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Date: 3/31/201

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Assassination Records Review Board
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SECRET

May 23, 1996

The President.
The White House
Washington, D.C.

Dear Mr. President:

I have the honor of enclosing herein a copy of "The Assassination Records Review Board Response to the May 10, 1996 Petition for Postponement by the Federal Bureau of Investigation." The Bureau is appealing the Review Board's formal determinations to release information in thirteen records related to the assassination of President Kennedy. The Department of State is joining the Bureau's Petition.

Although the Review Board is mindful of the extent to which the Bureau has released information under the The President John F. Kennedy Assassination Records Collection Act of 1992, it is our belief that, with respect to the thirteen records at issue, the Bureau and the State Department have chosen to assert general policy preferences rather than to provide the "clear and convincing evidence" that is required by the Act.

We believe that when the redactions at issue are carefully analyzed, with due regard to the information that is already a matter of public record, it will be clear that there are no meaningful "national security" or "foreign relations" concerns that warrant suppression of the information from the public.

Under the controlling legislation, you have the:

sole and nondelegable authority to require the disclosure or postponement of such record[s] or information under the standards set forth in section 6, and the President shall provide the Review Board with an

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Because the information is drawn from numerous sources,
portion classification is impracticable.

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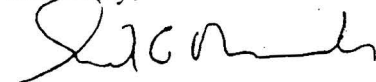
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unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107, Sect. 9(d)(1) (Supp. V 1994).

We would be pleased to provide you and the White House Staff with any additional information that you require.

Sincerely,



David G. Marwell
Executive Director

Enclosure

cc: The Hon. Warren M. Christopher
The Secretary of State
U.S. Department of State
Washington, D.C.

The Hon. Louis J. Freeh
The Director
The Federal Bureau of Investigation
Washington, D.C.

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The Hon. Jamie S. Gorelick
The Deputy Attorney General
U.S. Department of Justice
Washington, D.C.

The Hon. Peter Tarnoff
Under Secretary of State for Political Affairs
U.S. Department of State
Washington, D.C.

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was not looking at the proposed redactions, which say *nothing* about the circumstances, abilities, interests, or uses of the information, whereas the information released by the Church Committee and the Bureau itself does. If the circumstances of the Z-coverage program are among the Bureau's most "closely guarded secrets," one fears for those secrets that are not so closely guarded.

D. Electronic Surveillance (Exhibits 10 - 12)

The Bureau proposes to redact information in three documents that relate to electronic intercepts of telephone and teletype communications involving Russian, Polish, and Cuban officials.

Exhibit Number	Text of FBI's Proposed Redactions
Ex. 10 (10396)	[Miscellaneous redactions on pages 1 and 2]
Ex. 11 (10048)	["1498-S*," "Polish national," "Polish newspaper," [and (S)] numerous redactions on pages 3 and 4]
Ex. 12 (10222)	[according to] ["WF 1196-S*"] advised that the Cuban (S) Ministry of Foreign Relations advised the Cuban Mission to the United Nations (UN) that," [and additional redactions on page 2]

The Bureau offers essentially two reason to support these postponements: *first*, the decisions regarding which lines to tap are secrets, and *second*, disclosing the information would have the adverse foreign policy ramification of revealing the particular targets of investigative interest.

(a) *The Government already has acknowledged that the FBI conducted extensive electronic surveillance of foreign establishments during the 1960s.* The Bureau has already disclosed that, in 1963, it installed 244 national security wiretaps

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also, the Review Board cannot agree to postponement of this information under the JFK Act.

(b) *The Bureau has failed to offer any evidence showing why disclosure of these particular intercepts would compromise the national interest.* The issue, therefore, is not whether electronic surveillance itself is a secret. Rather, the issue is whether the disclosure of the *particular intercepts at issue here would reveal a source or method currently requiring protection.* The Review Board staff repeatedly invited the Bureau to provide evidence that there is some particular sensitivity associated with the specific intercepts at issue. The Review Board staff suggested, for example, that if the same telephone or teletype lines are used today or if individuals whose conversations were intercepted are of current operational interest, such information would be highly relevant under the standards of the JFK Act.

The Bureau, however, was unable to provide evidence that any of the appealed intercepts have any current operational significance. Rather than providing the specific evidence contemplated by the JFK Act, the Bureau resorted to citing its policy against disclosure of such information generally.²⁷ In fact, the evidence that is available suggests that there is no current intelligence interest in the telephone and teletype intercepts now at issue. The Bureau's Petition does not disclose that the source in Exhibit 10 was actually discontinued in 1970²⁸ -- a fact that seriously undermines the

conversations and retained the tapes for several years); William C. Sullivan, *The Bureau: My Thirty Years in Hoover's FBI* 178-79 (1979) (former Assistant to FBI Director describes FBI phone taps on Soviet and Czech Embassies); Pierre Thomas & John Mintz, *Petty Officer Arrested on Spy Charges*, *The Washington Post*, Apr. 24, 1996, at A3 (wiretaps used on "Russian embassies and other facilities"); John Mintz, *Spy Watchers Outmanned by Communist Operatives*, *The Washington Post*, Aug. 4, 1985, at A1 (FBI monitored Soviet Embassy phone conversations in 1980).

²⁷For example, rather than provide the specific evidence requested, the Bureau merely states that the "[h]ow, when, where, and under what circumstances" the Bureau implements electronic intercepts are among its "closely guarded secrets." Petition, p. 6.

²⁸See Assassination Record Number 124-10067-10273. The FBI has advised the Review Board that the source discussed in this record was (NY 1519-S*) (S)

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FBI's claim for postponement.²⁹

The FBI also asserts that the Review Board's decision in Exhibit 10 to postpone the symbol number for this tap, while releasing the names of the conversants and other identifying information, is inconsistent. Petition, p. 8. In this regard, the FBI fails to mention that, in another record of an intercept *from this same tap*, the FBI *unilaterally* released the identities of the conversants and the entire report of their conversation, while postponing only the symbol number designating the tap.³⁰ Given this release, it would have been inconsistent for the Review Board to have protected anything more than the symbol number in Exhibit 10. The "inconsistency," therefore, lies with the Bureau and not the Review Board.

The FBI further suggests regarding Exhibit 10 that the Review Board's decision would disclose that, in 1963, the FBI was tapping a transoceanic cable for a circuit dedicated to phone traffic between the United States and the Soviet Union. Petition, p. 9. This is not accurate. The Review Board's decision discloses only the fact of the intercepts and does not disclose the method by which the intercepts were made. That the intercepts were accomplished through a tap on the transoceanic cable, rather than, for example, a tap or listening device specifically targeting a conversant, is *not* revealed.³¹

The FBI finally argues that release of such information would "reveal the speed with which we were able to translate and digest these conversations[,] ... our interests, and priorities, and what we considered important or trivial. Such information will be used to develop and deploy effective countermeasures." Petition, p. 9. But

²⁹Section 6(1)(B) of the JFK Act requires, among other things, that a postponed source or method be "currently utilized, or reasonably expected to be utilized."

³⁰See Assassination Record Number 124-10062-10391.

³¹Postponing the symbol number ("NY 1519-S*") prevents a reader from [S] comparing records and seeing that the same source in New York intercepted phone conversations between Moscow and New York *and also* between Fort Worth and Leningrad: a fact that, *if* disclosed, *would* tend to reveal that the source was a tap on the [transoceanic circuit.] [S]

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If, on the other hand, the concern is about information withheld in other assassination records, the Review Board is open to any evidence of a current national security need to postpone its release.⁶² The Review Board has voted on thousands of redactions of classified information, upholding postponements where the requirements of the JFK Act were satisfied. The Review Board is committed to applying the JFK Act to the merits of each proposed redaction, rather than to broad-brush categories of assertedly sensitive information.

D. The Government of Russia *Has* Officially Acknowledged That, in Past Years, the KGB Conducted Electronic Surveillance Against the American Embassy in Moscow.

By way of underscoring the evils that allegedly would follow upon release of these records, the FBI states that, to its knowledge, "no other country officially acknowledges using specific investigative techniques to target the establishments or officials of foreign countries within their territory or elsewhere." FBI Petition, p. 11.

The State Department knows otherwise. In remarks to the National Press Club on December 13, 1991, then-Ambassador to Russia Robert S. Strauss related in dramatic terms how KGB Chief Vadim V. Bakatin had personally admitted to him "not only . . . that his agency had bugged the new American Embassy in Moscow but also turned over detailed plans that he said showed how it had been done," along with a suitcase filled with electronic equipment.⁶³ Additionally, one of the authors of this memorandum was personally assured by an American Embassy official in Warsaw, Poland, on Wednesday, April 17, 1996, that the Polish intelligence service had advised

⁶²The FBI cites as potentially damaging disclosure of intelligence activities directed at allies such as France, Israel, and Venezuela (FBI Petition, p. 10). The Review Board has voted on postponements relating to the FBI's electronic surveillance on establishments of all three of these countries. In these records, where immediate release in full posed a more plausible threat to foreign relations, the Review Board voted to protect most of the information the FBI had classified. The FBI did not appeal the additional releases. [S]

⁶³K.G.B. Passes Secrets Back to U.S., *The New York Times*, Dec. 14, 1991, at 6.

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