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DD/O 96-1190

FEB 07 1996

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence
Executive Director
General Counsel

FROM: David Cohen
Deputy Director for Operations

SUBJECT: Appeal to the President of Unfavorable Decisions
by the JFK Assassination Records Review Board
(AIUO)

1. Action. It is requested that you appeal to the President three unfavorable rulings by the John F. Kennedy Assassination Records Review Board. (AIUO)

2. Information at Issue. At its regular monthly meeting in Washington, D.C. to review the U.S. Government's JFK files, the Board announced its determination to release sensitive, classified CIA information that the DO had sought to protect. This information will:

- Implicate high-ranking [redacted] officials in a Joint Telephone Tap Operation Against Foreign Embassies in [redacted] 30 years ago (Attachment A);
- Identify a Sensitive Unilateral Source (Attachment B); and
- Identify an overseas CIA station (Attachment C). (S)

3. JFK Act Process. Under the JFK Assassination Records Collection Act, government documents identified as "assassination records" must be released in total to the public unless one of six limited exceptions apply (which include intelligence sources,

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SECRET

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JFK Assassination Records Review Board (AIUO)

methods, and activities). When an exception applies, a government agency may "postpone" release of the information for up to 25 years. The Act also established a Presidentially-appointed JFK Assassination Records Review Board to review each agency's processing of records and to approve or disapprove every postponement, and to consider requiring the release of substitute language for information postponed. The burden is on the agencies to present the Board with "clear and convincing evidence" that particular information meets the criteria for postponement under one of the Act's exceptions. The Board must advise an agency head in writing of its determinations. Only the President can reverse the Board's decisions and only an agency head can appeal to the President. The Act gives the President only 30 days from the date of the Board's determination letter to act on an appeal. In light of this deadline, the White House Counsel has directed that it receive appeals to the President within seven days of a Board letter. The Executive Director of the Board, however, recognizes the difficulty in bringing an appeal within such a short timeframe, and has recently indicated that the running of the statute of limitations would probably not be raised as a defense in an appeal. As to the releases at issue here, the CIA faces the following deadlines:

- CIA was notified as to the Board's decision on Attachment A by telefacsimile dated 7 December 1995. The DCI has not yet received a formal notification letter as is required by statute, and the CIA has been informed that one is not forthcoming. The Board decided that a formal notification letter was not required because it only substituted language into a document previously released in part. (AIUO)

- The DCI was initially notified of the Board's decision on Attachment B by letter dated 28 November 1995. The Board denied the Agency's request to reconsider the release of this information on 14 December and decided that an official notification letter was unnecessary. (AIUO)

- As to Attachment C, the Board issued their final determination letter on 27 December 1995. (AIUO)

SECRET

SECRET

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4. CIA Efforts to Comply with the JFK Act. It is important to note that the CIA has declassified and released a tremendous volume of previously classified information in order to meet not only the letter but the spirit of the Act. Additionally, the CIA has been extremely forthcoming with the members and staff of the JFK Board. With respect to the three matters listed above, we firmly believe that we have met the requirements of the Act to permit protection of the information. We have presented clear and convincing evidence to the Board, summarized in the attachments, that each of the three above subjects falls within one or more of the Act's six exceptions. However, despite numerous explanations, briefings and informal appeals to the Board by Agency officials on these issues, the Board has disapproved the postponement of two of the subjects, and directed substitute language be released in one document that will, in essence, release the third. The Board has rejected our postponement decisions on other issues, but we decided after extensive internal debate not to request that you appeal those determinations. The Board's current determinations, we believe, are so contrary to the provisions of the Act permitting certain information to remain protected and pose risks to intelligence sources and methods of sufficient gravity that we believe an appeal is warranted. (S)

5. If you concur in our proposal to appeal the Board's actions, please sign the attached letter to the President (Attachment D). (U)

David Cohen
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Attachments:
As stated

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IMS/ESG [] 44447/7 February 1996

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