

Testimony of Dr. James B. Rhoads
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The Warren Commission Records and the
"Freedom of Information Act"

The records of the President's Commission on the Assassination of President Kennedy (the Warren Commission) are administered under guidelines prepared by the Department of Justice in 1965 (copy attached) which provide for periodical reviews of the Commission's records in order to make as many of them as possible available for research. Any records withheld from research under the guidelines, of course, must belong to one or more of the types exempted from disclosure by the terms of the "Freedom of Information Act" (5 U. S. C. 552, subsections (b)(1) - (b)(9)). The reviews of the records provided for in the guidelines were held in 1965, 1967, and 1970. A large number of documents withheld from research as a result of the 1965 review were made available by the 1970 review. The five year review of the records withheld from research as a result of the 1967 review is now being conducted. This review includes a survey of the security classified documents among the Commission's records to determine whether they should be declassified or downgraded under the provisions of Executive Order 11652 (37 F.R. 5209), which goes into effect on June 1, 1972.

About 20% of the records of the Commission is withheld from research. These records are of the following types: (1) records exempted from disclosure by specific statutes, such as income tax returns; (2) security classified records

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specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy; (3) records that are part of investigatory files compiled for law enforcement purposes or that are inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency, the disclosure of which (a) would be detrimental to law enforcement, (b) might reveal confidential sources of information, or (c) would be a source of embarrassment to innocent persons; and (4) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

National Archives reference correspondence files concerning the records of the Commission contain denials of 326 requests for documents or parts of documents by 25 researchers under the exemptions in the "Freedom of Information Act" since the act went into effect on July 4, 1967. Some of the documents involved were later made available to the researchers by the 1970 review. Two researchers have appealed denials of requests by the National Archives for 15 documents or parts of documents to the General Services Administration. The appeals concerning 11 documents or parts of documents have been denied; the appeal concerning one document has been granted; the appeal concerning one document 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, 1966, 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 five 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 appeal citing the act was denied by the General Services Administration. 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 five 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 researchers 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.