

FBI OVERSIGHT AND AUTHORIZATION REQUEST FOR FISCAL YEAR 1991

HEARINGS BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIRST CONGRESS SECOND SESSION

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Mr. EDWARDS. Eight pages not even sent, and when you read it you see that it's really not very strategic stuff.

Now, my question to you is, who interpreted this law this way? It certainly seems to me to—does it make your job tougher or easier? Were you here then?

Mr. MOSCHELLA. Yes, sir.

Mr. EDWARDS. Do you remember when that happened?

Mr. MOSCHELLA. Yes. In 1986, the Congress passed the Freedom of Information Reform Act. We had asked for a number of changes almost since the day the law was passed in 1974, because we felt that the law, as it was at the time, did not provide the adequate language to protect sources in particular. The language was changed in 1986 so that we were able to withhold all information provided by a confidential source, and the term "confidential source" is given rather broad meaning, so that the processing is different.

Mr. EDWARDS. We will have to look at the law again. Did you get an opinion from the Department of Justice to interpret the law this way?

Mr. MOSCHELLA. There was a memorandum that had been written by Mr. Rose concerning the application of the confidential source exemption.

Mr. EDWARDS. Well, as you can imagine, it is kind of disturbing to see that that was such a major change that sort of went through, especially when you read what now is being censored. It's old 1941 stuff that really doesn't have any real business in being eliminated, I don't see.

Mr. MOSCHELLA. One thing I need to tell you, Mr. Chairman, is that we did institute a historical processing policy within the Section so that documents that do reach a certain age are treated much differently than the documents that are of more recent vintage.

Mr. EDWARDS. I had just gotten out of college. As a matter of fact, in 1941 I was an FBI agent.

Do you have any more questions, Mr. Kastenmeier?

Mr. KASTENMEIER. No, I don't, Mr. Chairman. I appreciate the testimony of Mr. Moschella.

Mr. EDWARDS. We appreciate your testimony very much, Mr. Moschella.

Mr. MOSCHELLA. Thank you, Mr. Chairman.

Mr. EDWARDS. We want to work with you, as you know.

Now, the next witnesses will testify as a panel. The first member of the panel is David Garrow. Mr. Garrow is a professor of political science at City College of New York and the City University Graduate Center.

In 1987, he won the Pulitzer Prize for his book, "Bearing the Cross: Martin Luther King, Jr., and the SCLC." He relied extensively on FBI documents in his research on that book and in his 1981 book on Martin Luther King and the FBI.

I think I will introduce the other witnesses as they testify. We welcome you all. Will you raise your right hand?

[Witnesses sworn.]

Mr. EDWARDS. Thank you very much.

Without objection, all of the statements, in full, will be made a part of the record, and we will now hear from David Garrow.

STATEMENT OF DAVID J. GARROW, PROFESSOR OF POLITICAL SCIENCE, CITY COLLEGE OF NEW YORK AND CITY UNIVERSITY GRADUATE CENTER, NEW YORK, NY

Mr. GARROW. Thank you very much, Mr. Chairman.

I've submitted for the record a somewhat longer statement, and I'll speak relatively briefly to touch on three or four of the matters that I discuss in this.

Access to historical information under the Freedom of Information Act is a major concern both to American historians—I serve as a member of the Access Committee of the Organization of American Historians—and also to freelance nonfiction authors; I serve on the advisory board of the National Writers Union.

I've worked with FOIA and made requests with the FBI since 1979, and so my experience goes back over a decade now, and in the course of that I've made perhaps four or five dozen FOIA requests. But my experience over this 10 years has revealed both the significant increase in the extent of delays that you discussed with your initial witness, and also my experience has revealed a very distinct, very dramatic increase in the scope of deletions that are being made by the FBI, a particular increase since the 1986 amendments that you referred to earlier.

I think with regard to the question of delay there are two matters that, in my experience and what I know of the experience of other scholarly users, I'd particularly like to highlight for you. The first—and this is one that has been confirmed in some informal comments that I've had made to me by members of the FOIPA Section of the Bureau—is that with historical requests the delay at the level of the classification unit, where the Section reviews materials to see whether something is classified, whether it should be withheld on (b)(1) grounds, my impression has been that much material—I don't know if this concerns only larger, more than 3,000-page requests—but that material sits in a backlog there for a considerable amount of time—the Bureau might be able to quantify that—but perhaps on the course of a year or more, before it is reviewed and then sent on for processing by the other parts of the Section.

What also has developed over this past decade is a rather extensive increase in the application of the (b)(1) exemption for classified material, and that's an increase that has been particularly difficult and particularly harmful to scholarly use of the FOIA because of the even greater delays that now exist and have existed for some time at the administrative appeal level in the Department of Justice, and I know this may not be directly within our purview here this afternoon, Mr. Chairman, but when a requester first receives some documents from the FBI, one then, under the FOIA, can appeal those deletions to the OIP in the Department, but although that administrative appeal process for nonclassification matters generates responses and usually—in most instances, in my experience—generates increased release of material, any review by DOJ of the (b)(1) deletions is a matter with referral to what is termed the Department Review Committee that takes many, many years—

in my personal experience, that takes 9 years—and I have said a little bit more in my prepared statement, but the appeals that I initially filed with DOJ in 1980 concerning (b)(1) deletions in the file of the Southern Christian Leadership Conference, Dr. King's organization, the final DOJ review and subsequent release of a considerable amount of the material that had been withheld in 1980 happened only this past December, a delay of something more than 9 years.

Mr. EDWARDS. Nine years?

Mr. GARROW. Nine years.

The parallel matter involving (b)(1) deletions and the appeal of those (b)(1) deletions from Dr. Martin Luther King's own personal file, which I first appealed in 1981, those still remain, and so my impression is that perhaps within the OIP at the Justice Department, whether it's for personnel reasons or other concerns, there is a scale of delay that vastly exceeds the difficulties that Mr. Moschella's Section is coping with, and I think that in a context where, perhaps, the Bureau is, quite understandably, wanting to be conservative and to be sure that it doesn't make a mistake, so that the Bureau is erring on the side of caution and deleting everything that it thinks might be close to the line, the fact that there is then a 9-year delay in having these classification decisions meaningfully reviewed does tremendous damage to the real value and meaning of FOIA.

The second matter that I'd like to say a little bit about briefly, Mr. Chairman, concerns the expansion of deletions over the course of this last 10 or 12 years, and, in particular, really, to go beyond the question of (b)(1), is the very extensive increase in the amount of material deleted under (b)(7)(d) since the 1986 amendments took effect.

Now where this change in the language and how the FBI has been applying that new language is most harmful is in historically valuable files where the FBI was garnering very extensive information about the political activities of labor unions, college students, and, in my own particular area of expertise, African American groups such as SNCC, the Student Nonviolent Coordinating Committee.

Now the 1986 amendments allowing—authorizing the Bureau to delete all information furnished by confidential sources and specifying that State and local and county law enforcement authorities are confidential sources means that, for those of us who are scholars, all information furnished by the county sheriff or the city police chief to the FBI about a civil rights protest or a local voter registration drive is now deletable, and, needless to say, I don't think it would come as a surprise to anyone here today, Mr. Chairman, that county sheriffs and city police chiefs do furnish information to the FBI, and the fact that the identities of county sheriffs, easily available on the public record, and all of the information that these agencies were understandably giving the Bureau, the deletion and withholding of all that material, some of which is of tremendous historical value, leaves FOIA really as a shell for a scholarly user.

Some academics who study the inner workings of the FBI leadership have not been as heavily affected by this (b)(7)(d) alteration,

but for academics who appreciate what a tremendous historical resource the Bureau's material is for documenting the activities of groups that perhaps weren't in a position to keep day-by-day written records of their own activities, the Bureau's material and FOIA is a tremendous resource for 20th century American history.

I think that there is a growing awareness and a very clear consensus among historians and other scholars who use FOIA that some attention ought to be directed toward remedying this very deleterious impact that the 1986 language had with regard to the withholding and deletion of information that, as you pointed out earlier, is, in some instances, 45 or 50 years old and that even in a more recent venue is not in any way embarrassing, sensitive, or in any way would paint someone as an informant in a way that properly the Bureau might want to protect.

And so I'd simply like to close by saying that I think all of us in the scholarly community who have made use of FOIA not only regret the delays that have developed but feel very strongly that the 1986 language might benefit from a review, and I think, finally, Mr. Chairman, that it's very important for members of the subcommittee to realize—and I'm quite certain that the Bureau and Justice Department people here today do realize as well—that much of the material that is processed and released under the larger requests, larger quantity requests, that the Bureau receives under FOIA is material that is not of benefit only to one or another of some small, little group of scholars but is material, as with that on Dr. King and SCLC and SNCC, that, in the hands of writers, in the hands of journalists, makes a major contribution to all of the American people's understanding of our history this last 60 or 70 years.

Thank you very much.

[The prepared statement of Mr. Garrow follows:]

PREPARED STATEMENT OF DAVID J. CARRON

Mr. Chairman, I very much appreciate this opportunity to offer you and your colleagues my impressions concerning the Federal Bureau of Investigation's implementation of the provisions of the Freedom of Information Act.

By way of background, I am presently a professor of political science at the City College of New York and the City University Graduate School and University Center. I received my doctoral degree from Duke University in 1981, and have authored three books and edited thirteen others all concerning the American Black freedom struggle of the 1950s and 1960s and particularly the Reverend Martin Luther King, Jr. Most relevant to this hearing today are The FBI and Martin Luther King, Jr.: From "Solo" to Memphis, published in 1981, and Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference, which won the 1987 Pulitzer Prize in biography, the Robert F. Kennedy Book Award, and several other book prizes. I also serve as a member of the Advisory Board of the National Writers Union and a member of the Access to Documents and Open Information Committee of the Organization of American Historians.

My scholarly work on King and the civil rights movement has led me to file over fifty different FOIA requests with the FBI, and other requests with other federal agencies, covering a wide range of individuals, organizations, and localities that were active in the African-American freedom movement. In addition to King and his principal organization, the SCLC, my requests also have covered most of the other major civil rights organizations, such as the Student Nonviolent Coordinating

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Committee (SNCC), the National Association for the Advancement of Colored People (NAACP), the Congress of Racial Equality (CORE), and the Mississippi Freedom Democratic Party (MFDP), among others. I have also requested and received from the FBI extensive files on such King advisors as Stanley D. Levison and Clarence B. Jones, as well as files on other major African-American political figures, including A. Philip Randolph, Adam Clayton Powell, and Malcolm X. I also have obtained rather lengthy files concerning particular civil rights locales such as Montgomery, Alabama, Albany, Georgia, and Selma, Alabama, as well as policy files on particular FBI programs, such as the "Racial/Extremist Informant" effort and the "Black Nationalist Informant Program."

My experience as a scholarly user of the FOIA with the FBI has been of relatively long standing as well as extensive. I filed the first of my FOIA requests with the Bureau in April of 1979, and over these ensuing eleven years hardly a month has gone by without one or more shipping cartons of processed documents arriving from the Bureau. As any experienced user of FOIA could similarly testify, these last eleven years have also witnessed some distinct alterations and variations in the FBI's application of FOIA to the processing and release of file material, with one distinct shift taking place in the early 1980s and a second, far more pronounced one, in the relatively immediate wake of the enactment of the FOIA provisions contained in the Anti-Drug Abuse Act of 1986.

To be of best assistance to your subcommittee today, Mr. Chairman, I would like to present the body of my remarks about the FBI's recent and current implementation of the FOIA under two distinct but not wholly

separable headings, "Delay" and "Deletions." From my experience, and from the experience of other extensive scholarly users of FOIA with the Bureau, most all serious problems and complaints, and most all of the deterioration which has been witnessed over this past decade, can be addressed under these two rubrics. To put matters in a nutshell, over the course of the 1980s, delays in both initial processing of requests, and in the handling of FOIA appeals, have grown dramatically, while at the same time deletions, particularly under 5 U.S.C. 552 (b)(1) and 5 U.S.C. 552 (b)(7)(d), have also increased quite dramatically.

Serious delays in the processing of FOIA requests, from the stage of initial submission through to final administrative rulings on appeals contesting deleted or withheld information, are not simply a matter of weeks or even months, but are a question of years, at times many years. For many users of FOIA, including both journalists or free-lance writers and young academics who may need particular materials in order to complete a thesis or doctoral dissertation, multi-year delays will inflict serious if not fatal injury to their research and writing. I like some other extensive FOIA users with the FBI know first-hand how hard-working the staff of the Bureau's FOIPA Section is, but no matter how dedicated present employees and managers may be, it nonetheless is undeniably true that extensive delays have been increasing even further over the last two to three years.

My own impression is that the most serious--and indeed multi-year--delays occur at two crucial stages of the FOIA process. First, a major and extremely extensive backlog apparently exists within the FOIPA Section's classification unit, where files are examined for the potential classifiability of some or all of their material, pursuant to (b)(1), before being passed on to the team captains and analysts who review and process

each document for other potential exemptions such as (b)(2) and (b)(7). Correspondence that I have received from the FOIPA Section with regard to several different, still pending requests repeatedly indicates that files relevant to hundreds if not thousands of requests sit in a very lengthy backlog waiting for that initial classification review that precedes actual processing for release. Although I am in nowhere as good a position as Records Management Division officials are to gauge the precise shortcomings that are contributing to such a bottleneck, it seems both fair and appropriate to suggest that the FOIPA Section probably requires additional personnel--perhaps substantial additional personnel--beyond its present work-force so as to be able to process FOIA requests without forcing scholarly and journalistic requesters to endure multi-year delays.

The second major FOIA delay a requester encounters comes at a later stage in the process, after the Bureau has made a release of some material and the requester seeks to appeal some or all of the Bureau's deletions and withholdings to the Justice Department's Office on Information and Privacy. Pursuing such an administrative appeal, in my experience, almost always results in the eventual release of some additional material that initially had been withheld, but the delays at this stage range from extreme to almost unbelievable. DOJ reconsideration of the non-classified deletions is often a matter of only approximately one year's wait, but reconsideration of the Bureau's initial classification decisions under (b)(1) by DOJ's Department Review Committee is, in my experience, a matter of approximately nine years or--in some still-pending appeals--perhaps more.

Let me briefly cite just two particular examples, Mr. Chairman, to give your subcommittee a firm sense of the extent of the delays one

encounters. I made my initial request for the Bureau's massive headquarters file (100-438794) on the Southern Christian Leadership Conference (SCLC) in 1979, and received the first partial release of early sections of the file on July 17, 1980. I appealed the FBI's (b)(1) and (b)(7)(d) withholdings to DOJ on July 29th, an appeal (80-1549) that DOJ acknowledge receipt of (on August 4th) on August 28, 1980. Following some intermediate correspondence in which I informed DOJ's OPIA of specific examples in which the FBI had withheld under (b)(1) portions of documents which already had been printed publicly in the Hearings of the House Assassinations Committee, DOJ on July 15, 1981, upheld almost all of the Bureau's withholdings and informed me that the (b)(1) material was "being referred to the Department Review Committee for review..." Somewhat more than three years later (October 25, 1984), the FBI, in a letter noting that the DRC had not yet reviewed the material, queried me as to whether I still wanted to pursue the matter. Following my affirmative response, I next heard of the appeal some four years later--June 15, 1989--when OIP Co-Director Richard L. Ruff informed me that some of the FBI's 1980 withholdings had been declassified by the DRC and would soon be sent me by the Bureau. The actual material finally arrived in mid-December, 1989, more than nine years after the appeal was first filed.

This may be a striking example of delay, and one for which DOJ's OIP may well bear far more responsibility than the FBI, but it is not unique or unusual. Indeed, in a parallel appeal case, concerning the FBI headquarters file on Reverend King (100-106670), the nine year lag in the SCLC case will probably be eclipsed. My initial appeal of deletions and withholdings was filed with DOJ on May 19, 1981, and on April 23, 1984, Mr. Ruff of OIP wrote to inform me that all of the deletions were

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being affirmed, with the (b)(1) material being referred to the Department Review Committee. As of now, almost six years later, no DRC decision has been taken in the matter. Indeed, as perhaps one final reflection of the speed of DOJ's action in FOIA matters, on March 23, 1989, the FOIPA Unit of the Department's Criminal Division, politely referencing my initial April 11, 1979, FOIA request letter to the Bureau, released to me three documents from the King main file (100-106670-3167) that had somehow been put aside or otherwise passed over in the earlier processing--a delay just three weeks short of a full decade.

Perhaps I should be thankful that I began my FOIA experience with the Bureau and DOJ at the ripe young age of 25, but these delays, dramatic as they may be, are not the greatest obstacle that scholarly researchers encounter in using FOIA with the FBI. Instead, both the scope and the unpredictability or variation in deletions and withholdings made by the Bureau, particularly under exemptions (b)(1) and (b)(7)(d), are the most serious matter that the members of this subcommittee should address if the Freedom of Information Act is to be a meaningful resource for scholars and journalists studying the Federal Bureau of Investigation.

Deletions and withholdings that are not imaginably plausible under any reading of FOIA's statutory language are by no means unique to the FBI. Indeed, my favorite personal example of the ultimate in FOIA redaction, a 1965 news clipping of an Evans and Novak column on Alabama Governor George C. Wallace in which every human name, including the authors' bylines, but not their small illustrative photographs (a copy is appended to this Prepared Statement as Attachment #1) was produced by the Justice Department's Community Relations Service, not the FBI.

In my FOIA experience with the FBI, however, excessive deletions

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fall into two principal categories, those made under the (b)(1) rubric and others made pursuant to (b)(7)(d). Even prior to the 1982 Executive Order that resulted in an easily perceptible expansion of (b)(1) deletions and withholdings, I like other requesters and researchers had seen many examples of documents where material was deleted by the FOIPA Section's classification unit even though that identical material had previously been released in earlier processings of the same or similar serials, and, in some instances, actually had been published in congressional hearings of the Senate's "Church Committee" or the House Assassinations Committee. Perhaps unlike some observers, Mr. Chairman, I attribute much of this erratic and unpredictable implementation of the (b)(1) exemption largely to the immense quantitative burden of documents that the personnel of the FOIPA Section finds themselves faced with, a burden that inevitably means that staffers are processing and redacting serials whose subject matter they are not particularly familiar with or knowledgeable about. While this quantitative burden and ensuing backlog create a situation where the problems of potentially standardless discretion under (b)(1) are greatly magnified, it is fully understandable--at least to this requester--that Section personnel, under such quantitative pressure, generally "play it safe" in applying the (b)(1) exemption, deleting anything and everything that might be imaginably classifiable and leaving subsequent substantive judgments to DOJ's Department Review Committee. Needless to say, this understandable but extremely expansive application of (b)(1) by the Bureau makes the substantive impact of the DRC's nine year-plus delays all the more debilitating to the scholarly work of FOIA requesters.

At least equally notable to these (b)(1) deletion problems, Mr. Chairman, is the FBI's usage of the (b)(7)(d) deletion, especially in

these last three years since the revised and expanded scope of the (b)(7)(d) exemption mandated by the provisions of the 1986 Anti-Drug Abuse Act took effect. Although I am fully aware that at least some friends and supporters of the Freedom of Information Act acquiesced in if not approved of that 1986 rewriting of (b)(7)(d) in the belief that the alteration would not lead to perceptible changes in the amount of historically-valuable material releasible by the Bureau and other agencies, that faith or expectation, I have to say, has clearly and convincingly been proven wrong and misplaced, for the 1986 language has led, in the FBI's practice, to a scope and scale of redactions under (b)(7)(d) never witnessed in prior years.

This is not to say, Mr. Chairman, that excessively expansive deletions under (b)(7)(d), and, in some instances, under a misplaced application of (b)(7)(c) as well, were not a commonplace feature of the FBI's FOIPA Section prior to 1986-1987. To a notable extent, both then and more recently, application of the (b)(7)(c) and (d) exemptions varied remarkably from team to team, and analyst to analyst, within the FOIPA Section. With one request or file, an FOIA user might experience very good luck, and have that file assigned to an analyst who took both a substantive interest in the material and applied considerable thought and care in the usage of the (b)(7)(c) and (d) deletions. Indeed, in my personal experience, a clear majority of my requests have been handled by analysts and team captains who applied commendable dedication and consistency to their work. However, in some instances a requester clearly can have "bad luck" and end up with a request and a file assigned to an analyst who is not experienced with or knowledgeable about the subject matter at hand, and who applies the (c) and/or (d) exemptions in a slapdash or unthoughtful manner.

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In such a case, Mr. Chairman, one will receive serials describing election "posters urging people to vote for [Name Deleted per (b)(7)(c)]" (file 44-26160 pursuant to FOIA request #252.028, appealed September 17, 1985) and redacted memos where the names of public establishments at which public demonstrations were taking place similarly deleted (file 173-98, concerning the Student Nonviolent Coordinating Committee, ibid).

Deletions and withholdings of this sort, oftentimes under the dual rubric of both (b)(7)(c) and (b)(7)(d), have expanded dramatically since the 1986 amendment took effect. Although some scholars understandably report little if any increase in the extent of deletions in files composed largely or entirely of intra-FBI Headquarters policy memos being exchanged between various Section Chiefs, Assistant Directors, and the Director himself, in the far larger category of files where material is of considerable historical value because of what the serials say about the activism and endeavors of groups and individuals whom the FBI was investigating, as distinct from the FBI's own conduct, the scholarly harm and historical damage done by the 1986 rewording of (b)(7)(d) is very extensive and quite serious.

While other experienced scholars and extensive users of the FOIA with the FBI, such as Professor Steven Rosewurm of Illinois' Lake Forest College, and Harvey Klehr, Samuel Candler Dobbs Professor of Political Science and Chairman of the Political Science Department at Atlanta's Emory University, could provide the subcommittee with other examples of this post-1986 impact, my own most distinctive experience in this regard has been with the Bureau's processing of headquarters files relating to the Student Nonviolent Coordinating Committee (SNCC), and particularly SNCC's grassroots political organizing and demonstrations in the state of Mississippi during the early and mid-1960s.

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Two aspects of the 1986 rewording have led to such expanded deletions as to constitute a virtual gutting of FOIA. First, the amended (b)(7)(d) language expressly defining "a confidential source" of the FBI as covering not simply undercover paid informants but any "State, local, or foreign agency or authority" has, in files such as those on SNCC, been applied by the Bureau to mandate deletion of information pertaining to city police chiefs and county sheriffs, resulting in redactions such as "Pike County Sheriff [Name Deleted]." Second, but often in tandem with that first change, the additional new (b)(7)(d) language expressly allowing redaction of all "information furnished by a confidential source," and not simply the identification of or information possibly identifying a "confidential source," allows for the deletion and withholding of virtually all information gathered by the Bureau about local African-American activism and local white responses to it, where such information was coming—quite naturally and understandably—from local law enforcement and public officials.

Hence, under the apparent or supposed guise of protecting undercover informants, especially in criminal cases, from possible retaliation or harassment potentially resulting from the release of FOIA material, the 1986 amended language has additionally or instead resulted in a vast increase in the amount of personally harmless but historically valuable material that is withheld from and denied to scholars of twentieth century American history, and particularly scholars in fields where the FBI kept a close eye on all forms of indigenous activism: African-Americans, labor movement organizers, and college students. This extensive loss is not, of course, only a loss to the particular scholars involved, but is far more importantly a loss to

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all who might learn from or be informed by those writers' work, or, in other words, ultimately constitutes a loss of the record of American history by the American people themselves.

Mr. Chairman, let me close by simply underlining two recommendations which I believe stem clearly from my own experiences and those of other scholars with the FBI and the Freedom of Information Act. First, the Bureau, and the DOJ's OIP, clearly ought to be provided with the personnel and resources necessary for eliminating the dramatic delays that not only vitiate many writers' opportunities to make meaningful use of the FOIA but also clearly contravene the clear statutory intent of the Congress as reflected in the text and full legislative history of the Freedom of Information Act. Second, Mr. Chairman, I respectfully contend that the now three-year track record of the impact of the 1986 amendments to FOIA, particularly the rewriting of 5 U.S.C. 552 (b)(7)(d), clearly and indisputably suggests that these changes have had a distinct and deleterious impact on the FBI's application of the Freedom of Information Act, and that supporters of the principles of FOIA should move to remedy and repair the damage done by those very hurried 1986 alterations. Thank you very much.

that they believe that the New York Times is a "left-wing" newspaper.

"THIS PROSPECT is ~~in~~
- enough in making me"

The young man, who was sent to the Federal Reformatory for Boys in 1934, was put together with a group of other inmates in 1935, and was approved.

But of Baker's work in his home: He has formed a San Francisco Committee — a bipartisan committee, actually led by a Democrat named

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AT THIS WRITING.

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holding against the poor
 by Robert Kennedy

ATTACHMENT #1 TO PREPARED
STATEMENT OF DAVID J. GARROW
NEWS CLIPPING OF 1965 EVANS
& NOVAK COLUMN AS PROCESSED
BY THE DEPARTMENT OF JUSTICE'S
COMMUNITY RELATIONS SERVICE,
RELEASED PURSUANT TO FOIA,
JUNE 29, 1981.

Mr. EDWARDS. Well, it is important. When I think of our negotiations and oversight with the FBI regarding their employment practices and attitudes in the Bureau toward minority employees, I'm sure that many thousands of employees in the FBI today don't understand the historical roots of our racial problems in this country, and that's very important.

Next we are going to hear from Sheryl L. Walter, associate general counsel for the National Security Archive in Washington, DC, which has sued under the FOIA to obtain information on the FBI's Library Awareness Program, and with Ms. Walter is Mr. Tom Blanton.

We welcome you both.

STATEMENT OF SHERYL L. WALTER, ASSOCIATE GENERAL COUNSEL, NATIONAL SECURITY ARCHIVE, WASHINGTON, DC

Ms. WALTER. Thank you, Mr. Chairman.

Tom Blanton and I wish to thank you for inviting this testimony from the National Security Archive on our experiences with the Federal Bureau of Investigation's responses to requesters seeking Government documents under the Freedom of Information Act.

We commend the members and staff of the subcommittee for their vigorous oversight of the FBI's activities, especially as they relate to the Freedom of Information Act. We very much appreciate the opportunity to brief the subcommittee on our extensive work with the FOIA and our knowledge of the FBI's FOIA practices and, in particular, on the barriers to access experienced by the archive in our efforts to obtain documents from the FBI related to the so-called Library Awareness Program.

In our written statement that we have submitted, I have given this committee information about the National Security Archive, and I won't go into that here, but if you have any questions about our operations we'll be happy to answer those questions, although I would like to read just a one-sentence—

Mr. EDWARDS. You are not a Government agency?

Ms. WALTER. No, we are not a Government agency. We are a private, nonprofit, public interest research library, and, as the Sacramento Bee once described us, the National Security Archive has been set up by Washington reporters to serve as a public repository for documents released under the Freedom of Information Act and as an active participant in efforts to use the act to build a more complete public record.

Mr. Chairman, as today's purpose is to bring to this committee's attention problems with the FBI's FOIA practices, unfortunately the experience of the National Security Archive and other requesters is that the FBI's practices frustrate and do not further the FOIA's purposes, which is to increase the free flow of information to have informed public debate on matters of public interest.

The vehicle for our discussion today is the Library Awareness Program, and in our written statement we have a chronological account of the program and of the archive's experience in filing a FOIA request, and you can find that on pages 6 through 20 of our statement, so I won't go into the details, although I will highlight some of the more important things that happened there, although

after about 6 months of that, he decided that maybe the Deputy Attorney General and I could do it without him, but it did not show a lack of interest, it was confidence. But he was very much in favor of—and I'll tell you something that you, again, would know, Mr. Chairman. At that time, the reputation—1975, remember back, post-Watergate—the reputation of law enforcement, intelligence, the Department of Justice, the Federal Government, was right down in the pits, and Mr. Levi and Mr. Tyler both expressed to me, personally, the view that there was nothing that could restore public confidence in the process faster than the maximum possible disclosure about what we were doing and why we were doing it or why we were not doing it. Secrecy really ends up kicking itself in the rear, because people who are suspicious become more suspicious.

Mr. EDWARDS. We must be respectful of history, too. We are going to send over to the Bureau—I told Director Sessions—some of the films from "Eyes on the Prize," because some of these younger agents, I'm sure, don't have any real understanding of what we went through in the sixties and seventies in this country—not we, but the people in the Deep South, especially Afro-Americans. Have you seen those? They are really remarkable films.

I believe that we will ask Mr. Dempsey to ask some questions, and then, if Ms. Hazeem wants to ask some, that will be fine.

Mr. Dempsey.

Mr. DEMPSEY. One question I had for Mr. Garrow was: With the more extensive material that you used to receive, even now with what you receive, you went to many people identified in the FBI records and interviewed them, and I wanted to know, first of all, did anybody, as a result of your going to interview them—did anybody ever complain that this was an intrusion or that this was harassment?

Mr. GARROW. In my personal experience with interviewing retired special agents and retired section chiefs and former assistant directors from headquarters, I never had any of the former agents or executives that I contacted voice any complaint to me of that sort at all. Indeed, in my experience, and I think a number of other academics—Ken O'Reilly from the University of Alaska, who recently has published a very good book entitled "Racial Matters," that came out this past fall—I think in my experience, like Professor O'Reilly's and, I think, other academics as well, a number of former Bureau agents are, indeed, somewhat eager to talk to historians, to explain what their perspective and their, at times, justification for some of their activities were, and I think that the last 10 years, in recent American historiography, has, quite commendably, featured more of a reliance on oral history, on interviewing people who were active participants, and, I think, with any reflection, that people in the Bureau, people who retired from the Bureau, ought to welcome the opportunity to tell their stories to academics.

I believe perhaps there have been a number of instances with individuals who may be defendants in tort claims actions, where people who were retired FBI personnel were sued, and my impression is that that experience has made people discomforted, but I don't think contact from historians or scholars has.

Mr. DEMPSEY. That is all I have right now.

Mr. EDWARDS. Ms. Hazeem.

Ms. HAZEEM. Yes, thank you, Mr. Chairman.

I must say, this has been very interesting, to hear all of your testimony.

At one point, Mr. Shea, Mr. Moschella was testifying about repeat requests for information on the same subject matter, and he seemed to imply that there was some sort of process by which those handled, and you were vigorously shaking your head.

Mr. SHEA. Well, I just knew what was in the copies of the same document that's processed on two different occasions. I have a problem—if they had a system, it didn't work in that case, let's put it that way. Or—as an afterthought, I'll give you a differential diagnosis—or they knew what they had released in 1980 and they nonetheless made a deliberate decision to take all this stuff out in 1988, I think that would almost be worse than thinking that the system for tracking previously processed materials just broke down.

Ms. HAZEEM. OK.

And, Mr. Blanton, one followup. You cited an example in which—if the Director asked for the materials, they would be up on his desk in no time. I think that is a very effective example, except, to what extent do you think confidentiality and other factors are significant in terms of releasing information? Obviously, with the Director that wouldn't be a consideration, but to what extent do you think those factors are significant?

Mr. BLANTON. I think I was making that suggestion in relation to them being able to find records. We got several "no records" responses. Unfortunately for the FBI, it was all over the press. They were having to write letters back to librarians saying, "Don't worry about this, really. You don't have anything to worry about," and they were using that phrase, so we could keep coming back to them, and coming back to them, and coming back to them.

What do you do if you are in Anchorage, AL, and you are not as sophisticated as Professor O'Reilly who wrote the book about the FBI and you don't know that you can keep coming back and appealing, and it forces other people within the Bureau to look at it and actually go look for records?

What I am talking about is more—I think the reason the Director would get those records very quickly is because some relatively senior people would have a pretty good idea of the whole purview of the information systems within the Bureau and would say, "Well, that sounds like something there'd be something in New York. It's the largest field office, as far as I know. So you should go look up there. There's likely to be something here in Washington. Let's check out—there's some other counterintelligence awareness programs we've got going on, and we do some general work with contractors; maybe there's something in those files."

As it turned out, in fact, all those files had something related to the Library Awareness Program, but we only found that out 2½ years later, and I just submit that when that kind of request comes in, if the Director had asked for it, there would have been that level of thought given to where the stuff might be, and I'm suggesting that this subcommittee can help short-circuit that process by getting the FBI to give a better description of its own recordkeep-

ing systems, and that would be a boon to all of us, academics, journalists, librarians, you name it.

Ms. HAZEEM. Thank you.

Mr. EDWARDS. Mr. Garrow, under the withholding rules that are applied today, would you have been able to write your books?

Mr. GARROW. I think it's quite easy and direct to say, Mr. Chairman, that under the post-1986 processing situation, that not only would I not have been able to use Bureau material in writing my larger book on Dr. King but that the writing of my earlier book on the FBI's pursuit of Dr. King would have been largely impossible, and I would emphasize again, by way of my earlier reference to Professor O'Reilly, that this is a large body of material and material not only for those of us who may have a special interest with regard to the history of the civil rights movement but, as with Professor Rosswurm's material that Mr. Shea referred to, is also material that is crucial to American labor history and many other fields, and so the range of scholarship that would be restricted and extensively cut back if this post-1986 approach were to continue would be quite, quite extensive.

Mr. EDWARDS. Well, Mr. Conyers from Michigan, who is the new chairman of the Government Operations Committee, which, for some strange reason, has legislative jurisdiction over the Freedom of Information Act, I am sure that he will be very interested in all of the goings on today.

Don't you have a historians association?

Mr. GARROW. Yes, the Organization of American Historians has a particular committee that is actively——

Mr. EDWARDS. It would be very helpful for the association to document some of the problems in terms of delay with their members and send it to us. That would be helpful, because this is very unacceptable, what we have heard today.

Mr. GARROW. I will certainly pass that along, Mr. Chairman.

Mr. EDWARDS. Well, thank you very much. It has been wonderful having you here, and you have given us a lot of good information.

[Whereupon, at 4 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]