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Kerr, John Hoare (1978-1984): Memorandum 01

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United States Senate

MEMORANDUM

July 27, 1981

TO: Senator 
FROM: ADC
RE: John Kerr

Attached is a packet of documents from Livy that pertain to the Kerr case.

Livy said that he had a brief exchange with you about Kerr.

Your last letter to Kerr is also attached _ FYI.

W/V

NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

July 21, 1981

CONFIDENTIAL MEMORANDUM TO SENATOR CLAIBORNE PELL

Dear Senator:

I asked our Legal Counsel to prepare a chronology of the John Kerr situation so that you would have an overall view of it at hand.

The chronology is really just the bare bones of my efforts to provide John with every possible chance to find other work, after I had decided that no one in the kind of position he held should be here permanently. I am enclosing a copy of the rotation policy statement which was developed very carefully and which I still believe is the only kind of policy for an agency that deals with such immensely sensitive problems as freedom of expression. I feel that the policy is in keeping with the spirit of the basic law which puts such emphasis on the guidance of private citizens in the conduct of a Federal arts agency -- not unchanging Federal bureaucrats.

I had observed that the program directors, prior to my coming, were tending to favor certain groups at the expense of others and that long service, while it had many advantages, had the basic disadvantage of inserting one individual's viewpoint too much into the workings of the program which should always be open to fresh and new ideas.

In John's case, we discussed this policy together. I also discussed it personally with the other affected program directors, both individually and collectively, so that all would have an understanding of my feelings. John, in the beginning, showed good understanding of the policy, was favorable towards it -- until it began to impinge on his own future employment.

Of all the program directors affected, I really felt I went beyond the call of duty with John. From the very beginning, he understood that he was not to remain in his job. He sought my help in trying to locate another position at the Endowment which would have been possible under the policy. However while he was a "finalist" for the Museum job, as director of that program, I simply felt that his qualifications were not as strong as the person I chose, Tom Freudenheim, who had the experience of running a major museum and who was highly recommended by the museum profession and its leadership, including our friend, George Seybolt.

John's other possibility for Endowment connected work was with the Office of Education, when Joan Mondale and I decided it would be a splendid idea to have a person serving as a liaison for the arts between the Endowment and the then Office of Education, before it became a Department. Again John was a finalist among the many we interviewed, but again he simply did not have the strength of qualifications which the person we selected possessed. (Actually this position did not last too long as the Office headed by Ernie Boyer changed, and he departed to work with the Carnegie Foundation.)

In both of the above cases I really went to bat for John as much as I could. I even detailed him to work with the International Communication Agency (ICA) so that he could expand his international contacts while helping the Endowment. In the summer of 1979, John wrote me an impassioned request that he be returned to the Endowment from ICA in order to concentrate more fully on his job searchings, and I permitted him to do this. John subsequently interpreted this to others as a premature termination of his detail to ICA, and as critical of my treatment of him.

In light of all the above, I find it so disturbing that John has alleged a mistreatment here and that he has won a technical claim that he was not given a chance to appeal his eventual departure. I just cannot understand how any fair-minded person could claim that he had no opportunity for an appeal when he and I and all concerned understood that his departure would take place and when his employment here was extended for months, far beyond what was otherwise required. The file on John is extensive and carefully documented in case you should want to review it. Also, as you know, I wrote extensively in John's behalf to many in an effort to find him work -- some positions were forthcoming, I understand, but he did not accept.

All best,



Livingston L. Biddle, Jr.
Chairman

Enclosures



July 17, 1981

Chronology of Events Surrounding Termination
of John Kerr and Efforts by and
on Behalf of Mr. Kerr to Seek Another Position

Early in 1978, adoption of a 5-year rotation policy affecting Schedule "A" Program Directors was under consideration by Chairman Biddle. The purpose of the policy was to refresh the program area by bringing in new views from the arts constituency. This policy was not presented to Program Directors as an accomplished fact. Rather, much thought and study went into developing alternatives to the 5-year plan and in soliciting the views and comments of current Program Directors regarding this subject. John Kerr was provided with information regarding this policy and was given the opportunity to comment thereon, insofar as it directly affected his personal future.

In addition to a lengthy memorandum detailing the reasons for the policy, Mr. Kerr received oral and written notification once the policy went into effect. On August 14, 1978, after having already received several months advance notice of the proposed action, Mr. Kerr was informed he would have an additional several months (until November 30, 1978) to find other employment.

During the final months of 1978, no indication was given by Mr. Kerr of any intention to observe the requirements of the rotation policy regarding the proposed November 30 departure date. In order to reaffirm the policy and provide further notice of the proposed personnel action, a letter was forwarded to Mr. Kerr on February 28, 1979 informing him that he would be terminated on August 31, 1979. Thus, Mr. Kerr was permitted to remain in his position at the Endowment for at least one and one-half years from the time he received initial notification of the rotation policy, and a full year from the August 14 letter notification of the proposed November 30 departure date. In addition, as indicated in the following chronology of events regarding this issue, the Chairman personally made continuing efforts to assist Mr. Kerr in seeking another position.

April 6, 1978 - Memorandum from L. Biddle to All Endowment Staff and All Parties Concerned regarding adoption of a 5-year rotation policy for Program Directors.

August 14, 1978 - Letter from L. Biddle to J. Kerr regarding establishment of a schedule for recruitment and hiring of new Program Directors. Kerr informed that final departure for Endowment staff should be scheduled for no later than November 30, 1978.

August 1978 - J. Kerr, in response to his request, detailed to special assignment with the International Communication Agency so that he could have additional opportunities to find a new position in the international area.

October 28, 1978 - L. Biddle writes to Esteban Torres, Ambassador, U. S. Representative to UNESCO recommending Mr. Kerr as a candidate for a position with UNESCO.

November 1978 - J. Kerr applies for position of Director of Museums, National Endowment for the Arts.

November 1978 - J. Kerr applies for position of "Senior Official" to work with both the Endowment and the Office of Education arts education programs. Kerr receives recommendation from Senator Pell.

November 28, 1978 - L. Biddle writes letter endorsing Mr. Kerr's application for a Guggenheim fellowship.

November 30, 1978 - Previously announced departure date for all Program Directors.

January 23, 1979 - L. Biddle writes letter of support to Ms. Mary Thompson, Search Committee, National Association for Student Affairs.

February 6, 1979 - L. Biddle writes "To Whom It May Concern" letter of endorsement for J. Kerr to be used in support of applications for employment. Cites Kerr's work in the Education Program and the growth of the Artists-In-Schools Program under his leadership.

February 20, 1979 - L. Biddle writes letter of support for Mr. Kerr to Mr. Winslow M. Lovejoy, Jr., President, Robert Sterling Clark Foundation.

February 28, 1979 - L. Biddle writes to J. Kerr informing Kerr that he would be terminated on August 31, 1979.

April 9, 1979 - L. Biddle writes letter of support for Mr. Kerr as a qualified museum expert to William Whalen, Director, National Park Service, Department of Interior.

June 15, 1979 - J. Kerr writes to L. Biddle requesting that he be recalled to the Endowment from special assignment at ICA in order to spend full time looking for another position.

June 26, 1979 - L. Biddle writes to John Reinhardt, Director, International Communication Agency, requesting that Mr. Kerr return to the Endowment from his special assignment in July rather than August.

July 13, 1979 - L. Biddle receives letter from John Reinhardt granting Mr. Kerr's request to be released from ICA.

August 5, 1979 - J. Kerr writes to L. Biddle alleging that circumstances indicate some kind of "black listing" at Endowment as a result of Kerr's failure to be selected for positions of Director of Museums, Special Counsel for Arts and Education, and Director, Federal Council on the Arts and the Humanities.

August 1979 - J. Kerr files a complaint against the National Endowment for the Arts alleging discrimination on the basis of age. The investigative report, dated June 6, 1980 found no basis to support a finding of discrimination.

August 31, 1979 - J. Kerr officially removed from Endowment rolls.

September 1979 - J. Kerr returns to his home in Rhode Island.

* June 1980 - J. Kerr files an appeal petition with the Merit Systems Protection Board (MSPB) challenging the Endowment's action in terminating him.

July 22, 1980 - L. Biddle writes a letter to the Chairman of the Search Committee in support of Mr. Kerr's candidacy for President of East-West Center.

* September 2, 1980 - MSPB finds harmful procedural error on the part of the Endowment in terminating Mr. Kerr and orders cancellation of the termination action.

* October 6, 1980 - Endowment requests that the MSPB review its decision in connection with Mr. Kerr's appeal. This request was based on the agency's belief that in terminating Mr. Kerr the Endowment acted in a manner consistent with standards of fair play and accorded Mr. Kerr procedural safeguards beyond those required under applicable MSPB procedures.

* April 9, 1981 - MSPB denies the Endowment's petition for review and orders the initial decision cancelling the termination to become final April 14, 1981.

* April 1981 - Cancellation of termination action and retroactive restoration of J. Kerr as Endowment employee.

NATIONAL
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FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

M E M O R A N D U M

TO : All Endowment Staff and All Parties Concerned

FROM : Livingston L. Biddle, Jr. *L.B.*

DATE : April 6, 1978

SUBJECT: Rotation Policy

We have had a number of discussions among Program Directors and some time now to react to my earlier statements regarding a rotation policy for our Program Directors.

These statements, I believe, relate in logical sequence to the changes I developed upon becoming Arts Endowment Chairman last November.

The appointment of three Deputy Chairmen -- rather than the one in previous years -- was motivated by a desire to make the Endowment as responsive as possible, in our major areas of interest and endeavor, to the changing and mounting needs of the arts and the growing demands on the Endowment.

I believe in a concept of renewal from the fields of the arts we serve. We are a Federal agency. We have immense responsibilities to keep the arts evolving. Perhaps of all areas of Federal involvement, our agency is among the most sensitive, for we deal with freedom of expression, with qualities of imagination, awareness, and the evolution of new insights and perceptions.

Traditionally, the Endowment has served as a catalyst in accord with its legislative mandate.

The Federal role should never be dominant. Its leadership should not be static. Its leadership should not be based on a concept of irreplaceability. It, too, should be refreshed from time to time by change.

With respect to the Chairman, the Council, and the panels, rotation is a part of our historic development and basic philosophy. And I believe this philosophy should apply to the positions of our Program Directors. In some important respects their positions are the most sensitive of all. No Chairman, no Deputy, no single Council Member, no panelist, can be fully knowledgeable in all fields of the arts. The Program Directors, however, have a special responsibility, a special proximity to the major art forms. Special reliance is placed on their abilities. The principle of rotation, in my view, would be incomplete without their involvement in the process.

This, then, is a matter of principle and philosophy to which I am committed. Stated another way, I believe no one in the areas I have mentioned -- Program Director, Council Member, panelist, Chairman -- should serve at the Endowment forever. You all know my views about my own term of service. I announced them at my nomination hearings to the Senate and I have oft-times repeated them -- if my job has been excellently carried out, I would hope for consideration for a second four-year term then, but I would consider it improper to serve longer.

And, if there is to be a principle of rotation, I believe it should be fairly applied. I also have said many times it should be flexible enough to mitigate against any possible individual hardships and to allow for maximum individual contributions to the Endowment and to the arts.

I have used the period of "five years" as a kind of benchmark for future guidance. Some have interpreted this to mean an arbitrary time limitation. Nothing could be further from my intentions. An arbitrary procedure runs counter to them.

Within the principle of rotation, I believe there should be considerable flexibility. Five years is only in most general terms a guide, in no way a determinant. A shorter or longer term should certainly be possible. In some cases a longer term could be highly desirable. Each program area and its leadership should be carefully assessed year by year. No arbitrary kind of uniformity should apply.

But we should all be clear that I believe rotation is of fundamental value to the well-being of the Endowment and to its responsiveness to our constituencies. Flexibility is desirable. But, to me, the principle of rotation is of basic importance.

I reviewed these matters with the National Council on the Arts, and with other leaders in the arts before stating my own deep convictions.

In the weeks ahead each program will be addressed separately. We will be seeking much valuable guidance from the various arts fields, and the help and guidance and understanding of those most involved at the Endowment, and of all those who work together here. Those most involved at present know they have both my high regard and lasting appreciation for the value of their work.

It is my intention that as this policy and procedure develops the Arts Endowment will become an increasing resource for all arts fields and that those who work here, when they leave their particular program areas in the future, can go forward toward broader horizons of interest to themselves and of service to others, in some cases, possibly at the Endowment itself.

All Endowment Staff and All Parties Concerned -4-

Finally, rotation should not affect continuity. Special care will be taken to avoid any disruption of Endowment program activity.

I have not put these thoughts on paper before, wishing to hear carefully all sides of the issue, but I believe it is now appropriate for me to express these opinions to you all.

July 20, 1981

Mr. John Hoare Kerr
"Derrydown"
R.F.D. #1
Newport, Rhode Island 02840

Dear John:

Thank you very much for your recent letter.

It is my understanding that the Arts Endowment is currently adjudicating your case in accordance with the latest information that they have received from you and your attorney. It would seem prudent to await the outcome of these negotiations.

With warm regards.

Ever sincerely,

Claiborne Pell

AC/jb

my