So, that was our position.

Beyond that, about not acknowledging letters and that sort of thing, Mr. Chairman, if you are looking for a Department of Justice representative to defend that sort of practice in 1969, 1970, or any other time, I am not going to do it.

Senator ABOUREZK. I understand that you would not want to, but we are informed that Mr. Weisberg still has 25 FOIA requests that to date have not been answered.

Mr. SCHAFFER. Mr. Chairman, I can respond to that in part.

We had a meeting in my office with Mrs. Zusman, the Chief of the Information and Privacy Section in the Civil Division, Mr. Weisberg, and his attorney. Cases like Mr. Weisberg's are not the routine freedom of information requests. I can assure you that the Department is going to try to do something about his requests as a whole rather than treating them piecemeal and processing them in strict chronological order, and this sort of thing.

It is a unique request. It is a case of unique historical importance. Mr. Weisberg does have reason to complain about the way he was treated in the past. We in the Civil Division are going to try to do something to straighten out all of those cases.

Mrs. ZUSMAN. Mr. Chairman, I would like to expand on Mr. Schaffer's comments. I am Chief of the litigating section that you referred to and have been in charge of the section for approximately 7 weeks. I would like to explain a little bit of the background of that meeting so that you can understand how importantly we in the Civil Division take our responsibilities under the Attorney General's guidelines sent to the Federal agencies as a memorandum on May 5. I am sure you and your staff are familiar with this document.

Mr. Weisberg has had for some time a number of lawsuits pending. I became acquainted with him in the late spring—early summer when I was asked to assist the assistant U.S. attorney who was primarily responsible for one of the pending Weisberg lawsuits. I did meet in my office with Mr. Weisberg and his attorney, Mr. Lesar, and representatives of the FBI. We had several sessions. Excuse me; Mr. Weisberg did not come. It was his counsel, Mr. Lesar who met with us. Then we had a subsequent meeting involving a number of hours where we drafted a stipulation by the parties setting forth a variety of tasks and how they would be performed by the client agency, the Bureau, in trying to satisfy the types of information and the timing of the release of the information, and so forth, in Mr. Weisberg's very voluminous request.

This fall Mr. Lesar and Mr. Weisberg contacted me and said that they had some problems in regard to the stipulation—which is being carried out and is being fulfilled by the FBI as well as other questions. I invited them to my office. At that time I discussed with them a number of problems. I picked up the phone and called Mr. Schaffer's secretary. I said, "If Mr. Schaffer is in now, we are coming downstairs. Hold him there. I think there is somebody that he should meet."

Mr. Schaffer did make the time to see Mr. Weisberg and Mr. Lesar. We spent quite a bit of time discussing the problems. This is the type of effort that we are now putting forth. We are a little bit hampered because, of course, primarily the Civil Division is in the litigation business. But, in this particular area of the law, we have to also put a

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lot of our efforts into attempts at settlement where it is appropriate, and into mediation and arbitration. Very often, plaintiffs file lawsuits based on a misunderstanding of the information that they are seeking, which they think an agency should have, but it doesn't. Or they have misunderstood something that has been deleted, et cetera.

In other words, what I am trying to indicate is that there is a very broad area where we are trying to be innovative as to reducing the number of lawsuits by working directly with plaintiffs and with plaintiffs' counsel. It can be very successful. It does depend upon a lot of manpower. This is something we are working for.

Another case that is an example of this approach occurred where a national newspaper represented by Washington, D.C., counsel made request for a large number of files on a number of celebrities long since dead, in the entertainment field and, in addition, Franklin Delano Roosevelt. After the Bureau processed the entertainment figures, the question arose: What was it that the plaintiff requester really wanted from the files concerning the former President, Franklin Roosevelt?

It turned out the way the FBI maintained its file system, we were talking about 25 pages of FBI files index citations and thousands and thousands and thousands of pages of files. It became possible for plaintiff's counsel, based on the previous relationship with FBI personnel under my supervision in working on the other aspects of the request, to ask me to sample at random from the files; which I did.

Plaintiff's counsel accepted my representations as to the type of material I found in the sample. We talked about what his client, a national newspaper, was looking for, which was specifically personal material, which did not appear to be there. The final stage was when the FBI personnel suggested to me that I ask plaintiff's counsel if he would want to random sample from these files because it was felt that they were so old and the nature was such that privacy and confidential source aspects just were not relevant in this area, and they were willing to waive this consideration.

That is how it became resolved. Plaintiff's counsel did pick a random sample. That material was Xeroxed. He did look at it. He consulted with his client. They determined that it was not worth his client's investment financially to pursue it because it did not appear that he would be able to get what he wanted to get.

This is the kind of work we are trying to do now.

Senator ABOUREZK. You are saying there wasn't enough scandal in there to satisfy him.

Mrs. ZUSMAN. You said it, Senator; I did not.

Mr. SHEA. Mr. Chairman, could I mention, in the context of Mr. Weisberg, that he is requesting both Martin Luther King and, I believe, John Kennedy assassination materials. I have had one of my more senior attorneys acting both as an ongoing reviewer and consultant to the people processing the file at the Bureau now for over a year. As a result of this ongoing process, there have been approximately 20,000 pages of FBI records that have been, not only released to Mr. Weisberg on the King assassination, but are available for public inspection in the FBI's reading room.

So, the wheels may grind a bit slowly, but we are addressing the problem that is presented by these voluminous requests.

Senator ABOUREZK. I would like to return to some policy questions. Mr. Shea, you and others from the Justice Department and the FBI

I am pleased to say that we think the Justice Department at that stage is now much more open in listening to the arguments that plaintiffs' attorneys are making in litigation, with a view toward trying to decide whether the prodisclosure mandate in Attorney General Bell's memorandum[1] would require disclosure in a particular case because the public interest so requires. In addition, the Department has in general been more willing to reexamine some of the legal positions which it has taken in the past.

The problem is in having the Attorney General's policy applied at the lower levels of government, so that there is no need for unnecessary litigation. It must be remembered that you have to first make your initial request to an agency. Suppose you are making a request to the FBI. The FBI presently has taken up the practice of using a form letter in responding. So, if you have waited your 5 or 6 months to get a response from the FBI, you then get a form letter that merely checks off the several exemptions which are claimed to apply to the documents which have been withheld. I have submitted a copy of this particular form as an exhibit to my statement.[2] If you look at that form, you will see that you are not told how many documents have been withheld, what is the basis for the Government's argument that the exemptions apply in a particular case. This practice makes it largely impossible to intelligently appeal a denial and, in effect, simply shifts your request over to Mr. Shea's office.

After 5 or 6 months, Mr. Shea may do a somewhat better job in trying to tell you how many documents there are that have been withheld and hopefully, in trying to put some of the arguments that the FBI has made in better perspective. But it may still require the filing of a lawsuit before the agency's position is thoroughly examined.

My point really is that, unless something is done about trying to filter down the true philosophy of the FOIA to the lower levels of government, to the actual individuals who are responsible for reviewing documents in response to FOIA requests—I just do not think that we can have a better sense of trust that the Government will be fully complying with the spirit of the act.

It is in this regard that I think the Weisberg correspondence,[3] which has already been discussed in some detail, is really important. Its importance is not that some of the King information which Mr. Weisberg requested has now independently been released to the press and its importance is not in the fact that—although commendable—Mrs. Zusman and Mr. Schaffer are now finally trying to find out what is going on.

Its importance lies in the fact that it is an example of an agency's total disregard for the requirements of the FOIA. Here, the FBI decided that since the requester of information was a critic of the Warren Commission, of the FBI, and of other investigatory agencies, for that reason alone, his request would simply be ignored.

Again, unless we have some real guidance and direction from the Justice Department in trying to bring all the agencies at the initial request level into line, we are not going to see very much change or very much litigation being avoided in the future.

[1] See p. 217 of the appendix.
[2] See p. 958 of the appendix.
[3] See exhibits 133, 134, 135, pp. 941, 942 of the appendix and p. 139 of the hearing text.