UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 81-2543
	:	
DEPARTMENT OF DEFENSE, ET AL.,	:	
	:	
Defendants	:	

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Preliminary Statement

This case arises under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. By letter dated December 15, 1980, plaintiff Mark A. Allen ("Allen") submitted a request to the Central Intelligence Agency ("CIA") for "all correspondence or records of any communications between your agency and the U.S. Select Committee on Asssassinations relating to the Select Committee's investigation into the assassination of President John F. Kennedy." Complaint, Att. 13. On April 6, 1980, he made a second request to the CIA for "all records relating to the investigation of the U.S. Select Committee on Assassinations into the murder of President John F. Kennedy not covered by my FOIA request of December 15, 1980." Complaint, Att. 17. Allen also submitted similar requests to the Department of Defense/Defense Intelligence Agency ("DIA").

Defendants have moved for summary judgment on three grounds: (1) a compilation of documents relating to the House Select Committee on Assassinations ("HSCA") made by the CIA is not an "agency record" within the meaning of the FOIA; (2) the CIA's compilation is not "improperly withheld" under the FOIA; and (3) the CIA compilation and the DIA's HSCA records are exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5).

For the reasons set forth below, these threshold claims must be rejected by this Court.[1/] The Court should deny defendants' motion for summary judgment and order defendants to begin releasing the requested documents. Of course, defendants then may assert whatever bona fide exemption claims they consider applicable to the individual documents or portions thereof.

ARGUMENT

I. THE RECORDS SOUGHT BY ALLEN ARE AGENCY RECORDS UNDER FOIA

A. Allen Seeks All CIA Records Pertaining to the HSCA Investigation Whether Kept in a Special Compilation or Not

Defendants argue that Allen is seeking a special CIA compilation of records pertaining to the HSCA investigation which is not an agency record because it is subject to the concurrent control of both the CIA and the U.S. House of Representatives. This argument depends on a characterization of Allen's request which is self-serving and inaccurate. Thus, defendants assert that Allen "is not requesting all CIA records which shed light on the assassination of President John F. Kennedy; he is concerned only with that CIA compilation of documents which betray the scope and nature of a congressional inquiry conducted by the [HSCA]." (emphasis added) Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment ("Memorandum") at 6.

But Allen's requests make no reference to the CIA's special compilation of HSCA-related materials. In fact, Allen did not know such a compilation existed at the time he made his request. The

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1/ The Clerk of the House of Representatives has filed an amicus brief which argues an additional claim, that the Speech or Debate Clause of the U.S. Constitution bars release of the records sought by Allen. Plaintiff's reply to this argument is contained in a separate brief filed concurrently with this one.

statement that Allen "is not requesting all CIA records which shed light on the assassination of President Kennedy" seems to imply that the CIA has records which do shed light on the assassination which were neither reviewed by the HSCA staff nor voluntarily furnished to the HSCA by the CIA. Allen, of course, has no knowledge of whether this implication is true or not. In any event, he has submitted a third request to the CIA for all CIA records on the assassination of President Kennedy.

Where and how the CIA's records relating to the HSCA's investigation are kept is of no concern to Allen. He does not care one whit whether he is provided copies made from the CIA's special compilation or from the CIA's "working files."

Most of the records at issue in this case were generated by the CIA and reposed in its files long before the HSCA ever came into being. They are indisputably "agency records" subject to release under FOIA. Since the CIA has the means of determining which of these original or working file documents were made available to the HSCA, it can simply copy the originals for Allen, leaving its special compilation undisturbed.

B. The CIA's Compilation Is An Agency Record Under FOIA

The CIA argues that its special compilation of HSCA-related materials is not an "agency record" within the meaning of the FOIA. The law on this question in this circuit is governed by the decision of the United States Court of Appeals in Goland v. Central Intelligence Agency, 607 F.2d 339 (D.C.Cir. 1978), modified on other grounds, 607 F.2d 367 (D.C.Cir. 1979), cert. denied, 445 U.S. 927 (1980), which held that:

> Whether a congressionally generated document has become an agency record . . . depends on whether under all the facts of the case the document has passed from the control of Con-

> gress and become property subject to the free disposition of the agency with which the document resides.

Id., 607 F.2d at 347. In a subsequent case, Holy Spirit Ass'n, Etc. v. C.I.A., 205 U.S.App.D.C. 91, 94, 636 F.2d 838, 841 (1980), the Court of Appeals reaffirmed this test, noting that Goland had considered two factors dispositive: "the circumstances attending the document's creation and the conditions under which it was transferred to the agency."

The issue of what constitutes "agency records" arises in a completely different factual context in this case than it did in Goland. Most of the records at issue here are clearly "agency generated" records. The CIA's April 27, 1979 memorandum on the visit of HSCA's former chief counsel to CIA headquarters seems to indicate that most of the records in its compilation of HSCA-related materials are contained in what it labels as "Category 1a" and "Category 1b". These two categories are comprised of thirteen four-drawer safes containing materials which are described by the CIA as "classified material [] from agency holdings." Exhibit 1. Goland dealt not with such agency generated documents but with "congressionally generated documents".

This means, therefore, that with respect to most documents in this case, the test to be applied is the converse of that employed in Goland; that is, it is whether the documents have passed from the control of the agency and become property subject to the free disposition of Congress.

By the CIA's own admission, the answer to this is no. The CIA's affiant, Mr. Doswell, acknowledges that Congress cannot make these materials public without the consent of the CIA. Affidavit of William J. Doswell, ¶15.

The CIA does argue, however, that the compilation of these documents is subject to the joint control of Congress and the CIA,

and that therefore it is not an agency record subject to FOIA. In order to address this argument, it is necessary to scrutinize the foundations upon which it is said to rest.

1. The Memorandum of Understanding

In support of its argument that the documents in its compilation are not "agency records" within the meaning of the FOIA, the CIA relies heavily upon a Memorandum of Understanding ("MOU") which the CIA and the HSCA negotiated before the compilation took place. As amended, Paragraph VI(B) of the MOU provides:

> Prior to its termination, the Committee will identify to the C.I.A. those documents which are to be made part of the permanent records of the C.I.A. under records schedules approved by the Archivist of the United States, which control the disposal of all Agency records. In view of the large volume of material, it is agreed that physical segregation of the material will not be required in all cases. The Committee will designate those materials provided by C.I.A. and examined by the Committee that are to be kept and preserved within a segregated and secure area within C.I.A. for at least thirty (30) years unless the D.C.I. and the House of Representatives agree to a shorter period of time. (emphasis added)

Exhibit 2.

The CIA argues that this reflects "Congress' intention regarding the confidentiality to be accorded all documents used in its investigation." Defendants' Memorandum at 9. However, none of the language employed in this paragraph (or elsewhere in the MOU) warrants such an interpretation. This provision does not address the question of access to these records; it merely provides that they are to be kept and preserved in a certain manner for thirty years, presumably so that Congress could have them readily available in the event that a further reopening of the assassination investigation should occur.

This provision does, however, clearly and unequivocally state that the records it describes "are to be made part of the permanent

records of the C.I.A.," and that this is to be accomplished in accordance with archival regulations which control the disposal of "Agency records." Thus, this part of the MOU indicates in unambiguous language that even those HSCA-related records within its scope--that is, those designated by the HSCA prior to its termination--are agency records.

Other parts of the MOU also clearly evidence the CIA's assertion of control over the reocrds which it provided to the HSCA or made available for its review. Thus, the MOU avowedly governs access to "classified information within the releasing authority of the CIA, and held by the CIA . . . ." MOU, ¶I(A). The responsibility of the Director of Central Intelligence ("DCI") to protect sensitive intelligence sources and methods is explicitly acknowledged, as is the power of the CIA to "appropriately sanitize, including by excising if necessary, information to assure protection of information identifying sensitive sources and methods." MOU, ¶I(B). In addition, the MOU also specifies that the CIA has the right to approve the HSCA's procedures for control and storage of any documents or materials provided by the CIA which require protection. Finally, the MOU provides that if the CIA and the HSCA disagree over the disclosure of information that is designated for protection from unauthorized disclosure by the DCI which the HSCA wants to release, the HSCA cannot disclose it in the face of an objection by the DCI without obtaining a court order. All of these provisions indicate control of these records by the CIA, not the HSCA.

2. Congressman Stokes' Letter of March 26, 1979

On March 26, 1979, the former Chairman of the HSCA wrote a letter to Admiral Stansfield Turner, Director of Central Intelligence, stating:

> 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 to the Committee not be disclosed outside your Agency without the written concurrence of the House of Representatives.

Exhibit 3. Defendants argue that "[t]his explicit Congressional assertion of continued concurrent control over the disposition of this compilation of records makes abundantly clear that they are not 'agency records' within the meaning of the FOIA." Defendants' Memorandum at 9.

However, by the time Congressman Stokes wrote his letter, the HSCA had gone out of existence and he was merely the former chairman of a defunct committee. The HSCA was created by the 95th Congress when it passed H. Res. 222 on February 2, 1977. Neither the House of Representatives nor its committees are continuing bodies. Gojack v. United States, 384 U.S. 702, 706, n. 4 (1966), citing Anderson v. Dunn, 6 Wheat 204, 231; Marshall v. Gordon, 243 U.S. 521, 542. Accordingly, the HSCA expired when the 95th Congress came to an end on January 3, 1979. Thereafter, Congressman Stokes could only exercise such authority as was extended to him by virtue of a resolution passed by the 96th Congress.

On January 18, 1979, the House of Representatives did pass H. Res. 49, which provided in pertinent part:

> (b) In the case of the former Select Committee on Assassinations, the unexpended balance of funds for the operation of such committee during the second session of the Ninety-fifth Congress shall be available to the Clerk of the House for the purpose of completing the final report of such committee not later than

> March 31, 1979. The Clerk is authorized to employ such persons as may be necessary and to expend the funds referred to in the previous sentence for completion of the report. Representative Louis Stokes is authorized to exercise the authority of the former select committee with respect to the handling of classified materials relating to the operations of such committee. (emphasis added)

This resolution establishes: (1) that the HSCA went out of existence on January 3, 1979; after that it was the former Select Committee on Assassinations; and (2) HSCA's former chairman, Representative Louis Stokes, was only authorized "to exercise the authority of the former select committee with respect to the handling of classified materials relating to the operations of such committee." Nothing in H. Res. 49 authorized Stokes to designate what HSCA-related materials should be withheld from public access,[2/] or even to designate what records should be kept and preserved at CIA Headquarters under the MOU.[3/]

The legislative history uniformly reinforces both points. When unanimous consent was sought for immediate consideration of H. Res. 49, only three congressmen spoke. Two expressly stated that HSCA no longer existed:

> Mr. Dickinson. *** As the gentlemen well knows, there is firm agreement by all concerned that the committee died at the end of the last Congress.
>
> * * *
>
> Mr. Thompson. *** The Select Committee on Assassinations no longer exists. No resolution has been introduced for its reconstitution.
>
> * * *
>
> Mr. Thompson. *** A very careful review was done of the financial situation of the Com-

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2/ Of course, neither a congressman nor a congressional committee has the power to order an agency not to comply with an FOIA request for agency records.

3/ The MOU provided that the HSCA must make its designation prior to its termination. MOU, ¶VI(B). It did not do so.

> mittee on Assassinations, and on October 14 a specific agreement was arrived at by the gentleman from New Jersey, the Speaker, and the Chairman of the Assassinations Committee, . . . (Mr. Stokes), with the specific understanding that the committee would continue to exist until January 3, 1979, that it would not be reconstituted, and that approximately $100,000 would remain for completion of the reports. (emphasis added)

125 Cong. Rec. 414-416 (daily ed. January 18, 1979). Exhibit 4. The third participant in this colloquy, Representative Bauman, expressed his agreement to H. Res. 49 upon being assured that there would be no further funding for the HSCA. Id. The CIA likewise recognized that the demise of the HSCA would occur on January 3, 1979. See January 2, 1979 letter from S. D. Breckinridge to G. Robert Blakey (". . . when the Committee ceases to exist tomorrow"). Exhibit 5.

The legislative history also shows that Congress intended H. Res. 49 to limit Stokes' authority to "deal[ing] with the classified material necessary for the publication of the report in the possession of the clerk and others." Id. In short, Stokes' authority was limited to seeing to it that the printer got and was able to use the materials needed for publication of the Committee's report.

During the existence of the HSCA, Stokes' actions regarding CIA materials made available to the Committee were authorized by the Committee. See, e.g., January 27, 1978, letter from Stokes to Adm. Turner (". . . I have been authorized by the Committee to, and do hereby, amend the original Memorandum of Understanding . . . ."). Exhibit 6. Once the HSCA ceased to exist, Stokes no longer had authority to take such actions. He was merely the former Chairman of a defunct Committee expressing his own personal preferences.

Stokes himself recognized this in a letter he wrote to FBI Special Agent Robert P. Gemberling on August 26, 1980, in which he rejected Gemberling's request for a transcript of his testimony be-

fore the HSCA, stating ". . . this Congressional Committee is no longer is (sic) existence and therefore, I have no authority to act as Chairman of a now default (sic) Congressional Committee." Exhibit 7. Stokes also explained that Gemberling's request for this Congressional record had not been presented to "the full Committee and authorized by them." (emphasis added) Id.

At the close of the 95th Congress, the Clerk of the House of Representatives became the legal custodian of the HSCA's records. See Exhibit 8, Legislative Reorganization Act of 1946, §§ 140(a), and Exhibit 9, House Rule XXVI. The Clerk took no action to assert control over HSCA-related records in the possession of the CIA prior to the date of Allen's FOIA requests. He did, however, send copies of the Committee's records to the National Archives, where, pursuant to H.R. Rule XXXVI, they remain under seal for 50 years.

In summary, Congressman Stokes lacked authority to assert control over the CIA's HSCA-related records at the time he wrote his March 26, 1979, letter to the Director of Central Intelligence, and the Clerk of the House failed to assert such control until after Allen's FOIA request had been received. Thus, if Congress ever had an assertable exemption for these materials, it lost it. As the Court of Appeals said in Holy Spirit:

> Thus, Congress can assert its exemption from the FOIA; it can also reassert the exemption. But the exemption can be lost if there is a request for documents at a time when Congress has not designated the documents as falling within congressional control.

205 U.S.App.D.C. at 94, 636 F.2d at 841.

3. The Memorandum of Agreement (MOA)

On April 27, 1979, the Select Committee's former Chief Counsel and Staff Director, Mr. G. Robert Blakey, visited CIA Headquarters, purportedly "to designate that portion of Agency held materials to be sequestered." Exhibit 1. According to the CIA's memorandum on

this visit, Blakey described the Agency-HSCA record as comprising three general categories of material:

> Category 1a: Classified materials, from Agency holdings, requested by the HSCA, which HSCA staff members reviewed in Agency Headquarters.
>
> Category 1b: Classified material, from Agency holdings, requested by the HSCA, which staff members had not reviewed (for one reason or another).
>
> Category 2: Material generated by the HSCA from Agency classified holdings made available to the HSCA in response to the latter's request.
>
> Category 3: Classified correspondence exchanged between this Agency and the HSCA.

Blakey is said by the CIA to have stated that he considered the materials in Category 2 to be the property of the HSCA, but he apparently made no such claim with respect to the other categories. He did inidcate that he wanted all three categories of materials sequestered, and he suggested that the CIA prepare a memorandum or letter of agreement which would set forth its proposal as to the handling of the material to be sequestered. His signature on this document would denote his agreement.

There is no evidence that Blakey had any authority to make such a designation. If Stokes could not make an effective designation on March 26, 1979, as argued above, then it follows a fortiori that Blakey could not do so on April 27, 1979. The HSCA was out of existence as of January 3, 1979, and it had failed to make such a designation "[p]rior to its termination" as required by the MOU. Moreover, although the CIA did draw up a proposed MOA, it concedes that it "has found no record that any final designation agreement actually was entered into. Only a proposed draft letter, neither signed by the CIA nor acknowledged by Mr. Blakey, was found." (emphasis added) Affidavit of J. William Doswell, ¶7, n. 6.

In short, no MOA was entered into, hence no designation was made and there was no legal obligation on the part of the CIA to do

anything. The CIA's claims that Congress has a veto over public disclosure of the records contained in its compilation of HSCA-related materials (Doswell Affidavit, ¶15), and that CIA employees are denied access to copies of the CIA-originated records in said compilation (Doswell Affidavit, ¶11), are baseless. The CIA is simply trying to hide agency records subject to FOIA behind a smoke-screen. This it cannot be allowed to do.

4. Internal Memoranda

Finally, it must be noted that nothing in the record indicates that the CIA's internal memoranda regarding HSCA were ever designated, or intended to be designated, as part of the CIA's compilation of HSCA-related records. Such memoranda are by definition "agency records" and must be released pursuant to Allen's requests.

II. THE CIA'S COMPILATION AND THE DIA'S HSCA RECORDS ARE NOT PROTECTED BY EXEMPTION 5

Defendants argue that even if the Court finds that parts of the CIA's compilation were "agency records," these records and the responsive DIA records would still be beyond the scope of the FOIA. Defendants' Memorandum at 14. In support of their argument that the "deliberative process" privilge is at stake here, defendants allude throughout their brief to the "sensitive" nature of the HSCA probe and the need for confidentiality concerning it. But the HSCA's own Report contradicts such claims, stating:

> The committee determined, therefore, that despite the potential dangers and risks inherent in its analysis of some of the issues it had identified to fulfill its mandate, an analysis and the public disclosure of all the facts relating to the four issues was necessary to fulfill its legislating functions under the Constitution. Further, the committee determined that an analysis and disclosure of the facts relating to each issue was also necessary to fulfill its constitutional informing responsibilities. (emphasis added)

HSCA Report, p. 17. Exhibit 8.

Nor did publication of the HSCA's Report and hearing volumes accomplish the Committee's disclosure aims. As the Committee's former Chief Counsel explained in an affidavit submitted in another case:

> The Committee was not able to publish everything it wanted to publish or which was relevant to the President's assassination, as it ran out of time and appropriations.

Affidavit of G. Robert Blakey, ¶4, executed February 15, 1982, and filed in Allen v. Federal Bureau of Investigations, et al., Civil Action No. 81-1206. Exhibit 9.

Thus, defendants' Exemption 5 argument proceeds on the basis of flawed premises. In addition, for reasons stated below, the law simply does not support their Exemption 5 claim.

A. Exemption 5 Does Not Apply to Communications Exchanged Between Congress and an Agency

The Freedom of Information Act, 5 U.S.C. § 552(b)(5) provides as follows:

> (b) This section does not apply to matters that are--
>
> (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

Defendants argue that "[l]ike the CIA's compilation, the DIA records were used in the deliberative process between these agencies and Congress."[4/] Memorandum at 14. Thus they seek to raise as

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4/ Insofar as the "deliberative process" privilege is concerned, none of the affidavits submitted by defendants complies with the requirement of Federal Rule of Civil Procedure 56(e) that such affidavits be made on personal knowledge. That is, none of the affiants states his personal knowledge that the records at issue reflect "deliberations."

to raise as a threshold issue the claim that Exemption 5 bars release to all records in agency files pertaining to the HSCA investigation, including not only all communications between the agency and Congress but also all pre-existing agency records which the agency furnishes Congress or allows it to review.

The first objection to defendants' argument is that Exemption 5 is intended to protect agency deliberations, not Congressional deliberations. Moreover, 5 U.S.C. § 552(1) expressly defines "agency" so as to exclude Congress from its meaning. At least two courts have held that Exemption 5 does not apply to communications between Congress and an administrative agency. In Agee v. CIA, 2 GDS ¶81364 (D.D.C. 1981), Judge Gerhard Gesell ruled that Exemption 5 did not apply to five communications between various congressional entities and the CIA which originated from Congress "since Congress is not an agency within the terms of the statute."[5/] Another court considered the applicability of Exemption 5 to records which the CIA prepared in response to specific questions from the Church Committee and concluded that it did not apply. Like Judge Gesell, this court relied on the fact that Congress is not an agency for FOIA purposes.

In support of their argument defendants advert to dicta in the opinion of Judge Aubrey Robinson, Jr. in Canadian Javelin v. SEC, 501 F. Supp. 898, 903, n. 6 (D.D.C. 1980), which states:

> The definition of "agency" in 5 U.S.C. §§551(1) and 552(e)(1976) defines the jurisdictional scope of FOIA not the scope of Exemption 3.

But the definitions provided in § 551 are "for the purpose of this subchapter." In Federal Open Market Committee v. Merrill, 443 U.S.

5/ Because Judge Gesell found that communications between congressional entities and the CIA which originated with the CIA were protected independently under Exemptions 1 and 3, he did not reach the question of whether they were also protected under Exemption 5.

340, 342 (1979), the United States Supreme Court relied on the definition of agency in §§ 551(1) and 552(e) to determine that Exemption 5 applied to the documents at issue there.

Furthermore, even if §§ 551(1) and 552(e) do not define "agency" for Exemption 5 purposes, it does not automatically follow that Congress therefore comes within its purview. It is a familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Consumer Product Safety Comm'n v. GTE Sylvania, 447 U.S. 102, 108 (1980). Here the plain meaning of "agency" is "an administrative division of government with specific functions." Webster's New Twentieth Century Dictionary (unabridged)(2nd ed. 1975)(emphasis added). As thus defined, Congress is not an "agency."

The legislative history of Exemption 5 also makes it clear that Congress was concerned with protecting the communications of administrative agencies, not Congress. See, e.g., H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966). The legislative history of Exemption 5 is devoid of any reference to the protection of congressional communications under its aegis.[6/]

B. Exemption 5 Does Not Apply to These Records Under the Ryan Test

In Ryan v. Department of Justice, 199 U.S.App.D.C. 199, 208, 617 F.2d 78, 790 (1980), the United States Court of Appeals for the District of Columbia construed the phrase "intra-agency memorandums" in the context of deciding whether it applied to "memoranda which were created by someone outside the executive branch but in response to an initiative from the executive branch." It held:

> When an agency record is submitted by outside
> submitted by outside consultants as part of

> the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an "intra-agency memorandum for purposes of determining the applicability of Exemption 5. (emphasis added)

Id.

Thus, when the Ryan Court extended Exemption 5 protection to records solicited from indidual Senators to the Justice Department, it errected a triple barrier. In order for Exemption 5 to apply to materials submitted from outside the agency, the records must be: (1) solicited by the agency; (2) submitted by outside consultants; (3) as part of the deliberative process.

This case does not surmount the first hurdle set up by Ryan. The records in question were not solicited by the CIA. Indeed, it was the CIA which made them available to Congress. Nor can the records at issue be fairly characterized as policy advice submitted by outside consultants. Most of the records pre-existed the HSCA investigation by many years. These certainly did not deal with policy advice exchanged between the CIA and Congress. Because of the investigative nature of the HSCA probe, it seems likely that most, if not all, of the records generated at the time of the HSCA probe were of an investigative nature and did not concern policy matters.

C. Even Assuming Documents Reflecting the Deliberative Process Are At Issue, Exemption 5 May Not Apply

Exemption 5 protects only those memoranda which would not normally be discoverable in civil litigation against an agency. 5 U.S.C. § 552(b)(5)(1976). Consequently, the courts have long held that it does not protect "purely factual material appearing in . . . documents in a form that is severable without compromising the private remainder of the documents." EPA v. Mink, 410 U.S. 73, 91 (1973). Even when a document may be an agency memorandum which

reflects the deliberative process, factual segments are disclosable unless the manner of selecting or presenting those facts would reveal the deliberative process, or if the facts are "inextricably intertwined" with the policy-making process. Ryan, supra, 199 U.S. App.D.C. at 208, 617 F.2d at 790.

Defendants attempt to get around this issue by arguing that Allen "has not requested the factual portion of this material--i.e., the 'facts' concerning the Kennedy assassination; he has requested those 'facts' which disclose the nature of the inquiry performed by the [HSCA]." Defendants' Memorandum at 17.

In response it must said, first, that Allen's request is for all the records to which the HSCA had access. This includes the "facts" concerning the Kennedy assassination. Second, in requesting access to and copies of CIA records, the HSCA was investigating the facts pertaining to the Kennedy assassination of the CIA's investigation of it; it was not engaging in a general way in what fairly can be characterized as policy deliberations. See Playboy Enterprises, Inc. v. Department of Justice, 677 F.2d 931, 935 (D.C. Cir. 1982)(report of Justice Department task force for the most part neither revealed the deliberative process engaged in by the task force nor was it intertwined with the policy-making process of the decision-maker--the Attorney General--where the only mission of the task force was to investigate the facts surrounding certain events). Consequently, providing Allen with these records will not ipso facto reveal the deliberative process of either the HSCA or the CIA.

Defendants argue that this case is comparable to the situation in Montrose Chemical Corp. v. Train, where the court held that case summaries prepared for the sole purpose of assisting the Administrator to make a complex decision in an adjudicatory proceeding were Exemption 5 material despite their "factual" character because

disclosing them would, of necessity, disclose the "mental processes" of the decision-maker. It is not. Allen does not seek "summaries" of the facts but the facts contained in the records themselves. The HSCA investigation was not an adjudicatory proceeding. Montrose is expressly limited to the "bar against probing the mental processes of an executive branch decision maker . . . ." (emphasis added) 491 F.2d at 69. Moreover, unlike Montrose, the materials sought by Allen do not of themselves reveal what "the decision-maker" considered significant in reaching a proper decision, nor "how the decision-maker evaluated those materials." See Playboy, supra, 677 F.2d at 936.

D. Defendants' Policy Arguments Are Not Grounds For Invoking Exemption 5

Defendants also argue that there are policy reasons which favor including all records sought by Allen within the protection of Exemption 5. Indeed, defendants invoke the "public policy which encourages broad congressional access to governmental information" cited in Murphy v. Dept. of Army, 198 U.S.App.D.C. 418, 613 F.2d 1151 (1979) to justify withholding these records either on the ground that they are congressional records or that they are agency records protected by Exemption 5. Defendants' Memorandum at 12, 16.

However, since Congress can always grant subpoena power to its committees, this reason does not apply to the circumstances presented by this case.

Defendants also cite Murphy's holding that documents do not lose their "intra-agency" character merely because they were shown to Congress, and they note that the court said that to hold otherwise would inevitably make agencies "more cautious in furnishing sensitive information to the legislative branch" in violation of the above-cited public policy favoring broad congressional access

to government information. Defendants' Memorandum at 16.

But Allen does not contend that disclosure to Congress waives the exempt status of agency records, as the plaintiff did in Murphy. He simply contends that agency records provided to Congress are not per se covered by Exemption 5. The agencies are, of course, free to assert whatever exemptions may apply to individual documents or portions thereof.

In contending that making the documents sought by Allen available under FOIA would violate the public policy favoring broad congressional access to governmental information and "seriously encroach upon Congress' purview over its own investigations, defendants assert that [i]t is inconceivable that Congress intended the FOIA to have this effect." For this speculative assertion defendants cite Washington Post Co. v. Dept. of State, 501 F. Supp. 1152, 1157 (D.D.C. 1980).

However, this decision has since been reversed by the Court of Appeals. In making it clear that policy grounds cannot be substituted for exemptions, the Court took note of the fact that Congress had overriden the decision of the Supreme Court in Administrator, FAA v. Robertson, 422 U.S. 255 (1975), stating:

> The subsequent--and professedly responsive--action by Congress to amend Exemption 3 to "eliminate the gap created in the Freedom of Information Act by the Robertson case," . . . emphatically demonstrated Congress's intent that FOIA must be taken to be something more than an ordinary statute, namely, the definitive word on disclosure of the information in the Government's possession covered by it. * * * Other legislation, its history, and powers of Congress underlying it are not to be ignored, but are to be taken as justifying refusal to disclose only when they meet the strictures of one of the specific exemptions included in FOIA. Consequently, when the District Court went beyond its determination that the material did not fall within the relevant FOIA exemption, and asked whether Congress had the power to prevent disclsoure and had in fact exercised such power in the past, it asked a question an affirmative answer to which could not foreclose appellant's right to disclosure.

Washington Post Co. v. Dept. of State, 110 D.W.L.R. 2117 (September 21, 1982).

Although the Washington Post case arose in the context of Exemption 3, another Court reached the same result when pondering Exemption 5. In the latter case, County of Madison, N.Y. v. U.S. Dept. of Justice, 641 F.2d 1036 (1st Cir. 1981), the plaintiff sought copies of all documents regarding tentative settlement negotiations engaged in between the Oneida Indian Nation, which had sued the County of Madison in the Court of Claims, and the United States. The United States conceded that since lawyers for the Oneidas are not government agencies, documents submitted by them to the Department of Justice (letters proposing and discussing settlement) were not literally inter- or intra-agency letters. However, it proposed that the Court rely on cases which protect communications from outside consultants that an agency calls upon to assist it in internal decision-making. (E.g., Ryan v. Department of Justice, supra) As the Court of Appeals noted:

> It would have us focus no so much upon exemption five's "intra-agency" language as on the extent to which government settlement negotiations will be hampered if correspondence regarding such negotiations [is] not found to be within the exemption.

641 F.2d at 1040.

Although "sympathetic to the logic and force of this policy plea," the Court of Appeals rejected it. Noting the FOIA's legislative history, and that courts had repeatedly stated that uncertainties in FOIA's language are to be construed in favor of disclosure and that its exemptions are to be read narrowly, it held:

> We threfore feel particularly constrained to require that sound policy arguments, however appealing, be grounded in a reading of statutory language that fairly reconciles rather than ignores the FOIA's phrasing. We perceive of no way, however, to describe the Oneidas' laywers as "intra-agency"--that is to say "within the Department of Justice--that

> does not simply omit the term "intra-agency" from the Act in pursuit of policy ends.[6/]

641 F.2d at 1040.

Having failed to demonstrate entitlement to Exemption 5 as a threshold matter, defendants cannot avail themselves of policy arguments to withhold all the materials sought by Allen.

E. If Exemption 5 Applies, Congress Has Waived It

The effect of disclosure of agency records by Congress is, of course, different from the effect of the disclosure of such records to Congress. Disclosure by Congress may waive the exempt status of agency records. Murphy, supra, 198 U.S.App.D.C. 426, 613 F.2d at 1159.

Note must be taken of the fact that the HSCA issued a Report and 12 volumes of hearings on its JFK assassination probe which quote, excerpt, summarize and cite countless agency documents, including some which originated with the CIA. If Congress is an

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6/ The court distinguished the case before it from Ryan, supra, and Wu v. National Endowment for Humanities, 460 F.2d 1030 (5th Cir. 1972), cert. denied, 410 U.S. 926 (1973), stating:

> Both go beyond the simplest measure of who is "within" an agency: the payroll. But in each case the agency contacted nonpayroll individuals to obtain information for the benefit of the agency. *** Although these cases leave literalness behind, they do describe situations similar to the "advice from staff assistants and exchange of ideas among agency personnel" that forms the object of exemption five. *** In this case, by contrast, the Oneidas approached the government with their own interest in mind. While they came to parley, they were past and potential adversaries, not coopted colleagues.

641 F.2d at 1040. This distinction applies equally to this case, where the agencies were approached by Congress, an independent branch of government exercising oversight responsibilities which "might discredit an investigation conducted by federal law enforcement and intelligence agencies . . . ." Defendants' Memorandum at 3.

an agency within the meaning of Exemption 5, as defendants urge, then incorporation of these materials in the HSCA volumes results in a loss of their Exemption 5 status and they must be disclosed. American Mail Line, Ltd. v. Gulick, 133 U.S.App.D.C. 382, 411 F.2d 696, 703 (1969).

III. THE CIA'S COMPILATION OF DOCUMENTS IS "IMPROPERLY WITHHELD" UNDER FOIA

Defendants also argue that even if parts of the collection of documents held by the CIA are agency records, the FOIA would not provide a basis for Allen's requests. This claim is founded on GTE Sylvania, Inc. v. Consumer's Union of the United States, Inc., 445 U.S. 375 (1980), in which the Supreme Court held that records were not being "improperly withheld" within the meaning of 5 U.S.C. § 552(a)(4)(B) where a court order prohibited the agency from disclosing them.

This case is inapposite. To begin with, there has been no court order forbiding the CIA from releasing these records. Indeed, as has been pointed out above, the Memorandum of Understanding between the CIA and the HSCA concerns only access to and preservation of agency records, not denial of public access under FOIA, and the Memorandum of Agreement was never entered into. Thus, the CIA's claim that it cannot release the records because it must coply with its agreement with Congress is baseless. There is no such agreement.

Defendants' argument that Congress has a right to protect its own documents is of no avail because, as has been shown above, most of the records at issue are not now, and never have been, Congressional documents. Furthermore, those which may have been Congressional records lost that status when Congress failed to protect it.

If the records at issue in this case are "agency records," as Allen maintains, and if Exemption 5 does not apply as a threshold

matter, as Allen has demonstrated above, then the CIA is improperly withholding records in violation of the Freedom of Information Act.

CONCLUSION

For the reasons set forth above, defendants' motion for summary judgment should be denied.

Respectfully submitted,

JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of October, 1982, mailed a copy of the foregoing Opposition to Defendants' Motion for Summary Judgment to Mr. Stephen E. Hart, Esq., U.S. Department of Justice, Room 3744, Washington, D.C. 20530, and Mr. Stanley M. Brand, General Counsel to the Clerk, U.S. House of Representatives, H-105 The Capitol, Washington, D.C. 20515.

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 81-2543
	:	
DEPARTMENT OF DEFENSE, et al.,	:	
	:	
Defendants	:	

O R D E R

Upon consideration of defendants' motion for summary judgment, plaintiff's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1982, hereby

ORDERED that defendants' motion for summary judgment be DENIED; and it is further

ORDERED that defendants shall forthwith commence releasing all records responsive to plaintiff's request on a weekly basis as they are proceesed.

_____
UNITED STATES DISTRICT JUDGE

Exhibit 1

Civil Action No. 81-2543

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☐ CONFIDENTIAL ☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:	EXTENSION	NO.
		DATE: 23 May 1979

TO: (Building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1.				The attached memo is
2.				the result of conversations
3.				with Blakey on 27 April 197
4.				and are not to be considere
5.				a commitment on the Agency'
6.				part to Blakey.
7.				Para 3, Category 1b -- I do
8.				not see any reason for
9.				photographing those docume
10.				under category 1b. We have
11.				a card file intex of that
12.				material which they have no
13.				seen which should be
14.				sufficient.
15.				Para 5, MOA -- I have
				attached a draft of a lette
				to Blakey setting forth the
				Agency's roposal as to the
				sequestering of documents
				requested by Blakey. I
				prepared this draft
				memorandum and checked it
				out with OGC. This is
				merely a suggested form
				of a letter to Blakey.

Exhibit # 6

FORM 610 USE PREVIOUS ☐ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED

27 April 1979

MEMORANDUM FOR THE RECORD

SUBJECT: G. Robert Blakey's Visit to CIA Headquarters on 27 April 1979

Participants:

1. On 27 April 1979, Mr. G. Robert Blakey, Chief Counsel and Staff Director of the House Select Committee on Assassinations (HSCA), visited CIA Headquarters. The purpose of his visit was two-fold: (a) to examine Agency held material requested by the HSCA in conjunction with its investigation into the assassination of President John F. Kennedy; and (b) to designate that portion of Agency held material to be sequestered.

2. Mr. Blakey examined only that material held . He apparently did not go elsewhere within the Agency, to examine their holdings. He stayed for about an hour; however, he spent only twenty or thirty minutes discussing and examining the contents of some fifteen safes of Agency material held in . A recapitulation of his remarks follows.

3. Categories of material to be sequestered: Mr. Blakey described the Agency-HSCA record as comprising three general categories of material.

Category 1a: Classified material, from Agency holdings, requested by the HSCA, which HSCA staff members reviewed in Agency Headquarters. [Comment: Files reviewed by HSCA staff members fill nine four-drawer safes. The files include the Lee Harvey OSWALD 201, which fills two four-drawer safes. OSWALD's 201 file was not completely reviewed by HSCA staff members.]

Category 1b: Classified material, from Agency holdings, requested by the HSCA, which staff members had not reviewed (for one reason or another). [Comment: Files not reviewed by HSCA staff members fill almost four four-drawer safes. An inventory in the form of an index card file of files not reviewed as well as of files reviewed by the HSCA is available.]

Category 2: Material generated by the HSCA from Agency classified holdings made available to the HSCA in response to the latter's request. NB: 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 Freedom of Information Act. [Comment: This material fills almost two four-drawer safes. An inventory has been completed of the material turned over to the Agency by the HSCA.]

Category 3: Classified correspondence exchanged between this Agency and the HSCA. [Comment: Classified correspondence includes all classified letters exchanged with the HSCA, errata sheets (pointing out inaccurate quotations, document citations, etc., in HSCA draft reports -- classified and unclassified), copies of letters, supporting documents (or copies of documents passed to the HSCA for use in executive sessions or obtaining depositions from Agency employees, either retired or presently employed, and logs held in OLC Registry, as well as in other Agency components, [redacted]. Mr. Blakey was quite concerned that copies of errata sheets (prepared primarily by DO) should not become part of the public record.]

4. Categories of material to be destroyed: Of that material turned over by the HSCA to the CIA, Mr. Blakey stated that the following types of material could be destroyed: Typewriter ribbons, stenographic notes, and cassettes (recordings of interviews, depositions, etc.). He asked that miscellaneous drafts and notes (Unclassified) based upon Agency material should be held with other Category 2 material.

5. Memorandum of Agreement: Mr. Blakey suggested that the Agency prepare a memorandum (or letter) of agreement which would set forth, in general terms, the Agency's proposal as to the handling of the material to be sequestered. His signature on the memorandum (or letter) would denote his agreement.

6. Mr. Blakey was told that in order to carry out HSCA's desire that the three categories of material be held in sealed and sequestered storage, the Agency proposed to make a photographic record of each official Agency document made available to the HSCA in response to the latter's specific request. [Comment: It would not be necessary to photograph copies of specific documents which had already been copied by Xerox or

other means before being made available to the HSCA for its review. Copies already made could be included in the Agency-HSCA record, thus saving the Agency some time and money.]

7. Upon completion of the task of photographing Agency held documents, the film of Categories 1a and 1b (excluding those documents already copied by Xerox or other means), HSCA generated materials (Category 2), and Agency-HSCA correspondence (Category 3) including all material (or copies thereof) held in [redacted] will be prepared for sequestered storage. Such material will be sealed and either turned over to the Archivist of the United States or held in Agency Archives. In either case, access to this material will be allowed only after fifty years, according to Mr. BLakey, or to Members of Congress acting in an official capacity.

8. A draft memorandum setting forth in general terms the categories mentioned above and the Agency's tentative proposal has been forwarded to the Office of General Counsel. Inasmuch as other Agency components are involved, the OGC will consult with those components at a later date.

9. Added Note: Mr. Blakey informed the undersigned that he was passing the HSCA reports to the GPO in three days which would mean 30 April and indicated further that the galley proofs would possibly not be available for at least three weeks, possibly more. Since he will, according to his own statements, read the proofs before they are sent to the Agency, we can possibly expect the galley proofs sometime in early June.

Distribution:
Orig -
1 -
1 -
1 -
1 -
1 -
1 -
1 -

Dear Mr. Blakey:

The purpose of this letter is to set forth, in general terms, the Agency's proposal as to the disposition of three categories of material related to the investigation by the House Select Committee on Assassinations (HSCA) into the death of President John F. Kennedy. Your signature on this letter will indicate your agreement with the Agency's proposal.

The three categories of material to be addressed are as follows:

a. Category 1a: Classified material from Agency holdings, requested by the HSCA, which HSCA staff members reviewed.

Category 1b: Classified material from Agency holdings, requested by the HSCA, but which HSCA staff members did not review.

b. Category 2: Material generated by the HSCA from Agency classified holdings made available to the HSCA in response to the latter's request. (NOTE: This HSCA material is considered by the HSCA as its property and therefore not releasable to the public under the Freedom of Information Act. An inventory of this material received from HSCA has been completed.

c. Category 3: Classified correspondence exchanged between this Agency and the HSCA.

The HSCA has indicated its desire that copies of these three categories of material be held in sealed and segregated storage to ensure the preservation of all relevant records pertaining to the phase of the investigation involving this Agency. In order to accommodate the HSCA, but also leave its own records accessible for routine purposes, the Agency proposes that a photographic copy be made of each official Agency document made available in response to a specific request by the HSCA (Category 1a and 1b).

Upon completion of the task of photographing the Category 1a and 1b documents, those copies (Category 1), the HSCA generated materials based upon Agency material (Category 2), and classified Agency-HSCA correspondence,

(Category 3), will be sealed and held in segregated storage, by the Agency, in accordance with schedules established by the Archivist ~~of the Archives~~ of the United States.

Fred Hitz

G. Robert Blakey

Exhibit 2 Civil Action No. 81-2543

And finally, because the quantity of documents and files which will be obtained pursuant to this Agreement will greatly exceed that anticipated when our Memorandum of Understanding was signed, I have been authorized by the Committee to, and do hereby, amend the original Memorandum of Understanding by substituting the following for the first sentence of Paragraph VI B:

> Prior to its termination, the Committee will identify to the C.I.A. those documents which are to be made part of the permanent records of the C.I.A. under records schedules approved by the Archivist of the United States, which control the disposal of all Agency records. In view of the large volume of material, it is agreed that physical segregation of the material will not be required in all cases. The Committee will designate those materials provided by C.I.A. and examined by the Committee that are to be kept and preserved within a segregated and secure area within C.I.A. for at least thirty (30) years unless the D.C.I. and the House of Representatives agree to a shorter period of time.

If you agree with the procedures set forth above and the Amendment to the Memorandum Of Understanding that we have discussed with representatives of your Agency, would you please acknowledge your approval by return letter.

I wish to thank you and those on your staff who are making this effort to facilitate the Select Committee's access to information and to enhance the efficiency and integrity of the Select Committee's investigation.

Sincerely,

[signature]

Louis Stokes
Chairman

LS:ger

Copy to: Mr. Patrick H. Carpentier
Assistant Legislative Counsel
Central Intelligence Agency
Washington, D. C. 20505

LOUIS STOKES, OHIO, CHAIRMAN
[illegible]
(202) [illegible]

Select Committee on Assassinations
U.S. House of Representatives
[illegible] HOUSE OFFICE BUILDING, ANNEX 2
WASHINGTON, D.C. 20515

March 26, 1979

Admiral Stansfield Turner
Director of Central Intelligence
Central Intelligence Agency
Washington, D. C. 20505

Dear Admiral Turner:

As you are aware, H. Res. 222, as passed by the House of Representatives on February 2, 1977, authorized the Select Committee on Assassinations to investigate the deaths of Dr. Martin Luther King, Jr. and President John F. Kennedy. The Committee's work is now drawing to an end. I write this letter to draw to your attention a matter that I recognize will inevitably come up in the future.

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 to the Committee not be disclosed outside your Agency without the written concurrence of the House of Representatives.

Sincerely,

LOUIS STOKES
Chairman

LS:dm

Exhibit # 5

Exhibit 4 Civil Action No. 81-2543

urge you to take a long, hard look at this legislation and assist me in my efforts to amend the Antidumping Act of 1921 in a constructive manner.

Thank you, Mr. Speaker, for allowing me to address this serious, pressing problem.

☐ 1115
TO PROVIDE LOW INTEREST RATES ON SBA DISASTER LOANS

(Mr. BADHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BADHAM. Mr. Speaker and Members of the House, I introduced on the beginning day of this session, on Monday, January 15, 1979, H.R. 114. H.R. 114 would embody section 113, title I, of H.R. 11445 of the 95th Congress which was passed by both Houses but which was pocket-vetoed by the President on October 25, 1978.

My bill, H.R. 2114—which I encourage the cosponsorship and support of by all of the Members of this body—would allow section 113 to be enacted into law. This section dictates a 3-percent interest rate on the first $55,000 and the cost of money to the Government in excess of that amount for disaster loans to people who have suffered as a result of a Presidential or SBA-declared disaster, and a 5-percent interest rate on the first $250,000 with the cost of money in excess for a business affected by a disaster.

Since the October veto by the President of the United States we have had two disasters in California and there have been disasters in Louisiana, Kentucky, West Virginia, and Arizona. Once again, I urge the support of all of the Members for this legislation and ask for their cosponsorship so that the victims of these disasters in areas throughout the United States might be recompensed by the U.S. Government.

MAKING THE 96th CONGRESS AN OVERSIGHT CONGRESS

(Mr. SHUSTER asked and was given permission to address the House for 1 mintue and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, today I have introduced a sense of the House resolution which will make the 96th Congress an "oversight Congress." This resolution which I introduced in the House Republican conference was unanimously adopted by House Republicans. Therefore, it is now up to the majority party in this body to determine whether this issue will again be put on the "back burner" or whether it will, at long last, receive positive action. This should not be a partisan matter. Not one of us sitting here today can fail to hear the message from American citizens and taxpayers across the country. It comes through loud and clear. They are demanding we strip away the layers of waste, inefficiency, bureaucracy and redtape that have grown like barnacles on the hull of our Ship of State. With runaway inflation, one of the highest tax burdens in our Nation's history, and reckless Government spending, the time has long since passed for the Congress to begin to take its oversight responsibility more seriously. I urge and challenge the Democrat majority in the House to join with Republicans in adopting this resolution.

The American people are crying out for a tighter, leaner, more efficient and cost-effective Government. There is a virtual taxpayers' revolution in our country. The present Democrat administration has given much lipservice to "streamlining the bureaucracy." As he campaigned for the Presidency, President Carter promised time and time again to fight waste and inefficiency in Washington. He devoted hours of political rhetoric against what Mr. Carter called the "horrible bureaucratic mess in Washington." This resolution gives the Democrats the opportunity to turn that rhetoric into reality. The American people are watching and waiting to see whether it is done.

LEARNING LANGUAGES

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, to judge from President Carter's remarks about inflation yesterday, he has secretly been taking language lessons. He is learning, however, haltingly, to talk Republican.

He said that the best thing he can do for the poor is to fight inflation. This is an old Republican proverb and it was pleasant to hear the President say these words even though he seemed obviously uncomfortable saying them.

During his election he was speaking differently, talking about multibillion-dollar inflationary "full employment" programs and other economically ruinous schemes.

But, as he himself said on September 24, 1976, "Economics is a very complicated business. Not many people understand it." It is now clear he was referring to himself and to all other political figures spouting the same line.

(Mr. FINDLEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

PERSONAL EXPLANATION

Mr. COURTER. Mr. Speaker, on rollcall No. 3, the vote on the previous question on adopting the House rules for the 96th Congress, I am recorded as not voting. I was present and voted "no."

Mr. Speaker, I ask that my statement appear in the permanent Record immediately following the vote on the previous question, rollcall No. 3.

PROVIDING FOR PAYMENT OF GRATUITY TO MRS. JANET D. STEIGER, WIFE OF LATE HON. WILLIAM A. STEIGER

Mr. THOMPSON. Mr. Speaker, I send to the desk a resolution (H. Res. 46), relating to the payment of a gratuity to the wife of the late William A. Steiger and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 46

Resolved, That there shall be paid out of the contingent fund of the House a sum equal to the annual compensation of a Representative in Congress as a gratuity to Janet D. Steiger, wife of the Honorable William A. Steiger, late a Representative from the State of Wisconsin.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER. The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, the resolution, as is the one following, is self-explanatory.

Rather than delaying the payment of this entitlement until next summer, when the supplemental appropriation bill is enacted, the resolution provides for the immediate payment of the gratuity.

The resolution is identical to resolutions adopted in the House in October of 1978, covering gratuity payments to the survivors of late Representatives Goodloe Byron and Ralph Metcalfe.

The minority has agreed to this provision; and I urge the immediate adoption of the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

☐ 1125
PROVIDING FOR PAYMENT OF GRATUITY TO THE CHILDREN OF THE LATE REPRESENTATIVE LEO J. RYAN

Mr. THOMPSON. Mr. Speaker, I send to the desk a resolution (H. Res. 47), relating to the payment of a gratuity to the children of the late Representative Leo J. Ryan, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. Res. 47

Resolved, That there shall be paid out of the contingent fund of the House a sum equal to the annual compensation of a Representative in Congress as a gratuity to Shannon J. Ryan, Patricia E. Ryan, Erin M. Ryan, Kevin L. Ryan, and Christopher R. Ryan, children of the Honorable Leo J. Ryan, late a Representative from the State of California. Such gratuity shall be divided equally among the children named in the preceding sentence.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING FUNDS FOR THE STANDING AND SELECT COMMITTEES OF THE HOUSE OF REPRESENTATIVES

Mr. THOMPSON. Mr. Speaker, I send to the desk a resolution (H. Res. 49) authorizing funds for the standing and select committees of the House of

Representatives, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 49

Resolved, That (a) there shall be paid out of the contingent fund of the House, in accordance with subsection (b), for the period beginning January 3, 1979, and ending March 31, 1979, such sums as may be necessary for the continuance of necessary projects, activities, operations, and services, by contract or otherwise, including payment of staff salaries for services performed, by each standing or select committee established in the Rules of the House.

(b) Each committee referred to in subsection (a) shall be entitled, for each month during the period specified in subsection (a), to payments out of the contingent fund of the House in amounts equal to one-twelfth of the total amount authorized for use by such committee during the second session of the Ninety-fifth Congress.

Sec. 2. (a) Except as provided in subsection (b), in the case of any former select committee of the House—

(1) which was established by resolution during the Ninety-fifth Congress; and

(2) for which a reestablishing resolution is introduced in the Ninety-sixth Congress;

such committee shall be entitled, for each month during the period specified in subsection (a) of the first section, to payments out of the contingent fund of the House, for the purposes specified in subsection (a) of the first section, in amounts equal to one-twelfth of the total amount authorized for use by such committee during the second session of the Ninety-fifth Congress.

(b) In the case of the former Select Committee on Assassinations, the unexpected balance of funds for the operation of such committee during the second session of the Ninety-fifth Congress shall be available to the Clerk of the House for the purpose of completing the final report of such committee not later than March 31, 1979. The Clerk is authorized to employ such persons as may be necessary and to expend the funds referred to in the previous sentence for completion of the report. Representative Louis Stokes is authorized to exercise the authority of the former select committee with respect to the handling of classified materials relating to the operations of such committee.

Sec. 3. The entitlement of any standing or select committee of the House to payments under this resolution shall cease on the effective date of the primary expense resolution adopted with respect to such committee.

Sec. 4. Funds authorized by this resolution shall be expended pursuant to rules and regulations promulgated by the Committee on House Administration.

Sec. 5. Notwithstanding any provision of law, Rule of the House, or other authority, from January 3, 1979, until the election of the chairman of the committee involved in the Ninety-sixth Congress—

(1) the Member of the House who was chairman of a committee of the House which was in existence at the close of the Ninety-fifth Congress (if such Member is a Member of the House in the Ninety-sixth Congress); or

(2) in any other case, the ranking majority party member of such committee who was serving on such committee at the close of the Ninety-fifth Congress (and is a Member of the House in the Ninety-sixth Congress);

may approve payments under this resolution under rules and regulations promulgated by the Committee on House Administration.

Mr. THOMPSON (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

Mr. BAUMAN. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Alabama (Mr. DICKINSON).

Mr. DICKINSON. I thank the gentleman for yielding.

I would just like to clear up for the record—and I am sure the membership in general would be interested to learn—what this will do as far as the Select Committee on Assassinations is concerned and what unexpended funds they might have, and what this will enable them to do. As the gentleman well knows, there is firm agreement by all concerned that the committee died at the end of the last Congress. Will the gentleman enlighten us?

Mr. THOMPSON. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New Jersey.

Mr. THOMPSON. I thank the gentleman for yielding. If the gentleman will agree to the unanimous consent request, I am prepared to explain the resolution and to answer the questions the gentleman raised.

Mr. Speaker, section 1 of the resolution will authorize each standing committee of the House, and the two permanent select committees established in the rules of the House, to expend necessary moneys from the contingent fund until the House is able to adopt primary expense resolutions covering such committees, or until March 31, 1979.

Section 2 is broken down into two paragraphs; Paragraph (a) provides the basis for authorizing the former select committees of the 95th Congress, with the exception of the former Select Committee on Assassinations which is dealt with in paragraph (b), to expend moneys from the contingent fund until the committees are reconstituted and funded by resolution, or until March 31, 1979. There are six former select committees which would be covered by the language in paragraph (a). They are the Select Committees on Energy, Ethics, Population, Outer Continental Shelf, Congressional Operations, and Narcotics Abuse and Control. The Select Committees on Energy and Ethics are not expected to seek reconstitution. The other committees have indicated their intention to seek reconstitution, and each would qualify under paragraph (a) upon the introduction of a reconstitution resolution. There are approximately 100 staff persons currently employed by these four select committees.

Paragraph (b) of section 2 authorizes the Clerk of the House to oversee the completion of the report of the former Select Committee on Assassinations on or before March 31, 1979, using unexpended funds authorized for use by such committee during the 2d session of the 95th Congress.

□ 1130

This provision is a recognition of the need to complete the final report of the committee without reconstituting it. The gentleman from Ohio (Mr. STOKES), the distinguished chairman, is authorized to deal with the classified material necessary for the publication of the report in the possession of the clerk and others.

Section 3 provides that funds spent by all committees under the continuing resolution shall be debited against the amounts authorized in the primary expense resolutions.

Section 4 requires compliance with the Regulations of the Committee on House Administration and any rules necessary to administer the continuing resolution.

Section 5 provides that a returning chairman, or if there is no returning chairman, then the next ranking majority party member, be authorized to sign the vouchers and certifications necessary to make payments under the continuing resolution until such time as a chairman is duly elected for the 96th Congress.

This provision is essential to insure the timely payment of routine and continuing expenditures, including January committee payrolls, which must be processed prior to the earliest date upon which the House is scheduled to consider action on committees.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman. I yield to the gentleman from Alabama.

Mr. DICKINSON. Mr. Speaker, if the distinguished chairman of the Committee on House Administration will yield, I was wondering if the distinguished chairman could tell us how much unexpended funds are available to be drawn on and expended by the Committee on Assassinations?

As I recollect, we have appropriated and authorized some $5.5 million so far. I was wondering how much of that is left.

Mr. THOMPSON. Mr. Speaker, the staff informs me that the latest accounting shows approximately $100,000.

Mr. DICKINSON. All right, now, with the $100,000, the Subcommittee on Assassinations will stay in existence, at least the clerical help will until March, is that correct?

Mr. THOMPSON. May I clarify that for my distinguished friend?

Mr. DICKINSON. Yes, please.

Mr. THOMPSON. First of all, I am the former chairman of the Committee on House Administration at the moment.

Mr. DICKINSON. I do not think that will be a permanent situation at all.

Mr. THOMPSON. I hope not.

The Select Committee on Assassinations no longer exists. No resolution has been introduced for its reconstitution. The gentleman from Ohio (Mr. STOKES), the distinguished chairman, is authorized to handle the classified information. The remainder of the moneys are under the control of the Clerk of the House, without any further appropriation, for the sole purpose of completing the necessary and voluminous reports by March 31.

Mr. DICKINSON. I understand what the gentleman is saying. If the gentleman will yield further; but it was my understanding last September and October that we were authorizing additional funds to allow the Select Committee on Assassinations to continue its existence until the end of the year, so that they might then have completed their re-

ports and done everything necessary for the successful termination of that committee.

I assume something has happened in the interim that would make that impractical or impossible.

Mr. THOMPSON. Mr. Speaker, if the gentleman will yield further, the gentleman is quite correct. In October it was determined that there were insufficient funds to continue the number of hearings which continued until approximately the first of this year.

□ 1135

A very careful review was done of the financial situation of the Committee on Assassinations, and on October 14 a specific agreement was arrived at by the gentleman from New Jersey, the Speaker, and the chairman of the Assassinations Committee, the gentleman from Ohio (Mr. STOKES), with the specific understanding that the committee would continue to exist until January 3, 1979, that it would not be reconstituted, and that approximately $100,000 would remain for completion of the reports.

It developed, I might say to the gentleman from Alabama (Mr. DICKINSON), that so much testimony was taken, especially in the last days, that to have terminated without completion of the reports would not make any logical sense. So the agreement was reached whereby the rather modest sum left would be used for the sole purpose of completing and printing the remaining reports.

Mr. DICKINSON. Mr. Speaker, I thank the committee chairman.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I would like to thank the gentleman from New Jersey (Mr. THOMPSON) for his explanation, but I would also hope that the $100,000 remaining is adequate in every respect for the printing of these Assassination Committee reports. I agree with the gentleman that it would serve no purpose at this point not to publish the committee's findings, such as they may be.

But I might also use this occasion, which I hope is the last such occasion, to remind the Members that at the time of the formation of this select committee those of us who 2 years opposed the creation of the committee predicted the ultimate findings would not lead to a settlement of the many questions surrounding the Kennedy and King deaths. Indeed the reason for the formation of the select committee advanced by its proponents was that its main purpose was to settle these questions and doubts. That was the major justification for $6 million worth of appropriations. So now, $6 million later, we have a report to which we will look forward eagerly, of course, since it costs $100,000, due on March 1. That report will do exactly the opposite of what its authors intended, that is, create even more doubts.

I think this is proof that this kind of congressional forum is not proper for the resolution of national questions of this nature.

Mr. THOMPSON. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I certainly will yield to the distinguished chairman of the committee.

Mr. THOMPSON. Mr. Speaker, the gentleman from New Jersey is not privy to what will be contained in the final reports. The gentleman from New Jersey did, of course, support the resolution, unlike my friend, the gentleman from Maryland (Mr. BAUMAN), but I can assure my friend, the gentleman from Maryland, that as far as the gentleman from New Jersey is concerned, there will be no further funding.

Mr. BAUMAN. We find ourselves in agreement once again, and I thank the gentleman for his statement.

Mr. THOMPSON. That does not happen very often, and I am delighted that on this first day we are in agreement. I do not expect that will continue, but I hope once in awhile it will happen.

Mr. BAUMAN. Perhaps we should embrace in the well.

Mr. THOMPSON. I would rather not.

Mr BAUMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER. Is there objection to the original request of the gentleman from New Jersey?

There was no objection.

The SPEAKER. Does the gentleman from New Jersey (Mr. THOMPSON) seek time on the resolution?

Mr. THOMPSON. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. THOMPSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolutions just considered and agreed to.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. THOMPSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the retirement of our great friend, Charlie Hackney, the majority reading clerk.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PROPOSAL FOR LEGISLATION TO EXTEND AUTHORITY OF SECRETARY OF THE TREASURY TO WAIVE APPLICATION OF COUNTERVAILING DUTIES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 96-34)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

I am today transmitting to the Congress a proposal for legislation to extend until September 30, 1979, the authority of the Secretary of the Treasury under Section 303(d) of the Tariff Act of 1930 to waive the application of countervailing duties. The Secretary's authority to waive the imposition of countervailing duties expired on January 2, 1979. Extension of this authority is essential to provide the Congress with time to consider the results of the Tokyo Round of Multilateral Trade Negotiations (MTN). Failure to extend this authority is likely to prevent the reaching of a conclusion to these negotiations and could set back our national economic interests. Accordingly, I urge that the Congress enact the necessary legislation at the earliest possible date.

As stipulated by the Congress in the Trade Act of 1974, negotiation of a satisfactory code on subsidies and countervailing duties has been a primary U.S. objective in the Tokyo Round. We have sought an agreement to improve discipline on the use of subsidies which adversely affect trade. I am pleased to report that in recent weeks our negotiators have substantially concluded negotiations for a satisfactory subsidy/countervailing duty code which includes: (1) new rules on the use of internal and export subsidies which substantially increase protection of United States agricultural and industrial trading interests, and (2) more effective provisions on notification, consultation and dispute settlement that will provide for timely resolution of disputes involving trade subsidies in international trade.

My Special Representative for Trade Negotiations has informed me that negotiations on almost all MTN topics have been substantially concluded, and that those agreements meet basic U.S. objectives. However, final agreement is unlikely unless the waiver authority is extended for the period during which such agreements and their implementing legislation are being considered by the Congress under the procedures of the Trade Act of 1974.

Under current authority, the imposition of countervailing duties may be waived in a specific case only if, inter alia, "adequate steps have been taken to eliminate or substantially reduce the adverse effect" of the subsidy in question. This provision and the other limitations on the use of the waiver authority which are currently in the law would continue in effect if the waiver authority is extended. Thus, U.S. producers and workers will continue to be protected from the adverse effects of subsidized competition.

A successful conclusion to the MTN is essential to our national interest, as well as to the continued growth of world trade. If the waiver authority is not extended, such a successful conclusion will be placed in serious jeopardy. Accordingly, I urge the Congress to act positively

Exhibit 5 Civil Action No. 81-2543

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

Office of Legislative Counsel

2 January 1978

Mr. G. Robert Blakey
Chief Counsel and Director
Select Committee on Assassinations
House of Representatives
Washington, D.C. 20515

Dear Mr. Blakey:

I realize that you have been very busy, but this is to remind you of your intention to formalize arrangements when the Committee ceases to exist tomorrow. It is my understanding that Mr. Stokes will act as agent for the House in the unfinished business of the Committee and that those Members who return to the Congress and wish to do so will continue to participate on a personal basis. Under this arrangement the agreements and working arrangements that we have will continue in full force and effect. It is my understanding that there was some technicality remaining to be worked out with the Parliamentarian and that following this you or Mr. Stokes would write us accordingly.

I should say that my concern on this matter is heightened somewhat by the release of some sort of report this past weekend. It had been my understanding that this was to have been submitted to us today, which was the reason for my having stated to you that we would be able to react immediately. I am fully appreciative of the added pressures under which you and the Committee have been working the past few weeks, but I must state in unqualified terms that the judgments must be reserved for us on whether or not the material in your reports require classified protection.

Exhibit # 3

It would be very much appreciated if you reply to this letter on an urgent basis.

Very truly yours,

S. D. Breckinridge
Principal Coordinator, HSCA

Distribution:
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(2 Jan 79)

Exhibit 6 Civil Action No. 81-2543

004880

Select Committee on Assassinations
U.S. House of Representatives
[illegible] HOUSE OFFICE BUILDING, ANNEX 2
WASHINGTON, D.C. 20515

JAN 27 1978

Admiral Stansfield Turner, Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Admiral Turner:

The Select Committee has been discussing with representatives of your staff procedures by which our access to information in the possession of the Central Intelligence Agency may be accelerated. Your staff has been understanding of the Select Committee's requirements, and very receptive to establishing an access procedure which will satisfy the concerns and interests of both the Select Committee and your Agency. I believe we have designed such a procedure, and this letter is to confirm an oral agreement reached between our staff and representatives of your Agency.

It is my understanding that your Agency will allow HSCA staff personnel at the working level full access (i.e., without any prior sanitization) to all information, files and documents which are properly produceable under Paragraph I.A. of our Memorandum Of Understanding. In order to achieve the basic objectives of Paragraph I.B. of our Memorandum of Understanding in a more efficient and expeditious manner, the following procedures will be followed:

(1.) HSCA Staff Director will inform the Agency of the names of those specific HSCA staff who are assigned investigative responsibility with respect to, and thus have a need to know, the contents of each Agency file, document, or subject of information requested from the Agency.

(2.) Those specific HSCA staff will periodically prepare at the Agency offices written summaries of the results of their review of your files, and they will submit these summaries for appropriate sanitization by the Agency before removing the written summaries from the Agency's premises.

(3.) HSCA staff will only remove from the Agency's offices the following written items, classified as appropriate:

(a.) The names and addresses of persons who are of interest to the Committee in connection with its investigation, which the Committee will use exclusively for locating and interviewing such persons;

(b.) Lists of the types of files they have reviewed (but not the substance or content of those files except as otherwise discussed herein);

(c.) The summaries noted in, and as written pursuant to, Item #2 above;

(d.) Such other files, documents or notes as may be expressly approved by the Agency;

(e.) Documents and information which may otherwise be obtainable under our Memorandum Of Understanding.

(4.) All HSCA staff members who receive access to unsantized Agency files or documents, or who have a need to discuss or utilize the knowledge gained from such documents, will sign the attached Secrecy Agreement.

(5.) In conducting interviews or questioning based upon the information in Item 3 (a) above, HSCA staff will not disclose the source of the information. In addition, of course, whenever the Agency files or documents reviewed indicate that a person to be interviewed is a present or past C.I.A. employee or agent, the procedure set forth in Paragraph II A of our Memorandum Of Understanding will be followed.

(6.) To the extent that HSCA staff obtain knowledge which goes beyond the information ultimately set forth in the final summaries discussed in Item #2, those HSCA staff members possessing such knowledge will only discuss it with other HSCA staff personnel who are assigned investigative responsibility for the subject matter involved, and then only if all such HSCA staff members involved in the discussion have signed the attached Secrecy Agreement.

And finally, because the quantity of documents and files which will be obtained pursuant to this Agreement will greatly exceed that anticipated when our Memorandum of Understanding was signed, I have been authorized by the Committee to, and do hereby, amend the original Memorandum of Understanding by substituting the following for the first sentence of Paragraph VI B:

> Prior to its termination, the Committee will identify to the C.I.A. those documents which are to be made part of the permanent records of the C.I.A. under records schedules approved by the Archivist of the United States, which control the disposal of all Agency records. In view of the large volume of material, it is agreed that physical segregation of the material will not be required in all cases. The Committee will designate those materials provided by C.I.A. and examined by the Committee that are to be kept and preserved within a segregated and secure area within C.I.A. for at least thirty (30) years unless the D.C.I. and the House of Representatives agree to a shorter period of time.

If you agree with the procedures set forth above and the Amendment to the Memorandum Of Understanding that we have discussed with representatives of your Agency, would you please acknowledge your approval by return letter.

I wish to thank you and those on your staff who are making this effort to facilitate the Select Committee's access to information and to enhance the efficiency and integrity of the Select Committee's investigation.

Sincerely,

[redacted]
Chairman

LS:jer

Copy to: Mr. Patrick L. Carpentier
Assistant Legislative Counsel
Central Intelligence Agency
Washington, D. C. 20505

Exhibit 7 Civil Action No. 81-2543

LOUIS STOKES
21st District, Ohio

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE BUDGET

CHAIRMAN: TASK FORCE ON COMMUNITY AND PHYSICAL RESOURCES

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

FORMER CHAIRMAN: SELECT COMMITTEE ON ASSASSINATIONS

FORMER CHAIRMAN: CONGRESSIONAL BLACK CAUCUS

Congress of the United States
House of Representatives
Washington, D.C. 20515

2465 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-7032

District Office:
Room 2947
New Federal Office Building
1240 East 9th Street
Cleveland, Ohio 44199
(216) 522-4900

August 26, 1980

Robert P. Gemberling
7106 Clemson Drive
Dallas, Texas 75214

Dear Mr. Gemberling:

This will acknowledge receipt of your letters dated July 18, 1980 and August 12, 1980 to me regarding the transcript of your testimony before the now default House Select Committee on Assassinations. After receiving your letter of July 18, 1980, I contacted the Office of the Clerk relative to the contents of that letter. I now have in my possession a copy of the letter from the Clerk to you dated August 6, 1980.

In your letter dated August 12, 1980, you posed the question of what was necessary for you to get a copy of the transcript of your testimony which could not be made available to you until it has been in existence for fifty years. Firstly, this Congressional Committee is no longer is existence and therefore, I have no authority to act as Chairman of a now default Congressional Committee. Secondly, you are not correct in assuming that the reason you are unable to get a copy of your transcript is because I, as Chairman of the Committee, did not approve publication of your testimony at the Committee's final meeting on December 29, 1978. While there was a resolution that did authorize me to release such executive testimony and other information in the possession of the Committee during presentation of the Final Report, there was no request before me to release your executive Committee transcript. The Committee for reasons of its own did not choose to publicize the executive Committee testimony.

If you recall on the day that you appeared before Mr. Preyer's Subcommittee there was a conversation between you and Mr. Preyer which appears in the transcript as follows:

> Mr. Preyer. "That was going to be my final comment to you, Mr. Gemberling. This is an executive session. I assure you that no member of the Committee or staff here is going to release any of this testimony. We would like to encourage you not to discuss any of it. If you want to use us as an excuse this is an executive session and the Committee has urged you not to discuss it, I would so urge you right now."

> Mr. Gemberling. "Very good. That will suffice. I am sure there will be people who will know I have been up here. I will assure the Committee that I will not divulge anything we have discussed other than to say I did testify but it was an executive session and that will end it. Thank you."

There was some further discussion between you and Mr. Preyer in which you requested a copy of the transcript being made available to you. Mr. Preyer informed you that under our Rules it stated that the Committee would furnish the witness a copy of the transcript of his or her testimony when it is made public at his or her own expense. Mr. Preyer advised you on that occasion that the full Committee would have to take up a question of authorizing a full transcript for you. Since the matter was never presented to the full Committee and authorized by them, I was never given an opportunity to have the Committee respond to your request. Accordingly, your testimony before the Kennedy Subcommittee is subject to the Rules of the House of Representatives which has been explained to you by the Clerk.

Sincerely,

LOUIS STOKES
Member of Congress

Exhibit 8

Civil Action No. 81-2543

Union Calendar No. 962

95th Congress, 2d Session - - - - - - House Report No. 95-1828, Part 2

REPORT

OF THE

SELECT COMMITTEE ON ASSASSINATIONS
U.S. HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

FINDINGS AND RECOMMENDATIONS

MARCH 29, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

> Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the Government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. (4)

The Supreme Court has similarly stated that it "does not doubt the importance of informing the public about the business of Congress." [3]

The committee's independent analysis of all four issues, and its informing the public of that analysis, will allow each American to make an intelligent judgment on the validity of allegations concerning the performance of agencies and departments of the executive branch, as well as enable people to assess the committee's own performance. It is essential not only that persons be able to judge the performance of the executive agencies, but that they be able to judge this committee's performance as well. Such is the very essence of representative democracy.

The committee determined, therefore, that, despite the potential dangers and risks inherent in its analysis of some of the issues it had identified to fulfill its mandate, an analysis and the public disclosure of all of the facts relating to the four issues was necessary to fulfill its legislating functions under the Constitution. Further, the committee determined that an analysis and disclosure of the facts relating to each issue was also necessary to fulfill its constitutional informing responsibilities.

The committee's findings in this report are stated so as to be faithful and accurate to the facts as found by the majority of the committee. The committee found each fact in this report with no goal or standard except the committee's commitment to ascertain the truth to the best of its ability. The committee hopes that each person who reads this report appreciates the nature of a congressional investigation, and that any potential dangers or harms from a misunderstanding of the com-

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[3] *Doe* v. *McMillan* (412 U.S. 306, 314 (1972)). The *Doe* case was carefully considered by the committee as its investigation was conducted, its hearings held, and the report prepared. *Doe* addressed the relationship between the informing function of Congress and the availability of speech and debate immunity for distribution of a report that might infringe on the rights of privacy of individuals. The majority opinion in the *Doe* case, the committee believed, does inhibit Congress exercise and performance of its responsibilities and duties. The committee noted that the opinion of the District of Columbia Court of Appeals on remand from the Supreme Court, *Doe* v. *McMillan* (566 F. 2d 713 (1977)), also emphasized the importance of the informing function of Congress; it interpreted the Supreme Court decision as only stating that public dissemination of a report was "not necessarily" within the speech and debate immunity. As detailed in the text, the committee was acutely aware of the potential injury to reputation or invasion of privacy that might occur by distribution of the committee's report. The committee believed, however, that its legislative and informing responsibilities required that this report be prepared and distributed in the manner the committee has done. For a committee addressing questions about controversies that have arisen concerning the assassination of two of the country's leading figures, public dissemination of the report is vital to fulfill its constitutional responsibilities. Congress should be able to disseminate such a report without fearing spurious lawsuits, for the very fear of such lawsuits may shape the manner in which facts are presented. If Congress is limited to official or qualified immunity for public distribution of a report, the committee recognizes that this might serve to insure against reckless public presentation of false facts. Such a benefit, however, can only accrue at the cost of Congress being inhibited in fulfilling its constitutional informing responsibilities.

Exhibit 9 Civil Action No. 81-2543

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mark A. Allen,

Plaintiff

v. Civil Action
No. 81-1206

Federal Bureau of Investigations, et al.

Defendants

Affidavit

I, G. Robert Blakey, being duly sworn, depose and say as follows:

(1) I am currently a professor of law at the Notre Dame Law School, Notre Dame, Indiana 46556,

(2) From July of 1977 to January of 1979, I was the chief counsel and staff director of the U.S. House of Representatives Select Committee on Assassination that looked into the assassination of President John F. Kennedy, in which capacity I personally supervised and reviewed the compilation of all materials published by the Committee.

(3) I have also reviewed the affidavit of John N. Phillips, special agent, F.B.I., dated January 12, 1981, filed in this matter, including paragraph 5, which states:

> The HSCA reviewed the material described in paragraph 4 supra spending approximately five million dollars. At the conclusion of their (sic) investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they (sic) included everything which could be deemed as relating to the assassination of President Kennedy (emphasis added).

(4) Special Agent Phillips is in error. The Committee was not able to publish everything it wanted to publish or which was relevant to the President's assassination, as it ran out of time and appropriations. In fact, little of the F.B.I. files made available to the Committee was directly published. The Committee concentrated its efforts, in the main, on publishing original material not available elsewhere.

(5) Whatever the merits of the pending litigation, it should not be resolved, in whole or in part, on any contrary assumption.

G. Robert Blakey

G. Robert Blakey
Professor of Law
Notre Dame Law School
Notre Dame, IN 46556

Subscribed and sworn to before me this 15th day of February, 1982.

Jacqueline M Blanford

Notary Public

My Commission expires October 19, 1984.