

GUIDELINES FOR REVIEW OF MATERIALS SUBMITTED TO
THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY

1. Statutory requirements prohibiting disclosure should be observed.
2. Security classifications should be respected, but the agency responsible for the classification should carefully re-evaluate the contents of each classified document and determine whether the classification can, consistently with the national security, be eliminated or downgraded.
3. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure--
 - (A) Would be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
 - (B) Might reveal the identity of confidential sources of information and impede or jeopardize future investigations by precluding or limiting the use of the same or similar sources hereafter;
 - (C) Would be a source of embarrassment to innocent persons, who are the subject, source, or apparent source of the material in question, because it contains gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

~~(D) Would reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.~~

Whenever one of the above reasons for nondisclosure may apply, your department should, in determining whether or not to authorize disclosure, weigh that reason against the overriding policy of the Executive Branch favoring the fullest possible disclosure.

Unless sooner released to the public, classified and unclassified material which is not now made available to the public shall, as a minimum, be reviewed by the agency concerned five years and ten years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at ten-year intervals until all materials are opened for legitimate research purposes. The Archivist of the United States will arrange for such review at the appropriate time. Whenever possible provision should be made for the automatic declassification of classified material which cannot be declassified at this time.

is still under consideration; and the appellant has been referred to the agencies that furnished documents to the Commission in regard to two documents.

The photographs and X-rays made during the autopsy of President Kennedy, which are not part of the records of the Warren Commission, were given to the General Services Administration (of which the National Archives is a part) by the Kennedy family pursuant to the provisions of 44 U.S.C. 397(e) (1) by an agreement dated October 29, 1964, which limits access to these materials (1) to persons authorized to act for a Committee of Congress, a Presidential Commission, or any other official agency of the Federal Government having authority to investigate matters relating to the assassination of President Kennedy and (2) to recognized experts in the field of pathology or related areas of science or technology whose applications are approved by the Kennedy family representative after a period of 5 years from the date of the agreement had elapsed.

Requests for access to the autopsy materials by a researcher after the effective date of the Freedom of Information Act were denied by the National Archives, referring to the terms of the agreement. His suit for access to the material was denied by the United States District Court for the District of Kansas. His appeal has been denied by the United States Court of Appeals for the Tenth Circuit. Since the expiration of the 5-year period mentioned in the agreement with the Kennedy family, five applications to examine the autopsy material have been received by the National Archives and referred to the Kennedy family representative. One application was approved by the Kennedy family representative, and the other four are still pending.

The above statistics concerning denials and appeals do not include denials of requests for copies of copyrighted materials and for copies of photographs of President Kennedy's clothing taken by the National Archives. The copyrighted materials and the photographs are available for inspection by researchers in the National Archives. The photographs of the clothing are shown to avoid any in place of the clothing, and copies are not furnished in order to avoid any possible violation of the agreement with the Kennedy family, by which the clothing also was given to the General Services Administration.

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Mr. MOONHEAD. Dr. Rhoads, under the new Executive order, as you say in your testimony, you will have the authority for the first time to declassify classified documents.

Dr. RHOADS. Yes.

Mr. MOONHEAD. What is the training or expertise of the employees of the Archives who will do the declassification?

Dr. RHOADS. We will have a number of persons on the staff, Mr. Chairman, professionally qualified archivists, persons with advanced academic degrees and long years of familiarity with the records, who will be heading this massive declassification project and giving guidance to it. But we will have to hire—this is assuming that our hearings before the Appropriations Committee later this week bear fruit—we will have to hire a substantial number of additional persons who will be trained by present members of our staff, both in the implications of the new Executive order and the mechanism that must be used to declassify the material and to interpret the guidelines. This is the most important part of it: to interpret properly but liberally the guidelines that are supplied to us by the agencies.

Mr. MOONHEAD. Is your testimony that a trained archivist, that experience is sufficient to pass judgments on classification or declassification?

Dr. RHOADS. Mr. Chairman, a trained archivist who has had experience in interpreting agency guidelines for the declassification of such materials, I believe, is fully qualified to do this work.

Mr. MOONHEAD. Well, we have heard testimony that, for example, our intelligence operations may have to be kept secret for a longer time than the ordinary man would comprehend. Would you need to have experts in the field of intelligence gathering?

Dr. RHOADS. I would like to pass that question, if I may, to Dr. O'Neill who has been working very closely with intelligence experts that the Department of Defense has had in the National Archives for many months. I think perhaps he can be more responsive to that than I can.

Dr. O'NEILL. We, of course, and our staff are not intelligence experts. We operate with the guidance provided by the intelligence community. The more refined they can make those guidelines the better our people will be able to separate out the kind of material that the intelligence community will wish themselves to see and on which they will pass the ultimate decision.

We have had, as Dr. Rhoads indicated, a team of Army intelligence reserve officers (better than 150 of them have passed through the reserves in the last year) working on army intelligence files. That is one of the pilot projects to which Dr. Rhoads's statement alluded. They have been able to declassify some 95 percent of the material in those files, and of the remaining 5 percent a good 4 percent they can't declassify because it isn't theirs, because it originated with some other part of the intelligence community or some foreign government such as Great Britain. We ourselves, however, will be making the kind of initial sifting of that kind of material and then passing the material which probably the intelligence officers will wish to see and

on which they will want to pass the ultimate judgment to them to decide. This procedure is in accordance with the new Executive order which places that responsibility on the agency itself rather than the National Archives.

Mr. MOORHEAD. It seems to me that the National Archives should have the capability of reaching an independent conclusion. Based on your experience, you should be arguing that even that 1 percent or one-half of that 1 percent of the classified information should still be declassified despite contrary wishes of the agency. You should be on the side of the people's right to know, since the State and Defense Department, CIA, and others are going to be on the side of maintaining secrecy. That is just in the nature of things.

If this subcommittee could do one thing, it is to urge you be on the side of people's right to know, be their, advocate, and prevail. I would like to see you have the ultimate decisionmaking power at least for documents past a certain age. It seems to me that the Archives has a better grasp of that than do the naturally secrecy-minded people of CIA, or State or Defense Departments. So I urge you to be strong and tough and don't let them maintain unnecessary secrecy. What kind of information would we be talking about during the 1939-1945 period? There is 1 percent that you say should properly remain classified. What type of information? I think you can tell us that without revealing.

Dr. O'NEILL. It would be mostly intelligence type information in the area of sources and methods, and cryptological material. And those are two areas in which we are not expert. We are not concerned about research and development technology documents of that vintage since we are told that those things go out of date nowadays within 5 years or so. We are not terribly concerned about military operations or overall military plans. We feel these are areas, such as you suggest, in which our judgment is probably quite sound, though we will still be following the guidelines. But the 1 percent will be essentially intelligence and cryptological material.

Mr. MOORHEAD. You are aware that the British have recently authorized the publication of their extensive "double agent" operation during World War II?

Dr. O'NEILL. Yes.

Mr. MOORHEAD. Again, it would seem to me that you would come back to our intelligence sources and say "if the British can do this, why can't we declassify similar information?" I can't believe it could be any more extensive as to methods or more significant than that already released by the British.

Dr. O'NEILL. I would agree. But it is not our ultimate decision, I think.

Dr. RHOADS. Mr. Chairman, I think you will find that over the past years, and certainly this will be even more true under the new Executive order, we have been on the side of opening just as much material as is possible to open. We have worked with researchers in attempting to convince the agencies that hitherto closed materials should be opened. There are some areas, of course, in which we do not have expertise on the staff and where we cannot properly, it seems to me, presume to know better than the originating agencies themselves.

That the release of certain material could cause great damage to the national security we cannot deny. But I think we are "on the side of the angels" on this one.

Dr. O'NEILL. And of this committee.

Dr. RHOADS. I am assuming this committee is composed of "angels." Mr. MOORHEAD. I do believe that you shouldn't just accept a statement from the Defense Department that some classified data is so sensitive that its release would "gravely damage the national interest." You ought to have someone who can make an independent evaluation and say to Defense, "you are absolutely wrong, this is ridiculous." You don't just have to accept the word of the Agency as fact. I urge you to have fighters who know what they are doing and to push for much broader declassification.

Have you seen drafts of the National Security Council guideline directive on the new Executive order?

Dr. RHOADS. I have seen an early draft, Mr. Chairman. I understand that it is being changed somewhat. I haven't seen what I understand is a more recent draft.

Mr. MOORHEAD. Did that draft of the NSC directives give you cause for the optimism which you express in your testimony today?

Dr. RHOADS. I think there was nothing in that draft which would cause me to lose the optimism that is reflected in my statement.

Dr. O'NEILL. We have, Mr. Chairman, suggested a few modifications of what we saw in that case also.

Mr. MOORHEAD. Dr. RHOADS, at the bottom of page 6 and the top of page 7 of your statement you discuss the provision of section 11 of the new Executive order dealing with declassification of documents in the six Presidential Libraries.

You state it means that you can now declassify such Presidential and White House documents subject to the restrictions of section 5, consultations with departments having primarily submatter interest, and in observance with the terms of the donor's deed of gift.

Do you expect that this new authority will result in a significant amount of declassification of such White House documents?

Dr. RHOADS. Yes, Mr. Chairman, I do.

Mr. MOORHEAD. Do you expect a liberal interpretation on the part of the affected executive departments?

Dr. RHOADS. I have reason to believe that there will be a more liberal interpretation than in the past, and the Executive order, as you will note, requires us to consult with the agencies of primary subject matter interest before we make a determination as to whether the material should be declassified or not.

Mr. MOORHEAD. Do you interpret that to mean if you consult with them and they don't want to declassify it, but you think it should be, that you can act or that you are subject to their decision?

Dr. RHOADS. I don't interpret it as meaning that we are subject to their decisions.

Now, I don't claim to be an expert in foreign affairs and national defense. Very serious consideration would, of course, be given to the recommendations of the agencies. I certainly would not want to be guilty of doing anything which would be against the best interest of the country. But I am interpreting the order literally, and it says we "consult" the agencies, and that we then determine.