

LEGAL SCENE

Assassinations Unit Chief: Remaking the Rules

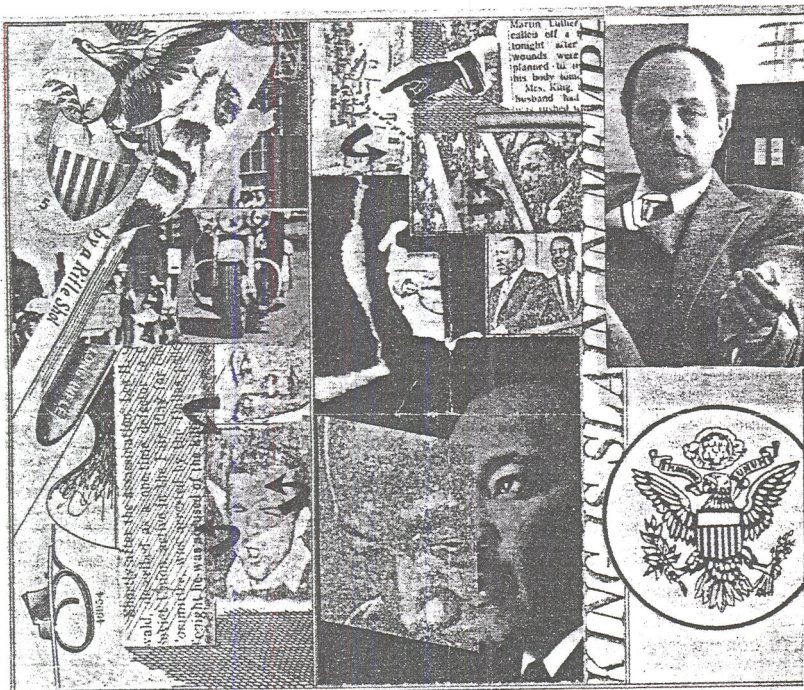


Illustration by Tom Tenque

Question for the criminal law professor from Cornell: how do you come down out of the legal classroom and, with few precedents to guide you, fit the investigation of two murders into the legislative hearing process and still keep it all constitutional.

Answer: turn the Congressional committee into a secret grand jury with power to issue subpoenas and grant witnesses immunity; then, when its hearings go public, have the chief counsel serve as a "neutral narrator" and the committee become inquiring magistrates; and then use the public and Congress as the jury to decide whether you won or lost.

To accomplish all this was the basic challenge facing G. Robert Blakey eighteen months ago when he became chief counsel of a quarreling, disorganized House Select Committee on Assassinations.

Earlier this month the first phase of this transition ended when a refurbished committee completed its public examination of evidence in the killing of President John F. Kennedy and got part way through its public hearing on the murder of the Rev. Martin Luther King Jr.

Four Questions

The reorganized committee, now headed by Rep. Louis Stokes, an Ohio Democrat, was charged with finding the answers to four questions: who committed the murders, did they have any help, how well did the government investigative agencies perform, and what should the committee recommend to improve those performances should there ever be another political assassination in this country.

"We were, in effect, trying four or five cases at the same time," Blakey said during a recent interview in his cramped office in the decaying House Annex #2.

"From the beginning we had to adapt an existing form of legislative procedure to accomplish different purposes and still stay within constitutional bounds. We had to be particularly careful while presenting evidence in the two killings that many people still believe were political murders. Then we had to become purely legislative in examining agency performances and preparing recommendations," he said.

The King case was particularly sensitive, Blakey said, because it continues to be an active investigation of a murder in which the convicted killer and many others involved are still alive.

In contrast, the investigation of the Kennedy case had to focus on what happened 15 years ago, with two of the principal participants long since dead.

Roscoe Pound, Blakey recalled, said the law had three senses: rules, process, and product.

"A special challenge for the committee was not rules, which in this instance are few and simple, but process, which here was terribly involved," Blakey said.

The reconstituted committee wanted no public investigation of the two murders. But one of its central purposes was to hold public hearings on the evidence it had amassed.

"On the Kennedy side, we were reviving the Warren Commission, which held no public hearings to examine its evidence and failed, because of that, to convince a lot of people on its findings. On the King side, we were in effect another Warren Commission," Blakey said.

So, to achieve its ends, the committee redrafted its rules to convert itself from legislative oversight to criminal investigation.

"In effect, it became a secret grand jury in the executive sessions that preceded its public hearings," Blakey said.

"We took the traditional Congressional subpoena power and treated it as grand jury subpoena power. We also utilized the power to grant immunity to witnesses, which was fortunately given to Congressional investigating committees when the McClellan Committee wrote Title II of the Organized Crime Control Act of 1970," he said.

Although the 42-year-old Blakey was a professor of law at Cornell when the committee asked for him, he was no stranger to the Washington maze. He served as a special attorney in the Justice Department's Organized Crime and Racketeering section when Robert F. Kennedy was Attorney General. He later moved to the legislative side, serving as chief counsel for the McClellan Committee during its investigations of organized crime beginning in 1969.

With this background, one of the first things Blakey did after taking over as chief counsel of the Assassinations Committee was to read the guidebook on managing racket bureaus and then adapt what he considered its best thinking to managing a Congressional investigation of two murders.

"Most organized crime cases are basically conspiracy cases," Blakey said. "And since conspiracy was a major question in our two cases, the transposing of racket bureau procedures to this investigation was logical."

The next thing Blakey did was reshape the committee's staff organization.

"Unlike normal homicide cases, we had limited time (the committee has a December deadline for disclosing

its findings and recommendations) as well as limited resources. In a normal murder case, you can have unrestricted investigative technique without worrying about management. Here, we had to have elaborate management applied to technique," he said.

The committee had to decide very quickly what to take and what to leave. This problem was particularly acute in the Kennedy case, which Blakey described as a "bottomless pit" where the committee knew it could never answer all the questions within its limited time and resources.

There was also the unique problem of recruiting investigators. Because one of the purposes was to probe the performance of Federal investigative and intelligence agencies and the police departments involved in the two murders, the supply of experienced independent investigators was limited.

So Blakey divided his operations into three phases: first a "foraging" phase in which the legal staff was enlarged, investigators were hired, and a start made on combing through the vanloads of agency files on the two assassinations; then a concentration phase in which the committee chose the aspects it would pursue and investigated them; and then a wrapup phase which began with this fall's public hearings and will continue until the King case is closed and final reports on both murders are written.

From mid-1977 to mid-1978 the committee and/or its staff read through more than 2,300 agency files, conducted 2,134 interviews, issued subpoenas for 305 witnesses and documents, and prepared grants of immunity for 112 witnesses.

When the public hearings began, there were new problems of process and procedure to be faced.

No Five-Minute Rule

Blakey believed that one of the most obvious failings of past Congressional investigative committees, especially the Senate Watergate committee, was their use of the five-minute rule, under which each committee member had five minutes in which to question a witness. This often left the cross examination of a witness incomplete when the committee member used up his time and the next member took up another subject, Blakey said.

"We couldn't afford to do that when we were presenting evidence in murder cases," he added. "So the committee abolished the five-minute rule and instead introduced the concept of specialization, with each member handling a certain aspect of the murders until it was concluded."

The committee was divided into two sections, with Rep. Richardson Preyer (D-N.C.) in charge of the Kennedy case and District of Columbia Delegate Walter E. Fautroy heading the King section.

"Unlike a prosecuting attorney, we couldn't afford to push a point of view. But the hearings had to resemble a criminal trial as closely as possible. So the committee decided the staff would present the evidence and the committee members would play the role of inquiring magistrates," Blakey said.

Although the hearing had to proceed without the normal direction of a prosecutor, there had to be some individual to focus the inquiry on each phase of the murders.

"For this we created the role we called the 'neutral narrator' and as chief counsel, I filled this," Blakey said. "The neutral narrator, rather than a prosecuting attorney, provided the background, described the political climate at each assassination, and reviewed all the previous evidence that had been developed."

The Kennedy case has been presented to the public jury and has now gone to the committee, which becomes the legislative jury.

More evidence will be presented in the King case from Nov. 9 thru Dec. 1. After that, there will be a week of legislative policy hearings.

Then, on Dec. 14 and 15, the committee will meet in public to disclose its findings and make its recommendations.

"The recommendations will be based on what the committee has learned from its investigation, so there's no question of who won or lost before that jury," Blakey said.

"If the evidence we've presented in the public hearings dispels the paranoia over these murders," Blakey said, "if it lays to rest many of the doubts about conspiracies and government agency performance, then we will have won before the public jury." ■