

**STATEMENT
OF
GERALD POSNER
BEFORE
THE
SUBCOMMITTEE ON LEGISLATION
AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NOVEMBER 17, 1993
ON THE
PRESIDENT JOHN F. KENNEDY
ASSASSINATION RECORDS COLLECTION ACT OF 1992**

Mr. Chairman, Members of the Subcommittee, I am pleased to have the opportunity to testify on my impressions regarding the effectiveness of Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992, in helping to both resolve issues in the Kennedy assassination, as well as to dispel some of the baseless speculation that has been associated with the case. I appear before you today both as an attorney and investigative reporter who is completely familiar with the public record in the case. On September 1, 1993, Random House published the result of several years of my research into the assassination, a book titled *CASE CLOSED: Lee Harvey Oswald and the Assassination of JFK*. My research included not only a review of the body of work generated by both the Warren Commission and the House Select Committee on Assassinations, but also the several hundred thousand pages of documents released through Freedom of Information requests and lawsuits over the past twenty five years, as well as relevant documents still in the possession of private individuals. Additionally, I conducted nearly 200 interviews with primary witnesses (some, like KGB agent Yuriy Nosenko, who was responsible for Oswald's file in the USSR in 1959, spoke publicly about Oswald for the first time); discovered primary documents that had been

overlooked by the two previous government investigations; retrieved information from still secret archives maintained by the KGB; and utilized the latest computer enhancements and animation studies, technology unavailable to the previous government investigations. In *CASE CLOSED*, I conclude that the extant credible evidence establishes, beyond a reasonable doubt, that Lee Harvey Oswald, alone, and not as part of any conspiracy, killed President John F. Kennedy, and moreover, that Jack Ruby, also acting alone and not as part of any plot, murdered Oswald two days after the president's assassination.

I enthusiastically welcomed the recent passing of Public Law 102-526. I have long been convinced that many government agencies were their own worst public relations enemies by sealing many documents in this case. The normal rules for sealing documents by both government agencies and congressional investigations should no longer apply in the Kennedy assassination. Public opinion polls reveal that many Americans suspect that their own government may have been involved in a plot to kill the president. Only full and complete disclosure can start to alleviate the tremendous doubt that has been created in a three decade onslaught of hundreds of conspiracy books, documentaries, and Oliver Stone's slick \$50

million propaganda film. Even then, of course, some people will never be satisfied unless the release of files produces a document that is a smoking gun for conspiracy. Without such a document, there are some who will charge that key papers are still being withheld, or that they were destroyed long ago. However, just because it will impossible to satisfy all of the critics in this case, there is no reason to hesitate in pursuing the most rapid and complete disclosure of all government paperwork on the assassination. Public Law 102-526 is the first necessary step in that direction, and I commend the Committee for having done an excellent task of balancing the many competing concerns for privacy and security versus the public's absolute need to know what is contained in the files.

Since Monday, August 23, 1993, when the first batch of files were released in response to PL 102-526, I have been so busy with the national furor created by *CASE CLOSED* (after thirty years, advocating the lone assassin has become the most controversial position in the case), that I have not had the opportunity to personally review the newly released files available at the Archives. However, that does not mean that I have not begun to familiarize myself with those files. Private researchers have examined the files at my request, and they have not only reported the

results of their review, but have provided me copies of the materials in which I am interested. Moreover, I have interviewed individuals who had been responsible for the creation of some of the sealed material, and I was familiar therefore with the content of some documents even before the August 23, 1993 release.

It should be noted that although there has been a massive first release of documents in response to Public Law 102-526, many of the potentially most interesting documents may be withheld until the Review Board, provided for under the law, is ready to perform its duties. I strongly urge this Committee to take whatever action is necessary, including but not limited to amendment of the Act, to insure that the Review Board has adequate time to perform its work in a diligent and comprehensive manner. I also urge the Review Board to adopt a policy of open and complete disclosure. I have interviewed both David Belin, Esq., and G. Robert Blakey, Esq., who served respectively as counsel to the Warren Commission and the House Select Committee on Assassinations, and who between them, are familiar with most, if not all, of the sealed government files on this case. They have both assured me that there is "no smoking gun" in those files. Only by releasing all the documents can the American people be convinced

this is true.

I am sometimes asked how I can so confidently call my book *CASE CLOSED* when there are hundreds of thousands of document pages about the assassination still to be released by the federal government? The relevant question is whether there is enough credible information available on the record to draw an overall conclusion about what happened in the assassination. If the answer is yes, then the documents will fill particulars about the event, but will not alter that conclusion.

For instance, historians are in complete agreement that Nazi Germany attacked Poland to begin World War II. If tomorrow it was announced that a million documents from the German High Command were about to be released to the public, that would be a treasure trove for historians. Those previously undisclosed documents would perhaps help fill information about the personalities of Nazi leaders, or give insights into their decision making process, and provide fresh details about the infighting inside the Third Reich. However, after those million documents from the German High Command are reviewed, they would not alter the historical truth that Nazi Germany started the war by attacking Poland. The same is true in the assassination of President Kennedy. There is more than enough

information on the record to conclude that Oswald, acting alone, killed JFK. While the documents which will be released by Public Law 102-526 will not contradict that conclusion, they will help fill in many of the details for historians about the extent of the somewhat bungled investigations that were conducted by Federal agencies after the murder. Full disclosure may also help to fill in many of the now missing details (i.e., what exactly did the CIA, in 1963, know about Oswald's visit to Mexico City; is there a copy of the original Army Intelligence file on Oswald which was routinely destroyed in 1973; did Garrison concoct photos of Oswald with New Orleans adventurer David Ferrie in order to boost his unravelling case?)

The key to determining the truth in the assassination of John F. Kennedy is the same as in any other area of historical inquiry, determining what evidence is credible in the seemingly intractable morass of information that has flooded the case. Certain rules are constant, such as the use of the most contemporaneous witness statements, unless there is a valid reason for accepting a witness's subsequent revision; documents and physical evidence usually control over witness testimony. For instance, no matter how many witnesses give various opinions as to where the bullet holes were located on Kennedy's body, the autopsy x-rays and photographs are the best evidence.

One of the major problems with the Kennedy assassination is that the field is cluttered with so many spurious sources, that if their credibility is ignored, it is possible to "prove" almost any thesis. Many of the conspiracy theories are dependent on either speculation or the testimony of people of highly questionable credibility. There are more people today who claim to have been at Dealey Plaza than could have physically fit there. Many have turned up decades after the event with elaborate stories of seeing second gunmen, phony Secret Service agents, and fleeing cars. While these tales are entertaining and help to sell books, they bring us further away from the truth by clouding the case. Many of the conspiracy theorists, especially those who propose that the mafia killed JFK, cite raw intelligence from FBI files as though it were fact. They also concentrate on proving that the mafia hated JFK and had therefore developed a plot to kill him. Forgotten is Oswald, who has almost become a side-note to many of these assassination theories. Quite possibly there could have been a plot, or several different plots, afoot against President Kennedy during the early 1960s. However, after thirty years of having this case examined by hundreds of private researchers, as well as two full government investigations, there is still not a shred of credible evidence that ties Oswald

into any of the possible plots. Oswald beat the plotters to JFK.

The public is often told by conspiracy advocates that the truth in the Kennedy assassination will never be known. This is also false. If I tell this Committee that it was 60 degrees fahrenheit yesterday in Washington D.C., my statement is not open to interpretation. By referring to the National Weather Service records for that date in Washington D.C. it is possible to determine whether I am right or wrong. The same level of certainty is possible in almost all questions in the assassination. For instance, some conspiracy theorists claim that the autopsy photographs and x-rays of President Kennedy are fakes. This is an issue with no middle ground. The autopsy x-rays and photos either are real or they are fake. By having experts test them it is possible to determine what the answer is - yet some writers still falsely claim that this is another murky issue which may never be resolved.

Most issues in the case have yes or no answers. Either Oswald did or did not enter the Book Depository with a rifle on the day of the assassination. The same is true as to whether or not he shot Dallas police officer J.D. Tippit on November 22, 1963, and whether he had tried to assassinate General Edwin Walker earlier that April. However, while many

issues can be resolved definitively, the American public will be disappointed if they expect 100% confidence in resolving each and every sub-issue in the assassination. Determining the historical truth in any area filled with many inconsistencies amongst a welter of changing information - whether it be Pearl Harbor, U.S policy in Vietnam, or Watergate, to name but a few - is a difficult undertaking. However, the basic issues in each of these investigations can be settled, and that is certainly true in the Kennedy assassination. That some issues may never be resolved is not only to be expected in a case of such complexity, but it would not diminish the accuracy of drawing overall conclusions about who killed JFK.

The fact that I have concluded that Oswald acted alone in assassinating John F. Kennedy, from a review of the public record, is not intended to slight the importance of what this Committee has accomplished by generating Public Law 102-526. I look forward with great interest to the full and rapid disclosure of all the documents, so that some semblance of sanity can return to a discussion of the Kennedy assassination. In this way, Public Law 102-526, will help to end once and for all the debate of who killed JFK. Without this law, the public mistrust of government will remain a central tenet of American life. It is possible that once the files are

released, and fully examined by responsible historians, that some measure of confidence can be restored in the public's opinion of government and its officials (although I unfortunately have little doubt that some writers will exploit the documents to raise a host of spurious questions that will probably result in many new books during the next few years).

I believe that from what I have seen of the operation of Public Law 102-526, as well as what I have learned from discussions with others who have been integrally involved in the production of documents pursuant to the statute, the law is accomplishing exactly what it intended to do. It is removing the specter raised in Oliver Stone's fantasy *JFK* that the government agencies sworn to protect this nation, actually killed President Kennedy, and that a massive coverup of that murder continued to this date. As the government's assassination files see the clear light of day, the sinister implications raised in *JFK* will be unmasked.

As we approach the 30th anniversary of John F. Kennedy's untimely death in Dallas, it is time to stop denigrating his memory by turning the case into a pop culture board game of "who did it?" Let us allow Jack Kennedy to rest in peace, and thereby protect the legacy of his presidency and his life. Let us not allow Lee Harvey Oswald, the man with blood on

his hands, to be exonerated by the history books because we are afraid to draw the firm conclusions mandated by the evidence. The release of all federal documents maintained on this case can only help to settle the lingering doubt, and for rational people, help close the case on this national tragedy.