

EMK

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

3/29/77

Dear Tom,

This is merely to inform you of what happened when we deposed two former FBI agents yesterday and the Archives refused to comply with the subpoena. The judge did not act on the motion to quash. We are before him in the morning.

Marion Johnson appeared with the pictures taken for me to meet my C.A. 2069-70 but without the tie. He then said he was under instructions not to permit the pictures to be introduced into evidence.

Now the only difference between these pictures and those the FBI originally took for the Warren Commission is clarity and proof that the most essential evidence was destroyed. This evidence is the knot in the tie. The tie was unknotted, probably by the FBI but if not by it when it was in the Archives.

In response to our subpoena for all records relating to the destruction of this evidence we got my letters asking for an investigation and their essentially ~~max~~ non-responsive ones. You are welcome to copies if you want them. There was no investigation, from these records. Not even an inquiry of the FBI. Not even a referral.

Jim's belief is that even if the letter agreement is valid, and he thinks it is not as I have all along, it was not complied with in this refusal. It once again is placed on the Kennedy family. (The FBI persists in doing this with everything. Howard Roffman is having this experience now with them and can supply you with the correspondence if you should want it. It relates to his efforts to get to the bottom of this business under FOIA.) Through Burke Marshall, who is said to have directed this non-compliance with a subpoena. Understand this was not for me to touch or use or anything ^{else} ~~else~~. It was as the basis of testimony from two retired FBI experts who are supposed to have done the testing that is at issue in the remand, which directs that I establish the existence or non-existence of records and that I explore "the events."

I have no literary interest in this and if I had it would all be public domain long before I could do anything. I'm saying it is not selfish.

Jim and I have not had a chance to discuss what we will or will not do at tomorrow's status call. My disposition is to take the letter agreement on, horn to horn, and to get those pictures into evidence at the least. And see if a court is interested in how a President can be killed and basic evidence destroyed while it is in official custody and if it is really true that the FBI comes unglued and can't keep any records of even tests it performed and examinations it made. And why expert official witnesses volunteered nothing when they also filed no records that could have led to the necessary questioning. (We have this in depositions now.) My disposition, even with an antagonist judge, is to demand what will be even more burdensome for me, an evidentiary hearing after Jim deposes me.

We have more than enough in the record now for an investigation by one of several standing committees if as I suspect the House Keystone Kops continue their media events. The way it has worked out is that in addressing what is at issue in the litigation we have done much to address what I think you lawyers call the corpus delicti. We will be doing more of this. While I do not, as I think you realize, do anything to attract attention to these procedures and do not plan to now, I do plan to make as much of a court record under oath as is possible for Jim and me. We can't depose me until after we have the transcripts of yesterday's depositions.

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