

Date:08/22/93
Page:1

JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : HSCA
RECORD NUMBER : 180-10124-10040

RECORDS SERIES :
TRANSCRIPT OF EXECUTIVE SESSION HEARINGS

AGENCY FILE NUMBER :

DOCUMENT INFORMATION

ORIGINATOR : HSCA
FROM :
TO :

TITLE :
EXECUTIVE SESSION-COMMITTEE BUSINESS

DATE : 09/06/78
PAGES : 14

SUBJECTS :
HSCA; ADMINISTRATION
IMMUNITY ORDERS

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : U
RESTRICTIONS : ~~REFERRED~~ OPEN
CURRENT STATUS : P O
DATE OF LAST REVIEW : 08/18/93

OPENING CRITERIA :

COMMENTS :
~~Four (4) copies~~ Box 4. Folder Title; 9-6-78=5;35pm.
2

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Stenographic Transcript Of

HEARINGS

Before The

SELECT COMMITTEE ON ASSASSINATIONS

HOUSE OF REPRESENTATIVES

EXECUTIVE SESSION

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COMMITTEE BUSINESS

Washington, D.C.

September 6, 1978

Alderson Reporting Company, Inc.

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EXECUTIVE SESSION

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COMMITTEE BUSINESS

- - -

Wednesday, September 6, 1978

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U. S. House of Representatives,
Select Committee on Assassinations,
Washington, D. C.

The Committee met, pursuant to notice, at 5:35 p.m., in Room H-227, The Capitol, the Honorable Louis Stokes (Chairman of the Committee) presiding.

Present: Representatives Stokes, Devine, Preyer, McKinney, Fauntroy, Sawyer, Dodd, Fithian and Edgar.

Staff Present: Robert Blakey, Chief Counsel, and Elizabeth Berning, Chief Clerk.

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Chairman Staokes. A quorum being present, the Committee will come to order.

Mr. Blakey.

Mr. Blakey. It would be appropriate to have a resolution to close the meeting.

Mr. Fithian. I so move.

Mr. Edgar. Seconded.

Chairman Stokes. It has been properly moved that the

1 Committee go into executive session. At this time, the Clerk
2 will call the role.

3 The Clerk. Mr. Stokes.

4 Chairman Stokes. Aye.

5 The Clerk. Mr. Devine.

6 Mr. Devine. Aye.

7 The Clerk. Mr. Preyer.

8 Mr. Preyer. Aye.

9 The Clerk. Mr. Fauntroy.

10 Mr. Fauntroy. Pass. Aye.

11 The Clerk. Mr. Thone.

12 (No response)

13 The Clerk. Mrs. Burke.

14 (No response.)

15 The Clerk. Mr. Sawyer.

16 (No response)

17 The Clerk. Mr. Dodd.

18 Mr. Dodd. Aye.

19 The Clerk. Mr. Ford.

20 (No response)

21 The Clerk. Mr. Fithian.

22 Mr. Fithian. Aye.

23 The Clerk. Mr. Edgar.

24 Mr. Edgar. Aye.

25 The Clerk. Eight ayes, Mr. Chairman.

1 Chairman Stokes. Eight members having voted in the affirma-
2 tive, the meeting at this point is in executive session. All
3 members of the public are asked to remove themselves from the
4 room.

5 Mr. Blakey.

6 Mr. Blakey. Mr. Chairman, there is only one substantive
7 matter to bring before the Committee. You have previously been
8 given a copy of a resolution for immunity that would authorize the
9 staff to apply to the court for immunity orders for the people
10 listed. All of these people are potential witnesses in the
11 Kennedy side. Many of them have already been talked to by the
12 staff. For example, Lewis McWillie.

13 (Discussion off the record)

14 Mr. Blakey. You have before you a copy of a resolution for
15 immunity. the people listed on it are potential witnesses in
16 the Kennedy hearings in September. Some of the witnesses have
17 already appeared before the Committee in executive session.
18 For example, Carolos Marcello appeared before both the King and
19 Kennedy Subcommittees and the immunity order at that time speci-
20 fied an appearances before the Subcommittee.

21 Out of abundance of caution, in the event that he is called
22 before the full Committee, it seemed appropriate for us to avoid
23 any legal entanglements by getting an immunity order to apply to
24 him in the full Committee.

25 Other witnesses like Lewis J. McWillie have appeared in the

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1 in the context of a deposition. If we were to call them before
2 the full Committee we run the risks that they could claim the
3 privilege of self-incrimination and frustrate the hearing.
4 Consequently, these, as they have been in the past, could be
5 fairly described as contingency planning, that in the event we
6 do call them and they claim the privilege of self-incrimination,
7 it would be better to have an immunity order before they come than
8 to have to postpone their testimony.

9 Mr. McKinney. I would so move, Mr. Chairman.

10 Mr. Edgar. Prior to taking a vote, just a point of clari-
11 fication.

12 Could you explain how the immunity works in public session,
13 in light of the fact that I thought part of the immunity was that
14 the evidence they give could not be used against them.

15 Couldn't someone watching television and listening to them
16 pick up evidence that could later be used against them?

17 Mr. Blakey. That is true, and what would happen, as a
18 practical matter, that if one of these individuals were to be
19 prosecuted following our hearings, and you could make a good
20 argument that the prosecution grew out of our public hearings,
21 the evidence that supported that prosecution could be suppressed.

22 To give you a concrete illustration. One of the reasons
23 John Dean wanted to be immunized and then heard in a public
24 session in the Watergate Committee, and one of the reasons that
25 John's lawyer, an old friend of mine, made that testimony so

1 detailed, was that Charlie Shafner hoped by making that testimony
2 so detailed that the Watergate Committee Special Prosecutor could
3 not be able to successfully prosecute John.

4 Mr. McKinney. Cover everything?

5 Mr. Blakey. Yes, he covered everything he could so he could
6 have a link between his public testimony and the subsequent
7 prosecution. Charlie did a good job but another old friend
8 of mine, who was a Special Prosecutor did a better job, he put
9 all his evidence in a little bag, tied it up and gave it to the
10 Judge before John testified, and then when Charlie looked at the
11 bag he gave up and John pleaded guilty.

12 The Government will get an opportunity to look at these
13 people and if there are any pending prosecutions, reasonably
14 pending they will put all their testimony in a little bag and
15 then in subsequent prosecutions won't be tainted. It is unlikely
16 any of the people that we would call here would testify on any-
17 thing that would immediately lead to a prosecution, so we don't
18 run the risk of immunizing them in current matters, since what
19 we would be talking to the people about would be materials that
20 are in some cases more than 15 years old.

21 Mr. Fithian. Is that one more reason for very narrow
22 questioning of people like Marcello and Trafficante?

23 Mr. Blakey. Yes sir.

24 Chairman Stokes. Again, for the record, I want to reiterate
25 my own special concerns about this area in terms of even narrowly

1 defined questioning. Unless it tends to point toward something
2 relating to our mandate, it is an area, it seems to me, we can
3 look very foolish by calling these type of people, unless we can
4 constructively point up or get testimony that tends to prove
5 something.

6 I have some serious concerns when we get to this area whether
7 or not we really call them, and I would like to see something
8 before we do.

9 Mr. Blakey. Sure, Mr. Chairman, as the specialization memo
10 indicated, the last week is conspiracy and the last part of the
11 last week is the whole organized crime question, and certain
12 aspects are very clear and we could set it out pretty much for
13 you.

14 The way in which we could have narrowly focused testimony
15 relating to both Carlos Marcello and Santo Trafficante is clear,
16 but less clear, and as the preparation matures, I share your
17 concerns that we not have a circus and that these people not be
18 called simply before the Committee for their show value and even
19 be forced into a contempt situation, or candidly, if we call
20 them, either Trafficante or Marcello, and ask them a straight away
21 question, are you a member of the Mafia, they will either deny
22 it or they will go into contempt and that would be, at least in
23 my judgment, an improper use of the Committee's coercive powers.

24 On the other hand, if we can focus on some factual incidents,
25 perhaps relating Mr. Trafficante to Jack Ruby or relating the

1 Lee Harvey Oswald through David Ferry through Carlos Marcello
2 and explore that in a narrow focus way, it seems to me that would
3 be appropriate, but the final decision on this obviously ought
4 to be made by the full Committee in light of a fairly detailed
5 game plan, and we can put that together.

6 There are options, for example. Some of the staff discussion
7 has been that instead of calling Carlos Marcello or Santo
8 Trafficante to the public hearings, that we note after the evidence
9 has been introduced, that we have in fact called both men to the
10 executive sessions, listened to their testimony in executive
11 sessions, found that basically they denied the allegations and the
12 thrust of the evidence, and that we thought in exercise of
13 discretion by the Committee that it would be inappropriate to
14 call them to a public hearing because it would have only a show
15 value.

16 Chairman Stokes. That goes to the heart of what my concerns
17 are. In Trafficante's case, we had him in two situations. Number
18 one, we had him in the circus atmosphere, where the Committee
19 received a great deal of adverse criticism, and as I reflect
20 back, perhaps rightfully so, except that we all knew and under-
21 stood we were involved in a political situation at that time,
22 which formulated the basis for it.

23 Secondly, in executive session, after we immunized him, he
24 told us absolutely nothing, and the testimony that he brought
25 forth at that time, I think would be a disgrace to even present

1 to the American public in open session because we then would be
2 in the position of having him cited for perjury. If we didn't
3 we would be derelict in our responsibilities, and you know unless
4 through Ralph, and those tapes, or through our Cuban investiga-
5 tion, we in some way can tie him into something, then I think we
6 ought to perhaps resort to your last comment.

7 Mr. Dodd. Mr. Chairman, your last comment was what, I am
8 sorry.

9 Mr. Blakey. The real issue is in the organized crime area.
10 If we assume that there was a conspiracy, it would be probably
11 involving one or two or both of these two guys. They are the
12 ones in the right time and right place, and indeed there is
13 evidence of association between Trafficante and Marcello, although
14 I leave open the question of its credibility, and I leave open
15 the question of its strength, -- of some relationship through
16 secondary parties between Lee Harvey Oswald and Carlos Marcello,
17 and between secondary parties and Jack Ruby and Santo Trafficante.

18 The key thing that we have is association. We don't have
19 conspiracy.

20 Now, the Committee has a duty to bring forth the evidence it
21 has and show that evidence to the American people, where there
22 are credible allegations, and if the evidence falls short of
23 establishing the allegation, I think a good argument can be made
24 they should put in the evidence and then ultimately find in
25 December it is only association and it is not conspiracy, the

1 case is just not proven.

2 If you are going to take a situation where these two people,
3 Mafia leaders or not, and not really indicate that the conspiracy
4 exists against them, a good argument can be made, and I have made
5 it on the staff level, although I have made it on both sides of
6 the argument, that calling them to a public hearing and asking
7 them in effect to deny the allegation that you don't think you
8 can prove, if you go much behind the narrow question and, for
9 example, and began to get into their Mafia relationships generally,
10 tend to use them as not as human beings but simply use them as
11 an instrument, as publicity or show, and probably something the
12 Committee ought not to do.

13 Mr. Dodd. I would agree with Lou. I think it is the kind
14 of thing in the narration where it is the experience of the
15 Committee through talking with them in executive session, investi-
16 gators having interviewed them, that it is our conclusion that we
17 cannot draw any conclusion because they had nothing to say that
18 we thought was credible, and I think getting that into the
19 record somehow without having to put them on the stand to say
20 people only want to question us, if we never talk to them I
21 think that is when you opened yourself up to the attack, you
22 didn't talk to Carlos Marcello, Trafficante, we can say we talked
23 to them but couldn't draw any conclusions from talking to them,
24 we didn't see any good purpose putting them on the public record
25 to repeat what they have already said to us in executive session.

1 Chairman Stokes. Even if you establish this association,
2 association is a far cry from conspiracy, and you would just be
3 in an awkward position of people saying what was this all about,
4 what was the foolishness.

5 Mr. Edgar. Why then do we authorize immunity orders today
6 if we have the kind of reservations that you have, wouldn't it
7 be better for us to --

8 Mr. Blakey. We don't have time.

9 Mr. Edgar. To immunize on a case by case basis?

10 Chairman Stokes. I have no basic problem with going on and
11 doing it just as a contingency measure, but with these reserva-
12 tions that we have, that we are not just going to subject them
13 to these kind of things.

14 First of all, you had some kind of working relationship
15 with his lawyer, and that kind of thing in the past, that he would
16 produce him when we need him, and he would testify, and we have
17 done all that, so there is just no sense in any kind of harass-
18 ment, if we wanted as a contingency plan in case something does
19 show.

20 Mr. Devine. I think I show the same reservations you do,
21 immunization should be used very, very fairly and Bob's request
22 is we authorize immunization if the situation arises where we may
23 feel we need it at a later time, we decide whether to exercise
24 it.

25 Mr. Blakey. There are two points to raise. One is in the

1 context of what Mr. Dodd said, the other arrangement is that the
2 public may say, well, you decided in private you didn't believe
3 Carlos Marcello, we had the right to judge and see ourselves
4 and you promised us public hearings, and this was a crucial
5 question, therefore, that part of the executive session that
6 indeed bore on the credibility should have been made public. I
7 think a good argument on either side can be made.

8 Mr. Dodd. Can't we make that by what is the ruling with
9 regard to us deciding that executive session testimony can be
10 made part of the record?

11 Mr. Blakey. You can make executive session testimony public.
12 I think the argument would be made they are entitled to see the
13 demeanor, the actual witness appearance.

14 Chairman Stokes. In the final analysis the Committee has
15 to make the judgment anyway. There are going to be many other
16 witnesses you have talked to and spent hours with in executive
17 session, you are never going to present to the American public,
18 but you have to make the decision who do we present?

19 Mr. Blakey. The other thing is -- I have to get across the
20 hall.

21 Chairman Stokes. All right, let's see, we have had a
22 motion and --

23 Mr. Dodd. What is the motion?

24 Mr. Blakey. They are in front of you.

25 Chairman Stokes. To approve.

1 Mr. Dodd. Before we do anything we would meet as a
2 Committee?

3 Mr. Blakey. The proposal that I make to you is that the
4 concrete plan for the two organized crime segments, meaning the
5 one focusing on Carlos Marcello and Santo Trafficante, and the
6 witnesses, and how we plan to structure it, will be brought back
7 to you before we go with that last week.

8 Mr. Dodd. Let me ask one last question. Is there any legal
9 effect of us voting today to grant immunity to them?

10 Mr. Blakey. None.

11 Mr. Dodd. It would have to be served on them?

12 Mr. Blakey. They have to take the Fifth in the hearings
13 and be given them --

14 Mr. Dodd. Our luck would be tomorrow.

15 Chairman Stokes. The Clerk will call the role.

16 The Clerk. Mr. Stokes.

17 Chairman Stokes. Aye.

18 The Clerk. Mr. Devine.

19 Mr. Devine. Aye.

20 The Clerk. Mr. Preyer.

21 Mr. Preyer. Aye.

22 The Clerk. Mr. McKinney.

23 Mr. McKinney. Aye.

24 The Clerk. Mr. Fauntroy.

25 Mr. Fauntroy. Aye.

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The Clerk. Mr. Thone.

(No response)

The Clerk. Mr. Sawyer.

Mr. Sawyer. Aye.

The Clerk. Mr. Dodd.

Mr. Dodd. Aye.

The Clerk. Mr. Fithian.

(No response)

The Clerk. Mr. Edgar.

Mr. Edgar. Aye.

The Clerk. Nine ayes, Mr. Chairman.

Chairman Stokes. Nine having voted in the affirmative the resolutions are moved.

Anything further?

Mr. Edgar. I have one thing further to raise. Can we go off the record for a second?

(Discussion off the record)

Chairman Stokes. Is there anything further? Is there any further business?

There being no further business to come before the Committee at this time, then the meeting is adjourned subject to the call of the Chair.

(Whereupon, at 5:54 p.m., the Committee was adjourned, subject to the call of the Chair)