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COMMENTS ON JOINT RESOLUTION(S) ON JFK ASSASSINATION FILES

- The resolution is based upon "records" rather than information and thus does not comport fully with the "third agency" rule, whereby the Agency whose information is at stake reviews the information. The body that originated a particular "record" may not be the "originator" of sensitive information contained within it. The resolution creates the anomolous 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 with respect to congressionally generated documents derived from Executive branch information, with respect to which the resolution provides no appeal from Review Board determinations.)

- The broad definition of "assassination material," coupled with the Review Board's broad 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 efforts--and such efforts could well stray into sensitive areas in fact unrelated to the assassination. There should be a provision whereby unreasonable Board requests for additional materials that strayed into sensitive areas unrelated to the assassination could be appealed--perhaps to the President.

- There is a potential conflict between E.O. 12356 and the resolution. The resolution contains no provision requiring security clearances or secure document handling and storage practices 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 assassination materials to the new body or its staff.

- There should be substantive expertise injected at the early, informal stages of the review process. Neither Board members nor the Executive Director may be government employees or have any background in the assassination investigations, so they 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 <u>may</u> request detailees from Executive agencies and <u>may</u> 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 a disclosure determination has been made--until a formal appeals process. Mandatory detailees (within reasonable limits, if they are to be nonreimbursable) from agencies originating information (who would review their Agency's materials), and/or mandatory consultations before determinations are made would ensure that relevant expertise is brought to bear as part of the decision-making process.

- The Board's broad powers to subpoena witnesses and documents and hold hearings could conflict with the DCI's statutory duty to protect sensitive intelligence sources and methods from unauthorized disclosure. This could be remedied if the Board were required to consult with the DCI (perhaps AG or D/Secret Service, in their areas of expertise?) as to whether a hearing should be closed, or whether a subpoena should be narrowed. Disagreements could be appealed to the President.

- While the resolution specifically provides that it does not affect FOIA actions, we suggest that litigation related to assassination materials should be stayed while the Review Board is conducting its business. The resolution clearly has more liberal standards for public disclosure of information than other access laws, and the public is likely to get more assassination materials more expeditiously if agencies are permitted to focus their resources in this area on supporting the work of the Review Board.

- Section 6 of the resolution, which outlines the bases for postponement of public release, represents an improvement over the earlier draft we had seen. However, one major gap is that there is no provision for any type of deliberative process or similar privilege exemption that might apply to certain records or portions of records. (Moreover, if the Review Board agreed that this type of exemption applied, sending these documents to Congress would undermine the privilege.) We also believe that intelligence agent under section 6(1)(A) should be defined with reference to the Intelligence Identities Protection Act (see 50 U.S.C. § 606(4) definition of covert agent).

- We are concerned also that the procedure whereby CIA assassination material qualified for postponement of disclosure would be transferred to the Archives. This would disrupt existing arrangements worked out between the DCI and the Archivist with respect to handling sensitive CIA materials. This problem could be alleviated by providing Archives an index, with actual materials to be returned to CIA for holding.

- Other agencies and particularly the White House are likely to have additional concerns, such as the burden the resolution places upon the President to determine appeals.

- We also have a number of more detailed concerns and suggestions relating to other specific provisions of the bill and would be happy to work with you when the Committees get down to specific drafting issues.