

To: HW
From: PH
Subject: Proposed outline for Ferrie Documents Complaint

December 23, 1970

- I. Required identifications of plaintiff and defendant, relief requested
- II. Specification of Requested Material
 - A. FBI Material at the Archives but not yet made available
 1. Pages xxx,nnn,...,mmm from CD 75
 2. Any other material indexed to Ferrie (Farry, etc.) except what we already have (specify all such pages)
 - B. Other FBI records relating to Ferrie
 1. The original signed statement, retyped in CD 75, page xxx.
 2. Any other reports of interviews with or information from Ferrie after 11/22/63
 3. Any report establishing Ferrie's whereabouts on 11/22 (Alibi report)
 4. Additional records relating to possible Ferrie-Oswald contacts
 - a. CAP records, including photos of Ferrie, Oswald, or both
 - b. Arrest records and other background files on Ferrie
 - c. The ONI (Guy Johnson) reports
 5. Reports of Ferrie's threats against the President
 6. Ferrie's activities with known or possible associates of Oswald, including but not limited to Andrews, Arcacha, Banister, Bartes, Bringuier, Butler, the CIA, the CRC, Geraci, Martens, O'Sullivan, Quiroga, Ruby, Thornley
- III. Proof that administrative remedies have been exhausted
- IV. Arguments of law and fact
 - A.- Relating to items specified in II.A:
 1. Applicability of the Guidelines; quote the best parts; argue that defendant has to establish validity of withholding
 2. Analysis of the requested items
 - a. Importance of anything on Ferrie-Oswald contacts
 - b. Analysis of index entries; connection to already-available information
 - c. Abuse of Guidelines in other cases: published and withheld pages, perhaps discuss page 301 (which we have); selective release of "embarassing" stuff
 - B.- Relating to items "specified" in II.B:
 1. Legal status:
 - a. Possible absence of "law enforcement purpose"
 - b. Release of similar material with even less direct connection to the assassination
 - c. Arguments for applying the same Guidelines here as to Commission files
 2. Facts: background and arguments for existence and disclosure for each of the items in II.B

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Additional comments:

I. I again urge that you do not base your action on the identification of the FBI as an effective arm of the WC. That may be relevant as an argument, say in section IV.B.1.a. All you need to say is that you are after FBI material.

I think my division of the requested material allows you to put in most of what was in the draft. Some things are so far from Ferrie that I don't see how they can fit logically, and I think they should be left out.

II.A.2 - the point here is to avoid reliance on the Archives' ability to find Ferrie material using their indexes. That is, ask for what is withheld and anything that is available but not in our hands. (Can't be too careful.)

Specific items in II.B - I am not that interested in item 1, but I see no objection to asking. For item 2, the arguments should refer to CD 405, p. 22 (see my letter of 12/8), where Ferrie says he mentioned McKibben earlier. Of course, you should stipulate that the items in B may or may not overlap with those in A.

Item 3- I think this is the correct use of the Regis Kennedy-Vincent Marcello report. You can point out that in other cases of allegations against various

suspects, such alibi reports seem to have been made routinely; two that come to mind are Robert Edward Webster and Vallee (the latter is at the bottom of page 12 of CD 47; I could find the former). Then cite the Marcello report and give evidence that Kennedy was in a position to write a similar report on Ferrie. If you want to throw in some innuendo, point out that there may have been some reason for concealing the Mafia connection of an admitted contact of Oswald. You may even want to use the concealment of Ruby's links with the Mafia in Dallas by the deletion of part of CE 1536; that might make an amusing exhibit.

Item 4a: in addition to what you had in your draft, refer to the records Boylston is supposed to have had. This is where the business about the photos belongs. I still do not understand exactly what use you wanted to make of this point in the draft. If you want to claim that some published material was denied to you, you will have to convince me that your request was precise enough to include it specifically. We shouldn't make a case based on the Archives' inability to find things well.

For Item 4b, you might want to throw in the report of Oswald staying out late, CD 75, p. 168-9, enclosed.

By the way, the Marine photo in Oswald's wallet should be in item FBI-B1 at the Archives. The CAP photo may well be in the numbered FBI items and not identifiable from the list in the Federal Register.

Section III might require some more requests, specifying the material as you plan to do in the suit. The JD regulations, 28 CFR 16.7(c), seem to require that the appeal include "reasons or arguments advanced for insistence upon disclosure." You might get a little flak if the detailed arguments all appear for the first time in the complaint. I would like an expert opinion on whether the JD could ask the judge to disregard arguments on this technicality.

IV.A.1- This could be a tricky point. It is clear from Mitchell's letter to me that they might resist this. Question for Bud or Jim L.: can one argue that the law automatically includes a "grandfather clause" - i.e., establishing procedures such as the Guidelines. (We can easily document the "official" status of the Guidelines.) Can the first sentence of 5 USC 552c be read as such a "grandfather clause"? Can we just argue intent?

Perhaps we should try to get the JD to commit itself in writing before filing a suit. Maybe I could just write a letter in response to Mitchell's apparent position in his letter to me. Ask them if they have revoked the guidelines as they apply to, say, the material that is to be reviewed by the FBI every 5 years; what guidelines are they following; have they abandoned all the high-sounding principles of maximum disclosure that go along with the guidelines. I would like to avoid a judicial decision that the Guidelines are irrelevant to action under USC 552 as a minor part of a decision on your suit; that is, we don't want to risk a negative precedent in a situation where the arguments might not get presented fully and the decision would be tied up with specific material that someone really wants kept secret. I would like opinions here. I have pending a DJ-118 for withheld but available pages, which might provide a good opportunity to straighten out this question.

The argument in IV.B.1.c might not appeal to a lawyer, but I think it is a good one and should be made. We can put them in an awkward position, making them admit that if an item had been given to the Warren Commission it would be public now, but since they managed to keep it from the Commission they can now keep it from us.

I don't think any judge will agree with an argument that there was no law enforcement purpose in the investigation. It is clear that the intent was broad interpretation. Certainly a finding that no crime was committed does not alter the status of the investigative reports. The FBI's cover was, I think, that the pre-assassination investigation of Oswald was in connection with possible violations of the Internal Security laws; are you saying that such interest should have stopped with Oswald's death, when conspirators in his activities may have been around? So,

we get lots of reports entitled "Oswald - IS - Russia, Cuba."

What I think you can and should argue is that the purpose of the FBI investigation was as much public reassurance as law enforcement. The disclosure of great chunks of the investigative reports confirms that they have never been treated as an ordinary investigative file. Argue that the publication by the Commission set some sort of precedent.

The outline I have suggested is pretty bare-bones, but if you go over it and your draft carefully, I think you will agree that it covers most of what you had in mind. I don't think it would pay for me to go into more detail about points in the draft that I called unclear or irrelevant. Much of the lack of clarity was just because of missing antecedents, the absence of the exhibits, etc. I am confident that when you and Jim L. prepare a revised version most of it will be fixed. You didn't mention any specific reason for wanting to file this soon; I again emphasize that I think it should be done very carefully. I would hope that when you have a revised version, you can send me two copies (complete with exhibits), so that I can blue-pencil one and return it. It is really almost impossible to make clear detailed comments in letters like this or based on a draft. I think we should take enough time to be able to anticipate the JD response to all your arguments. Also, if you use the arguments I suggest, I feel something of a vested interest in having them presented as well as possible, since I may want to use them later myself.

I'll turn now to your letters of 12/14 and 15 for some of the specific points.

Your 12/15, re my comment on paragraph 14: you misread my comment and your draft; the reference is to reports which should have been withheld but were not.

15: The Archives has occasionally given me information about withheld stuff. Aren't you required to ask?

21: I don't think ellipsis of this nature will work at all in this context. If I miss it you can be sure that your intended targets will also. When I object to such things as irrelevant, I am aware than generally some connection can be made, but if that is not done explicitly it just confuses the reader.

22: Pollak memo (in part; E27.13-5 in my filing system) enclosed.

My page 7, Quiroga: I just wondered about your sources.

On the FBI "withholding" from the Commission: I think both parties can be blamed. For your suit, however, it might be advantageous to give the Commission at least its fair share of the blame - in case the JD would like an out. "Of course we're not trying to hide anything, nobody ever asked, so we will let you have some of it." You can make the case against the FBI in another context.

I thought we had the FBI investigation of the Gun book. Are you suggesting it is withheld or missing? Or just that they didn't pick up on the CAP photo?

Re Exhibit 20: I just had in mind making the index analysis comprehensible to those who are not familiar with all the names. Both ways (by name, by page) sounds good to me.

Legalities and form of complaint: my outline combines argument and fact, etc. There are many ways of putting this together, and I think I should see what the lawyers have in mind before making any more suggestions. I'm not happy with the numbering requirement, because it breaks down the natural paragraphing and makes it awkward to add transitional or summarizing material. I suspect it won't be much of a problem once you settle on a good outline.

Paul

I see on rereading these three pages that they are much more concise than I would like. I have been doing quite a bit of thinking on these matters and have put down mainly my conclusions. I hope you will have the time to ~~go~~ go over this slowly, especially the outline.