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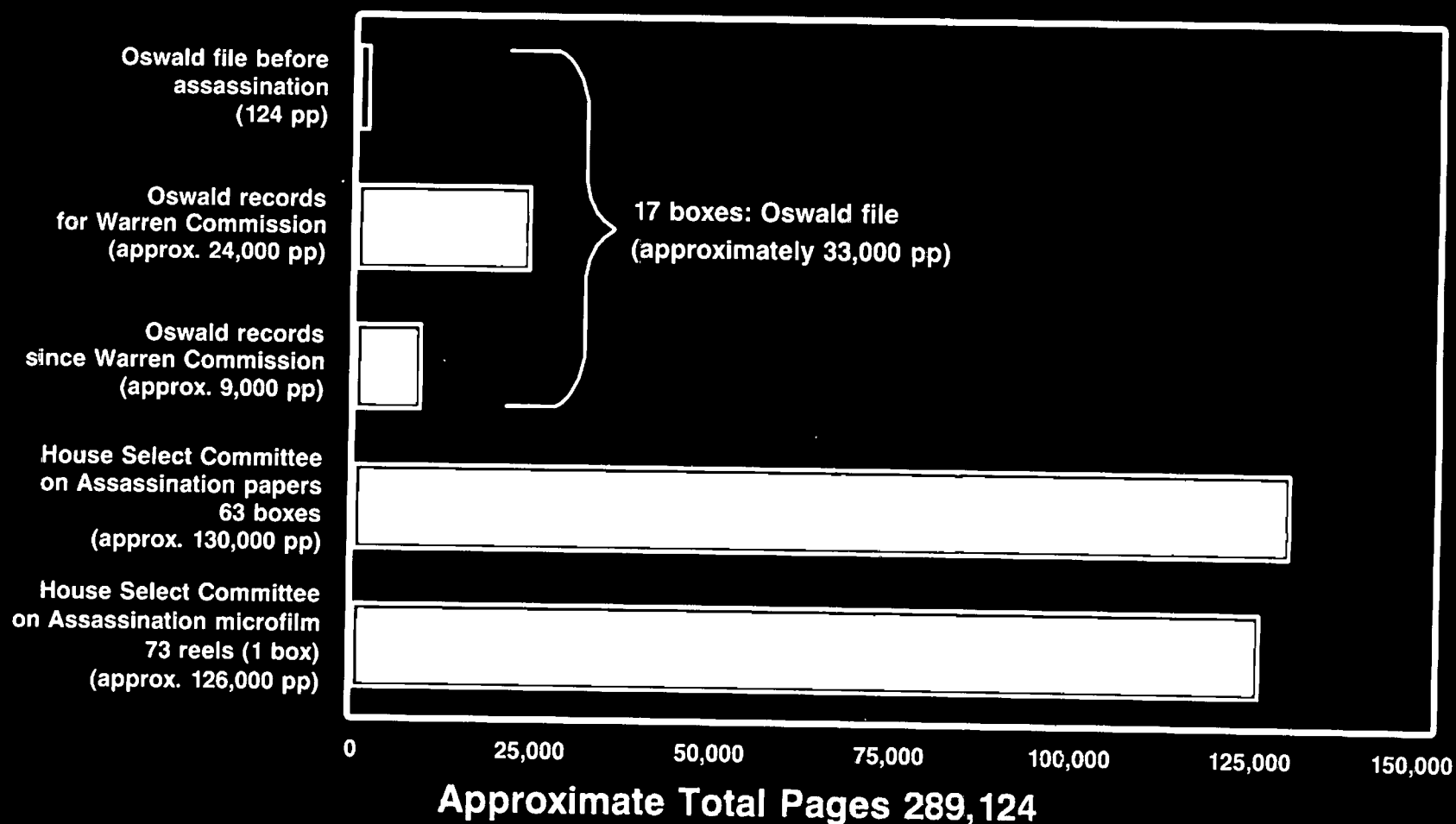
HEARING ON H.J. RES. 454
THE ASSASSINATION MATERIALS DISCLOSURE
ACT OF
1992

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B-2114-P. u

Kennedy Assassination Records

Collected and Created by CIA for the Warren Commission, 1963-64,
and for the House Select Committee on Assassination, 1977-79



OCA 2127-92
14 May 1992

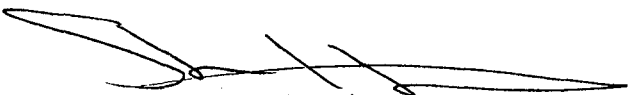
MEMORANDUM FOR: The Director of Central Intelligence

FROM: Stanley M. Moskowitz
Director of Congressional Affairs

SUBJECT: DCI Testimony on JFK Assassination
Materials Disclosure Act

1. You are scheduled to testify on 15 May before the Legislation and National Security Subcommittee of the House Committee on Government Operations on H.J. Res. 454, the "Assassination Materials Disclosure Act." This Subcommittee and the full Committee are chaired by John Conyers (D., MI). You will be followed by FBI Deputy Director Floyd Clarke and Deputy Assistant Attorney General David Leitch. The final witness will be Don Wilson, Archivist of the United States.

2. While the purpose of the hearing is to discuss the legislation on JFK assassination records, it is possible that you may get questions pertaining to FOIA and government secrecy because certain members--Chairman Conyers and Glenn English--have a particular interest in these topics. We also have been advised by staff that you may be asked about the classification of the Openness Task Force Report and why you did not accept certain recommendations of the Task Force. We have added some new material to your briefing book to aid you in addressing these additional topics.



Stanley M. Moskowitz

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MEMBERSHIP OF
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

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STATEMENT OF ROBERT M. GATES
DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND
NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

15 MAY 1992

Mr. Chairman, I am here today at your request to provide my views on House Joint Resolution 454, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter, just as I did before your Senate counterparts on Tuesday.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution--that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of President Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible

consistent with the protection of intelligence sources and methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am happy to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal deletions and transferred to the National Archives for release to the public. This is, I acknowledge, a small fraction of what we have, but it is an earnest of my commitment immediately to begin review for declassification of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and I anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many as possible. In fact, I recently approved new CIA declassification guidelines for our Historical Review Program which specifically direct a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart. In this spirit, the Agency is making publicly available these new guidelines for historical review and declassification.

In connection with these historical review guidelines, I have recently commissioned a task force to review Agency procedures under the Freedom of Information Act (FOIA). I have instructed this task force to ensure that our internal FOIA procedures are consistent with the approach that I have described for historical declassification. Although the task force will have to explore the difference between current documents that often are requested under FOIA and 30-year-old documents that are placed into the historical review program, my intention is to bring to the FOIA process a much more positive attitude toward declassification and release of Agency records.

To understand the magnitude of the effort involved in reviewing the JFK papers for declassification, it is important to place them in some context. CIA's collection of documents

related to the assassination of President Kennedy consists of approximately 250,000-300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination.

Unfortunately, and for reasons that I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized--all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. I have prepared a chart that illustrates this point.

As you can see, prior to President Kennedy's assassination CIA held only a small file on Lee Harvey Oswald that consisted of 34 documents (amounting to 124 pages), some of which originated with the FBI, State Department, the Navy, and

newspaper clippings. (Although I reported slightly smaller numbers to the Senate Committee on Governmental Affairs earlier this week, a subsequent count by my staff revealed these exact numbers.) Only 11 of these documents originated within CIA. I brought along a copy of Oswald's file as it existed before the assassination so that you can see first-hand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions and provided them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1962. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald--some 33,000 pages--most of which CIA received from other agencies after November 22, 1963.

There has been some comment on this pre-assassination Oswald file and how little it contained. I want to reemphasize that this pre-assassination material is but the first installment of all the material that we will review--an example of our intentions. All of the assassination-related documents we have will be reviewed for declassification, and we will transfer the declassified documents to the Archives as they are completed, rather than waiting until work on the entirety has been concluded.

The committee has asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example,

in the 17 boxes of Oswald records, approximately 40% of the documents originated with the FBI, and about 20% originated with the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 73 reels of microfilm. The microfilms in part overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27% originated with a variety of other U.S. government agencies, private organizations, and foreign and American press.

Mr. Chairman, you have also asked about assassination materials that may be held by other Intelligence Community agencies. The FBI will describe its holdings separately, which I assume include both intelligence and law enforcement records. The National Security Agency and the State Department's Bureau of Intelligence and Research report, after a preliminary search, that they have identified a relatively small amount of material responsive to previous inquiries by the Warren Commission, the Church Committee, and the House Select Committee on Assassinations. The Defense Intelligence Agency, which did not come into existence until 1961, has identified no assassination material to date, and it anticipates that any holdings it might have would be minimal because its mission at the time of the Kennedy assassination focused upon foreign order of battle.

Although our holdings at CIA do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review, and, as I said earlier, at my direction, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain.

Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than CIA. However, we have already taken steps to lift the sequestration, to coordinate with other agencies, and to begin the process of declassification. If necessary, in the absence of legislation, I will ask the House of Representatives for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents. I hope that we can work together, Mr. Chairman, to remove any obstacles that might arise in releasing the sequestered documents.

While I expect a large amount of material can be declassified under our program, I assume that there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of Agency employees. These files contain fitness reports (or performance evaluations), medical evaluations and credit checks on individual CIA officers. Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by Congress and signed by the President regarding the JFK papers, to enhance public confidence and to provide reassurance that CIA has not held back any information relevant to the assassination, I would appoint a panel of distinguished Americans from outside of government, perhaps including distinguished former jurists, to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and I am personally committed to making it work. Even in this time of diminishing resources within the Intelligence Community, I have directed the allocation of 15 full-time positions to expand the History Staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to get these papers declassified and released, and to open what remains classified to outside, non-governmental review. It is against this background that, in response to the committee's request, I cite our few technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only Intelligence Community concerns; I will

○ defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with my own statutory responsibility to protect intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff.

○ Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

○ Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and, in fact, are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed.

These are technical problems that I believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

But, again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate fully with any mechanism established by the Congress and the President to declassify all of this material.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT
OF
FLOYD I. CLARKE
DEPUTY DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE
THE
SUBCOMMITTEE ON LEGISLATION
AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
MAY 15, 1992
ON THE
ASSASSINATION MATERIALS DISCLOSURE ACT
HOUSE JOINT RESOLUTION 454

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU TO TESTIFY ABOUT FBI INVESTIGATIVE RECORDS RELATING TO THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY. FBI DIRECTOR SESSIONS TESTIFIED RECENTLY ABOUT THIS IMPORTANT TOPIC AND WANTED TO BE HERE TODAY. UNFORTUNATELY PRIOR OUT-OF-TOWN COMMITMENTS PRECLUDED HIM FROM DOING SO. HE DID ASK, MR. CHAIRMAN, THAT I EXPRESS HIS APPRECIATION TO YOU FOR THIS OPPORTUNITY AND THAT THE COMMITTEE'S ATTENTION BE DRAWN TO HIS TESTIMONY TO SUPPLEMENT MY TESTIMONY HERE TODAY.

WITHOUT QUESTION, MR. CHAIRMAN, IT IS FUNDAMENTAL THAT THE GOVERNMENT EXISTS TO MEET THE NEEDS OF ITS CITIZENS. IN THIS INSTANCE, THE NEED THAT COMPELS US ALL IS TO SATISFY THE INTENSE INTEREST AND CONCERN OF OUR CITIZENS ABOUT THE CIRCUMSTANCES SURROUNDING THAT TRAGIC EVENT NEARLY 30 YEARS AGO. CLEARLY, A CRITICAL COMPONENT OF THAT PROCESS IS THE EXAMINATION BY THE PUBLIC OF THE HUNDREDS OF THOUSANDS OF PAGES OF GOVERNMENT

DOCUMENTS CREATED DURING THE INVESTIGATION OF THE ASSASSINATION.

BECAUSE OF THAT AND YOUR EFFORTS HERE, WE SHARE A COMMON GOAL. AS DIRECTOR SESSIONS HAS PUBLICLY AND EMPHATICALLY INDICATED, WE STRONGLY SUPPORT MAXIMUM DISCLOSURE CONSISTENT WITH THE LAW AND THE NEED TO PROTECT CERTAIN NARROW BUT HIGHLY SENSITIVE CATEGORIES OF INFORMATION. IT IS OUR DESIRE TO WORK COOPERATIVELY THROUGH THE DEPARTMENT OF JUSTICE AND WITH OUR COLLEAGUES IN THE CIA TO QUICKLY FINALIZE AND IMPLEMENT A COMPREHENSIVE APPROACH. BECAUSE OF THE INTENSE PUBLIC INTEREST, HOWEVER, WE WILL NOT WAIT FOR THAT PROCESS TO UNFOLD. DIRECTOR SESSIONS HAS INSTRUCTED THAT THE FBI IMMEDIATELY BEGIN PROCESSING FOR PUBLIC RELEASE OUR REMAINING RECORDS. THIS PROCESSING WILL BE DONE BY THE TASK FORCE FORMED LAST MONTH BY THE DIRECTOR TO RESPOND TO THE PUBLIC DEMAND FOR GREATER DISCLOSURE OF RECORDS RELATING TO THE ASSASSINATION.

AS YOU KNOW, MR. CHAIRMAN, IMMEDIATELY FOLLOWING THE SHOOTING OF PRESIDENT KENNEDY, THE FBI BEGAN A MASSIVE INVESTIGATION. AN INTENSE EFFORT WAS MADE. RELATED INVESTIGATIONS WERE CONDUCTED AND MUCH INFORMATION WAS EXCHANGED BETWEEN VARIOUS AGENCIES. AS IS THE CASE WITH ALL MAJOR INVESTIGATIONS, THOUSANDS OF PAGES OF DOCUMENTS WERE CREATED TO RECORD THE RESULTS OF THESE EFFORTS AND TO FACILITATE THE INVESTIGATIONS.

MANY DIFFERENT KINDS OF INFORMATION WERE RECORDED IN FBI FILES. THE RESULTS OF THOUSANDS OF INTERVIEWS OF WITNESSES, OTHER INDIVIDUALS WITH POSSIBLY HELPFUL KNOWLEDGE, AND CONTACTS WITH CONFIDENTIAL INFORMANTS WERE MEMORIALIZED. COMMUNICATIONS BETWEEN FBI HEADQUARTERS AND OUR FIELD OFFICES AND VISE VERSA WERE INCLUDED AS WERE COMMUNICATIONS BETWEEN THE FBI AND OTHER AGENCIES. FORENSIC REPORTS WERE RECORDED. IN ALL, FBI FILES RELATING TO THE ASSASSINATION CONTAIN OVER 499,000 PAGES OF DOCUMENTS. A FEW MORE PAGES ARE ADDED

EVERY TIME THE FBI FOLLOWS UP ON A NEW ALLEGATION OR A NEW ISSUE ARISES.

IN ADDITION, A NUMBER OF REVIEWS WERE CONDUCTED BY THE GOVERNMENT. THE FBI COOPERATED FULLY WITH THE WARREN COMMISSION, THE HOUSE ASSASSINATIONS COMMITTEE, THE CHURCH COMMITTEE AND THE ROCKEFELLER COMMISSION. IN EACH INSTANCE, FBI DOCUMENTS WERE CREATED AS A RESULT OF INTERACTION WITH THESE COMMITTEES AND COMMISSIONS. DIRECTOR SESSIONS WAS ESPECIALLY PLEASED TO HEAR CONGRESSMAN STOKES TESTIFY WEDNESDAY THAT HE WAS ENTIRELY SATISFIED WITH BOTH THE COOPERATION AND THE INFORMATION THE FBI PROVIDED TO THE HOUSE ASSASSINATIONS COMMITTEE DURING ITS INQUIRY.

AFTER AMENDMENT OF THE FREEDOM OF INFORMATION ACT IN 1974, THE FBI BEGAN RECEIVING REQUESTS FOR INFORMATION RELATING TO THE ASSASSINATION. BY 1978 OVER 200,000 PAGES, OR 93 LINEAR FEET OF FILES, HAD BEEN PROCESSED AND MADE AVAILABLE TO THE PUBLIC THROUGH THE

FBI'S PUBLIC READING ROOM. MANY AUTHORS, JOURNALISTS, HISTORIANS AND OTHERS HAVE VISITED AND REVISITED THESE MATERIALS.

I WOULD LIKE TO BRIEFLY PROVIDE TO THE COMMITTEE A BREAKDOWN OF FBI RECORDS RELATING IN SOME WAY TO THE ASSASSINATION.

1. THE FBI HAS FOUR "CORE FILES" THAT RELATE DIRECTLY TO THE INVESTIGATION OF THE ASSASSINATION, OUR COOPERATION WITH THE WARREN COMMISSION, AND THE INVESTIGATIONS OF LEE HARVEY OSWALD AND JACK RUBY. THERE ARE APPROXIMATELY 499,000 PAGES IN THESE FILES. BECAUSE OF THE VERY LIBERAL STANDARDS USED FOR PROCESSING THESE DOCUMENTS, MOST OF THE INFORMATION IN THESE FILES WAS RELEASED PURSUANT TO THE FREEDOM OF INFORMATION ACT IN 1978 AND IS AVAILABLE IN THE FBI'S PUBLIC READING ROOM. A PHOTOGRAPH OF THE DOCUMENTS AVAILABLE IN OUR READING ROOM IS

ATTACHED TO MY STATEMENT. I ALSO HAVE ATTACHED A CHART DEPICTING THE TOTAL NUMBER OF PAGES IN THESE FILES, THE NUMBER OF DUPLICATE, THIRD AGENCY AND UNPROCESSED PAGES, AND THE NUMBER OF PAGES RELEASED IN THEIR ENTIRETY.

2. IN ADDITION, THE FBI HAS SEVERAL OTHER MUCH SMALLER FILES AS A RESULT OF OTHER RELATED INVESTIGATIONS SUCH AS THE INVESTIGATION OF MARINA OSWALD. THESE FILES COMPRISE APPROXIMATELY 22,000 PAGES. I ALSO HAVE ATTACHED A CHART PERTAINING TO THESE FILES AND, AGAIN, MUCH OF THIS INFORMATION HAS ALREADY BEEN RELEASED TO THE PUBLIC.

THE INFORMATION THAT HAS NOT BEEN DISCLOSED OR THAT HAS BEEN REDACTED TO SOME DEGREE FALLS WITHIN THE EXEMPTIONS SPECIFICALLY ENUMERATED IN THE FREEDOM OF INFORMATION ACT AND THE PROTECTION OF THE PRIVACY ACT. THIS INCLUDES INFORMATION THAT:

1. IS CLASSIFIED ON THE BASIS OF NATIONAL SECURITY;
2. WOULD DISCLOSE THE IDENTITIES OF INDIVIDUALS WHO SPECIFICALLY REQUESTED CONFIDENTIALITY;
3. WOULD DISCLOSE THE IDENTITIES OF CONFIDENTIAL INFORMANTS OR SOURCES;
4. IS HIGHLY PERSONAL INFORMATION ABOUT INDIVIDUALS;
OR
5. ORIGINATED WITH OTHER GOVERNMENT AGENCIES AND THOSE AGENCIES SPECIFICALLY REQUESTED THAT THE INFORMATION NOT BE RELEASED BASED UPON EXEMPTIONS APPLICABLE TO THOSE AGENCIES.

WHILE WE STRONGLY FAVOR MAXIMUM DISCLOSURE UNDER THE LAW, THERE ARE CERTAIN TYPES OF INFORMATION THAT ARE PARTICULARLY CRITICAL TO SUCCESSFUL LAW ENFORCEMENT INVESTIGATIONS AND NATIONAL SECURITY. THE FREEDOM OF INFORMATION ACT AND THE RESOLUTION PENDING BEFORE YOU RECOGNIZE THESE NARROW CATEGORIES. THE LIMITED INFORMATION IN FBI FILES THAT HAS NOT BEEN DISCLOSED

PUBLICLY FALLS LARGELY WITHIN THESE CATEGORIES OF INFORMATION.

IN ANY CASE, WE BELIEVE IT IS EXTREMELY HEALTHY FOR THE COUNTRY TO HAVE THESE ISSUES AIRED AND RESOLVED. THE PUBLIC INTEREST DEMANDS A FINAL REVIEW OF THIS HORRIFIC EVENT. MAXIMUM DISCLOSURE CONSISTENT WITH THE LAW CLEARLY SERVES THAT PURPOSE AND THAT IS WHAT WE INTEND TO DO.

I WOULD LIKE TO ADD A FINAL WORD OF CAUTION. AS I MENTIONED, THE FBI HAS HUNDREDS OF THOUSANDS OF PAGES OF DOCUMENTS RELATING TO THE ASSASSINATION. EXCLUDING THE DUPLICATE AND THIRD AGENCY DOCUMENTS, MOST OF THE DOCUMENTS AND ALMOST ALL OF THE INFORMATION THEY CONTAIN HAVE ALREADY BEEN RELEASED TO THE PUBLIC. FOLLOWING THE ASSASSINATION, THE GOVERNMENT CONDUCTED A NUMBER OF REVIEWS. THE WARREN COMMISSION AND THE HOUSE ASSASSINATIONS COMMITTEE INQUIRIES WERE PARTICULARLY EXHAUSTIVE. THE FBI COOPERATED FULLY

WITH BOTH, SUPPLYING MASSIVE NUMBERS OF DOCUMENTS. WHAT HAS NOT BEEN DISCLOSED FROM OUR RECORDS THROUGH THE FREEDOM OF INFORMATION ACT PROCESS HAS BEEN REVIEWED OUTSIDE OF THE FBI DURING THESE INQUIRIES. CONGRESS HAS SEEN ALL OF THE SIGNIFICANT INFORMATION THE FBI HAS THAT POSSIBLY BEARS ON THE ASSASSINATION. REGARDLESS OF WHAT PROCESS IS ULTIMATELY ADOPTED, THERE WILL BE NO NEW OR STARTLING REVELATIONS AS A RESULT OF THIS FINAL RELEASE FROM THE FBI. I BELIEVE, HOWEVER, THAT THIS SHOULD NOT DAMPEN THE ZEAL WITH WHICH THIS IS PURSUED. THE PUBLIC SHOULD KNOW WHAT IS IN OUR RECORDS RELATING TO THE ASSASSINATION AND WHAT IS NOT. THAT IS WHY WE ARE PROCEEDING REGARDLESS OF ANY LEGISLATION.

STATEMENT

OF

DAVID G. LEITCH
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

BEFORE THE

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

H.J. RES. 454

MAY 15, 1992

Mr. Chairman, Members of the Subcommittee, I am pleased to appear before you today to testify on the constitutional issues raised by House Joint Resolution 454, the "Assassination Materials Disclosure Act of 1992." The Department of Justice recognizes the importance of this legislation and is in agreement with the concerns that prompted its introduction. Without reservation, we endorse its stated purpose to "secure the expeditious disclosure of records relevant to the assassination of President John F. Kennedy as soon as practicable consistent with the public interest." We concur in the sponsors' belief that disclosure of information held by the government concerning the assassination is vital because of the public interest and scrutiny that the case, quite understandably, has generated.

It is, of course, necessary to achieve our shared policy goals in a constitutionally appropriate manner. That issue, which was discussed at length in the Department's April 27 letter to Chairman Cnyers, is what I would like to discuss today. For the most part, the constitutional concerns about which I will testify involve the structure of the proposed Assassination Materials Review Board. I emphasize that these concerns do not conflict with the goal of disclosure. In fact, the Congress could address these structural concerns in appropriate amendments without sacrificing any interest in disclosure. As the

Subcommittee knows, the Department and the Administration stand ready to work with the Congress to craft such amendments.

The most obvious constitutional issue raised by the structure of the proposed Assassination Materials Review Board is the appointment of the members of the Board by the Special Division of the United States Court of Appeals for the District of Columbia Circuit, which currently appoints independent counsels pursuant the provisions of chapter 40, title 28, United States Code. The Department's position that the proposed appointment structure for the Review Board raises significant and troubling constitutional issues is neither novel nor unique. In introducing S.J. Res. 282, the companion version of H.J. Res. 454, Senator Boren observed:

We faced a difficult choice in deciding who should appoint the Review Board. Given the unique circumstances involved, allowing the President or Congress to appoint the Board did not seem appropriate. We settled on the special three-judge Federal court division that appoints independent counsels for criminal investigations. Some may contend that this choice raises constitutional problems, despite the decision of the Supreme Court in Morrison v. Olson, 487 U.S. 654 (1988), which upheld the power of that division to appoint independent counsels. Some may feel that a judicial panel is ill-suited to make appointments for this task. The judges themselves, who have small staffs and other concerns, might well prefer to avoid this assignment. Still, we have found no better solution.

138 Cong. Rec. S4392 (daily ed. March 26, 1992).

In considering the validity of the proposed appointment structure, we have followed the Supreme Court's decision in Morrison v. Olson, which -- as Senator Boren recognized -- is of obvious relevance. In Morrison, the Supreme Court held, among other things, that vesting the appointment of the independent counsel in the Special Division does not violate the Appointments Clause, Article II, section 2, clause 2 of the Constitution. The Court also held that, notwithstanding the "for cause" restriction on the Attorney General's power to remove the independent counsel, the independent counsel statute taken as a whole does not violate the constitutional doctrine of separation of powers.

The appointment structure for the Review Board raises two significant constitutional issues, neither of which is directly governed by the Court's decision in Morrison. First, because the appointment of the Board members, who rather plainly exercise executive power, is vested in a court of law, the appointment is an "interbranch appointment" in a context different from the one considered by the Court in Morrison. Although the Court approved the specific interbranch appointment scheme before it, it recognized that Congress' power to provide for interbranch appointments is not "unlimited." The Court explained that "Congress' decision to vest the appointment power in the courts would be improper if there was some 'incongruity' between the functions normally performed by the courts and the performance of their duty to appoint." 487 U.S. at 676 (quoting Ex parte

Siebold, 100 U.S. 371, 398 (1880)). More recently, in Ezertag v. Commissioner of Internal Revenue, 111 S. Ct. 2631 (1991), the Court indicated that it is more difficult to challenge the constitutionality of an appointment structure that does not involve any interbranch appointments. The clear implication of this view is that interbranch appointment structures remain more vulnerable to constitutional challenge than the usual intrabranh appointment schemes.

Unfortunately, it is hard to determine just how vulnerable a particular interbranch appointment structure is to a constitutional challenge because the Morrison Court gave little guidance for deciding when such interbranch appointments are incongruous. In holding that the appointment of the independent counsel by the Special Division was not an unconstitutional interbranch appointment, the Court relied heavily on precedents in which courts have appointed prosecutors and on the perceived conflict of interest where the Executive Branch is called upon to investigate its own high-ranking officers. See 487 U.S. at 676-77.

Neither of these factors would help to justify the interbranch appointment of the members of the Review Board. It would not be unreasonable to conclude that there is indeed an incongruity between normal judicial functions and the appointment of the Board members because judicial panels and judges do not

ordinarily determine who will decide to release confidential Executive Branch materials. Nor do we divine a conflict of interest in vesting with the Executive the power to make this determination. Indeed, the sponsors of the joint resolution recognize in section 2(h)(2) that it is appropriate for the President to retain final authority over disclosure of Executive Branch materials.

Given the uncertainty in the constitutional law on interbranch appointments, vesting the appointment of the Review Board members in the Special Division would cast doubt on the constitutionality of the Board. That doubt could delay the work of the Board, and even require remedial legislation, further delaying the expeditious release of documents that the resolution and the Department seek. In a hearing in the Senate on Tuesday of this week, Senator Boren stated that other methods of appointment should be considered, and we pledged our willingness to explore alternatives with the Congress.

A second constitutional issue raised by the appointment structure of the Review Board involves vesting in the Review Board the power to appoint an Executive Director, who would, following the Supreme Court's precedents, be considered an inferior officer for Appointments Clause purposes. Because the members of the Review Board would be appointed by a court, they too must be considered inferior officers under the Appointments

Clause. Indeed, the resolution itself makes plain in section 5(b)(3) that "the members of the Review Board shall be deemed to be inferior officers of the United States within the meaning of section 2 of Article II of the Constitution." But under the appointments clause, the power to appoint inferior officers such as the Executive Director may be vested only in the President alone, the Head of a Department, or, subject to the constraints discussed above, a court of law, and not in other inferior officers. Morrison does not help to justify such an appointment structure, because while independent counsels have the power to appoint staff and other employees, see 28 U.S.C. § 594(c), they do not have power to appoint inferior officers.

Both of these constitutional problems could be addressed if the members of the Review Board were appointed by the President, with the advice and consent of the Senate. In that case, there would be no interbranch appointment problem, and the Review Board could then be composed of principal officers, who may be vested with the power to appoint inferior officers of the United States. Because that structure would distribute the appointment power between the President and the Senate, it might also satisfy any concern regarding vesting the appointment in either the President or Congress alone.

Let me mention one other constitutional issue with respect to the structure of the Review Board. The constitutional chain

of command requires that the President have the power to supervise the actions of government officers exercising Executive power. The Supreme Court's decision in Morrison in fact confirms this requirement because the Court upheld the constitutionality of the independent counsel statute only after it was satisfied that the statute "gives the Executive Branch sufficient control over the independent counsel to ensure that the President is able to perform his constitutionally assigned duties." Morrison, 487 U.S. at 696.

At least to the extent that the materials it holds do not contain privileged information of the Executive Branch, Congress may vest the power to review and release congressional assassination records with an officer of Congress, without interference by the executive. It may not, however, vest that power with an Executive Branch officer and deprive the President of his constitutional power to supervise that officer in the performance of that duty. We therefore object to the provision in section 8 purporting to insulate decisions of the review board from the supervision and control of the President.

Finally, the Department has expressed concern about the specific exceptions contemplated in the legislation to the general requirement of disclosure. As noted above, of course, we share the goal of achieving broad and expeditious disclosure of assassination materials. But, as the sponsors of the Joint

Resolution have recognized, there may be circumstances in which the public and national interest are not served by disclosure. The Joint Resolution spells out some of those circumstances including where disclosure would reveal intelligence sources and methods, constitute an unwarranted invasion of privacy, or violate an understanding of confidentiality between the Government and a witness. We are concerned, however, that there may be other significant interests, such as law enforcement, well recognized in existing practice, that should be addressed by the legislation. In crafting legislation that strikes the appropriate balance between the competing interests at stake in this matter, the Congress and the Executive Branch should work together in a spirit of cooperation and compromise. We submit that this matter should be further discussed with agencies -- such as the FBI and the CIA -- whose operational interests may be implicated.

In closing, I would like to emphasize that the Department is trying to find solutions to the constitutional issues raised by H.J. Res. 454. I hope we can work on that task together with this Subcommittee. Thank you very much.

STATEMENT OF
THE ARCHIVIST OF THE UNITED STATES
ON H. J. RES. 454,
ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992
MAY 15, 1992

Statement of
the Archivist of the United States
on H. J. Res. 454,
Assassination Materials Act of 1992
May 15, 1992

Chairman Conyers and distinguished members of the subcommittee, I want to thank you for providing me the opportunity to address this issue from the perspective of the National Archives.

The primary mission of the National Archives is not only to collect and preserve the records of the Federal Government, but also to make those records available to the public. NARA is proud of its record of support for greater access by citizens to the historic records of their Government, consistent with the national security interests of the Government and the privacy interests of other citizens. We believe that such access is one of the hallmarks of our democracy; through it our citizens can ensure that their Government is acting in their best interests.

I want to assure the subcommittee that the National Archives and Records Administration (NARA) fully supports the accelerated review, declassification, and release of documentary materials related to the assassination of President John F. Kennedy, and we stand ready to assist in this important effort.

Mr. Chairman, as I discussed in my letter to you of May 5, the National Archives has custody of a large amount of material that, under the definition used in House Joint Resolution 454, may relate to the assassination of President Kennedy. I have appended to this testimony a detailed listing of these record categories, but offer this brief summary for your information.

The National Archives has already released to the public the overwhelming majority of the records related to the assassination for which the National Archives holds release authority. For example, since the mid-1960s the records of the Warren Commission have been in our custody and we have made available to requestors, in consultation with originating agencies, over 95% of the information in these files. In addition, we house relevant records from the Secret Service, Department of Justice, and Department of State, nearly all of which have been made public. Much of the closed material in both the Warren Commission records and these other relevant agency records has been withheld to protect the privacy of individual citizens. Tax returns, information from medical and psychiatric records, and the details of an individual's personal and family life have

generally not been released. Many documents have been released in part and all reasonably segregable portions of these documents have been released. Often the only material that has been withheld is the name of an individual.

Those documentary materials we house for which we have no independent authority concerning access are in two broad groups: congressional records and donated historical materials. When the House Select Committee on Assassinations (the Stokes Committee) completed its work in 1979, the committee transferred its official files to the National Archives. Records of the Senate Intelligence Committee are also housed at the National Archives. Access to these records are governed by Senate and House rules, which prohibit public access for from 20 to 50 years after their creation.

In accordance with 44 USC 2107 and 2111, the National Archives has also accepted under deed of gift a wide variety of donated historical materials. The Kennedy autopsy photographs and x-rays fall into this category. According to the deed of gift from the Kennedy family, the National Archives refers researchers who wish to obtain access to the autopsy materials to a representative of the Kennedy family. That representative has approved access to qualified forensic pathologists and Government investigating bodies, such as the Stokes Committee.

In addition, the papers of the Commission to Investigate CIA Activity Within the United States, commonly referred to as the Rockefeller Commission, are held by the Gerald R. Ford Library under a deed of gift. This is in keeping with legal practices prior to 1978 when records of presidentially appointed commissions could be regarded as "personal" to the president, since the commission provided advice directly to him. With the enactment of the Presidential Records Act in 1978, all such records, beginning with the records of President Ronald Reagan, are now defined as Federal records, but the Act was not retroactive to previous presidencies.

Although none of the highly classified Rockefeller Commission collection has been made directly available to the general public, the deed of gift specifies that access will be granted for any legitimate governmental function and that access has been granted to at least three previous governmental investigations, one conducted by the Justice Department and two conducted by Congress: the Brooke Committee and the Church Committee. We are assured by President Ford that relevant portions of the Commission's records would also be made available to the review board proposed in the joint resolution.

In addition, there are other collections of personal papers in our presidential libraries received under the authority

of 46 USC 2107 and 2111 that may contain documentary materials that fall within the broad definition of "assassination materials" as reflected in the proposed resolution. We have recently requested a review by our libraries to identify such collections and have asked our library directors to review the relevant deeds of gift.

Mr. Chairman, similar to President Ford, all former Presidents and other donors of historical documentary materials to our presidential library system have fully cooperated with all previous government inquiries. Given that record of cooperation, we would ask that you and the Subcommittee give full consideration to an alteration in the current proposed definition of assassination materials that would accord to all donors the recognition of rights extended to the Kennedy family. The current definition of "assassination materials" only recognizes that the autopsy materials donated to the National Archives by the Kennedy family under a deed of gift must be dealt with differently than other assassination materials. We believe strongly that the resolution needs to be broadened to extend to other donors a recognition of their right to have some say in the access to their personal papers. To do otherwise would seriously damage the trust that the Archivist, acting on behalf of the Government, has established with the donors. The United States Government has promised through a deed of gift that the donor would have the right to control access to their personal property. If the resolution were to go forward in its present form, we feel that it would have a chilling effect on the willingness of donors to present their papers to presidential libraries and other repositories, such as the Library of Congress. The ultimate victim of such a sea change would be the richness of our documentary history. I understand that the Librarian of Congress joins me in this concern.

To accommodate these concerns and at the same time reflect the Review Board's probable desire to examine at least some of these materials, we would recommend an expansion of Section 10 of the joint resolution to include a review of other relevant materials being held under a deed of gift by the Government. As with the Kennedy autopsy photographs and x-rays, however, the terms of the deeds of gift would be recognized by the Review Board in requesting access to the materials.

In addition to this recommended alteration, Mr. Chairman, we wish to offer three additional suggestions which we feel will strengthen the resolution and permit us to expeditiously carry out its goals.

As currently drafted, the Archives would be required to provide copies of all released assassination-related materials under the provisions of the fee/waiver structure

of the Freedom of Information Act, Section 552 of Title 5, US Code. That method would be inconsistent with NARA's currently approved and longstanding procedure, authorized in 44 USC 2116, of providing copies to the public at cost.

The implications of providing fee waivers for copying would be extremely detrimental to the National Archives. The cost of providing what we know will be thousands of copies of the released documents would have to be absorbed by the Archives to the detriment of many of our other programs.

We therefore recommend that NARA provide copies to the public under the current at cost system. Researchers would still be permitted to view materials in our Research Room at no charge. We have found that this system strikes a good balance between making materials available to the public without unduly taxing our resources.

We strongly support the resolution's provision of using the Government Printing Office to publish those released assassination materials of "broad public interest". We would only ask that the decision of what to publish be left to the review board and not the Archives. Determining what is of "public interest" in this area of inquiry is not really an archival function and would be better left to independent subject matter specialists. We would strive to be the central source for all released materials and leave the selective decisions on public interest to others.




Finally, it is unclear, as currently drafted, whether the records of the Executive agencies would be "made available" to the Review Board where the records are currently stored or consolidated in a central location for the benefit of review. The National Archives does not now have the space to house all of the Government's assassination materials. Additionally, we believe that the records should not be moved for purposes of review. Preservation issues, security concerns, and opportunities for loss, damage, and inadvertent release are all compounded when records are moved from location to location. Also it would be impossible for agencies to continue to process FOIA requests for these materials (something provided for in the resolution) if they were moved from current agency space. We would therefore recommend that the independent reviewers go to the records and not vice versa.

I want to conclude by emphasizing that we fully support the broad purposes of this resolution and look forward to the day when all of the assassination materials are open and in the custody of the National Archives. Only in this way will the American public be able to assure themselves of the truth behind the assassination of President Kennedy.

Thank you.

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(A)

PRESUMPTION OF RELEASE AND FOIA

Question: You mentioned that you have established a task force to review FOIA procedures to ensure that they are consistent with your historical review guidelines. Does this mean that there will be a presumption in favor of declassification when the CIA responds to FOIA requests?

Answer: THE TASK FORCE HAS JUST BEEN CREATED, SO IT IS TOO EARLY TO PREDICT WHAT RECOMMENDATIONS IT WILL MAKE. MY INTENTION IS TO ENSURE THAT THE ATTITUDE THAT ANIMATES THE HISTORICAL REVIEW GUIDELINES WILL CARRY OVER INTO THE AGENCY'S RESPONSES TO FOIA REQUESTS. IT MAY BE THAT THE EXACT PROCEDURES USED FOR DECLASSIFICATION REVIEW OF 30-YEAR-OLD DOCUMENTS ARE NOT APPROPRIATE FOR REVIEW OF NEWER DOCUMENTS UNDER FOIA, BUT THAT IS AMONG THE QUESTIONS I LEAVE FOR THE TASK FORCE.

(B)

IS MORE RELEASED UNDER FOIA OR NEW GUIDELINES?

Question: Would more material be released under FOIA or under your new historical review guidelines?

Answer: I THINK THAT MORE DOCUMENTS PROBABLY WOULD BE RELEASED UNDER THE STANDARDS ESTABLISHED BY THE NEW HISTORICAL REVIEW GUIDELINES AS COMPARED TO OUR TRADITIONAL STANDARDS FOR FOIA REVIEW.

(C)

HOW MANY JFK DOCUMENTS RELEASED UNDER FOIA?

Question: How many of the CIA's JFK records have been reviewed for release under the Freedom of Information Act (FOIA)? How many of these records have been released pursuant to such requests?

Answer: CIA HAS RELEASED 7,432 PAGES OF RECORDS PERTAINING TO THE ASSASSINATION OF PRESIDENT KENNEDY, REPRESENTING 1,969 DOCUMENTS, UNDER THE FOIA. THERE IS NO DOCUMENTATION OF HOW MANY JFK ASSASSINATION RECORDS CIA HAS REVIEWED UNDER FOIA.

(D)

FOIA RESPONSE TIME IN GENERAL

Question: We have seen reports that the CIA takes many years to respond to FOIA requests, and that requests even for previously released material are sometimes held up for many months. Can you comment on the Agency's track record under FOIA and other disclosure laws?

Answer: CIA'S POLICY IS TO PROVIDE REQUESTERS WITH THE MAXIMUM AMOUNT OF RELEASABLE INFORMATION IN THE SHORTEST POSSIBLE TIME. OVER THE PAST FIVE YEARS, THE VOLUME OF INCOMING REQUESTS TO CIA HAS INCREASED BY 37%, AND WE HAVE TRIED TO MATCH THAT PACE IN GIVING FINAL RESPONSES. IN EACH OF THE YEARS 1989-1991, WE ANSWERED OVER 4000 REQUESTS--A FEAT NEVER BEFORE REQUIRED OR ACCOMPLISHED AT THE AGENCY. FURTHER, THE ADMINISTRATIVE APPEAL AND LITIGATION RATES FOR CIA FOIA RESPONSES ARE AMONG THE LOWEST IN ALL OF GOVERNMENT.

(E)

"SECRET" OPENNESS TASK FORCE REPORT

Question: Why was the Openness Task Force Report classified "Secret"?
Why was the first FOIA request for the Report denied in its entirety?

Answer: AS YOU KNOW, I HAVE ANNOUNCED A NEW OPENNESS PROGRAM AT CIA. HOWEVER, THIS APPROACH REPRESENTS A DRAMATIC CHANGE FOR AN AGENCY LONG ACCUSTOMED TO OPERATING PRIMARILY IN SECRET. THIS CHANGE WILL NOT OCCUR OVERNIGHT, AND THE INITIAL DECISION TO WITHHOLD THE ENTIRE OPENNESS TASK FORCE REPORT IS BUT ONE EXAMPLE OF THE HURDLES I FACE IN PURSUING MORE OPENNESS AT CIA. HOWEVER, I AM COMMITTED TO CHANGE, AND OUR NEW HISTORICAL REVIEW GUIDELINES, WITH A PRESUMPTION IN FAVOR OF DISCLOSURE, PROVIDE AN INDICATION OF THE DIRECTION I AM TAKING.

(F)

NEW EXECUTIVE ORDER ON CLASSIFICATION

Question: We have heard that the Executive Branch is considering a new Executive Order on classification procedures that would supersede Executive Order 12356. What can you tell us about this new Executive Order, and when will it be issued?

Answer: I AM TOLD THAT A NEW EXECUTIVE ORDER IS IN THE DRAFTING STAGE, AND THAT IT IS BEING COORDINATED WITHIN THE EXECUTIVE BRANCH. THE DETAILS OF ANY CHANGES TO E.O. 12356 WILL NOT BE CLEAR UNTIL THE DRAFT IS FINALIZED AND COORDINATED. I UNDERSTAND THAT THE INTER-AGENCY WORKING GROUP THAT IS LOOKING AT THIS ISSUE WOULD BE HAPPY TO TAKE ANY SUGGESTIONS FOR IMPROVING E.O. 12356.

I DO NOT KNOW HOW LONG THE PROCESS WILL TAKE.

(G)

OSWALD DOCUMENTS PREVIOUSLY RELEASED

Question: Many of the Oswald documents transferred to the National Archives earlier this week reportedly had already been released to the public many years ago. Is this true?

Answer: YES, THAT IS CORRECT. HOWEVER, MOST OF THE DOCUMENTS IN THE OSWALD FILE WERE ORIGINATED BY OTHER AGENCIES, AND WE DID NOT KNOW WHAT DOCUMENTS THOSE AGENCIES HAD RELEASED PREVIOUSLY.

(H)

LITTLE OF INTEREST IN OSWALD FILE

Question: There appears to be little new information of interest in the Oswald file that was released. Is this true?

Answer: YES, THAT IS ESSENTIALLY ACCURATE. BUT THE OBJECTIVE IN TRANSFERRING THE FILE WAS TO DEMONSTRATE OUR GOOD FAITH COMMITMENT TO RELEASING AS MANY DOCUMENTS RELATED TO THE ASSASSINATION AS WE CAN, AS QUICKLY AS POSSIBLE.

(I)

JFK MATERIAL AT NSA AND INR

Question: You mentioned that NSA and INR have identified a "relatively small amount" of material that had been provided in response to inquiries by the various bodies that investigated the Kennedy Assassination. Can you give us a better idea of the volume of material involved?

Answer: I AM ADVISED THAT BASED ON A PRELIMINARY SEARCH, NSA HAS IDENTIFIED APPROXIMATELY 50 PAGES OF NSA MATERIAL THAT IT PROVIDED IN RESPONSE TO OFFICIAL INQUIRIES BY THE WARREN COMMISSION, THE CHURCH COMMITTEE, AND THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS. INR ADVISED THAT IT HAS IDENTIFIED ONE DRAWER--APPROXIMATELY TWO CUBIC FEET OF MATERIAL--THAT IT SIMILARLY PROVIDED, ABOUT TWO-THIRDS OF WHICH ORIGINATED WITH OTHER AGENCIES, SUCH AS FBI AND CIA.

(J)

JFK MATERIAL AT NAVAL INTELLIGENCE

Question: You mentioned records held by NSA, DIA, and INR in your testimony, but what about the intelligence elements of the Armed Services, like Naval Intelligence? Are the allegations that Oswald had a relationship with Naval Intelligence true?

Answer: I AM NOT AWARE OF ANY ASSASSINATION MATERIALS THAT THEY MAY HAVE. THE COMMITTEE MAY WISH TO CONTACT THE DEPARTMENT OF DEFENSE TO OBTAIN THE INFORMATION YOU ARE SEEKING.

Can we get a
better read
on this from
ONI.

1/9
A

(K)

JFK MATERIAL RELEASED BY OTHER AGENCIES

Question: How much assassination material has been released to the public under existing statutes by intelligence agencies other than CIA? Can you tell us about their declassification procedures?

Answer: I AM ADVISED THAT NSA AND DIA HAVE RECEIVED FOIA REQUESTS RELEVANT TO THE KENNEDY ASSASSINATION, AND THAT FOIA REQUESTS TO THE STATE DEPARTMENT ON THIS TOPIC MAY HAVE ENCOMPASSED INR RECORDS. NSA REPORTS, BASED ON A PRELIMINARY REVIEW, THAT IT HAS IDENTIFIED ABOUT 17 FOIA REQUESTS, 5 OF WHICH ARE STILL "OPEN". DIA REPORTS THAT IT HAS RECEIVED A FEW SPECIFIC FOIA REQUESTS RELATED TO JFK, BUT IT HAS NOT LOCATED RESPONSIVE DOCUMENTS.

EACH AGENCY HAS ITS OWN INTERNAL PROCEDURES FOR RESPONDING TO FOIA REQUESTS, AND I AM NOT FAMILIAR WITH THE PROCEDURES AT OTHER INTELLIGENCE AGENCIES.

(L)

PAPERS ON CUBA, CASTRO, MONGOOSE, AMLASH, LOPEZ

Question: Can you tell us whether CIA's collection of assassination materials includes documents concerning Cuba, Castro, Operation MONGOOSE, AMLASH, and Gilberto Lopez?

Answer: I AM AWARE THAT DOCUMENTS ON THESE TOPICS ARE PRESENT IN OUR HOLDINGS OF ASSASSINATION MATERIAL. I WILL MAKE SURE THAT DOCUMENTS IN THESE CATEGORIES ARE AMONG FIRST THAT OUR REVIEWERS EXAMINE AS THEY WORK THROUGH OUR HOLDINGS.

DEFINITION OF ASSASSINATION MATERIALS

Question: How broadly should we define the term "assassination material" in the Joint Resolution?

Answer: I THINK THAT "ASSASSINATION MATERIAL" SHOULD BE DEFINED TO INCLUDE ONLY INFORMATION THAT BEARS SOME REASONABLE RELATIONSHIP TO THE JFK ASSASSINATION. IT SHOULD NOT BE DEFINED SO BROADLY AS TO INCLUDE INFORMATION RELATED TO EVERY CONSPIRACY THEORY OUT THERE. PERHAPS A PANEL OF DISTINGUISHED HISTORIANS COULD BE ASSEMBLED TO DRAW THE LINE BETWEEN WHAT IS -- AND WHAT IS NOT -- REASONABLY RELATED TO THE ASSASSINATION.

RECENT ASSASSINATION-RELATED DOCUMENTS

Question: Has the CIA created or received documents related to the JFK assassination since the end of the House Select Committee on Assassinations investigation? What happens to such documents?

Answer: THE AGENCY HAS COLLECTED A SMALL NUMBER OF DOCUMENTS IN THE PAST FEW YEARS THAT RELATE TO OSWALD OR TO THE ASSASSINATION MORE GENERALLY. SUCH DOCUMENTS ARE PLACED INTO THE OSWALD FILE, BECAUSE THAT IS THE ONLY FILE RELATING TO THE ASSASSINATION THAT IS STILL OPEN.

OTHER DOCUMENTS

Question: Does the CIA have any other documents, beyond the ones you have described, that would relate to the assassination of JFK?

Answer: THE COLLECTIONS OF RECORDS THAT I HAVE DESCRIBED CONTAIN ALL CIA DOCUMENTS THAT PREVIOUSLY HAVE BEEN CONSIDERED RELEVANT BY THE WARREN COMMISSION AND THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS. THE AGENCY BELIEVES THAT IN RESPONDING TO THESE INVESTIGATIONS, IT HAS IDENTIFIED THOSE DOCUMENTS THAT DIRECTLY PERTAIN TO THE ASSASSINATION OF PRESIDENT KENNEDY.

HELMS' IG REPORT TO PRESIDENT JOHNSON

Question: I understand that former DCI Helms ordered an IG report for President Johnson on CIA assassination attempts against Castro and their possible connection to the Kennedy assassination. Is that report included in the documents you have described? Has it ever been made public? Has it been made available to other investigative entities? Will it be disclosed under the Joint Resolution?

Answer: YES. I AM TOLD THAT THE INSPECTOR GENERAL REPORT THAT DCI HELMS ORDERED PREPARED FOR PRESIDENT JOHNSON IS INCLUDED IN THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS MATERIAL THAT I HAVE DESCRIBED. ALTHOUGH IT HAS NEVER BEEN MADE PUBLIC, IT WAS MADE AVAILABLE (IN SANITIZED BUT STILL CLASSIFIED FORM) TO THE ROCKEFELLER COMMISSION AND TO THE CHURCH COMMITTEE, AS WELL AS TO THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS. IT WILL BE REVIEWED FOR DECLASSIFICATION SOON, BUT UNTIL IT IS I CANNOT PREDICT WHETHER IT CAN BE RELEASED.

INITIAL REVIEW OF RECORDS

Question: Do you agree with the approach in the Joint Resolution, which has the Executive Director of the Review Board making the initial determination on all JFK records, or do you think that your agency should make the first cut?

Answer: I PROPOSE THAT THE INITIAL REVIEW OF ASSASSINATION MATERIALS BE MADE BY THE ORIGINATING AGENCY. THIS APPROACH WOULD ENSURE THAT THE JFK MATERIALS ARE REVIEWED AND RELEASED AS QUICKLY AND EFFICIENTLY AS POSSIBLE. AFTER THE INITIAL REVIEW BY THE ORIGINATING AGENCY, ONLY THOSE DOCUMENTS THAT COULD NOT BE RELEASED IN FULL WOULD THEN BE REVIEWED BY THE REVIEW BOARD. DISPUTES BETWEEN THE ORIGINATING AGENCY AND THE REVIEW BOARD COULD THEN BE RESOLVED BY THE PRESIDENT OR HIS DESIGNEE. THIS ARRANGEMENT WOULD EXPEDITE THE PROCESS OF DISCLOSURE BECAUSE THE AMOUNT OF MATERIAL THAT WOULD HAVE TO GO TO THE REVIEW BOARD WOULD ONLY BE A FRACTION OF THE WHOLE. AS I HAVE INDICATED, THE CIA HAS ALREADY BEGUN THE INITIAL REVIEW PROCESS.

HOW LONG WILL IT TAKE ?

Question: How long would it take the CIA to perform the initial review of the documents you have described?

Answer: MY STAFF ESTIMATES THAT THEY COULD COMPLETE AN INITIAL REVIEW OF THE DOCUMENTS WE ARE HOLDING WITHIN SIX TO TWELVE MONTHS. HOWEVER, I WILL USE WHATEVER RESOURCES ARE AVAILABLE TO MEET ANY REASONABLE DEADLINE ESTABLISHED BY THE JOINT RESOLUTION.

WHAT WILL IT COST ?

Question: Can you give us an estimate of the cost of reviewing these files in compliance with the Joint Resolution?

Answer: THE COST OF THE EFFORT WOULD DEPEND GREATLY ON WHAT PROCEDURES ARE SET OUT IN THE JOINT RESOLUTION AND ALSO ON THE DEADLINES THAT ARE ESTABLISHED. NATURALLY, THE COST OF THE EFFORT WILL INCREASE AS THE TIME ALLOWED FOR REVIEW IS SHORTENED, BECAUSE MORE EMPLOYEES WILL BE DRAWN INTO THE PROJECT IF THE DEADLINES ARE SHORT.

WHAT PERCENTAGE WILL BE RELEASED?

Question: What percentage of the CIA records you have described will be released to the public in full?

Answer: IT IS TOO EARLY TO GIVE YOU AN ESTIMATE OF THE PERCENTAGE THAT CAN BE RELEASED, SINCE THE HISTORICAL REVIEW GROUP HAS JUST BEGUN THE ENORMOUS TASK OF REVIEWING THESE DOCUMENTS. I DO BELIEVE, HOWEVER, THAT A SIGNIFICANT PORTION OF THESE RECORDS CAN BE RELEASED TO THE PUBLIC, AND I AM COMMITTED TO PUSHING FOR AS MUCH DISCLOSURE AS POSSIBLE.

CONCERNS WITH RELEASING OLD MATERIAL

Question: What concerns do you have which would result in withholding any of this 30-year-old material in whole or in part?

Answer: LET ME BEGIN BY SAYING THAT I SUSPECT THAT MUCH OF THE OLDER MATERIAL CAN BE RELEASED. I HAVE INSTRUCTED THE REVIEWERS TO USE A PRESUMPTION OF DISCLOSURE, AND THAT PRESUMPTION CAN ONLY BE OVERCOME BY A CURRENT SHOWING THAT DISCLOSURE WOULD DAMAGE THE NATIONAL SECURITY. HOWEVER, WHERE DISCLOSURE WOULD CAUSE SUCH DAMAGE, FOR INSTANCE BY REVEALING THE IDENTITY OF A SOURCE OR THE DETAILS OF AN INTELLIGENCE METHOD STILL IN USE, THEN WE DO HAVE A DUTY TO WITHHOLD. I SHOULD ALSO POINT OUT THAT SOME OF THE DOCUMENTS ARE MUCH NEWER, BECAUSE THEY WERE CREATED OR COLLECTED IN RESPONSE TO MORE RECENT CONGRESSIONAL INQUIRIES (SUCH AS THE HSCA).

NEW DECLASSIFICATION STANDARDS

Question: You mentioned that you recently approved new declassification standards for the Historical Review Group. How do these standards differ from past Agency practice? Can we see these new standards, or are they classified?

Answer: THE DECLASSIFICATION GUIDELINES THAT I RECENTLY APPROVED FOR THE HISTORICAL REVIEW PROGRAM DIFFER FROM PAST AGENCY PRACTICE BECAUSE THEY CREATE A PRESUMPTION IN FAVOR OF DISCLOSURE OF INFORMATION SELECTED FOR THE PROGRAM. REVIEWERS WHO ADVOCATE THE CONTINUED CLASSIFICATION OF INFORMATION IN THIS PROGRAM WILL BEAR THE BURDEN OF IDENTIFYING THE DAMAGE TO NATIONAL SECURITY THAT COULD REASONABLY BE EXPECTED TO RESULT FROM DISCLOSURE.

THE GUIDELINES ARE NOT CLASSIFIED. I WOULD BE HAPPY TO PROVIDE THE COMMITTEE WITH A COPY FOR ITS OWN REVIEW.

NAMES OF SOURCES

Question: Is it your position that no names of Agency sources will be released if those sources were promised confidentiality? Does it matter whether the promise was express or implied? What if the source is now deceased?

Answer: CONFIDENTIAL SOURCES ARE THE LIFEblood OF OUR BUSINESS, AND WE ARE EXTREMELY RELUCTANT TO RELEASE INFORMATION THAT COULD IDENTIFY A SOURCE, WHETHER THAT SOURCE WAS WITTING OR UNWITTING, AND REGARDLESS OF WHETHER CONFIDENTIALITY WAS EXPLICITLY PROMISED. IF WE DO NOT HONOR SUCH PAST CONFIDENCES, FUTURE SOURCES WILL NATURALLY BE HESITANT TO WORK FOR US. HOWEVER, I DO NOT WANT TO LAY DOWN A BLANKET RULE, BECAUSE I BELIEVE THAT IN CERTAIN EXTRAORDINARY CASES, IT MAY BE APPROPRIATE TO CONSIDER DISCLOSING THE IDENTITY OF A SOURCE.

PROTECTING METHODS

Question: Will you seek to protect any intelligence method reflected in these records, or just methods that are currently in use? Why should we protect sources and methods that are almost 30 years old?

Answer: I BELIEVE THAT WE WOULD ONLY SEEK TO PROTECT INTELLIGENCE METHODS THAT ARE CURRENTLY IN USE OR MIGHT BE USED IN THE FUTURE, AND ONLY IF THE INFORMATION COULD COMPROMISE THAT USE. SINCE MANY OF THE METHODS REFLECTED IN THESE DOCUMENTS WILL BE DECADES OLD, I EXPECT THAT A SIGNIFICANT PORTION OF OUR MATERIALS CAN BE RELEASED TO THE PUBLIC.

LINGERING DOUBTS

Question: If the CIA decides to withhold some documents, won't the lingering public doubts you referred to still persist? You seem confident that these documents will show no CIA involvement in the assassination, but if there was such involvement wouldn't the "smoking guns" have been destroyed long ago?

Answer: NO MATTER HOW MANY DOCUMENTS WE RELEASE, WE WILL NEVER BE ABLE TO SATISFY THE DEDICATED CONSPIRACY THEORISTS. HOWEVER, UNDER THE JOINT RESOLUTION, THE REVIEW BOARD MEMBERS WILL SEE ALL OF THE DOCUMENTS THAT WE STILL NEED TO WITHHOLD, AND THEY WILL BE ABLE TO ASSURE THE PUBLIC THAT NO "SMOKING GUNS" ARE BEING WITHHELD.

DEPARTMENT OF JUSTICE LETTER

Question: Do you agree with the constitutional objections raised by the Department of Justice in its letter opposing the Joint Resolution?

Answer: I WILL DEFER TO THE LAWYERS AT JUSTICE ON ANY CONSTITUTIONAL CONCERNS.

DoJ LETTER -- SOURCES AND METHODS

Question: Do you agree with the Department of Justice view that "the identification of past sources and methods could easily compromise current operations and other national security interests"?

Answer: MY APPROACH IS TO REQUIRE, ON A CASE-BY-CASE BASIS, A SHOWING THAT THE DISCLOSURE OF ANY PARTICULAR SOURCE OR METHOD REASONABLY COULD BE EXPECTED TO CAUSE DAMAGE TO THE NATIONAL SECURITY. IF SUCH A SHOWING CAN STILL BE MADE TODAY, THEN THE SOURCE OR METHOD SHOULD BE PROTECTED; OTHERWISE, THE INFORMATION SHOULD BE RELEASED.

DoJ LETTER -- STANDARDS FOR POSTPONEMENT

Question: We have laid out standards in section 6 of the Joint Resolution for postponing the release of certain information. The Department of Justice has stated that these standards are "unacceptably restrictive". Do you agree?

Answer: I HAVE TWO SUGGESTIONS FOR REVISING THE POSTPONEMENT STANDARDS IN THE JOINT RESOLUTION. FIRST, I WOULD ASK THAT DELIBERATIVE PROCESS AND OTHER PRIVILEGES RECOGNIZED IN THE LAW BE ADDED TO THE LIST OF POSSIBLE REASONS FOR POSTPONEMENT. ALTHOUGH SUCH PRIVILEGES PROBABLY COULD BE WAIVED IN MOST CASES, UNDER THE RESOLUTION AS IT NOW STANDS THEY ARE UNAVAILABLE EVEN IN THE RARE CASE THAT THEY ARE NEEDED. SECOND, I WOULD SUGGEST THAT THE IDENTITIES OF COVERT EMPLOYEES, PAST AND PRESENT, OF INTELLIGENCE AGENCIES BE COVERED BY THE POSTPONEMENT STANDARDS.

POSSIBLE ISSUANCE OF EXECUTIVE ORDER

Question: We have heard that the President may be considering an Executive Order on the subject of disclosure of JFK assassination materials. Is that true, and if such an order is issued, is it your view that legislation on this subject will be unnecessary?

Answer: IT IS MY UNDERSTANDING THAT THE ADMINISTRATION HAS GIVEN SOME THOUGHT TO INITIATING AN EXECUTIVE BRANCH REVIEW OF JFK ASSASSINATION MATERIALS BY EXECUTIVE ORDER. IF THE PRESIDENT WERE TO ISSUE SUCH AN EXECUTIVE ORDER, THE NEED FOR LEGISLATION PROBABLY WOULD BE REDUCED IF NOT ELIMINATED WITH RESPECT TO EXECUTIVE BRANCH DOCUMENTS.

(NOTE FOR THE DIRECTOR: A draft Executive Order is being coordinated within the Executive Branch. CIA has pointed out that the draft's failure to provide for any independent review of declassification decisions and its incorporation of a broad exemption for classified information reduces the likelihood that Congress will find the Executive Order an adequate substitute for legislation. It is not clear at this time whether the Administration intends to pursue the Executive Order.)

CIA INFORMATION IN CONGRESSIONAL DOCUMENTS

Question: Are you asserting jurisdiction over any congressional document that contains CIA information?

Answer: NO. I AM SIMPLY ASKING THAT CONGRESS REFER TO THE AGENCY FOR OUR REVIEW ANY CIA INFORMATION CONTAINED IN CONGRESSIONAL DOCUMENTS, JUST AS I AM ASKING OTHER EXECUTIVE BRANCH AGENCIES TO DO THE SAME. SIMILARLY, IF WE IDENTIFY CONGRESSIONAL INFORMATION IN OUR DOCUMENTS, WE WILL REFER THAT INFORMATION TO THE CONGRESS FOR ITS REVIEW.

NO REVIEW BOARD

Question: If we adopt your proposal, and allow the agency to make the initial determination, would we really need a Review Board? Could we just have a single person (e.g., the Executive Director) review agency decisions to withhold documents?

Answer: I WILL DEFER TO OTHERS ON WHO SHOULD REVIEW AGENCY DETERMINATIONS, ALTHOUGH FROM A SOURCES AND METHODS PERSPECTIVE, THE FEWER PEOPLE WHO NEED TO SEE SENSITIVE DOCUMENTS, THE BETTER. I DO THINK THAT THE REVIEW PROCESS NEEDS TO HAVE SUFFICIENT CREDIBILITY WITH THE PUBLIC SO THAT REASONABLE PEOPLE WILL NOT WORRY ABOUT THE INFORMATION THAT IS WITHHELD.

SECURITY MEASURES

Question: You mentioned the need for security clearances for the Review Board and its staff. What do you have in mind?

Answer: TO FULFILL MY OBLIGATION TO PROTECT SOURCES AND METHODS AND OTHER CLASSIFIED INFORMATION, I WOULD ASK THAT REVIEW BOARD MEMBERS AND STAFF WHO NEED TO LOOK AT CLASSIFIED INFORMATION FIRST OBTAIN THE NECESSARY SECURITY CLEARANCES. IN ADDITION, WE WOULD BE HAPPY TO MAKE OUR DOCUMENTS AVAILABLE TO THE REVIEW BOARD IN OUR OWN SECURE OFFICES. OTHERWISE, WE WOULD ASK THAT THE BOARD FOLLOW ESTABLISHED PROCEDURES FOR THE SECURE HANDLING AND STORAGE OF SENSITIVE INFORMATION.

ROCKEFELLER AND CHURCH COMMITTEE MATERIALS

Question: Are materials collected in response to the Rockefeller Commission and Church Committee investigations also contained in the holdings you have described?

Answer: THE RECORDS CONCERNING PRESIDENT KENNEDY'S ASSASSINATION THAT CIA PROVIDED TO THE ROCKEFELLER COMMISSION AND TO THE CHURCH COMMITTEE WERE MADE AVAILABLE TO THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS AND ARE INCLUDED IN OUR RECORDS COLLECTED FOR THAT INVESTIGATION.

DID OSWALD WORK FOR THE CIA?

Question: Did Lee Harvey Oswald ever work for the CIA?

Answer: NO, OSWALD NEVER WORKED FOR THE CIA.

DID CLAY SHAW WORK FOR THE CIA?

Question: Did Clay Shaw ever work for the CIA? Was he paid by the CIA?

Answer: CLAY SHAW PROVIDED INFORMATION ON INTERNATIONAL TRADE ISSUES TO THE AGENCY WHEN HE WAS THE MANAGING DIRECTOR OF THE INTERNATIONAL TRADE MART IN NEW ORLEANS. THE CIA'S LAST CONTACT WITH HIM WAS IN 1956.

CIA DID NOT CUSTOMARILY PAY FOR FOREIGN INTELLIGENCE INFORMATION VOLUNTEERED BY AMERICAN CITIZENS. HOWEVER, TO ANSWER YOUR QUESTION WITH COMPLETE CERTAINTY, IT WOULD BE NECESSARY TO SEARCH THE ENTIRE COLLECTION.

OTHER FACTUAL QUESTIONS

Question: Do you think that the CIA's efforts to assassinate Castro were connected in any way to JFK's assassination? What were the Agency's connections to Giancana and the Mafia? Can you tell us about Operation MONGOOSE? Etc.

Answer: I HAVE NOT READ THE JFK MATERIALS, NOR DO I HAVE THE DETAILED KNOWLEDGE TO DISCUSS THE SPECIFICS OF ALL THE THEORIES THAT HAVE BEEN ADVANCED CONCERNING THE ASSASSINATION OF PRESIDENT KENNEDY.

JOHN CONYERS, JR., MICHIGAN
Chairman

CARDISS COLLINS, ILLINOIS
GLENN ENGLISH, OKLAHOMA
MOTRY A. WAXMAN, CALIFORNIA
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ROBERT E. WISE, JR., WEST VIRGINIA
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RAY THORNTON, ARKANSAS
COLLIN C. PETERSON, MINNESOTA
ROSA L. DELAUNO, CONNECTICUT
CHARLES J. LUKE, OHIO
JOHN W. COX, JR., ILLINOIS

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

April 28, 1992

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BERNARD SANDERS, VERMONT
INDEPENDENT

MAJORITY—(200) 225-5061
MINORITY—(200) 225-5071

The Honorable Robert M. Gates
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Director Gates:

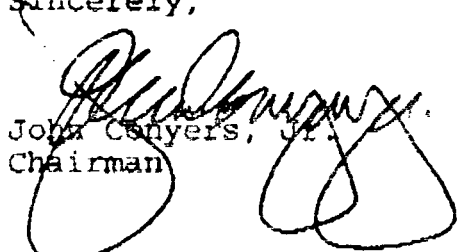
On Friday, May 15, 1992, at 10:00 a.m., in Room 2154 of the Rayburn House Office Building, the Legislation and National Security Subcommittee of the Committee on Government Operations will convene a legislative hearing on House Joint Resolution 454, a bill to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

I request that you testify at this hearing on the intelligence community's position regarding this resolution. You should also be prepared to discuss the volume and nature of records in the custody of the intelligence agencies which may be covered by this resolution, the volume and nature of relevant records held by other agencies or entities, and the process and status of public release of such records under existing statutes.

The Committee's Rules require all witnesses to submit written statements 24 hours prior to the hearing. Therefore, please deliver 100 copies of your prepared statement to the Committee offices by 10:00 a.m. Thursday, May 14, 1992.

I am enclosing a copy of the resolution for your convenience. I look forward to your testimony. If you have any questions concerning this letter, please call me, or have your staff call Don Goldberg or James C. Turner of the Committee staff at 225-5051.

Sincerely,


John Conyers, Jr.
Chairman

Central Intelligence Agency



Washington, D.C. 20505

OCA 1162-92
24 April 1992

Mr. Bernard H. Martin
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

This is in response to your request for the views of the Central Intelligence Agency on Senate Joint Resolution 282, the "Assassination Materials Disclosure Act of 1992", and the corresponding House Joint Resolution 454 ("the resolutions").

The Central Intelligence Agency fully supports the fundamental purpose underlying this legislation--that efforts should be made to declassify and make available to the public as expeditiously as possible government documents relating to the assassination of President Kennedy. In fact, the Director of Central Intelligence (DCI) has recently established and staffed a new unit within CIA responsible for review and declassification of documents of historical interest, including the JFK-related files, as part of the Agency's program of increased openness. Should Congress decide to enact a Joint Resolution, CIA will work closely with the appropriate body to ensure that the maximum amount of material possible is declassified consistent with the need to protect intelligence sources and methods. We anticipate that a significant part of our documents can be declassified for release pursuant to this process.

Although we are in agreement with the purpose of the resolutions, they contain several provisions that are of concern. We are prepared to work with the relevant Congressional committees to resolve these potential difficulties.

Our primary concern is that the resolutions provide that the initial review of all documents is vested in the Review Board and its staff. This approach is inconsistent

Bernard H. Martin

with the DCI's statutory duty to protect intelligence sources and methods. In fact, as currently drafted, the resolutions contain no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its Executive Director/staff elements. In order to minimize the exposure of sensitive intelligence sources and methods, CIA proposes that the initial review of assassination materials be made by the originating agencies. Documents that could not be released to the public would then be reviewed by appropriately cleared Board members or perhaps a small number of cleared staff.

Second, we are also concerned that the resolutions do not provide the Agency with opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the resolutions, documents originated by these entities can be released by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies. We believe that the resolutions should provide that the agencies that originated information have the opportunity also to review the information and raise necessary objections prior to its release.

Third, the resolutions define "assassination material" broadly to include any records that relate "in any manner or degree to the assassination." We believe this definition should be interpreted to include only documents already identified by CIA as assassination material, and any additional documents the Board requests that have some reasonable relationship to the JFK assassination.

Fourth, the resolutions provide only a 30 day period for appealing decisions by the Executive Director to release information. This may not provide sufficient time for meaningful review of what could prove to be large volumes of material at one time. The resolutions should be amended to provide that an agency may request a reasonable extension of time to determine whether documents may be released.

Fifth, the Board's broad powers to subpoena witnesses and documents and hold hearings under the resolutions could conflict with the DCI's statutory duty to protect sensitive intelligence sources and methods from unauthorized disclosure. We believe that the Board should be required to consult with the DCI on such issues if intelligence equities are involved.

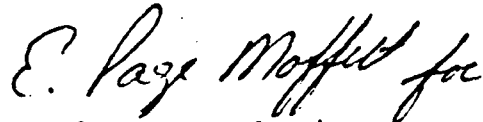
Finally, section 6 of the resolutions, which outlines the grounds for postponement of public release of a

Bernard H. Martin

document, may not be adequate to protect Agency interests in certain respects. For example, there is no provision for postponing release of Executive privilege/deliberative process, attorney-client, or attorney work-product information. While such privileges are not likely to arise with respect to factual information directly related to the JFK assassination and could be waived in the public interest, they would be wholly unavailable under the resolutions in the rare case that they might be needed. We also believe that "intelligence agent" under section 6(1)(A) of the resolutions should be defined with reference to the Intelligence Identities Protection Act so as to protect the identity of covert employees of the Agency.

We appreciate the opportunity to comment on the assassination materials resolutions. Please contact Vicki Pepper of my staff at (703) 482-6126 with any questions or comments concerning the Agency's position on these resolutions.

Sincerely,

A handwritten signature in cursive script, reading "E. Page Moffett for".

Stanley M. Moskowitz
Director of Congressional Affairs

Washington, D.C. 20505

OCA 1123-92

7 MAY 1992

The Honorable John Conyers, Jr.
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Director has asked me to respond to your letter of April 6, 1992 requesting certain information regarding CIA holdings of records related to the assassination of President Kennedy. We do have a significant number of records relating to the assassination of President John F. Kennedy, although many of these records were originated by the FBI or by investigating committees of the Congress. We believe that a significant portion of our records could be released if H.J. Resolution 454 were enacted into law.

I should also point out that the CIA is currently embarking on its own review of assassination records. I would expect that this review will result in the public release of a significant body of information.

To help the committee understand the nature and number of CIA records pertaining to the assassination, I am enclosing the answers to the specific questions you raised in your letter.

Sincerely,

/s/ Stanley M. Moskowitz

Stanley M. Moskowitz
Director of Congressional Affairs

Enclosure

1. Did the CIA retain possession of records requested by or developed on behalf of the House Select Committee on Assassinations? If so, how many pages of such records does the Agency have in its possession? What is the nature of these records?

Yes, the CIA retained possession of records requested by or developed on behalf of the House Select Committee on Assassinations (HSCA). The Agency has approximately 250,000 - 300,000 pages of such records which include microfilm of CIA's Oswald file (originally collected in response to the Warren Commission's inquiry, then added to) as well as records collected in response to specific requests from the HSCA. Although these records cover a wide variety of topics, they principally focus on CIA operations against Cuba and Castro, Lee Harvey Oswald's sojourn in the USSR, and Oswald's activities in Mexico City and New Orleans. The vast majority of documents pertaining to Oswald were created in response to specific inquiries from the Warren Commission and the HSCA. They also include a large number of name traces requested by the HSCA staff, as well as materials relating to the Garrison investigation, Cuban exile activities, FBI reports on Oswald, and even Watergate. Because the HSCA was also investigating the assassination of Dr. Martin Luther King, Jr., there is also some material on the Black Panthers and the civil rights movement.

2. Does the CIA have records outside of those related to the HSCA that may be considered relevant to the assassination of President Kennedy? If so, please describe such records and the approximate number of pages.

The records described above contain all CIA documents that previously have been considered relevant by the Warren Commission and the HSCA. CIA believes that, in response to these investigations, it has identified all documents that directly pertain to the assassination of President Kennedy.

3. Did any of the records described in questions 1 and 2 originate with the FBI? If so, approximately how many?

We believe that approximately 10 percent of the records described in questions 1 and 2 originated with the FBI.

4. Did any of these records originate with any other Federal, foreign, state, or local agency? If so, please describe which agencies and the approximate numbers.

A small number of CIA's records pertaining to the assassination of JFK, probably about 1 percent, originated with the State Department. About 20 percent of the records originate with a variety of other outside sources, including the Secret Service, the military services, press clippings, local police departments, etc.

5. How many of these records have been reviewed for release under the Freedom of Information Act (FOIA)? How many of these records have been released pursuant to such requests?

CIA has released 7,432 pages of records pertaining to the assassination of JFK, representing 1,969 documents, under the FOIA. There is no documentation of how many JFK assassination records CIA has reviewed under FOIA.

6. In the estimation of the CIA, approximately how many records would be released under the standards contained in House Joint Resolution 454?

We believe that a significant portion of our records related to the assassination of President Kennedy could be released if the Joint Resolution were enacted into law. We would review our holdings carefully to ensure that the maximum amount of information is released, consistent with the DCI's responsibility to protect intelligence sources and methods and with the privacy interests of the individuals involved.

Washington D.C. 20505

OCA 1134-92

6 MAY 1992

The Honorable John Glenn
Chairman
United States Senate
Committee on Government Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

Director Gates has asked me to respond to your request for the views of the Central Intelligence Agency on S.J. Res. 282, "The Assassination Materials Disclosure Act of 1992." The Central Intelligence Agency fully supports the fundamental purpose underlying this legislation--that efforts should be made to declassify and make available to the public as expeditiously as possible government documents relating to the assassination of President Kennedy. In fact, the Director of Central Intelligence (DCI) has recently established and staffed a new unit within CIA responsible for review and declassification of documents of historical interest, including the JFK-related files, as part of the Agency's program of increased openness.

As you are aware, the DCI has agreed to appear before your Committee on 12 May to testify on the nature and extent of Agency records related to the assassination and to provide his views on the joint resolution. Our specific comments on the joint resolution will be contained in his prepared remarks, which will be provided to the Committee in advance of the hearing.

Please do not hesitate to have your staff contact us if you have any questions regarding our testimony on the joint resolution.

Sincerely,

/s/ Stanley M. Markowitz

Stanley M. Markowitz
Director of Congressional Affairs



U.S. Department of Justice

Office of Legislative Affairs

Mark Evans

Office of the Assistant Attorney General

Washington, D.C. 20530

April 27, 1992

Honorable John Conyers
Chairman
Subcommittee on Legislation
and National Security
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman

I am writing to express the views of the Department of Justice on H.J. Res. 454, the "Assassination Materials Disclosure Act of 1992" ("the resolution"). Although we are sympathetic to the concerns that prompted introduction of this legislation, and are prepared to make documents available to the public in a manner that preserves applicable privileges and addresses legitimate confidentiality interests, we believe that the disclosure requirements in the resolution raise several constitutional concerns. In addition, we believe that the structural provisions regarding the appointment and authorities of the Assassination Materials Review Board are constitutionally flawed. We also have a number of other objections to the specifics of the joint resolution, detailed below.

We are, of course, willing to work with the Congress in an effort to remedy our objections. Nevertheless, we strongly object to the resolution in its current form, and, if it were presented to the President without amendment, would give serious consideration to recommending presidential disapproval.

Constitutional Objections

The resolution's disclosure requirements for Executive Branch information would severely encroach upon the President's constitutional authority to protect confidential information. See generally Nixon v. Administrator of General Services, 433 U.S. 425, 446-455 (1977). Section 6 significantly limits the bases on which public disclosure of material could be postponed. Most seriously, unlike the Freedom of Information Act, this provision provides no basis at all for protecting law enforcement information or Executive Branch deliberations. See 5 U.S.C. § 552(b)(7) (FOIA law enforcement exemption), § 552(b)(5) (FOIA

exemption incorporating deliberative process privilege and other privileges recognized at common law).

In addition, although section 6 recognizes the Executive Branch's confidentiality interests in the national security and foreign relations area, it imposes unacceptably restrictive standards for protecting those interests. For example, the only intelligence sources and methods that can be protected are those that are "currently utilized, or reasonably expected to be utilized." The identification of past sources and methods could easily compromise current operations and other national security interests. Moreover, matters "relating to the military defense, intelligence operations or conduct of foreign relations" are also subject to a "currently relating" standard, and, even more significantly, they can be protected only if it is determined that the threat posed by disclosure "is of such gravity that it outweighs any public interest in its disclosure." Executive Order 12356, which is based on the President's constitutional authority to control the dissemination of national security information, does not call for a balancing of national security and other public interests.¹

Section 8(h)(2) makes a concession to the President's existing, constitutional responsibility to protect confidential information by granting him authority to overrule the Review Board's decision to release material, but the section nonetheless raises substantial constitutional concerns by purporting to limit the President's authority to the standards set forth in section 6.² The President's constitutional authority to withhold confidential Executive Branch information cannot be so limited, because it extends to any material for which he determines withholding is in the public interest. Equally problematic from a constitutional standpoint is the requirement of section 8(i) that the President submit to Congress copies of any material that he determines to withhold pursuant to section 8(h)(2). The separation of powers requires that the President be able to

¹ The problems that section 6's limitations would create would only be exacerbated by the presumption for release imposed by the "clear and convincing evidence" standard established in sections 7(d) and 8(b) for a decision to invoke the section 6 exemptions. In addition, permitting postponement of release only where the release "would" meet the criteria established in section 6 creates too high a standard to meet in protecting national security information, confidential sources and other interests recognized in section 6.

² See also Sec. 11 ("Where this Joint Resolution requires release of a record, it shall take precedence over any other law, judicial decision construing such law, or common law doctrine that would otherwise prohibit such release.").

withhold privileged information from the Congress as well as the public.³

Although no statute can override the President's authority to assert executive privilege with respect to specific documents or information, we believe that H.J. Res. 454's encroachment upon the President's authority in this area is so severe as to render it unconstitutional under existing Supreme Court precedent. In reviewing this kind of regulation of the Executive Branch, the Court has focused on the disruption to the Executive's exercise of its constitutional responsibilities: "[I]n determining whether the [resolution] disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions." Nixon v. Administrator of General Services, 433 U.S. at 443. Where the potential for disruption of this balance exists, the legislation may be upheld only if it is "justified by an overriding need to promote objectives within the constitutional authority of Congress." Id.

We do not believe that the resolution's disclosure provisions are supported by the "overriding need" that would be necessary to find the legislation constitutional. Congress could readily enact legislation establishing a strong policy in favor of disclosure of this material without restricting the President's discretion. We note that the legislation at issue in Nixon v. Administrator of General Services was upheld only because "the Act facially [was] designed to ensure that the materials can be released only when release is not barred by some applicable privilege inherent in [the Executive Branch]." 433 U.S. at 444.

The structure of the Assassinations Materials Review Board also raises a number of difficult issues. Section 5(a) of the resolution would establish the Review Board "as an independent agency." Because it would be vested with the powers to review Executive Branch records and information and to authorize the release of those materials, the Review Board would have to be considered an executive agency for constitutional purposes. We would thus interpret section 5(a) as requiring the Review Board to be "independent" from all other Executive Branch departments and agencies, but nonetheless within the Executive Branch and subject to the direction and control of the President.

³ A related constitutional concern is raised by the requirement of section 5(i) that certain congressional committees be given "access to any records held or created by the Review Board." Since the Review Board would be an Executive Branch agency, see infra, the President must retain the authority to direct that privileged material be withheld from congressional committees.

Section 5(b) of the resolution provides that members of the Review Board would be appointed by the division of the United States Court of Appeals for the District of Columbia Circuit established under 28 U.S.C. § 49 (the Special Division), which also appoints independent counsels. Article II, sec. 2, cl. 2 of the United States Constitution provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." (Emphasis added.) In Morrison v. Olson, 487 U.S. 654, 671 (1988), the Supreme Court stated that "the line between 'inferior' and 'principal' officers is one that is far from clear." The Court, nevertheless, concluded that the independent counsel was an inferior officer because she was subject to removal for cause by the Attorney General, was empowered to perform certain limited duties, and had limited jurisdiction and tenure. We have concluded that the members of the Board would be inferior officers under the Court's analysis in Morrison. The Board members are subject to removal for cause by the President or the Attorney General. See Sec. 5(h). The Board's duties are limited to reviewing certain materials and making determinations concerning public disclosure. The Board's jurisdiction is limited to documents related to various investigations of a particular crime. Finally, the Board's tenure is limited to, at most, three years. See Sec. 5(l).

Because the appointment of the Board members, who are executive officers, is vested in a court of law, the appointment is an "interbranch appointment," and Congress' power to provide for such appointments is not "unlimited." Morrison, 487 U.S. at 675. In addition to general separation of powers concerns, which we address below in discussing the "for cause" restriction on the removal of Board members, "Congress' decision to vest the appointment power in the courts would be improper if there was some 'incongruity' between the functions normally performed by the courts and the performance of their duty to appoint." Id. at 676 (quoting Ex parte Siebold, 100 U.S. 371, 398 (1880)). Morrison held that the appointment of the independent counsel by the Special Division was not an incongruous interbranch appointment, but it relied on precedents in which courts have appointed prosecutors and on the perceived conflict of interest where the Executive Branch is called upon to investigate its own high-ranking officers. Neither of these factors would help to justify the interbranch appointment for the members of the Review Board. Furthermore, the Morrison Court gave little guidance for determining, as a general matter, whether other interbranch appointments are incongruous. Given this uncertainty, it is not clear that vesting the appointment of the members of the Review Board with the Special Division is constitutional. We believe that the Review Board should not be created under this constitutional cloud and therefore recommend that the appointment of the Board members be vested in the President, by and with the

advice and consent of the Senate; the President alone; or the Attorney General. Any of these three options would be preferable over the interbranch appointment scheme currently contemplated.

Under section 5(h) of the resolution, a member of the Board may be removed "only for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties," and the Attorney General must submit a report to the Congress and the Special Division stating the grounds for removal. Under Morrison, the validity of removal restrictions turns on whether "they impede the President's ability to perform his constitutional duty." Id. at 691. We do not believe that the restriction on removal of the Board members impedes the President's ability to perform his constitutional duty because the President would retain the power, under section 8(h), to overturn decisions of the Board with respect to whether assassination material is subject to release under the standards in the statute.⁴

The resolution also provides for the appointment of an Executive Director whose duties would include reviewing assassination materials in the first instance. Under section 7(e)(1) of the resolution, the Executive Director is vested with the power to authorize the disclosure of certain assassination materials in the absence of an appeal by the originating body. Because the Executive Director's determination under section 7(e)(1) would allow agencies to release records even where they would otherwise lack legal authority to release, he "exercise[s] significant authority pursuant to the laws of the United States" and is an officer of the United States. See Buckley v. Valeo, 424 U.S. 1, 126 (1976). The Executive Director therefore cannot be appointed by the Review Board because, under the appointments clause, only the President alone, the heads of departments or the courts of law, not inferior officers, may be vested with the power to appoint officers of the United States. To address this problem, we recommend that the Executive Director be appointed by the President alone.

Section 8(c) of the resolution confers on the Review Board the power to subpoena witnesses and documents and states that those subpoenas may be enforced in any appropriate federal court by the Department of the Justice "acting pursuant to a lawful request of the Review Board." Section 7(2) suggests, however,

⁴ We note, however, that we have independent constitutional objections to the provision of the resolution purporting to insulate the decisions of the Board concerning legislative materials from presidential direction. See infra. If that provision is not deleted as we suggest, it may undermine the validity of the removal restrictions.

that the Executive Director may recommend that the Review Board subpoena records from an executive agency if the agency denies the Executive Director access. Because it is a part of the unitary Executive Branch, the Review Board could not constitutionally issue a subpoena against another executive agency. Any attempt to enforce such a subpoena in federal court would not present a case or controversy within the meaning of Article III of the Constitution.⁵ Thus a request by the Review Board, pursuant to section 8(c), to enforce a subpoena against an executive agency would not be a "lawful request" and the Department of Justice would not seek enforcement. Therefore the clause authorizing the Executive Director to recommend that the Review Board issue subpoenas for executive records should be deleted from section 7(a).

- Section 8(h)(1) provides that decisions of the Review Board to release Congressional records and Warren Commission records are not subject to review by the President. With respect to the Warren Commission, we note that the Warren Commission was clearly part of the Executive Branch for constitutional purposes: it was established pursuant to Executive Order; its members were appointed by the President; and its expenses were paid from funds appropriated to the President. See Exec. Order No. 11130. The Warren Commission should not be treated as a legislative entity. Furthermore, the provision in section 8(h)(1) prohibiting the President from reviewing the Board's decisions concerning congressional records is unconstitutional. The constitutional chain of command requires that the President have the power to supervise the actions of all Executive Branch officers. Congress may vest the power to review and release congressional assassination records with an officer of Congress, but it may not vest that power with an Executive Branch officer and deprive the President of his constitutional power to supervise that officer. For these reasons, we recommend deleting section 8(h)(1) and applying the appeal procedure in 8(h)(2) to all assassination materials.

⁵ The ruling of the Supreme Court in United States v. Nixon, 418 U.S. 683 (1974), does not undermine our conclusion on this point. Nixon was a suit between the United States, acting through the Special Prosecutor, and Richard Nixon, who had personal possession of the records subpoenaed by the Independent Counsel. In that setting, the Court held that the case presented "traditionally justiciable" issues and had the required "concrete adverseness" necessary for a case or controversy. Id. at 697 (citations omitted). In contrast, a subpoena issued for official executive branch records would not satisfy those conditions.

Other Objections

We believe that the definition of "assassination material" in section 3(2) is too broad. The definition should be narrowed so that it includes only that material which is germane to the assassination investigations and should not include, for example, material regarding all death threats made against President Kennedy during his presidency. Much of the over 300,000 pages of the non-core JFK assassination records provided to the House Select Committee on Assassinations involve FBI investigations of individuals and organizations unrelated to the assassination. The Committee requested such broad range of material to see if it supported any conspiracy theories. We are unaware that any of that material proved to be related to the assassination. To the extent it did not, the material should be outside the scope of the definition of "assassination material," and not subject to the provisions of the Joint Resolution.

The definition of "originating body" in section 3(7) is under-inclusive in that it does not address information that originated with one agency that is actually contained in the record of another agency. For example, if the FBI has in its FBI record information that originated with the CIA, the CIA should be considered the originating body of that information. The definition should be changed to read:

(7) "Originating Body" means the Executive agency, commission, or congressional committee that created the particular record or created the particular information in the record or obtained the particular record

In section 6(3), the word "witness" should be deleted and the word "person" substituted in its place. This amendment will ensure that all individuals needing confidentiality are protected. Also in section 6(3), the words "substantial and unjustified" should be deleted and the words "express or implied" should be added before the word "understanding." Law enforcement agencies generally consider any breach of the confidentiality they afford their sources to be "substantial and unjustified." Thus, if there was an express or implied understanding of confidentiality related to the Government's obtaining information, that confidentiality should be protected (absent certain recognized exceptions, such as waivers). But even if some modification to the protections afforded confidential information is acceptable, the proposed standard in section 6(3) dilutes the protections far too much.

The standard in section 6(4) is too narrow. The standard would protect only "security or protective procedures" used by agencies responsible for protecting government officials and would not even protect those procedures where the harm caused by the release is not deemed to be not "so harmful" that it outweighs the public interest in disclosure. We recommend section 6(4) be amended as follows to provide better protection for all non-public law enforcement methods:

(4) disclose a technique or procedure that is utilized, or that may reasonably be expected to be utilized, by any law enforcement agency, and that is not well known to the public.

Similarly, we also recommend the addition of a provision in section 6 to protect against endangering the life or physical safety of any individual. This is similar to protections extended under 5 U.S.C. 552(b)(7).

We strongly object to the provision in section 8(h)(2) that prohibits the President from delegating the powers conferred in that section. As head of the Executive Branch, the President must have the authority to delegate functions where, in his judgment, such delegation would improve the efficient operation of the Executive Branch. Congress should not by law limit this necessary and important presidential power.

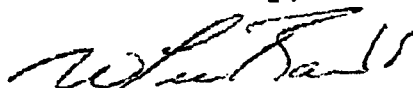
Finally, we also strongly object to the provision in section 10(a) of the bill that would authorize the Review Board, through its own counsel, to petition a court for release of information relevant to the assassination. The Attorney General has plenary authority to conduct and to supervise all litigation in which the United States, its agencies, or its officers are interested or to which they are parties. 28 U.S.C. §§ 509, 510, 515(a), 516, 517, 518(b) and 519; 5 U.S.C. § 3106.

As you may know, it is a longstanding policy of the Executive Branch that the authority to litigate and attend to the interests of the United States in judicial proceedings should be centralized in the Attorney General. In that connection, we have, on numerous occasions in the past, cautioned that we would ~~recommend executive disapproval of legislation containing provisions authorizing other officials to litigate.~~ We strongly oppose any proposed statute, such as this one, that would detract from the Attorney General's centralized litigation authority.

We look forward to working with you on this important matter. In this regard, please be advised that we are developing an alternative draft resolution to address these and other concerns. We plan to provide our proposal to the Subcommittee in the near future.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report, and that enactment of H.J.Res. 454 in its current form would not be consistent with the objectives of the Administration.

Sincerely,



W. Lee Rawls
Assistant Attorney General

cc: The Honorable Frank Horton
Ranking Minority Member

OCA 2034-92

1 May 1992

MEMORANDUM FOR THE RECORD

SUBJECT: House Government Operations Committee Hearing on
H.J. Res. 454 (JFK Materials Resolution)

1. On 28 April, the undersigned attended a public hearing on the proposed Assassination Materials Disclosure Act conducted by the House Government Operations Legislation and National Security Subcommittee. Majority Committee/Subcommittee Chairman Conyers and Ranking Minority Member Horton were present for the entire hearing; majority Subcommittee members English, Neal, Peterson, and Thornton and minority members Shays and Schiff and full Committee member Martinez attended at least part of the hearing. The Committee's Press release, which criticizes the government and particularly CIA as releasing JFK-related documents "at a snail's pace", and witness statements are attached.

2. The hearing was well attended by the public and attracted much media coverage. Eight witnesses testified in four groups: Congressmen Louis Stokes (assisted by Robert Blakey, former counsel to the House Select Committee on Assassinations) and former HPSCI Chairman Lee Hamilton testified first. The congressmen were followed by the movie "JFK"'s director Oliver Stone, who was followed by Howard Willens, Counsel to the Warren Commission, and James Johnston, Counsel to the Church Committee. The session closed with a panel comprised of Ms. Leslie Harris, Chief Legislative Counsel for the Washington office of the ACLU; Dr. Herbert Parmet, Professor of History, Queensborough Community College and Graduate School of the City University of New York, and Dr. Harold Rellyea, American National Government Specialist at the Congressional Research Service.

3. Chairman Conyers advised in his opening remarks that the Committee wanted to hear from the Executive branch and thus would hold another hearing session. He noted that "after much negotiation," the Director of Central Intelligence would be testifying in mid-May. He further noted that the Committee also hoped to hear from the Attorney General, but negotiations with the Justice Department were still ongoing. Conyers was critical of the DoJ at the outset, noting that the Committee had

Subject: House Government Operations Committee Hearing on
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received a long, single-spaced letter from Justice detailing numerous "legalistic" objections to the resolution, which he characterized as not reflecting a real willingness to work together to release the documents to the American people.

4. The general tone of the session was strongly in favor of the resolution and disclosure of the vast majority of the material. Most witnesses conceded that there might be some materials that required postponement of disclosure, but the bias was clearly toward disclosure. Even Oliver Stone, in response to a comment from Congressman Shays that he (Shays) found it hard to imagine what national security or privacy issues would persist after 30 years, conceded that there might be some exceptions, but Stone thought 98 percent of the material could be released. Several witnesses, including Congressman Stokes and Church Committee counsel, suggested that most national security information should be released under the resolution, but that privacy interests posed greater concerns. Congressman Hamilton warned that the Congress should be careful that nondisclosure "loopholes" do not "swallow up the bill," which is why he said that review by an independent board was so important.

5. Stone's testimony had quite an impact on the hearing. Several congressman and witnesses credited his movie "JFK" as "the reason we are all here today." Chairman Conyers appeared particularly impressed with Stone, describing his testimony in exchanges with later witnesses as "persuasive" and "compelling." A few potentially tough questions were thrown at Stone--did he not over-lionize Garrison; how much research did he do for the movie and did he seek to talk to or obtain information from the government as part of his research process?--However, there was no aggressive follow-up to Stone's answers. Discerning observers may have picked up on the fact that Stone's "research" seemed tailored to and limited by pre-conceived conspiracy theories. (For example, when asked if he had talked to President Ford, a member of the Warren Commission and advocate of disclosure of the JFK documents, Stone answered no--that it was pretty obvious where Ford stood as a proponent of the lone gunman theory.)

6. When asked about his personal views, Stone said he believed that there were two conspiracies. The murder conspiracy was small and covert--perhaps involving no more than five to ten people--and was led by the "intelligence agencies." Stone did not mention CIA by name at this point.

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He mentioned Oswald's alleged ties to naval intelligence, and also said that a closer look should be taken at an operation "MONGOOSE" and a Colonel Landsdale. He also posited a bigger "cover-up" conspiracy after the fact, spearheaded by President Johnson (who Stone alleged told Earl Warren he would be responsible for World War III if the Commission tied the Cubans into a conspiracy). Stone theorized that a much broader "Establishment", while not directly involved in the assassination, was not sorry to see Kennedy go because he was an agent of profound change embarking upon several courses that disturbed that "Establishment", including pulling out of Vietnam. In response to a later question about various theories, Stone called the Mafia theory a "red-herring." Stone said "as you know, the CIA has always used the Mafia for plausible deniability" and that it was important to look behind the Mafia at "who pulls the strings."

7. Other matters of Agency interest discussed include that both the Warren Commission attorney and particularly the Church Committee attorney castigated CIA for "lying" to the Warren Commission. The particular example offered had to do with "AMLASH." This individual came up in connection with traces the Agency apparently conducted for the Warren Commission. CIA purportedly had a relationship with AMLASH in connection with a Castro assassination plot, but did not make this fact known to the Warren Commission. The witnesses characterized this as pertinent information CIA consciously withheld from the Warren Commission. Also, when the final panel engaged in a broader discussion of government disclosure and FOIA with the subcommittee, the ACLU held up the CIA Openness Task Force report as an example of why FOIA was a "dismal failure" as the mechanism to "vindicate t public's right to know." (On 18 March Conyers rigorously questioned Gary Foster on the task force report when his subcommittee held a hearing on "Government Secrecy After the Cold War.")

8. A major recurring theme was concern that, despite the need to make the documents publicly available, the Administration would not support the resolution and it could be vetoed. Congressman Hamilton stated that, if the resolution were vetoed, he hoped that at minimum the House would pass a resolution to release its own records. (Such an action would be problematic for the Administration, because much Executive branch information is contained in House records, and the House also probably considers documents obtained from Executive agencies as part of its

Subject: House Government Operations Committee Hearing on _____
H.J. Res. 454 (JFK Materials Resolution)

records.) Most witnesses thought the Congress should try to avoid a constitutional confrontation with the Administration, however, and a few practical suggestions to help work around problems were made. For example, the ACLU suggested that the Review Board might be modeled after the Advisory Committee established in connection with the State Department's preparation of the Foreign Relations of the United States (FRUS) series, with which CIA's historical staff is familiar. This body was established by a provision included in last year's Foreign Relations Authorization Act.

9. In conclusion, the hearing did not get into much detail on provisions of the resolution. Much time was spent on general propositions like the fact that the documents ought to be released and why, and matters tangential to core issues raised by H.R. 454.



Victoria L. Pepper
Assistant General Counsel
Office of Congressional Affairs

OTE 92-1403
10 February 1992

OCA/IMO
MARK P.

MEMORANDUM FOR: Director of Central Intelligence

VIA: Director of Training and Education
Director, Center for the Study of Intelligence

FROM: J. Kenneth McDonald
Chief, CIA History Staff

SUBJECT: Survey of CIA's Records from House Select
Committee on Assassinations Investigation

1. As you requested on 16 January, the History Staff has now surveyed CIA's records from the House Select Committee on Assassinations (HSCA) investigation into the assassination of President John F. Kennedy. As promised in my 30 January interim report, I can now give you a full account of our findings, and of my recommendation for transferring this HSCA collection at its existing classification to the National Archives through CIA's Historical Review Program.

2. After the Office of Congressional Affairs arranged permission from Congress for History Staff access to the sequestered 64 boxes of this collection, we examined these and other related holdings at Headquarters and the Warrenton Records Center. As a result of careful, persistent, and determined inquiries, we are fairly confident--although by no means certain--that we have seen all the documents that CIA collected for the HSCA investigation of 1977-1979. The summary of our findings which follows is documented in more detail in attachments A and B.

3. General Description: The HSCA collection (defined as all records that the CIA provided to that Committee for its 1977-1979 investigation) is a large and chaotic collection. Beyond the 64 boxes sequestered by Congress that have been involved in FOIA litigation, there are 16 boxes of Oswald's 201 file and numerous loose folders (mainly from Mexico City Station records) that were collected for the Warren Commission investigation. Most of this material can be found on microfilm in the sequestered collection. Of the 64 boxes, 34 have material collected by the Directorate of Operations, while

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29 contain records from the Office of Legislative Counsel (now OCA), Inspector General, Office of the General Counsel, Directorate of Science and Technology, Office of Security, as well as several boxes of HSCA staff notes and records. Box No. 64 contains 72 microfilm reels (each equivalent to a box of records), which include the Oswald 201 file and Mexico City Station records, as well as other 201 files and information about Cuban exile groups.

4. Organization: The collection is arranged haphazardly, having been gathered in response to a series of HSCA and (in the case of the Oswald 201 file) Warren Commission requests. Although portions of the collection are organized by a variety of systems, there is no overall intellectual control of the entire body of records. We found fifteen indexes to the collection, none of which is adequate for control or retrieval.

5. Sensitivity: Although the collection is almost entirely at SECRET or lower classification, there is a scattering of TOP SECRET and codeword documentation. Materials we consider especially sensitive--more for privacy than national security reasons--include 201 files, phone taps, mail intercepts, security files, photo surveillance, names of sources, watch lists, and MHCHAOS documentation. Such material occurs throughout the collection, usually in response to HSCA requests for name traces. There are 22 microfilm reels of 201 files in addition to the Oswald file, while eight boxes contain security records, including, for example, files on David Atlee Phillips, Martin Luther King, and Clay Shaw.

6. Non-CIA Material: The collection includes a lot of third-agency material, mostly from the FBI. FBI reports dominate the 16 boxes of Oswald's 201 file, and nearly half of the 34 boxes of DO-collected material consists of third-agency material. The collection's remaining 29 boxes contain mostly CIA records, as does the box of microfilm, except for Oswald's 201 file. There is also some documentation of foreign liaison, mainly with the Mexican government.

7. CIA Complicity? Our survey found nothing in these records that indicates any CIA role in the Kennedy assassination or assassination conspiracy (if there was one), or any CIA involvement with Oswald. These records do reveal, however, that Clay Shaw was a highly paid CIA contract source until 1956. While nothing surfaced on Carlos Marcello in the collection, we found substantial documentation on other members of the mob, including Santos Trafficante.

8. Although the results of our survey fully support my earlier recommendation against inviting a panel of historians

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into CIA to examine and report on this collection, the problem that this proposal addressed remains--the widespread allegations, given new impetus by Oliver Stone's "JFK," that CIA was part of a conspiracy to assassinate President Kennedy. That CIA has a closed collection of records concerning the Kennedy assassination is well known, both because it is part of over 800 cubic feet of HSCA investigation records that Congress has closed until 2029, and because our 64 boxes of these records have been the subject of FOIA requests, litigation, and court orders. Since opening all US Government records on the Kennedy assassination has been proposed by former President Ford, Congressman Louis Stokes, and others, many observers will consider your decision on this question a test of your new openness policy.

9. Options: CIA's three principal options are to keep the Agency's HSCA records closed and in our hands, to open them entirely, or to transfer them to the National Archives. Before making my case for the third option, I should note the following considerations with respect to the first two:

a. Closed: To maintain the status quo would keep the collection classified, closed and in CIA's hands, sequestered by Congress until 2029. CIA would, however, remain subject to the 1988 court order to review portions of it in response to FOIA litigation. While putting the collection into Historical Review Program processing would speed and broaden its declassification review (which would nevertheless take several years), such an internal shift would probably not change the public perception of our closed position. Although keeping these records closed remains a viable option, it tends both to encourage suspicion that CIA is part of a cover-up, and to undermine the credibility of CIA's openness policy. If Congress should decide to open all HSCA records, however, CIA would be hard put to keep its HSCA collection closed.

b. Opened: To open the HSCA collection would require the permission of Congress. Indeed, CIA would presumably not consider this option except in response to congressional action or pressure, or in order not to be the last hold-out in a Government-wide opening of Kennedy assassination records. While opening the collection would disclose a good deal of information that deserves continued protection for privacy or national security reasons, a total release would dramatically demonstrate CIA's new openness, and rapidly reveal that these records contain nothing pointing to a CIA role in the Kennedy assassination.

10. Recommendation: I recommend that CIA transfer its entire HSCA collection (as defined and identified in this report) at its existing classification to the National Archives and Records Administration (NARA), for continuing declassification review by Archives staff, in accordance with the relevant laws, regulations and CIA guidelines. This transfer should be carried out under the auspices of CIA's Historical Review Program. To retire this HSCA collection to the National Archives offers some significant advantages:

a. It would get the collection off our hands. Retiring the records to the National Archives, which is by law the eventual repository for all permanent US Government records, should reduce public suspicion of a CIA cover-up. Such a transfer would not set a new precedent, since CIA has previously retired over 4000 cubic feet of Office of Strategic Services operational records to NARA, as well as all CIA records so far declassified under the Agency's Historical Review Program. Although CIA has not previously transferred classified records to NARA, the transfer of this HSCA collection, resulting from a congressional investigation, follows the special precedent of the classified CIA documents retired to NARA's vaults as part of the records of the Watergate and Iran-Contra investigations.

b. Transferring these HSCA records to the National Archives will protect their existing classification. The Departments of State and Defense have routinely retired classified records to NARA for years. In accordance with statutory guidelines, NARA must ensure the confidentiality of investigatory sources and the proper protection of personal privacy and national security information, including intelligence sources and methods. NARA would continue the court-ordered declassification review according to CIA guidelines. CIA can accelerate the declassification of this collection by funding review positions at NARA, as the Department of State and other agencies have done in the past. (Attachment C outlines declassification procedures for classified records retired to the National Archives.)

c. NARA's professional archivists will bring this collection under control (as they have done with the 4000 cubic feet of disorganized OSS records that CIA has retired since 1984), so that it can be usefully researched as it is declassified. Moreover, many of the records in this collection (especially photographs, carbon flimsies, and Thermofax) need expert preservation, which NARA is organized to provide.

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d. If Congress should eventually undertake to open this entire collection without regard to classification, the National Archives will be in a stronger position to protect its national security and privacy information than the CIA, whose motives would appear self-serving, if not sinister.

11. Action: If you wish to retire the Agency's House Select Committee on Assassinations collection to the National Archives, the following actions (from the offices noted) will be needed:

a. Request permission from Congress. (Office of Congressional Affairs)

b. Transfer responsibility for court-ordered FOIA declassification review from CIA to the National Archives. (Office of the General Counsel, with Information Management Staff, DO)

c. Prepare CIA guidelines for NARA's declassification review. (Office of Information Technology, DA)

d. Prepare the appropriate Historical Review Program documentation and NARA forms, and deliver the records. (Office of Information Technology, DA)

e. Announce the transfer jointly with Dr. Don Wilson, Archivist of the United States, and Congressman Louis Stokes. (Public Affairs Office)

/s/ J. Kenneth McDonald

J. Kenneth McDonald

Attachments

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SUMMARY

CIA HISTORY STAFF SURVEY

House Select Committee on Assassinations Collection

10 February 1992

The House Select Committee on Assassinations (HSCA) Collection consists of the following parts, which the attached box list describes in further detail:

1. Sequestered HSCA Records The first and major part of the collection, 64 boxes of records under Job No. 80-T01357A, is wide-ranging material collected in response to House Select Committee on Assassinations requests for documents relating to the assassinations of President John F. Kennedy and, to a far lesser extent, Dr. Martin Luther King. Coordinated by the Office of Legislative Counsel (now the Office of Congressional Affairs) and now under OCA control, these are the "sequestered" boxes that have been the subject of FOIA litigation and court order.

a. Boxes 1-34; DO Boxes 1-34 (34 cu. ft. of records) are about one-half DO-collected materials, with the remainder largely of third agency documents, primarily FBI reports gathered for the Warren Commission. There is also some material from the Department of State and the Immigration and Naturalization Service, as well as the original HSCA requests. Also included are staff handwritten notes, photographs, and copies of newspaper clippings. These records cover a wide variety of topics but focus on CIA operations against Cuba and Castro, Lee Harvey Oswald's sojourn in the USSR, Oswald's activities in Mexico City and New Orleans, and a large number of name traces requested by the HSCA staff. There is also material on the Black Panthers, the civil rights movement, and the peace movement. Among the subjects that appear in these boxes are: Jack Ruby, Clay Shaw, Frank Sturgis, E. Howard Hunt, Nosenko, Guy Bannister, David Ferrie, Silvia Duran, Martin Luther King, Coretta Scott King, James Earl Ray, William Kunstler, Jim Garrison, G. P. Hemming, Marina Oswald, John Roselli, Sam Giancana, Santos Trafficante, and Rolando Cubela's AMLASH operations against Castro. These records also include the 1967 Inspector General's report on CIA plots against Castro and the testimony of Richard Helms in executive session before HSCA.

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b. Boxes 35-63 Boxes 35 through 63 in this job (29 cu. ft. of records) are equally eclectic, divided as they are between records from the Office of Legislative Counsel (now OCA), Inspector General, Office of the General Counsel, Directorate, of Science and Technology, Office of Security (security files), and the HSCA itself. These records, which are mostly CIA material (heavily DO), consist of reports, memoranda, transcripts, cables, letters, newspaper clippings, photographs, and charts. They include materials relating to the Garrison investigation, Watergate, Cuban exile activities, and CIA attempts to assassinate Fidel Castro. There is also some material relating to Martin Luther King, black power, and racial violence, as well as a DS&T report on photos of the "unknown man" at the Mexico City Soviet embassy, and an NPIC analysis of the Zapruder film.

c. Box 64: Microfilm Box 64 of Job. No. 80-T01357A contains 72 reels of microfilm (although the box is labeled "CIA/DDO HSCA Records, box 1 of 2," box 2 has not been found). The History Staff was assured, however, that this was indeed box 64 of Job No. 80-T01357A. In addition to a copy of Oswald's 201 file (as actually shown to the HSCA staff in 1978), the microfilm contains material on Oswald's activities in Mexico City (primarily photographic and phone tap surveillance of the Soviet and Cuban embassies and consulates), Mexico City Station files (including cable traffic and the station's "P" Personality files), CIA security files, Nosenko interrogation transcripts, and a great deal of information relating to Cuban exile groups. There are also 22 reels of 201 files, which contain 151 individual files. Some of the material on these microfilm reels reproduces DO material in the boxes, although it is difficult to judge exactly how much.

2. Oswald's 201 File The second part of the HSCA collection is Lee Harvey Oswald's 201 file, 16 boxes (16 cu. ft. of records) held in the DO's Information Management Staff (IMS). This file consists primarily of copies of FBI reports relating to Oswald, FBI investigations on Oswald and his activities (including items that FBI sent CIA prior to the assassination), interviews with Marina Oswald, Department of State cable traffic concerning Oswald's passport and visa applications, information tracing Oswald's weapons, material on Jack Ruby and Silvia Duran, and a tape of Oswald's August 1963 radio debate. There are also detailed FBI reports concerning Oswald's assassination of the President and his contacts with Soviet officials, as well as records relating to Gilberto Alvarado, who maintained that he witnessed Cubans passing Oswald cash at a party on the night before the assassination.

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3. Loose Files The HSCA collection's third part comprises a number of loose folders that evidently belong within the collection, including eight bulky Mexico City Station files (including cable traffic and "P" files) that are also in the microfilm. These files are considered to be part of the Oswald 201 file and are held in IMS. A group of 16 file folders that appear to be unaccessioned contain a miscellany of HSCA requests and Agency responses on subjects such as Oswald in the USSR, Marina Oswald, Roselli, and Giancana. These appear to belong with Job. No. 80-T01357A.

4. Organization Partly because of the collection's origins in the disorderly process of the Agency's response to massive investigatory committee requests, the collection badly organized. Moreover, years of working through these files in response to numerous Freedom of Information Act requests have disrupted the collection further. More importantly, however, the Agency has not taken intellectual control of the collection in the fifteen years since it was created. Partial systems of organization have been imposed upon various parts of the collection without reference to or use of sound archival principles and procedures. Although 15 separate (and unsatisfactory) indexes to the collection eventually surfaced, the lack of any central index or finding aid makes retrieval of individual documents extremely difficult. Although CIA review officers attempted to impose some order to the collection by numbering each document and adding a folder numbering system to each box, there is no central control or finding aid for any of these these systems. Provenance cannot be traced, and entire files are missing that cannot be satisfactorily accounted for.

5. Non-record Copies This collection consists for the most part of xeroxed copies rather than original documents. We suspect that the originals of many, if not most, of these xeroxed documents would be difficult if not impossible to locate.

6. Preservation Much of the material throughout the collection, especially thermofax copies and photos, is fragile and in poor physical condition, requiring immediate attention to prevent further deterioration.

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BOX LIST OF FILES REVIEWED
CIA HISTORY STAFF SURVEY
House Select Committee on Assassinations Collection

10 February 1992

Job No. 80-T01357A

Box 1: CIA Security files on numerous individuals, including G. P. Hemming, Martin Luther King, Marina Oswald, and others; 1967 CIA IG report on plotting against Castro; Garrison investigation. (File folders 6, 7, 17 and 20 are missing).

Box 2: CIA Security files on William D. Pawley, Frank Sturgis, Jack Ruby, Clay Shaw, and others; numerous FBI documents and assorted CIA material.

Box 3: Helms hearing testimony; Mexico City Station cable traffic; CIA, FBI, Warren Commission, and HSCA correspondence.

Box 4: Chronology of Lee Harvey Oswald's sojourn in the USSR: CIA operations against Cuba, Castro, and the Cuban Intelligence Service, including information relating to ZRRIFLE, AMLASH, AMMUG; description of CIA 201 system; information on Nosenko interrogation regarding Oswald and his Soviet connections. (File folder 8 is missing).

Box 5: Notes on Oswald; various HSCA notes and affidavits; transcripts of Helms's testimony; FOIA information.

Box 6: Information relating to Lee Harvey Oswald's activities in Mexico City, including surveillance from CIA projects LIEMPTY, LILYRIC, and LIMITED: Garrison investigation; CIA support to Warren Commission; AMMUG debriefing; copies of Mexico City Station despatches (HMMA); sensitive material on photocoverage of Soviet, Cuban, Czech, and Polish embassies in Mexico City; an index to HSCA papers held by CIA; an index of Warren Commission exhibits; information relating to Silvia Duran; a copy of an agreement between the Director and Chairman Louis Stokes requiring the CIA to retain for 30 years all materials gathered in response to Committee requests; Richard Helms executive session testimony in 1978 before the committee; an index to requests to the CIA from J. Lee Rankin of the Warren Commission.

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Box 7: Mexico City Station surveillance of Cuban, Soviet embassies; AMMUG; Silvia Duran; Oswald's activities in New Orleans (FBI report); monthly operations reports from Mexico City Station; summaries of HMMA cables; Cuban exile mug books; Gilberto Alvarado, the Nicaraguan who claimed he saw Lee Harvey Oswald receive cash in meeting inside Mexico City Cuban embassy; transcripts of phone calls to and from Soviet embassy; a machine listing of documents officially recorded as being in Oswald's 201 file (list missing from folder); Warren Commission trip to Mexico City and interview with U.S. Ambassador Thomas Mann; Jack Ruby; Fair Play for Cuba Committee; FBI reports on Oswald; HTLINGUAL documents; Nosenko interviews; and interview of Mexico City Station personnel by committee staff. (File folder 37 is missing).

Box 8: HSCA requests primarily for name traces involving individuals, including James Earl Ray, Clay Shaw, John Roselli, Sam Giancana, Santos Trafficante; 1977 CIA study on Church committee findings relating to the CIA; HSCA requests to interview CIA personnel; ZRRIFLE; information relating to the Cuban airline flight from Mexico City to Havana; Nosenko interviews; photos of anti-Castro individuals.

Box 9: Primarily HSCA requests for name traces on individuals and organizations; CIA surveillance operations in Mexico City; copies of cable traffic from Mexico City Station. (File folder 76 missing).

Box 10: Name traces from 201 files, HTLINGUAL mail intercepts, and MHCHAOS files, including individuals associated with Black Panthers, Students for a Democratic Society, the civil rights movement, Ramparts, and the peace movement. Material on Henry Winston, Maurice Halperin, George Edward Wright, Julian Bond, William Kunstler, James Earl Ray. Also Lee Harvey Oswald and Jim Garrison.

Box 11: Misc. items on JFK assassination; HSCA material, including personal history of Nosenko and Oswald chronology.

Box 12: HSCA chronologies 1976-78; draft reviews and CIA comments; Oswald dossier forwarded to Warren Commission; Garrison investigation of JFK assassination; CIA chronology of memos received from Warren Commission; HSCA chronology, January-March 1978.

Box 13: Alphabetical files of individuals marked "completed" or "pending" based on 201 files.

Box 14: Primarily HSCA requests for name traces on individuals and organizations; some 201 files; interviews with POWs from Bay of Pigs; FBI and Immigration and Naturalization Service reports on Oswald.

Box 15: Alphabetical files based on CIA, State, and FBI on numerous individuals including Claire Booth Luce, Clay Shaw, Martin Luther King, and Coretta Scott King.

Box 16: Copies of 201 files; interview and transcripts relating to Mexico City activities of Oswald and the Mafia.

Box 17: JMWAVE cable; DCI cable traffic.

Box 18: HSCA chronology; Oswald 201 file; report on CIA performance.

Box 19: HSCA staff notes, taken at CIA. (File folders 2-5, 14, 18, 25, 28 and 34-35 missing. With HSCA records?)

Box 20: Follow-up requests from HSCA on name traces; handwritten notes of committee staff members on CIA 201 files; CIA surveillance of Soviet embassy in Mexico City; Oswald's activities in Mexico City; copies of staff interviews with CIA personnel (file folders 58-62, 65, 69-70, 73-74, 80, 83, 85-86, 88-92, 96, 101, 103 and 112 are missing, while folder 57 is empty. With HSCA records?)

Box 21: HSCA requests by JFK file number.

Box 22: HSCA staff notes, misc.

Box 23: HSCA staff notes: misc., including Helms's testimony in executive session.

Box 24: HSCA staff notes: misc., including Mexico City interviews and speculation about a dual CIA filing system re Oswald and Oswald's relationship to Agency.

Box 25: Committee staff notes on materials reviewed at CIA relating to Oswald and his possible connections with the CIA and his activities in Mexico City; a sanitized copy of the 1977 CIA report on the Church Committee findings; information relating to Cuban embassy officials in Mexico City, including Silvia Duran, Eusebio Lopez, and Alfredo Diaz.

Box 26: Documents re Oswald's Mexico City visit; DCI's appearance before Warren Commission; allegations of Oswald's connection with CIA.

Box 27: Agency file on Oswald, as sent to Warren Commission; Nosenko interrogation notes.

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Box 28: HSCA files mixed in with FBI and CIA documents; investigation of Silvia Duran, 28 November 1963; numerous HSCA handwritten notes.

Box 29: Alphabetical file on individuals from various sources, including Guy Bannister, Clay Shaw, and David Ferrie.

Box 30: HSCA report on Cuba trip, 1978; handwritten notes on Oswald; Domestic Contact Division notes on Garrison investigation; and information on Nosenko.

Box 31: Administrative materials, correspondence between HSCA and CIA, index and file of HSCA material returned to DO.

Box 32: Mexico City Station cables and dispatches.

Box 33: Cuban Mugbook and Mexico City Station traffic, October 1963-January 1964.

Box 34: HSCA files on George de Mohrenschildt; Cuban Mugbook; HSCA reading file; CIA relations with FBI and Warren Commission; Nosenko on Oswald; and Ruby's alleged travel to Cuba.

Box 35: Review of HSCA trip to Cuba and Mexico; HSCA report on Silvia Odio; report, "CIA Operations against Cuba prior to the Assassination of President John F. Kennedy on 23 November 1963;" and Senate Select Committee reports and comments.

Box 36: Review, what could Castro have known?; review of HSCA draft report; IG report on Cuban operations for 1960-64, for any bearing upon JFK assassination; Book V of Church Committee final report, with review by Agency of provocation theory (charges of Agency cover-up of Cuban operations); E. Howard Hunt file; Mexico City/Havana flights; Win Scott; AMTRUNK; Oswald contacts with Soviet and Cuban embassies, Mexico City; CIA relations with FBI and Warren Commission; Alpha 66; photo of unidentified man, Mexico City; cable traffic, AMLASH, AMWHIP; Mafia plotting; Jack Ruby/Cuba; QJWIN, ZRRIFLE.

Box 37; Information relating to Cuban exile activities against Castro, such as the Torriente Group and Alpha 66; name trace on E. Howard Hunt; and information relating to the Garrison investigation.

Box 38: Alphabetical files, including Hemming, Luce, Sturgis, Roselli, James McCord, and Nosenko; file on U-2 overflights from Japan; DDS&T report on photos of unknown man.

Box 39: Photo comparisons of E. Howard Hunt and Frank Sturgis with tramps arrested in Dallas on day of JFK assassination; chart of frames from the Zapruder film showing the actual assassination.

Box 40: Security files (including record of those files inadvertently destroyed).

Box 41: Security files (alphabetical); including Lucien Conein; also material on Fair Play for Cuba Committee.

Box 42: Name traces from Office of Security files; Garrison investigation information; a copy of a manuscript, "The Kennedy Conspiracy: An Uncommissioned Report on the Jim Garrison Investigation;" copies of material relating to Oswald shown to committee staff at CIA.

Box 43: Security files (some missing, inadvertently destroyed). Files present include that of Martin Luther King.

Box 44: Security files.

Box 45: Security files, including those of David Atlee Phillips and Clay Shaw.

Box 46: HSCA requests for information relating to Frank Sturgis, Clay Shaw, and Watergate; information relating to JMWAVE and the Miami Station; FBI reports on left-wing and racial unrest in U.S.

Box 47: Security files, mostly newspaper clippings; list of notes by HSCA staff member; Oswald security material; newspaper articles on Oswald; unsanitized material released in sanitized form via FOIA from Oswald material.

Box 48: Security files, including Tokyo Position Control Register (1960-64); HSCA staff notes reviewed by OS; HSCA staff review at headquarters of selected OS files (including Roselli and Giancana), plus other name traces through OS, including Gerald P. Hemming.

Box 49: Name trace requests; transcripts of interviews of CIA personnel; executive session transcript of a Senate Armed Services Committee meeting, 21 November 1973, regarding CIA assassination plots; CIA plans to assassinate Castro; and the Mafia/CIA connection in attempts to assassinate Castro.

Box 50: HSCA requests by date; Oswald chronology; draft copy of Hornbeck Report.

Box 51: Numerous HSCA requests and individual files; Jack Ruby file as well as Hemming, Hall, Pawley, M. L. King, and others.

Box 52: HSCA reviews by date; Cuban Counter-revolutionary Handbook, 1962 & 1964; photos of unknown man; NPIC analysis of Zapruder film, and Hoch memorandum.

Box 53: HSCA request log and priority response list; copy of manuscript, "Castro's Red-Hot-Hell"; information relating to HSCA leaks, guidelines, procedures, clearances, and secrecy agreements.

Box 54: HSCA staff notes.

Box 55: HSCA staff notes; HSCA chronologies, 1953-77.

Box 56: FBI reports on racial violence in the U.S. in 1967 and the Black Power movement and Martin Luther King; deposition material, but not the actual depositions, of Ray Rocca, John McCone, Richard Helms, and David Phillips.

Box 57: Mexico City Station file, 1959-68; correspondence concerning HSCA visit to Mexico; HSCA receipts, testimony, etc.; 1975 report on unidentified man at Cuban embassy; HSCA request for JMWAVE traffic.

Box 58: IG report on Church Committee final report, book V; annex to task force report (AMLASH); DDCI testimony before committee (Dec. 1978); HSCA final report (summary) and correspondence; internal DO memos re Warren Commission (what to tell it re Cuban operations?); correspondence/memos re HSCA interviews and depositions from Win Scott, Golitzyn, Shevchenko, McCone, Nosenko (for most part, interviews and depositions themselves not here).

Box 59: HSCA press releases and correspondence.

Box 60: Nosenko material, including polygraph transcripts; misc. HSCA memos; James J. Angleton material, 1977-78.

Box 61: Copies of House Select Committee draft reports and CIA comments relating to Cuban exiles and their activities against Castro, Silvia Duran, AMLASH, and Oswald's activities in Mexico City.

Box 62: HSCA requests; photo surveillance around Cuban embassy in Mexico City; CIA/HSCA defector study; various interviews about JFK's death.

Box 63: Warren Commission reports on Oswald; a House report on Oswald's activities in New Orleans; CIA plots to assassinate Castro; and a folder on Ray Rocca's testimony before the Rockefeller Commission (his testimony is not present in the folder); and information relating to the disposition of CIA materials relating to the House investigation.

Box 64: Microfilm

History Staff reviewed Reels for which there were no description. These were Reels 46, 53-56, 59, 60-62, and 65-71. History Staff also sampled Reels 1, 14, 18, 22, 24, 26, 30, 31, and 44. Reels reviewed, as follows:

Reel 1: CIA Security files in alphabetical order, containing background investigation results, memos, passport applications.

Reel 14: CIA Security files, in alphabetical order.

Reel 18: True name dossier from Office of Security files; list of U.S. defectors to Soviet Bloc; material on WIROGUE and the Congo; Cuban exile operations to infiltrate men into Cuba.

Reel 22: AMMUG; LIEMPTY; LILYRIC; LINCHPIN; LIENVOY (Mexico City surveillance activities of the Cuban and Soviet embassies in Mexico City.

Reel 24: Photo surveillance of Cuban embassy in Mexico City, August & November 1963; photo surveillance of USSR embassy in Mexico City, July-December 1963; Garrison investigation articles and CIA correspondence.

Reel 26: Extensive file on Cuban exile groups in U.S. receiving CIA help; DRE, Liberation Army of Cuba.

Reel 30: Mexico City Station files; CIA personnel records; Mexico City message traffic relating to Silvia Duran; photos of individuals entering or leaving the Soviet embassy and the Cuban consulate in Mexico City; press accounts of Garrison trial of Clay Shaw.

Reel 31: Oswald diary; Warren Commission file numbers and inventory; index of Mexico City traffic; Mexico City chronology; 1975 CIA report on unidentified man; 1975 CIA report on Cuba-JFK connection; list of "soft files" at beginning of microfilm.

Reel 44: Warren Commission documents relating to Oswald; Ambassador Thomas Mann's meeting with the Commission staff in Mexico City in 1964; Helms affidavit, 1964; Jack Ruby; Marina Oswald; Clay Shaw; and Jim Garrison.

Reel 46: Nosenko files; Mexico City Station chronological file; and a list of all station despatches from 10/15/63 to 11/27/63 (20 despatches missing).

Reel 53: CIA Security/201 files in alphabetical order.

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Reel 54: CIA Security/201 files; maps of Cuba; reports on Mexican/Cuban activities.

Reel 55: CIA Security files.

Reel 56: CIA Security files.

Reel 59: CIA Personnel files (including fitness reports).

Reel 60: CIA Personnel files.

Reel 61: Nosenko interrogation: information relating to Golitsyn; Cuban exile groups and their anti-Castro activities; William Pawley's anti-Castro activities.

Reel 62: CIA Nosenko interrogation transcripts; Cuban Revolutionary Council progress reports, March-April 1963; list of Cuban consulate employees worldwide; FBI report on Cuban government in exile in NYC; monthly expenditures of Cuban Revolutionary Council (CRC).

Reel 65: Cuban exile organizations such as the Cuban Revolutionary Council (CRC), Cuban Democratic Revolutionary Front (CDRF), Judicatura Cuban Democratica, and the 30 November Movement.

Reel 66: AMBUD file on CRC, monthly reports, statement of expenses, proposed programs and projects, budget projections and accounting statements of the Council.

Reel 67: AMBUD (Col. Johnson) file; CRC budget and programs, documents relating to the coordination problems within and between Cuban exile groups.

Reel 68: Col. Johnson Working File; weekly summary reports; the underground in Cuba; CRC activities and position papers; translations of Council documents; biographic information on CRC leaders Dr. Miro Cardona and Tony Varona.

Reel 69: CRC and the Cuban exile community; meeting in San Jose and around Latin America--selection of delegates, expenses, and recruitment efforts.

Reel 70: CRC finances; Brigade 2506; Juan Bosch interview in Dominican Republic with Cuban exiles; and information relating to CRC delegates to various Latin American governments.

Reel 71: Cuban organizations; photos of Mexican embassy entrance.

Reel 72: Photos of Mexican embassy entrance.

Oswald 201 File

Box 1: mostly FBI interviews/investigation notes; items sent by FBI to CIA prior to JFK assassination regarding Oswald's activities in New Orleans; State Department correspondence regarding Oswald defection and return; Silvia Duran material; newspaper articles; Mexico City Station files; and other material.

Box 2: FBI background investigation of Oswald and his wife Marina's activities while in the Soviet Union.

Box 3: FBI background investigation of Oswald activities in New Orleans; FBI interviews of Marina Oswald; information relating to the Fair Play for Cuba Committee; State Department actions regarding Oswald's passport and visa applications; FBI tracing of weapons connected with Oswald; information on Jack Ruby; and a tape of the radio debate in which Oswald participated in August 1963.

Box 4: FBI reports on Oswald; FBI interviews with Oswald and Marina after the assassination; copy of Cuban government's protest to Mexican authorities over the arrest and treatment of Silvia Duran; and an index to the FBI reports is included in the box.

Box 5: FBI investigation of the assassination (3 vols.); a copy of Oswald's diary while he was in Moscow; biographic material on Marina Oswald; a copy of Oswald's chronology while in the Soviet Union; and a copy of the questions for the Soviet government composed by CIA officials.

Box 6: Oswald chronology; biography of Marina Oswald; Warren Commission correspondence; name traces of those who appear in Oswald diary; Warren Commission correspondence; Oswald Mexico trip; Oswald address book; Silvia Duran Mexican interrogation; newspaper clippings.

Box 7: FBI reports on Oswald; Nosenko interviews; photos of Oswald in Minsk; list of Oswald's apartment articles; and a name list of CIA traces for the Warren Commission.

Box 8: Photos shown to Marina Oswald for ID purposes; SR/CI Studies for the Warren Commission; continuing FBI investigation, Dallas area; interview with Marina; Oswald/Ruby alleged association; attachments to Oswald chronology in USSR.

Box 9: Copy of Marina Oswald's notebook with addresses; list of items prepared by CI on Oswald care for the Warren Commission;

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Oswald's contacts in the Soviet Union; and an FBI report on Oswald's activities in Mexico; a CIA brief for presentation to the Warren Commission on Oswald; Soviet Government documents relating to Oswald; and a translation of a Portuguese book, A Conspiracao.

Box 10: FBI investigations; Nosenko material; anti-Castro activities in U.S.; CIA report of Oswald in Mexico City; CIA report on Oswald defection; CIA report of Oswald as Kennedy murderer; assorted FBI items.

Box 11: Bulky material, mostly SR/CI Studies for Warren Commission; FBI reports; Marina Oswald material; Oswald Cuban application; USSR radio and newspaper traffic; Silvia Duran interview; foreign press reaction to JFK assassination and Warren Commission report; photos of unidentified man in Mexico City; Bernard Fensterwald FOIA case; assorted CIA and FBI material.

Box 12: Warren Commission Log Book from National Archives; master list of Warren Commission correspondence and exhibits from National Archives; and copies of FBI reports on the assassination.

Box 13: HTLINGUAL intercepts (Russian language with some translations); SE soft file on Oswald; Nosenko information on other Soviet defectors.

Box 14: Copies of CIA documents still classified in the Warren Commission records held at the National Archives; Oswald's activities in the Soviet Union; information relating to Gilberto Alvarado "Source D", Silvia Duran, and Oswald in Mexico; transcripts of telephone intercepts from the Mexico City Station.

Box 15: CIA-Warren Commission released materials, 1964; background on Jack Ruby, Oswald; Oswald's Soviet medical record; National Archives list of status of CIA documents in Warren Commission records, 1967; Soviet press reaction to assassination; internal memoranda and other records of the Warren Commission; transcript of executive session of the Warren Commission; Oswald's Mexico trip, Soviet defection; Oswald's alleged CIA connections; Warren Commission material; "kook" cases; follow-up on numerous "leads"; Helms's file on Oswald and Warren Commission documents (as of January 1964).

Box 16: Garrison investigation, newspaper clippings, and other reports; Warren Commission memos.

Mexico City Station files (8 bulky files)

(Considered part of the Oswald 201 file; to be placed in box within Oswald's 201 file)

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Mexico Station files on Oswald (P-files); Oswald chronology; newspaper clippings; - FBI report on Oswald in Mexico city; misc. material on Oswald in Mexico; Garrison investigation material (mostly newspaper clippings); Warren Commission testimony.

HSCA Miscellaneous Folders (16 folders)

(These file folders, which are unaccessioned at present, will be placed within HSCA collection, Job No. 80-T01357A)

HSCA requests; information on Oswald in USSR; Marina Oswald; documents on Roselli and Giancana.

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NOTES ON TRANSFER TO THE NATIONAL ARCHIVES
AND DECLASSIFICATION OF CIA RECORDS

10 February 1992

1. Transfer CIA would transfer documents under their existing classification to the National Archives and Records Administration (NARA) in much the same way that it already transfers declassified documents. Using a NARA Form 258, the usual transfer document, CIA would note that the documents to be transferred are classified. These records would then go into secure NARA vaults, where they would be accessible only to archivists with appropriate security clearances. Codeword documents would go into a compartmented vault under the direct control of the Records Declassification Division, to be processed only by reviewers with the necessary SCI access approvals.

2. Classification Any transfer of CIA records to NARA under existing classification would provide continuing security protection for these documents consistent with Agency standards. In accordance with statutory guidelines, NARA must ensure the confidentiality of investigatory sources and the proper protection of personal privacy as well as national security information, including intelligence sources and methods.

3. Declassification Declassification guidelines would be a matter for negotiation between the CIA and NARA. Some agencies (e.g. the Department of Defense) give general guidance, while others (e.g. the Department of State) offer more specific guidelines. Although specific guidelines require more effort to develop, NARA prefers them to more general guidelines, since under specific instructions NARA's reviewers find less need for referral back to the donor agency.

4. Funding and Resources Funding and resources would also be matter for negotiation between the Agency and NARA. The Department of State and the Agency for International Development (AID), for example, have funded a certain number of reviewer positions, while NARA funds all overseer positions (both reviewers and overseers are NARA employees). For consistency and quality control NARA does two reviews for State and AID. State's own staff members then do a final quality check--in effect a third review--of the product at NARA. State and AID consider their review guidelines to be draft guidance until they review the

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results. They then redraft the guidance, as necessary. In the past, this has meant only fine-tuning the guidelines, which are then applied to the next group of records, rather than a re-review of those already processed.

5. Preservation CIA's records from the House Select Committee on Assassinations investigation are in poor physical condition and have distinct preservation needs. The collection contains large quantities of fragile and deteriorating documents, including thermofax copies and photographs, which NARA is in a far better position to care for properly than is CIA.

14. CIA HISTORICAL REVIEW PROGRAM

SYNOPSIS. This regulation prescribes the responsibilities, guidelines, and procedures for the declassification review and release of permanent Agency records under the CIA Historical Review Program.

a. GENERAL

- (1) The Agency's Historical Review Program (hereafter, the Program) is established to make significant historical information available to the public without damage to the national security interests of the United States. This includes systematic review for declassification and release of: all permanent records 30 years old or older (with the exception of designated operational files); other records on selected topics or events; certain National Intelligence Estimates; and CIA documents that the Department of State selects for inclusion in its Foreign Relations of the United States series.
- (2) Reaffirming the principle that the US Government's records should be available to the public, this Program will declassify and release to the public the maximum volume of historical records consistent with:
 - (a) The responsibilities of the Director of Central Intelligence (DCI) under the National Security Act of 1947 and the CIA Act of 1949, as amended, to protect intelligence sources and methods and organizational and personnel information.
 - (b) The requirements of Executive Order 12356 and successor orders to protect national security information.
 - (c) Provisions of law that govern the public disclosure of information.
- (3) The Agency will transfer records declassified and approved for release under this Program (including documents released for publication in the Department of State's Foreign Relations of the United States series) to the National Archives and Records Administration (hereafter, National Archives) for public use.

b. **AUTHORITY.** The Historical Review Program is established in accordance with:

- (1) Executive Order 12356, which prescribes a uniform system for classifying, declassifying, and safeguarding national security information, and provides in § 3.3(c) that the DCI may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.
- (2) The responsibility of the DCI under § 102(d)(3) of the National Security Act, as amended, 50 U.S.C. § 403(d)(3), to protect intelligence sources and methods from unauthorized disclosure.
- (3) Section 6 of the CIA Act of 1949, as amended, 50 U.S.C. § 403g, which exempts the Agency from the provisions of any law requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed.
- (4) The CIA Information Act of 1984, 50 U.S.C. § 431, which exempts certain operational files from the search and review provisions of the Freedom of Information Act.
- (5) Section 198 of P.L. 102-138 (new Title IV of the State Department Basic Authorities Act of 1956, Sections 402 & 403), which require CIA to provide full and complete access to its records to Department of State historians compiling the Foreign Relations of the United States documentary series, and to review for declassification records selected for inclusion in that series.

c. RESPONSIBILITIES

- (1) **THE DIRECTOR, CENTER FOR THE STUDY OF INTELLIGENCE,** has principal responsibility for the Historical Review Program. Custody, control, and declassification authority for records selected and received for review under the Program will be transferred from the components to the Director, Center for the Study of Intelligence, for all purposes. At the beginning of each calendar year the Director, Center for the Study of Intelligence, will submit a report to the DCI on the Program's work in the past year, and on its plans for the year ahead.

- (2) In the Center for the Study of Intelligence the History Staff and the Historical Review Group are responsible for carrying out the Program.
- (a) The History Staff will select groups of records for systematic declassification review, and locate and assemble for review records on events or topics of historical interest selected with the approval of the DCI. In accordance with Section 198 of P.L. 102-138, the History Staff will also coordinate with the Department of State's Office of the Historian to provide properly cleared and designated Department of State historians and members of its Advisory Committee on Historical Diplomatic Documentation with full and complete access to CIA records in selecting documents for possible inclusion in the Foreign Relations of the United States series. (Such CIA records must be pertinent to United States foreign policy and at least 26 years old when requested.)
 - (b) The Historical Review Group will be responsible for declassification review of records under the Program in accordance with this Regulation and additional guidance promulgated by the Director, Center for the Study of Intelligence, with the DCI's approval.
 - (c) In conducting this Program, the History Staff and Historical Review Group will advise the responsible components concerning the selection of records to be reviewed under the Program and will consult as necessary with the Agency Archivist and responsible directorate and DCI area Information Review Officers during the declassification review.
 - (d) To advise the Program on its policies and procedures the Director, Center for the Study of Intelligence, may from time to time convene the Historical Review Panel, which will include the Archivist of the United States, the Librarian of Congress, and representatives of the historical profession.
- (3) The Agency Archivist will assist the Historical Review Group in maintaining the integrity of all permanent records (as determined by the Archivist of the United States) received or created by the Agency, and in

preparing appropriate documentation to provide data for an annual index of all Agency documents approved for release under this Program or through other means. The Agency Archivist will transfer records declassified and released under the Program to the National Archives.

- (4) The History Advisory Board will advise the History Staff in its responsibilities for the Historical Review Program.

d. CRITERIA FOR REVIEW PRIORITY

- (1) The History Staff, with the assistance of the Agency Archivist and the relevant Information Management Officers, will use archival data and listings that describe the Agency's permanent records as well as on-site research at the Agency Archives and Records Center to identify and locate specific groups of records for review under the Program.
- (2) The History Staff will determine the order in which records are reviewed, using as primary criteria their historical value, public interest in the subject matter, and their potential yield of documents that can be released. The Program will give special attention to records originated by the DCI or his principal subordinates and other senior Agency officials, finished intelligence, and disseminated intelligence reports. Priority for review will also be given to file series requiring prompt reproduction or other conservation action to ensure preservation of the information contained in the records.
- (3) The History Staff will evaluate records in light of the contribution their declassification and release can make to understanding the history of CIA and its role in US intelligence, foreign policy, and international developments.
- (4) To determine historical value, the Chief, History Staff, will consider the recommendations of the Historical Review Panel, and of a wide range of government, academic, and private historians.
- (5) The following records will be subject to systematic declassification review:
 - (a) All permanent records held by the Agency that are 30 years old or older when reviewed, with the

exception of certain operational files designated by the DCI under the provisions of the CIA Information Act of 1984. Included in this review will be files inherited from predecessor organizations and formerly designated files that have been removed from exempt status as a result of the periodic review required by the CIA Information Act of 1984.

(b) All issues of Studies in Intelligence.

- (6) In addition to selecting 30-year old records for systematic declassification review, the History Staff will locate and collect for Historical Review Group declassification review National Intelligence Estimates on the former Soviet Union that are ten years old or older when reviewed, and records (including operational files excluded from systematic review) on selected events or topics of historical interest selected with the DCI's approval.
- (7) The Historical Review Group will review for declassification and release CIA records selected by the Department of State for inclusion in its Foreign Relations of the United States series, in accordance with Section 198 of P.L. 102-138 (as interpreted by the President's signing statement of 28 October 1991). The declassification review of such records will be completed within 120 days of their submission by the Department of State.

e. GUIDELINES FOR DECLASSIFICATION

- (1) Executive Order 12356 requires that information be classified only if its disclosure reasonably could be expected to cause damage to the national security, and that it shall be declassified or downgraded as soon as national security considerations permit. The Order further states that information that no longer requires protection in the interest of national security shall be declassified and released unless withholding is otherwise authorized by applicable law.
- (2) There shall be a presumption in favor of disclosure except as provided in subparagraph e(4). Reviewers conducting declassification review of information under this Program who advocate the continued classification of information will bear the burden of

identifying any damage its disclosure reasonably could be expected to cause to the national security. Information, including information classified solely on the basis of the "mosaic" effect, may remain classified only if the reviewer can identify such damage and a clear connection between disclosure and the projected damage. To show such damage with respect to information 30 years old or older, a reviewer must articulate how disclosure of the information is likely to affect, in a significant and adverse way, the US Government's current or future ability to carry out its authorized activities. Unless a showing of possible damage is made with reasonable specificity, the information will be declassified.

- (3) Factors to be considered in determining whether damage to the national security reasonably could be expected to be caused by disclosure include the effect of the passage of time on the sensitivity of the information, any prior disclosures of the information, the link between disclosure and possible harm, and past experience with respect to disclosures of similar information.
- (4) Under EO 12356 the unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Such information shall not be automatically withheld under this Program, but must be reviewed for possible declassification even if it concerns matters normally withheld from public release, such as the fact of CIA presence in a specific country abroad; the fact that certain covert action operations were conducted; the existence of foreign government relationships; or CIA personnel or organizational information. Such information will be declassified if a reviewer concludes that disclosure could not reasonably be expected to damage the national security.
- (5) In accordance with the third agency rule, the Historical Review Group will coordinate its review decisions as necessary with other US Government agencies before taking final declassification action and arranging to transfer records to the National Archives.
- (6) A significant consideration in reviewing information for declassification under this Program will be the

extent to which the information is already available to the public. Classified information will not be declassified automatically as a result of any unofficial or inadvertent disclosure of identical or similar information. However, information that CIA has officially acknowledged (including inadvertent disclosures) will not be eligible for continued classification. There is a presumption that information that has appeared publicly, including information that the CIA Publications Review Board has approved for publication even if not confirmed officially, will not damage the national security unless the reviewer can show how official confirmation could reasonably be expected to cause additional damage to the national security.

- (7) The Historical Review Group will determine whether the information under review warrants continued protection, even if declassified, pursuant to statutory or other requirements. Such information (e.g. privacy data and information protected by executive privilege) will be released, except when prohibited by law, unless there is a showing that US interests will be adversely affected by the disclosure.
- (8) In no case will information be kept classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; or to prevent or delay the release of information that does not require protection in the interest of national security.

f. PROCEDURES

- (1) Individual documents will be released in full, withheld in full, or released in part. When a document cannot be released in full, an effort to sanitize the document by deleting those portions that may not be declassified, or that may not be made public for other lawful reasons, will be undertaken. This procedure will be followed only when it will not slow the pace of the review unduly, will not obscure the record's essential significance, and will not distort the document's bibliographical identity, even if details of internal dissemination are excised. Documents that cannot be sanitized according to these criteria will be withheld in full.

- (2) The Center for the Study of Intelligence will make the determinations of the Historical Review Group available to the deputy directors, heads of independent offices, or their designees, whose components originated or have a substantial interest in the records. The responsible official will have 30 working days from the date of receipt of such records in which to appeal in writing to the Director, Center for the Study of Intelligence, any decision to declassify and release information.
- (3) If the appeal is denied, the responsible deputy director or head of independent office will have 10 working days from the receipt of the decision of the Director, Center for the Study of Intelligence, to appeal that decision in writing to the Director of Central Intelligence, whose decision will be final.
- (4) The Historical Review Group will maintain a record of all final determinations.
- (5) At the time of review, the Historical Review Group will identify Agency records that cannot be declassified. The Historical Review Group will again review such records for declassification at a date not more than 10 years later specified by the Director, Center for the Study of Intelligence. That date will be marked on the document.
- (6) This Regulation is intended to provide direction and guidance for those engaged in declassification review of records under the CIA Historical Review Program. Nothing contained in this Regulation or in any procedures promulgated to implement this Regulation is intended to confer, and does not confer, any substantive or procedural right or privilege on any person or organization.

APPROVED:



Director of Central Intelligence

4-28-72
Date

102D CONGRESS
2D SESSION

H. J. RES. 454

To provide for the expeditious disclosure of records relevant to the
assassination of President John F. Kennedy.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1992

Mr. STOKES (for himself, Mr. CONYERS, Mr. BROOKS, Mr. ROSE, Mr. HAMILTON, Mr. MOAKLEY, Mr. FAZIO, Mr. HORTON, Mr. TRAFICANT, Mr. WELDON, Mr. CLAY, Mr. CAMPBELL of Colorado, Mr. ROHRBACHER, Mr. AUCOIN, Mr. PICKETT, Mr. LEACH, Mr. MILLER of California, Mr. JACOBS, Mr. CLEMENT, Mr. WYLIE, Mrs. SCHROEDER, Mr. SERRANO, Mr. McNULTY, Mr. MARTINEZ, Mr. SANTORUM, Mr. LEWIS of Florida, Mr. SHARP, Mr. DREIER of California, Mr. KOPETSKI, Mr. BEREUTER, Mr. EMERSON, Mr. WAXMAN, Mr. HEFLEY, Mr. PETERSON of Florida, Mr. GILMAN, Mr. BACCHUS, Mr. SKAGGS, Ms. SLAUGHTER, Mr. SLATTERY, Mr. ABERCROMBIE, and Mr. MINETA) introduced the following joint resolution; which was referred jointly to the Committees on House Administration, Government Operations, Rules, and the Judiciary

JOINT RESOLUTION

To provide for the expeditious disclosure of records relevant
to the assassination of President John F. Kennedy.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Joint Resolution may be cited as the "Assas-
3 sination Materials Disclosure Act of 1992".

4 SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSE.

5 (a) FINDINGS AND DECLARATIONS.—The Congress
6 finds and declares that—

7 (1) the legitimacy of any government in a free
8 society depends on the consent of the people;

9 (2) the ability of a government in a free society
10 to obtain the consent of the people is undermined to
11 the degree that the people do not trust their govern-
12 ment;

13 (3) the disclosure of records in the possession
14 of the Government relevant to the assassination of
15 President John F. Kennedy will contribute to the
16 trust of the people in their government;

17 (4) the disclosure of records in the possession
18 of the Government relevant to the assassination of
19 President John F. Kennedy should proceed as expe-
20 ditiously as practicable; and

21 (5) all records in the possession of the Govern-
22 ment relevant to the assassination of President John
23 F. Kennedy should be released to the public at the
24 earliest opportunity, except where clear and convinc-
25 ing justification exists for postponing the disclosure

1 of such records to a specified time or following a
2 specified occurrence in the future.

3 (b) PURPOSE.—The purpose of this Joint Resolution
4 is to secure the expeditious disclosure of records relevant
5 to the assassination of President John F. Kennedy as soon
6 as practicable consistent with the public interest.

7 **SEC. 3. DEFINITIONS.**

8 In this Joint Resolution:

9 (1) “Archivist” means the Archivist of the
10 United States.

11 (2) “Assassination material” means a record
12 that relates in any manner or degree to the assas-
13 sination of President John F. Kennedy, that was
14 created or obtained by the House Committee, the
15 Senate Committee, the Warren Commission, or an
16 Executive agency or any other entity within the Ex-
17 ecutive branch of the Government, and that is in the
18 custody of the House of Representatives, the Senate,
19 the National Archives, or any other Executive agen-
20 cy, but does not include (A) material to the extent
21 that it pertains to personnel matters or other admin-
22 istrative affairs of a congressional committee, the
23 Warren Commission, or any entity within the Execu-
24 tive branch of the Government; or (B) the autopsy
25 materials donated by the Kennedy family to the Na-

1 tional Archives pursuant to a deed of gift regulating
2 access to those materials, which are addressed in
3 subsection 10(b) of this Joint Resolution.

4 (3) "Committee" means the House Committee
5 or Senate Committee.

6 (4) "Executive agency" means an Executive
7 agency as defined in subsection 552(f) of title 5,
8 United States Code.

9 (5) "House Committee" means the Select Com-
10 mittee on Assassinations of the House of Rep-
11 resentatives and the Permanent Select Committee on
12 Intelligence of the House of Representatives acting
13 under this Joint Resolution with respect to assas-
14 sination materials in the custody of the House of
15 Representatives.

16 (6) "National Archives" means the National
17 Archives and Records Administration.

18 (7) "Originating body" means the Executive
19 agency, commission, or congressional committee that
20 created the particular record or obtained the par-
21 ticular record from a source other than another en-
22 tity of the Government, or the custodian of records
23 of that agency, commission, or committee for pur-
24 poses of this Joint Resolution. For purposes of this
25 Joint Resolution, (A) the custodian of records of the

1 Select Committee on Assassinations of the House of
2 Representatives is the Permanent Select Committee
3 on Intelligence of the House of Representatives; (B)
4 the custodian of records of the Select Committee to
5 Study Governmental Operations With Respect to In-
6 telligence of the Senate is the Select Committee on
7 Intelligence of the Senate; and (C) the custodian of
8 records of the Warren Commission is the Archivist
9 of the United States.

10 (8) "Record" includes a book, paper, map, pho-
11 tograph, machine readable material, computerized,
12 digitized, or electronic information, regardless of the
13 medium on which it is stored, or other documentary
14 material, regardless of its physical form or charac-
15 teristics.

16 (9) "Review Board" means the Assassination
17 Material Review Board established under section 5.

18 (10) "Senate Committee" means the Select
19 Committee to Study Governmental Operations With
20 Respect to Intelligence of the Senate and the Select
21 Committee on Intelligence of the Senate acting
22 under this Joint Resolution with respect to assas-
23 sination materials in the custody of the Senate.

1 (11) "Warren Commission" means the Presi-
2 dent's Commission on the Assassination of President
3 John F. Kennedy.

4 **SEC. 4. PUBLIC DISCLOSURE OF MATERIALS BY CONGRESS**
5 **AND THE EXECUTIVE BRANCH.**

6 (a) IN GENERAL.—Except for assassination material
7 or particular information in assassination material the dis-
8 closure of which is postponed under section 8, all assas-
9 sination materials shall be transferred to the National Ar-
10 chives and made available for inspection and copying by
11 the general public as soon as practicable.

12 (b) FEES FOR COPYING.—The Archivist shall charge
13 fees for copying and grant waivers of such fees pursuant
14 to the standards established by section 552 of title 5,
15 United States Code.

16 (c) PRINTING AND DISSEMINATION OF ASSASSINA-
17 TION MATERIALS.—(1) The Archivist may provide copies
18 of assassination materials of broad public interest to the
19 Government Printing Office, which shall print copies for
20 sale to the public.

21 (2) Assassination materials printed by the Govern-
22 ment Printing Office pursuant to this subsection shall be
23 placed in libraries throughout the United States that are
24 Government depositories in accordance with the provisions
25 of chapter 19 of title 44, United States Code.

1 SEC. 5. ASSASSINATION MATERIALS REVIEW BOARD.

2 (a) ESTABLISHMENT.—There is established as an
3 independent agency a board to be known as the Assassina-
4 tion Materials Review Board.

5 (b) APPOINTMENT.—(1) The division of the United
6 States Court of Appeals for the District of Columbia Cir-
7 cuit established under section 49 of title 28, United States
8 Code, shall, within ninety calendar days of the date of en-
9 actment of this Joint Resolution, appoint, without regard
10 to political affiliation, five distinguished and impartial pri-
11 vate citizens, none of whom are presently employees of any
12 branch of the Government and none of whom shall have
13 had any previous involvement with any investigation or in-
14 quiry relating to the assassination of President John F.
15 Kennedy, to serve as members of the Review Board.

16 (2) A vacancy on the Review Board shall be filled
17 in the same manner as the original appointment was made
18 under paragraph (1).

19 (3) The members of the Review Board shall be
20 deemed to be inferior officers of the United States within
21 the meaning of section 2 of article II of the Constitution.

22 (c) CHAIR.—The members of the Review Board shall
23 elect 1 of its members as chair at its initial meeting.

24 (d) COMPENSATION OF MEMBERS.—(1) A member of
25 the Review Board shall be compensated at a rate equal
26 to the daily equivalent of the annual rate of basic pay pre-

1 scribed for level IV of the Executive Schedule under sec-
2 tion 5315 of title 5, United States Code, for each day (in-
3 cluding travel time) during which the member is engaged
4 in the performance of the duties of the Review Board.

5 (2) A member of the Review Board shall be allowed
6 reasonable travel expenses, including per diem in lieu of
7 subsistence, at rates authorized for employees of agencies
8 under subchapter I of chapter 57 of title 5, United States
9 Code, while away from the member's home or regular
10 place of business in the performance of services for the
11 Review Board.

12 (e) STAFF.—(1) The Review Board may, without re-
13 gard to the civil service laws and regulations, appoint and
14 terminate an Executive Director and such other additional
15 personnel as are necessary to enable the Review Board to
16 perform its duties. The individual appointed Executive Di-
17 rector shall be a person of integrity and impartiality who
18 is not a present employee of any branch of the Govern-
19 ment and has had no previous involvement with any inves-
20 tigation or inquiry relating to the assassination of Presi-
21 dent John F. Kennedy.

22 (2) The Review Board may fix the compensation of
23 the executive director and other personnel without regard
24 to the provisions of chapter 51 and subchapter III of chap-
25 ter 53 of title 5, United States Code, relating to classifica-

tion of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(3) At the request of the Executive Director, Executive agencies, including the National Archives and other originating bodies within the Executive branch, shall detail to the Review Board such employees as may be necessary and appropriate to carry out the review required by this Joint Resolution. Any employee detailed to the Review Board for this purpose shall be detailed without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) The Review Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(f) INAPPLICABILITY OF CERTAIN LAWS.—The following laws shall not apply to the Review Board:

(1) Subchapter II of chapter 5 of title 5, United States Code.

(2) Chapter 7 of title 5, United States Code.

1 (3) Section 3105 and 3344 of title 5, United
2 States Code.

3 (g) DUTIES.—The Review Board shall consider and
4 render decisions on referrals by the Executive Director
5 and appeals as provided in section 7 for a determination—

6 (1) whether a record constitutes assassination
7 material subject to this Joint Resolution; and

8 (2) whether ~~a~~ record or particular information
9 in a record qualifies for postponement of disclosure
10 under this Joint Resolution.

11 (h) REMOVAL.—(1) A member of the Review Board
— 12 may be removed from office, other than by impeachment
13 and conviction, only by the action of the President or the
14 Attorney General acting on behalf of the President, and
15 only for inefficiency, neglect of duty, malfeasance in office,
16 physical disability, mental incapacity, or any other condi-
17 tion that substantially impairs the performance of the
18 member's duties.

19 (2)(A) If a member of the Review Board is removed
20 from office, the Attorney General shall promptly submit
21 to the division of the court that appointed the members
22 of the Review Board, the Committee on the Judiciary of
23 the Senate, and the Committee on the Judiciary of the
24 House of Representatives a report specifying the facts
25 found and the ultimate grounds for the removal.

1 (B) The division of the court, the Committee on the
2 Judiciary of the Senate, and the Committee on the Judici-
3 ary of the House of Representatives shall make available
4 to the public a report submitted under subparagraph (A),
5 except that the division of the court or either judiciary
6 committee may, if necessary to protect the rights of a per-
7 son named in the report or to prevent undue interference
8 with any pending prosecution, postpone or refrain from
9 publishing any or all of the report.

10 (3)(A) A member of the Review Board removed from
11 office may obtain judicial review of the removal in a civil
12 action commenced in the United States District Court, for
13 the District of Columbia.

14 (B) A member of the division of the court that ap-
15 pointed the members of the Review Board may not hear
16 or determine a civil action or an appeal of a decision in
17 a civil action brought under subparagraph (A).

18 (C) The member may be reinstated or granted other
19 appropriate relief by order of the court.

20 (i) OVERSIGHT.—(1) The appropriate committee of
21 the House of Representatives and the Select Committee
22 on Intelligence of the Senate shall have continuing over-
23 sight jurisdiction with respect to the official conduct of
24 the Review Board, to include access to any records held
25 or created by the Review Board, and the Review Board

1 shall have the duty to cooperate with the exercise of such
2 oversight jurisdiction.

3 (2) The Review Board shall submit to the Congress
4 such statements or reports on the activities of the Review
5 Board as the Review Board considers to be appropriate
6 in addition to the notifications required by subsection
7 8(g).

8 (j) SUPPORT SERVICES.—The Administrator of the
9 General Services Administration shall provide administra-
10 tive services for the Review Board on a reimbursable basis.
11 The Archivist shall provide support services for the Review
12 Board to include, as necessary, office space, clerical sup-
13 port, and personnel support, on a reimbursable basis.

14 (k) INTERPRETIVE REGULATIONS.—The Review
15 Board may issue interpretive regulations.

16 (l) TERMINATION.—(1) The Review Board and the
17 terms of its members shall terminate within two years of
18 the date upon which the Board is formally constituted pur-
19 suant to this Joint Resolution and begins operations: *Pro-*
20 *vided*, That, if the Review Board has not completed its
21 work pursuant to this Joint Resolution within such two-
22 year period, it may, by majority vote, extend its term for
23 an additional one-year period for such purpose. Any addi-
24 tional extension of the Review Board and the terms of its
25 members shall be authorized by the Congress.

1 (2) At least thirty calendar days prior to the comple-
2 tion of its work, the Review Board shall provide written
3 notice to the President and the Congress of its intention
4 to terminate its operations at a specified date.

5 **SEC. 6. GROUNDS FOR POSTPONEMENT OF DISCLOSURE.**

6 Disclosure to the general public of assassination ma-
7 terial or particular information in assassination material
8 may be postponed if its release would—

9 (1) reveal—

10 (A) an intelligence agent;

11 (B) an intelligence source or method which
12 is currently utilized, or reasonably expected to
13 be utilized, by the United States Government;
14 or

15 (C) any other matter currently relating to
16 the military defense, intelligence operations or
17 conduct of foreign relations of the United
18 States;

19 and the threat to the military defense, intelligence
20 operations or conduct of foreign relations of the
21 United States posed by its disclosure is of such grav-
22 ity that it outweighs any public interest in its disclo-
23 sure.

24 (2) constitute an invasion of privacy of a living
25 person, whether that person is identified in the ma-

1 terial or not, and that invasion of privacy is so sub-
2 stantial that it outweighs any public interest in its
3 disclosure;

4 (3) constitute a substantial and unjustified vio-
5 lation of an understanding of confidentiality between
6 a Government agent and a witness or a foreign gov-
7 ernment; or

8 (4) disclose a security or protective procedure
9 currently utilized, or reasonably expected to be uti-
10 lized, by the Secret Service or other Government
11 agency responsible for protecting Government offi-
12 cials, and that disclosure is so harmful that it out-
13 weighs any public interest in its disclosure.

14 **SEC. 7. REVIEW OF MATERIALS BY THE EXECUTIVE DIREC-**
15 **TOR.**

16 (a) **RELEASE OF ALL ASSASSINATION MATERIALS TO**
17 **THE EXECUTIVE DIRECTOR.**—Each Executive agency, in-
18 cluding the National Archives, shall make available to the
19 Executive Director all assassination materials, as defined
20 in section 3, in its possession, including but not limited
21 to, in the case of the National Archives, the records of
22 the Warren Commission, the House Committee, and the
23 Senate Committee. Where the agency is uncertain if a
24 record is assassination material, it shall make that record
25 available to the Executive Director. The Executive Direc-

1 tor shall have the authority and responsibility, where cir-
2 cumstances warrant, to inquire of any Executive agency
3 as to the existence of further records that may be assass-
4 sination materials beyond those made available by that
5 agency, to obtain access to such records, and to rec-
6 ommend that the Review Board subpoena such records in
7 the event of denial of such access.

8 (b) EXECUTIVE DIRECTOR RESPONSIBILITY.—The
9 Executive Director shall have responsibility for reviewing
10 all records that are made available by Executive agencies,
11 including the National Archives, pursuant to subsection
12 7(a).

13 (c) CONSULTATION BY EXECUTIVE DIRECTOR.—The
14 Executive Director may consult with the originating body
15 for advice and information in reaching a decision with re-
16 spect to the disclosure or nondisclosure of assassination
17 materials.

18 (d) PRESUMPTION FOR RELEASE.—In the absence of
19 clear and convincing evidence that an assassination mate-
20 rial or particular information within an assassination ma-
21 terial falls within the exemptions established in section 6
22 of this Joint Resolution, the Executive Director shall di-
23 rect that the assassination material or particular informa-
24 tion be released pursuant to subsection 7(e)(1).

1 (e) EXECUTIVE DIRECTOR DECISION.—After review
2 of each record, the Executive Director shall, as soon as
3 practicable after the date of enactment of this Joint Reso-
4 lution, either—

5 (1) notify the originating body or bodies that
6 the record is assassination material that is appro-
7 priate for release in its entirety pursuant to the
8 standards established in this Joint Resolution. In
9 such event, the Executive Director shall transmit the
10 record to the Archivist and the Archivist shall make
11 the record available for inspection and appropriate
12 copying by the public, unless within thirty calendar
13 days of notification an originating body files a notice
14 of appeal with the Review Board: *Provided, That*
15 any record that, in the judgment of the Executive
16 Director, arguably falls within subsection 6(2), shall
17 automatically be referred to the Review Board pur-
18 suant to subsection 7(e)(2)(D); or

19 (2) refer the record to the Review Board, ac-
20 companied by a written determination, indicating
21 one of the following:

22 (A) that, in the Executive Director's judg-
23 ment, the record is not assassination material;

24 (B) that, in the Executive Director's judg-
25 ment, the record is assassination material that

1 qualifies for postponement of disclosure under
2 section 6 or contains particular information
3 that qualifies for postponement of disclosure
4 under section 6;

5 (C) that full Review Board investigation
6 and/or Review Board judgment appears appro-
7 priate for a determination as to whether the
8 record or particular information in the record
9 qualifies for postponement of disclosure under
10 section 6 and thus that this determination shall
11 be vested in the Review Board rather than the
12 Executive Director; or

13 (D) that, in the Executive Director's judg-
14 ment, the record arguably falls within sub-
15 section 6(2) and thus that the determination as
16 to whether the record qualifies for postpone-
17 ment of disclosure shall be vested in the Review
18 Board rather than the Executive Director.

19 **SEC. 8. DETERMINATIONS BY THE REVIEW BOARD.**

20 (a) APPEALS AND REFERRALS.—The Review Board
21 shall review and apply the standards for release set forth
22 in this Joint Resolution to—

23 (1) all records that are the subject of appeals
24 pursuant to section 7(e)(1); and

1 (2) all records referred to the Review Board by
2 the Executive Director pursuant to section 7(e)(2).

3 (b) PRESUMPTION FOR RELEASE.—In the absence of
4 clear and convincing evidence that an assassination mate-
5 rial or particular information within an assassination ma-
6 terial falls within the exemptions established in section 6
7 of this Joint Resolution, the Board shall direct that the
8 assassination material or particular information be re-
9 leased pursuant to subsection 8(h).

10 (c) POWERS.—The Review Board shall have author-
11 ity to hold hearings, administer oaths, and subpoena wit-
12 nesses and documents, and its subpoenas may be enforced
13 in any appropriate Federal court by the Department of
14 Justice acting pursuant to a lawful request of the Review
15 Board.

16 (d) ADDITIONAL MATERIALS.—The Review Board
17 shall have the authority and responsibility, where cir-
18 cumstances warrant, to inquire of any Executive agency
19 as to the existence of further records that may be assas-
20 sination materials beyond those made available by that
21 agency, to obtain access to such records, and to use its
22 subpoena power in support of this authority.

23 (e) WITNESS IMMUNITY.—The Review Board shall be
24 considered an agency of the United States for purposes
25 of section 6001 of title 18, United States Code.

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1 (f) REVIEW BOARD DETERMINATIONS.—After review
2 of each record, the Review Board shall determine whether
3 such record is assassination material, and, if so, whether
4 such assassination material, or particular information in
5 the assassination material, qualifies for postponement of
6 disclosure pursuant to section 6. Any reasonably seg-
7 regable particular information in an assassination mate-
8 rial shall be considered for release after deletion of infor-
9 mation in that assassination material that qualifies for
10 postponement of disclosure. Where an entire assassination
11 material qualifies for postponement of disclosure pursuant
12 to section 6, the Board may, after consultation with the
13 originating body and if consistent with and to the extent
14 consistent with section 6, create and prepare for release
15 a summary of the assassination material in order to pro-
16 vide for the fullest disclosure feasible. Where particular
17 information in an assassination material qualifies for post-
18 ponement of disclosure pursuant to section 6, the Board
19 may, after consultation with the originating body and if
20 consistent with and to the extent consistent with section
21 6, create and prepare for release appropriate substitutions
22 for that information in order to provide for the fullest dis-
23 closure feasible.

24 (g) DECISIONS TO POSTPONE.—Where the Board de-
25 termines that a record is not assassination material, or

1 that a record, or particular information in the record,
2 qualifies for postponement of disclosure pursuant to sec-
3 tion 6, the Board shall transmit to the originating body
4 written notice of such determination, together with a copy
5 of the record at issue, and, if the originating body is an
6 Executive agency, a copy of such notice and of the record
7 shall be transmitted to the appropriate committee of the
8 House of Representatives and the Select Committee on In-
9 telligence of the Senate. Such notice shall contain a state-
10 ment of the reason or reasons for the Board's decision.
11 Any decision of the Board that a record is not assassina-
12 tion material, or that disclosure of a record or particular
13 information in a record should be postponed pursuant to
14 section 6, shall not be subject to judicial review.

15 (h) DECISIONS TO RELEASE.—

16 (1) NON-EXECUTIVE AGENCY MATERIAL.—In
17 the case of records for which the originating body is
18 the Warren Commission, the House Committee, or
19 the Senate Committee, where the Review Board de-
20 termines that a record is assassination material, and
21 that a record, particular information in a record, a
22 summary of a record, or a substitution for particular
23 information in a record is appropriate for release
24 pursuant to this Joint Resolution, the Review Board
25 shall transmit the record, particular information.

1 summary, or substitution to the Archivist, and the
2 Archivist shall make such record, particular informa-
3 tion, summary, or substitution available for inspec-
4 tion and copying by the public. The Review Board's
5 decision to release shall not be subject to review by
6 the President or any other entity of the Government
7 and shall not be subject to judicial review.

8 (2) EXECUTIVE AGENCY MATERIAL.—In the
9 case of records for which the originating body is an
10 Executive agency, excluding the Warren Commis-
11 sion, where the Review Board determines that a
12 record, particular information in a record, a sum-
13 mary of a record, or a substitution for particular in-
14 formation in a record is appropriate for release pur-
15 suant to this Joint Resolution, the Review Board
16 shall transmit to the originating body written notice
17 of its determination. In such event, the Review
18 Board shall transmit the record, particular informa-
19 tion, summary, or substitute to the Archivist, and
20 the Archivist shall make such material available for
21 inspection and appropriate copying by the public,
22 unless, within sixty calendar days of the date on
23 which the Board has notified the originating body,
24 the President has certified to the Review Board and
25 the Archivist that the material qualifies for post-

1 ponement of disclosure pursuant to section 6, in
2 which case release of the material shall be post-
3 poned, and this decision shall not be subject to judi-
4 cial review. The President shall not delegate this au-
5 thority to any other official or entity.

6 (i) PRESIDENTIAL NOTICE TO CONGRESSIONAL COM-
7 MITTEES.—Whenever the President makes a certification
8 pursuant to subsection 8(h)(2), the President shall submit
9 to the appropriate committee of the House of Rep-
10 resentatives and the Select Committee on Intelligence of
11 the Senate a written statement setting forth the reason
12 or reasons for superseding the Board's determination and
13 a complete copy of the material at issue.

14 (j) BOARD NOTICE TO PUBLIC.—Every sixty cal-
15 endar days, beginning sixty calendar days after the date
16 on which the Review Board first postpones release of any
17 assassination material pursuant to section 8(g), the Board
18 shall make available for public inspection and copying a
19 notice of all such postponements determined over the
20 sixty-day period, including a description of the size and
21 nature of each assassination material concerned and the
22 ground or grounds for postponement.

23 (k) PRESIDENTIAL NOTICE TO PUBLIC.—In any case
24 in which a determination of the Board to release assas-
25 sination material is superseded by the President pursuant

1 to this subsection, the President shall within ten calendar
 2 days publish in the Federal Register notice of such action,
 3 including a description of the size and nature of the assas-
 4 sination material concerned and the ground or grounds for
 5 postponement.

6 (l) IMMUNITY FROM SUIT.—No person shall have a
 7 cause of action against members, employees or detailees
 8 of the Review Board arising out of any action or failure
 9 to act with regard to assassination material under this
 10 Joint Resolution.

11 (m) RULES OF THE HOUSE OF REPRESENTATIVES
 12 AND SENATE.—That portion of subsection 8(h)(1) that
 13 permits the Review Board to release materials for which
 14 the originating body is the House Committee or the Sen-
 15 ate Committee without the concurrence or approval of any
 16 congressional body is enacted by the Congress—

17 (1) as an exercise of the rulemaking power of
 18 the House of Representatives and the Senate, re-
 19 spectively, and as such is deemed a part of the rules
 20 of each House, respectively, and such procedures su-
 21 persede other rules only to the extent that they are
 22 inconsistent with such other rules; and

23 (2) with the full recognition of the con-
 24 stitutional right of either House to change the rules
 25 (so far as relating to the procedures of that House)

1 at any time, in the same manner, and to the same
2 extent as any other rule of that House.

3 **SEC. 9. MARKING AND REVIEW OF MATERIALS THE DISCLO-**
4 **SURE OF WHICH IS POSTPONED.**

5 (A) MARKING.—With respect to each assassination
6 material or particular information in assassination mate-
7 rial the disclosure of which is postponed pursuant to sec-
8 tion 8, or for which only substitutions or summaries have
9 been released to the public pursuant to subsection 8(h),
10 the Review Board shall append to the material (1) all
11 records of proceedings conducted pursuant to this Joint
12 Resolution and relating to the material and (2) a state-
13 ment of the Review Board designating, based on a review
14 of the proceedings and in conformity with the decisions
15 reflected therein, a specified time at which or a specified
16 occurrence following which the material may appropriately
17 be reconsidered for release pursuant to the standards es-
18 tablished in this Joint Resolution. The Review Board shall
19 then transfer the material and appendices to the Archivist
20 for placement in the Archives under seal.

21 (b) REVIEW.—The sealed assassination materials
22 transferred by the Review Board pursuant to this section
23 shall remain subject to the standards for release estab-
24 lished by this Joint Resolution. It shall be the continuing
25 duty of the Archivist to review the sealed assassination

1 materials and the documents appended thereto pursuant
2 to this section and to resubmit assassination materials to
3 the Review Board, if it is still in existence, or to the origi-
4 nating body, if the Review Board has been abolished,
5 whenever it appears to the Archivist that review may be
6 appropriate.

7 **SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDI-**
8 **TIONAL STUDY.**

9 (a) MATERIALS UNDER SEAL OF COURT.—(1) The
10 Review Board may request the Department of Justice to
11 petition, or through its own counsel petition, any court in
12 the United States or abroad to release any information
13 relevant to the assassination of President John F. Ken-
14 nedy that is held under seal of the court.

15 (2)(A) The Review Board may request the Attorney
16 General to petition, or through its own counsel petition,
17 any court in the United States to release any information
18 relevant to the assassination of President John F. Ken-
19 nedy that is held under the injunction of secrecy of a
20 grand jury.

21 (B) A request for disclosure of assassination mate-
22 rials under this Joint Resolution shall be deemed to con-
23 stitute a showing of particularized need under Rule 6 of
24 the Federal Rules of Criminal Procedure.

1 (b) AUTOPSY MATERIALS.—The Review Board shall,
2 pursuant to the terms of the applicable deed of gift, seek
3 access to the autopsy photographs and x-rays donated to
4 the National Archives by the Kennedy family under the
5 deed of gift. The Review Board shall, as soon as prac-
6 ticable, submit to the appropriate committee of the House
7 and the Select Committee on Intelligence of the Senate
8 a report on the status of these materials and on access
9 to these materials by individuals consistent with the deed
10 of gift.

11 (c) SENSE OF CONGRESS.—It is the sense of Con-
12 gress that—

13 (1) the Attorney General should assist the Re-
14 view Board in good faith to unseal any records that
15 the Review Board determines to be relevant and held
16 under seal by a court or under the injunction of se-
17 crecy of a grand jury;

18 (2) the Secretary of State should contact the
19 Government of the Republic of Russia and seek the
20 disclosure of all records of the government of the
21 former Soviet Union, including the records of the
22 Komitet Gosudarstvennoy Bezopasnosti (KGB) and
23 the Glavnoye Razvedyvatelnoye Upravleniye (GRU),
24 relevant to the assassination of President Kennedy,
25 and contact any other foreign government that may

1 hold information relevant to the assassination of
2 President Kennedy and seek disclosure of such infor-
3 mation; and

4 (3) all Executive agencies should cooperate in
5 full with the Review Board to seek the disclosure of
6 all information relevant to the assassination of
7 President John F. Kennedy consistent with the pub-
8 lic interest.

9 **SEC. 11. RULES OF CONSTRUCTION.**

10 (a) PRECEDENCE OVER OTHER LAW.—(1) Where
11 this Joint Resolution requires release of a record, it shall
12 take precedence over any other law, judicial decision con-
13 struing such law, or common law doctrine that would oth-
14 erwise prohibit such release.

15 (b) FREEDOM OF INFORMATION ACT.—Nothing in
16 this Joint Resolution shall be construed to eliminate or
17 limit any right to file requests with any Executive agency
18 other than the Review Board or seek judicial review of
19 the decisions of such agencies pursuant to section 552 of
20 title 5, United States Code.

21 (c) EXISTING AUTHORITY.—Nothing in this Joint
22 Resolution revokes or limits the existing authority of the
23 President, any Executive agency, the Senate, or the House
24 of Representatives, or any other entity of the Government
25 to release records in its possession.

1 **SEC. 12. TERMINATION OF EFFECT OF JOINT RESOLUTION.**

2 The provisions of this Joint Resolution which pertain
3 to the appointment and operation of the Review Board
4 shall cease to be effective when the Review Board and the
5 terms of its members have terminated pursuant to sub-
6 section 5(l). The remaining provisions of this Joint Reso-
7 lution shall continue in effect until such time as the Archi-
8 vist certifies to the President and the Congress that all
9 assassination materials have been made available to the
10 public in accordance with this Joint Resolution.

11 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) IN GENERAL.—There are authorized to be appro-
13 priated such sums as are necessary to carry out this Joint
14 Resolution, to remain available until expended.

15 (b) INTERIM FUNDING.—Until such time as funds
16 are appropriated pursuant to subsection (a), the President
17 may use such sums as are available for discretionary use
18 to carry out this Joint Resolution.

19 **SEC. 14. SEVERABILITY.**

20 If any provision of this Joint Resolution or the appli-
21 cation thereof to any person or circumstance is held in-
22 valid, the remainder of this Joint Resolution and the appli-
23 cation of that provision to other persons not similarly situ-
24 ated or to other circumstances shall not be affected by
25 the invalidation.

MEMBERSHIP OF
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

JOHN CONYERS, (D/MI) , CHAIRMAN

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STEVEN H. SCHIFF (R,NM)

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COLLIN C. PETERSON (D,MN)

DANIEL K. AKAKA (D,HI)

6 January 1992

MEMORANDUM FOR: Deputy Director for Administration
Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Planning & Coordination
Deputy Director for Science & Technology
Director of Congressional Affairs
General Counsel
Director of Public Affairs
Comptroller

FROM: Director of Central Intelligence

SUBJECT: Task Force Report on Greater CIA Openness

1. The task force has done a commendable job of examining the challenge of greater CIA openness and presenting a number of useful recommendations for implementing such a policy. Before addressing specific recommendations, it is important to establish policy and strategy.

2. I endorse the statement in paragraph 6 of the report that our objective is to make CIA and the intelligence process more visible and understandable rather than to seek inevitably incomplete or unattainable openness on specific substantive issues. In short, we are trying to help people understand better what this Agency does and how it does it.

3. The idea of a strategy or "vision" statement has merit but it should be short--something to the effect that "CIA's approach to public affairs grows out of our belief that it is important that CIA should be accountable to the American public as a law abiding organization comprised of talented people of integrity whose role supporting national security policymakers is important in an increasingly complex and often dangerous world." The Executive Committee should consider such a strategy statement, revise it as appropriate or desired, and submit it by 1 February for my approval.

4. I believe that CIA, whatever the level of its public affairs effort, will find it difficult to win recognition as an "open" institution. What we should do is strive where we can to be as forthcoming, candid, informative, and helpful as possible to the public, the media, and academia consistent with our mission and the protection of sources and methods. My decisions on specific recommendations have been made in this spirit.

SUBJECT: Task Force Report on Greater CIA Openness

5. Reference paragraph 8.A.(1) and (2) of the report: The Executive Committee should establish a senior-led Agency-wide group to review CIA policy and practices related to declassification and release of records under the historical review and FOIA programs with a view to accelerating the process. Additionally, this senior-level group should examine the initiation of a program in the near term to declassify historical materials on specific events as suggested by the task force report--a suggestion that I am inclined to support. (Further to this issue, see paragraph 18.a.) At the same time, this group should identify what additional resources would be necessary to augment our efforts in both of these areas.

6. Reference paragraph 8.A.(3): The editorial board of Studies in Intelligence should intensify its efforts to find a university prepared to publish unclassified or declassified articles from Studies in Intelligence. If no university has made a firm commitment by the end of May, OTE should begin publishing compendia of unclassified articles from past Studies. These should be made available in the same way as other unclassified CIA publications.

7. Reference paragraph 8.A.(4): We should not publish compendiums of papers delivered at conferences sponsored or co-sponsored by CIA. However, when such conferences are unclassified, we should indicate to participants that we have no objection to their publishing their papers--with appropriate disclaimers--and referencing a CIA conference. The choice should be up to the scholar.

8. Reference paragraph 8.B.: PAO, in cooperation with other appropriate elements of the Agency, should develop additional unclassified material on CIA, its history, mission, functions, and changing role. The Agency's briefing program for the full range of potential audiences should be expanded as opportunities arise.

9. Reference paragraph 8.C.(1): The current role of the Agency spokesperson is satisfactory but I would welcome views from the Executive Committee on greater use of television by the DCI and DDCI.

10. Reference paragraph 9.A.(2): PAO should be prepared to provide more background briefings to the media as opportunities arise and be prepared to respond to telephonic queries from the media. Careful records should be kept of such contacts. I endorse having the Deputy Directors, the General Counsel, the Director of Congressional Affairs and the Director of Public

SUBJECT: Task Force Report on Greater CIA Openness

Affairs provide both background and on-the-record interviews about intelligence process. CIA should not give groups of reporters unclassified background briefings when there is a major international event. Any exception to this should be approved by the DCI or DDCI. I do support the idea of individual profiles of people in the Agency that highlight the quality of our people, the diversity of our work force and that personalize the work of intelligence.

11. Reference paragraph 9.B.(2): The Officer-in-Residence program, which I support, should continue to be administered by individual Directorates and Offices. I agree that PAO should work with OTE and OP to develop a program for CIA employees involved in recruiting to ensure that they are conversant on issues affecting CIA, with emphasis on the intelligence process and multi-cultural sensitivities. I gather that this would simply give structure to informal guidance to employees from all Directorates who go on recruiting trips. I support participation of Agency employees in relevant scientific and professional societies and approve the recommendation for updating procedures for individuals to present papers in such meetings. I am not persuaded that CIA should become an institutional member of these societies. I support conducting more academic conferences at Langley, examining ways to continue to enhance the program of disseminating unclassified publications, and encouraging the establishment of intelligence studies programs at academic institutions.

12. I believe that the co-location of our Coordinator for Academic Affairs with Public Affairs confuses two related but separate functions. The Executive Committee should examine and provide me with a recommendation by 1 February on moving the Coordinator for Academic Affairs and associated functions to the Center for the Study of Intelligence. In this connection, I endorse the recommendation that the Center should sponsor either unilaterally or in cooperation with academic institutions conferences on the history and craft of intelligence.

13. Reference paragraph 9.C.(2): I am satisfied with the present and planned arrangements. Accordingly, none of the recommendations are approved.

14. Reference paragraph 9.D.(2): I am not persuaded that recommendations a. and c. are workable and therefore they are not approved. On the other hand, recommendation b. seems a worthwhile undertaking and I believe the Executive Committee should direct the development of a program along these lines, perhaps beginning with CEOs of companies that have been cooperative with NR.

SUBJECT: Task Force Report on Greater CIA Openness

15. Reference paragraph 9.E.(2): I support continuation and strengthening of the Agency Speakers' Bureau for addressing outside audiences about the intelligence process and the role of CIA in a changing world. Home components should pay the expenses of an expanded list of non-PAO speakers.

16. Reference paragraph 9.F.: I support the idea of PAO working with OTE to invite more members of the media to speak to CIA groups either in the classroom or at off-sites/seminars. PAO should brief employees authorized to give background briefings on pertinent guidelines and rules. I prefer to reserve decision on recommendation c. pending completion of the task force on internal communications.

17. Reference paragraph 10: I do not believe we will soon see any marked effect of all of the programs we have had underway and are now undertaking. I believe this will be a cumulative process and that all of us in the Agency simply should keep our eyes and ears open for feedback, from whatever quarter, on the success of our efforts.


18. I received a number of useful comments from several of the addressees of this memorandum, as well as a number of others in the Agency. As the Executive Committee considers the actions assigned to it above, as well as additional ideas for greater CIA openness, I commend to you:

- a. George Jameson's memorandum, particularly that part suggesting that the senior group reviewing our policy and practices relating to declassification and release of records under the historical review and the FOIA programs consider beyond these programs what kinds of information CIA really needs to protect, the criteria for determining when CIA protects its information, and under what circumstances exceptions should be made. As George says, "Mere expedience and a perceived need to respond to the Hill or press quickly should not be the driving factor in whether we declassify information." Above all, George contends we should be consistent in the way that we release information.

SUBJECT: Task Force Report on Greater CIA Openness

- b. Members of the Executive Committee also should give careful attention to the memorandum from Raul A. Roman-Riefkohl from the Office of Personnel. This memorandum lays out in considerable detail many programs managed by the Employment Group of the Office of Personnel that very much involve in presenting the Agency's message to diverse audiences, including the media and academe. The Executive Committee should look at the specific examples cited by Mr. Roman-Riefkohl with a view to enhancing them and/or integrating them into the broader Agency programs. It is an impressive list that warrants attention to see what can be done to give it further support as part of the overall effort on openness.

19. The Executive Committee or Task Force, as appropriate, should report to me on progress in implementing decisions for which no deadlines are specified above by 15 February.


Robert M. Gates

PAO 91-0586
20 December 1991

MEMORANDUM FOR: Director of Central Intelligence

FROM: Task Force on Greater CIA Openness

SUBJECT: Task Force Report on Greater CIA Openness

REFERENCE: Memo for D/PAO fr DCI, dtd 18 Nov, Subj:
Greater CIA Openness (Tab A)

1. In response to your referenced request, the Task Force addressed the following:

- How can we do a better job of informing the general public and key constituencies about the need for a strong intelligence effort and about the missions and accomplishments of the Intelligence Community in a changing world, and
- To what extent do the dramatic changes in the world situation and the needs of oversight and accountability to the American people and their representatives dictate a reexamination of policies on classification and release of records, and finally
- How can we use openness to learn from others outside the Agency in order to improve our capabilities and our people.

2. Senior officials in the media, in the Executive and Legislative Branches, in the business/private sector and in academia all shared their views on CIA openness with the Task Force. (See Tab B) We also consulted Agency retirees and employees throughout the organization.

3. Many of those interviewed said the CIA was sufficiently open; all thought the CIA could do more to declassify and make available portions of its historical archives, especially regarding CIA successes and scientific/technical accomplishments; some said the CIA will have to work harder at explaining the need for intelligence in a post-cold war world.

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All agreed that an effective public affairs program for the CIA was necessary and that whatever changes were made to increase openness, all would expect the CIA to keep the secrets it is charged to protect.

4. In whatever program we pursue, we should:

- ~~get our employees on board first~~
- be consistent
- be excellent
- be credible--admit when we are wrong
- personalize the Agency
- preserve the mystique

We should also ensure a coordinated PAO-OCA effort for this program. It will be important to get the Hill on board with the Agency's public position on various issues and to articulate the overall Agency strategy to Congress to honor your commitment re openness.

5. Before we can pursue greater openness, it is important to understand the Agency's current program in this area to put down a marker for possible change in the future. To provide some context you should be aware that while PAO grew during Judge Webster's tenure to meet the needs of increased requirements and an expanded program, PAO is now being told to downsize by about 33%. We recognize that a program of increased openness will require commitment of additional resources, not only for PAO but for other parts of the Agency. The Directorates will need to assess the resource implications of these recommendations.

6. In most of our discussions with outsiders as well as within the task force there was substantial agreement that we generally need to make the institution and the process more visible and understandable rather than strive for openness on specific substantive issues. To do this, we need to develop a strategic vision of what we want to be open about, why we want to be more open and to whom we want to be more open. Our suggestion for such a vision statement is:

CIA, the most open intelligence agency in the world, wants to be recognized as an organization of high caliber and culturally diverse people who achieve technical and analytic excellence and operational effectiveness in fulfilling their mission with integrity and the trust of the American people. We believe that it is important for

the American public to see CIA as a law-abiding organization whose role supporting national security policymakers continues to be important in an even more complex and dangerous world.

Formal acceptance of this statement by the Agency, or one similar to it, will provide a necessary and well-understood framework for taking the steps to achieve greater CIA openness.

7. We have an important story to tell, a story that bears repeating. We are the most open intelligence agency in the world which is proper in our form of democracy. (In fact, several foreign intelligence organizations have sought advice from PAO on how to establish a mechanism for dealing with the public.) That said, many Americans do not understand the intelligence process and the role of intelligence in national security policymaking. Many still operate with a romanticized or erroneous view of intelligence from the movies, TV, books and newspapers. These views often damage our reputation and make it harder for us to fulfill our mission. There are steps we can take which will benefit us and the American people.

8. To increase CIA openness and signal a change in how we do business, we need to take initiatives to share our history through the declassification of old records, explain our mission and functions in a changing world through an expanded briefing program within and outside of government, and develop a strategy for expanding our work with the media as a means of reaching an even broader audience. Our major recommendations address these issues:

A. Declassifying and releasing records that describe CIA's history and activities would go a long way to educating the public on the work of intelligence. Our voluntary Historical Review Program has proceeded very slowly, and recent legislation (H.R. 1415) has mandated greater access to our records by State Department historians. Presently, policy and resource constraints severely limit the amount of historical records released by the CIA. Therefore, we recommend that you:

- 1) Establish a senior-led, Agency-wide group to review the Agency's policy and practices related to declassification and release of records under the Historical Review and FOIA programs, as they relate to the changing international environment and counterintelligence threat, and with a view to accelerating the process.

____ Approve

____ Disapprove

- 2) Initiate in the near-term the declassification of historical materials on specific events, particularly those which are repeatedly the subject of false allegations, such as the 1948 Italian Elections, 1953 Iranian Coup, 1954 Guatemalan Coup, 1958 Indonesian Coup and the Cuban Missile Crisis in 1962. Notify the public of the availability of the resulting materials.

____ Approve

____ Disapprove

- 3) Have OTE publish an unclassified version of Studies in Intelligence and make it available to the public for sale through the National Technical Information Service and have it listed in the Social Science Index.¹

____ Approve

____ Disapprove

- 4) Publish compendiums of papers delivered at conferences sponsored or cosponsored by CIA.

____ Approve

____ Disapprove

B. Many people inside and outside of government do not understand what we do or how we do it. It is important that we increase our efforts to tell people both what we do and what we don't do. To this end, we recommend that you:

- 1) Commission PAO, working in concert with OCA and the directorates, to develop additional unclassified material on CIA, its mission, functions, and changing role into the next century.

____ Approve

____ Disapprove

¹ The Editorial Board of Studies has identified several hundred unclassified or declassified articles and taken steps to interest scholars and publishers in them. About half a dozen university presses have expressed interest, but to date none have actively begun the editorial process.

2) Expand the Agency's briefing program for:

- new members of Congress
- ~~key Congressional staffers, as appropriate~~
- ~~Congressional Research Service (CRS) and Office of Technology Assessment (OTA) staff members~~
- new political appointees in relevant agencies, (especially important to prepare for in an election year)
- Agency contractors
- Academic consultants
- Academic, business and other private sector groups

____ Approve

____ Disapprove

C. To reach our objective of greater openness, we must come up with a better balance in dealing with the media in a world where television is the primary conveyor of information to most Americans. In the past we have been reluctant to do television (Judge Webster appeared only three times before he announced his retirement), and some would still caution against it because of the special risks involved. Yet the opportunity for impact is so great that we believe the time has come to change our position. One of the things that is leading us in this direction is the strong view from many quarters that we need a visible Agency spokesperson, such as the D/PAO, to refute allegations and set the record straight. When such false allegations come from television, we need to be able to speak to them in the same forum.² To this end, we recommend that you:

- 1) Commission the D/PAO to develop in consultation with the Deputy Directors a media strategy for the '90's that

² For example, an Agency spokesperson reading our statement in response to the allegations made by Nightline in summer 1991 would have been more effective than Ted Koppel's reading of it with raised eyebrows and a look of "What do you expect given the source?".

increases the visibility of the DCI and the intelligence process, expands the role of the Agency spokesperson and takes a more proactive approach toward the media in general.

____ Approve

____ Disapprove

8. In most of our discussions we defined the audiences for greater CIA openness as the following: the media, academia, business, the private sector, government and our own employees. We have used these categories to describe our current program related to openness which provides a context for offering our other recommendations.

A. **MEDIA**

1) Current Program:

a) PAO now has relationships with reporters from every major wire service, newspaper, news weekly, and television network in the nation. This has helped us turn some "intelligence failure" stories into "intelligence success" stories, and it has contributed to the accuracy of countless others. In many instances, we have persuaded reporters to postpone, change, hold, or even scrap stories that could have adversely affected national security interests or jeopardized sources and methods.

b. PAO spokespersons build and maintain these professional relationships with reporters by responding to daily inquiries from them over the telephone (3369 in 1991), by providing unclassified background briefings to them at Headquarters (174 in 1991), and by arranging for them to interview the DCI, DDCI and other senior Agency officials (164 in 1991).

c. PAO responds to numerous requests from authors, researchers, filmmakers, and others seeking information, guidance, or cooperation from the Agency in their endeavours. Some responses can be handled in a one-shot telephone call. Others, such as *Life Magazine's* proposed photo essay, BBC's six-part series, Ron Kessler's requests for information for his Agency book, and the need for an Agency focal point in the Rochester Institute of Technology controversy drew heavily on PAO resources.

d. PAO has also reviewed some film scripts about the Agency, documentary and fictional, at the request of filmmakers seeking guidance on accuracy and authenticity. In a few instances,

we facilitated the filming of a few scenes on Agency premises. Responding positively to these requests in a limited way has provided PAO with the opportunity to help others depict the Agency and its activities accurately and without negative distortions. Except for responding to such requests, we do not seek to play a role in filmmaking ventures about the Agency which come to our attention. For example, although we knew that Oliver Stone's movie on JFK was in the works for some time, we did not contact him to volunteer an Agency viewpoint.

e. PAO coordinates the preparation of detailed background materials, usually in Q&A format, on major news issues for the DCI and DDCI for their appearances before media groups, world affairs councils, universities, and business and professional groups. PAO also prepares verbatim transcripts of their interviews with reporters and their appearances before media groups.

2) Recommendations:

a. Provide more background briefings, when practical, to a greater number of print and electronic media journalists. Respond more quickly to telephone queries from the media, especially on fast-breaking events. PAO should continue to work with area analysts and specialists so that PAO can respond telephonically to these questions, rather than insisting on an eventual in-person background briefings at Langley. Keep PAO as the conduit for these efforts and ensure that media across the U.S., not only those in the Washington, D.C. area, are aware of our program.

____ Approve

____ Disapprove

b. Find more opportunities for the deputy directors to have on-the-record interviews with the media to talk about process and, on occasion, substantive issues.

____ Approve

____ Disapprove

c. When there is a major international event that requires the attention of CIA (i.e., the Persian Gulf war), PAO should consider inviting a number of reporters to CIA Headquarters for an unclassified background briefing.

____ Approve

____ Disapprove

d. Look for ways to emphasize the changing nature of the intelligence work force and the growing number of women and minorities in each directorate and increasingly in more senior positions. Consider support for some individual profiles which help personalize the world of intelligence in broad circulation newspapers or magazines.³

____ Approve

____ Disapprove

B. ACADEMIA

1) Current Program

a. The Agency has a wide range of contacts with academics through recruiting, professional societies, contractual arrangements and OTE. PAO has recently been designated the focal point for all information about CIA's relations with the academic community. As such, PAO is building a database of information about Agency contacts with academia--conferences and seminars, recruiting, officers and scholars-in-residence, contracts, teaching--and serves as the clearinghouse of such information for Agency employees.

b. PAO officers also speak to approximately 250 academic audiences a year. Subject areas vary, but most focus on the structure and functions of the CIA, its role in the intelligence community, the intelligence process, and congressional oversight. PAO has developed a speakers' package for Agency officers and retirees who speak in public, including an annually updated Q&A package to aid the speaker in answering a broad array of questions.

c. PAO maintains a mailing list of 700 academicians who receive unclassified Agency publications four times a year. Recipients write to praise the quality of the products and to claim that these mailings are one of the most effective ways of reaching out.

d. PAO sponsors the DCI Program for Deans twice a year. This program seeks to expose administrators of academic institutions to senior Agency officials--the DCI, the DDCI, all the DDs, and heads of independent offices--and to give them a sense of what the Agency does, how it operates, and how it fits in and relates to American society.

³ The recent Denison University Alumni Magazine feature on Martha Kessler is a good example. (See Tab C)

2) Recommendations:

a. The Officer-in-Residence (OIR) program is seen by many as an excellent means of providing a window into CIA for the academic community. The program (currently 13 participants) could be enhanced with dedicated slots and resources, under central management. At present, individual offices provide the positions and about \$100,000 per officer. Such enhancement would ensure that selection of schools and officers meets our needs.

____ Approve

____ Disapprove

b. PAO should work with OTE and OP to develop a program for CIA employees involved in recruiting to ensure that they are conversant on all issues affecting the CIA with emphasis on the intelligence process and multicultural sensitivities. Provide for periodic update for recruiters on long-term assignment.

____ Approve

____ Disapprove

c. PAO's Coordinator for Academic Affairs should take steps to see that CIA becomes an institutional member of relevant scientific and professional societies. Agency employees should participate openly in such meetings as CIA officers. Procedures for individuals to present papers in such fora need to be updated.

____ Approve

____ Disapprove

d. Sponsor either unilaterally or in cooperation with academic institutions or other government agencies conferences on the history and craft of intelligence, as well as on other areas of common interest. PAO will work with OTE's Center for the Study of Intelligence on these programs.⁴

____ Approve

____ Disapprove

⁴ For example, PAO is currently talking with the Truman Library about a conference in late 1992 or 1993 on the origins of the Intelligence Community. A similar conference with the Wilson Center is being considered to mark the 30th anniversary of the Cuban Missile Crisis next fall.

e. Conduct more academic conferences here at Langley. Take the successful DI model of substantive conferences with the academic community and explore how it could be valuable to S&T and DA.

____ Approve

____ Disapprove

f. PAO, CPAS and FBIS should examine ways to continue or enhance the program to disseminate unclassified publications (highly valued by all we talked to) to ensure that the Agency is receiving maximum benefit for its efforts.

____ Approve

____ Disapprove

g. Encourage the establishment of intelligence studies programs at academic institutions.

____ Approve

____ Disapprove

C. GOVERNMENT

1. Current Program:

a. The Agency has a broad range of contacts throughout government and provides product, briefings, and exchanges to both Executive and Legislative Branches. PAO is an active participant in briefing the military and other government agencies on the CIA, its mission and functions. This year, PAO provided more than 70 briefings to groups from the National Security Agency, Foreign Service, Pentagon, Defense Intelligence College, and the United States Information Agency.

2. Recommendations:

a. OCA should seek additional opportunities for the DCI to appear before congressional committees in open session when such a session helps to educate the public about the role of intelligence and the relevance and accountability of the CIA.

____ Approve

____ Disapprove

b. Explore with the SSCI and HPSCI leadership the possibility of having the oversight committees issue an unclassified annual report on the performance of the Intelligence Community.

____ Approve

____ Disapprove

c. The DDI and DDS&T in coordination with OCA should reassess the Agency's relationship with CRS and OTA.⁵

____ Approve

____ Disapprove

d. PAO should work with PCS to look for ways to reach broader military audiences with information about our programs.

____ Approve

____ Disapprove

D. BUSINESS

1. Current Program:

a. *The Agency currently has three types of basic relationships with the US business sector. First, business is an important source of intelligence information via NR collection activities. Second, the US corporate sector is involved in the vast bulk of the Agency's contracting efforts. Finally, business receives selected briefings by the Agency--talks on the counterintelligence challenge, counterterrorism and other presentations at business-oriented conferences organized by groups such as SASA. Given the emphasis on economic security for the United States in the '90s, the business sector is looking to the potential contributions the Intelligence Community can make in this area.*

⁵ Hill staffers rely heavily on OTA and CRS products. Moreover, active interaction with these congressional support organizations can provide invaluable insights into issues that key House and Senate committees and individual members believe are important, as well as what legislation is under consideration or in the conceptual stage. Some Hill staffers have suggested that CIA assign officers to act as liaison through OCA for relevant OTA projects, as the military services do. For example, OTA is now focusing on two projects of particular interest to several congressional committees, proliferation and economic analyses of other nations as they relate to U.S. industrial competitiveness.

b. This past year, PAO provided remarks and support for the DCI and DDCI for some 40 appearances before outside audiences--including a wide range of groups from the business, legal and civic communities. Most of these appearances were covered by the media giving even more visibility to our leaders' comments.

c. PAO participates in providing briefings on the CIA to participants in AFCEA's biannual "Intelligence Community" course, attended by nearly 200 industry and government representatives.

2. Recommendations

a. Establish a program with appropriate guidelines for providing unclassified, off-the-record (or on background) country-specific briefings (similar to those given to journalists) to corporate leaders. NR should act as the focal point for this effort to consider the potential gain for the Agency in providing such information.

_____ Approve

_____ Disapprove

b. Host groups of CEOs at the Agency for day-long programs similar to the DCI's Program for Deans.

_____ Approve

_____ Disapprove

c. Task the DDS&T to take the lead in a program to consider declassifying the relationship between CIA and many of its contractors that have historically been classified. Many benefits could be derived by the Agency and by the contractors if these relationships and perhaps the general nature of the work involved were revealed.

_____ Approve

_____ Disapprove

E. PRIVATE SECTOR

1. Current Program:

a. PAO officers this year made presentations about the CIA to members of more than 60 civic and service clubs. Rotary and Kiwanis Clubs in particular have been the recipients of this service. PAO took steps to establish a speakers' bureau last spring to increase the number of presentations that the Agency could provide.

b. PAO responds to nearly 4000 pieces of correspondence a year from the public. Queries range from the ridiculous to the scholarly request for information. PAO also answers some 6,000 telephone queries from the public annually.

2. Recommendation:

a. Assign PAO the resources to fund and manage its speaker's bureau to develop a group of effective Agency speakers who can talk about the intelligence process and the role of CIA in a changing world.

____ Approve

____ Disapprove

F. INTERNAL AUDIENCE

1. Current Program:

a. Every business day PAO produces, Media Highlights a 50-75 page collation of newspaper articles, editorials, and commentaries on the Agency and intelligence-related subjects. The staff produces 172 copies of Highlights for distribution throughout the Agency. Modified versions of Highlights have also been prepared and forwarded to the DCI during his trips abroad.

b. In addition, PAO posts "Agency Views" on the Public Affairs bulletin boards throughout the Agency. These are compilations of statements by the DCI, DDCI, and PAO spokesmen on the Agency or intelligence-related issues of the day.

c. PAO also publishes a newsletter quarterly called The Public Eye to inform employees about the activities of PAO and the Agency issues which are being discussed in the media. PAO ensures that transcripts of selected DCI speeches are made available to employees through employee bulletins, on line and in the library.

2. Recommendations:

a. PAO should work with OTE to develop a training course for employees to better understand our relationship with the media with particular emphasis on the rules for background briefings.

____ Approve

____ Disapprove

b. PAO should work with OTE to invite more members of the media to speak to CIA groups, either in a class (i.e. mid-career) or at an offsite/seminar. More people in the Agency will need to be exposed to media representatives to better understand and appreciate the work of the media and its appropriate interaction with the Intelligence Community.

____ Approve

____ Disapprove

c. The Task Force on Internal Communications is addressing the subject of communications with our own employees, which is the responsibility of Agency managers at all levels. Current and former Agency officers emphasized, however, the need for a program of increased CIA openness to be part of our corporate strategy. That is senior managers must be on board and the employees informed that we are increasing the openness of the Agency and how we plan to do it. To this end we recommend that you:

- Distribute an employee bulletin describing the program for increased CIA openness
- Task senior managers to talk about the program
- Address employees in the bubble on this program and take questions

____ Approve

____ Disapprove

EVALUATION OF INCREASED OPENNESS

10. In recommending ways to increase CIA openness, we also wanted to come up with some means to measure the results of these efforts and to make changes in course, as appropriate. Since these are not programs or initiatives that lend themselves readily to quantifiable impact, we need to rely on an evaluation of how the perception of the Agency has changed. This can manifest itself in many ways including: a friendlier, more cooperative working environment for our officers, more interest in employment, more accurate reporting on our activities, etc. To this end, we recommend that you:

- a. Task all NR Station Chiefs to provide an annual evaluation of our openness program as it

is seen from their perspective and to make recommendations for changes.

____ Approve

____ Disapprove

b. Establish an advisory group of senior business, academics, and government leaders to provide advice on and evaluation of CIA efforts to explain the role of intelligence in the '90s.

____ Approve

____ Disapprove

Joseph R. DeTrani, Chairman

James A. Barry, DA

Carl A. Darby, DA

Edwin J. Dietel, DCI Area

Terry S. Kees, DS&T

Eileen Roach Smith, DCI Area

Richard J. Stakem, DI

Frederick A. Turco, DO

/s/
Frederick A. Turco

18 November 1991

MEMORANDUM FOR: Director of Public Affairs
FROM: Director of Central Intelligence
SUBJECT: Greater CIA Openness

1. In my hearings, I indicated my desire to continue Director Webster's policies in terms of improving accessibility to information about CIA by the public and overall openness to the extent possible, whether through background briefings for the press, public speeches by senior officials, or appearances on college campuses and elsewhere by professionals within CIA. I would like for you to appoint a task force to review these practices and see how they can be improved, and also to suggest additional proposals for making more information about the Agency available to the American people and to give greater transparency to our organization, internal control mechanisms, and steps that we take to ensure compliance with the law, actions consistent with the values of the American people, and cooperation with Congress. I invite you to include non-Agency individuals in your task force if that is appropriate and useful.

2. I would like to have your report and recommendations by 20 December 1991.

RG.
Robert M. Gates

CL BY 484270
DECL OADR

The Task Force Members received views on Greater CIA Openness from the following:

ACADEMIC

Allan Goodman, Georgetown
Ernest May, Harvard
Dick Neustadt, Harvard
Greg Treverton, Harvard
Ralph Weber, Marquette

GOVERNMENT

Mark Lowenthal, Congressional Research Service
Paula Scalingi, HPSCI Staff
Dorrance Smith, White House
George Tenet, SSCI Staff Director

BUSINESS/PRIVATE SECTOR

William Colby
David Garth, Chairman of the Board,
The Garth Group, Inc.
Ambassador Richard Helms
Evan Hineman, Senior V.P., TASC
Jerry Jasinowski, President National
Association of Manufacturers
Barry Kelly, Vice President, Special Project, Ball Aerospace
Bob Kohler, Group Vice President and General Manager,
Avionics and Surveillance Group, TRW
John McMahon, Group President, Lockheed Missile Space
Systems
Peter Morino, Senior Vice President, E Group Systems
Al Munson, Vice President and General Manager, System
Development Division, TRW

MEDIA

Wolf Blitzer - CNN
Karen DeYoung - THE WASHINGTON POST
Rob Doherty - Reuters
Len Downie - THE WASHINGTON POST
Bill Gertz - THE WASHINGTON TIMES
Brad Graham - THE WASHINGTON POST
David Ignatius - THE WASHINGTON POST
Bob Kaiser - THE WASHINGTON POST
Doyle McManus - THE LOS ANGELES TIMES
Knut Royce - NEWSDAY
John Scali - ABC
Bruce Van Voorst - TIME
Tim Weiner - The PHILADELPHIA INQUIRER

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DENISON

M A G A Z I N E



SPIES LIKE US?

Well, not quite. Central Intelligence Agency analyst

*Martha Neff Kessler '67 has no connection with Nathan Hale,
the nation's first spy. Instead, she has the important task of briefing
the President on developments in the Middle East.*

Back in 1967, college senior Martha Neff often walked by the biblical inscription on the front gates of Denison at the bottom of the drag, "Ye shall know the truth and the truth shall make you free."

Today, she passes by the same inscription each morning as she hurries to her office in the Langley, Va., headquarters of the Central Intelligence Agency. The quotation is etched into the south wall of the original CIA headquarters lobby as a reminder of the role of intelligence in a free society.

Martha's task as division chief within the Office of Near Eastern and South Asian Analysis is to convert raw information into finished intelligence which is presented to the President of the United States, the Secretaries of State and Defense, other key members of the

President's Cabinet, members of the National Security Council and committees of Congress.

"The first President I briefed was Jimmy Carter and that initial trip into the oval office was truly exciting. Then, since the agency has the responsibility for briefing the President-elect, I spent quite a bit of time with Ronald Reagan. George Bush sent me a very nice handwritten note after I briefed him on Lebanon when he was director of the CIA. I felt he

was an especially thoughtful and people-oriented individual," Martha notes.

One of the biggest changes I've seen in my 20 years with the agency is the growing demand for oral briefings. President Bush gets briefed directly by the agency and Director of Central Intelligence William H. Webster goes down to Capitol Hill several times a week. Although the people in the Executive branch are the primary recipients of intelligence information, Congress has become an increasingly eager consumer. It received 5000 documents and 1000 briefings last year. This means that I, or someone like me, goes either with Director Webster or alone to brief a member or several members of the intelligence or foreign affairs committees of Congress and their staffers. We deliver the oral briefs and backup written material. After the formal

Article by
FLEUR W. METZGER

Photographs by
J. PHIL SAMUELL





At the Agency by 7:30 a.m., Martha prepares for another crisis-filled day. Stress levels in her office have escalated since the August invasion of Kuwait.

part there is often a lot of give and take, with questions," she explains.

"The agency is divided into four parts—the directorates of science and technology, operations (the clandestine side), administration and intelligence, which is my part. We are like a big think tank which provides support for our country's decision makers," Martha continues.

Because it deals with the Near East, Martha's office has been on a 24-hour schedule since the Persian Gulf crisis began last August. "We are not a policy making body," she says. "We are basically a support system for the people who have to make very difficult decisions, as in the present crisis. You have a sense of being on the ground level of thinking through major problems for your country. Periods like this are 110 percent time, when your performance is right out there on the edge.

"There are situations when we must stay here 'till the wee hours, but things start to improve when a crisis is into its third and fourth day. Then you can de-

ploy people in task forces which work 10-hour shifts—it's all part of crisis management," she concludes.

On a typical day, Martha rushes out of her home in suburban Washington early enough to be at work between 7 and 7:30 a.m. "We're very much of a morning-oriented office, partially because we're dealing with a part of the world that has a seven-hour difference in the time zone and also because we need to have time to contemplate what has happened since the night before. After doing a lot of reading to determine what is going on, I meet with a large group of Middle East analysts in my office to decide what we want to deal with that day. Along with current intelligence, we also have many long-range assignments to work on."

Martha was born in Kalamazoo, Mich., but while an infant moved with her family to Granville, Ohio. She has fond childhood memories of growing up in the sleepy little town, and often visiting the college on the hill. Her family moved back to Michigan when she was in high school but she returned to Denison as a college student, majoring in political science. After earning a bachelor of arts degree in 1967, she completed a master's degree in combined international studies at Western Michigan University in 1969, focusing on the Middle East and Africa.

Martha moved to Washington that summer, awaiting final clearances for her employment by the CIA. "My decision to come to the agency was based on my judgment that it was going to give a woman more responsibility faster than the State Department would. I considered going into the operations side—as an agent—but decided I didn't want to live overseas most of my adult life," she adds. At a party she attended soon after joining the CIA, Martha met Ken Kessler, a Washington-based psychiatrist whom

she married five years later.

"Joining the agency wasn't a socially acceptable thing to do back then," she admits, "and people would sometimes walk out of the room when they heard where I worked. But since then, the American public has become more knowledgeable and sophisticated in their understanding of the need for intelligence. They are also aware of safeguards which have been established to oversee many CIA activities."

Martha feels the agency consistently has been progressive in building and maintaining its work force, providing employees with support to keep them healthy and help them deal with family problems. The CIA was one of the first agencies in the federal government to have a child care center for its employees, opening the Langley Children's Center in September 1989. "This is a highly stressful profession, but we have one of the lowest turnover rates in government," she says.

Although many analysts in the intelligence directorate choose to specialize in a variety of geographical areas or in some other aspect of intelligence, Martha has focused solely on the Middle East. "I began in that area, and my baptism by fire was the 1973 war. The disintegration of Lebanon, the Soviet invasion of Afghanistan, the rise of the revolutionary government in Iran and the hostage crisis—those were all in the '70s. The '80s brought the Israeli invasion of Lebanon and the Iran/Iraq war," she recalls. "I often wonder why I couldn't have become interested in Europe," she muses.

In 1982, Martha was awarded the National Intelligence Medal of Achievement for her 2 1/2 years' service as an Assistant National Intelligence Officer for the Near East-South Asia on the National Intelligence Council. The citation

reads in part: "...she gave an extraordinarily outstanding performance as a senior-level staff officer. During this period of particular turbulence, Mrs. Kessler demonstrated an exemplary ability to track and manage multiple intelligence tasks and projects simultaneously and proved herself eminently capable in the important area of crisis management. Her uncommon professionalism, diligence, resourcefulness and determination won the respect and admiration of her colleagues both at the Agency and

Martha reviews the Kesslers' plan for a major renovation of their home, built in 1927 in the Spring Valley section of Washington, D.C.



within the Intelligence Community..."

"As I look back on my academic training at Denison, the things that proved the most valuable were my courses in logic, statistics, religion and philosophy. Working through that material is where I honed my thinking and writing skills. In this job, the importance of being able to express yourself without any ambiguity is critical. You can't wing it with the material we're dealing with—you have to be absolutely clear. For undergraduates who are considering the agency, the most fundamental skill required is the ability to express yourself both orally and in writing," she concluded.

Martha spent 1986 as a Senior Fellow at the National Defense University, doing research on national security issues and on Syria in particular. The university hosts about 24 Senior Fellows each year, most of whom are military officers at the lieutenant colonel and colonel level and selects the best of their research for pub-

lication. About four or five books are published from the program each year. Martha's book, *Syria: Fragile Mosaic of Power*, was published in 1987 by the National Defense University Press. The book is dedicated to her family and to Robert Ames, a colleague who was killed while consulting in Beirut in 1983.

"I wanted to do research on Syria because I had not served on it as an analyst and I felt there was a gap in my knowledge. The year's sabbatical gave me an opportunity to catch up on all the literature on the area, and I spent a lot of time just reading. It was a chance to stand back from my work and get my intellectual batteries recharged. Someday I'd like to write another book, either on Syria or on Islamic fundamentalism," she added.

The sabbatical also permitted her to spend more time with husband Ken and daughters Justine and Lauren, who are now 13 and 8 respectively. "The balancing act of having children and a career is the biggest challenge I will ever face," Martha states. "I know that my children and my husband don't get as much of my time as they would like or as I would like to give them. Although my job is very demanding, the principle I have lived with, particularly since Lauren was born, is that these children are my number one priority. There is always someone who can step in behind me at the agency, but no one can be a backup mother to the girls. Luckily, the agency has been very understanding of my feelings about this," she adds.

"We are extremely fortunate because we have been able to have a fulltime housekeeper, so the girls have had our home as a stable part of their lives. I'm very sympathetic to housewives who take umbrage at the glorification of the working woman. Most of my close friends do not work, and although I'm occasionally envious of their lifestyle, when I'm being

Martha becomes sous chef when husband Ken turns his talents to gourmet cooking.



more realistic I realize they are working just as hard as I am," she comments.

Martha and her friends have a regular Saturday tennis game indoors or out, depending on the weather, and she sometimes tries to squeeze in a set or two during her lunch hour. She and Ken also play tennis and share a wide range of interests including sailing, scuba diving and gourmet cooking. "Ken is a really good cook and I'm basically the assistant," Martha confesses. "He is one of those people who can taste a dish in a restaurant, go home and pretty much replicate it."

Ken is a psychiatrist-turned businessman and is president of a company which he founded in 1983 to provide mental health cost containment services to large companies and he, too, has a demanding business life. "But he finds time to be extremely well read and is a wonderful sounding board for me in the areas in which I'm interested," Martha says.

During summers, they spend as much time as possible at their home in Rehoboth, Del., enjoying the serenity and the time for the family to be together. "I really believe that growing up in Granville defined for me what is a normal way of life, and I often feel a need to retreat from the high pressured life in Washington. Just driving from one place to another here, you're in a state of siege, and of course my occupation adds an additional dimension of stress to my life."

Martha concludes, "I don't think there are many professions that are quite as demanding as mine. I'm not sure I truly comprehended when I began that I was getting involved in a life event that would require me to hand over so much of my time to my profession. But I love my work. You have to have a commitment to service and be acutely aware all the time that you are working on national



Martha in the lobby of the old CIA headquarters building in Langley, Va.

security issues. The challenge of dealing with information overload in this age of computers, of sifting through all that information and deciding what is important, is never ending."

Perhaps the inscription on Denison's gate and the CIA wall has had a subliminal effect on Martha. For she continues to search for the truth and, through her efforts, to help the people who make the country's foreign policy decisions that will affect all of our lives.

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~~SECRET~~