

notes on Emory Brown's suit, CA44-71

Does the government response constitute tacit response that the three tramps were, in fact, arrested? All indication are that like others, they were taken in for questioning without formal arrest. P. 5, under Point 1, would seem to indicate otherwise.

For the future: the allegation that a file is in open condition within the FBI on the JFK assassination does not automatically conform everything in so enormous a collection with the investigatory file exemption, especially where it has been discarded, as has been done with these tramps. The Commission did it and the FBI did, too, or they deceived the Commission. The government did not address, leave alone meet, the burden of proof requirement. And the best proof is that material from this file has been declassified and made freely available by defendants. Also p.8.

P.6, par 2, confidential sources are irrelevant to either arrests or apprehensions or questioning or license-plate identifications.

P.7, in connection with Alderman, I think any such argument, especially if as I presume this is, valid, would be much stronger with inclusion of the citation from 5 U.S.C. 552 placing a positive burden of proof on the Government, here not addressed or met.

P. 11, penult par: It is not, I think, that Brown was required to give any better identification or whether more precise identification was required. The law requires only that the record be identified, and this Brown did.

Could Brown have asked the court to direct the FBI to state whether or not the sought records exist?

Swanner v US, 406 F 2d. (C.A.5, 1969) looks like it should be read carefully. Including in today's N.O. context.

Benson v. U.S., 309 Fed. Supp. 1144 (D. Neb. 1970) denied subject pending investigation access to investigatory files of which he is subject investigation. Was this waived in N.O.? Could use, ~~under~~ under American Mail, be a waiver in a civil action?

HW