

**JFK ACT LEGISLATIVE HISTORY**  
**RE: FOREIGN LIAISON POSTPONEMENTS**

**I. STATUTE**

- A. FBI claimed a 1B and a 4 postponement on these materials
- B. (1) the threat to ... conduct of foreign relations of the United States posed by the public disclosure of the ... [record] ... is of such gravity that it outweighs the public interest,

AND such public disclosure would reveal...

- (B) an intelligence source or method which is **currently utilized**, or **reasonably expected to be utilized**, by the U.S. Government

AND which has not been officially disclosed,

the disclosure of which would interfere with the conduct of intelligence activities.

- (4) the public disclosure of the ... record would compromise the existence of an understanding of confidentiality **currently requiring protection** between a Govt. agent and a **cooperating individual or a foreign govt.**

AND public disclosure would be so harmful that it outweighs public interest.

**II. SENATE REPORT**

- A. ...because most of the records related to the assassination...are at least 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records. p. 2969.
- B. Any postponed records or information should be narrowly drawn to enable the majority of any record to be disclosed immediately, so that the redaction is minimal, and subject to review and disclosure in the near future. p. 2976.
- C. The Review Board should consider a variety of factors related to the need to postpone disclosure of intelligence sources and methods, including the age of the record, whether the use of a particular source or method is already well known by the public, ... and whether it was the information it collected which was secret. p. 2977.
- D. [In re: 6(4)...] The govt. has argued that all such confidentiality requires withholding to preserve the integrity [of] the promise of confidentiality made by a govt. agency to a witness in order to obtain testimony or information.

In applying this postponement standard the Review Board should consider:

- Whether there is an express written confidentiality agreement, whether that agreement is express or implied, whether it is written or unwritten, and the exact restrictions

- regarding the scope and duration of confidentiality;
- whether the agreement currently requires protection;
- whether a witness or informant or confidential source is deceased;
- and whether the govt. is seeking postponement purely because it believes all such records should be withheld, or because of the informant's express desire that the understanding not be made public.

In all cases where the Review Board is considering postponement, it should keep the withheld information to an absolute minimum, and ensure that the postponement is narrowly drawn is for the shortest possible duration. In so doing, the Review Board should release as much information from the records as is possible. pp. 2977-2978.

### III. HOUSE REPORT - Committee on Govt. Operations

- A. It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that legitimate confidentiality concerns diminish over time. p. 16
- B. [In re: the (1) postponement criteria] This very narrow type of information [sources/methods] does not apply to any obsolete collection method, or to a method which has been acknowledged by the government....

For example, information concerning an on-going unacknowledged liaison relationship with the intelligence service of another nation might qualify under Section 7(a)(1)(C) [corresponding to (6)(1)(C) postponement in final version]. **Any agency claiming such a reason for postponing the release of a record must present evidence to the Review Board demonstrating the damage that would be caused to the national security before the Review Board can consider such a postponement.** It is the Committee's expectation that this ground for postponement will only be invoked in the rarest of cases. p. 27.

- C. [In re: the (4) postponements] The Committee recognizes that law enforcement agencies must to some degree rely on confidential sources to effectively perform their missions. However, **the Committee specifically rejects the proposition that such confidentiality exists in perpetuity.** As with all other govt. information, the govt's legitimate interest in keeping such information confidential diminishes with the passage of time. p. 29 (page attached)
- D. Claims of implicit confidentiality or blanket assertions that all sources of information are confidential informants *do not* satisfy the requirements of the joint resolution. p. 30 (page attached)

### IV. SENATE GOVERNMENTAL AFFAIRS COMMITTEE HEARINGS

- A. Senator Specter: [Re: confidential relationships] If you have a private arrangement that somebody comes forward to give information, that ought to be honored if at all possible. There may be some circumstances where you cannot honor a private commitment. The law sometimes overrides private agreements, and even agreements with foreign governments, if there is a dominant public policy concern. But to the extent they can be accommodated, you try to do so. p. 43.

- B. Floyd Clarke, Deputy Director, FBI: If there are techniques that are used for surveilling foreign establishments, some of those techniques may still be used, and to disclose them would give information to individuals that would preempt us from being able to do that...

I think one of the overriding concerns is that the American public has to have confidence and trust in representations made by law enforcement, and if we ask for cooperation and support and we get that in return for a promise of confidentiality, and then that contract is broken, it will dampen the potential of people cooperating with us in the future, and while we hope that we never have a repeat of this tragic event, that we do know that we have had situations with Presidents Ford and Reagan where attempts have been made, and extensive investigations conducted, and so there are very sensitive types of investigations that, while not of this particular nature, similar to it, where if we are unable to maintain agreements and confidentiality, people will not cooperate with us. p. 135.

## LEGISLATIVE HISTORY

### HOUSE

#### INTRODUCTION

3/26/92 H.J. Res. 454 introduced

- |             |     |   |
|-------------|-----|---|
| Referred to | (1) | House Committee on Govt. Operations, Rules and House Administration |
|             | (2) | House Judiciary Committee   |

#### HEARINGS

Judiciary

5/20/92

Govt. Operations

4/28/92

5/15/92

7/22/92

#### REPORTS

Judiciary

8/11/92

Govt. Operations

6/29/92

### SENATE

#### INTRODUCTION

3/26/92 S.J. Res. 282 (identical to H.J. Res. 454 -- acc'ding to the Sen. Glenn's statement at the beginning of the Senate hearings.) Referred to Senate Committee on Govtal Affairs.

#### HEARINGS

Govtal Affairs

5/12/92

#### AMENDED

6/25/92 Committee on Govtal Affairs approved by a voice vote adoption of the amendment in the nature of a substitute offered by Senator Glenn. Original resolution was revised and expanded at this time. Renamed S. 3006.

#### REPORT

7/22/92

On 5/15/92, Deputy Director Clarke brought a prepared statement of Mr. Sessions before the House Government Operations Committee. Sessions' statement referred to the unamended version of H.J. Res. 454.

On 5/20/92, Deputy Director Clarke testified before the House Judiciary Committee/Subcommittee on Economic and Commercial Law

On 6/29/92, the House Committee on Govt. Operations amended H.J. Res. 454 and recommended that the joint resolution **as amended** pass.