

UNITED STATES GOVERNMENT

Memorandum

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| Tolson | _____ |
| Sullivan | _____ |
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| Bishop | _____ |
| Brennan, C.D. | _____ |
| Callahan | _____ |
| Casper | _____ |
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TO : Mr. Tolson

DATE: 3/17/71

FROM : D. J. Dalbey

SUBJECT: EMORY L. BROWN, JR. V. MITCHELL, ET AL.;
ASSASSINATION OF PRESIDENT JOHN F. KENNEDY
DALLAS, TEXAS
11/22/63

→ Williamson

Re memorandum of the Assistant Attorney General, Civil Division, captioned "Emory L. Brown, Jr. v. Mitchell, et al. USDC D N.J., Civil Action No. 44-70," dated 3/10/71, which requested that a draft copy of an affidavit stating the Bureau's reasons for refusing access to its files be submitted to the Department. The memorandum enclosed a copy of an affidavit prepared by Robert L. Saloschin, Office of Legal Counsel, for our guidance.

This request was made to enable the Department to defend against Brown's civil action filed 1/12/71, in U. S. District Court in New Jersey under the Freedom of Information Act. He alleges he has the right of access to certain information on the assassination of President Kennedy contained in Bureau files. Our files show the case is correctly cited "Civil Action No. 44-71."

While the Freedom of Information Act (Title 5, United States Code, Section 552) grants public access to certain Government files and records, Section 552(b) (7) of the Act excepts from disclosure "investigatory files compiled for law enforcement purposes...." This exception will be the principal defense raised by the Department. However, the courts have narrowly construed this exception and require that to be considered an "investigatory" file, there must be some possibility of future prosecution. Bristol-Myers Co. v. F. T. C., 424 F2d 935, cert. den. 400 U.S. 824 (1970). Consequently, the Department is seeking support for the theory that even though prosecution is not foreseen,

- Enclosure
- 1 - Mr. Mohr
 - 1 - Mr. Sullivan
 - 1 - Mr. Tavel
 - 1 - Mr. Rosen
 - 1 - Mr. Bishop
 - 1 - Mr. Dalbey
 - 1 - Mr. Williamson

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LEGAL COUNSEL

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Memorandum to Mr. Tolson
Re: Emory L. Brown, Jr. v. Mitchell, et al.
Assassination of President John F. Kennedy
Dallas, Texas
11/22/63

the file still has significant "law enforcement purposes." To this end they have requested an affidavit executed by the Bureau setting forth the reasons that require this file be closed to the public. For guidance, they furnished a draft affidavit which, upon our review, was found to be unacceptable for execution by a Bureau employee. Much of the material contained in their draft affidavit is highly theoretical and better suited for a legal argument in defense of the suit. It is not the sort of factual material that, in our opinion, should be stated in an affidavit.

In accordance with the Department's request, an affidavit in draft form has been prepared which sets forth the facts which support and explain why opening the file would be improper. This proposal and a letter forwarding same to the Department are attached.

RECOMMENDATION:

That the proposed letter and draft affidavit be approved and sent to the Department.

JAM *P* *ore.* ✓ *H* *11/21* *WCB* *TAB* *SD/MLM*

JAM