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10 December 1990

WORKING PAPER:

SUBJECT : F81-0351- HSCA Equities

1. This is to discuss our handling of one of the more difficult and controversial areas involved in the processing of the HSCA material in the Allen litigation (F81-0351). Our area of concern involves the interpretation and treatment of the Congressional exemption, or, as usually referred to - the HSCA Equities exemption. The basic problem is the apparent contradiction between the court ordered Stipulation (C.A. No.81-2543), dated 10 June 1988, and instructions from the House of Representatives. In particular this pertains to Stipulation 3h, which 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."

2. Stipulation 3h would appear to be in direct conflict with instructions from the House of Representatives, as quoted in part from the following 2 documents:

Rules of the House Select Committee on Assassinations, 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 by any agency or department of the U.S. 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."

Letter from HSCA Chairman Stokes to the DCI, dated 26 March 1979, paragraph 2, which reads in part: "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."

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3. Our focus on Stipulation 3h is particularly timely, since, in our processing of the DO and OLC material, we now have arrived at the point where the final HSCA report, including drafts, is being critiqued by the Agency. As far as possible, we want to assure consistent treatment of this material. Although much of the material involved, in my opinion, already falls within the HSCA Equities exemption, some of it may be open to different interpretations. My working paper of 27 November 1990 highlights some of the more controversial cases.

4. It should be noted that the question of HSCA Equities also spills over into stipulation 3g which instructs the Agency to search for and treat; "All correspondence between the CIA and HSCA."

Here we have no difficulty whatever with correspondence actually originating with the HSCA or other elements of Congress, which material is exempt automatically. Our problem lies with the large volume of internal CIA correspondence and memoranda for the record, as well as Agency letters to HSCA, which discuss the activities of HSCA, our meetings with HSCA personnel, and other matters falling within the HSCA chairmans injunction to the Agency. The key line in Chairman Stokes' letter is, of course, " - - - and related information in a form connected with the Committee". This line is also the one that causes the headaches. Its almost impossible to follow literally the instructions we have received. Furthermore, which take priority, the Court's Stipulations or the instructions from the House? Or, do we continue our happy balancing act and, to the best of our ability, try to do justice to both sets of instructions? After all, treating FOIA material is more of an art than a science.

5 We have already received opinions from [redacted] Asst. Gen. Counsel and [redacted], Executive Secretary, DCI's office and both support our fairly literal interpretation of the line quoted above from Chairman Stokes' letter. Russ Holmes suggested that we also consult the Inspector General, Fred Hitz, who formerly headed up the Office of Congressional Affairs and was directly involved with the HSCA investigation. I believe that Mr. Hitz's opinion on this matter would be very valuable.

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FOIA Consultant