Date: 03/14/05

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

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AGENCY INFORMATION

AGENCY : CIA
RECORD NUMBER : 104-10332-10024
RECORD SERIES : JFK
AGENCY FILE NUMBER : PROJFILES-DECLASS STDS

---

DOCUMENT INFORMATION

AGENCY ORIGINATOR : CIA
FROM :
TO :
TITLE : ARRB-CIA ISSUES: COVER
DATE : 09/19/1994
PAGES : ~~16~~ 15

SUBJECTS : COVER
ISSUES
JFK ASSASSINATION
UNIT INDEX

DOCUMENT TYPE : PAPER
CLASSIFICATION : UNCLASSIFIED
RESTRICTIONS : 1A 1B
CURRENT STATUS : RELEASED IN PART PUBLIC - RELEASED WITH DELETIONS
DATE OF LAST REVIEW : 04/01/03
COMMENTS : JFK-M-17 : F25 : 2000.02.24.12:40:58:717035 : UNIT INDEX:~~55~~ 53 PGS. DIF.

Released under the John F. Kennedy Assassination Records Collection Act of 1992 (44 USC 2107 Note). Case#:NW 55360 Date: 06-01-2023

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[R] - ITEM IS RESTRICTED 104-10332-10024

C|HRG
Barry

OGC-94-52916
19 September 1994

MEMORANDUM FOR: David P. Holmes
Deputy General Counsel

FROM: Robert J. Eatinger. Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

1. Per your request, I have attached a copy of the President John F. Kennedy Assassination Records Collection Act of 1992 (ARCA), Pub. L. 102-526, 106 Stat. 3443-3458, reprinted at 44 U.S.C. § 2107 note. For your convenience, I have highlighted the pertinent provisions that will aid in responding to an inquiry regarding the statute's effect on the DCI's statutory authority to protect intelligence sources and methods.

2. The clear language and intent of the law is to supersede statutes that prohibit disclosure of information, except for some irrelevant subject areas, such as tax records. The statute provides that "it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit" the disclosure of information subject to the Act. ARCA § 11(a). This language, taken with the provisions discussed below which limit the intelligence sources and methods that may be protected and set a strict procedural scheme by which information is to be reviewed under the ARCA, effectively supersedes the DCI's National Security Act authority with respect to intelligence sources and methods information subject to the ARCA.

3. Section 6 of the ARCA provides the grounds for which the release of information may be "postponed." The statute contemplates that all information will eventually be released. Indeed, it specifies that all information will be made available to the public no later than 25 years after the passage of the ARCA (which occurred in October 1992) unless the president certifies that continued postponement is necessary. ARCA § 4(g)(2)(D). With respect to intelligence-related information, ARCA allows postponement if:

> "(1) the threat to ... intelligence operations ... is of such gravity that it outweighs the public interest, and such public disclosure would reveal--

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

> (A) an intelligence agent whose identity currently requires protection;
>
> (B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or
>
> (C) any other matter currently relating to ... intelligence operations ... the disclosure of which would demonstrably impair the national security of the United States."

ARCA § 6(1) (Emphasis added.)

4. The originating agency is to make the first review to identify information that meets the standards for postponement. ARCA § 4(c)(2)(D)(i). For CIA, this effort is being undertaken by the Historical Review Group, in consultation with the Directorate of Operations and other appropriate Agency components. Information the originating agencies identify for postponement must be transmitted to the Review Board. ARCA § 4(c)(2)(E). The Review Board "shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records." ARCA § 7(i)(1). Specifically, the "Review Board shall consider and render decisions on ... whether an assassination record or particular information in a record qualifies for postponement of disclosure under the Act." ARCA § 7(i)(2)(B).

5. If the Review Board determines to order the disclosure of information that the originating agency felt met the criteria for postponement, it "shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." ARCA § 9(c)(4)(A). If the information contained in an assassination record is "obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of ... the information under the standards set forth in Section 6." ARCA § 9(d)(1) (emphasis added). The President's decision must be certified to the Review Board within 30 days of the Review Boards determination. Id. Records postponed by the President must be re-reviewed every 5 years. ARCA § 9(d)(2).

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

6. I would be happy to discuss this further if you so desire. You might also want to contact John Pereira (x30373) since he has met with some or all of the Review Board members.

Robert J. Eatinger, Jr.

Attachment

SUBJECT: DCI Sources and Methods Authority w/Respect to JFK Assassination Records

OGC-94-52916

DCI/OGC/RJEatinger:76105 (19 Sept 94)

Original - Addressee (w/attach) (hand delivered)
1 - OGC Registry (~~w/attach~~)
1 - Lit File
1 - RBB (OGC/ILD)
1 - C/HRG (J.Pereira-404 Ames)
1 - RJE - Soft File (w/attach)
1 - RJE - Signer
1 - PDP
1 - KK -fyi
1 - PAS-fyi

**Assassination Records Review Board**
600 E Street NW • 2nd Floor • Washington, DC 20530
*(202) 724-0088 • Fax: (202) 724-0457*

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

March 1, 1996

Mr. John Pereira
Director
Historical Review Group
Center for the Study of Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear John:

A few months ago we made a request to the Department of Defense for, *inter alia,*

> "Any available MOUs or MOAs defining command responsibilities and lines of authority, responsibility and accountability when individuals of the Central Intelligence Agency serve under 'military cover,' i.e., are employed and operate for the CIA while wearing the uniform of the armed services. (Applicable period of interest here is 1956-64.)"

This letter is our official notification to you that we have made the above-stated request. We understand that the Agency was advised of this request by the Department of Defense at the time the request was made. We do, however, apologize for our inadvertent error in not having provided you with a contemporaneous notification.

Sincerely,

David G. Marwell
Executive Director

BOARD MEMBERS: *John R. Tunheim, Chair • Henry F. Graff • Kermit L. Hall • William L. Joyce • Anna K. Nelson*
EXECUTIVE DIRECTOR: *David G. Marwell*

ER 97-4962

Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

12-23-97 A08:59 IN

December 18, 1997

CIA HAS NO OBJECTION TO DECLASSIFICATION AND/OR RELEASE OF CIA INFORMATION IN THIS DOCUMENT

The Honorable George Tenet
Director of Central Intelligence
The Central Intelligence Agency
Washington, D.C. 20505

Dear Director Tenet:

In accordance with the President John F. Kennedy Assassination Records Collection Act of 1992, I am writing to inform you that the Assassination Records Review Board has made additional formal determinations concerning the public disclosure of CIA records at its meeting on December 15, 1997.

Enclosed is a list of the determinations that the Review Board has made. These decisions were premised on several factors, including the historical interest in the documents and the absence of evidence that the release of the information would cause harm to the United States or to any individual.

You have seven days to appeal these decisions to the President. You are invited to send your representative to the Review Board to examine our copies of the documents for which determinations have been made and to discuss the determinations with my staff.

Sincerely,

T. Jeremy Gunn
Executive Director

Enclosure

cc: Mr. John Pereira

BOARD MEMBERS: John R. Tunheim, Chair • Henry F. Graff • Kermit L. Hall • William L. Joyce • Anna K. Nelson
EXECUTIVE DIRECTOR: T. Jeremy Gunn • DEPUTY DIRECTOR: Thomas E. Samoluk

**Assassination Records Review Board**
**Review Guidelines**
**for Information Relating to Official Cover**

This document sets forth the review guidelines for use by the Assassination Records Review Board ("Board" or "ARRB") and the Central Intelligence Agency ("CIA" or "Agency") for public release of certain information concerning the identity, scope, details, and specific mechanisms of official cover (hereafter "official cover details"). These guidelines have been officially adopted by the Board to serve the public interest in making the complete story of the JFK assassination available while protecting from official disclosure information which would be harmful to the national security and is properly classified under Executive Order 12958.

1. Information in documents originated by the Congress (most often in the context of personal statements to committees or committee staffs) which sets forth official cover details shall be presumptively released unless it sets forth specific information not generally known to the public or the Agency shall be able to demonstrate that it has taken affirmative action to prevent the disclosure of such information in the past and that release here would cause identifiable damage to the national security.

2. Information in documents originated by the Executive Branch (including those designated by the parties as quasi-executive branch documents which reflect extracts from the records of the Executive Branch) which sets forth official cover details shall be presumptively postponed to the extent that it concerns:

- identification of the official cover provider,
- specific locations used for official cover, and
- identity, scope, details and mechanisms of any particular official cover.

3. Information in such documents which the Executive Branch has taken an affirmative act to officially disclose or allow to be disclosed shall be presumed to be releasable.

4. Moreover, information in such documents which relates to individuals who are considered important to the story of the assassination shall, consistent with past practice, be considered for release on an individual basis with the Agency having a higher standard of proof of damage to the national security.

5. For any information postponed pursuant to these Guidelines, the Agency agrees to provide a summary or substitution which preserves the content and relevance of the postponed information.

Neither these guidelines nor the release of documents pursuant to these guidelines shall be deemed to constitute an official Executive Branch acknowledgment of the identity, scope, details, and specific mechanisms of official cover in other information disclosure law matters.

For the Assassination Records Review Board: _____



NW 65360 DocId:32404537 Page 8

**Example of proposed summary/substitution**

Original:

Flynn recalls the following procedures [redacted] for CIA employees, The [redacted] would request [redacted] The [redacted] Office would contact the CIA liaison officer, who would [redacted] The [redacted] would then grant clearance. A record of [redacted] would probably be placed in the individual's [redacted] security file.

JFK Act 5 (g)(2)(D)

Summary/substitution:
(NB: Remaining original words in normal type; substituted language in bracketed bold italics)

Flynn recalls the following procedures for ***[a specific provider of official cover to provide cover]*** for CIA employees. ***[One office of the official provider of cover]*** would request ***[certain documents from a second office of the official provider of cover]***. ***[That second office]*** would contact the CIA liaison officer, who would ***[provide requested information]***. ***[The second office at the cover provider would take certain administrative steps]***. A record ***[of the requested information]*** would ***[be maintained by the official cover provider]***.

**CC:**
**Sent on 18 February 1998 at 07:25:54 AM**

# URGENT FAX

## PLEASE HAND DELIVER
## to Peggy Grafeld, room 1512

Peggy,

as I mentioned, the judge and jeremy came to visit our office director yesterday .... very pleasant ... and everybody said the right thing about "working together."

things continue to move forward quickly.

attached is the ARRB's "review guidelines" received last night and our what will be our hand-written slight suggested modifications ... and ... most important ... our interpretive memo. our lawyers have reviewed and find them legally identical. THE BOTTOM LINE IS THAT THIS AGREEMENT PRESERVES THE SECRECT RE OFFICIAL COVER AND THERE WILL BE NO OFFICIAL ACKNOWLEDGEMENT OF ANY SPECIFIC COVER AS A RESULT OF A RELEASE OF EXECUTIVE BRANCH DOCUMENTS BY THE ARRB.

let me know soonest your thoughts (out Friday COB is target)... especially if you want anything included in our memo (the review guidelines belong to them so the thought was suggest as few changes as possible AND put any clarifying language we want in our interpretive memo).

lastly, as for the second "legal" memo for Calder/Kennedy signature, we can also incorporate any changes but my sense is the staff and Board are fairly comfortable with it so it does not appear to be of overarching necessity to make changes.

thanks,

Lee Strickland
Voice: (703) 613-1289

URGENT FAX
PLEASE HAND DELIVER
to Peggy Grafeld, room 1512

Gunn's Draft

DRAFT DRAFT DRAFT
February 20, 1998

SPECIAL COLLECTIONS
RELEASE IN FULL
2000

ARRB Staff Guidelines for Review of Records Involving Official Cover

1. Substitute language or a summary will be used for all postponements. The substitutions will preserve the context and relevance of the information. (E.g., "official cover" or "location" or "details of cover arrangements.")

2. *For Congressional documents.* Cover information will be released unless the information explains details of the scope of official cover or important details about the mechanisms of official cover that is not generally known to the public. Information shall not be released if the Executive Branch shall be able to demonstrate that it has taken affirmative action to prevent the disclosure of such information in the past and that release here would cause identifiable damage to national security.

3. *For Executive Branch documents and "derivative" documents.* Information generally will be released except:

   a. the substitute language "official cover" will be used for the actual official cover;

   b. substitute language will be used in lieu of the details of official cover or the specific locations of cover facilities;

   c. the cover status of certain high-profile individuals will be released when disclosure has previously been permitted by affirmative official acts of the Executive Branch of the US government;

   d. cover status of other individuals will be disclosed only to the extent that they are important to the assassination story and they will be handled in a way similar to other key issues on a case-by-case basis; and

   e. information disclosing that a cover arrangement was *not* employed shall be released unless the information reveals or would reasonably imply the existence of otherwise postponable information.

4. The Review Board shall continue to retain the final authority to make "formal determinations" within the meaning of the JFK Act. Although these Guidelines describe the approach the Board intends to follow, whenever a document presents an issue that is not resolvable under these guidelines or to the extent that a document presents a difficult issue under these guidelines, the issue shall be brought to the Review Board's attention for its formal determination.

Central Intelligence Agency

Washington, D.C. 20505

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

**DRAFT**

3 April 1998

T. Jeremy Gunn, Esquire
Executive Director
Assassination Records Review Board
600 E Street, NW
Suite 207
Washington, D.C. 20530

Dear Mr. Gunn:

**Re: Release or Postponement of "Official Cover" Information**

This letter is intended to confirm our understanding of the recent "review guidelines" promulgated by the Assassination Records Review Board ("Board" or "ARRB") for public release of certain information concerning the identity, scope, details, and specific mechanisms of official cover (hereafter "official cover details"). This understanding is based on the prefatory negotiations between our respective staffs and reflects the agreement of all concerned agencies and departments within the Executive Branch. Please note that we have included a classified addendum which presents examples of some of the following understandings.

1. It is the intent of the staff of the Board and the federal agencies that these guidelines should serve the public interest by making the complete story of the JFK assassination available while protecting from official disclosure information which would be harmful to the national security and is properly classified under Executive Order 12958.

2. Information in documents originated by the Congress (most often in the context of personal statements to committees or committee staffs) which sets forth official cover details shall be presumptively released unless it sets forth specific information not generally known to the public or the Executive

Branch is able to demonstrate that it has taken affirmative action to prevent the disclosure of similar or identical information in another context in the past and that release here would cause identifiable damage to the national security.

T. Jeremy Gunn, Esquire

3. Information in documents originated by the Executive Branch (including those designated by the parties as quasi-executive branch documents which reflect extracts from the records of the Executive Branch) which sets forth official cover details shall be presumptively postponed to the extent that it concerns:

- identity or identification of the official cover provider,
- specific locations used for official cover, and
- scope, details and mechanisms of any particular official cover.

4. Information in such documents which the Executive Branch has taken an affirmative act to officially disclose or allow to be disclosed shall be presumed to be releasable; however, in no event shall extrinsic evidence by inference or deductive reasoning be deemed to qualify for this provision.

5. Further, information in such documents which relates to individuals who are considered important to the story of the assassination shall, consistent with past practice, be considered for release on an individual basis with the Executive Branch having a higher standard of proof of damage to the national security.

6. For any information postponed pursuant to the review guidelines, the concerned Executive Branch agency or department agrees to provide an unclassified summary or substitution which preserves the general content and relevance of the postponed information.



NW 65360 DocId:32404537 Page 13

T. Jeremy Gunn, Esquire

7. It is the intent of the Executive Branch that neither the review guidelines nor the release of documents pursuant to these guidelines shall be deemed to constitute an official Executive Branch acknowledgment of the identity, scope, details, and specific mechanisms of official cover in other information disclosure law matters.

8. It is the understanding of the Executive Branch that no release under the authority of the JFK Act shall be deemed to constitute official executive acknowledgment in other information disclosure law matters unrelated to the Act.

Your acknowledgment of receipt and concurrence below would be greatly appreciated.

Sincerely yours,

Lee S. Strickland
Chief, Information Review Group

Receipt and general agreement acknowledged
in my capacity as Executive Director,
Assassination Records Review Board:

_____
T. Jeremy Gunn

_____
Date



NW 65360 DocId:32404537 Page 14

ACTION:
COPIES TO:
M
INR
L
S/S
IA
WIIS/
dsm

**Assassination Records Review Board**
600 E Street NW • 2nd Floor • Washington, DC 20530
*(202) 724-0088 • Fax: (202) 724-0457*

9722779

December 18, 1997

The Honorable Madeleine K. Albright
Secretary of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Albright:

In accordance with the President John F. Kennedy Assassination Records Collection Act of 1992, I am writing to inform you that the Assassination Records Review Board has made additional formal determinations concerning the public disclosure of State Department records at its meeting on December 15, 1997.

Enclosed is a list of the determinations that the Review Board has made. These decisions were premised on several factors including the historical interest in the documents and the absence of evidence that the release of the information would cause harm to the United States or to any individual.

You have seven days to appeal these decisions to the President. You are invited to send your representative to the Review Board to examine our copies of the documents for which determinations have been made and to discuss the determinations with the Review Board staff.

Sincerely,

T. Jeremy Gunn
Executive Director

Enclosure

cc: Ms. Margaret Grafeld, Director, Office of Information Resources, Management Programs and Services, Department of State

BOARD MEMBERS: *John R. Tunheim, Chair • Henry F. Graff • Kermit L. Hall • William L. Joyce • Anna K. Nelson*
EXECUTIVE DIRECTOR: *T. Jeremy Gunn* • DEPUTY DIRECTOR: *Thomas E. Samoluk*

CC
MS
KT.
Pat C

**Assassination Records Review Board**
600 E Street NW • 2nd Floor • Washington, DC 20530
*(202) 724-0088 • Fax: (202) 724-0457*

December 22, 1997

DEC 22 P

HAND DELIVERY

Mr. Strobe Talbott
Deputy Secretary of State
Department of State
Washington, D.C. 20520

Dear Mr. Talbott:

I am writing in response to your December 17, 1997 security-classified letter to Assassination Records Review Board Chairman John R. Tunheim. Inasmuch as the Executive Director is the statutorily designated liaison of the Review Board to Federal agencies, I am taking the liberty of responding to you directly.

Your letter identified State Department interests in several records that are scheduled for an upcoming Review Board meeting. Although the Review Board is well aware of the general interest that you describe in your letter, *the Board has not received evidence (or argument) from the State Department regarding the particular records at issue.* Even if the Board were to agree with the general propositions stated in your letter, it is not clear that the opening of the documents at issue would release any information that is not already effectively in the public domain.

The Review Board strongly urges the Department of State to provide evidence that is specific to the documents at issue. I would be pleased to make arrangements for your designated representative to review the specific records so that he or she might provide evidence that would assist the Review Board in its decisions.

Sincerely,

T. Jeremy Gunn
Executive Director

BOARD MEMBERS: *John R. Tunheim, Chair • Henry F. Graff • Kermit L. Hall • William L. Joyce • Anna K. Nelson*
EXECUTIVE DIRECTOR: *T. Jeremy Gunn* • DEPUTY DIRECTOR: *Thomas E. Samoluk*

~~SECRET~~

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

EXECUTIVE DIRECTOR

ER 97-5738
26 November 1997

The Honorable John Raymond Tunheim
Chairman
Assassination Records
Review Board
600 E. Street N.W.
Washington, D.C.

Dear Judge Tunheim:

~~(C)~~ I have just received informal word of the decisions the JFK Board made at its 17 November 1997 meeting. Most of the Board's decisions--those relating to the CIA presence in Warrenton, CIA's involvement in various non-governmental organizations, and the details of CIA funding of the Cuban Revolutionary Council--are very welcome. I must, however, urge the Board to reconsider its decision to release documents in a form that would reveal the Agency's use of JFK Act 5 (g)(2)(D)

~~(C)~~ We stand behind the position that we have presented in writing and in discussions with the Board on previous occasions. I would welcome an opportunity to have a senior CIA representative meet with the Board at your convenience to explain why the Agency considers this information so sensitive and to answer any questions you may have. Meanwhile, I offer the following summary of our fundamental concerns.

~~(S)~~

JFK Act 5 (g)(2)(D)

CL BY: 2217297
CL REASON: 1.5 (c)
DECL ON: X1
DRV FROM: COV 2-87

~~SECRET~~

Judge Tunheim

clearly illustrates the purpose behind the Director's statutory obligation to protect intelligence methods from unnecessary and inappropriate disclosure.

~~(S)~~

JFK Act 5 (g)(2)(D)

~~(S)~~ JFK Act 5 (g)(2)(D) cover continues to be an important intelligence method. Its use is undiminished since the 1960s, and it will remain essential for the foreseeable future. I urge the Board to reconsider its recent decision insofar as it concerns the Agency's use of JFK Act 5 (g)(2)(D) In this regard, we will be forwarding a more comprehensive memorandum addressing the damage issue prior to the next Board meeting, and we would also like to offer the Board the opportunity for a personal appearance by a senior CIA representative should that be appropriate.

Sincerely,

David W. Carey

David W. Carey

Judge Tunheim

Distribution: ER 97-5738
Orig - Addressee
1 - GC
1 - D/CSI
1 - ADDA
1 - ADDO
1 - C/DO/OCC
1 - Linda Cipriani (OGC)
1 - John Pereira (CSI)
1 - Barry Harrelson(CSI)
1 - EA/Chrono
1 - ER

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JFK Act 5 (g)(2)(D)

CL BY
SIGNER
DECL OADR
DRV COV 2-87



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JFK Act 5 (g)(2)(D)

CL BY:
CL REASON: Section 1.5
DECL ON:
DRV FRM:

# From the Desk of JFK Act 5 (g)(2)(D)
## Senior CIA Liaison Officer to State

JFK Act 5 (g)(2)(D)

**NOTE FOR:** Richard D. Calder @ DA
Janice W. Fitzgerald @ DA
**FROM:** [redacted] @ DI
**OFFICE:**
**DATE:** 12/23/97 12:32:23 PM
**SUBJECT:** JFK ARRB Response to State

This morning I got copies of two letters from the ExDir of the JFK Board, T. Jeremy Gunn, one dated 18 Dec and addressed to Madeline Albright, one dated 22 Dec and addressed to Strobe Talbot. JFK Act 5 (g)(2)(D) [redacted] The first letter just offered 7 days to appeal the decisions to the President. The second says they have not received evidence or argument from State regarding the particular documents.

I have discussed with Kennedy, who initially felt State was just getting blown off. I have forwarded copies to Lee Strickland and DDA. My guess would be that the first JFK Board letter was written after receiving Kennedy's letter, but before they got Talbot's. Have put State's Acting FOIA & Declassification head, Margaret Grafeld, in touch with Lee to discuss next step and response. If anyone knows ExDir Gunn, would like a reading to pass on to Kennedy.

[redacted] JFK Act 5 (g)(2)(D)

**CC:** William H. McNair @ DO
Gloria Boyd @ DO
John Pereira
J. Barry Harrelson
Dawn R. Eilenberger
James R. Oliver @ DA
Rodney A. Snyder
John E. Pereira-C- @ DA
R. Bruce Burke
Victoria L. Pepper @ DA
Barbara T. Blufer @ DI
Kathryn Dyer
Becky L. Rant @ DA
Frieda P. Omasta @ DA
Nancy E. Morgan @ DA
Gary L. Moore @ DA
Glenn R. Jacobs @ DA



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JFK Act 5 (g)(2)(D)

2. (U) As a preliminary matter, we would respectfully ask the Board and staff to note the classified nature of this memorandum, to limit access to those individuals properly cleared, and to return it to Agency representatives at the conclusion of your deliberations.

JFK Act 5 (g)(2)(D)

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| | |
|---|---|
| JFK Act 5 (g)(2)(D) | |
| Doc No. 104-10119-10247 | JFK Act 5 (g)(2)(D) |
| Doc No. 104-10120-10094 | Specifies a named officer operating under State Department cover in Argentina; ***we propose to substitute the words "US Government" for "State Department" in three locations.*** |
| Doc No. 124-10176-10000 | JFK Act 5 (g)(2)(D) |
| Doc No. 180-10096-10401 | |
| Doc No. 180-10110-10122 | |
| Doc No. 180-10141-10488 | |

JFK Act 5 (g)(2)(D)

| | |
|---|---|
| Doc No. 180-10142-10391 | JFK Act 5 (g)(2)(D) |
| Doc No. 180-10143-10070 | |
| Doc No. 180-10143-10150 | |
| Doc No. 180-10143-10181 | very similar to Document No. 104-10120-10094; ***we propose to substitute the words "US Government" for "State Department" in two locations.*** |

JFK Act 5 (g)(2)(D)

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JFK Act 5 (g)(2)(D)

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(last modified at 1130 hours, 21 january 1998)

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JFK Act 5 (g)(2)(D)

2. (U) As a preliminary matter and as with our previous written submission, we would respectfully ask the Board and staff to note the classified nature of this memorandum, to limit access to those individuals properly cleared, and to return it to CIA representatives at the conclusion of your deliberations.

JFK Act 5 (g)(2)(D)

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JFK Act 5 (g)(2)(D)

in which were removed
was driven in large measure by an
unscrupulous politician looking for headlines."

JFK Act 5 (g)(2)(D)

Page Denied

JFK Act 5 (g)(2)(D)

JFK Act 5 (g)(2)(D) in terms of a security threat remains the only capital in the western hemisphere that has been the victim of two Hizballah bombings, killing hundreds of people. JFK Act 5 (g)(2)(D) JFK Act 5 (g)(2)(D) terrorist infrastructure exists in the tri-border area JFK Act 5 (g)(2)(D)

JFK Act 5 (g)(2)(D)

JFK Act 5 (g)(2)(D)

JFK Act 5 (g)(2)(D) two or three times per year, [redacted] obtains reporting of another threat on local Jewish or US interests, including this Embassy. It is his judgment that, in this environment, publication of CIA use of [redacted] might endanger peoples' lives, specifically [redacted] officers' given that Hamas, Gama'at Al Islamiyah, and Hizballah are all active locally JFK Act 5 (g)(2)(D) Arab population of over 700,000.

JFK Act 5 (g)(2)(D)

## D. ~~(S)~~ Mexico City Station

15. ~~(S)~~ The Chief of Station (CoS) Mexico City, given prior disclosures, provided an equally detailed and compelling rationale for non-disclosure.

JFK Act 5 (g)(2)(D)

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JFK Act 5 (g)(2)(D)

## III.
## (U) Officially Released Information and Official Acknowledgment

19. (U) For information to be "officially released," it must be official Executive Branch information, released by an authorized current official of the Executive Branch, for information under his or her official cognizance, and after a deliberation and conscious application of the classification and declassification rules promulgated by the President of the United States.[3] Thus, it has been held that neither private writings cleared by CIA,[4] nor acts by former officials,[5] nor acts by current officials at other governmental entities,[6] nor mistakes of fact or law in the declassification process,[7] nor accidental disclosures,[8] nor

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[3] (U) See, generally, Section 3 of Executive Order 12958. In particular, see section 3.1(c) which defines who may act as a "declassification authority" and section 3.2 which specifies that the process of declassification requires an individual determination as to whether particular information currently meets the standards for initial classification.

[4] (U) ***Schlesinger v. CIA,*** 591 F. Supp. 60, 66 (D.D.C. 1984), ***Pfeiffer v. CIA,*** 721 F. Supp. 337 (D.D.C. 1989); ***Washington Post v. DoD,*** 766 F. Supp. 1 (D.D.C. 1991).

[5] (U) ***Hudson River Sloop Clearwater, Inc. v. Department of the Navy,*** 891 F.2d 414, 421-22 (2nd Cir. 1989) (rejecting argument that a statement by retired Admiral constituted an authoritative disclosure by the Government); ***Sims v. CIA,*** 471 U.S. 159, 181 (1985) (declassification decision by prior DCI *"does not bind his successors to make the same determination")*.

[6] (U) ***Hunt v. CIA,*** 981 F.2d 1116, 1120 (9th Cir. 1992).

[7] (U) Examples of mistakes in which the Government has asserted there was no valid declassification include: (a) the reviewing officer k[insert]

[8] (U) ***Washington Post v. DoD,*** No. 84-3400, slip opinion (D.D.C. 22 Sep. 1986) (no declassification where disclosure was *"involuntary as a result of a tragic accident such as an aborted rescue mission, or used in evidence to prosecute espionage.")*

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limited public use for official purposes[9] constitute a *bona fide* declassification action.

20. (U) Accordingly, in deciding whether particular information in a particular information release case has been "officially acknowledged," the federal courts have consistently followed three established criteria. First, the information at issue must have been made public through an official, authorized and documented Executive Branch release (see above test). Second, it must be as specific as the information previously released. And, third, the information must match the information previously disclosed.[10] Thus it has been held that information in an Executive Branch document should not be released even if it was the subject of a Congressional release,[11] that an official release of a general reference to an intelligence method does not compel the release of specifics of that method,[12] and that official release of information of one date does not compel the release of identical information of another date.[13]

21. (U) In sum, the courts have consistently held that these criteria are important because they acknowledge

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[9] (U) ***Id.***

[10] (U) ***Fitzgibbon v. CIA,*** 911 F.2d 755, 765 (D.C. Cir. 1990); ***Afshar v. CIA,*** 702 F.2d 1125, 1133 (D.C. Cir. 1983).

[11] (U) ***Fitzgibbon,*** 911 F.2d at 765-66; ***Salisbury v. United States,*** 690 F.2d 966, 971 (D.C. Cir. 1982); ***Department of the Navy v. Egan,*** 484 U.S. 518, 528 (1988).

[12] (U) ***Afshar,*** 702 F.2d at 1133 (acknowledgment of a liaison relationship would not require the disclosure of any information *"regarding the extent and nature of the liaison")*.

[13] (U) ***Fitzgibbon,*** 911 F.2d at 765-66.

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the fact that in the arena of intelligence and foreign relations, there can be critical differences between official and unofficial disclosures.[14] Indeed, most relevant for the Board's consideration is the unequivocal holding by the D.C. Circuit Court of Appeals:

> "... that the fact that information resides in the public domain does not eliminate the possibility that further disclosures can cause harm to intelligence sources, methods, and operations."[15]

Given this fact and the damage arguments presented previously and below, the information at issue here meets the deferral standards of the JFK Assassination Records statute.

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[14] (U) ***Fitzgibbon,*** 911 F.2d at 765; ***Abbotts v. Nuclear Regulatory Commission,*** 766 F.2d 604, 607-8 (D.C. Cir. 1985); ***Military Audit Project v. Casey,*** 656 F.2d 724, 742-45 (D.C.Cir. 1981); ***Phillippi v. CIA,*** 655 F.2d 1325, 1332-33 (D.C. Cir. 1981).

(S) A factual example of this distinction is given by discussions between a senior State Department official and a CIA Chief of Station-designate. In that conversation it was observed that a previous FOIA release had stated that a particular Norwegian diplomat had limited intellectual capacity, abused alcohol, and was "controlled" by his spouse. That diplomat had, by the time of the conversation, become the JFK Act 5 (g)(2)(D) and had called on the State Department earlier that day to protest that "official" disclosure in the strongest possible terms.

[15] (U) ***Fitzgibbon,*** 911 F.2d at 766; ***Abbotts,*** 766 F.2d at 608; ***Military Audit,*** 656 F.2d at 753; ***Hayden v. NSA,*** 608 F.2d 1381, 1388 (D.C. Cir. 1979), *cert. denied,* 446 U.S. 937 (1980).

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## IV. (U) *"Studies in Intelligence"* Was Intended to Present Private Writings and Not Official Executive Branch Information

22. (U) What is *"Studies in Intelligence"*? *"Studies"* was conceived as and historically conducted itself as a professional journal where the original thoughts and learnings of members of the profession of intelligence may be shared with others. It has not been viewed as presenting the official position of the CIA and typically bears the following disclaimer:

> "All opinions expressed in *Studies* are those of the authors. They do not necessarily represent the official views of the Central Intelligence Agency or any other component of the Intelligence Community."[16]

It has been regarded, in every factual and legal sense, as the private writings of current and past intelligence officers and experts which, but for the nature of their work, could be published in any private publication. As demonstrated by the attached memorandum from Brian Latell,[17] the current chairman of the Editorial Board, and the historical practices and procedures of publication, the articles published to date have been considered personal

[16] (U) See ***Attachment 1*** for recent example. The Board's inquiry served to highlight one accidental inconsistency in our publication process. While the disclaimer has been used consistently since 1955 (see ***Attachment 2***), the Agency began an unclassified annual version in 1993 (dated 1992), also bearing a substantially identical disclaimer (see ***Attachment 3***). Due to paper and formatting changes and an oversight in the production process, subsequent unclassified versions were published with the disclaimer inadvertently missing. The Legal Advisor in this regard has directed that all subsequent versions of *"Studies"* should contain the disclaimer. The current Chairman of the Editorial Board and the *"Studies"* editor advise that there was no intent to remove the disclaimer.

[17] (U) See ***Attachment 4***.

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works and their entry into the public domain -- under the holdings of ***Schlesinger*** and related cases - have not been thought to constitute "official acknowledgment."[18]

23. (U) What was the genesis of "*Studies*"? World War II brought Sherman Kent to the Office of Strategic Services (OSS) from an academic teaching post at Yale University. He spent most of his professional life with the successor agency -- CIA -- where he gained a reputation as the pre-eminent intelligence analyst in the Federal Government and indeed headed the U.S. Government's most prestigious analysis unit -- the Board of National Estimates -- for sixteen years. He was a professional, an academic, and a leader who recognized the need for professionalism in the intelligence business. He observed:

> "Where would ... chemistry or medicine or economics ... be if no one aspired to the honor of publishing an original thought or concept or discovery in the trade

[18] (U) It is correct that published volumes of "*Studies*" bear the seal of the CIA and are published with appropriated funds. Yet there is no difference from similar publications at other public or private agencies including myriad items from the Department of Defense (*e.g.*, Naval Proceedings). Indeed, in discussions with representatives of the Office of General Counsel at Defense, they concur that articles in such journals do not affect the continued classification of identical or similar information in official records of the Department. The purpose of all of these publications is the academic diffusion of knowledge in its most basic, Jeffersonian sense -- the encouragement and sharing of ideas of the most diverse nature for the benefit of man. "*Studies*," as with most if not all of these other publications, encourages academic diversity of thought and imposes no organizational or policy test on proposed content. Indeed, some articles are critical of official positions and actions and, indeed, are the antithesis of "official acknowledgment."

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> journals of his profession? In our calling we do not do enough ... systematic professional literature."[19]

24. (U) The literature he had in mind would be "... *an elevated debate ... [and] ... a kind of intellectual platform upon which the new debate can start."* Hence, the first volume of "*Studies*" appeared in 1955 and the Editors followed his objectives closely. They declared that:

> "... this literature should attempt to define, criticize, and improve on the 'first principles' of intelligence; and that this literature [could] only be written by experienced officers, presenting their own personal views ... [that] ... these views [would] in no case be put forward as Agency or Office of Training doctrine ... [and that the Board would not be] responsible ... for the substance of the arguments and criticisms and opinions expressed."[20]

25. (U) What implications then may this Board draw from their observations that many volumes of Studies were published as classified documents and subsequently redacted, declassified and placed in the public domain? What is the logic behind the initial classification of personal writings? The answer is two-fold. The CIA recognized the importance of openness in general and concluded that these articles published in our professional journal should be subject to the same controls as similar personal writings published in the public sector. As more fully detailed in the attached memorandum of John Hedley, Chairman of the Publications Review Board,[21] CIA practice has been generally to conduct a review of appropriate articles by our

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[19] (U) "The Need for An Intelligence Literature," Sherman Kent, *Studies in Intelligence*, Vol 1, Number 1 (1955).

[20] (U) "The Current Program for An Intelligence Literature," The Editors, *Studies in Intelligence*, Vol 1, Number 1 (1955).

[21] (U) See ***Attachment 5.***

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Publications Review Board (PRB) under the legal standards for personal writings -- not the legal standards for official government records.[22]

26. (U) An example of this process is given by a current case of a writing by a CIA officer who, as a young officer on his first tour, was caught in the Tehran Embassy takeover and held prisoner in solitary confinement for 425 days of his total 444 days ordeal. The article was reviewed by the PRB which posed no objections for publication in the classified issue of *"Studies"* and requested only minimal changes for publication as unclassified in *"Studies"* or any nonofficial publication.[23]

27. (U) Moreover, the actual classification marking of articles in *"Studies"* and, in certain instances, the subsequent obliteration of those markings and the release into the public domain, have not been considered inconsistent with their status of personal writings and the PRB process. When a manuscript is received by PRB it is reviewed for the presence of classified information in the

[22] (U) The standards for review are significantly different because of the context -- private writings versus official government records. The courts have held, in light of the Constitutional issue, that the Government to withhold must prove that identifiable damage will flow from the publication of specific information in the context of that specific private writing given information already in the public domain through either official or non-official release. Thus, for example, the PRB would allow publication of a fact that has appeared in the *New York Times* (especially if the manuscript cites to that source), although a FOIA review of a federal record containing that same fact would result in redaction. Indeed, because of the absolute dichotomy between the review processes, the courts have consistently held that cleared private writings do not constitute official acknowledgment and are not relevant to withholding decisions in cases involving federal government records.

[23] (U) See ***Attachment 6***, Memorandum from Chair, Publications Review Board, to William J. Daugherty dated 28 August 1996, classification SECRET.

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given context and appropriate pages (or the entire document) are then marked with the requisite classification markings. Redacted or modified pages, which are deemed no longer to present classification issues, are of course not so marked. In sum, the classification markings and declassification markings on *"Studies"* articles have been fully consistent with our publications review process and have not viewed as altering the intrinsically personal nature of the writing.

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29. (U) As in our previous communications, we respectfully request that the Board postpone release of such information with the substitutions proposed both formally and informally to Board staff. ***In particular, we would reiterate that we are prepared to replace all information at issue with specific substitutions or summaries which would preserve the historical and substantive content of the documents. We are also prepared, in accordance with contemporaneous staff discussions, to interpose no objection to the release of information which consists of statements by former government officers which would be authorized by the publications review process.***[24] We believe that this approach is consistent with the Board's mission and the necessity for the American public to have the fullest possible disclosure regarding the assassination of President Kennedy while preventing a harmful disclosure that is significantly disproportionate to any public benefit. We trust that the Board will accept our compromise so that an appeal to the President, with the attendant embarrassment to the Administration and delay to the important work of this Board, can be avoided.

[24] (U) See footnote 1 for examples of the application of this offer.

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