

Dear Dave, re FOIA biblio

MI 4/26/79

I got on this right away, to be able to have it to give to you when we meet Wednesday. The more I got into it the more I ~~realized~~ realized the technical difficulties, compounded by the need for extreme condensation. So I'll mail to JL in the a.m., hoping he'll have time to go over it before we meet so we can then talk.

There was a major interruption and there is work I must complete by the morning so instead of trying to type it all I've made hand corrections and suggestions.

Where I have raised questions without answers or place? marks I do not have accurate information, as on the other suits.

One question I do raise is can we know these are all? Can others have been filed without our knowing it?

McClellan's requires more text. I think "Jane's vs. Secret Service was compromised out of court.

I think Levy got about 5,000 pages. I sent you a news story on it.

I also think your bias shows and shouldn't. I've changed some.

She was not Bimow at the time of the JFK affair. She was then Campbell.

Something should be added on the 5/19/64 ex sess transcript. The basis on which the Government won on it, ~~misstatements~~ decision making, roughly, was not argued in court. The judge merely decided on that basis.

I think you need explanatory text of a note on the exemptions of the Act. All require a law enforcement purpose. I'll cite the original AG's memo and the Glanz/Johnson statements on the people right to know what government does and has done as essential to representative society.

At some point I'd note that all the records I obtain will be in your archive in the form in which received plus added subject files and with all ~~the~~ records on the litigation, including all affidavits, drafts of affidavits including those not used, etc. And I'd make ~~the~~ reference even though this is a JFK bibliography they are already more than 50,000 pages. JFK estimate in excess of 200,000 pages.

On 0322 I'd add that records agreed to be provided include index to written communications for first two years and index to their contents.

There are areas in which I cannot check the factual accuracy.

You may want to consider another explanatory note referring to records withheld until the last administrative stage prior to the filing of suit and to other disclosures to avoid litigation by means of which some withholding is made possible.

My want to add in spectro that all information provided in second case is of the "raw material" of the Williams affidavit in the first case. That they claimed it would wreck the FBI and its informant system to disclose.

The ways in which you can avoid partisanship can be illustrated by the ~~language~~ language with which you say (accurately) that there was a conspiracy to withhold records by shifting them around. You could say that the agencies arranged to divert themselves of the records not to have them or that they arranged a transfer from agency to agency to be able to claim not to possess them. I

= On "hostile" and b as, etc., we can provide, if we have not, a quote in which Smith ~~said~~ said in court that he generally takes his lead from the Government. You might note that with Pratt in charge of case assignment he arranged for all my JFK cases after the one before him to be before Smith.

On spectro you might want to note that as of press time the FBI had not produced any stated results of this testing in the form of contemporaneous reports and claimed it had none, only the conclusory representations. Not even "raw material" on windshield and curbstone. Curbstone spectro plate allegedly destroyed. Guinn testified before HSCA that windshield sample no longer exists.

You need better titles than "spectro suits."

WJ

Dave, re bibliography-FOIA suits:

IM 5/26/79

Spectro- I would rephrase along line of

This language, from the superseded Administrative Procedures Act (1946) was specifically eliminated as an exemption in the 1966 Act. On request the Department of Justice was unable to find any record of any such "determination". Records Weisberg later obtained under FOIA and his Privacy Act requests reveal that the Department had sought to persuade the FBI to release the records requested to avoid ~~cases~~ establishing a legal precedent the FBI would regard as adverse to its interests. *

In drafting the FOIA the Congress found that the "national interest" provision of the earlier act had been converted into a cover for any and all withholding rather than the Congressional intent, that the 1946 Act be an act requiring disclosure of public information.

Then resume as you have with "On Nov. 9...)" to Marion Williams, after which a period. The copy provided Weisberg's attorney was a xerox of a carbon copy which did not disclose the date of executive. Later investigation showed that the Williams affidavit had been executed on August 20 and was withheld to deter countering its conclusory and unfactual representations.

In citation of the affidavit I'd use some direct quotes, like destroy the informant system, etc.

page 2, graf 2 "rudimentary state of FOIA case law..." I add and the willingness of judges to accept any representation by the executive agencies, no matter how unreal. *

*Obviously there is no connection between non-scientific laboratory tests and informants.

p.2 Started to write correction but felt point not fine enough:

Petition argued that Appeals Court expanded the Act to permit withholding under unsupported claim to law enforcement purpose.

I'll see JL Wednesday and will give him this for direct return to you after he has a chance to go over what I suggest.

p.4 "Congress override President Ford's veto to amend...."

"It narrowed and limited the investigatory files exemption. Intent to overturn the Appeals Court decision ~~is supported by the evidence~~ was made specific by Senator Edward H. Kennedy during May 30 debate. As first case under amended Act Weisberg broadened original suit to include results of neutron activation analyses of bullet and bullet-related evidence.

But if you follow immediately with case before Pratt do you need to repeat this? Perhaps insert instead:

After Weisberg filed FOIA request SAs Marion Williams and those who had done the actual testing, John F. Gallagher and Robert A. Mazier, ~~both~~ retired. Laboratory Agent John Kilty provided affidavits which Weisberg demonstrated were false and contradictory. Kilty swore that tests had been performed and when asked for the results swore that ~~these~~ these tests had not been performed. With Kilty's affidavits the only ~~proof~~ proofs offered the Government claimed it had compiled substantially. Pratt dismissed the case on July 15.

In the last graf, on Pratt as paladin, you might want to include either the Anderson column I've sent or a cite to the East case

P. 5 Pratt threatened us when he proved perjury. That he found oppressive is our request for the civil action norm, discovery of withheld evidence.

Where I have a marginal X I'd use a direct quote of the mandate. If you are satisfied with the words used at the end then for what I've lined through "ordered Weisberg to take testimony to establish the existence or non-existence of the records from those with first-person knowledge of the events."

Under Remand I've transposed JFK because they did not test all items.

Strike "essential." Suggests they are what was sought and they are not.

Strike "clean" for similar wrong suggestion, i.e. traces that could have been tested remained and were not tested.

page 7, Gesell decision, where I've marked the margin: For what is believed the first time ever Gesell ruled against the Government on its "national security" claim. However, he also ~~held~~ held there was a law enforcement purpose, which was to hold against Weisberg

receiving a copy of the transcript or that the government could continue to withhold the transcript.

after plus mark add Before Lesar could file an appeal, on June...

Page 10, E 2 opposite marginal mark.

The very day the Government's response was due it told Lesar it would mail copies of the 10 pages of the Jan. 21 transcript and the ~~withheld 10 pages of the~~ June 23 transcript in full.

Because this would enable official press management during the time required by mail Weisberg went to Washington, picked copies up at the Archives, has xeroxes made and gave them to the press. The same day

page 12: Suit to compel Government not to disclose any copies of its second general release of ~~FBI~~ JFK assassination records until it had provided Weisberg with a set, ~~without~~ with a waiver of costs because of his public role, so that he would have the records in time to respond to press inquiries when the records were first available to the press. (Weisberg's request had been ignored, his appeal ignored until long after the ~~the~~ time permitted by the statute and until the ~~over~~ of scheduled release)

Page 13, calling Judge Smith "hostile." Biased, prejudiced or partisan is apparent, hostility is not. Again this raises questions of disappssion.

Page 13. The addition I've made to the Dallas case covers enough of the H.O. case, to which I'd add: New information obtained relates to the FBI's penetration of Garrison's office, the existence of previously unknown files and evidence relating to Oswald's ~~career~~ and associations in New Orleans and to anti-Castro activity and persons, some of whom were FBI sources.

14. The clothing suit was not to examine the clothing. ^It was to obtain meaningful pix., those available being inadequate and needlessly unclear. Gesell dismissed the suit on the Government's promise to take and show such pictures to Weisberg. These pictures included a photograph of the knot of the President's tie allegedly damaged by a bullet. Only after obtaining dismissal by the promise that it would take this photograph did the Government disclose that the tie had been unknotted and that evidence destroyed forever.

April 23, 1979

Dear Harold

Enclosed are xeroxes of the FOIA section of bibliography. It is the preliminary draft.

Could you find time to glance at it? It will be an important item and your observations about any major error or mis-emphasis ought be had.

I send a copy to Jas. H. Lucas.

When I get the copies back I will then make a rough draft & with DePloyd will prepare the finished draft. Now, til end, am pushing, pushing.

Dane

P.S.

The honorarium was meant to cover expenses such as clips, filefolders, ink, etc..

PPS

\$2.00 enclosed to cover postage for return.