

MEMORANDUM

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February 16, 1996

To: Art Goldberg, Esq.
Department of Justice

cc: David Marwell
Executive Director

From: T. Jeremy Gunn
General Counsel

Subject: Thoughts on Connick's Motion and Incorporated Memorandum for Expedited Hearing
and for Stay Pending Hearing

On review of Connick's motion, I would make the initial observations:

First, Connick (grossly) misreads the scope of the JFK Act, believing that it applies solely to Federal government records. (See Memorandum in Support pp. 2-5.). He thus ignores: (a) the definitional sections of the JFK Act, (b) the subpoena power of the Board, and (c) the guidance supplied by the Board's 1995 regulations. The relevant provisions are as follows:

**The President John F. Kennedy Assassination Records Collection Act 44 U.S.C. 2107
(Supp V 1994).**

Definition of "assassination records"

"Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created *or made available for use by*, obtained by, or otherwise came into the possession of . . . (E) the Select

Committee on Assassinations (the ‘House Assassinations Committee’) of the House of Representatives . . . and (L) any *State or local law enforcement office* that performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy.” Sec. 3(2) (emphasis added).

[N.B.: the subpoenaed files were reviewed by the staff of the House Select Committee on Assassination and therefore are “assassination records” as defined by the JFK Act. We communicated this information to Connick’s office on June 15, 1995, in a letter from Samoluk to Buras with three pages of attachments. This communication is attached.]

“no assassination record shall be destroyed, altered, or mutilated in any way.”
Sec. 5(a)(2).

Review Board powers:

“request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act” Sec. 7(j)(1)(C)(iii).

“hold hearings, administer oaths, and subpoena witnesses and documents” Sec. 7(j)(1)(F).

“a subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board” Sec. 7(2).

“the Review Board may issue interpretive regulations” Sec. 7(n) [see below]

Guidance for Interpretation and Implementation of the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act), 36 CFR Chapter XIV, 60 F.R. 33345 (June 28, 1995).

Pursuant to Section 7(n) of the JFK Act, the Review Board issued the following guidance:

§ 1400.1: “(a) An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze, or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

“(b) An assassination record further includes, without limitation:

(1) All records as defined in Sec. 3(2) of the JFK Act [relevant portions of 3(2) are set forth above];

(2) All records collected by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy”

§ 1400.3: “Assassination records and additional records and information may be located at, or under the control of, without limitation [in] (b) Agencies, offices, and entities of the *executive, legislative, and judicial branches of state and local governments*”(emphasis added)

Second, Connick next argues that Rule 45 of the Fed. R. Civ. P. do not require him to travel more than 100 miles. Although I defer to you on what rules apply to administrative subpoenas, it should be noted that the subpoena itself says that the subpoena is returnable in Washington, D.C., “or at such

other mutually agreeable time and place” The subpoena to Mr. Connick included a cover letter stating: “We will be pleased to attempt to work with you and your attorney to schedule an alternative time and place that may be more convenient for you.” (copy of letter enclosed). When I orally informed Bill Wessel that we were issuing the subpoena, I also told him that we would be perfectly agreeable to scheduling a time and place that would be convenient and I enclosed a copy of the cover letter sent to Connick. Neither Connick nor Wessel ever contacted us, nor did they disclose any of these facts to the Court in their memorandum.

Attachments