

July 3, 1997

BY FACSIMILE

James R. Hastings, Esq.  
Criminal Division  
U.S. Department of Justice  
Washington , D.C. 20530

Re: Papers of Herbert J. Miller

Dear Mr. Hastings:

Thank you for meeting with Kevin Tiernan and me this morning regarding the papers of Herbert J. Miller.

As you know, the Assassination Records Review Board was provided subpoena power under its enabling legislation, the John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Sect. 2107 ("JFK Act"). Pursuant to the Review Board's request, the Department of Justice prepared a subpoena to Herbert J. Miller, the former head of the Criminal Division. Once the subpoena had been issued, I advised Mr. Miller that we had a subpoena that we were prepared to serve. Mr. Miller and I agreed that he would provide the responsive documents to us without the necessity of serving the subpoena. Later we learned that Mr. Miller decided to send some of the documents that we had requested to the Criminal Division rather than to us. It is, of course, the opinion of the Review Board that these documents, which were requested by the Review Board, should have been delivered directly to the Review Board.

It is our understanding that some of the materials delivered to DOJ by Mr. Miller contain grand jury material. Given that DOJ is in possession of these materials, the Review Board has no objection to DOJ withholding from delivery to the Review Board, at this time, any grand jury information. Nevertheless, it is our opinion that DOJ should not be withholding from delivery to the Review Board *any* information or records delivered by Mr. Miller once the grand jury information has been removed.

Moreover, the Review Board is authorized, pursuant to section 7(j)(C)(ii) of the JFK Act, to "direct Government offices to make available to the Review Board" records and information related to the assassination.

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We appreciate your showing to us this morning those records that you reviewed that do not contain grand jury material. As we told you this morning, and as we will explain more fully in a subsequent letter, we will not need to receive most of those materials that we were shown this morning.

Nevertheless, we now request, as the party responsible for the issuance of the subpoena and pursuant to our statutory authority, that you make the file labeled "CI-4" available to us immediately. As you confirmed this morning, it contains no grand jury materials.

To the extent that there are DOJ equities in "CI-4", DOJ will have a full opportunity to review the records, provide evidence to the Review Board, and appeal any Review Board decision to the President, prior to any public release of the information in "CI-4."

Thank you for your assistance.

Sincerely,

T. Jeremy Gunn  
General Counsel

cc: Arthur R. Goldberg, Esq.  
Civil Division

Carlotta P. Wells, Esq.  
Civil Division

I acknowledge receipt of the above-identified "CI-4" on behalf of the Assassination Records Review Board.

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Kevin Tiernan  
July 3, 1997

James R. Hastings, Esq.

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