

11/15/70

Jim,

Statement Material Facts- clothing suit:

2. Why take the bait of their answer? What they really do is acknowledge that the Archives has authority to grant, which is our amply-supported claim in the complaint, not their reverse formulation. To this I would add that (unless it becomes an argument in the legal sense), that this is the custom and practice. Perhaps it would be better at the end of 1. I think it should be in somewhere, so there is the statement that what I am asking is not in dispute in every other case. Otherwise, seems to be me to be excellent. The statement is relevant to every consideration in 1, by the way.

Memo on Points and Authorities:

Under claim upon which relief can be granted, because they misues letter agreement, I think, even though it is in the Complaint, we should here cite that provision, in the notes I gave you and Marshall's statement it is okay with the estate if the Archivist does whatever he wants, also in Complaint. Thus we add to the legal argument even the authorization of their spurious basis of defense. Belongs after end first page, if you agree. I of the letter agreement reads:

"(2) Access to the Appendix A materials shall be permitted only to:

.....

(b) Any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof."

(This fortifies the argument I've suggested for Material Facts.

Provision III:

(1) In order to preserve the "ppendix A materials against possible damage, the Administrator is authorized to photograph or otherwise reproduce any such materials for purposes of examination in lieu of the originals by persons authorized to have access pursuant to paragraph 1(2) or paragraph II(2)."

III. Archives as defendant. If you want to fortify this-and generally I think we should act like we are firing the Clobbersville Express, cite the Rhoads affidavits in both Nichols cases and La.v Shaw. I think it would be particularly effective to do this before Gessell because I think that more than most judges he would be influenced by so spurious a claim, so openly at variance with every other legal record by the same, the identical defendants. The stuff was assigned to Archives and Rhoads by GSA, over and above its being the custodian of the files, which I think should also be included.

Page 4. Unfortunately, I do not earn a living now as a writer. I suggest substituting Plaintiff ~~is~~ is a professional writer, the language of the Complaint, Bud's original formulation. The rest is okay, but I'd add at the end or discharge his professional responsibilities. Perhaps it would be better to add after "writer" in Bud's formulation "of non-fiction". There should be a reference to the affidavit here. End second paragraph, include here, "plaintiff also appealed, as told, to the Director of Public Information" (I think this is right title. It is at opening of Vawter's response.

38E