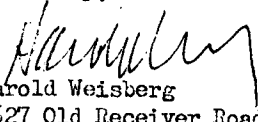


7/27/86

To Senators Metzenbaum and Simon,

In the event they may be of interest to you I enclose copies of my today's letter to a reporter, along with the documents I refer to in that letter.

Sincerely,

  
Harold Weisberg  
7627 Old Receiver Road  
Frederick, Md. 21701

*Carson*  
Dear George,

7/27/86

Today's Post story reminded me that the old surveillance case may not be the only one on which Rehnquist sat improperly as a Supreme Court Justice because in the Department of Justice his was a policy role in FOIA matters. So, if he sat on FOIA cases, was it improper? Was he defending himself as well as his former client, the Department and the entire government?

These records are from FBIHQ, the Dallas field office and the Department files.

Some of what Rehnquist wrote in response to inquiries is, if taken literally, false. He does not limit himself to the statement that most of the Warren Commission records have been disclosed. He says most of those of the entire government and the FBI alone had enormously more than the Commission, including what the Commission got from the FBI.

Moreover, the policy with regard at least to the investigative files FOIA exemption, was to in effect rewrite the Act, as the Congress decided in restating its intentions in the 1974 amending of the Act. As you may remember, it was my case over which this was done. And as you probably have no way of knowing, at the district and appeals court levels the government prevailed by overtly false swearing. I am not, of course, blaming Rehnquist for that.

It thus looks as though we are about to have a chief justice who was responsible for the executive agency rewriting of an act of Congress and who will be sitting in judgement on his own record, with a new associate justice, Scalia, is pretty much the same position and in Scalia's case, he has already sat on FOIA cases.

How Rehnquist could have had any knowledge of the thoroughness and completeness of the Warren Commission's work or any other work, as he represents, is not apparent. But he does not even represent that what he says is what others have told him. Nor is it apparent how he could have had any knowledge of the nature of criticism of the official investigations. What is now without question, regardless of how one may feel about the official investigations and their conclusions, is that what Rehnquist says is not true, that the most profound questions remain and will linger simply because of the failures and omissions of those investigations.

Sincerely,

*H. Weisberg*  
Harold Weisberg

# Memorandum

DEPARTMENT OF JUSTICE

Mr. Tolson	<input checked="" type="checkbox"/>
Mr. Sullivan	<input checked="" type="checkbox"/>
Mr. Mohr	<input checked="" type="checkbox"/>
Mr. Bishop	<input checked="" type="checkbox"/>
Mr. Brennan	<input checked="" type="checkbox"/>
Mr. Callahan	<input checked="" type="checkbox"/>
Mr. Casper	<input checked="" type="checkbox"/>
Mr. Conrad	<input checked="" type="checkbox"/>
Mr. Felt	<input checked="" type="checkbox"/>
Mr. Gale	<input checked="" type="checkbox"/>
Mr. Rosen	<input checked="" type="checkbox"/>
Mr. Tavel	<input checked="" type="checkbox"/>
Mr. Walters	<input checked="" type="checkbox"/>
Mr. [unclear]	<input checked="" type="checkbox"/>
Tele. Room	<input type="checkbox"/>
Miss Holmes	<input type="checkbox"/>
Miss Gandy	<input type="checkbox"/>

TO : J. Edgar Hoover  
 Director  
 Federal Bureau of Investigation

DATE: SEP 4 1970

FROM: William H. Rehnquist  
 Assistant Attorney General  
 Office of Legal Counsel

*Rehnquist*

SUBJECT: Five-Year Review of Warren Commission Files.

The Attorney General has referred to me the letter to him of August 17, 1970 from Herbert E. Angel, Acting Archivist of the United States (a copy of which is attached), notifying the Department that it is time for the documents in the Numbered Document File of the Warren Commission which have previously been withheld from public scrutiny to be reviewed for the purpose of determining whether any of those documents may now be released. Mr. Angel points out that the documents of the Department in question include "about four linear feet of reports of the Federal Bureau of Investigation" and "Commission Document 355, a volume (about 2 inches thick) of copies of summaries of FBI interviews with acquaintances of Jack L. Ruby." Mr. Angel states that the Archives will be pleased to make these documents available to those members of the Department selected to review them.

In late 1968, at the request of the Attorney General, this Office made a complete review of all of the documents in the Commission's files and listed those items which appeared to be releasable. We recommended to the Attorney General, however, that no release of documents be made at that time. My predecessor, Mr. Frank Wozencraft, stated in a memorandum to the Attorney General that-

[I]n view of the lack of substantive value of these materials and the very small proportion which they represent of the total presently withheld, I do not believe that any constructive purpose would be served by their release prior to the review scheduled for 1970, for which this list would furnish an appropriate starting point.

EXP. PROC.

SEP 4 1970

ENCLOSURE

2 ENCLOSURES

62-109090

*let to H.G. Office of Legal Counsel  
 9/9/70  
 JDH:smh  
 62-109090-  
 NOT RECORDED  
 145 SEP 24 1970*

*Support*  
 SIX

*Section 174*

ORIGINAL FILED IN 62-109090-3

The Attorney General accepted this recommendation, and no new release of documents was made at that time.

In view of the fact that the Department's documents which are presently being withheld were generated by the Bureau, it is appropriate that the Bureau assist in the present five-year review. The inventory prepared by this Office in 1968 will, we believe, facilitate the task at hand. The attorney in this Office handling this matter is Steven P. Lockman, code 187, extension 2053. If you will designate an individual from the Bureau and direct him to notify Mr. Lockman, we can proceed with the review and the preparation of a recommendation to the Attorney General.

Attachments

# Memorandum

Mr. Tolson	<input checked="" type="checkbox"/>
Mr. Sullivan	<input checked="" type="checkbox"/>
Mr. Mohr	<input type="checkbox"/>
Mr. Bishop	<input type="checkbox"/>
Mr. Brennan	<input checked="" type="checkbox"/>
Mr. Callahan	<input type="checkbox"/>
Mr. Casper	<input type="checkbox"/>
Mr. Conrad	<input type="checkbox"/>
Mr. Felt	<input type="checkbox"/>
Mr. Gale	<input type="checkbox"/>
Mr. Rosen	<input type="checkbox"/>
Mr. Tavel	<input type="checkbox"/>
Mr. Walters	<input type="checkbox"/>
Mr. F. [unclear]	<input type="checkbox"/>
Tele. Room	<input type="checkbox"/>
Miss Holmes	<input type="checkbox"/>
Miss Gandy	<input type="checkbox"/>

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 Director  
 Federal Bureau of Investigation

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 Assistant Attorney General  
 Office of Legal Counsel

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EXP. PROC. 30

SEP 4 1970

REC-21 62-109090-616

ENCLOSURE

*Let to [unclear] Office of [unclear] 9/9/70 JWH: such*

*[Signature]*

SEP 23 1970 62-109090

UNRECORDED COPY FILED IN 62-109090

The Attorney General accepted this recommendation, and no new release of documents was made at that time.

In view of the fact that the Department's documents which are presently being withheld were generated by the Bureau, it is appropriate that the Bureau assist in the present five-year review. The inventory prepared by this Office in 1968 will, we believe, facilitate the task at hand. The attorney in this Office handling this matter is Steven P. Lockman, code 187, extension 2053. If you will designate an individual from the Bureau and direct him to notify Mr. Lockman, we can proceed with the review and the preparation of a recommendation to the Attorney General.

Attachments:

GENERAL SERVICES ADMINISTRATION

U.S. GOVERNMENT PRINTING OFFICE: 1964 O 284



Honorable John H. Mitchell  
Attorney General  
Washington, D. C. 20530

Dear Mr. Attorney General:

The President's Commission on the Assassination of President Kennedy transferred its records to the National Archives in November 1964 to be "permanently preserved under the rules and regulations of the National Archives and applicable Federal law" (Report of the Commission, p. XV). The records included some documents which are withheld from disclosure by specific statutes, security classified records, investigatory files compiled for law enforcement purposes, and medical and personnel records. It was apparent that the records of the Commission would have to be reviewed on a document-by-document basis in order to identify the relatively few documents of this nature that could not immediately be made available for research.

This review was conducted in 1965 in accordance with "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy," which were prepared by the Department of Justice in consultation with the agencies which furnished records to the Commission (copy enclosed). Under these guidelines (page 2) it is the responsibility of the Archivist of the United States to arrange for successive reviews of the records of the Commission that are withheld from research. As it is now five years since the review of the Numbered Document File of the Commission in 1965, it is time for the documents that were withheld from research at that time to be reviewed again as indicated in the last paragraph of the guidelines. The National Archives will be pleased to show the documents withheld from research at the request of your Department to any members of your staff who may be selected to review them. The following documents are withheld at the request of the Office of Legal Counsel of the Department of Justice:

1. About four linear feet of reports of the Federal Bureau of Investigation.

129-11

129-012-3

SEP 23 1970

62-109490-

ENCLOSURE

Keep Freedom in Your Future With U.S. Savings Bonds

ATTORNEY GENERAL

2. Commission Document 355, a volume (about two inches thick) of copies of summaries of FBI interviews with acquaintances of Jack L. Ruby which was transmitted to the Commission by a letter dated February 4, 1964, of the Assistant Attorney General in charge of the Criminal Division of the Department. Withhold under Guideline 3C.

The following staff members of the National Archives may be called for any additional information that may be needed: Mr. Mark G. Eckhoff, Director, Legislative, Judicial and Diplomatic Records Division, or Mr. Marion M. Johnson, on Code 13, Extension 2317L.

Sincerely,



HERBERT E. NOEL  
Acting Archivist  
of the United States

Enclosure ✓



FROM

OFFICE OF LEGAL COUNSEL

TO

OFFICIAL INDICATED BELOW BY CHECK

MAR 31 1970

The Attorney General .....  
 Executive Assistant .....  
 Public Information .....  
 The Solicitor General .....  
 Deputy Attorney General .....  
 Administrative Assistant Attorney General .....  
 Assistant Attorney General, Antitrust .....  
 Assistant Attorney General, Civil .....  
 Assistant Attorney General, Civil Rights .....  
 Assistant Attorney General, Criminal .....  
 Assistant Attorney General, Internal Security .....  
 Assistant Attorney General, Lands .....  
 Assistant Attorney General, Tax .....  
 Director, Federal Bureau of Investigation .....  
 Commissioner, Immigration and Naturalization Service .....  
 Board of Immigration Appeals .....  
 Director, Bureau of Prisons .....  
 Board of Parole .....  
 Pardon Attorney .....

<input type="checkbox"/>	Memorandum
<input type="checkbox"/>	To: Will R. Wilson, Ass't Atty Gen. Criminal Division
<input type="checkbox"/>	Re: Attachment
<input type="checkbox"/>	Attached for appropriate reply to Congressman Howard is a letter from Emory L. Brown, Jr. concerning his correspondence relating to his research on the assassination of President Kennedy and the Warren Commission Report. Although correspondence on this subject was formerly handled in this Office, I understand that letters of this nature are now answered in your correspondence section. Also attached is Mr. Brown's letter dated Feb. 21, 1970 to the Attorney General.
<input checked="" type="checkbox"/>	<i>William H. Rehnquist</i> William H. Rehnquist, Assistant Atty General, Office of Legal Counsel
<input type="checkbox"/>	129-11 DEI
<input type="checkbox"/>	11 MAR 31 1970 CRIMINAL DIVISION
<input type="checkbox"/>	CRIMINAL GEN. CRIME SEC.

*Sub 29*  
*1327*

UNITED STATES GOVERNMENT

# Memorandum

DEPARTMENT OF JUSTICE

RECEIVED

SEP 24 9 36 AM '70  
OFFICE OF LEGAL COUNSEL

DATE: Sept. 23, 1970

TO : William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel

FROM : Richard G. Kleindienst  
Deputy Attorney General

SUBJECT: Freedom of Information Act

*alms*

Attached is a letter from Mr. Emory L. Brown, Jr. in which he seeks review by the Attorney General of my denial of his request for information contained in FBI investigatory files. Also attached is a memorandum from the Director of the FBI commenting on Mr. Brown's request.

Would you please review this matter in accordance with the usual procedure.

*[Handwritten mark]*

89-43-91564

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 15 1970	
FBI - DALLAS	

*Hamberling*

WHR: BCS: dp

cc: ✓ Files  
Mr. Rehnquist  
Mr. Schmidt  
Mrs. Copeland

APR 10 1969

Honorable Walter F. Mondale  
United States Senate  
Washington, D. C. 20510

*out 4/10/69*

Dear Senator Mondale:

*7c* You have requested our consideration of the attached letter of [redacted] concerning the conclusions of the Warren Commission Report. [redacted] argues that the evidence suggests that President Kennedy was shot from the rear. *7c*

The Warren Commission made a thorough analysis of the facts of the assassination and its conclusions based on this analysis are plainly set forth in its report. Every citizen is certainly free to form his own conclusions as to the facts as he understands them. The Department of Justice, however (as I am sure you will appreciate), is simply not in a position to enter the debating lists against every individual who takes issue with the Commission's conclusions.

*Res  
in*

I regret that we cannot be more helpful in responding to [redacted] *7c*

Sincerely,

William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel

*File*

WHR:SPL:dp  
129-11 Section 31, 1302

cc: Mr. Lockman  
Mrs. Copeland  
Files

MAR 2 1971

Honorable Jacob K. Javits  
United States Senate  
Washington, D. C. 20510

int 3/2

Dear Senator Javits:

SPL

Your memorandum of February 24, 1971, which requests the views of the Department of Justice on a letter from one of your constituents, has been referred to this Office for reply. Your constituent refers to an article in the May, 1970 issue of Computers and Automation magazine concerning the assassination of President John F. Kennedy. We have been unable to locate this issue of the magazine, but it appears that the article questions the performance of the Warren Commission and is critical of the withholding by the National Archives of certain of the documents compiled during the investigation.

As you know, the Warren Commission conducted an exhaustive investigation of the circumstances surrounding the assassination. Its Report spans 26 volumes and consists of many thousands of pages. In addition, it contains numerous exhibits and interviews. While there are those who are critical of the performance of the Commission, it does not appear that any of the critics has produced evidence which would cast serious doubt on the conclusions reached by the Commission.

It is, of course, true that certain data compiled by the Federal Bureau of Investigation as well as other governmental agencies was not disclosed to the public in the first instance. However, a review of all the documents compiled on the assassination was conducted in 1965, and as a result of that review the great majority of the documents were made public. A subsequent review was conducted in late 1970, and a number of the documents previously withheld

4/10

were released at that time. Thus, only a very small percentage of the results of the Government's investigation of President Kennedy's assassination are not now public.

Certain items, as one can well understand, must be withheld from public scrutiny. Documents pertaining to the autopsy or investigative reports containing false and slanderous matter should not be released. The withholding of documents of this nature in no way suggests any official intention to suppress the truth. Indeed, the release of substantially all of the data collected, together with the issuance of the voluminous report of the Commission, demonstrates in my view quite clearly the Government's commitment to a full disclosure of the facts.

I hope that the foregoing assists you in preparation of a reply to your constituent.

Sincerely,

William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel

United States Senate

February 24, 1971

Respectfully referred to  
Congressional Liaison  
Department of Justice  
Washington, D.C.

for such consideration as the communication  
herewith submitted may warrant, and for a report  
thereon, in duplicate to accompany return of  
inclosure

RECEIVED  
FEB 25 10 24 AM '71  
OFFICE OF LEGAL COUNSEL

By direction of

Jacob K. Javits

Attention:

DS 129-11 U. S. S.  
10 FEB 25 1971  
OFFICE OF LEGAL COUNSEL

off

MFR: BS: dp

129-11

cc: Files

Mr. Hoffman  
Mr. Richman  
Mr. Schmidt  
Mrs. Copeland

FEB 11 1969

Honorable George Murphy  
United States Senate  
Washington, D. C. 20510

Dear Senator Murphy:

wt 2/11

This is in response to your letter of January 17, 1969 concerning the call you received from [REDACTED]

[REDACTED] asks why the Government has not released the x-rays and autopsy photographs taken in connection with the assassination of President Kennedy.

These pictures were transferred to the Archives by President Kennedy's family pursuant to 44 U.S.C. 397(e) (1) (since codified as 44 U.S.C. 2107(1) by P.L. 90-620). This provision authorizes the Archives to accept historical materials relating to a President subject to reasonable restrictions as to their use. The Kennedy family desired to prevent the undignified or sensational use of these materials (such as public display) or any other use which would tend to dishonor the late President or cause unnecessary suffering to his family.

Accordingly, the Kennedy family, with the agreement of the Administrator of the General Services Administration (which has jurisdiction over the National Archives), set certain restrictions on the use of these photographs. Basically, the use of these materials was limited to official Federal investigating bodies and to serious pathologists and scientists investigating the assassination, except that non-official pathologists and experts should not have access to the materials for five years after the transfer, which took place October 29, 1966, unless the Kennedy family granted permission.

Because of the continuing controversy about the x-rays and autopsy photographs, Attorney General Clark

File  
ae

in February, 1968 officially requested an impartial panel of medical experts to review these materials to determine the accuracy of the original autopsy report. That report had concluded that President Kennedy had been struck by two bullets, both fired from a position behind him. This was the basic conclusion of the Warren Commission. The 1968 panel, the members of which were selected by the Presidents of Stanford, Johns Hopkins, and Michigan State University, and the President of the College of American Pathologists, reviewed the materials and reported unanimously that they were in agreement with the conclusions of the original autopsy report.

The United States opposed the request of District Attorney Garrison that these materials be released for a state criminal proceeding. The opposition was primarily on the ground that such disclosure would not comply with the conditions of the agreement whereby the materials were transferred to the Archives and would hence violate the authorizing statute.

I hope that this information is of interest to  
[REDACTED] 7C

Sincerely,

William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel





Address Reply to the  
Division Indicated  
and Refer to Initials and Number

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

December 8, 1969

MEMORANDUM TO GENERAL COUNSELS OF  
ALL FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative  
Matters under the Freedom of Information  
Act, 5 U.S.C. 552.

The Freedom of Information Act, providing for compulsory disclosure of agency records not exempted by the Act, confers administrative responsibility on each agency and makes the agency's final decisions subject to judicial review. The Department of Justice conducts litigation in defense of agency determinations under the Act and furnishes certain advisory and other services pertaining to Freedom of Information problems. In general, the Department's litigation functions in this area are conducted by the Civil Division, and the advisory and other functions are conducted by the Office of Legal Counsel.

In discharging these functions, the Department has noted several developments which we believe

89-43-9151

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 15 1970	
FBI - DALLAS	

*Handwritten signature*

attention. First, the government in recent months has lost cases in court which involved a number of the exemptions contained in the Act. Consumers Union v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. July 10, 1969) (involving exemptions 2, 3, 4 and 5); General Services Administration v. Benson, 415 F. 2d 878 (9th Cir. Aug. 26, 1969) (exemptions 4 and 5). Second, there has been considerable variation in agency practices with respect to consulting the Department on Freedom of Information controversies before the agency takes final action which may result in the filing of suit against the agency. Third, there are particular problem areas under the Act which are common to a number of agencies, where an exchange of views may be beneficial.

The implications of the judicial decisions cited above, as well as other cases, are under continuing review in the Department. However, enough review has already been accomplished to point to two conclusions: (1) Although the legal basis for denying a particular request under the Act may seem quite strong to an agency at the time it

elects finally to refuse access to the requested records, the justification may appear considerably less strong when later, viewed, in the context of adversary litigation, from the detached perspective of a court and from the standpoint of the broad public policy of the Act; (2). An agency denial leading to litigation and a possible adverse judicial decision may well have effects going beyond the operations and programs of the agency involved, insofar as it creates a precedent affecting other departments and agencies in the Executive Branch.

In view of the foregoing, it seems manifestly desirable that, in most instances, litigation should be avoided if reasonably practicable where the government's prospects for success are subject to serious question. This can often best be done if, before a final agency rejection of a request has committed both sides to conflicting positions, the matter is given a timely and careful review, in terms of litigation risks, government-wide implications, and the policy of the Act, as well as the agency's own interests. To facilitate review of the nature just described, we need your cooperation. To

improve cooperation on our part, we have just established an informal committee of representatives of the Civil Division and of the Office of Legal Counsel.<sup>1/</sup> The functions of this committee will be to assist in such review and help assure closer coordination in our work.

We request that in the future you consult this Department before your agency issues a final denial of a request under the Freedom of Information Act if there is any substantial possibility that such denial might lead to a court decision adversely affecting the government. Such consultation will serve the review function discussed above, and in some instances may also enable us to assist you in reaching a disposition of the matter reasonably satisfactory both to your agency and to the person making the request. The requested consultation may be undertaken

<sup>1/</sup> The members of this committee as of now are: Jeffrey F. Axelrad, Civil Div., ext. 3300; Robert V. Zener, Civil Div., ext. 3354; Steven P. Lockman, Office of Legal Counsel, ext. 2039; and Robert L. Saloschin, Office of Legal Counsel, ext. 2674, chairman. Deputy Assistant Attorney General Thomas E. Kauper, Office of Legal Counsel, ext. 2051, will be chairman ex officio.


formally or informally as you prefer, and ordinarily should be directed initially to the Office of Legal Counsel rather than to the Civil Division.


As regards the third development under the Act noted near the beginning of this memorandum -- the emergence of certain problem areas common to several agencies on which exchanges of view and experience may be mutually beneficial -- there is one such area warranting mention at this time. This area consists of various questions as to the availability of information on the testing of manufactured and other products (including such items of information as the identity of the maker or supplier, brand names, models, generic descriptions, test criteria, test procedures, test results, comparative ratings, limitations pertaining to products or characteristics not tested, etc.). If the activities of your agency involve testing or information pertaining thereto, we would welcome any statements of experience, policies or views which you may care to provide. Such statements may prove use-

ful to other agencies engaged in similar activities and to this Department in representing or counseling such agencies.

It is our hope that through the consultation and review procedures outlined above and through exchanges of experience and views on problems of common interest, positive benefits will accrue to individual agencies, the government as a whole, and the public.

Please feel free to call us if you have any questions about the foregoing.

  
William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel

  
William D. Ruckelshaus  
Assistant Attorney General  
Civil Division