

ROPES & GRAY
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624
(617) 951-7000
TELECOPIER: (617) 951-7050

(202) 626-3900

TELECOPIER: (202) 626-3961

30 KENNEDY PLAZA
PROVIDENCE, R.I. 02903
(401) 521-6400
TELECOPIER: (401) 521-0910

TELECOPIER TRANSMITTAL LETTER

Total number of pages including this transmittal letter:

COMPANY NAME: National Security Archives

ATTENTION: Tom Blanton

COPIES TO:

FROM: Thomas M. Susman

COMMENTS: I think you'll enjoy this touch of history as seen
from the other side. The reference we discussed
is at the top of page 2 of the June 17 memo.

SENT BY:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL IMMEDIATELY AT:

(202) 626-3900 ext. 3944

IMPORTANT: PLEASE DELIVER THIS DOCUMENT IMMEDIATELY!

=====

COMPLETE WHEN SUBMITTING TO FAX DEPARTMENT

DATE: May 3, 1994

TIME: 10:43 am

TELECOPIER NUMBER: 202-387-6315

COMPANY NUMBER: 202-797-0882

FILE SYMBOL: XPRD-094

PERSONAL ID NUMBER: 26698

SUBMITTED BY: D. Williams

EXT. 3944

THIS DOCUMENT IS INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM
IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED,
CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.
If you are not the intended recipient, any dissemination,
distribution, copying or use of this document is strictly
prohibited. If you have received this communication in error,
please notify us by telephone (Collect: 202-626-3960) to arrange
for the destruction or return of the original document to us.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Jenkins

DATE: 6-7-74

FROM : J. J. McDermott

SUBJECT: S. 2543, H. R. 12471
FREEDOM OF INFORMATION LEGISLATION

Assoc. Dir.	_____
Dep. AD Adm.	_____
Dep. AD Inv.	_____
Asst. Dir.:	
Adm.	_____
Comp. Syst.	_____
Ext. Affairs	_____
Files & Com.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Telephone Rm.	_____
Director Sec'y	_____

DeLoach

D.C. Tom Susman, Counsel on the Subcommittee on Administrative Practices and Procedures, chaired by Senator Edward Kennedy (D-Mass.), D.C. out of which captioned legislation was reported, called Inspector Bowers on 6-6-74. He said he realizes from prior discussions he has had with FBI personnel that the Hart amendment adopted by the Senate when it passed S. 2543 on 5-30-74 will be troublesome to the FBI. Susman stated he assumes the House of Representatives will request a conference on this legislation since the House version differs so greatly from the Senate bill; hence, there is opportunity to perhaps make some adjustments in the Hart amendment to lessen its impact on the FBI.

Edward J. McKeeney

Susman was told that if the thrust of the amendment is to preclude regulatory agencies from withholding information by compiling it in so-called investigatory files, then there is certainly a means of rectifying the damage which the Hart amendment will cause to agencies such as the FBI. This can be done by simply exempting agencies such as the FBI, CIA, Secret Service, the Drug Enforcement Administration, and others which exist primarily to conduct criminal and security type investigations. Susman responded he thought this might be too big a change. He said, however, he would be most anxious to discuss with us some "reasonable" proposals, although he would be forced to reject totally any proposals which would create such great loopholes as to render the Hart amendment totally ineffective.

ST-101 REC 27 62-81830-253

It was mentioned to Susman there has been strong indication the Hart amendment and the Muskie amendment, which would require in camera inspection by Federal judges of classified material, are so objectionable as to virtually assure a veto. Susman said that if we are willing to rely entirely on the prospect of a veto and the likelihood of its being upheld, then there is no point in discussion. He was told we certainly never close off our options to work with the Congress effectively in an effort to resolve our problems and we certainly would want to talk further with him about possible solutions. Susman was advised we

- 1 - Mr. Callahan
- 1 - Mr. Mintz

- 1 - Mr. McDermott
- 1 - Mr. Bowers

JJ McDermott
5/23 5/23/74
10/17/74
 DWB:kjs (6)

CONTINUED - OVER

C50-81830

J. J. McDermott to Mr. Jenkins Memo

RE: S. 2543; H. R. 12471;

FREEDOM OF INFORMATION LEGISLATION

appreciate his call and we will be back in touch with him after we have had an opportunity to thoroughly review the possible impact of the Hart and Muskie amendments on our operations. Susman said there will be several days before a conference is requested and conferees are named. He said he anticipates the Senate conferees will represent about the same balance as currently exists on the Judiciary Committee. In this regard, Committee sources have advised they expect Senators John McClellan, Strom Thurmond, Roman Hruska, and Edward Gurney to be members of the Senate conferees, and each of these can be expected to support our position. Kennedy and Hart undoubtedly will lead the Senate conferees who hold to the views of weakening the current exemptions in the Freedom of Information Act.

While Susman claims the main desire in wanting to change the exemption concerning investigatory files is to stop the regulatory agencies from misusing it, there can be no doubt he and others of like mind will oppose any move which will give the FBI and other such agencies any meaningful relief. There is, of course, tremendous overtones of pure politics involved in this matter. The liberal Democrats would be pleased to force the President to veto this legislation since they see this as a big campaign issue. In this regard, Susman commented he was glad the veto threat came up during floor debate for he now can alert the news media to watch out for this further example of a desire for Government secrecy on the part of the Administration.

The Freedom of Information legislation also came up on 6-6-74 during a discussion Bowers had with Senator James O. Eastland (D-Miss.), Chairman of the Senate Judiciary Committee. The Senator commented it is obvious Kennedy agreed to compromise on his bill with the Department of Justice merely as a means of getting it out of Committee. The Senator indicated he has no doubts but that Kennedy fully intended to insure the Muskie and Hart amendments were introduced on the floor all along. In this regard Senator Eastland previously had stated he felt this legislation could have been defeated in the Judiciary Committee had the Administration made a strong stand against it rather than trying to work out a compromise in which they ended up being double-crossed.

This matter also was discussed with Vince Rakestraw, Assistant Attorney General, Office of Legislative Affairs, on 6-6-74. Rakestraw continues to lament the fact that he went along with the compromise attempt. He said this already was well underway when he took over the Office of Legislative Affairs, and he had agreed to let it continue but he would not make such a mistake again. Rakestraw doubts seriously that the Muskie and Hart amendments can be knocked out or sufficiently watered down in conference to make them palatable but he agrees

J. J. McDermott to Mr. Jenkins Memo

RE: S. 2543; H. R. 12471

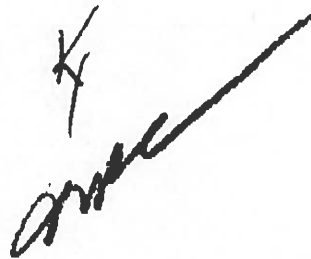
FREEDOM OF INFORMATION LEGISLATION

efforts should be made in this regard. He stated he will recommend a strong letter from the Attorney General to each of the conferees opposing both the Muskie and Hart amendments. He also suggested that he and Bowers jointly call on some of the conferees, particularly Congressman William Moorhead (D-Pa.), Chairman of the Subcommittee on Foreign Operations and Government Information which handles this legislation in the House. Moorhead is strongly committed to the Freedom of Information concept, and it is uncertain what his views might be concerning the Hart and Muskie amendments. It should be noted, however, his bill, which passed the House, made no effort to change the exemption regarding investigatory files and had no provision in it similar to the Muskie amendment. Bowers has had a very friendly relationship with Congressman Moorhead for several years. Rakestraw stated he would appreciate receiving as early as possible next week a brief outline of our best arguments against both amendments which could be used in preparing the letter from the Attorney General and as a talking paper in meetings with the conferees and staff personnel such as Susman. This matter already has been called to the attention of the Office of Legal Counsel where such a paper is being prepared which Bowers can furnish to Rakestraw.

Rakestraw said there is no doubt whatever the President will veto this bill in its present form. He said the veto probably would go before the House first and he would anticipate it would be overridden there. He believes, however, based on the strong vote against the Hart amendment that the veto can be sustained in the Senate.

RECOMMENDATION:

For information.



UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Jenkins

DATE: 6-17-74

FROM : J. J. McDermott

SUBJECT: S. 2543; H. R. 12471;
FREEDOM OF INFORMATION ACT LEGISLATION

Assoc. Dir.	_____
Dep. AD Adm.	_____
Dep. AD Inv.	_____
Asst. Dir.:	
Admin.	_____
Comp. Syst.	_____
Ident.	_____
Insp.	_____
Intell.	_____
Laboratory	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

Burdick

Reference my memorandum of 6-7-74 which reported that Vince Rakestraw, Assistant Attorney General, Office of Legislative Affairs, had indicated he would recommend a strong letter from the Attorney General to each of the conferees who will consider captioned bill opposing the Hart amendment which greatly lessens the effect of the exemption covering the investigatory files in the Freedom of Information Act. Rakestraw also indicated he would want to accompany FBI representatives in discussing this legislation with conferees and their staff representatives.

Last week the conferees on this legislation were named and they are as follows. House conferees are: Chet Holifield (D-Calif.), William S. Moorhead (D-Pa.), John E. Moss (D-Calif.), Bill Alexander (D-Ark.), Frank Horton (R-N. Y.), John N. Erlenborn (R-Ill.), and Paul N. McCloskey, Jr., (R-Calif.). Senate conferees are: Edward M. Kennedy (D-Mass.), Philip A. Hart (D-Mich.), Birch Bayh (D-Ind.), Quentin N. Burdick (D-N. D.), John V. Tunney (D-Calif.), John L. McClellan (D-Ark.), Strom Thurmond (R-S. C.), Roman L. Hruska (R-Nebr.), Edward J. Gurney (R-Fla.), and Charles McC. Mathias, Jr., (R-Md.).

It should be noted the majority of these conferees are known to be committed to strong expansion of the coverage of the Freedom of Information Act; hence, there is little likelihood any lessening of our problems created by the Hart amendment can be expected from the conferees.

SI-105 62-81830-255

Last week, both Tom Susman, Counsel on the Administrative Practice and Procedure Subcommittee, chaired by Senator Kennedy, and Burt Wides, Staff Counsel to Senator Hart, called Inspector Bowers and asked to meet with FBI representatives to discuss problems caused by the Hart amendment and possible solutions to these problems. It was suggested to Susman that he set up a meeting with representatives of various Senate conferees interested in this matter so we could discuss the problems with all of them at one time. He said he would arrange such a meeting for Friday, 6-14-74. Rakestraw indicated he would attend this session and arrangements were made to have Special Agent James Farrington, Chief of the Freedom of Information Unit, Office of Legal Counsel, also participate.

70 JJE Mr. Callahan
1 - Mr. Mintz
DWB:kjs (8)

1 - Mr. McDermott
1 - Mr. Farrington

1 - Mr. Bowers

CONTINUED - OVER

Ch. Bowers

J. J. McDermott to Mr. Jenkins Memo
RE: S. 2543; H. R. 12471
FREEDOM OF INFORMATION LEGISLATION

On 6-13-74 Carolyn Havel, Office of Legislative Affairs, advised Bowers she had received word from the Office of Legislative Affairs at the White House that they want no changes made in this legislation since they want it to remain as bad as possible to make their case stronger for sustaining a certain veto. She said the White House representatives indicated that they want no efforts made to lessen the impact of this legislation on any branches of Government. She stated she had not informed Rakestraw of this message from the White House as yet since he was out of the office. Rakestraw was contacted later in the day and informed that we felt it would be very unwise if not impossible to refuse to talk to Senate staff personnel who had requested us to do so concerning this legislation. He agreed and subsequently advised he had informed the White House that the Department and the FBI would continue to discuss this legislation with anyone who requested us to do so. He stated, however, that as it now stands the Attorney General would send no letter to the conferees pointing out that it is quite apparent the membership of the conferees is "loaded" and chances of effecting any change in the Hart amendment are virtually nil.

On the morning of 6-14-74 Bowers, Farrington, and Rakestraw met with the following Senate staff personnel for over an hour: Neil Levy, Legislative Assistant to Senator Tunney; Howard Paster, Editorial Director, Subcommittee on Constitutional Amendments, Senate Judiciary Committee (Senator Bayh); Michael J. Mullen, Deputy Counsel, Subcommittee on Improvement of Judicial Machinery, Senate Judiciary Committee (Senator Quentin Burdick); William J. Weller, Research Director, Subcommittee on Improvement in Judicial Machinery, Senate Judiciary Committee (Senator Burdick); William P. Westphal, Chief Counsel, Subcommittee on Improvement in Judiciary Machinery, Senate Judiciary Committee (Senator Burdick); Doug Marvin, Legislative Assistant to Senator Roman Hruska; Burt Wides, Staff Counsel to Senator Philip Hart; Harrison Wellford, Legislative Assistant to Senator Philip Hart; Jim Hinish, Legislative Assistant to Senator Edward J. Gurney; Paul Summitt, Chief Counsel, Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee (Senator John L. McClellan); Ann Phillippi, Research Assistant, Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee (Senator Kennedy); and Tom Susman, Assistant Counsel, Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee (Senator Kennedy).

After discussing in some detail some of the problems this amendment would create, Susman and Wellford, who were primary spokesmen for the staffers, indicated they appreciate our position and now understand some of our difficulties. They said they see no possibility of conferees changing the Hart amendment since

J. J. McDermott to Mr. Jenkins Memo

RE: S. 2543; H. R. 12471;

FREEDOM OF INFORMATION LEGISLATION

discussions with House representatives indicate the House conferees also favor this amendment. Susman and Wellford stated they would incorporate into the conference report specific language to indicate the Hart amendment should be interpreted very narrowly with respect to investigatory files of agencies such as the FBI, Secret Service, and the like. They said this language would point out the main thrust is still to restrict regulatory agencies from using the investigatory file exemption to withhold information in their files.

Following this meeting, Rakestraw advised he has been assured by the White House this bill will be vetoed. He suggested it would be a waste of effort at this stage to make further contacts with conferees or their staff members. He said the Department will spearhead an all out effort to sustain the veto. He feels there is likelihood the veto will be overridden in the House but can be sustained in the Senate where there were 33 votes, only one short of the number necessary to sustain a veto, cast against the Hart amendment. It is apparent the White House is relying strongly on the opposition to the Hart amendment for its major base of strength in upholding the veto.

RECOMMENDATION:

For information.

TJS
HJ

SWJ

mmc