

February 11, 1997

HAND DELIVERED

David J. Anderson, Esq.
Branch Director
Federal Programs Branch
Department of Justice
901 E Street, N.W. , Room 1064
Washington, D.C. 20530

Re: Proposed Assassination Records Review Board Actions Regarding Transferring
Certain Assassination Records to the National Archives

Dear Mr. Anderson:

I am writing to request the concurrence of the Department of Justice for an action that the Assassination Records Review Board (Review Board) is preparing to take with regard to some unsolicited records that were sent to the Review Board from New Orleans in early July, 1995 ("New Orleans records"). We have discussed this issue with Ann Weisman, Art Goldberg, and Rich Brown of your staff in a meeting on January 9, 1997, and have described to them the procedure that we intend to follow. It is our understanding that they were generally in agreement with the course of action that we are proposing to take, and they accepted our proposal to notify you in writing of our plans. Subsequent to the meeting, we have discussed the issue with members of the Review Board and we now have their consent for us to proceed as will be outlined below.

Background

As you are aware, the Review Board was created pursuant to the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act). Under this statute, the Review Board is responsible for collecting records related to the assassination of President Kennedy, including records from all levels of government and from private persons. Once the Review Board obtains relevant records, it transfers them to the JFK Collection at the National Archives and Records Administration (NARA).

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The Review Board and members of the staff met with Mr. Harry Connick, Sr., the District Attorney of New Orleans Parish, on three separate occasions during the summer of 1995. During these encounters, Mr. Connick agreed to donate to NARA all of the extant records from Jim Garrison's prosecution of Mr. Clay Shaw for conspiracy to assassinate President Kennedy. Mr. Connick specifically stated that he was not including any grand jury records in his gift and he suggested that they were no longer in existence.

On June 28, 1995, Mr. Connick testified to the Board and described the records he was preparing to donate. Mr. Connick also suggested that there were some missing records that had been stolen by Mr. Garrison's staff. He also stated that *all* records related to the Garrison investigation should have been preserved in an archive. Shortly after his testimony to the Review Board, Mr. Connick reiterated these statements to the New Orleans news media. We now have a copy of a videotape of a televised interview between Mr. Connick and a New Orleans reporter named Richard Angelico. In the interview, Angelico revealed that he had information that Connick himself had ordered one Gary Raymond, at the time an employee of Mr. Connick and an investigator for the New Orleans District Attorney, to destroy the grand jury testimony, but that Mr. Raymond had secretly kept the records. Mr. Connick, after being shown an affidavit containing Mr. Raymond's allegations, retracted his original story and acknowledged that he may indeed have been the person who ordered destruction of the grand jury records.

In early July, 1995, the Review Board received, by a Federal Express shipment, records that appeared on their face to be ribbon copies of the grand jury testimony from the Garrison investigation. I am attaching the cover letter and inventory that was received with the shipment. Once I learned of the receipt of these New Orleans records, I instructed that they be placed in a secure vault -- where they have remained to this day. As far as I am aware, the only persons who have seen the New Orleans records since their receipt are myself and the administrative staff.

Mr. Connick attempted to issue a subpoena to the Review Board on or about July 13, 1995, for the return of the records. The Department of Justice took the position that the subpoena was defective and the Review Board did not return the records. On several occasions thereafter, the Review Board sought to discuss the issue with Mr. Connick, but he refused to do so. As far as we are aware, Mr. Connick has taken no further legal actions to serve a subpoena or to enforce a subpoena against the Review Board.

We understand that constructive contempt of court proceedings were instituted against Mr. Raymond

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and Mr. Angelico, which alleged that they had violated court rules on secrecy of grand jury records. *See* La. C. Cr. P. Art. 434. Both Messrs. Raymond and Angelico were found to have been in contempt. It is our understanding that the judgment was never enforced against Mr. Raymond.¹ The district court's ruling against Mr. Angelico was reversed by the Court of Appeals. The Louisiana State Supreme Court denied Mr. Connick's writ, thereby leaving Mr. Angelico free.

It is worth noting that Mr. Raymond apparently sent a copy of the New Orleans records to another reporter named Mr. Hugh Aynesworth. Mr. Aynesworth apparently read the records and wrote a newspaper article about their contents. (*See* enclosed *Washington Times* article dated July 16, 1995). As far as we are aware, Mr. Connick has taken no action against Mr. Aynesworth.

Legal Constraints on the Review Board

The records, on their face, clearly appear to be "assassination records." Under the JFK Act, all assassination records that come into the possession of a Federal agency should be indexed and forwarded to NARA for inclusion in the JFK Collection. 44 U.S.C. § 2107.5(c). The Review Board, as a Federal agency that itself is obligated to comply with the Act, is under a legal duty to send the records at issue to NARA. At the same time, neither the Review Board nor NARA wishes to take any steps that would be improper with respect to handling the New Orleans records. There are, of course, issues pertaining to ownership and secrecy that might be pertinent to the disposition of the records.

Review Board Plan

Unless the Review Board is instructed differently by the Department of Justice, the Review Board will, at its March 13, 1997 meeting, decide whether the records are in fact "assassination records" within the meaning of the JFK Act. After the Review Board makes its determination -- which almost certainly will be in favor of the designation -- it will make copies of the records available to the public through its Reading Room. (Copies will be made available at cost.) After one month, the Review Board will send to NARA a copy of the records for inclusion in the JFK Collection. The Review Board will, at a later time, decide what should be the final disposition of the original records.

¹Unlike Mr. Angelico, Mr. Raymond did not appeal the court's decision. I have spoken with Mr. Raymond's attorney, Raleigh Olmeyer, who told me that he was unconcerned about the court's decision because the Judge had told him that, if Mr. Connick ever tried to enforce the decision, Mr. Raymond would only be "slapped on the wrist."

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We would be pleased to discuss this matter further with you or with your staff. We request that, if you foresee any impediment to our action, that you let us know prior to the March 13 meeting.

Sincerely,

T. Jeremy Gunn
General Counsel

Enclosures