INVESTIGATION OF THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

MONDAY, SEPTEMBER 25, 1978

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON ASSASSINATIONS,
Washington, D.C.

The select committee met, pursuant to adjournment, at 9:15 a.m., in room 345, Cannon House Office Building, Hon. Louis Stokes (chairman of the select committee) presiding.

Members present: Representatives Stokes, Devine, Preyer, McKinney, Fauntroy, Sawyer, Ford, Fithian, and Edgar.

Staff present: G. Robert Blakey, chief counsel and staff director; I. Charles Mathews, special counsel; Kenneth Klein, assistant deputy chief counsel; Michael Goldsmith, senior staff counsel; Robert Genzman, staff counsel; Ms. Jacqueline Hess, chief researcher, and Ms. Elizabeth Berning, chief clerk.

Chairman STOKES. The committee will come to order.

At this time I would like to make brief opening remarks.

This morning, the Select Committee on Assassinations begins a final week of public hearings on the death of President John F. Kennedy. As I indicated when the committee opened its public hearings on September 6, 1978, the committee has identified three main issues to investigate in order to fulfill its legislative mandate, which is found in House Resolution 222.

First, who assassinated President Kennedy?

Second, how well did the agencies perform?

Third, did the assassin or assassins have assistance, that is, was there a conspiracy?

In the past several weeks, the committee's hearings have moved through two general phases. First, evidence was received on the facts and circumstances surrounding the President's death and the connection, if any, between those facts and circumstances and the alleged assassin, Lee Harvey Oswald. Second, an effort has been made to evaluate the performance of the various Federal agencies, Secret Service, the FBI, the CIA, and the Warren Commission.

Today, and the rest of this concluding week, the committee will hear evidence focused directly on the third question: Was there a conspiracy?

But let me first make one point explicit. The committee will be hearing testimony this week dealing with what the committee has found. In presenting this evidence to the committee, the staff will not be trying to prove or disprove any particular theory. The purpose of these hearings is not to try to establish or refute particular theories, but to consider the evidence available on the various

points. That evidence may either prove it, disprove it, or be insufficient to make a judgment either way. Nevertheless, because these hearings are legislative in character, and not a judicial trial, the committee has a duty to make what it has learned public, even if it falls short of what everyone might wish to know on the crucial question: Was there a conspiracy involved in the assassination of President Kennedy?

Let me make another point. The evidence that the committee has heard in these past several weeks—and will hear this week—in fact bears on more than one question. For example, when the committee heard testimony dealing with its neutron activation analysis project, the results dealt with the question to whose gun the bullets found in the car and at Parkland Hospital might be linked, the performance of the FBI in conducting such tests in 1964, and the possibility that more than one assassin may have fired at President Kennedy. In fact, the committee will have held 17 days of hearings on each of the three key questions, even though the principal focus of a particular phase of the hearings or of an individual day may have been some aspect of one of these questions. Let me say it another way. Although these hearings have been structured in an organized fashion, we have not compartmentalized them in a restrictive way, as if to indicate this is only conspiracy week, last week was only agency performance week, and so on. As I said, in each day of hearings we are attempting to settle all three questions in our mandate.

Let me make another important point. It may be helpful for those following our hearings if something is also said here about the quality and quantity of evidence available to the committee as it has moved through each of these three phases of its deliberations and the need to recognize how to use each kind of evidence. In general, during the first phase of our hearings—what happened in Dallas—the committee has had available to it the hard stuff of science. The quality and quantity of the evidence available to the committee was, therefore, unusually high. As the committee turned to assessing the performance of the agencies, less scientific evidence was available to the committee, and it was necessary to rely more on documents and human memories, principally those of public officials. Now, as the committee's attention turns directly to the question of conspiracy, it will be necessary to move further away from the hard evidence of science and documents and consider more and more oral testimony. We do have available to us the aid of science and documents here, but the shifting nature of the balance ought to be explicitly noted and commented on. Those who follow our hearings must, therefore, recognize the difference in the quality and quantity of the evidence available to resolve issues in this most difficult area. Human perception and memory, to say nothing of bias or motive to lie, sharply qualify human testimony, making it less reliable than scientific analysis or documents written, not for litigation, but as an accurate record of actual events.

Granted, when we examine conspiracy, science has something to say, and documents are available to us. But much of our deliberations this week will depend on recorded conversations. While they may well be reliable, they must be carefully interpreted, lest erro-

neous conclusions be drawn from them. I would note that we are also dealing in many instances with remembrances now 15 years old, so I would caution that great discrimination is required in making final judgments.

Finally, those who follow our hearings might also find helpful some comment about the law of conspiracy and the special difficulties associated with its proof. Mr. Justice Holmes once succinctly defined a conspiracy as "a partnership in criminal purposes." That definition serves well enough here. Unless evidence is adduced, from which "a partnership in criminal purposes" can be inferred, a conspiracy cannot be said to exist. A suspicion suspected must always be distinguished from a fact found.

Let me say concretely what I mean. Basically, the Warren Commission concluded that Lee Harvey Oswald was the lone assassin of President Kennedy because it concluded that he was a loner. In short, because he had no significant associations, it was not possible, the Commission found, to conclude that there was a conspiracy involved in the assassination. What the Warren Commission rightly recognized was that conspiracy is first rooted in association. But no association, no conspiracy.

Because the Commission concluded there was no association, it was not forced to deal with the difficult questions posed by evidence of conspiracy, for it is a fundamental principle of American law that guilt cannot be inferred from association alone. To be sure, conspirators seldom shout their intentions from the roof tops or publish their thoughts in the newspaper. Conspiracy must, therefore, usually be inferred from circumstantial evidence: associations, plus. But herein lies the difficulty in all conspiracy investigations, whether they are trials or legislative hearings dealing with conspiracy questions.

Mr. Justice Jackson once observed of conspiracy trials:

> A defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are willing to believe that birds of a feather flock together. If he is silent, he is taken to admitting and if, as it often happens, codefendants can be prodded into * * * contradicting each other, they convict each other.

What Mr. Justice Jackson said about a conspiracy trial applies even more strongly in the context of a congressional hearing. As I mentioned in my opening statement, these proceedings are not a criminal trial. There is no indictment, and there is no defendant. There is no prosecutor, and there is no defense counsel. The normal rules of evidence do not apply. Because none of the elements are here present, a special burden is imposed on this committee as evidence is introduced before it, and on those who follow our proceedings, not to take the evidence so introduced beyond what it fairly establishes or to sensationalize it.

This caution is particularly apt when evidence of association is introduced. I repeat: Conspiracy is founded in association, but more than association is required to establish conspiracy. Reasoning that guilt goes hand in hand with association—the principle of guilt by association—is to be abhorred in a free society. Let me give two examples of just how that mode of reasoning can be misused:

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Jacqueline Kennedy, the President's wife, had a passing acquaintanceship with George DeMohrenschildt, a friend of Lee Harvey Oswald.

Would anyone seriously suggest that because Jacqueline Kennedy was somehow associated with Lee Harvey Oswald that she was, therefore, somehow involved in the assassination?

The Volkswagen was a centerpiece in Hitler's Nazi Germany. It was to be the people's car, a proud product of national socialism. Today, thousands of Americans drive Volkswagens.

Would anyone seriously suggest that by so doing they have become somehow associated with the aims and goals of Nazi Germany?

I would caution, therefore, those who follow our hearings or read our record, evaluate the evidence that we will hear this week as carefully as the committee itself will, reserve judgment until all the evidence is in, and do not reach conclusions beyond what the evidence itself fully justifies. Anything else would be bad logic. It could only lead to what none can easily contemplate: more suspicion and doubt in an area already much too much troubled. It would also be unfair to all concerned.

The committee calls Mr. McNally.

Mr. McNally, you have previously been sworn in this hearing and the Chair would admonish you that you are still under that oath.

Mr. MCNALLY. Yes, sir.

FURTHER TESTIMONY OF JOSEPH McNALLY

Chairman STOKES. The Chair recognizes Mr. Ken Klein, counsel for the committee.

Mr. KLEIN. Thank you, Mr. Chairman.

Mr. McNally, you testified before the committee on Thursday, September 14; is that correct?

Mr. MCNALLY. I did.

Mr. KLEIN. What is your occupation?

Mr. MCNALLY. I am an examiner of questioned documents, that is more commonly referred to as a handwriting expert.

Mr. KLEIN. Are you testifying today as a representative of the handwriting panel?

Mr. MCNALLY. I am.

Mr. KLEIN. What would you estimate to be the total number of documents examined by the members of the panel during the course of your careers as questioned document examiners?

Mr. MCNALLY. I would judge somewhere in the tens of thousands.

Mr. KLEIN. Could you approximate for us the total combined years of experience that the three members of the panel have as questioned documents examiners?

Mr. MCNALLY. Considering the other two are contempories of mine, I would assume we have more than 100 years' experience.

Mr. KLEIN. Is each person's handwriting unique to that person?

Mr. MCNALLY. It is.

Mr. KLEIN. Mr. Chairman, I would ask that the document JFK F-399 be received as a committee exhibit and shown to the witness.

Chairman STOKES. Without objection, it may be received and made a part of the record at this point.

[Whereupon, JFK exhibit F-399 was received.]