

August 27, 1975

Ho

Re: assassination of President J.F.K. 11/1/75
Nic

Mr. Callahan:

You called this morning to advise that hopefully we will be receiving a response from the Department in the very near future concerning the Dallas situation. You mentioned that apparently the "hang-up" in the Department was the fact that on three of the interviews the individual being interviewed was not given a waiver of rights and on all of the other interviews such a waiver was obtained. The following is in response to your question in regard to the foregoing situation:

Initially I suppose it can be honestly stated that the obtaining of a waiver of rights was not considered germane to the inquiry. I say that because there was some doubt certainly as to the accuracy of the allegation and secondly it was necessary to obtain what information we could before we even knew what we had. Mrs. Fenner, the first person interviewed, was not given a waiver of rights. Frankly, I was surprised by the information she furnished and such a waiver never even occurred to me. I must also admit that the information she furnished was suspect in my mind. Anyone interviewing Mrs. Fenner, I feel, would have had the same feeling.

The second person interviewed was Howe in San Diego. As you will note from the background information, nothing to support Mrs. Fenner's allegations was obtained from Howe upon submission of his first affidavit other than the fact that he had heard Mrs. Fenner say something to the effect that Oswald had visited the Dallas Office prior to the assassination. Following submission of his first affidavit, however, Howe became more candid and for the first time some credence to Mrs. Fenner's statement was established.

Hosty is the third person interviewed and as in the first two instances no waiver was given to Hosty. It was following the interview of him that we had what I would say definitely established that Oswald did indeed visit the Dallas Office prior to the assassination and did indeed leave a note.

REC-8

100

10 NOV 18 1976

7234 X1

Tyler

70 NOV 1976

Hosty was interviewed on a Thursday and on that evening Mr. Kelley was advised personally in Kansas City by me of the results of these three interviews. On the following morning, Friday, I again discussed the matter with Mr. Kelley and it was at this point that he felt a determination should be made from John Mintz as to the need for obtaining a waiver of rights from anyone else interviewed in connection with the matter. Mr. Kelley called Mr. Mintz and we both talked to him. During this discussion John was of the opinion that should any prosecution arise as a result of this inquiry our failure to give the waiver of rights to the above three people would not be "fatal." However, he did feel that in handling any subsequent interviews in regard to the matter the individual interviewed should be furnished a waiver of rights for his or her consideration. Mr. Kelley at this time recognized the fact that we could be asked why the first three individuals interviewed were not so furnished a waiver. He took the position that these constitute our initial inquiries, that they were probing in an effort to obtain the facts and once establishing that there was credence to the initial allegations we would proceed with the waiver of rights.

This was done and all of the six subsequent interviewees furnished a waiver of rights.

HNS H. N. Bassett

OVER

ADDENDUM BY LEGAL COUNSEL, 8/27/75, JH:mfd

The Miranda warning (warning of constitutional rights) is really only required by law in a custodial situation. The FBI, prior to the Miranda case and subsequent to that decision, has given a statement of constitutional rights in situations not actually required by law. Our policy is to go beyond the legal requirements to insure this constitutional safe-guard.

The FBI Handbook, Part II, Page 12, indicates "at the beginning of an interview with any known subject of a Bureau case, or any person under arrest or for whom arrest is contemplated on completion of the interview or later, or any other person so strongly suspect that he is now to be interviewed for a confession or admission of his own guilt in the case rather than merely as a possible source of information, such person must be advised of the names and official identities of the interviewing Agents, the nature of the inquiry and must be warned of his rights"

This basic rule applies to employees as well as non-employees and there appears to be no justifiable basis for adopting any new policy which would pertain to Bureau employees as opposed to the general interviews we conduct. Essentially, our rule is that an individual is given the Miranda warning when he is the focus of a potential criminal investigation and when his comments may constitute a confession or admission of guilt.

With regard to this specific matter, the early interviews were designed to determine whether there was any validity to the basic allegation. It was not until after these interviews were conducted that it was realized that the allegation may have had some substance and that there were potential criminal ramifications as opposed to a mere disciplinary matter.

Since none of the persons interviewed were in a custodial situation, there was no legal requirement to give them the Miranda warning and the failure to do so should not be fatal to any potential prosecution. We began giving the warnings when in the judgment of Bureau officials there were potential criminal ramifications which is in accord with our general policy and which exceeds legal requirements.

ADDENDUM (CONT'D)

This same situation arises in numerous cases we handle where individuals are interviewed at a preliminary stage without a warning, but who are later given a warning in a subsequent interview because the investigation has focused on them as suspects or because our investigation has shown they lied during the initial interview. Certainly, there is an area of judgment and discretion within our regulation. From the facts outlined we consider the judgment in this matter to be well within the scope of our regulation and certainly within the requirements of the law.

Jim Boyd