

DRAFT
ON DOJ LETTERHEAD

Date

BY TELECOPIER AND U.S. MAIL

William F. Wessel, Esq.
Wessel & Associates
127 Camp Street
New Orleans, Louisiana 70130-2507

Dear Mr. Wessel:

The Department of Justice is now representing the Assassination Records Review Board in the matter of *Assassination Records Review Board Subpoena to Harry F. Connick*, Civ. Action No. 96-0598, Section: E/4 (Livaudais). I have received copies of your pleadings as well as your correspondence with Jeremy Gunn of the Review Board.

In response to your motions to stay and to quash the subpoena, Judge Livaudais ordered, on February 16, 1996, that: "the subpoena should be stayed pending the Assassination Records Review Board and Mr. Connick reaching an agreement *as to a mutually agreeable time for production of the documents in New Orleans.*" (emphasis added). (Judge Livaudais certainly did not order, as you incorrectly state in your letter of February 16, that "[h]e will conduct a hearing on the Motion to Quash if the parties cannot agree [to stay the subpoena].") Your motion to quash was not granted; indeed Judge Livaudais explicitly ordered the parties to reach an agreement as to the timing for compliance with the subpoena. In response to the Court's order, Mr. Gunn attempted to contact you by phone and he sent you a letter by telefax proposing some suggested times. Because Judge Livaudais's order is currently binding on you, we urge that you respond promptly to our attempts to establish a time that is convenient for compliance with the subpoena and the order.

I would also like to note that your letter of February 22 contains the same misunderstanding of The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act), that you conveyed to the Court in your memorandum. You apparently have the misunderstanding that the Review Board's power extends solely to Federal government records. To the contrary, the statute empowers the Review Board: (a) to 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), and (b) to "hold hearings, administer oaths, and *subpoena witnesses and documents . . .*" (Sec. 7(j)(1)(F) (emphasis added)).

Furthermore, your observation that the Garrison-Shaw records at issue are not “assassination records” within the meaning of the JFK Act is contradicted by the express language of the statute itself.

‘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). As the Review Board informed Mr. Connick’s office on June 15, 1995, over eight months ago, the House Select Committee on Assassinations reviewed the Garrison-Shaw records that are now at issue. (I am enclosing a copy of some of the notes taken by HSCA staff members in conjunction with their review of the records.) Far from applying solely to Federal records, the JFK Act explicitly includes the subpoenaed records.

Thus, the Review Board has the statutory power to seek the Garrison-Shaw records at issue and, in any case Judge Livaudais ordered you to make them available at a convenient time. We await your prompt suggestion as to a convenient time for your compliance with the subpoena and the Court’s order.

Please direct any future correspondence to my attention.

Sincerely yours,

Arthur R. Goldberg
Assistant Branch Director
Federal Programs Branch, Civil Division

cc: T. Jeremy Gunn
General Counsel
Assassination Records Review Board