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27 November 1990

F81-0351, Working Paper
HSCA Equities

The purpose of this paper is to identify and pull together basic documents and other material bearing on the Congressional or HSCA Equities exemption. Hopefully this may be useful to the JFK Task Force in its interpretation and application of this exemption. With the processing phase of the Allen litigation drawing to a close, it may also help in consistency of treatment and, perhaps, prevent or lessen future flaps during the inevitable Appeals stage.

As our processing of the OLC material has progressed, we have become increasingly concerned about our treatment of materials where the HSCA Equities exemption is applicable. Perhaps at the core of our problem is the dilemma posed by the contradiction between the Court ordered Stipulation 3h and instructions from the House of Representatives.

Stipulation 3h enjoins the Agency to search for: "Any records relating to any assignment by the CIA to an employee of the CIA to review, evaluate or assess any final or interim report by the HSCA."

However, HSCA Chairman Stokes, in his letter to the DCI of 26 March 1979 states: "A great deal of material has been generated by your Agency in response to specific requests or concerns of the Select Committee. In addition, your Agency is in physical custody of a variety of materials originating from the Select Committee. It can be anticipated that your Agency will receive requests under the Freedom of Information Act for access to these materials. The purpose of this letter is to request specifically that this Congressional material and related information in a form connected with the Committee not be disclosed outside your Agency without the written concurrence of the House of Representatives."

Attached to this paper are other documents concerned with various aspects of Congressional Equities. The following pertinent quotes are taken from some of these documents:

1. Rules of the HSCA adopted 7 March 1977 as amended, Rule 10.8: "The Chief Counsel and deputy chief counsels shall have authority to designate materials and documents as sensitive. The contents of all such materials and documents, in addition to any materials or documents already classified or marked confidential

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by any agency or department of the United States Government, shall not be released or divulged in any way, form, shape or manner without the approval of the Select Committee or one of its subcommittees."

2. In his letter to Chairman Stokes, dated 23 April 1979, the DCI writes: "I have your letter of 26 March 1979 requesting that the congressional material and related information from your Committees investigations not be publicly disclosed without the written concurrence of the House of Representatives, and I will be guided accordingly."

Comment: Since the DCI's letter, which is quoted in its entirety, falls squarely within our interpretation of HSCA Equities, we presumably have to obtain the written concurrence of the House before releasing it.

3. The Agency HSCA Coordinator, Scott Breckenridge, in a 5 April 1979 memorandum to the DCI, Subject: HSCA Correspondence, states: the basis for doing so is an apparent misunderstanding on the part of Blakey (Chief Counsel, HSCA) that our written comments from the HSCA drafts are subject to FOIA proceedings. Our agreement with Blakey was that the Agency will retain no copies of the various draft reports or of our written comments. Most of this material has been retrieved by the OLC Registry, and the rest will be retrieved following such comment that we may make on the final HSCA report. The point is that these were, by agreement with the Committee, not to become records; specifically that they would be destroyed."

4. In a memorandum for the record, dated 6 April 1979, Subject: Meeting Regarding Disposition of CIA Material related to the HSCA Investigation, Jon E. Wolfe, DDA Records Management Officer, states in para. 3: "It was noted that Representative Stokes had, by a recent letter the DCI, Requested that none of the collection be made subject to the FOIA. While the group unanimously agreed that the CIA could not legally exempt any of the CIA records from the FOIA, it was pointed out that our probable retirement procedures would preclude any retrieval on individual documents within the collection. That is, individual documents within the collection would not be locatable without an arduous document by document search - a process not required under the FOIA."

5. In a 27 April memorandum for the record regarding HSCA Chief Counsel Blakey's visit to CIA Headquarters, R. Holmes writes in para. 3: "Category 2: Material generated by the HSCA from Agency classified holdings made available to the HSCA in response to the latter's request. Note: Mr. Blakey stated that he considered this material to be the property of the HSCA, and, therefore not releasable to the public or other unauthorized personnel under the provisions of the FOIA."

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6. In a memorandum to the DCI, dated 8 November 1978,
Subject: HSCA Proposal for Review of Preliminary Reports, the
Principal Coordinator, HSCA writes:

"para. 2, Background: The Chief Counsel of the HSCA has proposed a procedure, outside the formal Memorandum of Understanding, for preliminary review of the draft reports prepared by the staff. We will be provided the reports and will convey our comments in a series of meetings. To avoid a record of the exchanges we must agree to keep no copies of the draft (we will be allowed to reproduce copies) and to prepare no formal papers; all Agency reaction will be kept in informal working notes that will be destroyed. We must commit ourselves to this and establish procedures that will insure compliance.

para. 4, Recommendation: It is recommended that we accept Mr. Blakey's conditions and that the undersigned be authorized to so state to him."

Comment: Some very basic questions arise here. Is this agreement with HSCA binding at this date, particularly in view of its conflict with the Courts Stipulation 3h? Right now we are processing some draft reports, errata sheets, pencilled notes, etc., which, according to the agreement, should have been destroyed long ago? How do we handle this?

Also, details of the review process are discussed extensively in internal CIA memoranda and in CIA letters to the HSCA. In a strict interpretation of HSCA Equities, should such material not also be exempt? We believe that it should be.

7. It is realized that some of the statements and comments made above may no longer apply and may have been somewhat conjectural to begin with, particularly paras. 3 to 5. However they may be useful as guidelines, since there is a dearth of specific instructions on how to handle HSCA Equities.

8. Since it bears directly on Congressional Equities and serves as an important precedent, included in the attachments is also correspondence relative to the Agency's implementation of Stipulation 3j. This Stipulation reads in part: "The CIA shall write to Congressman Louis Stokes and/ or the Clerk of the U.S. House of Representatives requesting that the CIA be allowed to process for possible disclosure the draft HSCA study on Lee Harvey Oswald's activities in Mexico City. If the Congress withholds consent, the CIA's obligations under this subparagraph shall be deemed satisfied."

Materials attached include:

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- U.S., District Court for the District of Columbia's, Stipulation, dated 10 June 1988;
- Letter from the CIA Director of Congressional Affairs, to the Clerk of the House of Representatives, dated 25 August 1978;
- The Clerk of the House's response to above letter, dated 9 September 1988, which withholds consent to process the Stipulation 3j material;
- Letter from the CIA General Counsel's Office to James H. Lesar, the litigant's lawyer, dated 28 September 1988, advising of the above.

8. All the documents and material referred to above are to be found in the Basic HSCA Equities folder.

