MEMORANDUM FOR: SA/DDCI

I spoke with you recently about a technical issue involved in the question of the subpoena reportedly voted by SSCI, and how it best be handled if Chairman Stokes decides to initiate a discussion on the subject with the DCI.

We hope that this matter will disappear, but against the eventuality that it becomes a live issue, it seemed best to present some of the complexities of the question of what the Committee might claim to be its rights under the Memorandum of Understanding entered into in August 1977, and the amendments agreed in the following January.

The attached briefing paper attempts to provide the basic issue, with the suggestion that technical issues be avoided in discussion of the problem, in favor of a more general and reasoning approach.

Date 31 August 1978

FORM 5-75 101 USE PREVIOUS EDITIONS

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OLC # 78-4055

31 August 1978

HSCA

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Aide Memoire

SUBJECT : Issues in Pending HSCA Subpoenas

1. CIA has restricted access by HSCA representatives to two sets of documents, which led to the Committee's voting a subpoena shortly prior to the recess by the House. Two other items of information that were included in the subpoena had been reviewed by HSCA representatives prior to voting the subpoena. So far as we know no action has yet been taken to serve the subpoena formally. Its reported date of return is 6 September.

2. The two files on which we have restricted access deal with two separate subjects, as follows:

a. An operational file involving a sensitive Covert Action program, in which a person of interest to the HSCA was one of a number of targets. The HSCA has reviewed the 201 file of the person in question for the period January 1973 through May 1964, but the separate operational file has not been shown. The nature of the operation has been outlined to Mr. Blakey and his deputy, Mr. Cornwell. The presentation emphasized the sensitivity of the operation and its lack of relevance to the HSCA inquiry.

b. The history of the Mexico City Station for the period [redacted] 1969. It covers all activities of the Station over a period of time almost entirely irrelevant to the purpose of the HSCA investigation. Only a few references in the Mexico City Station history can be considered relevant to the issue of President Kennedy's assassination, and these have been seen by HSCA representatives. Substantial sections of other portions of the history have been shown the HSCA Chief Counsel and Staff Director, Mr. Blakey, and to his deputy, Mr. Cornwell.

3. The grounds offered for withholding these documents are a mix of sensitivity and relevance. Traditionally the Agency claims the sensitivity of subject matter as a basis for giving special handling to materials shown external investigators, while Mr. Blakey asserts that the Congress reserves the right to judge relevance. There is something of an anomaly in these positions, because the evolution of the working agreements with HSCA has to a degree compromised the basic position of both parties.

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4. The original Memorandum of Understanding, executed in August 1977, commits the Agency to provide access to material "that bears upon the study and investigation authorized by H. Res. 222," which we see as referring to relevance. It also recognized the limitations placed on access depending on "the responsibility of the DCI to protect sensitive intelligence sources and methods." An amendment to the original agreement was negotiated in January 1978, the language of which throws into question the unqualified right of the DCI to withhold material because of sources-and-methods considerations, but leaves intact the original position on relevance.

5. Our practice, under these provisions, has been to agree to requested access to material we feel probably irrelevant, if it is not judged sensitive. When considerations of relevance and sensitivity combine we have opposed unqualified access. In the face of the HSCA representatives' assertion of the need to verify our statements about relevancy, etc., we have tried to employ the original commitment to the DCI by Mr. Blakey to not disclose anything shown him personally, when the matter becomes an issue, letting him review the material personally. This serves to demonstrate good faith, at the same time that it has permitted verification by a selected HSCA person.

6. If the HSCA decides to force the present issue, for whatever purposes, there would be some confusion in outlining just what the Agency's position is. The agreements can be presented as compromising the legislated responsibility of the DCI to protect sources and methods from unauthorized disclosure. This consideration has led us to follow the practice of tying relevance (preserved in the original agreement) to sensitivity, avoiding assertion of the right to protect material on the grounds of sensitivity alone. As an example we have given extensive access to intelligence sources and methods as employed in Mexico City, where it was relevant because it explained CIA coverage of the Oswald visit in September-October 1963.

7. Discussions with Chairman Stokes, assuming there will be an opportunity to have such an exchange, should be reasonable rather than technical. While we believe our grounds sound (the material at issue is not relevant to the inquiry, and is sensitive) the arguments in support of it may prove confusing in public controversy.

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SDBreckinridge:hfs (31 August 1978)