

12/29/70

Comment on your outline and suggestions re Ferrie complaint.

Outline looks very good and helpful. I think you have included items + may have forgotten, but it is so long since I drafted, I can't recall. Like what I asked Arcives for, the original of his statement. However, I think that the argument on the guidelines belongs more properly in court and should await the collection of the full files, as I've asked Smith to do, on all policy statements of that transfer-declassification period.

If I didn't make it clear,, your 1. under additional comments: my argument on the FBI as an arm of the Commission is relevant to "investigative file for law enforcement purposes" exemption, and it is more than an investigative arm, from other things I have. Before some judges, this in itself might be enough to get their claim to the applicability of the exemption thrown out. Also, in this context, their withholding from the WC is much worse (and they can argue they didn't withhold, but they did, as we know from a number of incidents. Here on the threats vs JFK, on his involvement (suspected by the FBI at least from what I have) in gun-running, of his connections to the CRC (I have the proof the FBI was officially informed), etc.

In the second par here, you miss the essential point of the addendum, which is to make a contextual record of the fact that between withholding and failures, there was no N.O. investigation and of what is missing that is relevant to any investigation of LHO and those linked in various ways to him.

Good point in your comment on your II A 2, also Fairy.

I disagree with you on item IIB2. I have found significant changes where I've seen originals, and I've been meaning to ask for Carolyn Arnold's for this purpose. Baker, for example. And the Rowland complaint, which I believe.

I like the Mafia idea, and using what is out of CE1536, but if I have it, it doesn't come to mind.

Item 4: I knew of Boylston. I believe it is in the testimony, either Voebel's or O'Sullivan's. Have you something further? This is the kind of thing their files should have, is not subject to withholding, and is not present.

Thanks for CD75:168-9.

Your next paragraph refers to what they are withholding, pretending it is all in the one CD to which they refer. Can't be. Thus I use the picture (CAPC)

If 28CFR 16.7(c) makes this requirement, it is contrary to the law and Clark's interpretation of it.

IV A 1 I think it is easier to argue the burden of proof is on them from the law and legislative history. On the status of the guidelines, the copy I first got from the Archives is noted to say it was approved by DJ. The rest, I don't know.

Getting Mitchell on record on the guidelines may serve a useful purpose, but I suggest we may be getting him to take a fixed position where later he might, if he hadn't, be disposed to bend some. What follows I agree with, hence haven't used the guidelines in any of the drafts to date. It is inherent in the preceding, too. In addition to your own good arguments, add the unpredictability of some judges and the predisposition of most to side with the government.

Contrary to your estimate, I think this part would be regarded as minimally required by any good lawyer. Oh, I see now you just referred to c. Interesting point. I think part of Mitchell's changed position, that withholding is not mandatory, may be in anticipation of this kind of presentation.

If you think no judge will agree with the argument there was no law-enforcement purpose, cite me a law. Bud agrees with this. There can be no law-enforcement purpose without a law in mind. In court, they were reduced to saying there ought to be such a law, no more. Hence the point they had no jurisdiction. In N.O., they can't even claim to have been helping the local police....It is possible they can argue their pre-ass inv was under ~~xxx~~ internal-security laws. When they became the investigative arm of the Commission, this ceased. They also had the responsibility of giving all of this to the Commission, and didn't. Hoover could not be more explicit on this point. Read him. They had no jurisdiction of any kind and what was contrived, specifically, is not law-enforcement, within 24 hours. But the Commission precedent is a worthwhile point, and in this sense the argument that they would have withheld what the commission didn't is good.

Among my reasons for wanting to file this soon and a major one of those is to lay further foundation for other and more important suits, i.e., panel. There is no real rush and I may have to lay it aside soon, for I must get to other work also. Meanwhile, I'll have to go over the new stuff carefully anyway.

How many copies I can have of the revision depends upon when it is done. If it is done during tax season, the chances are I'll not be able to have any, for Lil may be too busy and too tired. But yours is a good idea, blue-pencilling....I think DJ would ignore the addendum completely. There seems to be good legal reasoning and logic in having it separate from the Complaint, which is supposed to be restricted pretty much to the legal arguments and some judges are too busy to read all of it, at least on filing.

Your comments on the other letters: I have asked the Archives for everything on Ferrie. I have on the others important here, like O(Sullivan, Caire, Arcacha, etc).

I'll check your comment on 21 against the original when I can. I'll have this with it when I get to revising.

Pollack memo looks very good. I'll read the attachments afterward. I want to respond to your comments before supper., after which I may be preoccupied.

Until I realized that by "My page 7" you meant your question about my page 7 I was stumped. The answer is not from CDs but from my own investigation. Included, without checking, I can recall a number of people, esp. Pena. Also something from Bringuier, Arnesto (on tape), Sam Newman. I can prove it. Arcacha was deep in Quiroga. And less dependable sources, like Jack Martin.

Your next par. Tom Kelley was pretty specific in telling me the lawyers turned down what they were offered. But my point is to let them argue that if they want to go into it. They'll not have to in court.

I do not have the investigation of the Gun book. I was told they didn't have this picture. At least I was told, I am certain, that I had seen every picture they do have.

It was the idea of the lawyers, not mine, to separate out what is the legal necessity and have the rest in an addendum. Their arguments are persuasive, and this also avoid the complaint that the Complaint proper is loaded with what the defendant can argue is irrelevant and what the judge would agree it. The Complaint is the legal document, the attachment or the addendum is an extra. All this stuff, they assure me, would antagonize any judge in reading the Complaint. I agree on the numbering, but it seems to be required for references, a stereotype.

That Pollack memo, which I've just begun, is great. When you can, because it is so indistinct, may I also have a copy to use in court on the clothing/pix ~~xxx~~ suit, ~~xx~~ of which I should soon be hearing. They can argue that only the Kennedys have privacy rights!

~~xix~~ I don't know I could have missed CD 75:168-9 when I went through it. That is a very good second paragraph.

And if LHO had such poor coordination, how could he do factory work, or the things he did after returning from the USSR? If Murretx is wrong about the blueprint company (bottom page 1), quite a provocative thing. Oswald did apply all over.

After I can find time to go over the new Ferrie docs with care, I'll be in a better position to know if I should do this revising first, assuming I'm not then preparing for the hearing on the clothing/pix case. I assume by now you've gotten these from A. If so, I'd welcome any comment. If not, I'll send.

Hastily,