

Doc 6 arr. arr

11 February 1997

MEMORANDUM FOR THE RECORD

FROM: Gary M. Breneman, IC

SUBJECT: Comparison of ARRB and DO Memoranda re
Treatment of CIA Officer Names in JFK
Collection

1. This memorandum is in response to an assignment to compare a 20 March 1996 ARRB memorandum written by T. Jeremy Gunn and The Directorate of Operations response dated 20 July 1966, authored by Fredrick C. Wickham, Jr. Both deal with the treatment of CIA officer true names which appear in the JFK collection -- when they will be postponed and when they will be released.

2. First the ARRB Memorandum Gunn describes in legal terms the Board's position on the postponement or release of CIA officers' true names. He makes a proffer which states that there is a presumption in favor of release akin to a legal evidentiary rule which causes a burden to shift to the other party (CIA) to prove something. In this instance, it is factual evidence/proof sufficient to shift the burden not only back to neutral but to the other side of neutral which permits postponement.

3. The Gunn memorandum then sets out the criteria required to meet the burden under several situations.

A. For officers who are still alive he states that the proofs required to postpone release of a name are three in number and all three must be met:

i. The officer must be living outside of the U.S.

OR,

(R)easonably be expected to travel outside of the U.S. in the foreseeable future;

AND,

ii. The officer is either working ... (presumably a current staff officer, contract employee, or independent contractor) ... or is retired under cover;

AND,

iii. The officer objects to the release of his or her true name.

COMMENT: Mr. Gunn's criteria are a little confusing and reach beyond the Board's authority. First, note again that the three elements are joined by an ❖ AND❖ meaning all elements must be met to satisfy a postponement. Second, the first requirement of living or traveling outside of the U.S. is not tied to ❖ cover.❖ Many officers who do not work under cover all of the time are, in fact, provided cover for overseas TDY's. Thus, any officer who might ❖ reasonably' be expected to travel outside of the U.S. would warrant postponement of his true name. This would

seem to include every CIA employee, contract employee and independent contractor past and present.

With respect to the third element, Mr. Gunn and the Board are simply in error. To my knowledge they have no authority to require that an individual be consulted concerning his or her wishes to maintain cover, thus having his or her true name postponed, or to give up his cover, thus having the name released. This decision does not lie in the first instance with the individual but is an institutional decision which lies solely within the purview of the Agency and the executive branch of the government. CIA as an executive agency charged with the creation, maintenance, and dissolution of cover mechanisms is the only entity competent to make such a decision. It alone knows if release of an officer's true name will compromise an existing cover mechanism which will, in turn, expose others who share or have shared the same cover. It alone knows if release of an officer's name will expose CIA sponsorship (a cover entity) of a sensitive activity. It alone knows if release of an officer's name will violate a promise of confidentiality to a commercial cover sponsor which could cause both embarrassment and possibly, financial hardship to the sponsor and, in turn, substantially hinder the Agency's ability to secure subsequent commercial cover sponsors.

Turning next to the wishes of a particular officer (either current or retired) vis a vis staying with his or her cover, these thoughts come to mind. For current

employees, the decision is again not entirely theirs. If, after careful review, the Agency does not have a strong position on the employee maintaining the cover, the officer should be permitted to decide. He or she should be counseled however, that an action to remove cover could have an adverse impact on future assignments or TDYs. With respect to retirees, if, after careful review, the Agency does not object to the removal from cover, the individual should be permitted to decide. Note, that the responses to this inquiry will be mixed. As a historical note, the Agency over the years has been on an ever-swinging pendulum with respect to ~~the~~ cover into retirement, ~~the~~ cover for life, ~~the~~ etc. There will be officers who petitioned hard unsuccessfully to have their cover removed when they retired and will gladly consent to lifting the cover. There will be those officers who do not want their cover lifted under any circumstance.

By way of summary, it is CIA not the Board and not the individual officer who makes the initial decision concerning the maintenance or lifting of cover.

B. **Former officers, status unknown.** While the heading to this section would seem to suggest the CIA does not know the cover/non-cover status of some of its former officers, the section does not rally deal with this issue. Rather, within the section, Mr. Gunn simply recognizes the fact the CIA may not be able to find all of its former officers to ask if they want to be opened up or remain under

cover. The test required by Mr. Gunn to satisfy the Board and thus continue postponement until 1 June of this year is a ~~good faith showing that reasonable attempts~~ were made to locate the officer and failed.

The section contains the additional provision which advises the Board may continue a postponement beyond 1 June of this year (i.e., until 2010) if the CIA provides the board with evidence which satisfies the criteria of either category 1 or category 3. Such ~~additional evidence~~ must be provided by 1 May 1977.

The requirements or tests of this section for the Agency are not onerous but should be set-out as a series of uniform actions or check-off's taken in the attempt to locate each ~~current status unknown~~ officer. The record of these actions could then be presented to the ARRB in support of a request for continued to postponement. The DO Memorandum mentions of the possibility of asking the IRS or the OPM for assistance in this regard and this should probably be done. I recall however, that the Service will assist, through cleared contacts at the National Office, but only to the extent of determining the whereabouts of the individual and then contacting him and ask that he be in touch with his former employer. I have no current knowledge of cleared contacts at the OPM but they existed in the past and I assume they continue.

C. Names having effect on current intelligence interests. The Gunn letter appears to subscribe a higher

level of concern to this section and its criteria than the previous two, not recognizing the plain fact that the criteria of all three sections are inextricable. It sets out four separate criteria which, if CIA satisfies its burden, i.e. provides sufficient evidence to prove any one of them, will operate to postpone a true name until the year 2010. Note again, the criteria required are four separate ones, each separated by a comma and between numbers 3 and 4 and " OR." They are:

i. The officer must be currently engaged in clandestine activities; OR,

ii. The release of the officer's name would compromise ongoing intelligence operations or operations with current intelligence value (presumably, the latter permits a review into the officer's past activities, agent relationships, and cover positions); OR,

iii. The release of the officer's true name would reasonably be expected to cause significant harm to a living person (including family members); (read broadly, this provision would include, the individual, former agents, anyone who shared the same cover or cover position, i.e. a

; OR,

iv. The release of the officer's name would cause a significant harm to the national security or the foreign relations of the U.S. (a criteria which is broad enough to drive the proverbial Mack truck through).

4. In Part II, the Gunn memorandum takes back part of what it gave in the previous section. It sets up a test of importance to the assassination story vs. evidence of harm. Essentially, it advises that the Board will weigh the CIA's evidence but, if within its view, the true name being considered for postponement is important to the assassination story, the Board will release it. This means for those few individuals who may be viewed as important to the story, truly substantial evidence must be brought to bear. Absent such evidence, the Board will release, and the only recourse left to the Agency would be an appeal to the President.

5. **The Directorate of Operations Memorandum.** The basic concern with the steps for handling names as contained within the memorandum is as follows. For officers who retired under cover, the first step will be to contact them and ask if they want their true name released. Per the comments on page three supra, this should be the last step of the review, not the first.

A. **Other Comments.** The resources and data bases which will be researched for each name should be clearly established and followed in a uniform manner. Deviation from a set, orderly process will open CIA determinations to criticism, objections and dismissal, i.e. release of a name that should be postponed.

B. In addition to the data bases described -- retirement records, annuity pay records, the office of

security, insurance lists -- consideration might be given to the Northwest Federal Credit Union, and overt data bases such as Phonedec. Like the IRS and OPM, the credit union might not be able from a legal standpoint to provide an address. However, it would probably be prepared to contact an individual and ask that he be in touch.

C. A comment must be made about the idea of universally releasing the true names of overt employees. To the extent that any current employee, even overt employee, may be sent overseas on TDY under light cover, the release of his or her true name via these JFK documents which will receive widespread review could jeopardize his overseas mission and possibly, place his life in danger.

6. These thoughts are intended to be talking points as we commence to sort out the manner in which we will deal with the true names. Clearly, we need to begin to quickly identify those names which can be released, those on which there is some question, and those few on which we really need to dig in our heels.

6. I would be glad to discuss with you any of the issues raised herein.

Gary M. Breneman