

4/23/71

Dear Emory,

While I see nothing to relieve the deficiencies I earlier noted believing exist in your suit, I must say you have wierdos and assets in Steffens and S Schutz. Let me in the usual haste go through your letter first then the enclosed papers.

Par. 1, (1), if this is what I think I gave in, they have all on it I have. (2) I think nonexistent in this form. Your lawyer might want to make his own interpretation of Clark's executive order of 10/31/66, which the government always misinterprets to mean of non-government origin and then would get you into an interpretation of whether or not (I say yes) what the FBI did was "consider" for the Commission.

Your second paragraph is very weak and you've missed the greatest weaknesses of the Schutz affidavit, I think. I agree on the law-enforcement interpretation, naturally, since I started it You are weak on the closed investigation, for Hoover's testimony is to the contrary, and that dates to 1964. And, in addition,, after the one week in which the FBI was investigating for the President (not Hoover's testimony on this as cited at the end of WWII), Hoover was explicit in saying there was no law-enforcement purpose. The rest was for the Commission, which certainly had none. One investigations subsequent to the end of the Commission or the date of the filing of the Report can even be alleged to have been for law-enforcement purposes. You might ask what law was being enforced.

Argument, par 1, misstates requirements and obligations under the law and the provision that enables you to go to federal court (is it 3?) They say it conveys no right to you. It actually puts the burden of proof upon them to withhold, and if they cannot justify the withholding, you have to establish no rights. They are automatic. You did request "identifiable records", and they concede it in several ways at several points.

Generally, and Jim can tell you better, they usually miscite the decisions, omitting the relevant and misusing the irrelevant. I found their citations, including, I am sure, some of these, were my way, not theirs, and they misrepresented. This means checking the full decision and what was at issue.

Page 3 5 U.S.C 552 most certainly does "require agencies to produce information", the purpose for which it was enacted. It also requires that they be available. That jazz about alteration and compilation is irrelevant, immaterial and, in this case, also incompetent, for the competence of the alleged witness via affidavit is not established therein. I'll return to that.

Page 4: when they describe WC material as "could only be part of investigatory files compiled for law enforcement purposes", you've got them dead, for a) the burden of proof is on them and it is everywhere lacking and b) the period to the end of the Commission, which is the period covered by your request, is definitely not this.

Page 6: part of what you see was published, some exists in the unpublished files, so their allegation "have not been made part of the record in agency proceedings". "Agency" here is not Justice but Archives, and they are successors to WC, and the law describes succession, and they are and were part of the "agency" proceedings in that they were part of the WC's.

Schutz: merely being an FBI agent does not make him an expert on everything or anything. Suppose he is their expert on lockpicking or plumbing? How does that qualify him to execute this affidavit. And it involves a determination that must be made on a higher level than even a competent agent to have any meaning. Demand one from Hoover or an executive and challenge this on this particular basis (plus others).

Demand "best evidence". I think they raise this question in his language in 1, last sentence. And besides, he interprets the law without saying ~~that~~ he is a lawyer, which still would not interpret him to make such an interpretation.

Interrupted. Day later.

2. "if it exists" is hokum/ Repeating, no such "investigative files" exist so far as your complaint goes.

3 Unless I do not recall your complaint, what you seek should be under subject heading, making this "response" irrelevant and not a response. But if it "failed to identify certain of the information requested", is this not to say that it did identify other information sought? What follows is lies. They have a file or files on arrests, and everything the Dallas authorities gave the WC was for publication, that is, whether printed or not, without restriction.

4 "Investigative responsibilities" is an evasion. All that is material under the law is that kind for law-enforcement purposes, etc., and no other. All that follows about methods, etc., is likewise irrelevant and is intended to intimidate as well as impress the judge. Have you asked for anything that discloses investigative methods? There is no secret "method" in the asking of questions of witnesses or the tabulating of names from a docket. And I do not recall your asking for anything that remotely suggests the need for identifying their sources, that is, informants.

5 Invasion of rights can be quite legitimate, as I wrote you earlier, as can defamation. You do not ask for all these files, hence what follows is again designed deception and misrepresentation.

I think regardless of what happens, your lawyer ought take this affidavit apart word for word and throw it back at them. They did the same thing with me in the spectro suit, and I went to a lot of work to tear it down. Bud decided against filing anything on it, and I deferred to his judgement. In retrospect, we agree this had been wrong. If nothing else, make a record of their dishonesty. It can always tend to diminish it next time. If we do this long enough, maybe we can cut it out. They lie and deceive all the time, but they do it because they get away with it. If you can convince the judge that this is an effort to fool him, even a not-good judge might get up tight about it.

Hurriedly