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HEARINGS

Before The

Subcommittee on Government Information
and Individual Rights

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON NATIONAL ARCHIVES: HANDLING OF
FREEDOM OF INFORMATION ACT AND DECLASSIFICATION REQUESTS

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NOVEMBER 11, 1975

Washington, D. C.

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OVERSIGHT HEARING ON NATIONAL ARCHIVES: HANDLING OF
FREEDOM OF INFORMATION ACT AND DECLASSIFICATION REQUESTS

TUESDAY, NOVEMBER 11, 1975

House of Representatives

Subcommittee on Government
Information and Individual
Rights of the Committee on
Government Operations

Washington, D. C.

The Subcommittee met at 10:00 a.m., pursuant to notice,
in Room 2247, Rayburn House Office Building, Honorable Bella S.
Abzug (Chairwoman of the Subcommittee) presiding.

Present: Representative Abzug.

Also present: Eric L. Hirschhorn, Counsel; Timothy H.
Ingram, Staff Director; William G. Florence, Professional Staff
Member; Anita Wiesman, Clerk; and Thomas Sullivan, Minority
Counsel.

Ms. Abzug. The Subcommittee will come to order.

Without objection the hearings will be recorded and
televised.

This morning the Subcommittee is exercising its oversight
over the National Archives and Records Service to examine that
institution's handling of Freedom of Information Act requests
and its declassification of documents under Executive Order
11652.

1 The Archivist of the United States is entrusted with some
2 12 million cubic feet of government paper. Stored in the
3 National Archives and Records Service's Federal Records Centers,
4 its six Presidential libraries, and in the Archives building
5 are at least 860 million pieces of classified paper - most of
6 it over twenty years old and still shut off from historians
7 and the public.

8 Dr. James Rhoads, who is with us today, wears two hats:
9 one as Archivist of the United States, and the other as
10 Acting Chairman of the Interagency Classification Review
11 Committee.

12 The Interagency Committee is the Executive branch's top
13 appeals unit for reviewing citizen requests to see classified
14 documents.

15 We have a number of questions we would like to look at
16 today.

17 For example: What initiative does the Archives take when
18 it discovers a document which is obviously improperly classifi-
19 ed? As custodian of records, the Archives must abide by
20 restrictions placed on documents by the originating agency.

21 But if the classification marking is patently invalid,
22 does the Archives have procedures for challenging that marking
23 and removing it?

24 Our independent staff investigation, for example, has
25 concluded that the Warren Commission was never specifically

1 given the power by the President under the Executive Order to
2 originally classify its transcripts and memos. In effect, then
3 hundreds of Warren Commission documents were withheld from the
4 public for years when there was no sound or legal basis for it.

5 Another question we would like to examine is whether the
6 Archives has always been forthright in its denials of Freedom
7 of Information Act requests.

8 The Archives say that it refers all F.O.I. requests it
9 receives to the Agency or Department which generated the papers
10 being requested.

11 Does the Archives exercise any independent judgment in
12 withholding the files, or does it rely solely on the decision
13 of a self-interested bureaucrat?

14 Also, does the Archives make any attempt to search out
15 important historical documents? Many papers relating to the
16 Warren Commission investigation of President Kennedy's
17 assassination, for example, are still in the custody of certain
18 federal agencies.

19 What efforts has the Archives made to safeguard these
20 records and combine relevant documents with its current holdings?

21 Normally, out of courtesy to our government witness, Dr.
22 Rhoads would appear first this morning. But Attorney David
23 Belin, who is also to appear, informs us that because of a
24 pending lawsuit in which he is engaged, his appearance in court
25 in another city is pressing.

1 With Dr. Rhoads' kind permission, therefore, I would like
2 to call David Belin as our first witness.

3 Mr. Belin is in private practice in Des Moines. He was
4 an Assistant Counsel with the Warren Commission, and he was
5 Executive Director of the Rockefeller panel to investigate the
6 CIA's domestic activities.

7 (The witness was duly sworn by the Chairwoman.)

8 Ms. Abzug. Do you have a written testimony?

9 Mr. Belin. No, I do not.

10 Ms. Abzug. Would you like to make some remarks?

11 Mr. Belin. The only introductory remark I would care to
12 make is that I think these hearings are very important hearings
13 because I think the essence of a democratic society is the
14 right to know. I think it is important that from time to time
15 Congress review whether or not the public right to know is
16 being literally followed by government agencies which theoretic-
17 cally represent the public.

18 I do not mean to prejudge what you are doing, but I
19 think the hearing itself is a very important hearing to be
20 conducted.

21 Ms. Abzug. Thank you.

22
23
24
25

1 STATEMENT OF MR. DAVID W. BELIN, ATTORNEY, FORMER ASSISTANT
2 COUNSEL, WARREN COMMISSION, AND FORMER EXECUTIVE DIRECTOR,
3 ROCKEFELLER COMMISSION ON DOMESTIC ACTIVITIES, CENTRAL
INTELLIGENCE AGENCY

4 Ms. Abzug. Let us see if we can have some questions
5 answered which have been raised.

6 How would you characterize the use of classification
7 markings of Warren Commission documents? Was it over-
8 extensive?

9 Mr. Belin. Almost everything that we had on the Warren
10 Commission was marked Top Secret.

11 I would have to say that it was over-extensive to the
12 extent that most of the matters before the Commission really
13 had nothing to do with what you would ordinarily think of as
14 Top Secret information.

15 When I took the testimony of Johnny Calvin Brewer of
16 Texas, who told how he heard police sirens coming down the
17 street and saw a man duck in a shoe store after the shooting
18 of Officer Tippett, he became suspicious of the man because
19 when the police sirens ebbed away, Brewer saw the man leave and
20 then Brewer followed him into the Texas Theater and the man
21 turned out to be Oswald; the fact that that was classified as
22 Top Secret was really, so far as I was concerned, not a proper
23 use of classification.

24 I think perhaps the reason it was classified Top Secret
25 was that they did not want things to leak out of the Warren

1 Commission hearing rooms.

2 But basically all of the testimony we took of witnesses
3 to the events in Dallas had the stamp of Top Secret on them.

4 Ms. Abzug. Are you aware as to whether the Warren
5 Commission was given any authority by the President in an
6 Executive Order to originally classify the documents?

7 Mr. Belin. I do not purport to be a classification
8 expert, but to the best of my knowledge I knew of no such
9 independent classifying authority that the Warren Commission
10 had.

11 Ms. Abzug. In other words, as far as you know, the
12 markings of Top Secret on Executive Session transcripts of the
13 Warren Commission and of its Staff Memos, for example, were
14 really for a mixture of purposes?

15 Mr. Belin. To the best of my knowledge I know of no
16 other reason other than the administrative purposes, because
17 I know of no independent classification authority, although
18 there might be some indirect authority and I do not purport
19 to be an expert at that. I know that on many memoranda I
20 prepared myself, I did not put anything of a classification
21 nature on it.

22 Ms. Abzug. Assuming that nobody had the authority,
23 that is, to classify the Commission's documents, what is your
24 view as to whether they - let me say this. Do you think they
25 had been properly withheld or do you think they should be

1 withheld under some other concept?

2 Mr. Belin. -- I will exclude those Commission documents
3 which were prepared out of classified information that was
4 received, let us say, from the CIA because it is my understand-
5 ing that when you receive information from a classified docu-
6 ment, that theoretically that memorandum that you prepared,
7 which quotes from the classified source, must remain classified.

8 But I must candidly state to you that there has been an
9 over-classification, I believe, of Warren Commission documents
10 in general.

11 The one that stands out most in my mind, and that has
12 caused the most widespread public concern, related to the
13 autopsy photographs and x-rays of President Kennedy.

14 Ms. Abzug. This is a very interesting question. Would
15 you say it was a question of Ward and Paul marking the
16 transcripts Top Secret?

17 Mr. Belin. I think that Ward and Paul did mark every
18 transcript Top Secret and upon what authority I do not know.

19 Ms. Abzug. You do not know?

20 Mr. Belin. No, I do not know what authority they had, if
21 any.

22 Ms. Abzug. I am trying to get at, as to how it came
23 about. Do you think it was an administrative device?

24 Mr. Belin. I do not know whether they did it of their
25 own volition or whether they were directed to by the General

1 Counsel, Lee Rankin. All I can tell you is that every trans-
2 cript, including every witness whom we interrogated, was marked
3 or stamped Top Secret.

4 Ms. Abzug. Let me ask this then. What was generally
5 the staff's attitude toward the so-called classification
6 markings?

7 Mr. Belin. The general attitude of the staff was this.
8 I do not want to use the word 'ridiculous', but we thought
9 that it was over-classification, to say the least. In fact,
10 it was so classified that even though our building was under
11 a 24-hour a day security guard, we were directed to put all of
12 these transcripts in safes at night, and they were marked Top
13 Secret when they really were not Top Secret.

14 I am excluding the transcripts related to CIA matters or
15 what have you. I am talking about the general transcripts of
16 the area in which I was involved. I was one of the two
17 lawyers in Area 2 which was involved in analysis of all the
18 evidence to determine who killed President Kennedy and Officer
19 Tippett.

20 Ms. Abzug. Do you have any recollection of Mr. J. Lee
21 Rankin, the Counsel, claiming the Commission had authority to
22 classify its own information?

23 Mr. Belin. I do not remember a conversation with General
24 Counsel Lee Rankin. I do not think any of us really raised any
25 issue at the time.

1 Ms. Abzug. Did you have any difficulty getting informa-
2 tion?

3 Mr. Belin. None.

4 Ms. Abzug. Did any of the staff people have any difficul-
5 ty getting information?

6 Mr. Belin. Not to the best of my recollection.

7 Ms. Abzug. Did they require security clearance, that is,
8 staff members?

9 Mr. Belin. All of us had to go through a security
10 clearance. That perhaps relates to an earlier question you
11 asked. It was a standard joke within the members of the staff
12 that we were having access to documents that were marked Top
13 Secret at a time when none of us had security clearances.
14 Even after some of us had security clearances, there were one
15 or two that took a month, or two, or more to get security
16 clearances. It was an inside joke about the fact that what
17 would the Warren Commission do if one of the members of the
18 staff had not gotten the security clearance by the time the
19 Warren Commission had completed its investigation, and you
20 would have all of these hundreds of secret documents.

21 It would have been embarrassing to a lot of people.

22 I believe eventually all staff people were cleared.

23 Ms. Abzug. As Executive Director of the Rockefeller
24 Commission, do you recall any specific provisions which
25 authorized that Commission to classify documents?

1 Mr. Belin. I do not have the files in front of me. They
2 would be the best evidence, but my recollection is that there
3 was a written authorization of classification authority to the
4 Rockefeller Commission.

5 Ms. Abzug. There was what?

6 Mr. Belin. That there was a written authorization of
7 classification authority to the Rockefeller Commission.

8 Ms. Abzug. Where did that authorization come from?

9 Mr. Belin. I do not remember. I do remember, at least
10 I think I can remember, that relatively early in the course of
11 our investigation it was a written memorandum that came to my
12 attention, and to the attention of the Vice President.

13 Ms. Abzug. Came from whom?

14 Mr. Belin. It came to my attention and to the attention
15 of the Vice President.

16 Ms. Abzug. You do not have any recollection as to who
17 signed that authorization?

18 Mr. Belin. Frankly, I do not. I am sure it would be
19 available so that it could be verified, but I have no present
20 recollection of it, no.

21 Ms. Abzug. Do you have a copy of it?

22 Mr. Belin. No, I did not bring that with me.

23 Ms. Abzug. What is your position regarding Warren
24 Commission documents?

25 Mr. Belin. I think my basic position with regard to the

1 Warren Commission documents is the same position that I have
2 held with regard to the Kennedy autopsy reports and x-rays
3 since 1964. That is, that the public's right to know far
4 overrides any considerations of what might be considered
5 breaches of national security.

6 Perhaps if I could take a minute or two to develop that,
7 I will.

8 There has been a tremendous amount of information about
9 the murder of President Kennedy. It is a subject which I
10 believe I have more expertise about than perhaps anyone else,
11 because I was intimately involved with the key witnesses to
12 the assassination of President Kennedy and the murder of
13 Officer Tippett.

14 I believe that the release of all of this information is
15 going to quieten the voices of those who raise questions,
16 because they do not even accept the verdict of the fact that
17 Oswald killed Tippett even though Oswald was apprehended with
18 the murder weapon in hand, and even though there were six side
19 witnesses that saw Oswald at the murder scene with gun in hand
20 and running away from the murder scene with gun in hand.

21 But even though this is not going to silence all of the
22 critics, I believe that in an age of post-Watergate and post-
23 Vietnam when there was such a lack of confidence in government
24 in general, I think it would be refreshing for the public to
25 have access to all these documents, because I think it would

1 show that the Warren Commission was absolutely right in its
2 conclusions that Oswald was the sole gunman who killed
3 President and Officer Tippett, and I think the release of the
4 documents would support the fact that in 1964 we did a thorough
5 independent objective investigation.

6 I think the public's right to know about the murder of
7 their President, for instance, should prevail over the natural
8 inclinations of the Kennedy family of what I would call a right
9 to privacy, in regard to the autopsy photographs and x-rays.

10 I think the public right to know, and the whole issue of
11 confidence and trust in government would override whatever
12 other considerations there might be for not releasing some of
13 these documents.

14 That is my position.

15 Ms. Abzug. Do you know anything about why the FBI has
16 refused to release all of the Harvey Oswald files?

17 Mr. Belin. No, I do not, but I believe they should be
18 released.

19 Ms. Abzug. Do you have any idea where the 302 files of
20 each of the 9 interviews with Jack Ruby when he was an informer
21 for the Bureau R?

22 Mr. Belin. I do not know. I was not working in the Jack
23 Ruby area during my service with the Warren Commission.

24 Ms. Abzug. Then you have no knowledge about them?

25 Mr. Belin. No, I do not.

1 Ms. Abzug. What was your role in the Warren Commission?

2 Mr. Belin. We had the investigation broken down into
3 six areas. For instance, two lawyers worked in an area to
4 determine if Jack Ruby was conspiratorially involved.

5 Two lawyers worked in the foreign conspiracy area. I
6 was one of the two lawyers who worked in the area to
7 determine who was the assassin of President Kennedy, and as a
8 part of that area, who killed Officer Tippett.

9 Ms. Abzug. So you are not familiar with the rest of
10 the investigation?

11 Mr. Belin. I was not familiar, for example, with the
12 details of the Jack Ruby investigation, although I was
13 concerned enough about it so that, when the Warren Commission
14 refused to have polygraph examinations of Marie Oswald and
15 Jack Ruby, I went through the back door and was able to work
16 through Jack Ruby's rabbi, whom I had met on a trip abroad,
17 to have him have Jack Ruby demand, as a condition preceding
18 to testifying before the Warren Commission, that he had a
19 polygraph examination.

20 Not that it is a 100 percent sure lie detector test,
21 but I wanted it as an investigative aid.

22 I mention that, not to show that I was involved with the
23 Jack Ruby area, but to show that there was some overlap of
24 all areas, and a lot of interchange among the Counsel. But
25 I did not have any great familiarity with the particulars of

1 that area.

2 Ms. Abzug. Do you think it would be useful in any way to
3 have these 302 files of each of the interviews with Jack Ruby
4 when he was an informer, released?

5 Mr. Belin. Yes.

6 For the same reasons that I have said that all the
7 material should be released.

8 Ms. Abzug. I take it that you feel that about the whole
9 file?

10 Mr. Belin. Yes.

11 Ms. Abzug. You made some exceptions, as I recall.

12 Mr. Belin. I do not believe I have any exceptions as
13 far as the archive documents - that is, those involved with the
14 assassination of President Kennedy.

15 So far as the FBI 302 files are concerned, of course, I
16 do not know how those relate to the investigation of the
17 assassination. There might be some reasons so far as rights
18 of privacy of some people who were the subject of those 302 files
19 were concerned, and that should be given consideration, but
20 when I say everything should be released I have specific
21 reference to everything in the hands of the Archives relating
22 to the Warren Commission investigation.

23 Ms. Abzug. Of course, that is a very interesting question
24 that I think has not been totally resolved. That is, in the
25 development of the Privacy Act in this Committee. There was a

1 question of the rights of privacy and the question of whose
2 private rights we protect. Do we protect the rights of
3 privacy, or are we trying to protect the process of informers?
4 That is the issue which has been before this Committee as we
5 developed the Privacy Act, and as we had testimony from the
6 various agencies.

7 Then would you place any limitation on access?

8 Mr. Belin. Not on any of the Kennedy assassination
9 documents which are in the hands of the Archives.

10 Ms. Abzug. Let us take another look at something
11 related. Supposing, in three years or so or tomorrow, the
12 public begins to doubt the legitimacy of the Rockefeller
13 Commission in the investigation. What provision for public
14 access would you recommend for those papers? Should copies of
15 the Rockefeller Commission's papers be placed in the Archives
16 and made available at a particular date? Or should they not
17 be placed in the Archives and made immediately available to the
18 public?

19 Mr. Belin. I would have to say that the large majority
20 of the materials in the Rockefeller Commission, I think, can
21 be declassified. I can start with that portion of the investi-
22 gation which related to claims that the CIA was conspiratori-
23 ally involved in the assassination of President Kennedy. We
24 found these claims to be unfounded.

25 There are matters in the Rockefeller Commission

1 investigation that I believe are classified and should
2 legitimately remain classified.

3 Ms. Abzug. Would you give an example?

4 Mr. Belin. I think matters pertaining to sources and
5 methods of a number of areas and matters pertaining to the
6 internal workings of the CIA that have not been disclosed;
7 matters pertaining to science and technology; matters pertain-
8 ing, for instance, to agents whose cover would be blown if
9 there were declassification; matters perhaps pertaining to
10 other areas; but the majority of the transcribed hearings,
11 which are of the Commission's hearings, should eventually,
12 in the not too distant future, be declassified, I hope.

13 Ms. Abzug. You raise a very interesting question. We
14 are considering it in this Committee at this time.

15 The question under the Privacy Act of the various
16 exemptions which was enacted by the Congress last year, that
17 is, with the Privacy Act there are exemptions which we provide.

18 You may recall this, or you may know this. We have
19 general exemption categories for the act of criminal investiga-
20 tion, foreign policy and national security matters, and so on.

21 The CIA and I think the Secret Service secured a more
22 generalized exemption on the grounds that everything they did
23 affected the sensitive national security issue.

24 I opposed that general exemption in the Committee, and
25 on the Floor of the House on the grounds that they, indeed,

1 were known to have invaded the privacy of citizens of this
2 country in domestic surveillance and what have you.

3 The question only came up afterwards, namely, that they
4 indeed did invade privacy.

5 If one were to follow your exemption, that is, that you
6 think all documents be available to the public under their
7 right to know, and so on --

8 Mr. Belin. With particular reference to the Warren
9 Commission, is what I am saying.

10 Ms. Absug. I shifted to the Rockefeller Commission,
11 which in your experience is also very important. That is, in
12 terms of the public's right to know.

13 Let me finish my point.

14 I find, therefore, that the connection which you have
15 made that however information supplied by the CIA should not
16 be made available because it could reveal, or information which
17 would reveal sources and methods, science and technology, the
18 names of agents and so on, that really is an interesting argu-
19 ment because it covers a great deal, and it would give them a
20 more blanket exemption than I think the Act now provides.

21 There is an inconsistency in your testimony.

22 Mr. Belin. My statement, Madam Chairwoman, was that --

23 Ms. Absug. If I may say one more thing. A lot of what
24 the Rockefeller Commission reveals is invasions of privacy,
25 violations of war, activities of the CIA way beyond its given

1 Charter, and so on. There were a lot of impossible acts of
2 illegality.

3 Mr. Bolin. Madam Chairwoman, I think my statement was
4 that the great majority of material that the Rockefeller
5 Commission had before it could be released, and should be
6 released, and should be declassified.

7 You asked me to give you some examples of some areas
8 where material should not be declassified. I gave you, I felt,
9 some areas. That does not mean that I believe the Agency
10 itself should have the right to use that rationale, and
11 therefore not declassify anything.

12 I am suggesting to this Subcommittee that there are
13 legitimate areas of classification. I have to also state that
14 in my observation and in my service as an independent citizen
15 from Iowa with both the Warren Commission and the Rockefeller
16 Commission, is that there is a general tendency in government
17 to over-classify.

18 But I do not want the Subcommittee to think in any sense
19 of what I have said that anything the Rockefeller Commission
20 got should be declassified. That I do not believe would be
21 appropriate.

22 Ms. Abzug. In connection with your work with the Warren
23 Commission, did you see or learn of any documents whose secrecy
24 was necessary for reasons of national defense or foreign policy?

25 Mr. Bolin. I would say yes with particular reference

1 not to the area in which I was involved, but with specific.
2 reference to the area involving the investigation of possible
3 foreign conspiracy. I think that there were documents and
4 matters, at that time, which legitimately could be classified.

5 I think perhaps today an argument could be made that
6 these same documents should still be classified, but I feel
7 that because of the passage of time, and because of the over-
8 riding concern of the public in this event, and because of the
9 whole issue of confidence and trust in government, I believe
10 that there would be a greater public good achieved by de-
11 classifying everything in the Archives pertaining to the Warren
12 Commission investigation.

13 Ms. Abzug. Then that has nothing to do with the general
14 concept?

15 Mr. Belin. My general concept is that most of what is in
16 the Archives has no basis of classification at this time. I
17 will withdraw that. With the passage of time it should be de-
18 classified. Your staff has prepared a list of documents which
19 are still classified, and which, so far as I am concerned, shows
20 a lot of hard work on the part of the staff, and also shows that
21 most of these documents should be declassified.

22 Now, there are some portions of that list, for instance,
23 one pertaining to transcripts of Oswald's conversations in
24 Mexico City. I think you can make a legitimate argument that
25 those particular documents should still be properly classified.

1 I believe the better argument is that even those documents
2 should be declassified.

3 By the way, the autopsy photographs and x-rays which
4 have caused the widest public concern have not even been
5 withheld from the Government by classification authority.

6 Somewhere along the way Government property got into the
7 hands of the Kennedy family, and then was given back to the
8 Government by the Kennedy family under restrictions. I am not
9 sure how that happened, but I do know that they are restricted.

10 Ms. Abzug. What do you think that would reveal?

11 Mr. Belin. I think that every single doctor who has
12 examined those autopsy photographs and x-rays has concluded
13 that there was no evidence, medical evidence, of any shots
14 coming from the front or right front, as alleged by people who
15 claim that there were gunmen firing from the front or right
16 front on what was known as a grassy knoll area.

17 The autopsy physicians, the panel which was selected by
18 Ramsey Clark when he was Attorney General, the recommendations
19 of three university presidents, and the President of the College
20 of American Pathologists, I believe. The panel that was
21 selected by a Senior Counsel of Robert Olsen of the Rockefeller
22 Commission staff. The release of those would remove a lot of
23 speculation about what they show, although I can understand the
24 desires of the Kennedy family for privacy and the pictures,
25 frankly, are very horrifying. Nevertheless I have always felt

1 that they should have been released, and that it was the biggest
2 mistake of the Warren Commission not to release them.

3 Ms. Abzug. Did the Warren Commission ever have access
4 to these documents?

5 Mr. Belin. To the best of my knowledge they were not
6 introduced as evidence in any of the hearings. I think the
7 statement was made by Chief Justice Warren that if we saw them
8 at Commission hearings, then we would have to release these
9 horrifying photographs to the public and, inasmuch as we had
10 the testimony of the autopsy physicians, then he felt there
11 was no decisive need to have these documents released.

12 Ms. Abzug. When there was a review of the Warren
13 Commission report, were they then made available?

14 Mr. Belin. Not to the best of my knowledge.

15 Ms. Abzug. They were never made available. But you do
16 not have specific knowledge, is that right?

17 Mr. Belin. I was not given access to them when I asked
18 for them.

19 Ms. Abzug. What was the reason given?

20 Mr. Belin. The reason given was what I just testified to.
21 The Kennedy family desired that they not be released to the
22 public and Chief Justice Warren felt that if they came before
23 the Commission they would have to be released to the public,
24 and he yielded to the desires of the Kennedy family.

25 I have since discussed this with John McCloy who was a

1 member of the Warren Commission. He now feels it was a mistake
2 to do that.

3 Ms. Abzug. Why?

4 Mr. Belin. Because he feels that the release would still
5 a lot of voices of people who have falsely misled the public.
6 I would hasten to add that there are a large number of people
7 who have been able to use the wide ignorance of the public as
8 a basis for misleading them to the false conclusion that
9 Oswald was not the sole gunman that killed President Kennedy
10 and Officer Tippett.

11 Ms. Abzug. Do you have any idea where this material
12 presently is?

13 Mr. Belin. Most of the material is in the hands of the
14 Archives. There is some material that I think, somewhere
15 between the transfers from the Government to the Kennedy
16 family and then back to the Archives, got lost. For instance.
17 I believe Kennedy's brain is not now at the Archives. I do
18 not know if it was ever in the Archives, but I do know that
19 there has been a question raised about where it is.

20 I believe that the Kennedy family apparently have the
21 answer to that.

22 Ms. Abzug. Did the Rockefeller panel review all of the
23 autopsy and x-ray pictures and see all the materials including
24 the paraffin slides of the brain tissue?

25 Mr. Belin. I was not present at all of the investigations

1 of the Rockefeller Commission panel. I do know they saw the
2 autopsy photographs and x-rays but you would have to check with
3 the doctors themselves as to whether or not they saw slide
4 tissues.

5 Ms. Abzug. In other words, all of that material was
6 seen, as far as you know, by the Rockefeller Commission?

7 Mr. Belin. I know the Rockefeller Commission panel of
8 doctors, as distinguished from the Commission - and there
9 were five physicians who comprised the members of that panel -
10 did have access to whatever autopsy photographs and x-ray
11 materials were in the Archives at the time.

12 Whether or not they saw all of them, I cannot tell.

13 Ms. Abzug. I am confused about something.

14 The original material which you say should have been
15 made public: you recently said that you did not have any
16 knowledge as to where it was, and then you said it was in the
17 Warren Commission, I mean in the Archives. Which is it?

18 Mr. Belin. No.

19 I believe that there was original material, which
20 included the autopsy photographs and x-rays, and I believe
21 your staff has prepared a memorandum summarizing this, which
22 was eventually turned over to, I think it was Evelyn Lincoln,
23 the private secretary to the Kennedy family, or was released
24 to her. Your staff memorandum would be a better source of
25 authority than I.

1 Eventually, the material was deeded back by the Kennedy
2 family under a restrictive deed to the Archives, but the
3 material that was deeded back did not include all of the
4 material that was originally turned over to the Kennedy family.

5 I think one of those materials which is missing is the
6 brain of President Kennedy.

7 Ms. Abzug. Let the record show at this point that I
8 have incorporated into the record the Staff Report concerning
9 the chronology of the custodianship transfer, and events
10 related to autopsy data and material of President John F.
11 Kennedy.

12 (Material to be supplied follows:)

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1 Ms. Abzug. When you said earlier that the Warren
2 Commission's review did see all the material, do you mean with
3 the exception of that material or including that material?

4 Mr. Belin. The Warren Commission investigation did not
5 see - that is, the Warren Commission itself did not have
6 before it the actual autopsy photographs and x-rays. They
7 had reconstructions which were drawn which were not the best
8 evidence and, which I felt, was a very improper way to proceed.
9 I felt that way at the time, and I wrote a memorandum at the
10 time I believe. I certainly made my oral position clear.

11 I said the same thing in the book I have written about
12 the Kennedy assassination. I say it today.

13 Ms. Abzug. As an aside, let me say this. The Warren
14 Commission apparently never attempted to duplicate its theory
15 that the bullets that hit the President, namely that three
16 bullets were fired, and one missed, and one presumably pene-
17 trated the neck of the President and passed through Governor
18 Connolly's back and wrist, and the third hit the President in
19 the head.

20 I think those were the facts.

21 Mr. Belin. I do not think your statement that they never
22 attempted to duplicate it is accurate, but go right ahead.

23 Ms. Abzug. I am trying to find out if it is accurate.

24 The single bullet theory, of course, was ridiculed by
25 many Commission critics, as you know.

1 I have been trying to deal with the question of informa-
2 tion and the public's right to know so that we can try to
3 secure information which can give us a much more intelligent
4 bureaucracy and a much more informed citizenry, and which will
5 enable us to move more effectively.

6 Why were not these shots attempted by a Commission
7 marksman to see if it were possible?

8 Mr. Belin. The single bullet theory grew out of an
9 attempt on my part to prove that there was more than one gun-
10 man. I am going to have to take several minutes to respond to
11 your question.

12 Ms. Abzug. I am not here to argue the facts as much as
13 I am the question of evidence and information, and how we are
14 going to get this thing moving.

15 Mr. Belin. But with particular reference to the question
16 of duplicating the shot --

17 Ms. Abzug. Yes, I am interested in the shot itself and
18 why there was no attempt made to duplicate it.

19 Mr. Belin. When we examined the slides from the amateur
20 movie film, that is the Zabruder film - and we had 35 mm
21 slides made of each frame - it was impossible to precisely
22 determine exactly when Governor Connolly was hit. You could
23 vividly see the time the President was first hit, at least the
24 results of it, because his head emerged for what we call
25 Frame 225, with his hands clutched to his throat. You could

1 vividly see the fatal shot strike the President in the frame
2 which we numbered 313, but you could not tell exactly where
3 Governor Connolly was hit. Therefore, since I knew that the
4 Zapruder camera traveled at 18.3 frames a second, and inasmuch
5 as I knew that the bolt-action rifle could not be aimed
6 accurately, according to the FBI, faster than 2 or 2½ seconds,
7 then I felt that if I could prove that Governor Connolly was
8 hit closer than 40 frames to the time President Kennedy was
9 hit, I would therefore be able to prove that there was a
10 second gunman.

11 And so I came up with the theory of writing the Secret
12 Service in Dallas and asking them to reconstruct the position
13 of Governor Connolly, through his three physicians who
14 treated him, to see where he had been sitting at the time that
15 he was hit, because all of his physicians agreed that he was
16 struck by one bullet.

17 The physicians did this. The only thing wrong was that
18 in three of the poses they showed the bullet that entered his
19 hand, entering on the back side of his hand, and exiting in
20 the front, and the other poses vice versa. I called this
21 discrepancy to their attention, and when they finally came up
22 with a reconstructed pose, I went back to the Zapruder film
23 to the FBI lab experts, and lo and behold, I was able to prove
24 that Governor Connolly could not have been hit after Frame 240,
25 and President Kennedy was hit at about Frame 220, and the

1 camera traveled at 18.3 frames a second, then a maximum of
2 one second elapsed and therefore that would prove that there
3 was a second gunman, unless the bullet that went through
4 President Kennedy's neck also struck Governor Connolly.

5 We then reconstructed what happened to a bullet that ran
6 through President Kennedy's neck. We were advised by ballistic
7 experts that we could do it in three different ways: one was
8 a 20 percent gelatine substance compound; one was goatmeat;
9 and one was a horsemeat reconstruction. We directed that it
10 be done all three ways, and lo and behold, found that the
11 bullet exited President Kennedy's neck running at around 1700
12 feet per second.

13 Governor Connolly was sitting directly in front of
14 President Kennedy with reference to the bullet from the 6th
15 floor window of the depository building, and that is how the
16 single bullet theory was evolved.

17 When you say we did not reconstruct, we reconstructed
18 what happened to the bullet passing through President Kennedy's
19 neck. What we did not do, and what I believe we should have
20 done, was, when we had marksman tests run, we should have run
21 them with a moving vehicle rather than with these stationary
22 targets.

23 We also should have done one other thing. At the time
24 the tests were run it was assumed that all the shots fired
25 took place in about 5½ or 6 seconds. But, if you assume that

1 the first shot struck President Kennedy's neck, exited, and
2 hit Governor Connolly, then the second shot struck Kennedy
3 in the head 5 1/2 seconds later, and the third shot missed -
4 which was certainly a plausible theory - then that also should
5 have been investigated.

6 The argument against it was that we should not show that
7 it was necessarily probable although we had to show that it
8 was reasonably possible to do what was done, and that is the
9 way the tests were run.

10 Ms. Aberg. In other words, the specific shot was not
11 attempted, that is, one bullet penetrating the neck of one
12 individual through the back and wrist of a second individual?

13 Mr. Belin. That was not attempted, except they were able
14 to determine the fact that Governor Connolly's jacket showed
15 a bullet entering in somewhere at a slant and indicative of
16 the fact that the bullet was probably tumbling when it hit
17 Governor Connolly, and probably hit something else in the mean-
18 time, coupled with the other tests that were done.

19 We did reconstruct tests on his wrist to see what would
20 happen if a wrist were hit with a pristine bullet, and that
21 was evidence of the fact that one shot did all of the damage
22 to Governor Connolly.

23 Ms. Aberg. In other words, there was a specific
24 decision not to try to duplicate that shot? Give me a yes or
25 a no so we can get off this subject, and on to some other

1 questions.

2 Mr. Belin. There was a specific decision not to try
3 and have a moving target made. I do not know exactly how you
4 could duplicate a shot going through the neck and then striking
5 a human body, but to the best of my recollection that specific
6 thing was not done.

7 Ms. Abzug. Mr. Belin, in your recent appearance on the
8 David Susskind show you said that in your capacity as Executive
9 Director of the Rockefeller Commission which investigated the
10 CIA, you learned information that should have been told to the
11 Warren Commission, is that correct?

12 Mr. Belin. I believe I made that statement on the David
13 Susskind show.

14 Ms. Abzug. Is that correct?

15 Mr. Belin. That is correct.

16 Ms. Abzug. So, you were told information which should
17 have been brought to the Warren Commission. What was that
18 information?

19 Mr. Belin. The information which I felt should have been
20 disclosed to the Warren Commission related to the possible CIA
21 involvement in plans to assassinate foreign leaders, and in
22 particular, Fidel Castro. At the time of the Warren Commission
23 investigation, there were allegations made that Castro might
24 have had some relationship with the assassination of President
25 Kennedy.

1 By saying that I do not mean to say that Castro was
2 involved.

3 I am just saying that what evidence should have been
4 brought to the attention of the Warren Commission.

5 Ms. Abzug. Was not CIA Director Allen Dulles a member
6 of the Commission?

7 Mr. Belin. Former CIA Director Allen Dulles was a
8 member of the Warren Commission. Obviously, Mr. Dulles would
9 have known what was going on in the CIA at the time of his
10 tenure, at least, he should have known.

11 I do not know, as Counsel of the Warren Commission and
12 as a member of the legal staff, that there was any knowledge of
13 any member of the legal staff about these claims.

14 I know I have talked to the lawyers who were involved
15 in the area of foreign conspiracy, and they have told me that
16 they had no knowledge of any such claims. I have talked to
17 several of the commissioners. They say that they had no
18 knowledge of any such claims.

19 Allen Dulles is dead, and I have been unable to talk to
20 him.

21 Ms. Abzug. Did you investigate this matter while with
22 the Rockefeller Commission?

23 Mr. Belin. Did I investigate what matter?

24 Ms. Abzug. This matter. The matter of the CIA plots to
25 assassinate Castro.

1 Mr. Belin. Yes.

2 Ms. Abzug. I gather there were some rather detailed
3 reports on this issue.

4 Mr. Belin. I made a rather detailed memorandum
5 concerning what I considered to be a very very sordid chapter
6 in American history, because I cannot countenance the concept
7 of an agency of the U.S. Government being involved in assassin-
8 ation plots directed against foreign leaders in peacetime.

9 Ms. Abzug. So, you made a report and you must have read
10 some reports, correct?

11 Mr. Belin. Among other things I read some reports, yes.

12 Ms. Abzug. Do you think the release of these reports
13 which you read would add to the public's knowledge, inasmuch
14 as you say all the information should be made available
15 affecting the Warren Commission and the facts on which it was
16 based, and what happened?

17 Mr. Belin. I think I stated all information in the hands
18 of the Archives should be released.

19 Any matter involving the assassination of President
20 Kennedy, I am talking about.

21 I think that during the Rockefeller Commission investiga-
22 tion, I believe at one press conference one of the Commission
23 members, C. Douglas Dillon, stated that it was the intent of
24 the Commission to release the portion of its investigation
25 pertaining to alleged CIA involvement in the assassination

1 plots directed against foreign leaders.

2 A decision was made not to release those documents. I
3 understand that they will be released by the Senate Select
4 Committee which is investigating this area.

5 Ms. Abzug. According to information developed, Oswald's
6 note to Mr. Hosty was destroyed by Mr. Hosty, who, as you may
7 recall, was an FBI agent. Is there any evidence that was
8 destroyed by either the CIA, the FBI, or anybody else in your
9 present investigation of what took place? Or past investiga-
10 tion which took place?

11 Mr. Belin. I think it is an inexcusable dereliction of
12 duty to have any Government agency destroy evidence of this
13 kind.

14 I was appalled when I learned about it. The evidence in
15 no way negates from the fact that Oswald killed President
16 Kennedy, and Oswald killed Officer Tippett. Nevertheless,
17 the evidence should never have been destroyed.

18 Ms. Abzug. You know something interesting about that?
19 I am an ordinary human being with ordinary thought processes.

20 I am always very suspicious, as I think the average
21 citizen in this country would be, when suddenly a piece of
22 paper, which is involved in a matter like this, which is a
23 note from someone that was supposed to have been the sole
24 actor in a very serious historical event, and which was ulti-
25 mately a great American tragedy, was destroyed.

1 It is difficult to believe that it does not have something
2 to do with the facts, or the shaping of the facts, or the
3 concealing of the facts, or the accuracy. It is very difficult,
4 and I find that here you are testifying before our Committee,
5 which we appreciate; you are very assertive and you are basing
6 this on your knowledge, I assume. You have your conclusions
7 based on your knowledge.

8 You are asserting that the assassination was committed in
9 one particular way by one person, and yet there is a cloud, at
10 least, over the evidence on a number of points.

11 One is a note written by the actor, two, an FBI agent,
12 which, to you as a lawyer and I as a lawyer know, had some
13 relevance to the evidence, is that not correct?

14 How can you be so sure that, nevertheless, it would
15 still not change anything? That interests me.

16 Mr. Belin. I basically share your concern about the
17 destruction of evidence. I am an ordinary citizen like you,
18 although I think, by the way, you are far from ordinary.

19 I think it is reasonable to conclude that if they destroy
20 evidence here, then the question is, where will they not destroy
21 evidence?

22 Ms. Abzug. The question is what other evidence, indeed,
23 was destroyed. The question, indeed, is that I do not think
24 you have addressed yourself to it regarding what other evidence
25 was destroyed, or are you familiar with any other evidence that

1 may have been destroyed or missing?

2 Mr. Belin. I cannot prove that there was no other
3 evidence destroyed, any more than I can prove that you or a
4 member of your staff have never been an FBI informant. But
5 what I can say is this. I have had firsthand knowledge and
6 contact with the witnesses, and the evidence involving the
7 assassination of President Kennedy.

8 I can tell you that beyond a reasonable doubt Lee Harvey
9 Oswald killed President Kennedy and killed Officer Tippett.
10 I say that, not because of evidence that the FBI developed,
11 but because of evidence that Joseph Ball and I developed right
12 on the scene in Dallas.

13 It is based on our independent investigation.

14 So, as horrible as it is for the FBI to have destroyed
15 evidence, I can tell you from the firsthand knowledge I have
16 of the witnesses and the events, and the other material - and
17 I think we could spend days on it - that there is no question
18 which has been raised by any assassination critic that cannot
19 be answered. The basic problem is that I, as a person intima-
20 tely involved in the investigation, do not have the time to do
21 it.

22 For example, on the day of the Susskind show when there
23 was misrepresentation after misrepresentation made by people
24 who were criticising the Warren Commission, you can go ahead
25 in five minutes, make ten accusations, and then give me five

1 minutes which will take me five minutes to respond to one of
2 them.

3 I can go through and carefully respond to every single
4 one that you or anyone else might ask.

5 Therefore, I say even though it was absolutely inexcusable
6 for the Hosty note to have been destroyed, I say, based upon
7 my independent investigation and based upon an objective
8 analysis of the witnesses and the fact that there was no doubt
9 that Oswald killed President Kennedy and Officer Tippett.

10 I do not excuse the FBI. I do not excuse the CIA. I
11 cannot prove the FBI did not destroy anything else. I cannot
12 prove the CIA did not destroy anything else.

13 None of us here just cannot prove the negative. I am
14 sure, Madam Chairwoman, that you are familiar with that.

15 Ms. Abzug. You do testify, interestingly enough, to
16 information that you saw for the first time while with the
17 Rockefeller Commission which you did not see when you were with
18 the Warren Commission, is that not correct?

19 Mr. Belin. That is correct.

20 Ms. Abzug. So we have an interesting development. We
21 are dealing with the freedom of information, and public access
22 and privacy, and so on. Did you have any indication at the
23 time of the investigation that the note had been destroyed -
24 that is, Oswald's threat potential initially?

25 Mr. Belin. Initially no.

1 There was indication from investigation, I believe it
2 was either through Marie Oswald or Ruth Picklin - I was not
3 personally involved in that area, two other lawyers were,
4 Albert Jenner and Wesley James Lever - but Oswald was unhappy
5 with the fact that the FBI had been in contact with his wife.

6 So, we knew he was not happy with the FBI. What we did
7 not know was that he himself had written a threatening note to
8 the FBI and, by the way, not threatening the President, as I
9 understand it, but the threatening to the FBI before the
10 assassination was never been disclosed to the Warren Commission,
11 and it should have been.

12 Ms. Abzug. Who should have disclosed that information?

13 Mr. Belin. The FBI.

14 Ms. Abzug. If the Commission had known that information
15 about the CIA plot to assassinate Castro, for example, do you
16 think there would have been any other lines of investigation?
17 How about Oswald's links with the Cuban community and Cuban
18 refugees?

19 Mr. Belin. There might have been a broader investigation
20 than there was. At least it would have kept a different
21 perspective on what was investigated. But that is pure specu-
22 lation.

23 Ms. Abzug. The question now is, interestingly enough,
24 whether or not all of these unanswered questions, which have
25 surfaced since the Warren Commission reports and views, were

1 dealt with in the Rockefeller Commission review.

2 Mr. Belin. The Rockefeller Commission reports in no way
3 attempted to reopen the Warren Commission investigation. We
4 had our hands full just to perform the duty assigned to us.

5 The only reason the Rockefeller Commission got involved
6 in the Warren Commission investigation at all was because of
7 allegations that the CIA was conspiratorially involved in the
8 assassination of President Kennedy.

9 To that extent, and to that limited extent, we analyzed
10 whether or not these allegations were correct. There were
11 claims that CIA agents, Hunt and Sturgis, were in Dallas at the
12 time and that they were involved in shots fired from the right
13 front. We determined that they were not in Dallas at the time.
14 We determined that there were no shots from the front or right
15 front as claimed.

16 Ms. Abzug. What about this fact. Why did not the
17 Commission make a more intensive investigation of Oswald's
18 links with the Cuban community and the Cuban refugees in view
19 of what you have just said?

20 Mr. Belin. Which Commission?

21 Ms. Abzug. The Rockefeller Commission.

22 Mr. Belin. The Rockefeller Commission in no way was
23 going to get into the reopening of the Warren Commission. It
24 was only going to do it to the extent that CIA was involved.

25 Ms. Abzug. I appreciate that. This is within the

1 parameter of the alleged CIA involvement.

2 Mr. Belin. I can tell you that I do not believe that we
3 found any CIA involvement. We severely limited ourselves to
4 the specific area of the CIA being involved with the assassina-
5 tion so far as the firing of the gun was concerned, because of
6 the claims that were made, and the testimony by witnesses who
7 asked to be heard before the Rockefeller Commission.

8 I saw my primary goal as Executive Director of the
9 Rockefeller Commission to investigate the allegations that the
10 CIA had improperly been involved in domestic activities, plus
11 the issues of recommendations so that this might not happen
12 again in the future.

13 To that extent we directed our primary attention to that.

14 Ms. Abzug. Did you determine, or were you the final
15 determinator as to how far the Commission should go in deter-
16 mining whether the CIA had indeed been involved?

17 Mr. Belin. The Commission itself made the final deter-
18 mination. I turned that area of the investigation over to
19 Senior Counsel and the staff, because I had served with the
20 Warren Commission. That was Mr. Robert Olsen.

21 Ms. Abzug. I wanted to make sure if there were a number
22 of CIA reports which you just now indicated. That is, as a
23 result of the Rockefeller Commission Investigation, that is,
24 which should be revealed.

25 I just wonder if the Warren Commission's failure to go

1 into certain areas, continued rather than opened, in view of
2 the fact that one had a commitment to a position, as you
3 appear to have.

4 Mr. Belin. My position is that, having complete access
5 to the record, I know beyond a reasonable doubt that Oswald
6 killed President Kennedy and Officer Tippett. I also know
7 the misrepresentation which has permeated the American televis-
8 ion screens in this area.

9 Ms. Abzug. I thank you very much for your testimony
10 today, Mr. Belin. I hope, with you, that the Warren Commission
11 documents are opened up so that the full record can be laid
12 before the public, and that the public's rights and concerns
13 can be satisfied.

14 Mr. Belin. Thank you.

15 Ms. Abzug. Dr. Rhoads.

16 (The witness was duly sworn by the Madam Chairwoman.)

17 Ms. Abzug. Do you have a written testimony?

18 Dr. Rhoads. I kept this within a summarized length.
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1 STATEMENT OF DR. JAMES B. RHOADS, ARCHIVIST OF THE UNITED
2 STATES

3 ACCOMPANIED BY: MR. STEVEN GARFINKEL, COUNSEL, OFFICE
4 OF THE GENERAL COUNSEL, GSA; MR. MARION JOHNSON,
SPECIALIST, WARREN COMMISSION RECORDS; MR. WILLIAM BROWN,
EXECUTIVE DIRECTOR, CLASSIFICATION BUREAU

5 Dr. Rhoads. Madam Chairwoman, I am accompanied by
6 Mr. Steven Garfinkel, on my right, who is our Counsel in the
7 Office of General Counsel of the GSA, by Mr. Marion Johnson,
8 our specialist in the Warren Commission Records.

9 Ms. Abzug. If they are going to participate in the
10 testimony, I would just as soon they be sworn.

11 Dr. Rhoads. And Mr. William Brown, who is Executive
12 Director of the Classification Bureau.

13 (All three witnesses were duly sworn.)

14 Ms. Abzug. Please proceed.

15 Dr. Rhoads. Thank you for giving me this opportunity to
16 discuss the policies of the National Archives with respect to
17 one of the groups of records in our custody - the records of
18 the President's Commission on the Assassination of President
19 Kennedy.

20 Let me say at the outset that there is a general policy
21 for the 1.3 million cubic feet of permanently valuable Federal
22 records which constitute the National Archives of the United
23 States.

24 This policy is both to preserve them and to make them
25 available for further Government use, for the protection of

1 private rights, and for the use of researchers whether they
2 be scholars or just interested members of the public.

3 Record Group 272, the records of the Warren Commission,
4 comes under this broad policy as do the other record groups
5 in the National Archives.

6 Relatively speaking, this is a small group of records,
7 amounting to about 350 cubic feet of textual and related
8 material. It is, however, complex.

9 There are transcripts of testimony, depositions,
10 affidavits, correspondence, investigatory reports, passport
11 files, memoranda, chronologies, indexes, films - the list goes
12 on and on.

13 Much of the material is duplicative, such as the multiple
14 copies of transcripts. Subtracting the duplications, about
15 100 feet of original textual and audiovisual records remain.

16 The textual records account for approximately 75 percent
17 of that amount. Additionally, there are approximately 40
18 cubic feet of three-dimensional objects, ranging from clothing
19 to the windshield of the automobile in which President Kennedy
20 lost his life.

21 The Commission on the Assassination of President Kennedy,
22 popularly known as the Warren Commission, began its investiga-
23 tion soon after President Kennedy's death on November 22, 1963.

24 The Commission presented its report to President Johnson
25 on September 24, 1964, and this action was followed by the

1 publication of 15 volumes of testimony and 11 volumes of
2 exhibits.

3 The Commission then transferred its records to the
4 National Archives in November of 1964 to be preserved under the
5 rules and regulations of the National Archives and applicable
6 law.

7 I should mention at this point that the autopsy x-rays
8 and photographs came to the National Archives later and
9 separately. They were donated by the Kennedy family under an
10 agreement limiting access to those materials, which are now
11 part of a different record group, Record Group 200, the
12 National Archives Gift Collection.

13 Access to this material is limited by the agreement
14 dated October 29, 1966, to persons authorized to act for a
15 committee of Congress, a Presidential commission, or any other
16 official agency of the Federal Government having authority to
17 investigate matters relating to the assassination of President
18 Kennedy, and to recognized experts in the field of pathology
19 or related areas of science and technology whose qualifications
20 are approved by the Kennedy family representative, Burke
21 Marshall.

22 About 90 percent of the records of the Warren Commission,
23 Record Group 272, now are open for research. In the past
24 decade, research activity in this group has been extensive.

25 This was particularly so in the early years. Activity

1 lessened for a time, but there has been a revival of interest
2 of late. In the last quarter of this year, 90 persons came in
3 to do in-person research, in addition to those who sought
4 information by mail.

5 Marion Johnson, the archivist in charge of the records,
6 and an associate have a heavy reference load along with their
7 other work.

8 I note that the September 1975 issue of the revived
9 Saturday Evening Post, which focuses on current interest in the
10 assassination and its investigation, observes that "The de-
11 classified, but unpublished Warren Commission materials are
12 available to any serious researcher" and that Johnson and his
13 associate "provide the individual researcher who writes or
14 visits the National Archives with friendly and cooperative
15 service."

16 I think that most of the researchers who have used the
17 Warren Commission records in the National Archives would agree
18 with this assessment.

19 There are, as well, various finding aids at the disposal
20 of researchers, including a 158-page Inventory of the Records
21 of the President's Commission on the Assassination of President
22 Kennedy. This was compiled by Mr. Johnson and published in
23 1973 to replace an earlier version.

24 The Committee, Madame (Chairwoman), has expressed interest
25 in use of the Freedom of Information Act and Executive Order

1 11652, the declassification order, in relation to the Warren
2 Commission records. Both have proved useful in opening
3 previously closed material. The regularly scheduled reviews of
4 withheld materials in this body of records also have been
5 helpful in this regard. Let me say a few words about the back-
6 ground of these reviews.

7 When the Warren Commission records came to the National
8 Archives, most were made available for research use quickly.
9 However, some records were withheld because disclosure was
10 prohibited by specific statute, because of national security
11 classifications, because disclosure would invade rights of
12 personal privacy, or because as parts of investigatory files
13 their disclosure might impede law enforcement or reveal con-
14 fidential sources of information.

15 The normal procedure followed in withholding investiga-
16 tory reports to which the restrictions applied was to maintain
17 disclosure for a period of 75 years - roughly a person's
18 lifetime - unless the originating agency authorized earlier
19 disclosure.

20 However, the White House at that time held that every
21 effort should be made to accelerate disclosure of withheld
22 material in the Warren Commission records and directed the
23 Attorney General to coordinate a study of means of accomplishing
24 this purpose.

25 The study was made by the Department of Justice, in

1 consultation with the National Archives and other agencies,
2 and the recommendations resulting from the study were approved.

3 They called for immediate review of the material with-
4 held by the originating agencies. The purpose was disclosure
5 of as much of the material as possible. A key provision of
6 the guidelines prepared by the Department of Justice held that
7 originating agencies should review their classified and un-
8 classified withheld material 5 years and 10 years after the
9 initial review, and thereafter every 10 years.

10 The Attorney General dispatched the first review letters
11 to agencies in 1965, and the National Archives in 1970 sent
12 out similar letters seeking review of withheld material.

13 The regular 5-year reviews continue. The National
14 Archives wrote last July to the various agencies involved,
15 asking them to examine their withheld documents again with a
16 view to disclosure.

17 The reviews of 1965 and 1970 were not the only ones made
18 to speed disclosure. When the President's Commission on the
19 Assassination of President Kennedy went out of existence, the
20 status of previously undisclosed internal records and corres-
21 pondence of the Commission was uncertain.

22 With the assent of the Department of Justice, the National
23 Archives in 1967-68 screened this material and opened most of
24 it. However, some correspondence between the agencies and the
25 Commission and other records relating to the agencies remained

1 closed.

2 The National Archives, therefore, went back again to the
3 agencies in 1972-73 for a further review of this type of
4 record. On the latter occasion the agencies were reminded
5 that Executive Order 11652 had been issued in the interim, with
6 provisions for declassifying or downgrading any classified
7 documents among those withheld.

8 More recently, in our letters to agencies relating to the
9 1975 review, we have asked them to keep in mind the provisions
10 of the Freedom of Information Act, as amended in 1974, and
11 Executive Order 11652 when making their determinations as to
12 what now can be opened in the material which is still with-
13 held.

14 As the result of the various reviews under the Department
15 of Justice guidelines, additional material in the Warren
16 Commission records has been disclosed by originating agencies
17 since that first general review in 1965. Moreover, researchers
18 now have recourse to mandatory review procedures of the Freedom
19 of Information Act and Executive Order 11652, both of which
20 have been effective in opening other withheld materials in the
21 Warren Commission records. They provide workable means for
22 researchers to challenge nondisclosure of material which they
23 believe should be opened.

24 I thank the Committee again for this opportunity to
25 discuss the policies and practices of the National Archives with

1 respect to records of the Warren Commission.

2 I hope it is not a secret that we archivists are
3 committed to the fullest possible disclosure of records in our
4 custody.

5 In addition to preserving records of value, we like to
6 see them available to researchers - and well used.

7 Thank you.

8 I will be happy to respond to your questions.

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1 Ms. Abzug. I am looking at a copy of the Warren
2 Commission's Executive Session of January 22, 1964. On the
3 last page it says "The transcript was based on the court
4 reporter's notes and was apparently typed up some time after
5 the Commission went out of business."

6 Yet the transcript was itself marked with Top Secret
7 markings. Who applied those Top Secret markings?

8 Mr. Johnson. The Defense Department applied that on the
9 basis of the marking on the package of the reporter's notes.

10 Ms. Abzug. I am not too clear about that last part.
11 Get closer to the mike, please.

12 Mr. Johnson. The Defense Department stenotypist prepared
13 the transcripts from the reporter's notes and presumably the
14 stamp was applied --

15 Ms. Abzug. You mean the stenotypist has authority to
16 classify Top Secret?

17 Mr. Johnson. I do not know.

18 Ms. Abzug. That may prevent me from reading that
19 document, that is, me who is elected by 467,000 people and I
20 cannot even stenotype?

21 Was it you or the Archives that did it?

22 Mr. Johnson. It was classified when it came back to us
23 from the Defense Department.

24 Mr. Garfinkel. This particular transcript was the only
25 one that came to the Archives' custody in stenotype form. It

1 It had never been transcribed by the Warren Commission
2 because of statements to the effect that they did not want it
3 preserved.

4 When we received a Freedom of Information request for
5 access to that particular transcript, we were unable to answer
6 the request and to review the document without knowing what it
7 said.

8 We contacted the Defense Department in order to find a
9 stenotypist who had a Top Secret clearance, because the steno-
10 type copy which we had was marked Top Secret. When we sent it
11 to the Defense Department the stenotypists merely was apply-
12 ing the Top Secret classification marking that appears on the
13 stenotype form.

14 Ms. Abzug. Let me get something clear. You mean you
15 think originally the stenotypist marked it Top Secret? I am
16 talking about the notes, were marked Top Secret?

17 Mr. Garfinkel. No. The stenotype notes that came to us
18 from the court reporter were marked Top Secret as were all the
19 transcripts that came to the Archives from the court reporter,
20 or the reporter.

21 Ms. Abzug. You just testified that some request was made
22 for this particular transcript, and that it really had not been
23 transcribed prior to the request. When was the request?

24 Mr. Garfinkel. The request was in 1974.

25 Ms. Abzug. Until that time, there had been no

1 transcription of these notes? You just had a stenotype record
2 of the hearings, is that correct?

3 Mr. Garfinkel. This particular transcript remained in
4 stenotype form.

5 Ms. Abzug. In that form --

6 Mr. Garfinkel. In that form it was marked on the exterior
7 "Top Secret."

8 Ms. Abzug. Who had marked that?

9 Mr. Garfinkel. Presumably the recorder who originally
10 took the stenotype notes at the instruction of the Counsel of
11 the Warren Commission --

12 Ms. Abzug. So now we have the Counsel for the Warren
13 Commission classifying?

14 Mr. Garfinkel. We have a letter in which the reporters
15 of the transcript, Ward and Paul, are instructed by Counsel to
16 the Warren Commission to mark each of the Executive Session
17 transcripts Top Secret, or Secret.

18 Ms. Abzug. Do you have that letter with you?

19 Dr. Rhoads. Yes. Would you like to see a copy of it?

20 Ms. Abzug. Yes, I certainly would.

21 I would like to see the pertinent one and the impertinent
22 one.

23 Mr. Garfinkel. The most pertinent is only two sentences
24 if I could read it.

25 Ms. Abzug. You can read it, but I would still like to

1 see it.

2 Mr. Garfinkel. It is a letter of May 1, 1964, to Ward
3 and Paul from J.A. Rankin, General Counsel of the Commission.
4 "This is to inform you that as of this date all depositions
5 and testimony handled by your firm for the Commission will be
6 classified as Confidential rather than Top Secret. The
7 meetings of the Commissioners will continue to be classified
8 Top Secret. Very truly yours, J. Lee Rankin."

9 Ms. Abzug. Why was it downgraded, do you know?

10 Dr. Rhoads. Why was what downgraded?

11 Ms. Abzug. The depositions.

12 Apparently, at a certain point it was all marked "Top
13 Secret". That is how I read that letter.

14 Dr. Rhoads. You mean the instructions from Mr. Rankin
15 to Ward and Paul?

16 Ms. Abzug. Yes.

17 Dr. Rhoads. That was effective May 1. I do not know why
18 he made that change.

19 Ms. Abzug. May I see that letter, please?

20 Would you submit a copy of this for the record? That is
21 the letter of J. Lee Rankin of May 1, 1964, indicating that all
22 depositions and testimony be classified as Confidential rather
23 than Top Secret?

24 Mr. Garfinkel. Yes.

25 (The letter to be supplied follows:)

1 Ms. Abzug. How did you discover the existence of these
2 notes?

3 Mr. Johnson. A researcher requested it on the basis of
4 something that he found in the administrative records of the
5 Commission. It was from Ward and Paul, I believe.

6 Ms. Abzug. It is my recollection that for many years
7 were you not telling researchers that no transcript or notes
8 existed of that particular meeting?

9 Mr. Johnson. We told them that the transcripts which we
10 had are listed in the inventory of the records. At that time
11 no transcript existed for this particular meeting.

12 Ms. Abzug. At that time what?

13 Mr. Johnson. At the time the inventory was prepared
14 there was no transcript for this particular meeting of the
15 Commission.

16 We informed the researchers of the transcripts that we
17 had.

18 Ms. Abzug. How did you finally find out that there was
19 such a transcript of the meeting?

20 Mr. Johnson. The researcher requested that a transcript
21 be prepared, or access be given to the reporter's notes.
22 It happened on the basis of the bill that he found in the
23 administrative records.

24 Ms. Abzug. That is not my question. Obviously they
25 had been requested for a long time. Suddenly, in 1974, you

1 discover a record: why? Because of the Freedom of Information
2 Act? What is it?

3 Mr. Johnson. The researcher requested a search for the
4 reporter's notes of that session. We found them in the form of
5 the reporter's notes.

6 Ms. Abzug. In the next to last page it reads as follows:
7 "Dulles. Yes I think this record ought to be destroyed. Do
8 you think we need a record of this?" Answer: "I do not.
9 Except that we said that we would have records at meetings so
10 we called the reporter in the formal way. If you think that
11 what we have said here should not be a part of the record, then
12 we can have it done that way."

13 Etcetera, etcetera, it goes on.

14 Do you think it has any relevance that it was in notes
15 all of this time?

16 Mr. Johnson. I think that was the reason. The
17 Commission did not want a transcript prepared.

18 Ms. Abzug. You have had a lot of transcripts of a lot of
19 meetings.

20 This one deals with the discussions as to how to cope with
21 the possibility that Oswald might be an FBI informant, and the
22 fact that the Warren Commission had to rely on the FBI for its
23 investigative efforts. Do you see any relationship?

24 Dr. Rhoads. Between the fact that it was retained
25 in stenotype form rather than as a transcript?

1 Ms. Abzug. Exactly.

2 Dr. Rhoads. I think there was no relation there.

3 Ms. Abzug. Were there any other stenotype notes for other
4 meetings?

5 Dr. Rhoads. The stenotype notes were preserved and at
6 the request, the transcript was provided.

7 Ms. Abzug. Were there any other stenotype notes which
8 remained in an untranscribed form?

9 Mr. Johnson. I do not know the answer to that question.
10 We have to compare each one of the reporter's notes with each
11 one of the transcripts. That would be quite a job.

12 Ms. Abzug. You mean to tell me you do not know whether
13 there are any untranscribed stenotype notes in the Archives,
14 but you would know if I made a direct request? Then you would
15 know, correct?

16 Mr. Johnson. Yes.

17 Ms. Abzug. Otherwise you do not know what is there?

18 Mr. Johnson. Yes.

19 Dr. Rhoads. We know generally what is there, but we do
20 not know every detail of every document. There is great deal
21 of material.

22 Ms. Abzug. Do you know whether there are any untranscri-
23 bed notes now that you have had this issue raised, and you knew
24 you would be questioned about it, you mean to tell me you did
25 not bother to find out whether there are any other untranscribed

1 notes affecting this Commission?

2 Dr. Rhoads. I did not know that this issue was going to
3 be raised today.

4 Ms. Abzug. I see. Knowing that we were going to ask
5 questions about the documents on file, and which documents are
6 not on file, and which documents should be on file, and who
7 classifies them and who has the classifying authority, it did
8 not occur to you?

9 I will direct you to make a search and come back here
10 and provide information for this record as to whether there are
11 any other untranscribed notes in your possession with respect
12 to this matter.

13 Dr. Rhoads. We will be glad to do that.

14 Ms. Abzug. Without objection this material will be
15 supplied for the record.

16 (Material to be supplied for the record follows:)
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1 Ms. Abzug. Do you have any knowledge about anybody
2 requesting at any time that these transcripts be withheld or
3 not be made public?

4 Mr. Johnson. I do not understand the question.

5 Ms. Abzug. There are these transcribed notes. They were
6 kept in raw form. Did anybody ever suggest this? There is an
7 indication in what I read to you that it was felt that they
8 would just as soon not have this information out, that it
9 should be kept secret, right?

10 Mr. Johnson. Yes.

11 Ms. Abzug. Therefore, I am asking this. Did anybody
12 ever ask that this particular transcript be kept in the raw
13 form?

14 Mr. Johnson. Not to me.

15 Ms. Abzug. Does anybody here answer that?

16 Dr. Rhoads. I know of no such request.

17 Ms. Abzug. How about the rest of you?

18 (No response)

19 You do not know whether the CIA or the FBI asked for any
20 of this to be kept in that form, because after all, the
21 Director, Dulles, thought the record should be destroyed.

22 Dr. Rhoads. No request of that sort was made to us
23 after those materials were transferred to us.

24 Ms. Abzug. Can you tell me if any Warren Commission
25 documents are missing?

1 Mr. Johnson. Some of them are missing. We have found a
2 lot of those that we listed as missing at the beginning, but
3 most of the numbered Commission documents were found and turned
4 into exhibits or were in the subject files of the Commission,
5 or were in extra copies of documents. There are some documents
6 which we have not been able to locate, however.

7 Ms. Abzug. What documents and how many have you been
8 unable to locate? How many are missing, for example?

9 Mr. Johnson. I think there are two or three of the
10 numbered documents which are missing.

11 Ms. Abzug. Which are they?

12 Mr. Johnson. The Texas Attorney General's file. I think
13 some of it may have been turned into exhibits, but I have not
14 been able to identify them yet.

15 Ms. Abzug. One was the Attorney General's file?
16 That is missing?

17 Mr. Johnson. Yes, it is missing.

18 Ms. Abzug. What else is missing?

19 Mr. Johnson. Some documents in the correspondence file
20 which we have not been able to locate. I cannot specify them
21 without re-checking our correspondence with the surgeons.

22 Ms. Abzug. How do you know they are missing if you have
23 not identified them?

24 Mr. Johnson. We cannot locate them.

25 Ms. Abzug. How do you know if something is missing?

1 Mr. Johnson. We get requests for specific items and we
2 locate them in the reference.

3 Dr. Rhoads. They may be referred to in another document.

4 Ms. Abzug. Would you supply for the record those
5 requests that you have received which you find to be missing
6 but cannot locate?

7 Dr. Rhoads. We will be glad to.

8 (The material to be supplied follows:)

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1 Ms. Abzug. What other things are missing?

2 We have the Texas Attorney General's file. That might be
3 important, might it not?

4 Mr. Johnson. Yes.

5 Dr. Rhoads. It could very well be.

6 Ms. Abzug. What could be in that file?

7 Dr. Rhoads. We have not seen it. We do not know.

8 Ms. Abzug. Would it have anything to do with commencing
9 the criminal proceedings against various persons involved in
10 the assassination?

11 Mr. Johnson. There is a list of the material in the
12 list of basic source material which the Committee has.

13 Ms. Abzug. This indicates what may be missing?

14 Mr. Johnson. Yes.

15 Ms. Abzug. Would you please supply that for the record
16 as well.

17 Dr. Rhoads. We will be glad to.

18 (Material to be supplied follows:)

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1 Ms. Abzug. It would be interesting to know the content
2 of the documents that are missing.

3 What attempts are you making in the Archives to replace
4 or secure these missing documents?

5 Mr. Johnson. There is very little that we can do about
6 this.

7 We have requests from researchers who are interested in
8 them. We ask them to apply to the Agency that wrote to the
9 Commission. If the Agency will supply the document, with
10 permission to make it available, we will do that.

11 Ms. Abzug. Can you tell me about the Attorney General's
12 file? Which agencies helped you get duplicates?

13 Mr. Johnson. We have not done that because it would
14 involve a great deal of work on our part, and we certainly
15 have enough work to do.

16 Ms. Abzug. Are there any Kennedy assassination related
17 documents in the possession of other Federal agencies, for
18 example, the Department of Justice, the FBI, or CIA?

19 Dr. Rhoads. There probably and undoubtedly are materials
20 and records in the files of those agencies which relate, in one
21 way or another, to the investigation of the assassination.

22 I think it might be useful to review very briefly certain
23 provisions in the Federal Records Act, that is, the Records
24 Disposal Act, which provides that all agencies will schedule
25 records for disposition.

1 It is a joint effort between people in the agencies and
2 the senior staff of specialists in the National Archives to
3 make determinations as to what materials must be kept and
4 eventually come to the National Archives those that are of
5 permanent historical research value, and those which can be
6 disposed of after a period of time.

7 Records do come to us, records of permanent value, as
8 these certainly are. They come on a scheduled basis. Once
9 records have existed in agencies for 50 years, we have
10 authority to requisition them. We do not have absolute
11 authority to do that for records that are not that old.

12 We are concerned that these records be properly preserved
13 and that they eventually come to the National Archives.

14 Ms. Abzug. What efforts are being made by your staff,
15 in specifics that is, to gather the documents into the
16 Archives to put with Warren Commission folders?

17 Dr. Rhoads. I believe that the records you are talking
18 about are properly agency files which are part of the records
19 of the FBI or the Justice Department. There is a system of
20 scheduling all records in all agencies, so that those that are
21 permanently valuable, which these certainly are, will in due
22 course come to the National Archives.

23 Ms. Abzug. How do you know they will?

24 Some people do different things with papers.

25 Dr. Rhoads. Regrettably they do. They are violating the

1 law if they take off with Federal records, or make unauthorized
2 disposal of Federal records.

3 Ms. Abzug. For example, I am told that at Princeton
4 University, former CIA Director Allen Dulles was also one of
5 the members of the Warren Commission - I just defer to his
6 idea of what you do with some documents in the last page of
7 this transcript - has bequested his personal papers to the
8 library.

9 I am also told that these include copies in many cases of
10 the Warren Commission documents that he took with him.

11 So I would not want to see the National Archives have to
12 run around all over the planet looking for those documents.

13 What I am trying to find out is, a) at this stage, which
14 is so many year passed, how do you make certain that you may
15 conduct some effort in getting some documents which are
16 important as a result of the responsibility of your archives?

17 Dr. Rhoads. We have this Government-wide system which
18 is buttressed by a network of Records Management Officers in
19 each agency whose responsibility it is, under the statutory
20 responsibility of the head of the agency --

21 Ms. Abzug. Let me cut in here.

22 Gerald Ford is going to send his papers to Michigan.
23 There may be documents in these files which relate to the JFK
24 assassination and investigation which are not in the Archives.

25 Have you checked this? Have you ever reviewed these

1 files, for example, in the libraries?

2 Dr. Rhoads. We have not.

3 Ms. Abzug. You have not looked at the libraries, and
4 we are not asking the Government agencies. We are just hoping
5 that they will give them to us some day, correct?

6 Dr. Rhoads. It is more than a hope.

7 Ms. Abzug. You believe they will? Some you have hope
8 for, and some you believe.

9 I just do not understand that.

10 Supposing there are important documents of the Warren
11 Commission stored at Princeton, or anywhere else outside. You
12 do not know whether you have duplicates, and you do not know
13 anything about whether or not important information, which
14 should be available to researchers and to history, is there.
15 It seems to me that that is a very important question.

16 Dr. Rhoads. It certainly is very important that those
17 documents be preserved. The assumption is that the members of
18 the Commission were honorable men and did not take with them
19 the file copies or record copies of official Warren Commission
20 records.

21 To the extent that these materials exist among the papers
22 of members of the Commission, certainly they ought to be nothing
23 more than a personal duplicate copy, file copy, or carbon copy
24 which was retained for purposes of reference. These would not
25 be records as defined under the Federal Records Act.

1 Ms. Abzug. Let me ask you another question. I did not
2 finish with you. The Attorney: I asked you how many documents
3 were missing. You told me correspondence, the Texas Attorney
4 General's files, what else?

5 Mr. Johnson. We will have to supply that.

6 Ms. Abzug. Would you supply for the record the documents
7 which you find are missing?

8 Mr. Johnson. We would be glad to.

9 Ms. Abzug. Without objection the documents will be
10 supplied for the record.

11 (The documents to be supplied follow:)

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1 Ms. Abzug. I have been advised by the staff that
2 Princeton and Michigan libraries, where some of the Warren
3 Commission material is part of other papers that will reside,
4 that many of the Warren Commission papers are there, and that
5 they are still marked "Classified".

6 Dr. Rhoads. That may well be.

7 Ms. Abzug. The individuals handling these files are not
8 Federal employees. Do you know if they were cleared to handle
9 these classified documents?

10 Dr. Rhoads. In most repositories which acquire the papers
11 of public officials, there is someone there who is cleared to
12 handle classified documents.

13 In some cases, upon the request of such an institution,
14 we will work with them to help them de-classify classified
15 material in their possession. We would be glad to respond in
16 the same way to Princeton and the University of Michigan.

17 Ms. Abzug. Do you know of any instances, that is, do
18 you know for sure whether they have a classified employee
19 handling these files?

20 Dr. Rhoads. I do not know in these two particular
21 instances.

22 Ms. Abzug. I am trying to figure out where the responsi-
23 bility is, because if not, then the information in effect is
24 no longer restricted except in the Archives.

25 Dr. Rhoads. That might depend to some extent on the

1 conditions on the Deed of Gift under which the papers were
2 given to Princeton, or whatever, by Mr. Dulles.

3 Ms. Abzug. If you in the Archives continue to maintain
4 a category of classification, where on the outside in the real
5 world it is not classified, then what?

6 Dr. Rhoads. That does create some inconsistency.

7 Ms. Abzug. What have you done about it? In a funny
8 way, you have documents where nobody has the authority to
9 declassify them.

10 I cannot figure out who had the authority to classify
11 the Warren Commission documents. I have had no testimony.

12 Can you give me any idea as to who had the authority to
13 classify the Warren Commission documents?

14 I see no evidence so far of it having been done pursuant
15 to the Executive Order of the President.

16 Some stenotypist in the Defense Department decided to
17 mark documents Top Secret. We just found that out.

18 Under whose authority, and by what authority, have
19 documents been classified in the Archives - which may very well
20 be significant and important to the public and to researchers -
21 and yet they may not be classified in the outside world in the
22 cases where they were given to libraries?

23 We do not know who is responsible for this whole jungle
24 of control of information.

25 Can you give me some information about that?

1 Can you put this in some order for this simple mind?
2 Sometimes I have to spend weeks getting a document that is
3 marked Classified, and I have to put it in my safe and change
4 the combination and so on. I am so concerned about maintaining
5 classified secrets of this nation.

6 But suddenly I found out that in this whole maze of the
7 Archives there are documents which a stenotypist decided were
8 Top Secret. One day the Commission Counsel says "do not
9 bother to make it Top Secret. Let us make it Confidential."

10 Then I find there are a series of documents out there
11 running around in the libraries. However, we cannot get to
12 them in the Archives because they are marked Classified by
13 some unknown handwriting on the wall.

14 Mr. Garfinkel. I think if we examine every document of
15 the Commission which remains Classified, or has been classified
16 at some time in the past, we will discover that the original
17 classifier was either an agency which specifically had the
18 authority to classify the records, or was the Commission
19 itself.

20 We will find that it was never the Archives on its own
21 authority.

22 What happened, apparently, is that the Warren Commission
23 naturally assumed, because it was handling a great deal of
24 security classified information, that it had the authority to
25 mark these documents as security classified.

1 It also appears from the record that the President, and
2 of course, his advisers, were the perpetrators of an oversight
3 in that they never made a specific amendment to Executive
4 Order 10501, which was in effect at that time, to include the
5 Warren Commission among those agencies that had original
6 classifying authority.

7 The Commission assumed it had that authority, and acted
8 under that assumption. We have an affidavit of its General
9 Counsel that the Commission had that authority, and that,
10 pursuant to that authority as delegated to him by the
11 Commissioners, he instructed the reporters of the Commission
12 transcripts and other Commission documents to mark documents
13 as classified.

14 We also had indirect evidence that it was the assumption
15 of the President that the Commission had that authority;
16 although we do not have a specific amendment to Executive
17 Order 10501, we have a letter from President Johnson to Chief
18 Justice Warren in his capacity as chairman of the Commission,
19 stating that the Commission was waived from a particular
20 provision of the Executive Order.

21 We can assume that the President --

22 Ms. Abzug. The Commission was what?

23 Mr. Garfinkel. These were waived from a particular
24 provision of the Executive Order. I can be more specific.

25 When the Commission's report came out, many of the

1 documents which originally had been marked Classified, retained
2 their classification marking although, subsequently, they had
3 been declassified.

4 The Executive Order provided a mechanism whereby previous-
5 ly classified documents could be marked as declassified. It
6 was that mechanism that the Commission failed to use in
7 marking its previously classified documents as unclassified.

8 Noting that they were coming out with their report, and
9 that would create a very bad problem --

10 Ms. Abzug. I would like for you to provide for the
11 record this. I think we have the affidavit you mentioned,
12 and we would like you to submit a copy of that, but we do not
13 have a copy of another statement that you referred to, that is,
14 of the President. That is the letter from President Johnson
15 stating what?

16 Mr. Garfinkel. Stating that the Commission was waived
17 from paragraph 5(1) of Executive Order 10501 which set out a
18 procedure whereby the Commission documents could be declassified.

19 Ms. Abzug. Please provide that for the record even
20 though it is very interesting, in view of the fact that there
21 had not been any indication that there was any authority given
22 for classification of the Warren Commission report.

23 (The material to be supplied follows:)
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1 Ms. Abzug. Congressman Gerald Ford, as opposed to
2 President Gerald Ford, published this book called "Portrait
3 of the Assassin" in 1965. He quoted in it extensively from
4 the January 27th transcript.

5 For nine years after Mr. Ford had published parts of it,
6 the Archives continue to suppress the entire transcript on the
7 grounds that it had been classified Top Secret pursuant to
8 Executive Order 10501.

9 How did that happen?

10 Dr. Rhoads. I think we were not aware until fairly
11 recently of the fact that there was not a completely
12 regularized grant of authority to the Warren Commission to
13 classify. We assumed they had the authority, and for a number
14 of years proceeded on that basis.

15 Ms. Abzug. I find that fascinating.

16 We are entrusting to the Archives our whole history.
17 This is important to know about. This is part of knowledge.
18 We are almost in a situation where we have to have an archaeolo-
19 gical expedition to discover the writings on the walls.

20 I find this remarkable that you do not know anything, or
21 you did not know for how many years?

22 Mr. Johnson. Nine years.

23 Ms. Abzug. Nine years.

24 You did not know for nine years by what authority, if
25 any authority, the documents of the Warren Commission were

1 classified. You still really have not unraveled the question,
2 because part of your documents remain classified, and I just
3 gave you an example of a document from which Congressman Gerald
4 Ford quoted extensively in his book in 1965. You maintained
5 for nine years the same material classified in the Archives
6 without any authority of classification residing anywhere.

7 The reason this is critical is that we cannot, as a
8 nation, stand up to the requirements of information of an
9 informed citizenry, to even historic necessity, of recording
10 our history if information is going to be concealed illegally,
11 and classified illegally.

12 Dr. Rhoads. I assure you that there was no intention
13 or awareness of illegally concealing any information that was
14 operable.

15 The whole thrust of our institution is to open as much
16 material as we are allowed to by law and Executive Order. We
17 may get a little bit behind at times because, after all, we
18 have a great deal of material.

19 We have to rely to some extent on the interested research-
20 er coming in and saying "I would like to see this and so."
21 We check it, and if it is classified and if it appears to us
22 that perhaps there is no longer any reason to keep it classified,
23 then we go to bat with the agencies to try to get it opened up.

24 Ms. Abzug. Knowing this, is there any reason why you, as
25 the Custodian of these records, cannot annotate them to show

1 that the classification markings have no effect?

2 Dr. Rhoads. If we find material - and we do find it
3 frequently - where there are classification markings and there
4 is no information in there, that is, that ever should have been
5 classified, then we strike out those markings.

6 If we find documents, and if documents come to our
7 attention, which contain information that perhaps at one time
8 was reasonably classified but does not seem to make sense any
9 longer, then we go to the agencies and try to get them to de-
10 classify them. They have the final authority, but we do take
11 these initiatives. We feel very strongly that it is part of
12 our mission to do so.

13 Ms. Abzug. There apparently was no authority for
14 classification in the first place.

15 You heard testimony this morning from one of the Counsels
16 to the Warren Commission, the Assistant Counsel, who made clear
17 that he believed that there was no authority and that he
18 thought these documents should be made available and de-
19 classified.

20 We have now had information from you, and other informa-
21 tion, which my staff has collected, which indicates that
22 without authority individuals, really having no particular
23 reason, have classified documents. A stenotypist classified
24 documents. Certain people would like to have had that
25 destroyed. We do not know whether all the documents are there.

1 We have testimony that some documents marked Classified
2 in your possession are out in the libraries for the public to
3 see, not necessarily in the custody of a security cleared
4 employee.

5 What I would like to get from you out of all of this is:
6 how do you feel about these documents?

7 If, indeed, this Commission never once had classification
8 authority, then by what authority do you withhold these docu-
9 ments from the American public?

10 Are you going to permit some stenotypist to decide for
11 the American public that a document should be withheld from
12 the public? Are you going to allow yourself to be the vehicle
13 for that?

14 Dr. Rhoads. I do not believe any stenotypist made those
15 decisions. They were instructed by Mr. Rankin to place these
16 classification markings on them. That was not a stenotypist
17 exercising authority.

18 Ms. Abzug. You are making an assumption, and inasmuch
19 as there is no actual authority, you are dealing with assumpt-
20 ions.

21 What I am trying to suggest to you is that there has been
22 a great deal of discussion on this subject which would seem to
23 indicate that most people feel that these documents serve no
24 purpose in being classified. Would you agree with that?

25 Dr. Rhoads. I would agree that by far the large bulk

1 of the records of the Warren Commission can and should be open
2 and are open.

3 Ms. Abzug. What should be withheld?

4 Dr. Rhoads. I think the kinds of documents that Mr.
5 Belin mentioned as being appropriate for continued withholding
6 in the records of the Rockefeller Commission are basically the
7 same --

8 Ms. Abzug. I am talking about the documents in your
9 possession. Is it not so that every one of those documents
10 should be declassified, and in view of the fact that you have
11 mistakenly held those documents in classified condition, do
12 you not have a responsibility to act and make clear to the
13 public and to the researchers that these documents are
14 available in declassified form?

15 Dr. Rhoads. We have declassified, with the cooperation
16 of the agencies, a good deal of material. With regard to the
17 material that remains classified, most of that is classified
18 by authority of the agencies which furnished that information
19 to the Warren Commission.

20 The other information, which may still remain classified,
21 where the Warren Commission itself, rightly or wrongly,
22 exercised an independent authority, has been declassified by
23 us to the extent that it can be, without having a contradictory
24 situation with regard to the internal records of the Commission
25 as against the materials that were furnished to it by other

1 agencies.

2 Ms. Abzug. I have great difficulty in following this,
3 because we have a very interesting thing here.

4 If, indeed, there has been no classification authority,
5 then it seems to me what you are doing is tracing back the
6 classification, and if it is invalid then it is invalid. You
7 cannot subsequently say that some agency is making it valid.

8 Dr. Rhoads. Perhaps this will tend to clarify that.

9 It is information that is classified, not a document.

10 Ms. Abzug. For ten years?

11 Dr. Rhoads. It could very well be.

12 But it is information, and not the documents.

13 Ms. Abzug. Many of us who have talked about this make
14 clear that, if that information is made available to the public,
15 then it is information that indeed would be helpful in terms of
16 settling the dispute or the unease and concern of the people.

17 Dr. Rhoads. I think if this information should be
18 released, then that might serve a useful purpose in the sense
19 that you are addressing.

20 However, there is information still withheld that does
21 relate to sources and methods. The release of some would
22 violate personal privacy.

23 Ms. Abzug. Let me make it simple. You have not even
24 thought about privacy. You did not think about it until we
25 passed it in 1974. You did not think about Freedom of

1 Information until we passed the amendments of 1974. Now you
2 are protecting the public and individuals based upon these
3 Acts which we have attempted to pass, so that we could get
4 the Constitution to work.

5 Will you open up to public access those documents which
6 were created by the Commission without any classification
7 authority, and which do not contain other agency information
8 which you trying to talk about? These do not contain other
9 agency information. They just contain reports of the Warren
10 Commission.

11 Will you open up to the public access to those classified
12 documents, knowing full well, as we all do sitting here in this
13 hearing, that those documents were never classified pursuant
14 to any authority, and that those documents should be made
15 available to the public. Indeed, those documents, and parts
16 of them are all over the place. They are declassified by
17 actual practice, except in the Archives.

18 Will you open up to access those classified documents
19 of the Commission which do not contain other agency information?

20 Dr. Rhoads. I think they are probably all open now.

21 Ms. Abzug. You are under oath here. I noted the word
22 "probably."

23 Dr. Rhoads. I am very conscious of that. I do not want
24 to make a categorical statement for that reason.

25 Ms. Abzug. I know you do not.

1 Dr. Rhoads. I think that practically all, if not all,
2 of that kind of material is already open.

3 I will certainly be happy to make a review of the
4 situation. There have been many reviews. We will be glad to
5 review it again. I certainly share your feelings that as much
6 of this material as can be released ought to be released.

7 I believe that sincerely as a matter of personal
8 philosophy and professional ethics.

9 If I may, I would like to correct one mis-impression or
10 what I fear may be a mis-impression. That the National Archives
11 was never interested in personal privacy or the issue of
12 personal privacy until Congress passed the Privacy Act last
13 year is simply not correct. There is a wealth of information
14 in our files to prove that it has been our practice to try to
15 draw very carefully and conscientiously that very fine and
16 delicate and important line between the public's right to know
17 and the citizen's right to privacy, ever since the Archives
18 came into effect, Ms. Abzug.

19 Ms. Abzug. I understand.

20 We are going to break through the conflict, because I
21 think the two will play against each other and we do not want
22 you to do that.

23 Dr. Rhoads. I do not want to play them against each
24 other either.

25 Ms. Abzug. The whole purpose is to do two things: one

1 is to make clear that the public has a right to know, and the
2 other is to make clear that the Government does not have a
3 right to know certain things.

4 Dr. Rhoads. I am in sympathy with that.

5 Ms. Abzug. In this Committee we are dealing with that
6 subject every single day. I cannot tell you the problems that
7 the bureaucracy has created on this. In many instances I am
8 sorry to say it is done to prevent the living side by side of
9 those two propositions.

10 Dr. Rhoads. That may be. I sincerely do not believe
11 that is true of the National Archives.

12 Ms. Abzug. The question is this.

13 I asked you and you said you would let us know whether
14 you had done it, that is, to open up to public access those
15 classified documents created by the Commission which do not
16 contain any other agency information. I have a related question.

17 Do you not think that, as custodian of the records, that
18 you have a responsibility to annotate them to show that the
19 classification markings, which are placed on these documents
20 without authority, have no effect?

21 Dr. Rhoads. Where a document does not contain classified
22 information and was wrongly classified in the first place -
23 and believe me I have seen a lot of them, and I know you have
24 too - we strike that out. We do not honor it.

25 Ms. Abzug. I have asked you a very specific question.

1 There is testimony, and you have confirmed it, that there never
2 was any classifying authority to the Commission, and that you
3 hold documents in the Archives with classification markings
4 which are unauthorized by anybody.

5 Therefore I ask you specifically, as custodian of those
6 records, do you not have a responsibility to annotate them to
7 show that their classification markings have no effect?

8 Dr. Rhoads. I think I have a responsibility to make
9 sure that the information which is validly classified remains
10 so.

11 Ms. Abzug. It is not validly classified.

12 Dr. Rhoads. If it is not validly classified, then it
13 should not be marked in any case.

14 Ms. Abzug. We have that testimony.

15 Dr. Rhoads. I do not think in the case of the Warren
16 Commission it is that crystal clear.

17 Ms. Abzug. How do you explain the Gerald Ford instance,
18 then? He published in his book certain information of the
19 January 27th transcript, and yet for nine years after Mr. Ford
20 published parts of it, the Archives continues to suppress the
21 entire transcript on the grounds that it had been classified
22 Top Secret pursuant to Executive Order 10501?

23 Dr. Rhoads. We assumed that it had been classified
24 pursuant to 10501.

25 Ms. Abzug. But you know that it was not. You testified

1 to that effect.

2 When did you find that out?

3 Mr. Johnson. When the Weissberg case came up.

4 Ms. Abzug. That was three years ago.

5 You continue to testify, and just this year you released
6 that transcript. You are in a bad habit. We all know what
7 happens. You get a habit, it is hard to kick it. But the
8 point is you have got to get out of this habit.

9 This Committee is dealing with this issue because,
10 frankly, we have got to deal with this craziness which has
11 been going on in this Government for so long. We classify so
12 much we do not know the difference between secret and not
13 secret any more.

14 That stenotypist incident grabs me. For that stenotypist
15 to classify the notes --

16 Dr. Rhoads. The stenotypist did not classify the notes.

17 Ms. Abzug. It is my way of making the point. We do not
18 know anything about it. There was no authority. There really
19 was no person who had the right. It is a paranoia.

20 Dr. Rhoads. Under Executive Order 10501 there was a
21 great deal of looseness. There was a great deal of over-
22 classification, there was a great deal of improper classifica-
23 tion, there was no central control over it. I agree with you,
24 it was a bad chaotic situation.

25 With the Order 11652 I do not claim that we have come into

1 the Promised Land, but there are some very important mechanisms
2 that are now in place that are trying very hard to address the
3 kind of problem you have been talking about, quite legitimately.
4 I would agree with you that they existed under the old
5 Executive Order.

6 Ms. Abzug. Let me ask you a question.

7 Do you feel now, as Archivist of the United States, that
8 you can make the decision to review the classification markings
9 and decide that they are invalid? Do you have that authority?

10 Dr. Rhoads. I have that authority for materials that
11 are 30 years old. I also have authority, under the terms of
12 the Executive Order, to introduce a Mandatory Review Request.
13 That is a right which is accorded, not only to an individual,
14 but also to a Department of the Government. If we have
15 material in our custody, which we feel is wrongfully classified
16 or about which there may be question, we have the authority
17 to launch a Mandatory Review Request to the classifying agency.

18 Any individual citizen would have that. We have used
19 that. We have used it repeatedly with regard to materials in
20 the Presidential Library system. A good deal of material has
21 been opened up.

22 We do not have endless resources. We know that there
23 are other things in our holdings which, if we went on a piece-
24 meal basis, we could do it. We have tried to use that
25 authority when it seemed that there was a good opportunity to

1 open up substantial amounts of material. It seems to me that
2 it makes a lot more sense for us to put in ten Mandatory
3 Review Requests which are going to open up 500,000 documents,
4 than to put in ten Mandatory Review Review Requests that are
5 going to open up ten documents.

6 So, we have tried to exercise responsible use of our
7 resources in getting the most for our dollar.

8 Ms. Abzug. Do you think that you have the authority to
9 declassify these documents, inasmuch as the original classifi-
10 cation was not valid?

11 Dr. Rhoads. I do not have the authority to defy an
12 agency having original classification authority.

13 Ms. Abzug. That is not what I asked you.

14 These documents are marked classified. There is no
15 authority that has been cited as having the basis for doing so.
16 I now suggest to you, and I have been suggesting it throughout
17 the hearing, that these classification markings should be
18 marked invalid. I think the only one who should really do that
19 is you as Archivist of the United States.

20 If you think you have the authority, I would like to get
21 an answer yes or no.

22 If you think you do not, then I would like to make a
23 suggestion.

24 Dr. Rhoads. I think I have authority with regard to any
25 of the internal records of the Warren Commission, where the

1 information is not derived from other classified materials not
2 originating in the Warren Commission.

3 Ms. Abzug. Will you proceed to do that?

4 Dr. Rhoads. As I indicated earlier, we will review the
5 situation and, if we find that there are materials of that sort
6 still bearing the classification markings, then I will be glad
7 to.

8 Ms. Abzug. Would you be good enough to submit that for
9 the record or to this Committee as soon as you complete the
10 review?

11 Dr. Rhoads. I will be happy to do so.

12 (The material to be supplied follows:)

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1 Ms. Abzug. We are trying to deal with access policies
2 and the freedom of information, and privacy, and classification.

3 There are other conflicting access policies. We
4 discovered this in going into the question of records being
5 kept in the Archives on the Warren Commission.

6 We have Jack Ruby's income tax returns, and the income
7 tax records of his relatives which were published in the
8 Warren Commission report. They appear in Volume 18 covering
9 some hundred or so pages. Yet Lee Harvey Oswald's income tax
10 returns were not published by the Commission, and these tax
11 records of Oswald's are still being withheld by the Archives.

12 Can you explain that inconsistency?

13 Dr. Rhoads. I cannot explain why the Warren Commission
14 felt free to go ahead and publish the Ruby tax returns. There
15 is an explicit provision in the law which prohibits the
16 release of personal income tax returns. The Oswald tax returns
17 are being held pursuant to that requirement of law.

18 Ms. Abzug. What happened to Jack Ruby's rights under the
19 law?

20 Dr. Rhoads. I do not know. They are gone.

21 Ms. Abzug. You have to know.

22 Dr. Rhoads. That was a decision made by the Warren
23 Commission and not by me, long before we ever had the records.

24 Ms. Abzug. Well, we have seen that they had no
25 authority. I am suggesting to you that these income tax

1 returns of Oswald's should be as available as the Ruby tax
2 returns. I am asking you as the Archivist to explain this
3 discrepancy, and how you can have one and not the other.

4 Dr. Rhoads. It is a discrepancy I am afraid I cannot
5 explain.

6 Ms. Abzug. What are you going to do about it? Some-
7 times you cannot explain, but what are you going to do about it?
8 Are you going to do something about it?

9 Dr. Rhoads. There is nothing I can do about the fact
10 that the Ruby tax returns have already been released. The
11 Oswald returns have not been released, and it is my understand-
12 ing that, if I am going to obey the law, I have to keep those
13 closed. I have to look at that in itself.

14 Ms. Abzug. We did some investigating in the Government
15 Operations Committee and we found that all farmers' tax
16 returns were made available to the Executive Branch.

17 Dr. Rhoads. Was it authorized by law?

18 Ms. Abzug. No, we stopped it.

19 Dr. Rhoads. Good for you.

20 Ms. Abzug. Those farmers had to kick in a lot of money
21 to that campaign.

22 I agree there was a law, but I find it complicated to me.

23 Dr. Rhoads. It is regrettable that it has not always
24 been obeyed, but I am not going to be the one who disobeys it.

25 Ms. Abzug. You are going to make this review?

1 Dr. Rhoads. Yes.

2 Ms. Abzug. And you are going to make a list of all the
3 documents designated to be withheld or ones that you still
4 think should be withheld, and submit it to this Committee as
5 soon as practical, is that correct?

6 Dr. Rhoads. I will be glad to do that.

7 Ms. Abzug. In connection with that, I hope this will not
8 be necessary, but I hope that you will indicate to me and to
9 this Committee that, should you decide that you cannot in a
10 particular case or particular document declassify or mark
11 appropriately that there was an invalid classification, that
12 you indicate the reasons for such.

13 Dr. Rhoads. If I feel that I cannot declassify something
14 for which no authority exists, then I will.

15 Ms. Abzug. You have several routes. I have given you
16 two at least.

17 You are an Archivist and that is an imposing function to
18 take care of all the history of the nation. It seems to me
19 that if you know that documents were not classified pursuant
20 to any authority, that at least there should be that notation.
21 And what happens should be a matter of decision outside, but
22 certainly it seems to me that is the minimum of your responsi-
23 bility.

24 The second step would be to declassify, the first step
25 would be to simply to say that it was improperly classified or

1 classified without authority.

2 It seems to me that is the minimum that I would do if I
3 were in your place, if they gave me that job. It probably
4 pays better than my job.

5 Dr. Rhoads. No it does not.

6 Ms. Arzug. I have to go to the Floor and the staff will
7 submit to you, Dr. Rhoads, some extensive questions and we
8 will leave the record open to receive the material that you
9 said you would supply us.

10 The meeting is adjourned.

11 (Whereupon at 12:10 p.m., the Committee adjourned.)
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