

MEMORANDUM

November 6, 1995

To: Federal Programs Branch
Civil Division
United States Department of Justice

From: Assassination Records Review Board

Subject: Proceedings for Appointment of Special Administrator

Introduction

Late this afternoon the Assassination Records Review Board learned that the Department of Justice (DOJ) will begin to research the question whether a Petition for Special Letters of Administration under California law may be filed on behalf of the Assassination Records Review Board (ARRB). This memorandum is designed to provide some background on the relevant issues. It is not a comprehensive memorandum of law.

The Assassination Records Review Board

The ARRB was created pursuant to The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note (JFK Act). The statutory mandate of the ARRB is to collect public and private records related to the assassination of President Kennedy and to ensure that they become a part of the public record in the National Archives. In order to ensure that the ARRB would have sufficient powers to accomplish this goal, the JFK Act granted the ARRB the power to issue subpoenas, take testimony under oath, grant immunity, and request the assistance of the DOJ to enforce its subpoena power.

This memorandum is being submitted to describe the emergency situation now confronting the ARRB related to the recent death of Richard Case Nagell and to suggest possible approaches by which the DOJ may assist the ARRB in fulfilling its mandate.

Richard Case Nagell

Mr. Richard Case Nagell is the principal subject of the book *The Man Who Knew Too Much* by Dick Russell. In his book, Mr. Russell provides evidence and argument for the proposition that Mr.

Nagell was an intelligence official of the United States Government and possessed many records related to Lee Harvey Oswald and to the assassination of President Kennedy. According to Mr. Russell, the records included previously unknown photographs of Oswald, tape recordings of Oswald, and communications about the assassination that were written prior to the assassination.

On October 31, 1995, the ARRB wrote a letter to Mr. Nagell, who was then living in Los Angeles County, California, requesting the opportunity to meet with him and to discuss whatever information he possessed related to the assassination of President Kennedy. The ARRB subsequently learned that Mr. Nagell was found dead in his California apartment on November 2, 1995. The ARRB understands that the Los Angeles County Coroner either has conducted, or will conduct, an autopsy on Mr. Nagell to determine the cause of death.

Although the ARRB has been attempting to gather as much information as possible regarding the Estate of Mr. Nagell, the Executor of the Estate, the whereabouts of the Executor, and whether Mr. Nagell left a will, there is a great deal of uncertainty regarding the ownership and ultimate disposition of Mr. Nagell's effects. Through the good offices of the DOJ, an administrative subpoena has been issued to the Executor of the Estate of Mr. Nagell on behalf of the ARRB. Photocopies of the subpoena have been sent by certified mail to the two known addresses of Mr. Nagell. The ARRB intends to serve the original subpoena once the name and location of the Executor are determined. Because of the public interest in Mr. Nagell's records, the ARRB seeks to ensure that his assassination-related records are properly identified and secured pending a decision on their ultimate disposition.

Under the present circumstances, the ARRB believes that further steps are required to ensure that the purpose of the subpoena is not thwarted, and that any assassination records in Mr. Nagell's estate are identified and preserved.

California Procedure for Appointment of Special Administrator

There is a procedure under California law that addresses the need for an emergency appointment of an administrator to deal with a particular portion of a decedent's estate that is particularly susceptible to loss or dispersal. An interested party may apply, on an *ex parte* basis, for a "Petition for Special Letters of Administration" to designate an appropriate person as administrator for that portion of a decedent's estate that would likely perish or be dispersed before more elaborate probate proceedings have run their course. In this case, the appointment of a special administrator and subsequent service of an administrative subpoena would nullify any questions as to the efficacy of the attempted service on the Executor believed to have been named by Mr. Nagell.

Ability of Review Board to Request Appointment of Special Administrator

The ARRB believes that, pursuant to the ARRB's mandate and powers to collect public and private records related to the assassination of President Kennedy, the DOJ may facilitate this process by filing a "Petition for Special Letters of Administration" under the following analysis:

First approach: The DOJ Files the Petition on Behalf of the ARRB

The ARRB is seeking the Petition for Special Letters of Administration solely for the purpose of ensuring that records related to the assassination of President Kennedy are preserved and protected.

Congress plainly intended that the ARRB have a broad and effective subpoena authority. Indeed, the ARRB independently has the authority to "subpoena witnesses and documents" under Section 7(j)(1)(F) of the JFK Act. Section 7(j)(2) of the JFK Act authorizes the ARRB to seek enforcement of its subpoenas in Federal courts. Although, not surprisingly, the JFK Act does not specifically address the procedural mechanics of subpoenaing records from a decedent's estate, we believe that the ability meaningfully to issue and enforce such subpoenas was intended.

Under the JFK Act, DOJ is authorized to bring suit on behalf of the ARRB to enforce subpoenas. Section 10(b)(3) states the sense of Congress that "all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination." Where, as here, seeking appointment of a special administrator is required for effective service and enforcement of a proper ARRB subpoena, the "full cooperation" of DOJ surely extends to filing the necessary court papers.¹

The ARRB clearly has the authority to issue subpoenas and to have them enforced by DOJ. The representation we are requesting here is solely in furtherance of this subpoena authority, and would have no material effect upon the ultimate rights, obligations, or liabilities beyond those encompassed

¹This enforcement power is but one of many ways in which DOJ is authorized to seek judicial relief on behalf of the ARRB. *See, e.g.*, Section 10(a)(1) of the JFK Act authorizes the ARRB to "request the Attorney General to petition any court . . . to release any information relevant to the assassination . . . held under seal of the court." Section 10(a)(2)(A) describes a similar role for the Attorney General regarding assassination-related material "under the injunction of secrecy of a grand jury." Section 10(b)(1) emphasizes "the sense of Congress" that the Attorney General "should assist the Review Board in good faith to unseal any [grand jury] records that the Review Board determines to be relevant."

within the subpoena itself. The ARRB, duly represented by DOJ, can and should seek the appointment of a special administrator for any assassination records in the Estate of Richard Case Nagell.

Second approach: The Department of Justice Files the Petition Under its Own Name

The JFK Act does not explicitly grant the ARRB the power to file suit in its own name. To the extent that DOJ finds that the Petition for Special Letters of Administration is the equivalent of filing a suit, and that the ARRB may not file such a suit under its own name, one avenue remaining available would be for DOJ to file suit on behalf of the United States. Under this approach, the DOJ would be using its own authority to file suit in order to preserve those records in which the United States has an interest.

The ARRB contends that the Petition for Special Letters of Administration is, particularly in the present circumstances, the functional equivalent of enforcing a subpoena rather than of initiating a lawsuit. However, if this contention were unpersuasive, the JFK Act nevertheless contemplates that DOJ has the authority to file suits on behalf of the United States in order to ensure that the statutory interest in preserving assassination records is protected. Thus the ARRB need not have independent litigating authority in order for the Petition to be filed.