

March 22, 1977

Dear Harold,

It was great to talk to you last night. Enclosed are 2 copies of something I got from the SS in response to my FOIA request. There were other things, which I will send in a little while. But this one is special; consider it a sort of ironic birthday present. I think it could be the basis for a damage suit against Archives and SS for deliberate wrongful withholding of the memo of transfer from you.

As you can see, the record of the meeting was made by your friend, Tom Kelley, prior, I believe, to your meeting with him.

Why don't you read the memo before you read the rest of this letter?

The memo is loaded with important admissions: the displeasure at the panel's "gratuitous" mention of the memo of transfer and how "it would have been so much better" if they'd not mentioned it; the fear that it would "lead to all sorts of speculation" about the government's frankness and about conspiracies; the fear that writers might "dicuss the discrepancy"; the decision to let the matter lie because "we were borrowing trouble in exploring it any farther."

But I think you'll agree with me that the most important admission is atop page 2, the fear that you or Lane would ask to see the memo of transfer. (Remember, by this time you had asked Rhoads personally, in court, for a copy--this is in PM; Rhoads was at this meeting). Note the language describing Van Cleve's reaction: "He indicated that he saw no legal reason how the existence of this inventory could be kept from writers of this kind..."

This, and the whole context in which it was said, is crucial. I interpret it as an admission that there was no legal basis to withhold the memo from you, and they all knew it. Remember the description in PM of how they stalled on your request and finally came up with that nonsense about how the memo was put in the Archives for "safekeeping"?

The one difficulty with the language Kelley uses is that he has Van Cleve saying he sees no legal reason how the existence of the memo could be kept from you. I think it apparent, however, that he means no reason why the memo itself could be kept from you. With the panel report already public, the existence of the memo was known, and at least Rhoads knew you had requested a copy. The context of the discussion at any rate is what would happen if you knew the contents of the memo, so clearly their concern is to keep the memo from you and not merely its existence.

And what a picture of their motives! Not only is there the admission of no legal reason for withholding, which already has them violating the FOIA, but then the reason for their wishing to withhold to spare them embarrassment, to prevent speculation, to deprive conspiracy theorists of grist for their mills. Isn't this exactly the arbitrary type of withholding Congress was striking out at in passing the FOIA? Tell me what follow-up steps you want now, such as an inquiry at the Archives.

Best,

Howard

February 13, 1969

MEMORANDUM FOR FILE - CO-2-34030

At 2:30 p.m., February 12, 1969, at the request of Mr. Harry R. Van Cleve, Jr., General Counsel, General Services Administration, the following persons met in the Director's Conference Room at 1800 Q Street, N.W.: Assistant Director Kelley, Assistant Director Peterson, Legal Counsel Robert Goff, Special Agent in Charge John E. Parker, Harry Van Cleve, GSA, James B. Rhoads, Archivist of the United States, Dudley Chapman, Office of the Legal Counsel, Department of Justice, and Byron E. Harding, Associate General Counsel, GSA.

Mr. Van Cleve outlined the problem he wished to discuss, stating that some weeks ago, at the request of the Attorney General of the United States, a panel of physicians reviewed the autopsy slides made by the physicians at the Naval Hospital relative to the assassination of the late President Kennedy. In their report, which was made a matter of public record, they mentioned that the material they examined was furnished to them by the Archivist of the United States, and was included on an inventory list which accompanied the letter from Dr. George C. Burkley to Mrs. Lincoln, dated April 26, 1965. Mr. Van Cleve stated that this was a gratuitous statement made by the doctors and it would have been so much better if they had merely indicated what material they had examined.

Mr. Van Cleve then went on to explain that at some unspecified date there was placed in a bin at the Archives a quantity of material in sealed cardboard boxes and a locked foot locker. This material was received from the Kennedy offices, presumably from Mrs. Lincoln.

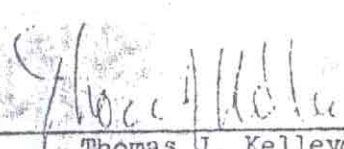
Subsequently, in October, 1966, the family of the late President Kennedy made a gift to the United States of certain specified articles which were further described in the letter to Lawson B. Knott, Jr., Administrator of General Services, from Burke Marshall on behalf of the Executor of the Estate of John F. Kennedy, dated October 29, 1966. The articles to be given to the Archivist were in the sealed boxes and the foot locker mentioned above, and when the Archivist took possession of and opened these containers a careful inventory of the contents was made. A key to the foot locker was produced by Angela M. Novello, Secretary to Senator Robert F. Kennedy. When the foot locker was opened, it was found to contain articles No. 1 through 8 listed on the inventory prepared by Dr. Burkley on April 26, 1965.

A careful search was made in the Archives to ascertain what happened to the articles described in Item No. 9 of Dr. Burkley's inventory and they cannot be found in the Archives.

never saw nor heard anything about its disposition, and that he was surprised to hear that it was not with the remainder of the material he turned over to Mrs. Lincoln. After discussing the problem, Dr. Burkley offered to call Mrs. Lincoln. He did this in my presence and Mrs. Lincoln told him that all of the material he turned over to her was placed in a trunk or foot locker; that it was locked, and that to her knowledge it was never opened nor the contents disturbed by her. She said, however, that sometime after its receipt all of the material concerning the assassination, with which she was working, was turned over to Angie Novello, Robert Kennedy's Secretary. (Angela Novello is said to be a secretary to Mr. Angier Biddle Duke, Ambassador to Denmark).

Dr. Burkley said that Henry Giordano, former White House driver who is known to us, was also an employee of the Kennedy family at that time and was working with Mrs. Lincoln. Giordano is now a Doorkeeper at the U. S. Senate. He is under Senator Pastore's patronage, but actually works for Senator Kennedy's office. It is my opinion that Giordano should not be talked to concerning this matter.

On February 13, I called Harry Van Cleve and advised him of the results of the conversation with Dr. Burkley, and further advised him that, in my opinion, we should not contact Giordano. He agreed with this and stated he felt that the inquiry would have to remain as it now stands; that perhaps we were borrowing trouble in exploring it any further, and assured me that the Archivist had made a thorough search of all of the material on hand to make sure that the material in question had not been received by the Archivist at another time or under other circumstances.



Thomas J. Kelley
Assistant Director (PI)

TJK/hes

Dear Howard,

3/25/77

Your letter of the 22d and the enclosed Tom Kelley memo of 2/13/69 are more important than you think. You have forgotten some things, not mentioned others I think you did not forget, and there are other considerations I must keep in mind.

As you may remember for a long time I have told "in that if he faces a conflict between my interests and those of the FOIA to resolve them in favor of what can be of most use in preserving and protecting FOIA. I mean this. I believe this Act epitomizes the basic American belief and is essential to any kind of decent, representative society. Unlike others, especially those parti pris in government, I believe it is one of the assurances of a healthier government and a more honest one. So there is this interest.

There is also the Kennedy family interest. You know I do not mean this in a sense of personal and blind loyalty for I do not. Rather am I more concerned with what this reflects of the continuing official efforts to accomplish several things: intimidating Kennedys; blaming them for suppressions of evidence; and more recently alleging that they are responsible for the assassination because it is a "astro lickback and John and "obby were responsible for that. (This is one of the reasons I so yearn to be able to return to Tiger to Ride.) While I have no personal knowledge my own and much earlier inquiries convince me that for a year prior to the JFK assassination the assassination of "astro was not a Kennedy policy. Rather do I believe the opposite. Unfortunately it is not possible for me to get those on Bobby's staff at the time to talk to me, even trust me. I no longer even try.

Partly as a reminder to you and partly for other purposes I'll trace this a little. One other purpose is that I feel obligated to send a carbon to someone or when you and Jim as my executors know but is otherwise secret. This was not a restriction imposed upon me. It is my own desire as well as belief that it is necessary. At some point it may be important for me to have this record of being secure and dependable because it may be in the interest of one who is vulnerable to feel that I can be trusted.

What you are into is a pretty sordid official business.

It is not self-serving to note that the representation of my writing is useless. I have never been a conspiracy theorist. While to keep going I have to vent my ~~gutter~~ passion and I have no editor to slam the writing down the only theoretical expression I can recall in all my published work is on an Oswald-intelligence connection. The very first words in my very first book could not be more opposite the representation of these characters, now I suppose legally conspirators.

This is your work and I can't tell you how to use or not use it. But I do want you to be aware of something much more serious than Kelley suggests about conspiracy theories: this memo can be used by the "anes and other whores and nuts to allege a government conspiracy to kill JFK. A real case can be made out without it so with it I shudder to think of what the irresponsibles can do. Especially now that "ane has a six-figure deal on a book that says the FBI killed "ing. Unless he has backed off. The book has been delayed a month. It is now due in May. Anyway, I am encouraging you to do nothing public now. Rather do I suggest that you persist in your searches and correspondence. I combine a recommendation with a reminder.

You remember correctly that I did discuss this with "heads during a recess in LaV. Shaw in early 1969, before the memo. What you do not request is that I made an earlier request in writing. "ere is that story.

The first hearing on "arrison's efforts to get the autopsy material and other evidence for his trial was in December, 1968. It was on a Friday. By then my disagreements with "arrison had become many and strong. I agreed to be a consultant expert on this in the hope it might diminish more insanities. Numa Bertal, an assistant DA, came up the day before. I met him at the airport and brought him here. We were at supper when "ud Fensterwald, who was Washington counsel, phoned and told us to pack out toothbrushes, to expect to spend the night with him. The DJ had pulled one of its regular dirty tricks, saying the court it had wanted to hear the trial.

Somehow someone knew this and phoned Bud to tell him and to offer him a copy of the papers supposedly given to him but in fact withheld. Bud drove to get them while I drove Uma and myself to Bud's home. We divided it in two because there was an unusual legal situation I could see. Bud had his then partner with him and they agreed that the situation permitted putting me on to testify as an expert - on the Archives and the subject. So we divided it in two. Bud and Uma after the partner left worked over the government legal arguments and I annotated the panel report. This was our first knowledge of it.

He worked until about 3 a.m. I do not recall whether I spoke to Rhoads that day or not. I do recall that I did the next hearing, after the first of the year and well before the date of the Kelley memo. First I was angered by the crazy Garrison carryings on and told them all where to go and cancelled my reservations for two days later, a Sunday, to go down and help them prepare the non-Shaw part of that prosecution. Then Alcock and Al Oser and two other lawyers phoned me on a conference setup and explained that Garrison was out of town and it was all that nasty Charlie Ward's doing. (I later became convinced this was false. But I kept my word and did go, loaded with records for them. That day, by prearrangement, I spent with Oser and his assistant, until 5 p.m., when they pooped out. When I left I told them they would lose the case, that they should lose it, and what later turned out to be exactly the jury reaction, why they would lose it. That night I wanted to go to work on the panel report, making extensive notes. It was a hell of a fight to get Bertel to give it to me. It was January and the night got cold. After I got Alcock to order him to do it Bertel kept me waiting on a windy and cold street corner for several hours. I recall all this very clearly. That night I began preparing what was first to be Cyril's testimony, then became Part II of Post Mortem.

Time is returning better. That was the Sunday before the opening of the trial. Garrison had a nutty notion that by beginning the trial the day Nixon was inaugurated it would somehow pressure Nixon. So that was January 19, 1969. The next morning I went to Garrison's office to work. I used part of Sciambra's office. On an old typewriter in it I wrote a formal, written request for the memo of transfer. January 20. You have a copy. So I did make a formal, written request more than a month before the wretch Rhoads told the others that if I got wind I would. I am also pretty certain that our in-court conversation was before the date of the Kelley memo. As I recall Hallick gave the government three weeks. This would have been about two weeks before the Kelley memo.

Now even for the Rhoads we have come to know and not to love this is pretty dirty stuff. Look at all those top government people from all those agencies he was deceiving deliberately. He was also deceiving them over the entry 9. If you look at what was not there you know that the question is not wild conspiracy theories but the disappearance or seeming disappearance of the most essential evidence, evidence the Commission and I suspect the FBI never had. Not that all did not know it - the need for it and of the existence of it. Not just the cannister with the brain. More important such things as the tissue slides. Interest in withholding this from the Commission was not Kennedy interest. It was the interest of those who were the obfuscators, those who covered up the actual fact of the crime.

Two reminders: the official story is that no tissue was removed for slides from the anterior neck wound and the autopsy was rewritten beginning after Dr.umes knew Oswald had been killed. Now I'm reminding you that my own medical interviews in Dallas leave no doubt that they took the anterior wound as one of entry and it bore the visible indications of an entry wound. So, Rhoads knew the need to remove tissue and make slides. The tracheostomy did not destroy any tissue. This is conjectural as an explanation but not to be ignored. It does represent the beginning official covering up.

This Kelley memo may be unfair to the Secret Service because of my later dealings with them. But it may be that they lied to me. Or had a deal with Rhoads and DI to get me off their backs. You will recall that after about 100 days Rhoads turned me down on a series of spurious representations. Thereafter I went to the Secret Service on this because they were the agency of paramount interest and I asked for their copy, not the one Rhoads had. They invited me in. We reached an immediate accommodation and I agreed not to file an FOIA action against them. They elected to give the memo of transfer to me through the Archives instead of directly. Rhoads intercepted it. Got together with DI and DI told the

SS to sit tight. If the SS had gotten rid of its only copy there was nothing I could do. Kelley's secretary did tell me of his sending it to the Archives (I've never been able to get the covering correspondence) so I had doubts about filing against SS. I also did not want to have to file, period, because I was aware of the anti-Kennedy misuses possible. As with Rhoads denying me the GSA-family agreement and then giving it exclusively to Graham, whose misuse was automatic from the nature of it.

What Rhoads really did was to create a situation in which exactly that he pretended horrified him was virtually certain. He did this by denying me first-use, even if they did, finally, give me some of it after Jim was ready to file a complaint. By that time all the nuts, commercializers and anti-Kennedyites had gotten wind of it. Just recall the misuse, the gross and indecent misuse, Wecht made at the press conference and, he, Joling and McDonnell had at the University Club.

I know of no record that is a genuine cause of Kennedy embarrassment. I know that the Rhoads behavior with them manufactures the embarrassments. I do not believe this is accidental. He with this, combined with what he withheld that says other than he wanted said, Rhoads saw to it there would be improper use, misuse by anti-Kennedyites. Have you any idea how many paid speeches Cyril alone made with that impassioned line, "Give that brain?" How many radio and TV shows? And all the nuts picking it up?

Rhoads' record is even worse. We had a hassle and he agreed that I had asked for all autopsy and medical evidence and that I would get it as it is released. He then held all these records back before denying them when I learned of them and made requests. All this assured is that the first use would not be in context and that angled use against all Kennedys was certain.

I think you now have other memos that can shed some light on this. I believe they say that obby did not have possession and did not make the delivery. This is like the receipts involving Burkley. He did not have possession. The Secret Service hid itself in this way, having him on the records. I'm sure that even th list was typed up by a Secret Service agent. Not even one of their typists. And not by Burkley.

It is not necessary to assume the business about two original autopsy reports, fascinating as that is. It is possible the original was removed from the locked box and deposited separately. But there is no doubt I held the originals in my hands. If I can find the color pix I got just for historical purposes they will establish this. The holograph was on blue-lined white paper. The body chart was on a mimeographed sheet. The stains of fluids were quite visible. Etc.

There is more but I now do not have time for it. Heavy mail and people due here in an hour. I would suggest that you carry this forward rather openly. Tell them that you have had access to my files, etc when you ask for what they still withheld. If they raise privacy questions send me a release to sign, made out to you only. We do not want the commercializers to latch on. I'd be inclined to hold off on going farther on the line of a former Commission counsel in the DJ Office of Legal Counsel and influencing their decisions to cover the Commission and incriminate Kennedys, esp. Bobby at the beginning. I'd ask each of the agencies for its memos and other records on this and all that is relevant to it. Harding is a nutty in this. By mistake I was once sent the wrong copy. All my correspondence was referred to him in GSA. This is probably part of what counts for the long period in which any response required about two or more months. "arfinkle now figures in FOIA matters that are open. It is he who told Jim they'd decline to produce the tie, etc. I do not yet know what the story on this is. No word from Jim today. When the ALM tried to con Jim, Jim told him to file a motion to quash. It is Jim's belief that the counterproductiveness of this has finally dawned on at least him. We should have been in court today if they were going to do this. We depose Monday, or the next working day. As I wrote Jim when I asked him to add these things to the subpoena, I believed that if they thought about it they'd realize their interests is in not attracting attention to it all. They know by now that I'm keeping a low profile Of course I regret the day I had to take to rough out the testimony I would have to give.

With breaks and handled properly and better if all can be combined this may provide

a means of opening up the cancer cleanly and without the possibility of those of vested interest turning it around or corrupting it into more of the indecent effort to blame all that is wrong on the survivors.

As I recall what you sent earlier it indicates that DJ worked on Burke Marshall via Rochman, with whom there seems to have been a friendship. Marshall may be a nice guy but with him as a friend no Kennedy needs enemies. I would address no requests to him. He'd consult Rhoads and do what Rhoads says. I've been down that road.

The language of Kelley's memo is horrifying. It strongly suggests that they knew what they were doing, knew what they were covering up.

Please be alert to something else as you pursue this. I have a long-overdue FOIA/PA request of the Secret Service. The same Goff personally wrote me that there are no files. For almost two years, beginning prior to this, I've been waiting for him to clear a record they provided CIA. CIA told me of it to make itself look better. Even giving SS file numbers has meant nothing. I wait for the first piece of paper from them.

There is now other and viable explanation of this incredible stonewalling: they know the inferences of subversion were fabricated by the paranoidal specks.

I'd not let on you know of this FOIA/PA request I've made. Just that you have had access to my files in the past.

This is not the only record I now have of a lawyer saying there is no legal way to withhold followed by continued withholding. I have one DJ lawyer's letter in which he said first deny him and then try to find some reason. This on "ing. He was more extreme than the FBI, with which he conferred. The GBI was wiser. They played the clock, their power and the certainty there would be no punishment.

You are correct on the legislative histroy. You asked about embarrassment being a reason. In the House or Senate reports of 1966, maybe both, this is explicit and explicitly said not to be a basis for withholding. As I recall it also said this was generally the real reason but another was invoked.

I'm won't know about this until I see him Monday.

Many thanks. Keep up the great work.

Best,

Mr. Tom Susman, Counsel
Administrative Practices Subcommittee
U.S. Senate
Washington, D.C.

3/25/77

Dear Tom,

Unless you believe the enclosed is something you should discuss with the Senator please regard it as confidential. Not only because it is Howard Roffman's work product. There is no need for any of us to know whether you discuss this with the Senator. But I do encourage you not to dismiss what I say to Howard out of hand.

This can get hairier because of the irresponsible committee and the needs it will have to try and sanitize itself.

Do not overlook the possibility that this was finally disclosed to Howard because with him about to become clerk to a federal appeals court judge and capable of filing his own FOIA case there might be too much risk in denying it to him and feeding in it to Sprague and others on the committee.

I ask cannot speak too highly of Howard if you want to consult with him about this or any part of it. His address is Howard Roffman, 1111 SW 16 Ave., #156, Gainesville, Fla. 32601. Phone 904/373-9194.

He is preparing to take the bar exams, after which he will move to Jacksonville.

If you can please be safe and avoid risking later sorrow. You should recall that this conforms to what I told you long ago.

I have traced it back to the Commission, to not later than 4/64.

The same Tom Kelley was then a liaison with Bobby.

That then may have meant through someone like Katzenbach.

Should you want to discuss any of this with another lawyer who has some knowledge, if less than Howard's or mine, I'll be giving a call to Jim Leear on Monday unless the depositions are postponed. 484-6023 and 223 5587.

By after supper last night he had not heard whether the government was going to move to quash the subpoena. When he explained the need to the AUSA that Nixonian stonewaller indicated uneasiness over an attempt to quash.

If they do it the only real reason will be to embarrass the Senator. With his FOIA interests and positions it could be even more embarrassing.

Sincerely,

Harold Weisberg

Dear Jim, Tom Kelley's 2/13/69 & ER's comment on it 3/26/77

I am quite surprised they surrendered this record.

Whether accident or not - and I think not- it may have broader significance than Howard indicated. He may have had in mind more than he said, that it was useful against Rhoads. It in fact casts Rhoads in the role I have.

There must be many memoranda of this kind. Like this with much also missing. Much of which Kelley knew that he does not reflect communicating to his fellow conferees.

Remember in response to my FOIA/PA request Goff insisted they have no records.

They were very sensitive on this and he was part of a conference with me so if Kelley wrote the memo on that Goff would have it, as he would what followed with Archives and Justice.

If in time they argue internal records, is this release to Howard a waiver?

Does this not indicate the existence of records not supplied by Archives and Justice, and can they also argue that exemption? Or can we defeat that argument?

Recently I've sent you copies of communications indicating the existence of withheld records where there has been no compliance.

GIA and its approx 150 names connected with Garrison.

NSA which claimed no records sent me a copy of one it got back from FBI.

State now claims to be reviewing one of its records it said not supply me that it says it got back from FBI. Both, of course, indicate very belated FBI processing of request, which appears to represent a decision to go against an earlier decision, the one under which there was no attention to the request. Perhaps this relates to the call you received from the office of the SAC and that to the coming of a new administration.

This also has broad significance re Rehnquist because of the participation of his office in so wrongful and prejudicial an operation. He may have been seriously complicated in other matters that were before that office.

At the time in question Harding appears to have been in on all my requests, all correspondence. Once by accident they sent me a wrong copy from which this was clear. It then took months to get an answer.

This record, I think, is indicative of a much broader violation of the Act and of my rights than is represented by the memo of transfer only.

At the same time it raises questions about the deliberative process and immunity. Is there immunity when officials conspire? This was a conspiracy. The deliberations were about violating the law and the law was violated. I'd like some legal scholars to ponder this layman's view. I do not believe there is a proper legal philosophy under which an illegal act has sanction or immunity. I am confident there will be less problem with this under discovery than by request but what I'm asking is can this have added meaning with regard to the Act and abuses of it that have been immune?

Used properly I think this can mean much to the law and on this subject. The implications are horrendous. They talk like conspirators.

Best,