

Central intelligence Agency



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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 premise 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. However, several provisions of the resolutions raise serious concerns, as outlined below, and CIA cannot support them as currently drafted. Our comments will focus upon specific CIA concerns; many general issues raised by the resolutions are better addressed by the White House or the Department of Justice.

Initially, the resolutions are focussed on "records" rather than the information contained in them. We are concerned that the Agency would not have the opportunity to object to 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. Similarly, there is no mechanism that would allow

Letter to Mr. Bernard H. Martin

the Agency to object to release of its information contained in documents originated by other agencies or departments. The resolutions should provide that the agencies which originate information have the opportunity to review that information prior to its release. Otherwise, an anomalous situation could be created in which documents originated by the Executive Branch would be withheld while documents originated by Congress containing the same Executive branch information would be released.

The resolutions' broad definition of "assassination material" is also troublesome. The resolutions define "assassination material" as a record that relates "in any manner or degree to the assassination." This unbounded definition could cover a range of material beyond that which has been traditionally associated with the JFK assassination. This broad definition, coupled with the Review Board's powers to request additional information from Executive agencies, and the fact that the Board makes the determination of what is assassination material, could lead to a new investigation of the assassination, rather than review of existing files for declassification purposes. Such an inquiry could well stray into sensitive areas that are unrelated to the assassination.

The question of proper scope of the Review Board's charter is a difficult one, and we do not mean to suggest that reasonable requests for materials should be denied simply because they were not made by a previous Presidential Commission or Congressional Committee. However, there should be a provision whereby Board requests for additional materials that an agency believes are unrelated to the assassination could be appealed--perhaps to the President.

The resolutions contain no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its Executive Director/staff elements. Absent security procedures and facilities that met Executive branch standards, agencies would be unable to provide classified assassination materials to the new body or its staff.

The resolutions provide 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--particularly where some documents may require coordination with other agencies. We suggest that the

Letter to Mr. Bernard H. Martin

resolutions be amended to provide that agencies may file for an automatic 30 day extension to consider whether an appeal is necessary before material is publicly disclosed.

We believe that the Executive Director of the Review Board should have substantive expertise with respect to protection of intelligence or law enforcement information readily available so that the initial decisions on whether to release documents are made on an informed basis. Under the resolutions, neither Board members nor the Executive Director may be government employees or have any background in the assassination investigations. Because of this restriction, these individuals are unlikely to have any familiarity with the documents at issue and may well have no expertise in intelligence or law enforcement equities. While the Executive Director may request detailees from Executive agencies and may consult with originating agencies, there is no requirement that he do so. An Executive branch agency with knowledge of the information at stake and potential harms (or lack thereof) likely to result from release of the information may have no involvement in the process until after an initial determination has been made to disclose the information. Requiring that the staff informally consult with agencies originating the information or mandating detailees from the affected agencies (within reasonable limits--particularly if details are to be nonreimbursable) would ensure that relevant expertise is brought to bear as part of the initial decision-making process.

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 the Board should be required to consult with the DCI on issues like whether a hearing should be closed, or whether a subpoena could be narrowed, if intelligence equities are involved. Disagreements could be appealed to the President.

Section 6 of the resolutions, which outlines the grounds for postponement of public release of a 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. Such privileges could always be waived in the public interest, but as the resolutions are currently drafted, they would be wholly unavailable.

Letter to Mr. Bernard H. Martin

While such privileges are not likely to arise with respect to factual information directly related to the JFK assassination, they could well arise with respect to other documents swept up in the resolutions' broad definition of assassination materials. 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.

The Congressional oversight mechanism established for Board activities also may conflict with the existing rules for oversight of intelligence activities. The resolutions provide for congressional oversight of the Review Board and its activities by the "appropriate" House committee and the SSCI, although we have reason to believe that the resolutions may be amended to remove the SSCI from oversight responsibilities. Under the resolutions, the committees would obtain copies of all material that were not released. Thus, the resolutions are likely to involve non-intelligence oversight committees in the review of sensitive CIA information that would not be released to the public. Congress enacted the Intelligence Oversight Act of 1980 in part to reduce the number of congressional committees with access to sensitive CIA information. Expanding the number of committees with access to our information would be of concern, especially if the Review Board seeks new documents minimally-related to the assassination.

Finally, each resolution specifically provides that it does not affect FOIA actions. We would suggest that the resolution explicitly stay responses to FOIA requests related to assassination materials while the Review Board is conducting its business. The resolutions clearly have a more liberal standards for public disclosure of information than does the FOIA, and the public is likely to get assassination materials more expeditiously if agencies are permitted to focus their resources on supporting the work of the Review Board.

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,

Stanley M. Moskowitz
Director of Congressional Affairs