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OLC: 78-1141

22 March 1978

FOIA

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting at Senate Select Committee on Intelligence Offices Regarding Release Under FOIA of Congressional Documents

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OLC, met with Mr. David Shaw, of the Senate Select Committee on Intelligence staff. The purpose of the meeting was to discuss the ramifications of the Freedom of Information Act (FOIA) as it relates to the release of documents originated in the Congress by agencies wherein those documents repose.

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2. The question which may be decided in the Judith Miller case (an FOIA action wherein Judith Miller of the New York Times has requested documents of the Church Committee regarding the Agency's relationship with the media) is whether or not Congressional documents in CIA files remain Congressional documents and, therefore, not reachable under the FOIA. This question can be subdivided into two parts. The first part deals with those documents originated in Congress. The question is, do the documents, upon reaching the Agency's files and records thus become Agency records and subject to the FOIA, or do they remain Congressional documents under Congressional control as to release. The second part of the issue is whether the Agency's responses to Congressional requests can also be considered the property of Congress, and, therefore, not reachable under the FOIA. In this case, our argument might be, inasmuch as the Agency responds directly and specifically to a Congressional inquiry, that such information is under the control of the Congress and thus not subject to the FOIA. In other words, a study on "The Situation in Outer-Siberia and its Effect on the Wheat Crop" prepared

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specifically in response to a Congressional request is in effect a Congressional document for purposes of determining releasability. On the other hand, an existing Agency study forwarded in response to a Congressional request would not be considered Congressional material and would therefore be subject to FOIA.

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3. [redacted] It was pointed out to Mr. Shaw that another approach to cover Congressional documents is to invoke FOIA exemption (b)(5) (inter-agency or intra-agency material). The legal rationale would be to extend (b)(5) to exchanges of internal information between the Executive and Legislative Branches. Of course, CIA can always invoke (b)(1) and (b)(3) of the Act to protect sensitive intelligence information in Congressional documents.

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4. [redacted] Mr. Shaw will discuss this matter with Bill Miller, Staff Director of the Committee, and will inform us within the next two weeks of the Committee's position.

[redacted]

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Office of Legislative Counsel

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