

Dear Jim, Clarence Kelley's 5/11/76 letter

5/17/76

Although I had specifically in this case and generally in the past asked both Wiseman and Dugan to send me carbons of letters to you when there is any time question, Kelley's letter, in the copy you made when you returned to Washington, did not reach me until today. If there had been a plan to preclude my responding it could not have been better designed to accomplish this.

It is impossible to imagine that the false statements are accidental. They are many. It is impossible to imagine that the misrepresentations are innocent and they also are not uncommon. In fact, this letter is nothing like what happened in our 5/5 meeting with Wiseman and it is consistent with that of which I complained to him. I mean by this the deliberate contriving of situations in which it is our word against their word and their insisting on this being impossible to resolve.

You will remember that I anticipated this the first time they invited us to a meeting for which there was no need. I then asked you to write and request that the meeting be taped. They refused this. Now why should anyone refuse to have an accurate record of any innocent meeting? In that case they actually alleged that at that meeting I waived any interest in what I asked for and filed suit for. I did remind Wiseman of this during our 5/5 meeting when I was specifying what is totally absent from this letter.

The first paragraph is a formality. The second begins with falsehood, "As you were advised at the May 5, 1976 meeting, our Memphis Field Office had been requested to search their records for any additional material which might be responsive to your ...request dated April 15, 1975, not available at FBI Headquarters."

The Memphis FO knows what is available at HQ? If it does not, how could it comply in Kelley's own formulation?

Wiseman personally refuted the opening words. He said that the Memphis office had been asked about pictures only. In even the restrictive 4/15 limitation, it is hardly true that the request was for pictures only. This is not interpretation. I was specific in asking him for documents. He then said the request to Memphis was for pic only.

"Additional material" from Memphis? By 5/5 we had received not a single record from Memphis. To date I haven't received even a picture. You may have.

I believe this deceptive language is not accidental, that it is intended to deceive the judge. Regardless of its purpose, it is false and inappropriate.

Moreover, the Memphis promise was made in court by Dugan 3/26, with the added promise of full compliance within 30 days, which expired prior to our 5/5 meeting without our being given a single thing.

What follows is inaccurate in virtually every possible way and is in direct contradiction of Wiseman's affidavit: "...you were shown 14 photographs of suspects in the King investigation..." In context this says from Memphis. However, where they were identified, these were from Birmingham. And we have received nothing from the Birmingham office. But, how can it be that Tyler, Dugan and Wiseman assure us, Wiseman the court under oath and Dugan on his word to the court, that there never was another suspect and now they claim photographs of suspects in the plural?

We were not shown photographs of suspects. We were shown photographs that were largely of sketches and some photographs of photographs at least one of which was not of Ray. Pictures, that is. This was also true of sketches, but there here is no reference to sketches. However, more than a year after the request and a month and a half after Wiseman, in addition to his affirmation, assured us personally that these did not exist and they had made this good-faith search, he did show us what I can prove is an incomplete file of other suspects, my request, mixed in with shots of Ray to build the figure to his total of 14.

Before this letter was drafted I had specified some the FBI has and has not yet admitted having. I repeated this to Wiseman 5/5, but the letter is silent on it.

"Also, a set of aerial view negatives of the crime scene and vicinity were displayed."

They not only were not "displayed," it was made impossible for me to examine them because of their special character. These are Army Engineer aerial views of a fairly large part of Memphis, its cloverleafs and the muddy river, not in any sense of the "crime scene." They are about 9"x9", were not printed, were on a large roll like an old-fashioned player piano roll, and there was no provision for displaying them. Wiseman enjoyed this when I asked him how I was to look at them without damaging them. Because I feared the screaming that would follow if I damaged one I suspended even looking at them when I had 15 or 20 feet of them unrolled. While it might have been the case that I would not have, it can't honestly be said that "Mr. Weisberg did not care to receive copies of any of the ~~set~~ negatives viewed." Viewing was impossible. These are negatives, too, not prints. They also were in a very long roll.

Parenthetically I note that with all the cost of the plane, its crew, this special camera and the more expensive film, it is beyond belief that no FBI agent went to the actual scene of the crime with a \$20 Polaroid or cheap Instamatic to take a single but were were shown none and again assured there are only those pictures shown. Not that an experienced professional photographer, with the FBI apparently having none, could not have been engaged for much less than the cost of these irrelevant aerial views so irrelevant Wiseman assured us not one had been printed.

"Additionally, 107 photographs, the property of Time, Incorporated, but in the possession of the FBI, were displayed to Mr. Weisberg..." If handing a batch is to display, then there were displayed, but the rest is neither accurate nor complete.

These photographs, as I told Wiseman, are the property of the FBI and are not all those given it by ~~the~~ Hallard of LIFE at the time. The rights in the sense of literary rights are owned by Time, but not those prints and not those prints, as I specified, not shown to me. What Wiseman had, pretending it did not exist in Washington, which according to my information is false, is one of two sets of prints of Joseph's negatives Hallard gave the FBI. The other, as I also specified, are 35mm contact prints.

Wiseman's information was so inadequate it can't be believed that with a case to go to trial the FBI's files do not include what he claimed not to know and I did tell him. It can't be believed that there is no record of any Time reservation of rights in the FBI's files but when I was asked I was told that a letter had not been received, would be and I would receive a copy. I have not.

My recollection is other than that "he ^{was} advised that he would have to request these [the 15 of which I said I would like prints] of Time, Incorporated." I was not able to make notes, but it is my impression that the FBI was going to ask Time and I said I did not want these for publication but for study.

"Release" is an ambiguity. While as a matter of principle I'd be prepared to contest the right of the wealthy to buy evidence and thereafter sequester it, the FBI's interpretation, there is not and has not been any question of my reproducing any pictures. I would, if I so desired, raise this with Time and I would expect, as I have in the past, to pay for normal one-time use charges. I do here note, however, that when there has been a lapse of more than eight years, those pictures with evidentiary value have never been published anywhere to my knowledge.

If Exemption (b)(3) is relevant, no statute is specified in this letter. (b)(4) also is invoked, "commercial information obtained from a person and privileged or confidential." I believe no single word is applicable. These pictures are not

in any sense "commercial information," they were not obtained from a person and they are not privileged or confidential.

As I told Wiseman, Lee ~~was~~ was there for Public TV, having nothing to do with the unexpected assassination. When he heard a ~~shot~~, instead of grabbing his TV camera, which would have made the film the property of Public TV, he grasped his own 35mm still camera. He was on that floor of that wing of that motel. He then sold the rights, which include the original negatives, to LIFE. This is so far from confidential that I do know it and do know that LIFE then printed the schmitz, not those pictures of evidentiary value. But if published in multi-millions, can it be alleged to be "confidential?"

The second page begins with a deliberate falsehood that probably has its origin in what I specified after the 5/5 examination when I asked Wiseman, "Where are the other pictures?" I was ~~never~~ "advised" that our Memphis Field Office had furnished a group of photographs which were provided to the FBI by a non-Federal law enforcement *organization* agency which has specifically requested that this material continue to be held ~~confidentially~~ confidentially."

Wiseman told us of two pictures or set he would not show us. One he said was a single, nude shot of Ray and the other he refused to say anything about. Maybe this is that one. But this detail he did not give us. Afterward, when I told him I would in each case specify only one proof of continued withhold, I did tell him about the pictures from the Memphis police. I then specified that the FBI had been given prints, not the original negatives, and that my source is a high-ranking Memphis police official.

We were not offered or given or shown copies of the alleged request. But it is false as it related to the Memphis police unless it is a letter procured for this special misuse. Rather than "confidential" one of that series of pictures was used in the extradition affidavits and, after summary judgment, provided in C.A. 718-70.

There never was any mention of a separate picture of "an individual taken under circumstances implying criminality."

However, ~~as it relates~~ to police pictures in the foregoing, the invocation of (b)(7) is limited to "(D) disclose the identity of a confidential source, or confidential information furnished only by the confidential source." This is ludicrous, irrelevant, deceptive and false. Now that the FBI can no longer swear falsely that it has no pictures of the scene of the crime it contrives the ridiculous, that the Memphis police are a "confidential source." Would letting me see the pictures violate the claimed "confidentiality" of the source when I identified this source to the FBI?

Here I am not reluctant to attribute motive: presenting these pictures to a court or permitting me to have copies of them would let outside Department possession prove that Department layers suborned perjury. Some of these pictures do prove this so there has to be some hoked up legal Rube Goldbergism to forestall exposure. But the law is specific, as I understand the law, in prohibiting this as a basis for withholding.

While we each spontaneously said we did not want to see the nude picture of Ray the existence of which Wiseman disclosed, the invocation of (b)(7) could not be more irrelevant: "...compiled for law enforcement purposes..." Wiseman himself, in explaining this single picture, gave the lie to the claim under Kelley's signature, which I would not be surprised to learn was drafted by Wiseman. He said a front-only view of Ray, completely naked, was taken. I think he said on the plane and I know he said to depict Ray's physical condition when the FBI took possession of his body. I did not make an issue of it because I have no interest in nudity, but it is apparent that a front-only view in no way addresses whether Ray was whipped with a cat-o-nine-tails on the back.

There is a statement I cannot alleged to be false: "As you have previously been advised we believe this discretionary release completes our response..." Except for the "discretionary." It is true that beginning in December, 1975 the Department has stated that it ~~believes~~ believes "compliance" to be "complete" with the most extensive nonconfidential-