Free Congress
Research and Education
Foundation



July 13, 1982

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William Webster
The FBI
Washington, D.C.

OUTSIDE SOURCE

Dear Judge Webster:

I need your help with the next phase of our Foundation's Judicial Reform Project. A Blueprint for Judicial Reform attracted significant media attention when it was released last fall. The first Blueprint and activities such as our recent conference on judicial reform are helping conservatives to "reframe" the issue of judicial activism. Our second Blueprint will be released sometime in late fall and will focus primarily on criminal justice.

It is my feeling that a chapter on the Freedom of Information Act (FOIA), and the need for some amendments to that act, must be included in a book on criminal justice. Because of your leading role on this subject, I sincerely hope that you will agree to help us by producing a chapter on FOIA.

What I am looking for is a detailed discussion of the problem followed by a specific blueprint of what needs to be done. Such a chapter, under your name, would play a crucial role in the success of our book on criminal justice. You would be joining Attorney General Smith, Senators Hawkins and Zorinsky, Professor [redacted] and a number of other legal scholars who have agreed to help us with the book. I sincerely hope you can help us with the book, which we plan to co-publish with Devin-Adair.

We are looking at a mid-to-late August deadline. I really need your help and I cannot think of anyone more qualified to address this topic than yourself. If you have any further questions, please do not hesitate to call Randy Rader or Pat McGuigan (the co-editors) or myself. We hope to hear from you soon.

Best wishes.

Sincerely,

Paul M. Weyrich

Paul M. Weyrich
President



721 Second Street, N.E. Washington, D.C. 20002 202-546-3004

4-22 (Rev. 5-12-81)

FEDERAL BUREAU OF INVESTIGATION

Records Systems/Services Sections

_____, 19___

- ☐ Name Searching Unit, 4543, TL# 115
- ☐ Service Unit, 4654, TL# 225
- ☐ Special File Room, 5991, TL# 122
- ☐ Forward to File Review, 5447, TL# 143
- ☐ Attention _____
- ☐ Return to _____
  Supervisor, Room, TL#, Ext.

**Type of Search Requested:** (Check One)

- ☐ Restricted Search (Active Index - 5 & 20)
- ☐ Restricted Search (Active & Inactive Index - 5 & 30)
- ☑ Unrestricted (Active & Inactive Index)

**Special Instructions:** (Check One)

- ☑ All References (Subversive & Nonsubversive)
- ☐ Subversive Search
- ☐ Nonsubversive Search
- ☐ Main _____ References Only
- ☐ Exact Name Only (On the Nose)
- ☐ Buildup ☐ Variations
- ☐ Restricted to Locality of _____

Subject Paul M. Weyrich

Birthdate & Place _____

Address _____

Localities _____

R# _____ Date 7-27 Searcher Initials EC

Prod. _____

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|---|---|---|
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FBI/DOJ

4-22 (Rev. 5-12-81)

FEDERAL BUREAU OF INVESTIGATION

Records Systems/Services Sections

_____, 19___

- ☐ Name Searching Unit, 4543, TL# 115
- ☐ Service Unit, 4654, TL# 225
- ☐ Special File Room, 5991, TL# 122
- ☐ Forward to File Review, 5447, TL# 143
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  Supervisor, Room, TL#, Ext.

**Type of Search Requested:** (Check One)

- ☐ Restricted Search (Active Index - 5 & 20)
- ☐ Restricted Search (Active & Inactive Index - 5 & 30)
- ☑ Unrestricted (Active & Inactive Index)

**Special Instructions:** (Check One)

- ☑ All References (Subversive & Nonsubversive)
- ☐ Subversive Search
- ☐ Nonsubversive Search
- ☐ Main _____ References Only
- ☐ Exact Name Only (On the Nose)
- ☐ Buildup ☐ Variations
- ☐ Restricted to Locality of _____

Subject FREE CONGRESS RESEARCH + EDUCATION FOUNDATION

Birthdate & Place

Address _____

Localities _____

R# _____ Date 7-27 Searcher Initials EC

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FBI/DOJ

# Memorandum

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Crim. Inv. ___
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Tech. Servs. ___
Training ___
Off. of Cong. & Public Affs. ___
Telephone Rm. ___
Director's Sec'y ___

To : The Director

Date 7/29/82

From : [redacted]

Classified by 9145 CI/Typ
Declassify on: OADR 5/16/15

SECRET

Subject : REQUEST FROM FREE CONGRESS RESEARCH AND EDUCATION FOUNDATION THAT DIRECTOR WEBSTER FURNISH FOR A CRIMINAL JUSTICE BOOK A CHAPTER ON THE FREEDOM OF INFORMATION ACT (FOIA) AND THE NEED FOR AMENDMENTS

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PURPOSE: To advise of this request.

DETAILS: By letter (attached) dated 7/13/82, Mr. Paul Weyrich, President, Free Congress Research and Education Foundation advised that the Foundation's Judicial Reform Project is preparing a publication concerned with criminal justice and the need for certain reforms. Mr. Weyrich has asked the Director to submit a chapter for this publication which will address the FOIA, its impact on the FBI and the need for amendments. In this letter, Mr. Weyrich advised that Attorney General Smith, Senators Hawkins and Zorinsky among others will be contributing articles to this book. [redacted] Special Counsel, Office of Legal Policy, DOJ, confirmed that the Attorney General would be contributing an article on habeas corpus).

On 7/26/82, Mr. Randy Rader, counsel, Subcommittee on the Constitution, Senate Judiciary Committee, who was mentioned as a point of contact in Mr. Weyrich's letter, was telephoned concerning this request. Mr. Rader advised he was a consultant for the group. He further commented that, in addition to the above contributors, Mr. [redacted], and Senators Laxalt, Hatch and Grassley will be contributing articles as well as 6 or 7 law professors. He advised that some of the topics being addressed in this book are the exclusionary rule, bail reform, tort claims (Senator Grassley), the insanity defense, etc. Only Director Webster has been asked to contribute on the FOIA. Mr. Rader also advised that the Chapter should be about 20-30 pages double spaced and should be submitted by Labor Day to permit publication by early winter.

1 - Mr. Monroe - Enc.
1 - Mr. Young - Enc.
1 - Mr. Haynes - Enc.
2 - Mr. [redacted]
1 - Ms. [redacted]
(7)

CONTINUED-OVER

SECRET

FBI/DOJ

DO-6

OFFICE OF DIRECT

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

July 30, 1982

Mr. Colwell
Mr. Mullen
Mr. Otto
Mr. Bayse
Mr. Greenleaf
Mr. Groover
Mr. Kelleher
Mr. McKenzie
Mr. Mintz
Mr. Monroe
Mr. O'Malley
Mr. Revell
Mr. Stames
Mr. Young
Mr. Haynes
Mr. Hotis
Mr. Andrews
Ms. Douglas
Mr. Gants
Tele. Rm.
Miss Devine

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b7C

Judge,

In the attached memorandum [redacted] notes the receipt of a letter from Paul M. Weyrich, President of the Free Congress Research and Education Foundation, in which Weyrich requested you prepare a chapter on the FOIA for an upcoming criminal justice book to be published by the Foundation. Records Management Division recommends that a chapter on the FOIA be prepared for the you to be submitted to the Foundation, but RMD recommends that the responsibility for the preparation be assigned to the appropriate unit of the Office of Congressional and Public Affairs with input and assistance from Records Management Division's FOIPA Section. RMD indicates that this has been the practice in the past, but I would simply recommend that it be made clear that the responsibility should be joint, since RMD has the expertise in this area.

Mr. Weyrich indicated that there is a mid- to late-August deadline, so I believe that the work should begin on the project. I am trying to locate a copy of the first book before you give a final commitment to this project, but I am not overly concerned about the propriety of your offering a chaper for publication, since Ed Meese, the Attorney General, and Senators Laxalt, Hatch, and Grassley will all be contributing as well. I will obtain a copy of the first report and prepare a letter to Mr. Weyrich upon your approval or disapproval.

OK

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5/16/85 BY 9145 CS/DOJ vp

RE: FREE CONGRESS FOUNDATION

[redacted]

DO-6

OFFICE OF DIREC[redacted]

FEDERAL BUREAU OF INVESTIGATION

UNITED STATES DEPARTMENT OF JUSTICE

Mr. Colwell _____
Mr. Mullen _____
Mr. Otto _____
Mr. Bayse _____
Mr. Greenleaf _____
Mr. Groover _____
Mr. Kelleher _____
Mr. McKenzie _____
Mr. Mintz _____
Mr. Monroe _____
Mr. O'Malley _____
Mr. Revell _____
Mr. Stames _____
Mr. Young _____
Mr. Haynes _____
Mr. Hotis _____
Mr. Andrews _____
Ms. Douglas _____
Mr. Gants _____
Tele. Rm. _____
Miss Devine _____

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Judge:

I obtained a copy of A Blueprint for Judicial Reform for you to browse through. You will recall that Mr. Paul Weyrich of the Free Congress Research & Education Foundation has asked you to contribute to the second "Blueprint."

Please return the book to me and I will see that it is returned to Mr. Randy Rader of Senator Hatch's staff.

FBI/DOJ

~~SECRET~~

A review of FBI indices revealed no record on the Free Congress Research and Education Foundation. FBI records did reveal that Mr. Weyrich, in 1963, was program director for WAXO-FM in Kenosha, Wisconsin and had requested a Bureau spokesman appear on a radio program to discuss communism. (The request was declined). Further FBI files reveal that in January of 1958, while Press Secretary to Senator Gordon Allott, Mr. Weyrich met with a Press Counselor from an area embassy. An article (attached) in the Washington Post on July 28, 1982, indicates that the Free Congress Foundation is a conservative group, which along with the Moral Majority, sponsored Family Forum II which had as its purpose teaching participants to influence politics. (The forum consentrated an economic and social issues). (S) (U)

RECOMMENDATION: That Records Management Division comment on whether or not the requested chapter on the FOIA should be prepared for inclusion into referenced book. Mr. Weyrich should be advised accordingly.

APPROVED:

Director
Exec. AD-Adm.
Exec. AD-Inv.
Asst. AD-LES

Adm. Serv.
Crim. Inv.
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Inspection
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Laboratory
Legal Coun.
Off. of Cong. & Public Affs
Rec. Mgnt.
Tech. Servs.
Training

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~~SECRET~~

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Memorandun [redacted] to The Director
Re: Request from Free Congress Research and Education Foundation that Director Webster Furnish for a Criminal Justice Book a Chapter on the Freedom of Information Act (FOIA) and the Need for Amendments

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ADDENDUM OF RECORDS MANAGEMENT DIVISION (RMD), [redacted] 7/27/82

Records Management Division (RMD) recommends that a chapter on the FOIA be prepared for the Director to be submitted to the Free Congress Research and Education Foundation's publication on criminal justice. RMD recommends, however, that responsibility for preparation of the Director's article be assigned to the appropriate unit of the Office of Congressional and Public Affairs, with input and assistance being provided by RMD's FOIPA Section, as has been the case in the past.

APPROVED:
Director
Exec. AD-Adm.
Exec. AD-Inv.
Exec. AD-LES
Adm. Servs.
Crim. Inv.
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Inspection
Intell.
Laboratory
Legal Coun.
Off. of Cong. & Public Affs. [redacted]
Rec. Mgnt.
Tech. Servs.
Training



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# New Right Meeting Grumbles About Reagan

By Nicholas D. Kristof
Washington Post Staff Writer

Almost two years after they helped install a conservative president and elect conservatives all over the country, leaders of the Moral Majority and other New Right organizations are meeting to plan new crusades with many grumbling that President Reagan has not done enough.

The purpose of Family Forum II, sponsored by the Moral Majority and the Free Congress Foundation, is to teach the 500 participants from 37 states how to influence politics. But a common topic at the first day of the conference yesterday at the Sheraton-Washington Hotel, was that Reagan has neglected social issues dear to many conservatives.

"There is a disenchantment with Reagan," said Connaught (Connie) Marshner, chairman of the National Pro-Family Coalition and an organizer of the conference.

"Frankly, there's so much that he has promised that he hasn't done. He said he was strongly for tuition tax credits. He said he was strongly pro-life. He said he was strongly for school prayer.

"And then he got in and said the economy is the problem, and these issues are going to have to be on the back burner."

Marshner, who was chairman of the family policy advisory board of the Reagan-Bush campaign, added, "Reagan's heart is right [but] he's got a palace guard around him—Deaver, Meese, Baker—who don't believe these issues are important."

"That kind of advice," she said, "is going to hurt him [and the congressional candidates he supports] in the November elections."

Other participants were more cautious, stressing that change takes time and that there are limits on what the president can do. Rep. Vin Weber (R-Minn.) said he is satisfied with the administration's performance, adding that any fault lies with the Senate leadership, particularly Majority Leader Howard H. Baker Jr. (R-Tenn.), in not pressing conservative proposals.

The focus at the conference is on "family issues," and the disenchantment is not so much in fiscal policy as with social issues.

Participants tend to be economic conservatives, supporting substantial budget cuts and supply-side economics.

But the Moral Majority and similar groups have treated issues of social policy as paramount. They favor prayer in schools and tuition tax credits so parents can better afford to send children to private schools and they oppose abortion and guarantees of civil rights for homosexuals.

These positions frequently are based on fundamentalist religious convictions, and participants in the conference are most upset at lack of leadership in these areas from Reagan.

Gary L. Bauer, a White House liaison with the New Right, defended Reagan at a panel discussion, saying he has pushed for a constitutional amendment to permit school prayer, for tuition tax credits and for restrictions on availability of abortions.

Paul M. Weyrich, president of the Free Congress Foundation, said officials in the administration have been willing to listen to conservative spokesmen.

"We have access running out of our ears," he said. "The problem is that access doesn't always get results."

At one panel discussion, several congressmen discussed the moral issues confronting Congress and included federal deficits among them. Rep. William E. Dannemeyer (R-Calif.) explained that deficits posed a moral issue because they cause inflation that weakens the country and its people.

At the panel, Rep. David Michael Staton (R-W.Va.), said, "I believe God picks certain people. . . . I believe He's raised Ronald Reagan for this time."

In a speech to the conference plenary, George Gilder, author of "Wealth and Poverty," attacked welfare policies and feminism, which he said had done much to destroy the traditional family.

The "terrible crisis and disaster of American liberalism," Gilder said, was that welfare programs had destroyed much of the family structure of poor blacks because they give so many benefits to unwed mothers they encourage them to have children out of wedlock.

Gilder proposed phasing out Aid to Families with Dependent Children and income tax exemptions for children, and replacing them with a "child allowance." This would be a cash sum sent to all parents, regardless of income, based on the number of children they have.

August 3, 1982

OUTSIDE SOURCE

Mr. Paul M. Weyrich
President
Free Congress Research and
Education Foundation
721 Second Street, N.E.
Washington, D. C. 20002

Dear Mr. Weyrich:

I am pleased to accept your invitation to contribute a chapter on the Freedom of Information Act to your Foundation's upcoming edition of A Blueprint For Judicial Reform.

We will proceed along the lines suggested in your letter of July 13, 1982, by preparing a detailed discussion of the problems that the Freedom of Information Act poses for law enforcement agencies, followed by a discussion of several proposed amendments to the Freedom of Information Act to correct the problems. In addition, we have noted the mid- to late-August deadline.

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I look forward to hearing from you in the near future, and would welcome any further suggestions or comments that you might have.

DE-72

Sincerely,

William H. Webster
Director

Exec AD Inv. ___
Exec AD Adm. ___
Exec AD LES ___
Asst. Dir.:
Adm. Servs. ___
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Tech. Servs. ___
Training ___
Public Affs. O
Telephone Rm. ___
Director's Sec'y

360CT25 1982

1 - Mr. Randy Rader
1 - Mr. Monroe
1 - Mr. Young
1 - Mr. Haynes
1 - Mr.
1 - Ms.
1 - Miss Devine
(9)

SENT FROM D. O.
TIME 1:22
DATE 8-3-82
BY

FOR FILING

September 14, 1982

DAW

CLASSIFIED SOURCE

Mr. Paul M. Weyrich
President
Free Congress Research and
Education Foundation
721 Second Street, N.E.
Washington, D. C. 20002

Dear Mr. Weyrich:

Attached is the chapter on the Freedom of Information Act (FOIA) which was prepared at your request for the upcoming edition of "A Blueprint For Judicial Reform."

The FBI continues to support amendments to the FOIA to enable us to better protect certain law enforcement and foreign counterintelligence information. I appreciate the opportunity to address for your publication some of the FBI's concerns with the FOIA and to make certain recommendations for amending the Act. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely, DE-39 94-69919-4

11 9

William H. Webster
Director

Enclosure

1 - Mr. Monroe (Enc.)
[redacted] (6)
1 - Mr. Young (Enc.)
1 - Miss Devine (Enc.)

[redacted]

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Exec AD Inv.
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Public Affs. Off.
Telephone Rm.
Director's Sec'y

NOTE: Attached article prepared jointly by the Training and Research Unit, Records Management Division, and by the Research Unit, OCPA. Editorial input also provided by the Congressional Affairs Unit and Reading Room, OCPA, and by [redacted] Special Assistant to the Director. Article prepared in accordance with our agreement to do so by 8/3/82 letter to Mr. Weyrich, who requested such an article by his letter of 7/13/82. Bufiles do not contain reference to the Foundation. Based on available information, Bufiles do not contain reference to Mr. Weyrich.

mailed 10/5/82

MAIL ROOM [redacted]

APPROVED:
Director
Exec. AD-Adm.
Exec. AD-Inv.
Exec. AD-LES
Adm. Serv.
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Ident.
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Public Affs Off

DO-6

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

September 13, 1982

Mr. Colwell
Mr. Mullen
Mr. Otto
Mr. Bayse
Mr. Greenleaf
Mr. Groover
Laboratory
Mr. McKenzie
Mr. Mintz
Mr. Monroe
Mr. O'Malley
Mr. Revell
Mr. Stames
Mr. Young
Mr. Haynes
Mr. Hotis
Mr. Andrews
Ms. Douglas
Mr. Gants
Tele. Rm.
Miss Devine

Judge,

Attached is the chapter that was prepared for you on the Freedom of Information Act for inclusion in the Free Congress Research and Education Foundation's "Blueprint For Judicial Reform." The recommendations in the chapter are fairly consistent with the Administration's proposals for amending the FOIA, but the recommendations are very general and do not concede the points that have been given up in the Senate Judiciary Committee's markup of the bill. For example, you continue to support legislation which would modify the disclosure provisions for records relating to organized crime, terrorism, and foreign counterintelligence.

I believe that the article will preserve the Bureau's position for future legislative battles, and is general enough to be consistent with the Administration's proposals for revisions this year.

[redacted] b6 b7C

[redacted]

(2)

FBI/DOJ

Surely these values are
vitally important to a
free society and (and
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to art.

Surely a balance can be
struck which more
rationally supports our
future as a land of ordered
liberty.

Alex suggests a few acknowledgments
the assistance of _____
in the preparation of this article.
It can include divisions if 3-4 names
involved

(Rev. 9-9-82)

# DEPARTMENT OF JUSTICE
## FEDERAL BUREAU OF INVESTIGATION
## INTERNAL ROUTING/ACTION SLIP

| TO | TL # | ROOM | NAME/TITLE |
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| | 235 | 7116 | Exec. AD - Inv. |
| | 235 | 7110 | Exec. AD - LES |
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| | 234 | 6012 | Adm. Serv. |
| | 233 | 5012 | Crim. Inv. |
| | 341 | 11255 | Ident. |
| | 213 | 7125 | Inspection |
| | 232 | 4026 | Intell. |
| | 241 | 3090 | Laboratory |
| | 245 | 7427 | Legal Coun. |
| | 235 | 7116 | Off. Cong. & Public Aff. |
| | 211 | 5829 | Rec. Mgnt. |
| | 213 | 7159 | Tech. Servs. |
| | 152 | QT | Training |
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| | | | Miss Adams |
| | | | Mr. Andrews |
| | | | Mrs. Baldwin |
| | | | Mrs. Cooper |
| | | | Miss Devine |
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| | 244 | 6212 | Correspondence Unit |
| | 242 | 4437 | Reading Room |
| | 213 | 7861 | Media Services |
| | 233 | 5027 | Duty Supervisor, Div. 6 |
| | 244 | 6437 | Info. Desk/Telephone Center |
| | 152 | 1B327 | Mail Room/Courier Service |
| | 135 | 6912 | Personnel Records |
| | 111 | 4336 | Routing Unit |
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☐ Call Me
☐ See Me
☐ Approp. Action
☐ Initial
☐ Per Inquiry
☐ For Your Info.
☐ Note & Return
☐ Record & Return
☑ See Reverse Side

Remarks:

FROM
OFFICE OF THE DIRECTOR

Room 7162 | TL # 214 | Phone 3320 | Date 10/4/82

FBI/DOJ

[redacted]

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As you can see, the Judge signed off on the article concerning FOIA but he requests two changes in the article. First, he asked that a sentence be added at the end of the article (I assume the last sentence of the conclusion) which says "Surely a balance can be struck which more rationally supports our future as a land of ordered liberty." He also suggests a footnote acknowledging the assistance of _____ in the preparation of this article. He notes that this acknowledgement can include divisions if more than three or four names are involved. Since the addition of a footnote at the beginning would require us to renumber all the footnotes, I suggest that we handle this acknowledgement through an asterisk.

Would you please revise the article accordingly.

[redacted]

Changes made.

[redacted]

# THE FREEDOM OF INFORMATION ACT -- CHANGES NEEDED

by

William H. Webster*

During the last two decades, we have witnessed the emergence of a growing insistence that the people are entitled to know what their Government is doing, and that the information it possesses should be accessible to them. This insistence was manifested in the enactment of the Freedom of Information Act (FOIA). The FOIA provides access to Government records by individuals and sets forth justification for the Government to protect certain items of information. This legislative intent is a noble one. However, in practice the administration of the FOIA has created severe problems for agencies in the executive branch of Government and the citizens we serve.

When the FOIA went into effect in July, 1967,[1] it exempted many records from access, including investigative files. As a result, the FBI initially received few FOIA requests.[2] However, following the 1974 amendments it was used with increasing frequency by many individuals seeking every

*The assistance of the Research Unit, Office of Congressional and Public Affairs, and the Freedom of Information-Privacy Acts Section, Records Management Division, Federal Bureau of Investigation, in the preparation of this article is acknowledged.

Exec AD Adm. ___
Exec AD Inv. ___
Exec AD LES ___
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Legal Coun. ___
Off. Cong. & Public Affs. ___
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Tech. Servs. ___
Training ___
Telephone Rm. ___
Director's Sec'y ___
MAIL ROOM ☐

1 - Mr. Monroe
1 - Mr. Young
1 - Miss Devine

NOTE: Enclosure to letter dated 9/14/82 to Paul Weyrich, President, Free Congress Research and Education Foundation, Washington, D.C.

94-69979-4

TO FILE

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imaginable kind of record held by the executive branch. The law does not include the records of the legislative or judicial branch.

By the early 1970's, public sentiment concerning Government secrecy prompted Congress to review the Act. Ultimately, to make the FOIA more effective and responsive, Congress amended the law in 1974. As a result, Federal law enforcement agencies were required to disclose many records that had previously been exempted from FOIA disclosure.

It is certain that Congress intended the 1974[3] amendments to strike a better balance between the need to disclose information to ensure an informed citizenry and the need to protect information in the interests of national security and effective law enforcement. However, our experience establishes that while the 1974 amendments have contributed to open government, they have done so at the cost of effective government. While the FBI is committed to the basic concept of public disclosure, the FOIA continues to have a debilitating effect on FBI investigative operations which must be rectified.

The 1974 amendments to the FOIA significantly modified the Federal disclosure law. Specifically, the changes in exemption (b)(7), designed to cover law enforcement records, greatly affected the FBI. They provided that investigatory records could be withheld only if dissemination would result in any of six specific harms:

> ...investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.[4]

The FOIA and its amendments were designed to open Government records to public inspection and to provide judicial remedies to those aggrieved. The Act was a safeguard against possible abuses in Government. Nevertheless, the effects have not always been salutary. Those of us in the executive branch have an obligation to weigh the impact of FOIA on our work and to tell Congress and the public of our findings. And we have done so.

Our message has been that the FOIA needs some fine-tuning and, in certain areas, substantial revision. There are important values to be served in correcting the problems within the FOIA. This article will discuss the problems, and present the FBI's viewpoint for needed reforms in the Act.

## Administrative Problems

The FOIA has resulted in substantial administrative burdens for the FBI. This has detrimentally affected the public's use of the Act as well. The problem stems from the sheer volume of requests submitted.

It has been very difficult and sometimes impossible for the FBI to respond to the large number of requesters within the time limit presently imposed by the Act. Agencies must respond to requests within ten working days regardless of the complexity or scope of the request or the amount of work involved in responding.[5] Upon notice to a requester, an agency may extend this time limit for ten days in "unusual circumstances."[6]

If we are pressed to engage in hasty processing, we are more likely to commit serious errors, prematurely deny requests, or cause unnecessary litigation. Clearly, the volume of requests vastly exceeds the number anticipated by Congress when the law was written.

Changes should be made to create a more flexible system that would permit each agency to consider the amount of work required by a request and respond accordingly. Some requests can be handled quickly and easily, while other requests require major research projects. For example, the FOIA litigation pursued by the Meeropol brothers, the sons of Julius and Ethel Rosenberg, involved a review of over 400,000 pages at FBI Headquarters and several field offices. In one six-month period 70 employees of the FBI worked full-time on this request, reviewing 40,000 pages per month. Since 1975, the FBI has expended over $700,000 in salaries alone to comply with the court order in this one FOIA suit.

We need greater flexibility in the processing system. This would allow an agency to give priority to certain requesters, such as the news media, in order to make the Act a more useful device for the dissemination of information to the public. Thus, the public would benefit from a more timely response to the media.

We are also concerned that, under current law, an agency is required to comply with any request for records made by "any person."[7] This enables foreign nationals and governments to use the FOIA for purposes which may be contrary to our national interests.

As an alternative, a change is needed to require an agency to make information available only to a requester who is a "United States person." The definition of the term "United States person" would be limited to a U.S. citizen, an alien lawfully admitted for permanent residence, and certain corporations and unincorporated associations.

## The "Mosaic"

Information now being released can form a blueprint of the Bureau's investigative operations and techniques. Not too long ago, we ran a test called "Operation Mosaic." We reviewed FOIA materials that already had been released. The exemptions had been applied, and the material released was what we thought was safe material. But we discovered that seemingly innocuous information can be combined with records released at a different

time or with the requester's personal knowledge. This could reveal clues as to the identity of FBI sources or the extent of an FBI investigation. Obviously, our FOIA analysts have no way of knowing what information each requester possesses.

This situation has been noted by the judiciary. In Halperin v. CIA,[8] the United States Court of Appeals for the District of Columbia Circuit ruled in an FOIA suit that certain information would not be released, stating:

> We must take into account, however, that each individual piece of intelligence information, much like a piece of jigsaw puzzle, may aid in piecing together other bits of information even when the individual piece is not of obvious importance in itself.

Those parties opposing changes in FOIA have demanded specific examples of harm caused by the Act. The FBI has provided numerous examples of sources who have refused to cooperate with law enforcement because of the FOIA and certain other examples where we believe the FOIA has aided in the identification of a source. However, we do not always know if we have compromised an informant or source on an important case unless the opposition tells us. Finally, in many cases it is not possible for us to give the public examples in which hostile intelligence agencies have used the Act to their advantage. Such examples are not broadcast because the slightest suggestion that certain protected data have become available would only serve to increase the harm already created by such a release.

We need an FOIA amendment to remedy the foregoing concerns. We must redefine the meaning of "reasonably segregable" (as applied to law enforcement records under exemption 7 and to classified information under exemption 1) to allow us to withhold information that, on its face, does not fall within these exemptions but can be pieced together with other information known to the requester to reveal exempt information.

## Sources of Information

Traditionally, the FBI's ability to successfully investigate has depended in large measure on the willingness of the public to furnish information to us. To the extent the FOIA inhibits persons from providing crucial criminal or counterintelligence information, even if the individual's perception of disclosure is exaggerated, our effectiveness is impaired. The fact is, we have had instances of judges, businessmen, and even other law enforcement agencies refusing to cooperate in our investigations because of fear of disclosure. When an individual has derogatory information about a nominee for a Federal judicial appointment and refuses to furnish such information because of possible embarrassment or potential civil suit, the effect is far-reaching. Since 1976, no fewer than five different reports[9] studying the impact of the FOIA have concluded that the Act has harmed the Federal Government's ability to recruit informants and other confidential sources.

In March, 1980, a research project was conducted in which a five-part questionnaire was administered to 4,100 FBI Agents who were chosen randomly. The results of this survey, as it related to the FOIA, revealed that over 70 percent of the Agents reported that the FOIA had diminished their ability to develop informants. A survey by DEA reported that 85 percent of their agents considered the FOIA to be inhibiting their operations.

The danger to potential informants who cooperate with law enforcement can be illustrated by the testimony of Gary Bowdach, an admitted organized crime figure and loan shark, before the 95th Congress. The following exchange took place in testimony before Senator Sam Nunn's Governmental Affairs Committee and demonstrates how the Act can be used to learn the degree of the FBI's knowledge in an ongoing investigation:

Mr. Bowdach: ...we sent a request to the Drug Enforcement Administration. We received back the package, that must have weighed about five pounds, of documents. We went through all of these documents. Deletions were made throughout the documents. In some instances, deletions were not totally complete. They would leave one letter, where it could be recognized, the people that were involved in that case, to take the amount of space that was deleted, the length of the deletion, take that letter, measure the letter, backspace, see what position that letter is placed in the name, and from that letter, they were able to determine the name of an informant in that case.

Senator Nunn: What happened to that informant?

Mr. Bowdach: I can only speculate, sir.

Senator Nunn: What was the purpose of them trying so hard to obtain this information?

Mr. Bowdach: To eradicate the informant.

Senator Nunn: Do you think the informant was eradicated or do you have any way of knowing?

Mr. Bowdach: I have no way of knowing, but knowing the people that we are talking about, I don't think the man is among the living any more.[10]

A more recent example occurred in 1980 when a Federal inmate, convicted of interstate flight to avoid confinement for robbery and assault, confronted and threatened an FBI source in the prison exercise yard. This source had provided valuable information to the FBI in relation to a bank burglary that involved the inmate. The inmate showed the source an FBI document which was released to him under the FOIA and he accused the source of being an FBI informant. This accusation was based on the inmate's reasoning that because only three people knew the details of the crime discussed in the document, and two of those names appeared in the document caption, the name of the deleted person also must be the name of the informant.

In order to protect his life, prison authorities had to transfer the source to another facility. His usefulness as a source was ended, and word has reached the street that this man is an informant. Here, the requester's personal knowledge, coupled with the absence of certain information, led to the exposure of a confidential source of the FBI--a potentially lethal situation.

In another case a man telephoned an FBI office stating he knew the whereabouts of an escaped Federal prisoner. The caller expressed concern that the fugitive would kill him if his

cooperation became known. He was assured that his identity and any information he provided would be considered confidential. However, he refused to give his name, saying that he knew about FOIA and he believed anything he told us would get back to the escapee. The anonymous caller then said the fugitive was in some motel on a street he named. After contacting numerous motels on that street, the fugitive was eventually apprehended. In another case, an informant regularly furnished information resulting in recovery of large amounts of stolen Government property and the arrest and conviction of several subjects. However, one day he stopped cooperating, explaining that he believed the FOIA would jeopardize his life if he continued to assist the FBI.

We need FOIA revisions in three areas to remedy these serious problems. First, the informant exemption must be broadened to encompass information which "would tend" or "could reasonably be expected" to identify confidential informants. Under current law, only information which "would disclose the identity" of informants is protected.[11] Secondly, a provision is needed which would enable the Government to, in effect, give a "no record" response to requests for a particular informant's records by anyone other than the informant. This is needed because even acknowledging the existence of such records can reveal an individual as a Government informant. Finally, relief is necessary to expand the exemption protecting the lives of law enforcement personnel to exempt information endangering the safety of any person.

Currently, the law permits withholding from FOIA disclosure those portions of law enforcement investigatory records which would endanger the life or physical safety of law enforcement personnel.[12] One Federal court has stated it would allow the deletion of not only the identities of law enforcement personnel but any information which will jeopardize their safety as well.[13]

Unfortunately, this needed protection under the FOIA applies only to law enforcement personnel. Other persons who face similar danger from the criminal world or hostile intelligence organizations (such as witnesses, jurors, and informants) are not so protected by the exemption. Yet the cooperation and conduct of these individuals may well depend upon the assurances of safety provided for in the law.

## Foreign Counterintelligence and Terrorism

The present FOIA also has had an impact on foreign counterintelligence. As I have indicated, at present it provides that any "person" may request access to U.S. Government records.[14] Thus, whether that person is a U.S. citizen, an illegal alien, a foreign government representative or a hostile intelligence service employee, all have equal access to Government records. Some do not hesitate to use FOIA provisions to try to cripple the efforts of the FBI or CIA.

The problem can be illustrated by the request for intelligence files made by Philip Agee, formerly a CIA employee

and now a private citizen, who has engaged in a campaign to expose CIA officers wherever they are operating. A respected Federal District Court judge in Washington who heard the civil suit that arose over Agee's request, said:

> It is amazing that a rational society tolerates the expense, the waste of resources, the potential injury to its own security which this process necessarily entails.[15]

A law firm representing the Islamic Republic of Iran has asked the FBI to do a complete and thorough search of "all filing systems and location of all information regarding Mohammed Riza Pahlevi [the late Shah of Iran], including records maintained by your agency pertaining to any list of assets, all records of accounts, all records of holdings and transfers of property." Such requests clearly demonstrate that a potentially hostile government can attempt to obtain valuable information from FBI files pertaining to its national interests. I do not think Congress intended that a foreign government's request should be processed at the expense of the American taxpayer.

More importantly, the FOIA may inhibit the free flow of information to the FBI from friendly foreign governments. Recently, a government refused to furnish us information about organized crime members it was investigating because the Act would require the FBI, in response to FOIA requests, to confirm the existence of ongoing investigations by citing the appropriate exemptions.

In the war against terrorism, the FBI tries to anticipate violent designs before they occur. The only known method to thwart terrorist groups is to collect information

so that a terrorist act that is being planned may be discovered before it occurs. For a hostile terrorist group to request a file and be told it is denied because it is exempt as an ongoing investigation is a tip-off that the organization is under scrutiny. On the other hand, in these highly sensitive investigations, the absence of information can be as damaging as telling the groups we do have the information. The lack of investigative activity in a particular place within a certain time frame informs such groups that we have no knowledge of their plans. This may give them the confidence to proceed with a violent act. For these reasons we believe the FOIA should be amended to provide separate exclusionary consideration for these sensitive records.

## Organized Crime

Most Americans are aware that one of the top priorities of the FBI is the investigation of organized crime, which includes narcotics, loansharking, racketeering, gambling, and public corruption. The records we collect, maintain, and use in connection with these cases are, of course, among our most sensitive because of the harm that would result from the disclosure of that information to the wrong person.

Our investigations in this area are detailed, complex, and extensive. They are, therefore, most valuable to individuals motivated by other than legitimate reasons to identify

sources and determine the scope, capabilities, and limitations of our efforts. We know, for example, of an organized crime group in Detroit that mounted a campaign to use the FOIA to determine the extent of the FBI's investigation and to identify our confidential sources.

Although one of the purposes of the FOIA was to compel agency disclosure of records to assist in informing the electorate, it would be folly to assume that all citizens requesting the FBI's most sensitive information do so for the purpose of making themselves a more informed electorate. It must be recognized that organized crime groups not only have the motive to subject our release to detailed analysis, they also have the resources to finance such an examination by knowledgeable and skilled analysts.

Risks surface within the FBI as well. The FBI traditionally has operated on the "need to know" principle: sensitive information is provided only to those FBI employees who have a legitimate need for the information. It would not be uncommon for a veteran Special Agent assigned to our Criminal Investigative Division to have no knowledge about a foreign counterintelligence case, or for an employee assigned foreign counterintelligence responsibilities to know only a portion of the details of that same case. Yet, to respond to an FOIA request, all relevant records must be assembled in one place. Throughout the response, appeal, and litigation stages the records obviously receive much more exposure than they otherwise would in the normal course of the FBI's daily business.

We must remember, too, that human beings in the FBI review our records and try to decide what must be released and what properly should be withheld. Human beings have made mistakes in the past; they will make them in the future. Furthermore, there is a limit to their knowledge. As I have indicated, our FOIA analysts do not know, cannot know, and have no way of learning the extent of a requester's knowledge of relevant names, dates, and places. They may have no way of knowing or learning the significance to organized crime of a particular item of information. Yet, despite this, the FBI employee is expected to always make intelligent judgments.

Through their elected representatives, Americans have placed upon the FBI responsibility for the investigation of organized crime. We recognize the American people have a right to know how the FBI is discharging that responsibility. However, in order not to diminish our effectiveness, we believe the FOIA should be amended to provide separate exclusionary consideration for organized crime records, in view of their extreme sensitivity.

## Prisoners

Another area of serious concern is the access to our investigative files that FOIA permits to criminals in jail. Over the past few years, the percentage of all FOIA requests from convicted felons has ranged from 11 to 16 percent. As I have indicated, many of these requests may be efforts by prisoners to use the FOIA to identify informants. They also may

wish to identify FBI Agents and other law enforcement personnel for revenge. The volume of FOIA litigation generated by prisoners has not escaped judicial notice. A Federal judge noted, in a series of FOIA actions initiated by Michael Antonelli,[16] that he was "the most prominent FOIA litigant in the Northern District of Illinois" and that Congress has, through the Act, provided to prisoners "more occupational therapy than by any other act."

Our concern is not limited to the fact that convicted felons request and receive large amounts of law enforcement information about themselves. As I have indicated, we are also concerned that the FOIA harms law enforcement efforts by decreasing the amount and quality of information from confidential informants as well as giving criminals insights into the course and direction of criminal investigations.

In November, 1979, Joanne Chesimard escaped from the Clinton County Correctional Institute in New Jersey where she was serving a life sentence for the execution-style murder of a New Jersey State Trooper. Following her escape, prison authorities found in her cell 1,700 pages of FBI records acquired by Chesimard under the FOIA. The New Jersey State Police analyzed these documents. Based upon this analysis, Colonel C. L. Pagano, Superintendent, Department of Law and Public Safety, New Jersey State Police, told me that "without question Joanne Chesimard has an in-depth knowledge of the procedures of your agency which she will use to elude apprehension, and that persons who have provided reliable information to your agency in the past have had their personal safety jeopardized."

I can't say whether or not the FOIA has assisted Chesimard in her successful efforts to elude law enforcement. I do know she was reading the documents before she escaped and I also know, as this is being written, that she remains at large.

What is needed is a revision in the FOIA to allow the Attorney General, by regulation, to preclude imprisoned felons from using the FOIA.

## Costs

The cost to the taxpayers of implementing a new program can be significant and this is certainly true of FOIA. Despite congressional estimates that the 1974 amendments to the Act would cost the Government no more than $100,000 annually, the total expended by all agencies in FOIA compliance in 1980 was at least $57 million.[17] Less than five percent of that amount was recovered in requesters fees.

Hundreds of Federal employees work full-time complying with FOIA requests. At FBI Headquarters, over 300 employees (including 21 law-trained Special Agents) are assigned to this task. Judge Edward Dumbauld, of the U.S. District Court for the Western District of Pennsylvania, analyzed the matter when he said:

> "Where the enactments of Congress or precedents in the jurisprudence of this Court do not clearly command otherwise, the FBI should be permitted to fight crime by investigating violations of Federal law rather than to serve as a librarian to furnish criminals a complete account of evidence in the government's possession demonstrating their criminality, or to conduct historical research for the benefit of journalists seeking to spread...scandal and sensationalism throughout the land for monetary gain.... These priorities are particularly important in the present era of budgetary constraint when all misspent resources diminish what is available for useful service to the public."[18]

It can be demonstrated that the cost of Government search and review frequently bears little correlation to the public interest in disclosure. Most FOIA requests made by corporations are for private commercial reasons. In some instances, individuals also pursue personal requests, at public expense, which serve no public interest. The cost of a single request can be quite substantial. Consider the Philip Agee request, mentioned earlier, which has cost the American taxpayer over $400,000.

At present, the Government's collection of fees for FOIA requests is limited to the relatively small cost of document search and duplication. While we never have predicated our urging for FOIA revisions on the basis of costs, consideration should be given to requiring requesters to pay more realistic fees. In particular, the Government should be able to recover reasonable costs for document processing, the major cost item.

## Law Enforcement Guidelines

Another troublesome area for us concerns the protection of information that may be termed "law enforcement guidelines and priorities." While the current law protects from disclosure "investigative techniques and procedures,"[19] it provides no similar exemption for "guidelines and priorities." So, while laboratory techniques used in the investigation of arson, and techniques for preventing the assassination of the President

are protected, the internal prosecutive guidelines of the Department of Justice and the investigative priorities of the FBI are subject to release.

Since "guidelines and priorities" are subject to disclosure through the FOIA, the Government is in a disadvantageous position. It must release its "game plan" to those who would use the information to evade investigation or avoid prosecution. For example, if a United States Attorney's prosecution guidelines state that thefts of Government property not exceeding $500 will not be prosecuted, the knowing criminals may act with impunity as long as they stay within the $500 limitation. If records detailing FBI priorities state that certain classes of Federal violations are not to be given priority investigation due to resource limitations, the criminal community is provided a relatively safe zone of operation.

To correct this inadequacy in the law, the FBI supports amendments to provide express protection to "guidelines and priorities," in addition to that now afforded "techniques and procedures."

## The Judiciary

In the past few years, Federal courts have commented on the FOIA in their opinions, suggesting that Congress revise the Act if it wishes to exempt certain information from disclosure.

One of the major concerns of the Courts is the disruption of normal agency operations that results from administering the Act. As Judge Arlin M. Adams noted in Ferri v. Bell,[20] one must question "whether Congress anticipated at the time of enactment that individuals with no demonstrable need would be able to hinder the normal operations of Federal enforcement agencies by requesting large quantities of documents."[21]

While the Supreme Court has recognized that the "...FOIA was not intended to function as a private discovery tool,"[22] it has also held that a requester's rights under present law "are neither increased nor decreased" because of his status as a litigant.[23] In other words, attempts have been made to use the Freedom of Information Act to circumvent discovery rules in administrative and judicial proceedings.

In the prosecution of a Federal criminal case, a defendant seeking discovery information must ordinarily demonstrate not only the relevance of the information he seeks, but also that his request is reasonable and within the scope of criminal discovery.[24] In addition, a criminal defendant's request for discovery may trigger a Government right to reciprocal discovery. Thus, to avoid the rules of discovery, as well as to disrupt the prosecutor's case preparation or to delay the trial, criminal defendants have made flurries of related FOIA requests, often close to scheduled trial dates. This disrupts trial proceedings and circumvents the discovery scheme established under the Federal Rules of Criminal Procedure.

In Lame, Judge Dumbauld also discussed the burden of the Act on the courts:[25]

> ...Similarly, the judiciary should be permitted to perform its normal task of adjudicating controversies of importance by the development and application of legal principles rather than to dissipate its energies in file searches through mountainous haystacks of triviality and in unproductive paperwork.[26]

The in camera reviews that Judge Dumbauld was referring to place an additional burden on already overworked trial courts.

Legislation is needed to change the current requirements for judicial review of agency denials of information under the Act, specifically to modify the standard for de novo review where the requested information is withheld on the basis of exemption (b)(1), i.e. classified national security information. The courts should not enjoin the agency from withholding such records unless the agency's action is found to be arbitrary or capricious.

This needed change takes into consideration the sensitive nature of documents relating to national security and foreign policy and the need to give substantial deference to an agency's classification decisions. With respect to other exemptions, however, this modification would not affect the de novo standard of review.

## Conclusion

The FOIA, with its mandate for open government, has created some serious problems. In the FBI we have handled over 116,000 requests since 1975 and therefore are in a position

to make valid judgments as to the impact the FOIA has had on our operation. The problems I have identified should be addressed so that we can continue to serve effectively as a law enforcement agency entrusted with vital responsibilities in the areas of crime and national security. Surely a balance can be struck which more rationally supports our future as a land of ordered liberty.

1. 5 U.S.C.A. Section 552 (1976 and Supp. 1979).

2. Requests for information from the FBI pursuant to the FOIA for the years 1967 through 1972 totaled approximately 50. Requests for the subsequent years are as follows.

| | |
|---|---|
| 1973 | 64 |
| 1974 | 447 |
| 1975 | 13,881 |
| 1976 | 15,778 |
| 1977 | 18,026 |
| 1978 | 18,084 |
| 1979 | 14,925 |
| 1980 | 15,260 |
| 1981 | 12,531 |

3. 5 U.S.C. Section 552(b)(7)(1976) (originally enacted as Pub. L. No. 93-502, 88 Stat. 1561). This amendment substituted "investigatory records" for "investigatory files." Also, segregable portions of records no longer fell under the exemptions.

4. Id.

5. 5 U.S.C. Section 552 (a)(6)(1976).

6. Id.

7. 5 U.S.C. Section 552 (a)(3)(1976).

8. Halperin v. CIA, 629 F.2d 144, 150 (D.C. Cir. 1980).

9. See Senate Judiciary Committee, Subcommittee on Criminal Laws and Procedures, Erosion of Law Enforcement Intelligence (1977); General Accounting Office, Impact of the Freedom of Information and Privacy Act on Law Enforcement Agencies (1978); Report of the Attorney General's Task Force on Violent Crime (1981); Department of the Treasury, Management Review on the Performance of the U.S. Department of the Treasury in Connection with the March 30, 1981, Assassination Attempt on President Reagan (1981); Department of Justice, Drug Enforcement Administration, Effect of the Freedom of Information Act on DEA Investigations (1982).

10. Senate Committee on Governmental Affairs, Senate Permament Subcommittee on Investigations, "Organized Criminal Activities," August 10, 1978, p. 233.

11. 5 U.S.C. Section 552 (b)(7)(D).

12. 5 U.S.C. Section 552 (b)(7)(F).

13. Shaver v. Bell, 433 F.Supp. 438, 441 (N.D. Ga. 1977).

14. 5 U.S.C. Section 552 (a)(3).

15. Agee v. CIA, 517 F.Supp 1335, 1341-42 n.5 (D.D.C. 1981).

16. Antonelli v. FBI, No. 80-C-3324 (U.S.D.C., N.D. Ill., March 2, 1981) (summary judgment denied).

17. For initial estimates of administrative costs see S.Rep No. 93-854, 93d Cong. 2d Sess. (1974); H.R. Rep. No. 93-876 93d Cong., 2d Sess. (1974). The 1980 estimates are based on a survey by the Department of Justice's Office of Information. See Intelligence Reform Act of 1981: Hearing before the Select Committee on Intelligence of the United States Senate, 97th Cong., 1st Sess. 83 (1981)(statement of Jonathan C. Rose, Assistant Attorney General, Office of Legal Policy, Department of Justice).

18. Lame v. United States Dept. of Justice, 654 F.2d 917, 932 (3rd Cir. 1981).

19. 5 U.S.C. Section 552 (b)(7)(E).

20. Ferri v. Bell, 645 F.2d 1213 (3d Cir. 1981).

21. Id., note 17, p. 1226.

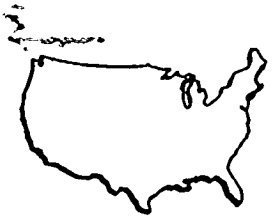
22. NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214, 242 (1978).

23. Sears, Roebuck and Co. v. NLRB, 346 F.Supp. 751 (D.D.C. 1972), aff'd 480 F.2d 1195 (D.C. Cir. 1973) aff'd in part, rev'd in part and remanded, 421 U.S. 132, 143 n. 10 (1975).

24. See 18 U.S.C. Section 3500 and FR Crim. Proc. 16.

25. See note 18, supra.

26. Id., p. 932.



# Free Congress Research and Education Foundation



December 16, 1982 OUTSIDE SOURCE

Judge William Webster
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Judge Webster:

We are happy to be able to give you an update on Criminal Justice Reform: A Blueprint. As of last Friday, December 10th, Regnery Gateway of Chicago, the publisher, had received all of the chapters to be included in the book. They will now begin the process of typesetting and we will soon be receiving the galleys. We are hoping for a mid-February publication.

We both hope that you have a very Merry Christmas and a wonderful New Year. After the holidays, we will continue to keep you posted on the book's progress and look forward to working with you in the future. If you ever have any questions or need our assistance, please do not hesitate to call.

Sincerely,

Patrick B. McGuigan
Director
Judicial Reform Project

Randall R. Rader
Co-Editor
Criminal Justice Reform

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March 15, 1983

OUTSIDE SOURCE

Judge William Webster
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Judge Webster:

I am pleased to tell you that Criminal Justice Reform, including your excellent chapter, is now being produced by Regnery Gateway in Chicago, Illinois. We should have books within the next few weeks. In gratitude for your participation in this project, we will be sending you three copies of the book as soon as it is available.

We would be pleased if you could be our guest at a press briefing/luncheon to release the book officially. The luncheon will be held on Tuesday, April 12 in the Russell Senate Office Building, Room 385. Among our guests will be Presidential Counsellor Edwin Meese III, several of the other authors who participated in the production of this book, and members of the media.

Please call me as soon as convenient to let me know whether or not you will be attending. Paul Weyrich, Randy Rader, Claudia Keiper and I have appreciated your help on this Project. We look forward to working with you in the future.

Best personal regards.

DE-96 94-69979-6

APR 15 1983

Sincerely,

Patrick B. McGuigan
Director
Judicial Reform Project

P.S. The second annual Conference on Judicial Reform will be held on Monday, June 13 at the Mayflower Hotel here in Washington, D.C. We will send you complete information on that conference when planning is completed.

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QUTSIDE SOURCE

April 6, 1983

Mr. Patrick B. McGuigan
Director
Free Congress Research
and Education Foundation
721 Second Street, N. E.
Washington, D. C. 20002

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Dear Mr. McGuigan:

Thank you for your invitation of March 15 to attend the luncheon on April 12 to celebrate the release of Criminal Justice Reform. This is something I would certainly enjoy being present for. Unfortunately, I will be out of town during that time.

I appreciate your thinking of me, and I am especially looking forward to receiving copies of the book. Please accept my best wishes for a successful luncheon.

Sincerely yours,

90-69479-1

William H. Webster

William H. Webster
Director

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APPROVED:
Director
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1 - Mr. Monroe - Enclosure
1 - Miss Devine - Enclosure
1 - Telephone Room - Enclosure
1 - Mr. French - Enclosure
1 - Mr. Andrews - Enclosure
1 - Mr. Baker - Enclosure
1 - Speech Unit - Enclosure

Exec AD Adm.
Exec AD Inv.
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Note: Invitation declined per Director due to Missouri Law Enforcement Conference in Lake Ozark on 4/11 and Fifth Circuit Conference in Ft. Worth on 4/13. Bufiles reflect nothing to preclude this response.

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Director's Sec'y
MAIL ROOM

# Free Congress Research and Education Foundation



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Director's Sec'y

April 14, 1983

William Webster
Director
Federal Bureau of Investigation
Washington, D.C. 20535

OUTSIDE SOURCE

Dear Mr. Webster:

I am pleased to enclose three copies of Criminal Justice Reform, including your excellent chapter, for your use. Some of your staffers have received copies in recent days, but I wanted to be sure you had your personal copies. These are all softcover. The hardcover copies are being bound in Chicago and will not be available for another couple of weeks. Once those books are here, we will send you two copies. Of course, if you find you need additional books, feel free to call upon us.

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On behalf of the Free Congress Foundation's Judicial Reform Project, I am extending a formal invitation for you to participate in some role in our Conference on Criminal Justice Reform, which will be held at the Mayflower Hotel on Monday, June 13, 1983. I make this invitation somewhat open-ended because I am entirely comfortable with the idea of letting you decide exactly what you would like to speak upon in the criminal justice area. Perhaps you could speak on the Freedom of Information Act, or another area of criminal justice if you prefer. Could you have one of your staffers call me as soon as possible if this is indeed a possibility?

Paul Weyrich, Randy Rader and I want to express our deep gratitude for your help on this book. We also appreciate your leadership on criminal justice reform issues.

We look forward to working with you and your staff in the future. As always, feel free to call upon me or any of the Free Congress Foundation staff if we can be helpful in any way.

Sincerely,

Patrick B. McGuigan

Patrick B. McGuigan
Director
Judicial Reform Project

FBI/DOJ
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OUTSIDE SOURCE

April 28, 1983

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Mr. Patrick B. McGuigan
Director
Free Congress Research and
Education Foundation
721 Second Street, N. E.
Washington, D. C. 20002

Dear Mr. McGuigan:

Thank you for your letter of April 14 enlosing three copies of Criminal Justice Reform. I will look forward to receiving the hardcover copies and appreciate your words of thanks for my contributions to your publication.

I also appreciate the invitation to participate in your conference on Criminal Justice Reform. Unfortunately, my schedule of prior commitments will not permit me to join you.

You and the other members of the Foundation have my best wishes for a very successful conference.

Sincerely yours,

DE-T15 William H. Webster

William H. Webster
Director

94-[illegible]-9

1 - Miss Devine - Enclosure
1 - Telephone Room - Enclosure
1 - Mr. Baker - Enclosure
1 - Speech Unit - Enclosure
NOTE: Invitation declined per Director. Bufiles reflect nothing to preclude this response.
IAB:sah (6)

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MAIL ROOM

JUN - 1983

FBI/DOJ

# The Congress Research and Education Foundation




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Dir... ____

September 20, 1983

OUTSIDE SOURCE

William H. Webster
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Pennsylvania Avenue, between
9th and 10th Streets, N.W.
Washington, D.C.

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Dear Judge Webster:

Our great respect for you, and the excellent chapter on FOIA you provided for our publication, Criminal Justice Reform, prompts me to make this request. As you can see from the material I have enclosed, we have put together what we feel is an impressive Conference on Criminal Justice Reform, slated for one week from today.

We would be honored if you could serve as the after-dinner speaker, the capstone to what we believe will be a day making a real contribution to the national dialogue on the future of the criminal justice system. Among the speakers joining us during the course of the day are Attorney General William French Smith, Presidential Counsellor Edwin Meese III, Philadelphia D.A. Edward Rendell, Senator Paul Laxalt, Dr. Russell Kirk and many more.

9/27/83

The dinner session will begin at 6:30 with a 20-25 minute speech from Senator Pete Wilson, followed by dinner itself. At 7:30 or thereabouts, we would be honored to have you deliver a 30 minute or longer (or shorter, at your discretion) address to the attendees. You might wish to simply adapt and update the excellent chapter on FOIA you gave us earlier, or address the newly-released crime statistics, or any other criminal justice topic you feel is appropriate.

We already have more than 200 registrants for the conference, including regional law enforcement officials, Hill staffers, executive branch staffers, anti-crime activists, attorneys, law students, academics, journalists and other interested individuals.

DE-63 139-14-699 79— 10

If you or your staff have any questions, I would ask that you call Patrick McGuigan, our Judicial Reform Project director, to discuss this further. I am out of town this afternoon and most of tomorrow. If you find this fits your schedule, let Pat know right away and he can make appropriate adjustments in the conference program and pre-conference publicity.

1 SEP 30 1983

Thank you for your consideration of this request. Best regards.

Sincerely,

Paul M. Weyrich

Paul M. Weyrich
President

A Non-Profit, Tax-Exempt Educational Organization


721 Second Street, N.E. Washington, D.C. 20002 202-546-3004


1125/A 9/22/83
Patrick McGuigan advised of regrets on AD Lyons. No action necessary OCPA 9/22/83

Copy made for Tele. Rm. & Speech Unit 9/20/83 aga

DO-7

FROM

OFFICE OF DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

TO

OFFICIAL INDICATED BELOW

| | |
|---|---|
| Mr. Colwell | ( ) |
| Mr. Mullen | ( ) |
| Mr. Otto | ( ) |
| Mr. Boyd | ( ) |
| Mr. Geer | ( ) |
| Mr. Glover | ( ) |
| Mr. Groover | ( ) |
| Mr. McKenzie | ( ) |
| Mr. Mintz | ( ) |
| Mr. Monroe | ( ) |
| Mr. O'Malley | ( ) |
| Mr. Revell | ( ) |
| Mr. Stames | (X) |
| Mr. Young | ( ) |
| Mr. Hotis | ( ) |
| Mr. Andrews | ( ) |
| Mr. Gants | ( ) |
| Tele. Room | ( ) |
| Miss Devine | ( ) |

| | |
|---|---|
| See Me | ( ) |
| Note and return | ( ) |
| Prepare reply and return for my signature | ( ) |
| Please Handle | ( ) |
| Respond over your signature | ( ) |
| Prepare memo for the Department | ( ) |
| For your recommendation | (✓) |
| What are the facts? | ( ) |
| Hold | ( ) |

ASAP

Remarks:

FBI/DOJ

# Memorandum

FEDERAL GOVERNMENT

Subject: Free Congress Foundation Speech

Date: August 31, 1983

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To:
Director William Webster, FBI
[redacted] AAG
[redacted] SG
[redacted] OLC
[redacted] OLP
[redacted] Criminal
[redacted] DSG

From:
[redacted]
Special Assistant to
the Attorney General

Free Congress Research And Education Foundation

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Director's Sec'y ___
FBI/DOJ

On September 27th either the Attorney General or the Deputy Attorney General will address a conference on criminal law reform sponsored by the Free Congress Foundation.

The speech will focus on what the courts recently have done wrong in the area of criminal law, as well as on what they have done right. Thus, I need information on both the positive and negative trends in the courts. And I would also like to know the occasions on which the courts have invited legislative reform of certain areas of the law. I would appreciate any help you can give me. A phone call would do (633-2927), unless you would prefer to put your thoughts down in writing. I would appreciate it if you could respond by Monday, September 12th (Room 5127).

[redacted]

94-69979-11

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DIRECTOR'S
ASSISTANT
RECEIVED

57 MAR 23 1984

SEE LEGAL COUNSEL DIVISION ADDENDUM - PG. 2

Memorandum from [redacted] to Director
Re: FREE CONGRESS FOUNDATION SPEECH [redacted]

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ADDENDUM: LEGAL COUNSEL DIVISION, 1/25/84

On 9/12/83, SA [redacted] Legal Counsel Division, responded by telephone to the request of Special Assistant to the Attorney General [redacted] was given the names of the following cases, together with a brief summary of the decisions:

Negative Trends:

1. U.S. v. Cuaron, 700 F.2d 582 (10th Cir. 1983), accord U.S. v. Baker, 520 F.2d 1080 (8th Cir. 1981) (warrantless entry to arrest - telephonic search warrants)

2. U.S. v. Taborda, 635 F.2d 131 (2d Cir. 1980) (warrantless use of sense-enhancing devices)

3. U.S. v. Henry, 447 U.S. 264 (1980); Edwards v. Arizona, 451 U.S. 477 (1981); U.S. v. Hinckley, 672 F.2d 115 (D.C. Cir. 1981); U.S. v. Mohabir, 624 F.2d 1150 (2d Cir. 1980) (restrictions on authority to interrogate based on suspect's right to counsel)

4. U.S. v. Criden, 633 F.2d 346 (3d Cir. 1980) (recognition of journalist-source privilege in federal court)

5. In re Grand Jury Empanelled Jan. 21, 1981, 535 F.Supp. 537 (D.N.J. 1982) (creation of privilege barring federal access to state tax returns)

6. In re Subpoena (Zuniga), 33 Cr.L. 2439 (6th Cir. 8/3/83) (recognition of psychotherapist-patient privilege)

Positive Trends:

1. U.S. v. Myers, 692 F.2d 823 (2d Cir. 1982) (undercover operations properly controlled and conducted do not offend due process)

2. N.Y. v. Belton, 453 U.S. 454 (1981); U.S. v. Ross, 456 U.S. 798 (1982); Illinois v. Lafayette, 77 L.Ed.2d 65 (1983) (adoption of "bright-line rules" for search and seizure)

ADDENDUM: LEGAL COUNSEL DIVISION, 1/25/84, [redacted] b6 b7C

Legislation Invited:

Williams v. U.S., 73 L.Ed.2d 767 (1982) (invitation to modify federal criminal statute)