

Decision

JL - re Gesells's decision in 0692

7/28/78

Marty Price, a free-lancer who is working for Willis Carto, was late coming this morning because he is not well. He returned to the motel for a rest instead of lunching, saying he'd be back in an hour, which I doubt, so these hasty thoughts about an appeal in addition to the spontaneous negatives I gave you when we spoke.

While there is no predicting judges and no certain estimates of how they'll evaluate, I believe that from the sheer volume of records you obtained after filing suit you have prevailed substantially despite the negative decision on the remainder of records. I believe that your appraisal of getting fees might well be the basis for your decision. If you get fees you come out a winner. If you appeal and lose there may be bad precedent, perhaps influencing initial interpretation of the new executive order. We are on much better footing on that with the other cases. If there is a remand in any of them the constructive possibilities also are better.

What appears to have influenced Gesell is those areas in which you have often said the courts are afraid. If Gesell, after his Axelrad experience, is consistent with the others, I believe that much too much may depend on the panel on appeal. (In this connection, perhaps you can better understand my long-time feeling about going after those who mislead and misrepresent, even if in this case Gesell opted not to pay any attention by by-passing via the in camera inspection route, where he has no way of knowing what is within the public domain. And ignored the fact that exactly what he felt should not be disclosed from Atlanta had already been disclosed from Atlanta.)

Maybe my approach will not work because the judges will not let it work but I believe it is the only way of overcoming what officials are able to do. Beckwithing. I believe we need more of it where we are on solid footing in doing it.

Take counsel on appealing with lawyers whose judgement you trust. I believe you want to do it because Gesell's decision is wrong and not balanced and does not regard key issues. (My own view is that by basing so much on his personal in camera inspection ~~you~~ he limits what the appeals court may regard as most directly relevant to what you know nothing about.) He disregarded the integrity of the government's representations and I think can get away with it.

There appears to be a real judicial fear of getting into a position in which the CIA and FBI types can allege interference with law enforcement or national security needs. This is their thrust in their campaign that has been going on for some time and will continue to go on.

Another consideration might be what can be gained in return for the effort required in terms of fact of the King assassination. My belief is relatively little if anything. I doubt there is anything important in the police files that we do not have already from the FBI. I know we need nothing else if we have an opportunity to turn the case around. The FBI got all the police had, including the exculpatory, which the processing agents were not able to recognize or I'd never have gotten it. The time and effort, as related to fact about the King assassination, would be less and might be more productive if you spend it trying to enforce the stipulations in 1996. There are real leads in that we have. It is not the blind alley of an in camera inspection by a judge who has no knowledge of what is public domain. Here we have the leads, like Hardin and still Esquivel, about whom I intend to tell Quin more when it seems to be appropriate.

Evaluate also in terms of cases not filed, where there is real promise, especially if Mark can help or can arrange it, meaning other help.

As ideas pop into my mind I see other considerations, like fear of going against Judge Smith and risking bringing out more FBI nasty records about King. Fear of some of the finks getting hurt. Like those inside SCIC. This also makes the national security claim dangerous for a judge, and I have it on what I accept as good authority, Quin's,

that one or more is still in place. This may have been what Schaffer had in mind and I can see the FBI selecting such a case and laying it all out to them. (There also was one "inside the Ray camp." I got no reaction to my saying I knew about Huie. This was not in the sense of a paid informer and you now know nothing about it.)

The informer issue also is tricky and touchy. Anything that can lead to an exposure or can be imagined as having the capability is virtually certain to lose.

When the decision gets here I'll read it immediately and if I see any basis for any contrary opinion(s) I'll let you know right away. I hate to lose on these issues and especially because the loss comes from official corruption. (If Gesell ignored this I believe it would be an exceptional panel that would not.)

When you speak to Metcalfe I suggest you ask him when they will pay you how much before you discuss any appeal with him. It may help you get paid if they can see not having to fight an appeal and run any possible risks in addition. A couple of good fees and you'll be able to do more and do it more efficiently. You have a decent one in the work and I think can move for another whenever you'd like to. In 1996 aside from the great volume of records there is the finding of the AG after it was filed that this is an historical case. (Quin thinks the law week piece was designed to hurt us both in this area. I had the same impression when I read it and also because of factual error in it. We were dragged in by the shadow at the heels.)

On another subject, Marty already being almost a half hour late, I think I have a fairly good beginning with Marro. Some hot my enemy has been talking to him. Possibly Wendell, who did try to phone me from St. Louis. He covers DJ and has his own sources there, probably good ones. Les knows him from their days together at Newsday, which was prior to Marro's going to Newsweek. Les evaluates him as an excellent reporter. From what I've read I agree. His piece on informants is balanced and fair, for example. He exposed LaPrade by name over domestic intelligence abuses in St. Louis, by the way.

The day has been quiet on the Byers market to now, almost three. My hunch is that the story will die, as Clifton Haid also died after doing his work vicariously.

The Kelley to Brown letter is not in my Brown files. I will look elsewhere. I think I kept a copy when I gave it to you. I know it is in the record, early, in 1996.

A thought on claims to exemptions like 7D: I think we must start insisting on being told which provision is claimed to be applicable. This is where we can clobber them for withholding the public domain.