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9BRDepartment of Justice
Washington

AUG 17 1966

Dr. Robert H. Bahmer
Archivist of the United States
National Archives and Records Service
Washington, D.C. 20408

Dear Dr. Bahmer:

I have been asked to reply to the informal inquiries which you and the Deputy Administrator of General Services, Joe E. Moody, have made to this Department concerning the authority and procedures for releasing for public disclosure certain of the documentary material that was produced or acquired by the President's Commission on the Assassination of President Kennedy (the Warren Commission).

The Commission has, of course, completed its investigation, submitted its report, and transferred all of its records, papers, and other documentary material to the National Archives for preservation. Many scholars and other persons are anxious to study that material.

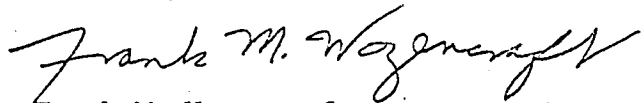
Last year, the Executive departments and agencies which had furnished documentary material to the Commission developed certain guidelines for determining which of the items they had furnished could be released to the public. As a result of the applications of those guidelines, approximately two thirds of that material has been made available to the public.

Since the Commission did not provide any guidance or impose any restrictions in this regard at the time that its files were transferred to your agency, since the Commission is now out of existence, and since your agency is now the receiver and custodian of the records of the Commission, this Department believes the Administrator of General Services, acting through you and your staff, is now in the same legal and administrative position with

respect to the records, papers, and other documentary material transferred to your agency by the Commission, as the Commission was prior to that transfer.

Consequently, we believe that your agency has the authority and obligation to review that material and to determine which of it should be made available to, or withheld from, the public at this time, and to conduct subsequent reviews of such material at reasonable intervals until all of it is released. In this regard, we believe it would be appropriate for your reviews of that material to be made in conformity with the guidelines which were developed and applied by the various Executive departments and agencies with respect to the material they had contributed to the Commission. However, we do not consider those guidelines as imposing absolute standards for the release or disclosure of Commission-produced material in your custody. If in any specific case a sound legal basis exists for withholding or for releasing any such material notwithstanding provisions of the guidelines, your agency should, of course, disregard the guidelines. Similarly, if sound archival or other principles or reasons, not inconsistent with law, exist for disregarding the guidelines in some particular case, we believe that it would be appropriate for your agency to disregard the guidelines in that case. If any significant legal problem should arise in this regard, the Department of Justice will, of course, be happy to assist you in any way that we can.

Sincerely,



Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel

5/22/69

Dear John,

In preparing the memo-letter I sent you several days ago I overlooked something that might be of help to your lawyers in preparing their answer to the Department of Justice argument in your suit. In my opinion it is relevant in that it may establish a basis for asking the Archives for evidence rather than other agencies, the agencies of origin, etc. and may address the argument that you did not make the proper request.

It is a letter of August 17, 1966, to Dr. Bahner from Frank M. Wozencraft, Assistant Attorney General Office of Legal Counsel. Paul Hoch got this letter and may have more that is relevant. I am sending him a copy of this so he can understand and send you what he has, but he is busy with his orals for his doctorate and I suggest you write him directly.

After a three-paragraph introduction, Wozencraft says, "Since the Commission did not provide any guidance or impose any restrictions in this regard at the time that its files were transferred to your agency, since the Commission is now out of existence, and since your agency is now the receiver and custodian of the records of the Commission, this Department believes the Administrator of General Services, acting through you and your staff, is now in the same legal and administrative position with respect to the records, papers, and other documentary material transferred to your agency by the Commission, as the Commission was prior to that transfer."

He then says the Archives "has the authority and obligation to review the material and determine which of it should be made available...and conduct subsequent reviews at reasonable intervals until all of it is released." He adds that the Archives is not bound by the "guidelines", that they did not "impose an absolute standard and that "is sound archival or other principals or reasons, not consistent with the law, exist for disregarding the guidelines in some particular case, we believe that it would be appropriate for your agency to disregard the guidelines in that case."

When you get into court, I think having this in his possession may also be of help to your lawyer in his presentation, particularly if the Department of Justice lawyers display their capacity for antagonizing the judge that I observed in Judge Halleck's court in Washington. I also think the passage of the Freedom of Information Act makes this more pertinent and that it is powerful in what I believe lawyers call a "public policy" argument, that something may not be contrary to public policy.

I do not know what was the immediate cause of the inquiries that led to this opinion, but I do know that it came at a time I was pushing the Archives rather hard along those lines, for example, as I now recall, on what they claimed not to have on the autopsy and it subsequently turned out they did have in the staff papers, some of which you have seen.

Hastily,

Harold Weisberg