



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

FILE
JFK
ASSASS.

Honorable John Glenn
Chairman, Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense, and your request to various agencies of the Department, on S.J. Res. 282, a joint resolution to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy. S.J. Res. 282 creates a five member Assassination Material Review Board (Review Board), assisted by an Executive Director and staff, that would be required within two years of its first meeting to ensure the release of as many assassination materials concerning President John F. Kennedy's assassination as possible.

The Department of Defense supports the concept of making documents available to the public in a manner that preserves confidentiality interests. As to making documents public regarding the assassination of a former President, the Department of Defense defers to other agencies more concerned. With regard to S.J. Res. 282, however, there are several provisions that cause some concern.

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First, S.J. Res. 282 makes no provision to ensure that access to classified information by the Executive Director, the staff supporting the Executive Director, and the members of the Review Board is made contingent on their having current security clearances at the appropriate level. We recommend adding a provision to the legislation to ensure that members of the Review Board, the personnel selected to support it, and the Executive Director be required to obtain appropriate security clearances before they obtain access to documents containing classified information. We also recommend that a provision be added to require that classified information be properly handled and stored.

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Section 6 provides that disclosure of assassination materials would be postponed only if the threat posed by disclosure substantially outweighs the public's interest; i.e. access to the material. Section 7 provides that the Executive Director of the Review Board shall require disclosure absent "clear and convincing evidence" that material fall within the exemptions set forth in Section 6. When applied to classified assassination materials, these provisions would permit more liberal disclosure of such information than would be permitted under Executive Order 12866, 8 C.F.R. 166 (1988), reprinted in 60 U.S.C. 401 note. We are concerned that these provisions will cause inconsistent treatment of national security information

and, worse, could prompt disclosure of information that should remain undisclosed in the interest of the national security.

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Second, the Senate resolution at section 5(e)(3) provides that upon the direction of the Executive Director, and without reimbursement, executive agencies and other information originating bodies within the Executive Branch shall detail to the Review Board such personnel as may be necessary to carry out the purposes of this resolution. We are of the view that such details should be made only with the approval of the director of the agency or other organization that employs those individuals.

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Third, section 8(j) of the Senate resolution requires that the Review Board publish a notice of each of its decisions to postpone opening assassination materials to the public. Each such notice is to describe the volume and nature of materials affected by the postponement. We recommend that the Senate resolution be amended to ensure that the published notices do not inadvertently disclose classified information. The Justice proposed substitute should also be amended to include this change.

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The resolution speaks to "records" or "material" rather than information. The organization that originated a particular "record" may not be the "originator" of sensitive information contained within it. The resolution language, therefore, risks the anomalous situation that the entity whose interests are actually at stake with respect to a dissemination determination has no knowledge of or involvement in that determination. This is particularly troublesome when records contain information that is being protected against disclosure pursuant to the specific request of a foreign government.

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The broad definition of "assassination material," the Review Board's broad powers to request additional information from Executive agencies, and the fact that the Board determines what is assassination material, taken together, raise the specter that the Review Board can seek access to materials with a questionable connection to the assassination. There should be a provision to ensure Executive agency review of requests for additional materials that stray into sensitive areas unrelated to the assassination.

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The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the presentation of the foregoing views for the consideration of the Congress.

Sincerely,

Chester Paul Beach, Jr.
Acting General Counsel