

MEMORANDUM

To: T. Jeremy Gunn
cc: David G. Marwell
Thomas Samoluk
From: Dennis J. Quinn
Date: June 13, 1995
File: 3.____

Subj: Status of Louisiana Law Regarding the Release of Public Records

At your request, I have conducted some preliminary research into whether District Attorney Harry Connick can legally withhold the case files of Jim Garrison. What follows is a very brief summary of the law in Louisiana and how it relates to our situation.

I. **Applicable Law**

The operative statute is the Louisiana Public Records Act, LA. REV. STAT. ANN. § 44.1 et seq., which is the state's version of the FOIA. The statute is quite liberal in its approach to the release of government records, mandating a policy of broad access to public documents. But, like the FOIA, it has exceptions. Section 3 applies to records "of prosecutive, investigative, and law enforcement agencies," and specifically includes those records held by the offices of the district attorneys. These records are exempt from disclosure under certain circumstances, including:

A. Records pertaining to **pending** criminal litigation, until such litigation has been finally adjudicated. Since Clay Shaw was acquitted, and has been dead for more than twenty years, it is safe to conclude that this case has been finally adjudicated.

B. Records containing the identity of a confidential source of information or records that would tend to reveal the identity of a confidential source.

C. Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer.

There is substantial case law dealing with the statute. Not surprisingly, Connick has been fighting to prevent the release of his office's records for several years now, usually to no avail. *See, Lemmon v. Connick*, 590 So. 2d 574 (La. 1991). Most recently, he argued that the statute did not apply to his office, and, that the statute was unconstitutional. The Louisiana Court of Appeals

disagreed, on both counts. *Miles v. Connick*, 613 So. 2d 1169 (La.Ct. App. 4 Cir. 1993) and again, *Carter v. Connick*, 623 So. 2d 670 (La. Ct. App 4 Cir. 1993).

While Connick was ordered to disclose his records in the three cases cited above, the court was careful to specify the release of those records "not otherwise privileged." *Lemmon*, 590 So. 2d at 575. None of these cases specify what privileges the court had in mind, but the Louisiana Fifth Circuit recently held that portions of a District Attorney's files could be withheld from disclosure as attorney work product. *Trenticosta v. Mamoulides*, 633 So. 2d 786 (La. Ct. App. 5 Cir 1994).

The *Trenticosta* court also held that grand jury testimony was properly withheld where the plaintiff failed to allege any specific facts showing an injustice or prejudice would be suffered if the testimony was not released. 633 So. 2d at 222. In reaching this decision, the court reasoned that the "indispensable secrecy of grand jury proceedings must not be broken except when there is a compelling necessity." *Id.* at 788. Additionally, the party seeking disclosure has the burden of proving that the need for disclosure outweighs the continuing need for secrecy. *Id.*

II. Conclusion

Connick cannot simply refuse to turn over the Garrison records based on state sovereignty. He can, however, refuse to disclose those portions of the file that contain the identity of a confidential source, as well as those portions that can reasonably be classified as attorney work product. Additionally, the secrecy of the grand jury proceedings will be protected unless we can show there is a compelling necessity to force disclosure.

These issues can all be litigated and, depending on the judge and the arguments presented, we might be able to force complete disclosure of the Garrison files. But if Connick chooses to fight, and history shows he is willing to do so, he can probably keep these records tied up well past the Board's sunset date. It would be worthwhile to pursue all alternate means(e.g., Lindy Boggs) of getting these files before taking the matter to court.