

August 18, 1975

MR. CALLAHAN:

Mr. Callahan
John F. Kennedy

At 1:35 p.m., 8/18/75, I returned a telephone call, at his request, to Mr. Dave Muchow, Obstruction and Perjury Desk, Criminal Division of the Department. Muchow is the individual who was present in the office of Carl Belcher on the late afternoon of 8/15/75 when Belcher called me concerning our letter to the Attorney General dated 7/29/75 concerning the Dallas affair.

Muchow advised that he understood from Deputy Attorney General Kinney that the FBI had received authorization to administer oaths in our inquiry and was wondering as to whether this was some sort of special authorization given by the Department in this regard. I informed Muchow that we had received no special authorization and in fact by statute, which citation I could not recall, the FBI is empowered to place people under oath in conducting our investigations and the authorization was applicable to any individual and not restricted to just Government employees. He also mentioned that in the Mitchell case Judge Sirica had dismissed a charge against Haldeman of furnishing false information to Bureau Agents and wondered if in that instance Haldeman had been placed under oath. I informed him I had no knowledge of this but I would check it out and let him know. (Mr. Mintz advises that in the Haldeman matter the Agents had not placed Haldeman under oath and Judge Sirica would not proceed because the oath was not given.) I informed Muchow I would call back and furnish him the specific citation for our authorization in this regard.

Muchow stated he understood that there was a question as to the source being available either today or tomorrow in Washington, D. C., and if so would the Department be able to see the source and question him. I advised Muchow that the source, to my knowledge, was not in Washington, D. C., and I had no knowledge that he planned to be in Washington, D. C. He then asked whether or not it would be possible for the Department to submit some questions to the source through the Bureau. I advised him

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that I could not give him an answer in this regard but reiterated what I had told Mr. Belcher on 8/15/75 that to my knowledge the source had given every bit of information he had concerning this matter to Bureau officials early in July, 1975. He then asked if an FD-302 had been prepared concerning the interview of the source and I informed him that an FD-302 had not been prepared but if he he would desire this interview could be reduced to an FD-302. I again pointed out to Muchow there was no question but that the source had given every bit of information at his disposal which had been included in our letter to the Attorney General.

Muchow stated that he and others in the Criminal Division had been reviewing this matter over the weekend, including review of Warren Commission hearings and observed that in reviewing the Warren Commission report, Marina Oswald did not testify concerning whether she knew of Oswald's visit to the Dallas Office and of a note he may have left there. Muchow thought Marina Oswald would be a logical person to be interviewed and wondered if I knew of any reason why she should not be interviewed to which I replied in the negative. I told him it was my understanding that she is still in the Dallas area. In this regard Muchow also thought the police officer who reported a conversation with SA Hosty would be a logical person to interview and this refers to a conversation Lieutenant Revill, Dallas Police Department, claims SA Hosty had with him on an elevator wherein he claims Hosty made reference to Oswald being violent.

Muchow stated at this time it appears that the following options are available and named them as follows:

1. Refer the matter back to the FBI for further interviews.
2. Have the FBI conduct further investigation with the Department outlining specific questions that should be asked.
3. Ask that the FBI allow someone from the Department to sit in on subsequent interviews.
4. Someone from the Department to conduct interviews, taking depositions in question and answer form.
5. Refer the matter to a Grand Jury.

6. Utilization of polygraph. Concerning the polygraph, Muchow asked what the Bureau's position would be on this and he was informed that there have been instances in the past when employees have been requested to take a polygraph.

After citing the above options, Muchow asked what my thoughts were as to the various options and I told him that I was not in a position to speak for the Bureau and he requested that these options be furnished to Mr. Callahan and he was assured they would be. He did make reference to the fact that it would appear that in conducting further inquiry the FBI would be investigating itself and I informed him that this is nothing new, we have highly skilled personnel who in the past have conducted inquiry involving our personnel, that we let the chips fall where they may, and this matter would be handled in the same fashion.

In conclusion, Muchow pointed out that from a review of the information we have furnished the Department to date it is felt that there are a number of "one on one" situations and further pointed out that it seems the higher up one seems in the echelon the more general was the response of the person being interviewed. He stated he and several others in his office are continuing to review this material and he did not anticipate reaching any conclusion for several days.

I asked him if he had received any inquiry from the Deputy Attorney General's office today and he replied in the negative.

*Trans. 11/10/75
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To [unclear]
[unclear]*

J. A. Conley

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August 27, 1975

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.

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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.

HNB H. N. Bassett



OVER

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.

J. M. [Signature]