

Chapter 29

The Workings of the Assassination Records

Review Board [1]

John R. Tunheim

Good afternoon, everyone. I'm going to stick to my time limits today. I want to leave time for your questions. That is one of the most important parts of these events. Although I am a federal judge right now, four years in the 1990's, for four years, I served as chairman of the federal agency that was charged with finding what were then still secret records from the Kennedy assassination and getting as many of them released as quickly as possible to the public. The law that Congress passed, The President John F. Kennedy Records Collection Act of 1992, was a reaction not only to the movie by Oliver Stone which brought the issue to the fore, but also due to the years of dedicated work done by researchers who felt they were trying to research this important subject with one arm tied behind their back, because so many government records from the 1960's were still classified. It doesn't take much to classify a record. That is still a problem that exists in Washington today. You put "Top Secret" on a document and perhaps 30 or 40 years later it might get released. The bill was passed in 1992 by Congress, President Bush was empowered to make the appointment; he did not make an appointment. He opposed the bill, thinking it was unconstitutional, and therefore he ignored the impact of the law and it fell to President Clinton to make the appointment.

I was nominated by President Clinton in September of 1993, and we were all confirmed, a five member board, consisting of myself, the one required lawyer on the board, and four academics, one of whom was a professional archivist, and three who were presidential historians. This Act put control of declassification of federal records, albeit in a single category, in the hands of an outside independent body for the first time. We were an independent agency within the executive branch which meant that we were handling executive branch records, which got around the constitutional issue. We were independent and couldn't be simply fired by the president. All government records on the Kennedy assassination were to carry a presumption of openness, and agencies were required to organize their files and present them to us, along with any argument as to why a particular record should remain sealed. When we made our decision about releasing a document, the agency could appeal our decision to the president. There was no part of this effort that was to go before the courts, the president being ultimately in control of executive branch records.

We were also to do our best to search for state, local, and private records to be part of the collection, and we were empowered to try to clear up, as best we could, some of the evidence. What we were not supposed to do, and we did not do, was to try to decide what happened. The whole goal of this effort was to find all of the records and release them to the extent possible. We released just about everything that we got our hands on; then let the public decide: open the records to researchers, let them look through them, and let the public decide what happened. We made several important decisions at the beginning. All of the documents were considered on a word-by-word basis, which means that no entire document was ever sealed or kept under wraps by our efforts. We occasionally would redact information—not very much. We did not redact any information that was central to the assassination story. We did redact names of certain intelligence agents who were still alive; we felt that their lives might be endangered if it was known that they were CIA agents. We used their pseudonyms instead. But for every piece of information we redacted, we set a release date. All of those release dates have now passed. The only records that have not been released are records that will be released in 2017. These non-released documents were not considered central to the assassination story, but they contain national security information.

The standard we applied was very interesting. We had to weigh interests. We weighed interests such as public interests and interests like national security, intelligence gathering methods, personal privacy, and presidential security. But with the great interest in the Kennedy assassination records, we released just about everything. We found that just about everything satisfied that standard. We had a staff of about 30 people; we held hearings around the country. We defined expansively what an assassination record was. There are those who would argue that President Kennedy was killed, for example, because he was going to withdraw advisors from Vietnam. That's a theory that some people expressed. We didn't take a position on that, but we went and found all of President Kennedy's administration's records on Vietnam policies, and released them. That's the way we did our work—not taking sides on any particular place, but just getting everything out. We issued in the four years over 27,000 decisions. There were an additional 33,000 decisions that were called "consent releases," which is a fancy way of saying the agency wanted the information protected, but the agency knew we weren't going to protect the information, so the agency just gave up. There were no successful agency appeals at the White House, President Clinton signaled early on that we were going to do this work and he wasn't going to interfere with it.

The collection includes all the evidentiary material from the Warren Commission, and includes the voluminous collection of The House Committee on Assassinations. We have about 1.6 million pages of material from the Central Intelligence Agency that was shipped over and declassified and archived. The total collection today is over 6 million pages. It is the largest single collection at the National Archives. [2] It has

an index at www.nara.gov . We had very interesting relationships with the federal agencies who were involved, and in the end we knew their files better than they did, because we were looking at their files and we were examining everything.

Now, one question that people ask is: “Weren’t there records that were destroyed over the years?” Well yes there were. I’m sure there were records that were destroyed before we got into the action, 30 years after the assassination. The voluminous collection maintained by James Angleton at the CIA was largely destroyed when he was fired from his job as Chief of Counterintelligence in 1975. The files of J. Edgar Hoover were burned upon his death. So there are records that disappeared. But if a record was destroyed at the CIA, the State Department likely may have a copy of the record, or it may be at the FBI, or at the National Security Agency. There are copies of records galore throughout the federal government, so when the Secret Service destroyed a group of records that we were seeking, which they said were destroyed inadvertently—they were the threat assessment records before the November 1963 period, we found copies of those records in the FBI files. The FBI, fortunately, kept all their records in a very organized fashion. The CIA, on the other hand had no clue where records were with their filing systems. They were off in warehouses, they were misfiled; we had a hard time finding records within the CIA.

Just to inform you of some of the efforts we made, we hunted for a lot of extra records, such as in New Orleans. Professor Fetzer mentioned the Garrison investigation and prosecution of Clay Shaw. [3] We went to New Orleans to get as many records as we could. A cousin of one of Clay Shaw’s former partners came forward with the diary that Clay Shaw had written during the trial, which is now a pretty interesting part of the collection. We held a public hearing in New Orleans, and the District Attorney said, “I will help you with whatever you want. All of our records are yours. Nothing’s been destroyed.” Watching that hearing at the time was an investigator that the District Attorney had fired. This man was fired shortly after the new District Attorney came on board. The investigator was fired because he refused to destroy the Grand Jury records that Garrison had used in the prosecution of Clay Shaw. About three or four days later, he showed up in Washington with all the Grand Jury records from the investigation by Jim Garrison on Clay Shaw. They were wonderful records, including testimony by Marina Oswald and others. The District Attorney fought us on that all the way to the Supreme Court, on the basis of whether our power or the states secrecy law trumped the other side. So that is an example of some of the fights we had.

Professor Fetzer [4] discussed some of the changes Gerald Ford made in the Warren Commission narrative. This was a significant change even though he denied it was significant. We found that because the chief counsel of the Warren Commission had taken all of the edited early versions of the Warren Report home with him. His son came to us and said that they had been in his dad’s basement for years. He’s dead now, and the

son didn't know what to do with them and asked if we wanted them. Of course we wanted them. Of course we did. All 18 early versions of the Warren Report were included in our records. Gerald Ford's was right there in plain sight, so we had to address that.

We tried to do our best with the photographic record. We were 30 years after the fact. We established there were probably between 80-100 photographs taken in the autopsy room in the Bethesda Naval facility. There are 15 of these photographs that exist today. They have passed through Kennedy's physician, George Burkley's hands, through Robert Kennedy's hands, eventually back to the National Archives, where they are held through a deed of gift, where permission needs to be received from the Kennedy family to view them. Many photographs were destroyed. That raises the question as to why the photographs were destroyed, and why other photographs were not destroyed. We had these 15 original photographs from the 60's that were fading. We had them digitalized. They're very precise now; they will be preserved for history in this precise way. We brought in experts one day to look at them and look at the x-rays. They looked at everything we had. Now, some have argued that some of these photographs are fraudulent documents, but we took what we had. We brought in a group of experts, pathologists who had a great deal of experience, and we asked them to tell us what they thought. They spent a lot of time looking at these documents, and they came to a conclusion that the shot was a head shot that hit in the top of the back of the skull in what they called a trenching wound, meaning that it trenched along, breaking open the flap that is visible in the pictures. In their view, at least in the pictures we had, we collected everything that was available at this time;-- they didn't think that the bullet hit brain tissue, but the shock waves was enough to kill him instantly when the bullet hit.

The Zapruder film was something we spent time on. This film has an interesting history. It was taken the day of the assassination and made into the film. It was processed right away. Three first day copies were made. The government kept each of the first day copies; one of them went to the secret service. The original was sold almost immediately to the Time/Life Corporation. They had exclusive control over the images. These are things that would not happen today. These things happened in 1963. Part of the original film had some damage to it while Time/Life held it. As a result, they became increasingly concerned about holding this important piece of evidence. They sold it back to Henry Zapruder, who was the son of Abraham Zapruder. Henry was a Washington lawyer who died several years ago. The film then went directly to the National Archives. Whatever you think of the Zapruder film, we had the film, and it should be maintained. We had it analyzed by experts at Kodak. They did not feel it had been altered [5], at least that particular copy that they had tested. And we took it, in the Constitutional sense, from the Zapruder family. So the original film is maintained under perfect conditions, at the National Archives, where it is stored. And it has been digitalized, which of course means

it is much easier to see. So we did what we could with the Zapruder film. We had some issues dealing with the Zapruder family. We tried to get them to donate the original film to the United States. We came close at times, but in the end, there was a lawsuit trying to establish the value of the film.

We spent a lot of time trying to get records out of the former Soviet Union. Oswald spent two and a half years there under very close supervision and observation by the KGB. There is a file about eight feet high in Minsk, which includes everything he said and did. It is in remarkable detail; the KGB did its job very well. They kept tabs on him at all times; they were very concerned about him. I've seen a lot of the files out of that series of documents, but we haven't been able to get more than 400-500 pages of that file. We have a horrible relationship with the government of Belarus. It just keeps getting worse over time. In Soviet files in Moscow, there are also files that we haven't got access to yet. The KGB did an investigation into the assassination. It is an important set of documents. For the future, will we get them? I don't know. Things don't seem to be going too well with Russia these days, so at some point in time, if they need something from us, if we are smart enough, we'll ask them to share their archives on the assassination of President Kennedy with us. Maybe we'll get something out of them then. So there is more work to be done, there are files in Mexico City that still haven't seen the light of day; those files are important because Oswald spent some crucial time there. These are just some of the projects that should be pursued.

It was a remarkable experience to work with all of these documents; we tried very hard to review everything that someone might have seen as relevant. This was a one time opportunity to open up classified documents and government files. There are upward of 100-150 researchers a day looking at these files. That was the whole idea behind this effort; it was to open it up and finally trust the people to review the records themselves and decide what happened, rather than have the government tell them what to do.

I want to recall, in closing, this was 1963—it was a very different world then. The Dallas police force was a relatively small town police force, and, in my opinion, a corrupt police force. They were corrupt in a small sort of way, in accordance with the standards of that era. A person like Jack Ruby could spend a weekend in the police station, probably carrying a gun the whole time, and not attract any attention. That is why Lee Harvey Oswald was paraded out twice for press conferences during the 44 hours he was held by the Dallas Police. But security standards were very different in that day and age. The Secret Service, on the day of the assassination, the blackest day in the history of that organization, which dates back to within months of Lincoln's assassination, their procedures and practices were completely changed because of that day in Dallas. A lot of the things we look at today looks like almost criminal negligence on their part and the part of the other agencies that were following Oswald at the time. But the fact of the

matter is, it was standard practice in 1963. We didn't protect our presidents very well. We had a remarkably lax set of standards at that time. Just go forward another 30 years and look at Timothy McVey. Imagine when Timothy McVey was arrested in the Oklahoma City bombing in 1965. Did the authorities parade him out to two press conferences? Did they attempt to transfer him in an unsecured facility? Absolutely not. Those things never happen today. When you think back to 1963, and look at these investigations that were poorly done—they were poorly done, partly because they were done by the standard of the times. The Warren Commission reflected that as well. I'll quit now, so we'll have time to talk.

Question from the audience: Can we find the Zapruder film on the internet , or anything?

Judge Tunheim: The actual original is at the National Archives, but there are many versions that you can see. [6]

Notes:

1. The presentation by Judge Tunheim was recorded by Sean Windingland and along with many of the other presentations, placed on youTube. Using the recording preserved by Windingland on YouTube, John Delane Williams transcribed Judge Tunheim's presentation.
2. Tunheim, J.R., (Chair) and others (1998). *Final report of the Assassination Records Review Board*. Washington, DC: US Government Printing Office.
3. Fetzer, J.H. (September 28, 2008). *The JFK assassination: Photographic Evidence*. Presented at the John F. Kennedy: History, Memory, Legacy Conference at The University of North Dakota, Grand Forks.
4. Ibid.
5. Fetzer, J.H. (Ed.) (2003). *The Great Zapruder Film Hoax*. Peru, IL: Catfeet Press.
6. One of the better versions, Images of an assassination: A new look at the Zapruder film is available through a variety of sources, including half.com, Amazon.com and barnesandnoble.com.