

To Senators Biden, Kennedy, Hatch/Laura and Simon 9/4/06
from Harold Weisberg, 7627 Old Receiver Road, Frederick, Md. 21701; 301/475-3106

Re: Possibly available Weinquist and Scalia information; FBI searches/Phoenix matter

Enclosed is a memo on these subjects that I have prepared based on my examination of hundreds of thousands of pages of FBI records and my experiences with the FBI in extensive FOIA litigation. I regret that the state of my health prevents my reworking this, as I'd have preferred, and delayed its completion.

If I can be of any help, I am usually home for the rest of the day after my mornings' therapy or by 10:30 a.m.

I do not know whether there will be any additional hearings but if there are there is another FBI device I call to your attention: claiming not to be able to respond immediately and promising to provide the requested information for the record. Where too often people who are too busy pay no attention to it.

Thus when Pat Gray appeared before your committee during Watergate days and did provide later what he could have provided when he testified no attention was paid to what almost certainly is the subject matter of those erased 13 1/2 minutes of Nixon tapes.

My wife and I thank you for your efforts.

Harold Weisberg

Disclosed records relating to Messrs. Rehnquist and Scalia

Aside from those records for which the ~~Reagan~~ Reagan administration has claimed executive privilege, FBI and Department records relating to both men have been disclosed in various FOIA matters, litigated and unlitigated. Those of which I know are in files relating to the assassinations of President Kennedy and Dr. Martin Luther King, Jr. I have obtained perhaps a third of a million pages of these records.

Unlike the rest of those known as "critics" of the official investigations of those crimes I am not a conspiracy theorist and my work is a study of how our basic institutions worked in those times of great crisis and thereafter. Thus, although Mr. Rehnquist has nothing at all to do with those crimes, when I read records relating to him that get to how our institutions worked I made separate copies for subject filing. (Certainly not all disclosed Rehnquist records in those matters.) These documents reflect that as AAG, OLC Rehnquist's function including policy and disclosure under FOIA. They also disclose that he was not truthful in writing Senators, for example, his 3/2/71 letter to the late Senator Jacob Javits states that there was a 1965 "review of all the documents compiled on the (JFK) assassination" and that "the great majority of the documents were made public." This is a large untruth because as of 1965 most of the government's records were unsearched, unprocessed and kept secret. And when Rehnquist was AAG, OLC, the Department's policy was to restrict disclosure. As of the time of this letter, 1971, the FBI's vast accumulation was virtually untouched, as was the smaller compilation of the Department. (Virtually no CIA records were then disclosed and its accumulation was very large.) Instead of processing its records for disclosure the Army destroyed all its JFK assassination records. Yet Rehnquist, without saying or even suggesting that he refers only to the Warren Commission's records and saying the opposite explicitly, adds that as the result of 1970 review and additional disclosures, "only a very small portion of the results of the Government's investigation. . . was not made public." That ^uvery small portion," in FBI records disclosed to me, with duplicates omitted when they were

filed in different cities, is about 250,000 pages. And this is far from all of the known "results of the Government's investigation."

He also states what he has no way of knowing, whether or not it is true, as it is not at all, that "(w)hile 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 casts doubt on the conclusions reached by the Commission." But if true this has nothing at all to do with whether withheld records ought have been disclosed, as only years later and then under compulsion, hundreds of thousands of pages were disclosed.

In sending copies of these few pages to Senators Simon and Petzenbaum I ~~was~~ suggested that they ought have been enough to get Justice Rehnquist to disqualify himself in FOIA cases. I have no knowledge either way.

It is a relatively simple task for the FBI and Department to locate and copy all disclosed Rehnquist and Scalia records because they are indexed and because all those disclosed are listed by their file numbers. (Not all disclosed records are in the FBI's reading room but those relating to the assassination investigations are.) Thus, a proper indices search will identify all existing records and comparison with the lists of disclosed files readily identifies all that have been disclosed.

As AAG, OIG, Judge Scalia wrote policy memos in which he also stated what was not true and what he had no way of knowing with regard to the internal investigation, an entirely secret investigation, of the FBI's abuses of the late Dr. King. (I cannot now locate my copies but they are available from the lawyer who represented me in a number of FOIA cases, James H. Lesar, 202/393-1921) Scalia stated that this investigation was thorough and complete, as it was not, and that only the report prepared as a result ought be made public (perhaps if anything at all were made public). I was then in court in a FOIA case seeking the Department's, including the FBI's, records related to that crime and its investigation. When the state of my health precluded my filing suit for the records of this internal investigation, by the Office of Professional Responsibility, Lesar filed in his own name. What was disclosed, which was far from all relevant records, leaves it without doubt that this investigation was neither

thorough nor complete and that the conclusions drawn were at the minimum subject to question. (In my own suit, after much struggle and prolonged stonewalling, I obtained 400 FBI pages reflecting how it set out to and did con the OPR.)

As AAG, OLC, Scalia also held that Dr. King's heirs ought not be compensated for the FBI's extraordinary abuses of him and his family and associates. He argued that this ought not be done because none of the FBI's other victims were compensated in any way. My recollection, which may be faulty, is that the AG did direct that there be compensation and that in some instances there was.

I believe that there is, at the least, a question of the propriety of Judge Scalia sitting on FOIA cases. (The influence of OLC on FOIA cases involving other government components is indicated in the Rehnquist records I mailed to the two named Senators. Any AAG, OLC who as a judge sits on FOIA cases in effect sits in judgement on himself. (While what one judge does is not binding on other judges, Judge Oberdorfer disqualified himself in one of my FOIA cases because he had been the law partner of a former staff counsel of the Warren Commission - even though that litigation was not related to the Warren Commission.)

The state of my health has prevented my reading all the records I have obtained but I believe that these illustrations raise questions of the propriety of both judges sitting on at least some FOIA cases if not all and that a search of the disclosed records may well disclose more. Both did form policy and ^{some of} their policy records have been disclosed and were not withheld under claim of executive privilege.

Senator Hatch at several points and with some vigor insisted that ^{there is only a} ~~the~~ single FBI report relating the alleged election abuses in Phoenix when Rehnquist was accused of what he denied under oath, any challenges at the polling places. From my knowledge of FBI practises, including filing practises, I believe that what Senator Hatch insisted upon is not and cannot be true. How and where the FBI's records are is another matter. It has its own ways of hiding what can be embarrassing to it. While I cannot be certain, the Phoenix case (or cases) would have been filed under the 44 classification: "Civil

Rights; Civil Rights-Election Laws; Civil Rights Election Laws- Voting Rights Act, 1965." File classification 67 includes "Federal Judiciary Investigations." A number of classifications ~~is~~^{are} used for government employees of various grades. Some are now obsolete but that does not mean they were destroyed.

In practise information originates at the filed offices. The field offices do not transmit all the information they collect to FBIHQ. FBI Form FD302 is used for reporting the results of interviews. When distribution is intended, information, usually much more than is held in a single FD302, the FBI uses a Letterhead Memorandum, known as LHM. When sources the FBI believes must be protected are used, they are identified within these LHMs by arbitrary designations, like T-1, and there is a separate page or pages that FBIHQ withholds from distribution on which each arbitrary designation is correctly identified. (I believe that in the Judiciary Committee hearings I heard that the Department originally claimed the need to withhold Behnquist information to protect confidential sources.) If the interviewing agents make and keep notes (not uncommonly they are destroyed after memos are prepared), if the interviews are tape recorded, or if they involve anything like exhibits, they are stored in the field offices in an FD340 envelope. They and such other things as newspaper clippings are generally in subfiles of the main files. The subfiles are usually identified by the addition of a letter to the main file number. (Clippings are also found in the main files.) The filed offices are rather diligent in clipping and in forwarding clippings and like matter to FBIHQ. Memos not intended for distribution are prepared and filed in the field offices and, generally, they are not forwarded to FBIHQ. Case agents and supervisors also keep ticklers. These ticklers often include information from sources other than the main file or files, particularly in political matters. (FBIHQ also has and preserves many ticklers.) In practise the FBI claims it destroys its ticklers routinely and thus never makes a search for them. I do not know that in the Phoenix matter the FBI prepared any ticklers, there or at FBIHQ, but it is the kind of thing the FBI likes to keep informed about. From my knowledge of FBI records I am certain

that from the moment he was considered for federal employment it would not have destroyed any records relating to Rehnquist. There might be exceptions, such as when the same information appears elsewhere, but with such exceptions the FBI makes cross-reference. It has a printed form for the posting of where the same or similar information is while when records are destroyed.

Before filing records are marked for indexing. It indexes the names mentioned on what it refers to as "see" cards. These cite the records in which the names appear.

It appears to be certain that on several occasions the FBI had to investigate Rehnquist and that in any investigation the voter harassment allegations could have been avoided only with considerable difficulty. With the first law in the FBI "cover the Bureau's ass" and the second law "cover your own ass," it is not probable that any such records were destroyed if only because the FBI needed them to cover itself. (And the FBI I know from my study not infrequently has other interests in preserving what can be embarrassing to individuals.)

When the FBI wants to file to frustrate search or to hide what it does not want to retrieve it has special file classifications it uses. One example relates to how it was able to withhold from the OPI internal investigation mentioned above. The inventories filed by the field offices supposedly listing all records relating to Dr. King all avoid listing records of the 66 classification. It is "administrative matters" and is known internally as an "admat." And that, as an "administrative matter," is where the FBI hid its enormous collections of electronic surveillances of Dr. King and his family and associates. In searching it merely holds that "administrative matters" are not within the subject searched.

At FBIHQ, file classification 94 is for "Research Matters." It in fact is where the FBI hides such things as its files on and about the press, its lobbying and propaganda activities and other things of political interest to it. On searching it merely holds that "Research Matters" and not within the ordered search.

In the field offices, the 80 classification ("Laboratory Research Matters") is

used for similar purposes, including also contacts with local officials. The field offices file "laboratory research matters" within the relevant main files, ~~not~~^{not} under the 80 classification. In every instance within my experience the FBI has held that the indexed 80 records are not relevant or it destroyed them after I requested them.

I believe that in any criminal investigation the FBI does not permit the destruction of records for at least five years. If as I understood from the hearings the alleged Rehnquist irregularities or those of the local Republicans included 1964, then the five years would not have elapsed by the time Rehnquist was at Justice and thus those records mentioning him existed then. They could of course, have then been filed elsewhere. But when that happens it is FBI practice to replace the transferred records with a sheet stating where they can be found.

As long as the FBI is able to get away with it, it pretends that a search of FBIHQ general indices is a complete search and it never voluntarily searches the field offices, which hold much more investigative material. It also pretends that all the information at FBIHQ is retrievable through its central index, which also is not correct. However, all searches are supposed to begin with written requests for searches, filed on printed forms, with the searching not by the special agents who have the interest but by the clerical personnel. The request for the search indicates what is requested, and this is one point at which information not infrequently has been automatically excluded, and the completed search slip supposedly lists all indexed records responsive to the request. Such a request need not be phrased as the Senate may have asked and thus also the search and compliance can be restricted. I suggest that requests be made for all search slips. I believe that no claim to executive privilege can be ascertained for file numbers, which is all that appears on the completed search slip. Examination of these slips might be informative and might indicate information for which the claim cannot properly be made. If the FBI does produce search slips and they do not include any field office searches, then you will know that it is apparent the FBI did not intend a real search and genuine compliance.

Perhaps there is something that was missed ~~d~~during Senator Hatch's assault on the San Francisco lawyer who had been an assistant U.S. Attorney in Phoenix. Senator Hatch insisted that the witness was present at the fracas in the one report he said the FBI provided and the Senator pretended that it had to have been that matter, at which Rehnquist was not present. Earlier this witness had been firm in testifying that he knew of the fracas but was not there. If he had been there it is not likely that the FBI would have omitted ~~that~~ in its report.

During the last session the committee appeared to be unaware of how it might locate former FBI agents, except through the FBI itself. There is a society of former agents and it publishes a directory in which they are all listed, with home addresses and phones, I believe.

The first paragraph above is intended to alert you to the possibility of the incorporation in the committee's report of a false structure built entirely upon misrepresentation and the Senator's so-called logic.