment or in foreign personnel.

Commentary. In the FBI's May 10 and 28, 1996, appeals to the President, the overriding issue was whether the FBI could, in 1996, keep secret its investigative interest in the diplomatic establishments and personnel of Communist Bloc countries. For a full discussion of the Review Board's decision-making with regard to the FBI's foreign counterintelligence activities, *see part* **[___]** above.

p. Technical sources in FBI foreign counterintelligence

Review Board guidelines. The Review Board released nearly all general information and some specific information (or operational details) regarding non-current technical sources on Communist Bloc targets.

"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 evaluated "specific" information about technical sources on a case-by-case basis, agreeing to sustain postponements provided that the FBI proved that the "operational detail" at issue is currently utilized and not officially disclosed.

As a general rule, the Review Board agreed 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 released 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.

For that material that does not contribute in a meaningful way to the understanding of the assassination, the Review Board released as much information as possible about the FBI's use of technical sources in its foreign counterintelligence activities against non-communist bloc countries. The Review Board did, however, often protect the identity of the country that was the target of the FBI's surveillance. The Review Board was more willing to protect specific details regarding installation, equipment, location, transmittal, and routing of technical sources where the FBI can proved, (1) that the source currently requires protection, and (2) that the Government has not officially disclosed the source.

Commentary. The JFK Act directed the Review Board to release information that specifically identifies "listening devices on telephones." The Act states that these are an "intelligence source or method" that should *not* be postponed in circumstances where they are "already well known by the public."[7]

The Review Board believed that The FBI's use of non-human sources or methods (*e.g.,* electronic surveillance and "black bag jobs") in foreign

[7]S. Rep. No. 328, 102d Cong., 2d Sess. 28 1992) (emphasis added).

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 it believed were relevant to deciding the issues on appeal.

In its May 10, 1996, appeal of the Review Board's decisions on FCI records, the FBI requested that the President override the Review Board's decisions to release information that related to electronic intercepts of telephone and teletype communications involving Communist Bloc officials. In its appeal briefs, the FBI argued that its decisions regarding the targets of its electronic surveillance are secrets. The Review Board collected a large body of evidence proving that, at least with regard to Communist-Bloc countries, the Government has already acknowledged that the FBI conducted extensive technical surveillance of foreign establishments during the 1960s. In fact, the official public record and secondary sources revealed information regarding wiretaps and electronic surveillance against foreigners and foreign establishments that was more specific than information that the FBI sought to protect.

q. FBI classified counterintelligence file numbers

Review Board guidelines. The Review Board generally agreed to protect classified file numbers in FBI foreign counterintelligence files, provided the FBI could prove that the file number corresponded to a current and ongoing operation. However, where the classified file number had been released in other contexts, the Review Board voted to release the number.

Commentary. The Review Board agreed that file numbers corresponding to current and ongoing intelligence operations were entitled to protection under Section 6(1)(B) and (C). The only question, then, was whether the Review Board would allow the FBI to protect classified file numbers when the corresponding operation was no longer current. The Review Board took the position that non-current classified file were *not* entitled to protection. In its May 28, 1996, appeal on foreign

counterintelligence records, the FBI argued that if the Review Board released classified file numbers for terminated operations, that release would prompt Freedom of Information Act requests for the underlying files, "resulting inevitably in more and more information from the file being released." FBI's May 28, 1998, Appeal at 8. In its June 14, 1996, response, the Review Board stated simply that, "[m]aking it more difficult for researchers to file FOIA requests is not among the reasons for postponement provided by the JFK Act."

r. FBI mail cover in FCI investigations

Review Board guidelines. The Review Board released information that revealed that the FBI conducted mail cover operations against the Soviet Embassy in the 1960s. The Review Board did not encounter a great number of additional records regarding mail cover operations. When the Review Board did encounter mail cover operations in other FBI records, it released the information at issue unless the FBI could provide evidence that the operation was still ongoing and required protection. The Review Board did not relax its standard in the Segregated Collection files.

Commentary. With regard to the FBI's use of mail cover, the Review Board had to decide whether and to what extent it should reveal the Bureau's use of this method in conducting foreign counterintelligence activities. The Review Board used the same reasoning it employed for other FCI activities -- mainly that foreign counterintelligence operations against the USSR and other Communist Bloc countries during the cold war no longer merit protection. Moreover, the Review Board believed that the public is already well aware that the FBI used the methodology of mal cover and thus, such operations should not be protected.

In its May 10, 1996, appeal to the President, the FBI asked the President to overturn the Board's decision to release information from two documents that the FBI alleged would reveal that the FBI engaged in a "mail cover" operation against the Soviet Embassy in Washington, D.C. in 1963. The Bureau argued that the "[h]ow, when where, and [the] circumstances" of its mail cover operation were among its most "closely guarded secrets."

The Review Board responded that the information that the Bureau sought to redact had already been released. The Church Committee disclosed the mail cover operation at issue -- the "Z-coverage" program -- twenty years ago. In addition, the Review Board produced three previously disclosed assassination records in which the FBI disclosed that the Soviet Embassy in Washington, D.C. was targeted under the "Z-coverage" program, a program that the document discloses existed pursuant to an agreement with the Post Office. As with the other foreign counterintelligence records that the FBI appealed, the FBI ultimately withdrew its appeals and began to treat this type of information as a consent release.

s. FBI tracing of funds in foreign counterintelligence

Review Board guidelines. The Review Board released information that disclosed that the FBI was capable of tracking funds and examining bank accounts of Communist-Bloc enterprises.

Commentary. The issue that arose with regard to the FBI's tracing of funds was whether the Review Board should release the FBI's monitoring of financial records and bank accounts for the purpose of investigating espionage. The Review Board decided that since this method had previously been disclosed to the public by the United States Government, the information should not be protected. The Review Board voted to release FBI records regarding tracing of funds transferred to Oswald in Russia and records regarding the FBI's ability to track funds from diplomatic establishments.

In its May 10, 1996, appeal to the President, the FBI and the State Department asked the President to overturn the Review Board's decision to release information from six documents related to the FBI's ability to track funds from diplomatic establishments. The FBI and the State Department argued, *first*, disclosure would reveal sensitive sources and methods, and *second,* disclosure would reveal that Soviet government bank accounts were the target of FBI counterintelligence activities.

The Review Board responded that the "sources and methods"

employed in tracking of funds already has been disclosed, citing FBI documents that reveal the FBI's ability to trace funds as well as other federal government records that explained that the FBI engaged in covert examination of financial records and bank accounts in order to determine whether an individual is engaged in espionage. In addition, the Review Board noted that the FBI cannot now classify that the Soviet government was the principal target of the Bureau's foreign counterintelligence activities in the United States, again citing FBI documents as well as a lengthy list of publicly available federal government publications that disclosed the FBI's interest in Soviet financial activities in the United States. In late 1996, the National Security Agency and the CIA removed whatever fig leaf remained covering the FBI's tracing of funds. In the NSA/CIA joint publication, *Venona: Soviet Espionage and the American Response 1939-1957 (Robert Louis Benson & Michael Warner, eds., 1996),* the agencies released records that explicitly stated that the FBI monitored Soviet bank accounts in the United States. The *Venona* releases also show that the Soviets knew about the FBI's monitoring of their finances in the 1940s.

The Review Board concluded that previous official disclosures of the FBI's ability to trace funds in foreign counterintelligence investigations prevented the FBI from making any plausible or convincing argument that the method was one that should remain secret.

t. FBI physical surveillance

Review Board guidelines. The Review Board released information that disclosed that physical surveillance is a method that the FBI employs in conducting investigations. Moreover, the Review Board specifically released information that the FBI conducted physical surveillance in its foreign counterintelligence investigations against Communist-Bloc countries.

Commentary. In the course of many FBI investigations, physical surveillance is not a classified operation and thus would not be protectable under Section 6(1). However, as part of its May 10, 1996, appeal to President Clinton, the FBI requested the President to overturn the Review Board's decision to release on document because it revealed that the FBI

conducted physical surveillance on the Soviet Embassy and that it kept a "lookout log" that recorded visitors to the Embassy.

The Review Board had voted to release the record because the FBI had not offered adequate evidence in support of its redactions.

The Review Board again stressed the statutory requirement that the FBI provide document-specific, clear and convincing evidence in support of its proposed redactions. In its May 23, 1995, brief, the Review Board also noted that not only had the FBI previously officially acknowledged the particular physical surveillance operation that the document at issue revealed, but that former Director Webster had publicly acknowledged that the FBI conducts physical surveillance and used the physical surveillance of the Russian Embassy as an example.

The Review Board concluded that previous official disclosures of the FBI's physical surveillance of the Soviet Embassy prevented the FBI from making any plausible or convincing argument that the method was one that should remain secret. The FBI ultimately withdrew its appeal of the Board's decision on "lookout logs." (Letter from FBI to Hon. Jack Quinn, 9/18/96)

The Review Board's also took the position that, even in documents where the Board might agree to protect the identity of a particularly sensitive target of the FBI's physical surveillance, the fact that the FBI uses the method of physical surveillance in conducting investigations is not secret and is not eligible for postponement.

u. National Security Agency issues

Review Board guidelines. National Security Agency employee names, targeting, intercept, and transmission indicators, internal production indicators, and routing and dissemination information are generally protected unless the specific detail is important to an understanding of the assassination or events surrounding the assassination. Substitute language is provided consistently throughout the documents.

Commentary. From the first days of the Review Board, NSA documents have been considered on a document by document basis with individual words and punctuation marks being negotiated between NSA and the Review Board for release or redaction. Review Board members visited NSA for a background briefing and the NSA provided justifications and substitute language for each requested redaction.

Yet, like those of the CIA and FBI the NSA documents contain a number of repetitive issues, such as employee names, targeting and transmission indicators, internal production indicators, routing indicators, and dissemination information. For the first three years of its existence, the Review Board viewed and discussed each individual NSA document. Over time, however, the Board reached consensus and established general guidelines to deal with specific repetitive NSA issues.

For the work of the Review Board, NSA documents can differ from those of the CIA and FBI in several important ways. First, due to the nature of NSA information, few NSA employee names appear in the documents. Nonetheless, names do appear in letters and occasionally in other documents. The National Security Agency Act (P. L. 86-36) allows for the protection of the names of NSA employees, whether current or retired. In addition, NSA argued that the release of any names, other than those of publicly acknowledged senior officials, jeopardized the potential security of US cryptographic systems and those individuals. The Review Board considered the names of NSA officers on a document by document basis. Given the nature of NSA information, the Review Board members agreed that none of the few names which appear in the documents, and for which NSA requested protection, was of high public interest or central to an understanding of the assassination story. These names are protected under Section 6(1)(A) of the JFK Act.

Secondly, signals intelligence (SIGINT) is an inherently fragile commodity. The specific information revealed in raw intercept traffic or intercept reporting can provide a great deal of information to foreign entities on US Government targeting, intercept, and cryptographic capabilities which could be relevant to current SIGINT capabilities. To reveal to a foreign

government or entity that the US Government was capable of targeting and reading some or all of their communications, even in 1963, could provide information to that government or entity as to whether NSA is likely to have the targeting, intercept, and cryptographic capabilities to read similar communications today. Often it is not the basic information contained in the intercept but rather the fact that the information was acquired by an intercept or the specific technical details of how and from where the intercept was acquired which require protection. Thus the specificity of such details as transmission times, transmission methods, geographic locations, and government buildings or military unit numbers may be protected under Section 6(1)(B) and (C) where the Board has determined that such information is not important to an understanding of the events surrounding the assassination.

Third, intercept traffic by its very nature picks up a wide variety of information and a significant amount of non-relevant information. NSA summaries of intercept traffic usually examine a wide variety of intercepts on many different subjects worldwide. Thus, the Review Board protected blocks of information where the information had no relevance to an understanding of the Kennedy assassination story.

v. Military operational details

Review Board guidelines. In many military records, particularly JCS records (“202" series) and Army (Califano Collection) records (“198" series), the substitute language “operational details” frequently appears where the Review Board has upheld postponements under Section 6 (1) (C) of the JFK Act. This phraseology refers to the details of force deployments (*i.e.,* numbers of ships, aircraft, troops, warheads, etc.), or precise targeting information, in support of proposed operational activities or OPLANs, or in support of real-world exercise situations or real-world threat environments, in cases where revealing such information today, because the similarity of some currently proposed combat operations or OPLANs is so close to those used in the documents in question, that revealing this information would demonstrably impair the national security of the United States.

Commentary. Use of this substitute language for military records was approved by the Review Board members during the autumn of 1997, as they reviewed the first large groups of military records on Cuba and Vietnam policy.

3. Informant Postponements

Text from Sections 6(2) and 6(4)*:*

section (2) . . . clear and convincing evidence that 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

section (4) . . . clear and convincing evidence that 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;

a. Informant postponements generally

Review Board guidelines. As a general rule, the Review Board did not postpone information that would reveal the identity of an informant unless the FBI could provide, at least, evidence that the informant was alive and still living in the same area. The Review Board recognized two significant exceptions to the general rule. First, even where the FBI provided such evidence, the Review Board released informant identities if it found that the informant's identity was of high public interest. Second, the Review Board did, in some cases, allow postponement of informant identities even though the FBI could not provide evidence that the informant was alive and living in the same area if the FBI could prove that disclosure would subject the informant to an extremely significant threat of harm.

Where a person's relationship with the FBI had already been made public, the Review Board did not agree to protect the fact of the relationship between the Government and the individual.

Commentary. The FBI initially cited Sections 6(2) and 6(4) in support of informant postponements. 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 informant-specific evidence, the FBI decided to rely exclusively 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.

The Review Board first considered informant postponements in its meeting on May 2nd and 3rd, 1995. 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 informants differ depending on the type of information they provided to the FBI and the level of confidentiality that existed between the FBI and the informant at the time that the informant provided the information.

After hearing the FBI's general policy arguments, the Review Board 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.

In the summer of 1995, the Review Board considered four documents containing informant postponements. Three of the documents concerned symbol number informants. The fourth document disclosed the name of a deceased informant. Because the FBI did not present document-specific evidence in support of its postponements, the Board voted to release the records. On August 11, 1995, the FBI appealed to the President the Review Board's decisions on those four records. The FBI argued that disclosure of informant information would result in the following harms: *first,* harm to existing informants; *second,* harm to the FBI's ability to recruit new informants and its ability to obtain cooperation from existing informants, and *third,* harm to the government's "word" since disclosure results in a breach of a promise of confidentiality.

In its response briefs to the President, the Review Board emphasized

the JFK Act's clear and convincing evidence standard and explained that speculative harm does not provide sufficient grounds for withholding of information. In addition, the Review Board offered examples of prior releases that had not resulted in expected harm. The FBI did agree to provide particularized evidence on three of the four documents. The FBI's evidence was to interview the informants to determine whether they would object to having their identities disclosed. Of course, all of the informants or their relatives objected to disclosure of their identities. Upon receipt of the FBI's evidence, the Review Board reconsidered the informant postponements and determined that it would release all information except for the numeric portion of the symbol numbers.

The Review Board's September 28, 1995, letter to the FBI informing the FBI of its decisions on the documents provided useful and specific guidance as to what type of evidence the Review Board was looking for -- interviewing informants would not be necessary, nor would the Review Board find it useful. Instead, the Review Board needed to know whether informants were still alive and whether the informant file contained corroborating evidence of harm that would befall the informant if identity were disclosed. Ultimately, the FBI was able to satisfy the Review Board's requests for evidence on informant issues by providing information that was available at FBI headquarters.

After the FBI appealed the Review Board's decisions on four informant records, the FBI eventually came to eliminate 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 disclosures. 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.

b. FBI sources without ongoing confidential relationship

Review Board guidelines. Where an individual provided information to the FBI and requested that the FBI protect his or her identity, *but the FBI provided no evidence of an ongoing confidential relationship with the individual*, the Review Board voted to disclose all identifying information about that individual.

Commentary. 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. . . . **[Laura–is this a quote?]** 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.[8]

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.*, potential security informant ("PSI"), potential criminal informant ("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.

c. FBI sources with employment-based information

[8]FBI Memorandum, *FBI Informant/Confidentiality Postponements*, p. 3.

Review Board guidelines. The FBI unilaterally released the identities of individuals who gave the FBI information to which they had access by virtue of their employment, such as telephone company employees, utility employees, and hotel employees.

Commentary. Until the summer of 1995, the FBI protected the identities of all persons who gave the FBI information to which they had access by virtue of their employment provided one of the two following circumstances existed: (1) the employee requested confidentiality, or (2) the employee's providing the information involved a breach of trust (*e.g.,* a phone company employee who gives out an unlisted number.) The Review Board believed that disclosure of the identities of such individuals would not subject the individuals to the type of harm that the JFK Act required to sustain informant postponements. Once the Review Board voted to release the identities of persons who gave the FBI information to which they had access by virtue of their employment, the FBI acquiesced and proceed to unilaterally release the identities of such individuals.

d. Deceased informants

Review Board guidelines. With very few exceptions, the Review Board released the identities of deceased informant in the core and related files.

In the "Segregated Collection" files, the Review Board did not require that the FBI provide evidence that an informant was alive to sustain a postponement *unless* the Review Board staff member had some reason to believe that the informant was deceased. Thus, unless the informant was of relatively high public interest, the Review Board voted to protect the informant's identity. In the cases where a staff member had a reason to believe that an informant was deceased, the staff did request the FBI to provide evidence concerning the informant and released the informant's identity if the informant was deceased.

Commentary. A "Named informant" is an individual whose name appears in assassination records and who had some type of ongoing

confidential informant relationship with the FBI. The FBI records often refer to such informants as "PSIs" (potential security informants) or "PCIs" (potential criminal informants), 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. While the Review Board was often willing to sustain postponements of named informants when the FBI could demonstrate that the informant was still living, it believed that deceased informants were generally not entitled to protection.

However, in its response to the FBI's informant appeals, the Review Board did state that, in some rare cases, the FBI might be able to prove clearly and convincingly that a "confidential relationship" with an deceased informant currently required protection. For example, the FBI might be able to show that the relatives of a high-level organized crime informant could still be at risk of retaliation.

The Review Board debated extensively the issue of what constituted adequate evidence that an informant was currently living. Specifically, the Board had to determine what evidence was necessary to prove that someone who, according to a search of the FBI's computer databases, is now living, is in fact the same individual named as an FBI informant.[9]

Ultimately, the Review Board determined that the FBI must verify that the informant was still alive by matching the informant's name plus date of birth or social security number. The Review Board did not consider name alone or name plus general location to be adequate evidence that an informant was still living.

e. "Negative Contacts": FBI informants with no assassination-related information

[9]For a full discussion of the issue regarding "adequate" proof, *see* Memorandum from Philip D. Golrick to the Review Board, *Staff Recommendations on "Negative Contact" Informant Postponements*, May 13, 1996.

Review Board guidelines. When an FBI agent asks an informant for information on a particular topic and the informant reports that he or she has no information to provide, the FBI calls the contact a "negative contact." Where the FBI adequately identified the "negative contact" informant as still living,[10] the Review Board agreed to postpone for 10 years "negative contact" named informants and all specific identifying information, such as street addresses, telephone numbers, and informant-specific portions of FBI case numbers and file numbers.

Where the FBI did not adequately identify the informant as still living, the Review Board voted to release the name and any accompanying identifying information. *See* d. (Deceased Informants) above.

The FBI unilaterally released all unclassified "negative contact" (definition below) symbol number informants.

Commentary. In the FBI's early investigations into the assassination of President Kennedy, Director Hoover ordered special agents to ask all informants for relevant information. Even when informants reported that they knew nothing that would assist the FBI in its investigation, FBI agents filed reports in the assassination investigation file documenting the "negative contact."

As a result of Director Hoover's broad directive to agents to question all informants concerning the assassination, the assassination investigation file provides a reasonably comprehensive picture of the state of the FBI's informant network in late 1963 and early 1964. The FBI, of course, preferred that this overview of its informant operations not be disclosed to the public. The Review Board acknowledged that the public had little or no interest in knowing the identities of each "negative contact" informant. At the same time, the Review Board believed that the public did have an interest in having accurate information concerning the FBI's activities in the days and

[10]An informant is "adequately identified as still living" if identified through current information with a living person with the same name and other specifically identifying information (*e.g.,* name and date of birth or social security number.)

weeks following the assassination. As a compromise, 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 that were still alive (on the theory that, since they provided no information about the assassination, there was little value to be gained from disclosing the identities of hundreds of living FBI informants.)

f. Positive Contacts: Informants with assassination-related information

Review Board guidelines. "Positive contact" informants are informants who provided at least *some* assassination-related information. Where the FBI adequately identified the informant as still living, the Review Board adopted a case-by-case approach, considering the factors listed in the commentary below. When the Review Board voted to postpone the identity of a "positive contact" informant, it voted to postpone it for ten (10) years, and adopted appropriate substitute language. The Review Board released informant names if the informant was of particular relevance to the assassination. Where the FBI did not adequately identify the informant as still living, the Review Board released the informant's name and any accompanying information. *See* 4. (Deceased Informants) above.

Commentary. The Review Board's decisionmaking with regard to "positive contact" informant postponements involved an evaluation of some combination of the following factors:

- the significance of the information that the informant provided to understanding of the assassination;
- the importance of the identity of the informant to assessing the accuracy of the reported information; and
- the significance of the threat of harm to the informant from disclosure, considering the following:

- whether the informant is still living, and if so, whether the informant still lives in the same area;
- the amount of time that has passed since the informant last provided information;
- the type of information the informant provided;
- the level of confidentiality that existed between the FBI and the informant at the time that the informant provided the information; and
- any specific evidence of possible harm or retaliation that might come to the informant or his or her relatives.

Although no single factor was dispositive in every case, the Board considered certain factors to be more important than others in making decisions to release records. For example, if public interest in a particular document was high, the Board released informant names in the document even though the Bureau was able to provide evidence that would have otherwise justified postponement of the informant's identity.

In those cases where the Review Board agreed to protect an informant's name and specific identifying information, substitute language such as "informant Name," "street address," "informant file number," or "informant symbol number" replaced the redacted information.

g. FBI informant symbol numbers and file numbers

Review Board guidelines. 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. (*see* c. FBI Informants: Negative Contacts.)

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.

Commentary. 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.[11]

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

[11]In longer, formal FBI reports from field offices to headquarters, where many informants are used, the FBI adds yet another layer of security to the informant's identity by assigning temporary symbol numbers (T-1, T-2, etc. . . .). The Review Board never sustained postponements of these temporary numbers.

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.

4. Personal Privacy

Text from Section 6(3)

. . . clear and convincing evidence that 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

a. Personal privacy generally

Review Board guidelines. 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 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.

Commentary. 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.

Although the Review Board expected that it would encounter a number of personal privacy postponements, the FBI did not request many postponements citing Section 6(3). The CIA never requested a privacy postponement.

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. (FBI 5/28/96 Appeal) The Review Board very carefully considered the privacy concerns involved and requested that the President issue a decision that would result in release of the important information in the record.

b. Military Prisoner of War Issue

Review Board guidelines. The Review Board agreed to the postponement of some information in the file of one American soldier who had been a prisoner of war (POW) during the Korean War. The file contained debriefing statements by the POW after his return to the United States as well as statements made by some of his fellow prisoners. The Board agreed to postpone, until the year 2008, the personal identifiers of both the subject of interest, and all others mentioned in the subject's debriefing file (namely, the date and place of birth and service number); the names of those who made statements about the subject of interest during debriefings; and all statements made during debriefings about POWs other than the subject himself, whose statements were released.

Commentary. The Review Board was eventually confronted with the challenge of deciding whether, and how, privacy postponements requested under Section 6 (3) of the JFK Act would be applied to Korean War prisoner of war (POW) records in general, and specifically, to POW debriefing records, in cases where the individual at issue was deemed relevant to the assassination. Initially the position of the Army and the Defense Prisoner of War/Missing Personnel Management Office (DPMO) was that *all* prisoner of war debriefing records be withheld *in their entirety*, on privacy grounds. The Review Board staff negotiated a proposed compromise with the Army--namely, that the name of the individual of interest, and the dates and basic facts of his imprisonment be opened, but that *no debriefing statements whatsoever be released*--and presented this compromise to the Review Board members as a staff recommendation. The following information is being released: the name of the POW **[insert name]** and dates and basic facts of his imprisonment; any documents describing or quoting written or oral statements made by the POW subject of interest for the imprisoning authority during his confinement; as well as any debriefing statements the POW subject of interest made about himself, or any statements others made about him.

c. Secret Service privacy arguments on mental health.

Review Board guidelines. The Review Board voted to release in full information that had been collected from the Protective Research Section files of the Secret Service by an HSCA staff member. The information included short synopses of those on whom the PRS maintained files between March and December 1963. The information included statements describing the individuals by such labels as "paranoid." The Secret Service appealed the Review Board's decisions. **[insert final resolution by White House.]**

Commentary. The Secret Service appealed the Review Board's April 13, 1998 decision to release four documents that contained names and personal information of individuals whom the Secret Service's Protective Research Section considered to be potential threats to President Kennedy,

Vice President Johnson, and their families, between March and December 1963. (Secret Service 5/26/98 and June 1, 1998 Appeal Briefs). These records were created in 1978 by Eileen Dinneen, a staff member of the House Select Committee on Assassinations, for the purpose of evaluating how the Protective Research Section collected and evaluated information on individuals who were potentially threatening to the President. Dinneen's documents identified the names of the individuals, and contained condensed information about their personal background and affiliations. In some cases, the documents contained brief information about an individual's mental health history. Although the Secret Service did not oppose the release of the text of these documents, it argued that many of the names should be postponed pursuant to Section 6(3) of the JFK Act as an "unwarranted invasion of personal privacy."

The Review Board afforded the Secret Service the opportunity to present clear and convincing evidence as to why the names in the documents should be postponed. Through written submissions and oral presentations, the Secret Service primarily offered policy reasons in support of its arguments for postponement of the names. After carefully considering the Secret Service's arguments, the Review Board determined that the Secret Service had to meet its statutory burden of proof by "clear and convincing evidence" that these names should be postponed.

The Secret Service appealed the Review Board's decision to the President. In its Reply to the Secret Service's Appeal, the Review Board argued that the Secret Service failed to meet its statutory burden of proof with respect to the postponement of these names, and urged the President to release these historically significant documents in full. (Review Board's Reply Memorandum to the President, May 22, 1998, and Surreply Memorandum, June 15, 1998).

6. Confidential relationships between governments and co-operating foreign governments.

Text from Section 6(4):

> *. . . clear and convincing evidence that 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;*

a. Foreign liaison postponements in the FBI files

Review Board guidelines. Information that the FBI receives from cooperating foreign governments appears throughout the FBI's files. The official position of the FBI is that any foreign government information in FBI files is the property of the foreign government, and as such, the FBI cannot release the information without first obtaining the consent of the foreign government that provided the information. When the Review Board believed that information in FBI records truly was "foreign government" information, it worked with the FBI to approach the foreign governments and attempt to persuade the foreign government that it is in our countries' mutual interests to release liaison information in assassination records. When necessary, the Review Board requested the assistance of the State Department in approaching foreign governments.

In the "Segregated Collection" files, the Review Board recognized that the cost of releasing foreign government information far outweighed the benefits of releasing information of marginal relevance, as most of the "Segregated Collection" files are. Thus, the Board sustained postponements of foreign government information in the "Segregated Collection" files, provided the information was not assassination-related.

Commentary. Given that the FBI has a great deal of foreign government information in its files, the FBI asked the Review Board to postpone release of all such information because it adheres to the position that it does not have authority to release another government's information. The Review Board did not necessarily agree with the FBI's position that the

United States cannot unilaterally release information received from another government.

On August 8, 1995, the FBI appealed to the President the Review Board's decisions to release five documents that contained foreign relations postponements. The FBI made three arguments in support of its postponements: *first,* the fact of the liaison relationship between the FBI and the foreign government in question was a classified secret; *second,* the FBI had never officially released documents demonstrating the nature of the relationship between the FBI and foreign government; and *third,* release of information about the relationship would cause dramatic harm to the United States' foreign relations with the foreign government in question.

Three days later, on August 11, 1995, the Review Board responded to the President that its research in publicly available sources supported the Review Board's decisions to release the five records at issue. In response to the FBI's first two arguments, the Review Board explained that the FBI had publicly announced its liaison relationship with the foreign Government at issue more than thirty years ago, and that the FBI *had already* released assassination records that described the FBI's liaison relationship with the foreign government. The Review Board offered a three part response to the FBI's third argument that harm would result from release of information about the liaison relationship: *first*, the FBI had not met the "clear and convincing evidence" standard because it had not identified a particular harm that would result, *second,* if foreign relations would be harmed as a result of release of information about the liaison relationship, the harm would have already occurred when the relationship was previously disclosed by the FBI; and *third,* harm to foreign relations was unlikely because the information in the documents is the type of information that we would expect Governments to share in law enforcement activities.

The FBI then consulted representatives of the foreign government to ask whether the foreign government would object to an official disclosure of the liaison relationship. The foreign government asked the FBI not to reveal the relationship, and the FBI argued to the President that the United States should respect the request of the foreign government. The Review

Board noted that, had the FBI released the records without consulting the foreign government, foreign relations would not have been harmed, but since the FBI did consult the foreign government, the FBI itself had created a foreign relations problem. Despite the paradox that resulted from the FBI's consultation with the foreign government, the Review Board took the position that the foreign government's desire that the FBI not release the information was a relevant factor in the balancing test but that, in this case, the public interest in disclosure outweighed the foreign government's unexplained desire to protect the information.

After the FBI and the Review Board briefed the issues to the President, representatives of the Review Board and the FBI met with the White House Counsel's Office. The White House asked the Review Board to reconsider its decisions on the documents on appeal, but also instructed the FBI to provide the Review Board with postponement-specific evidence in support of its claimed postponements. The Review Board and the FBI agreed to the White House request and entered into a Stipulation on August 30, 1995.

In an attempt to understand the position of the foreign government, the Review Board met with representatives of the State Department and the foreign government to discuss the documents at issue. As a result of the meeting, the foreign government agreed to release of the overwhelming majority of information in the documents. The Review Board agreed to sustain the one postponement that the foreign government requested, which was the name of the employee of the foreign government, recognizing that the identity of the individual was of little or no interest to the public.

After the appeals process had ended, the FBI maintained its position that it could not release foreign government information without the consent of the foreign government. The Review Board recognized that it simply did not have the time or the resources to pursue release of each postponement in the same way that it pursued release of the five appealed documents. Initially, the Review Board had hoped to approach each foreign government separately in an attempt to convince the governments that release of liaison information in assassination records would benefit both the United States

and the foreign governments. In the end, the Review Board recognized that the easiest way to release the foreign information in the FBI records would be for the FBI, through its "Legats" (Legal Attaches), to request the foreign government at issue to release the information. The Review Board saw three advantages to this approach: *first,* in those cases where the FBI was successful in obtaining release of the information, the record at issue would be available to the public with no further action by the Review Board; *second,* allowing the FBI to request release of foreign information using the same channels through which they obtain foreign information makes it possible for the FBI to maintain positive relations with their foreign contacts, and *third,* the Review Board relinquished no rights to make its own approach to the foreign government, either before or after the FBI Legat had approached its foreign contacts.

Practically, the FBI sent the records at issue to its Legats with a letter from Director Freeh explaining to the foreign government how important release of the information is to the FBI and to the American people. In addition to materials from the FBI, the Review Board enclosed a letter to the foreign governments explaining our statute and our mission and requested release of the records.

note: what follows is what we intend to happen, not what has already happened.

When the Legats were unsuccessful in obtaining the consent of the foreign government to release of the information, either because the Legat's contacts did not approve the release or because the Legat's local contacts no longer existed, the Review Board, with the help of the State Department, approached the foreign government directly. In meetings with foreign government officials, the Review Board requested that the governments consent to release of information in the FBI files when the Review Board thought that the public interest would be served by disclosure.

[to be continued as the story unfolds]

If the Review Board adopted the same policy on marginally relevant

foreign government information in the "Segregated Collections" that it follows for records more closely related to the assassination, the Review Board and its staff would have spent the majority of the last year of the Review Board's operations approaching foreign governments to try to obtain the release of information that is of little public interest. The Review Board came to believe that the cost of release of the information outweighs the benefits of releasing this marginally relevant information in the "Segregated Collection" files. Thus, in its April 1998 meeting, it agreed to designate the irrelevant information as "NBR" and applied its "NBR" guidelines.

7. Presidential Protection

Text from Section 6(5):

> *. . . clear and convincing evidence that 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.*

[insert by Kim]