

KAVANAUGH

Box 103

Kont
12/16/2020

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Kavanaugh Presentation - Priv

Brett Presentation

Lambeth's opinion, Smaltr, p 15, presumption that govt
is incompetent prosecutor.

Tumors in WHCO.

who?

Toney, then Bates, also Aron, Callahan; Brett Posenberg.
Goldberg has frustrations too.

Smaltr - 10/94 experience.

Smaltr told "all docs."

haven't gotten them still.

Judge Kenn is slow.

6/97 opinion ordered immediate production of some
docs, remand to Dkt. for others.

Abominable relationship, great difficulty
Mitra + Cutler

↳ fairly forthcoming (raj's bondsmen)
↓ close to Cutler, more political.

Harsh on Quinn + Puff

Barrett has complaints of relationship of DOJ.

Matt Rosenberg had complained too. Trouble after
the Lerner's investigation.

Burtin + ^{Chris} Cox (on staff, was in WHCO).

↳ wants criminal referrals re WHCO.

before videotape episodes.

Bates started staff, became radicalized.

Brett → station (WVU)
Nixon → DCL (Smaltr)

WH response: (themes)

1) slow production generally

2) important docs correlate.

- killing records

- Watkins memo

- videotapes

- [MacIntosh

3) privileges asserted as general cover. - discuss, accommodate, request.

- ~~State~~ Nussbaum asserts privy re Foster docs when DOJ asks.

- selectively invoked, so unimpeached.

- why + how?

- embarrassment politically

- chilling effect on WH discussions.

- HRC stuff - co-she ~~the~~

"WH stuff"?

multiple subpoenas

understaffing

overbreadth

hard to find

not bad faith, but no sense of urgency either. Not taking seriously.

What kind of privy

- Post NK privy

- Nixon executive privy.

What policy args.

- should cooperate

- will speed along investigation

WH the produced docs re Foster & contacts

- Shephard - Nernitz review notes.

were the most important.

- would produce if WTHCO was suspected of wrong-doing.
- still, a HRC exemption asserted; litigation related. Int's of HRC not produced.

express →
 No joint defense agreement.
 notes by WTHCO are not detailed, but are decent.
 WTHCO took advers side in WTH side of investigation
 - obtaining info in their job. (Kendall Hinder was doing the U.S. Ark 1980's stuff).

WTH
 Good about ID'ing locations of docs + whether privilege is being asserted.

- ★ atty notes privilege - are we being set up?
 - Comm's of Kendall provided.
 no notes.
 - did they take atty-atty notes.

Sensitive stuff hasn't been produced yet.
 "Pending a President." "Criminal defense stuff."
 JDA issue. Want to set, no notes.

(10:00 Mtg) tomorrow.

re privilege issues; the law
Nixon 1974.

17C subp for tapes.
Privy asserted. \rightarrow absolute
 \rightarrow qualified (med unavailably).

It: qualified: natural ready exception.
demonstrably relevant - specific + central to case.
 \rightarrow relevance + admissibility (for trial sub) is test.

Marshall
Capas: support
relevance is all
that is needed.

What (the need)
unger: broad assertion yields to "demonstrably
specific need" for evidence in a trial.

Rule 17 test -

- Trial - relevance + admis.
- 6J - Nixon, mere "L. Ent.'s" relevance.

Notes -

Exec + AIC asserted

Exec - lapsed.

AIC (Govt AIC) remains.

8th Cir: - Nixon says it's needs demonstrat.
- why ^{should} ~~can~~ govt key info from Govt.?

- gross misuse of public assets
- bur of fending out corruption is in govt interest.

28/535 (b) = requires Exec. branch 'ees to
repate and of wrong doing to AG.
This would trump AIC privy (common law).

In 9.: OLC hasn't shown "dem. spec. need" ?
"We doubt this is the right test, even
in that case." It is general language;
"classic dicta". Marshall papers show
the language was dicta; there is
no ~~de~~ vest of "dem. spec. need."

There is a dissent from a Neb. P.Ct. judge. He
also rejects WH position. He took a retroactivity
position re HRC. This is wrong on law
(it can be retroactively applied) and maybe
on facts (who knows what she assumed).
good language in the sentence of dissent.

Dr. in Smalley litigation

WH refusal review re Espy.

Smalley sub's it.

Exec privy denied re Atty docs.

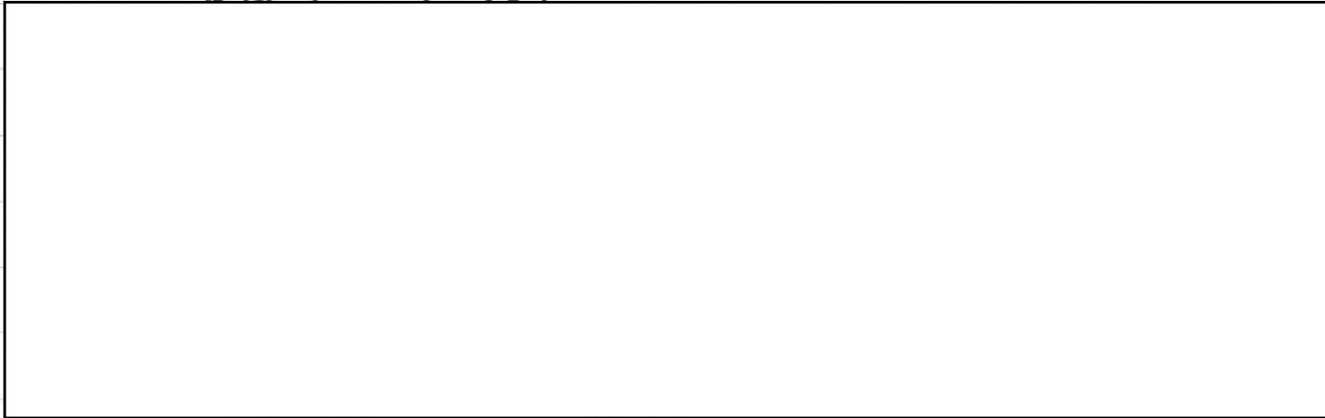
CA

[Sillberman question re Neble supports Exec
view of Neble: it reg's only 17(c) explanations]

Here, CA disagrees w/ Sillberman: "if there is
practical benefit." Then balancing test:
2 things: ① each group contains material
evidence, ② not available elsewhere.

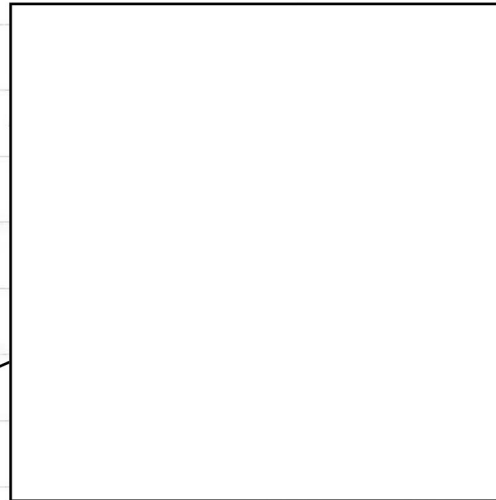
#2 is most important. CA says this is
satisfied if ~~not~~ WH people are
being investigated - as w/ OLCs

So it's not so problematic for us.
Application here: gathering of evidence + E's +
charts of report. (The back up material).
Also notes of mtgs + phone conv's. So not
with int's; more with strategizing. (important)
Has Smaltz show need?
with officers are under investigation.
as to "work product"; with unsealed there is
info there that not public. So don't
release the deliberative stuff; only the
factual stuff.



100 Larry Skubic
Parrett - deputy; → Matt Posenquand.
" All

Larry replaced Shepaine.
Shelly replaced Nemitz.



FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury