

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
: HAROLD WEISBERG, :
: :
: Plaintiff :
: :
: v. : Civil Action 2052-73
: :
: UNITED STATES GENERAL SERVICES :
: ADMINISTRATION, :
: :
: Defendant :
: :
:

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

This action involves a suit brought under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, for disclosure of the transcript of an Executive Session of the Warren Commission held on January 27, 1964. The Complaint stated that the defendant, the General Services Administration, was withholding the January 27 transcript on the grounds that it was protected by two exceptions to the Freedom of Information Act, 5 U.S.C. §552(b)(1), which exempts from disclosure information "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy," and 5 U.S.C. §552(b)(7), which exempts "investigatory files compiled for law enforcement purposes except

K

was classified Top Secret pursuant to Executive Order 10501, or that if so classified, the classification was done by an authorized individual. Nor has the defendant asserted that the Warren Commission was authorized to classify documents Top Secret under the terms of Executive Order 10501. True, the defendant has filed a conclusory affidavit by Dr. James B. Rhoads, Archivist of the United States, which asserts that the transcript has been classified Top Secret "in accordance with Executive Order" ever since it came into the custody of the National Archives, but even this inadequate statement is unsupported by any evidence. If the January 27 transcript was originally classified in accordance with Executive Order 10501, evidence in support of that claim could have been obtained by the defendant and submitted along with the Rhoads' affidavit. For example, the defendant could have submitted a copy of the transcript's face sheet, which, if properly classified, is required to show the level of classification, the office of origin, the date of preparation and classification, and the identity of the person who classified the transcript. By not eliciting such facts, the defendant has failed to show that the transcript is lawfully classified Top Secret pursuant to Executive Order. Accordingly, the defendant has not met the burden placed upon it by the Freedom of Information Act of demonstrating that the transcript is entitled to protection under Exemption 1.

B. THE DEFENDANT HAS NOT SHOWN THAT THE JANUARY 27 TRANSCRIPT INVOLVES HIGHLY SENSITIVE INFORMATION THAT IS VITAL TO OUR NATIONAL DEFENSE OR FOREIGN POLICY

Executive Order 10501 limits all classification to "defense information." Top Secret information, is, of course, even more re-

stricted, as is shown by the text of Section 1(a):

Top Secret. Except as may be expressly provided by statute, the use of the classification Top Secret shall be authorized, by appropriate authority, only for defense information or material which requires the highest degree of protection. The Top Secret classification shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

The substance of the January 27, 1964 transcript is well-known, in part because it is extensively quoted in Chapter One of Portrait of the Assassin. In his affidavit, plaintiff has described the content of this executive session:

18. The January 27 executive session dealt with the rumor that Lee Harvey Oswald had been an undercover agent for the FBI. Although this rumor had been withheld from the members of the Commission, it was not news when it reached them on January 27, 1964. This rumor had previously appeared in print in Texas and Pennsylvania. Indeed, both the FBI and the Secret Service had conducted investigations of it a month and a half earlier. The FBI and Secret Service reports pertaining to their investigations of this rumor were never classified or withheld. In fact, affiant has many such reports in his possession. [Emphasis in the original. See attached affidavit of Harold Weisberg]

On the basis of both Chapter One of Portrait of the Assassin, attached hereto as Exhibit I, and plaintiff's affidavit, the Court can properly conclude that the January 27 Executive Session had nothing to do with information which was required to be classified Top Secret as that term is defined under Executive Order 10501. Moreover, other considerations add to the circumstances which dis-

pute any attempt to characterize the January 27 transcript as involving information required to be classified in the interests of the national defense or foreign policy. Thus, when Gerald Ford testified before the Senate Rules Committee about his authorship of Portrait of the Assassin with John R. Stiles, he stated:

. . . we wrote the book, but we did not use in that book any material other than the material that was in the 26 volumes of testimony and exhibits that were subsequently made public and sold to the public generally. [Hearings on the Nomination of Gerald R. Ford of Michigan to be Vice President of the United States, Committee on Rules and Administration, United States Senate, p. 89]

Clearly, Gerald Ford is under the impression that Chapter One of Portrait of the Assassin did not disclose classified information. Nor is Gerald Ford alone in that regard. Apparently no government official has accused Ford of leaking or disclosing classified information in connection with his book. Yet government heads have an affirmative obligation to take action if unauthorized disclosure of classified information occurs. Section 13(B) of Executive Order 11652 provides:

The head of each Department is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.

It is evident that no such action has been taken with regard to Gerald Ford's disclosure of lengthy verbatim quotes from the January 27 transcript. The obvious explanation for this is that the transcript does not contain information which is required to be

kept secret in the interest of national defense or foreign policy. This conclusion is fortified by the fact that neither the defendant nor anyone else has claimed that the national security suffered "exceptionally grave damage" as a result of the publication of segments of the January 27 transcript. It is simply preposterous to claim that today, more than nine years after Gerald Ford and John R. Stiles "declassified" parts of the transcript on their own hook, disclosure of the transcript could result in armed hostilities and the like.

As discussed in the preceding section, the decision of the Supreme Court in Mink was conditioned on the fact that the plaintiff there had not disputed either the fact of classification or "the documents' characterizations." In the case at bar, the plaintiff disputes both. Plaintiff believes that Mink stands for the proposition that a failure to comply with the requirements of Executive Orders 10501 and 11652 precludes the government from asserting the applicability of Exemption 1. On the present record, the very least that can be said is that the defendant has failed to affirmatively show that the transcript is classified in compliance with either Executive Order 10501 or 11652. As a consequence, the defendant cannot properly invoke the protection of Exemption 1.

II. DEFENDANT HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT THE TRANSCRIPT SOUGHT IS ENTITLED TO PROTECTION UNDER THE INVESTIGATORY FILES EXEMPTION

The defendant has also sought to invoke the protection of Exemption 7, which excepts from disclosure "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." With regard to

Exemption 7, the United States Court of Appeals for the District of Columbia Circuit has held that:

The threshold question . . . is whether the files sought . . . relate to anything that can fairly be characterized as an enforcement proceeding. Bristol-Myers v. F.T.C., 424 F. 2d 935, 939.

In Aspin v. Department of Defense, 348 F. Supp. 1081 (1972), the District Court applied this test to a suit to compel the Army to release the Peers Commission Report on its investigation into the My Lai incident. The Court found that Exemption 7 applied because "the affidavits of Mr. Robert Berry, General Westmoreland, and Colonel George Ryker clearly indicate that the Report was in fact the basis for the bringing of charges under the Code against both officers and enlisted men." Aspin, supra, at 1082.

In reviewing the Aspin decision in the aftermath of Weisberg v. Department of Justice, No. 71-1026 (D.C. Cir., October 24, 1973), the Court of Appeals again quoted the Bristol-Myers test:

The trial court's duty in FOIA cases is clear. It must examine the total record to determine "whether the files sought . . . relate to anything that can fairly be characterized as an enforcement proceeding." Aspin v. Department of Defense, No. 72-2147 (D.C. Cir., November 26, 1973), slip op. at 8.

In the instant case, the defendant has not submitted any affidavits in support of its Exemption 7 claim of immunity. In the instant case, unlike Aspin, the defendant is unable to name a specific law or statute which the transcript was or will be used to enforce. Unable to name a specific law enforcement purpose to which the transcript relates, the defendant has been forced to admit that it is unaware of any court proceedings which have been, or, in the future, may be initiated with respect to its unnamed law enforcement purpose. [See defendant's answers to plaintiff's interrogatories, Numbers 6-10] Also very damaging to the defendant's

claim of Exemption 7 immunity is the defendant's admission, in response to interrogatories 18 and 19, that the transcript has never been made available to any court or law enforcement agency or officer of the State of Texas. These Texas officials are the only authorities established to have had a law enforcement purpose, the trials of Lee Harvey Oswald and Jack Ruby, but the transcript was not made available to them, nor does the defendant claim that it was ever intended that it would be made available to them.

In its Memorandum of Points and Authorities in support of its summary judgment motion, the defendant has contended that:

. . . the Court may readily conclude from the circumstances surrounding the establishment of the Warren Commission as well as from the Warren Report itself that Commission files including the transcript of the January 27, 1964 executive session, are investigatory and were compiled for law enforcement purposes.
[Memorandum, pp. 7-8]

The defendant did not venture to put into the record any of these "circumstances", not did it even mention any. Since plaintiff believes that the Court may just as readily reach the opposite conclusion from the actual facts as it can reach the defendant's desired conclusion from its vacuum of "circumstances," plaintiff calls attention to the Executive Order which established the Warren Commission and which set forth the express, specific, and limited purposes for which the Commission was convened:

The purposes of the Commission are to examine the evidence developed by the Federal Bureau of Investigation and any additional evidence that may hereafter come to light or be uncovered by federal or state authorities; to make further investigation as the Commission finds desirable; to evaluate all the facts and circumstances surrounding such assassination, including the subsequent violent death of the man charged with assassination, and to report to me its findings and conclusions. [Emphasis added. Executive Order 11130, November 29, 1963, attached hereto as Exhibit J]

There is not a word in Executive Order 11130 which indicates that the Commission had a law enforcement purpose. The Commission's task was to prepare a report to the President, not to apprehend or prosecute assassins. (The only alleged assassin, it must be remembered, was already dead.) The Commission's purpose is not to gather evidence for a grand jury but to ascertain the truth about the assassination and prepare a report for the President who would then make it public.

Thus, on the basis of the evidence which now comprises the total record in this case, the Court must conclude that the defendant has failed to meet its burden of demonstrating that the transcript which plaintiff seeks relates to anything which "can fairly be characterized as an enforcement proceeding." The transcript is, therefore, not protected from disclosure by Exemption 7.

III. THE DEFENDANT HAS FAILED TO SHOW THAT THE JANUARY 27 TRANSCRIPT IS ENTITLED TO PROTECTION UNDER EXEMPTION 5

The defendant has also invoked Exemption 5, which exempts from disclosure "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 an agency." In its correspondence with plaintiff, the defendant had not previously claimed Exemption 5 as a grounds for withholding the January 27 transcript. Presumably it has now been added because of the weakness of Exemptions 1 and 7 as grounds for avoiding disclosure.

The obvious ground for objecting to the invocation of Exemption 5 is that plaintiff is seeking a transcript not a letter or memorandum. Again, the defendant has not submitted any affidavit or other evidence in support of its Exemption 5 claim, nor has the defendant specified the policy deliberated at the January 27, 1964 executive session.

In Ackerly v. Ley, 420 F. 2d 1336 (D.C. Cir., 1969), the Court of Appeals had occasion to interpret the underlying legislative history of Exemption 5:

That history, looked at in more detail, only confirms the view of it expressed by us in Saligson, and we accept the Commissioner's contention that the Congress intended that Exemption (5) was to reflect the privilege, customarily enjoyed by the Government in its litigations, against having to reveal those internal working papers in which opinions are expressed and policies formulated and recommended. Ackerly, supra, at 1341. [Emphasis added]

The legislative history which the Court of Appeals had examined states in part:

It was pointed out in the comments of many of the agencies that it would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny. It was argued, and with merit, that efficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to "operate in a fishbowl." The Committee is convinced of the merits of this general proposition, but it has attempted to delimit the exception as narrowly as consistent with efficient Government operation. S. Rep. No. 813, at 9. [Emphasis added]

The present case does not involve a situation in which the government agency could assert the privilege "customarily enjoyed by the government in its litigations." The government agency involved, the Warren Commission, is no longer in existence and never was involved in litigation. Nor has the defendant shown that the January 27 transcript deals with "legal and policy matters." And, in any event, it cannot be said that plaintiff's request that the transcript be disclosed nearly ten years after the Commission went out of existence is forcing the Commission to "operate in a fishbowl" prematurely.

Nor has the defendant shown that release of the transcript is in any way inconsistent with efficient Government operation. This the defendant is required to do. As the Supreme Court said

in Mink:

But the privilege that has been held to attach to intragovernmental memoranda clearly has finite limits, even in civil litigation. In each case, the question was whether production of the contested document would be "injurious to the consultative functions of government that the privilege of nondisclosure protects." Mink, supra, at 87, quoting Kaiser Aluminum & Chemical Corp. v. United States, 157 F. Supp. 939, 946 (Ct. of Cl. 1958)

Thus, even assuming for the purposes of argument that the transcript is properly described as an inter- or intra-agency memorandum or letter, the defendant has failed to establish that its release would be "injurious to the consultative functions of the government."

Finally, even if the transcript is an intra-agency memorandum, any claim to Exemption 5 immunity for it has been waived by: 1) the Warren Report's express denial of the rumor that Oswald had worked for the FBI, and 2) the publication, in Portrait of the Assassin, of lengthy parts of the transcript by a member of the Commission. The principle that public reliance on an internal memorandum operates as a waiver of Exemption 5 immunity was established by the United States Court of Appeals for the District of Columbia in American Mail Line, Ltd. v. Gulick, 411 F. 2d 696, 703 (1969).

CONCLUSION

For the reasons stated above, it is clear that the defendant has not met its burden of demonstrating that any of the cited exemptions protect the January 27, 1964 transcript from disclosure. In addition, it must be pointed out that in denying plaintiff access to this transcript after it has been extensively used by other persons for literary and commercial purposes, the defendant is arbitrarily violating plaintiff's First Amendment rights. It is a well-established constitutional principle that while regula-

tion of protected First Amendment activity may itself be proper, such regulation must be even-handed to a fault. Niemotko v. Maryland, 340 U.S. 268 (1951), Fowler v. Rhode Island, 345 U.S. 67 (1953), Edwards v. South Carolina, 373 U.S. 229 (1963). Denying plaintiff access to the January 27 transcript after it has been commerciall exploited by others is not "even-handed" treatment. Rather it is an arbitrary denial of First Amendment rights which violates the very constitutional premises upon which the Freedom of Information Act was based. As President Johnson commented on signing the Act:

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits . . .
2 Weekly Compilation of Presidential Documents
895, July 11, 1966.

Accordingly, plaintiff requests that the defendant's Motion To Dismiss Or, In The Alternative, For Summary Judgment be denied. In addition, plaintiff wishes to state that after the defendant has answered plaintiff's Second Set of Interrogatories, plaintiff will probably file a Cross Motion For Summary Judgment.

JAMES HIRAM LESAR
1231 Fourth St., S. W.
Washington, D. C.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Opposition and its attached exhibits has been made upon the defendant by mailing a copy thereof to its attorney, Mr. Michael J. Ryan, Esquire, Assistant United States Attorney, United States Courthouse, Room 3421, Washington, D. C. 20001, on this 12th day of March, 1974.

JAMES HIRMA LESAR

Exhibit A

PRESIDENTIAL COMMISSION
TO INVESTIGATE THE ASSASSINATION
OF PRESIDENT KENNEDY

5 December 1963
National Archives
Washington, D. C.

Reported and Transcribed by
Oakie Dyer
Reporter
Office of the United States Attorney
Washington, D. C.

EXHIBIT B

PRESENT:

Chief Justice Earl Warren - Chairman

Senator Richard B. Russell

Senator John Sherman Cooper

Representative Hale Boggs

Representative Gerald R. Ford

Mr. Allen W. Dulles

Mr. John J. McCloy

Mr. Nicholas deB. Katzenbach, Deputy Attorney
General (Present from 10:00 AM to 11:22 AM,
approximately).

PLACE:

Conference Room
National Archives
Washington, D. C.

TIME:

Approximately 10:00 AM to 12:45 PM, 5 Dec 1963

EXHIBIT D

Receipt No. 3013

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
628-6286

JESSE L. WARD, JR.
ALMA PAUL WICK
WAYNE EIRDELL

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date January 28, 1964

Received from WARD & PAUL NINE copies of transcript of proceedings
before President's Commission on the Assassination of President Kennedy
in re TOP SECRET
held at Washington, D. C. on January 27, 1964
01 of 9 thru 49 of 9
also, Reporter's notes, master sheets, carbon paper and waste.

To President's Commission on the Assassination
of President Kennedy
200 Maryland Avenue, N. E.
Washington, D. C. 20002

By Jesse L. Ward, Jr.

Released by Jesse L. Ward, Jr.
Washington, D. C.

EXHIBIT E

Registry B.2328

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS EK LOUISIANA 70130

April 20, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AIR MAIL


Mr. Jesse Ward
Ward and Paul, Inc.
917 "G" Street, N.W.
Washington, D. C.

Dear Mr. Ward:

Enclosed please find the depositions of
Edward Voebel, Julian Evans, Charles Hall Steele, Jr.,
Charles Hall Steele, Sr., and Charles Murrett, taken be-
fore Mr. Albert E. Jenner of the President's Commission
on the Assassination of President John F. Kennedy. Also
attached is the statement of George S. Thomas Co. for the
depositions taken by reporter Robert L. Lee.

I have retained in this office the carbon
copies of these depositions for inspection of the wit-
nesses or their counsel, in accordance with Mr. J. Lee
Rankin's letter of April 3, 1964.

Sincerely,



LOUIS C. LeCOUR
United States Attorney

LCL/eb
Encl.

TS 248(78)
TS 251(51)
TS 249(79)
TS 252(82)
TS 250(80)

EXHIBIT F

Receipt No. 3237

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
628-4266

~~XXXXXXXXXX~~
T. S. 249(79)

JESSE L. WARD, JR.
ALMA PAUL WICK
WAYNE BIRDELL

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date April 22, 1964

Received from WARD & PAUL 8 copies of transcript of proceedings
before President's Commission on the Assassination of President Kennedy

in re TOP SECRET -- Deposition of: Julian Evans

held at ~~Washington, D.C.~~ New Orleans on April 7, 1964

copies # 1 of 8 thru # 8 of 8

Herewith original copy from which copies were made Pages 1 thru 30

To President's Commission on the Assassination
of President Kennedy
200 Maryland Avenue, N. E.

Washington, D. C. 20002

By B. G. Beckman

Released by Wayne Birdell
Date 11/27/64 Time 10:10a

Exhibit

Preface

The testimony of the following witnesses is contained in volume VIII: Edward Voebel, William E. Wulf, Bennierita Smith, Frederick S. O'Sullivan, Mildred Sawyer, Anne Boudreaux, Viola Peterman, Myrtle Evans, Julian Evans, Philip Eugene Vinson, and Hiram Conway, who were associated with Lee Harvey Oswald in his youth; Lillian Murret, Marilyn Dorothea Murret, Charles Murret, John M. Murret, and Edward John Pic, Jr., who were related to Oswald; John Larro, Dr. Renatus Hartogs, and Evelyn Grace Strickman Siegel, who came into contact with Oswald while he was in New York during his youth; Nelson Delgado, Daniel Patrick Powers, John E. Donovan, Lt. Col. A. G. Folsom, Jr., Capt. George Konabedian, James Anthony Botelho, Donald Peter Camarata, Peter Francis Connor, Allen D. Graf, John Rene Heindel, David Christie Murray, Jr., Paul Edward Murphy, Henry J. Roussel, Jr., Mack Osborne, Richard Dennis Call, and Edwin Donald Lewis, who testified regarding Oswald's service in the Marine Corps; Martin Isaacs and Pauline Virginia Bates, who saw Oswald when he returned from Russia; and Max E. Clark, George A. Bouhe, Anna N. Meller, Stena A. Hall, John Raymond Hall, Mrs. Frank H. Ray (Valentina); and Mr. and Mrs. Igor Vladimir Voshnin, who became acquainted with Oswald and/or his wife after their return to Texas in 1962.

EXHIBIT H

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 2052-73

UNITED STATES GENERAL SERVICES
ADMINISTRATION,

Defendant
.....

AFFIDAVIT OF HAROLD WEISBERG

1. I am an author. I live at Route 8, Frederic, Maryland.
2. For the past ten years I have devoted myself to an intensive study of political assassinations. I am author of four published books on the investigation into President Kennedy's assassination: Whitewash: The Report on the Warren Report; Whitewash II: The FBI-Secret Service Coverup; Photographic Whitewash: Suppressed Kennedy Assassination Pictures; and Oswald in New Orleans: Case For Conspiracy with the CIA. I have also written one book on the assassination of Dr. Martin Luther King: Frame-Up: The Martin Luther King-James Earl Ray Case.
3. In the 1930's I was an investigator for and editor of the record of a subcommittee of the Senate Labor Committee. After Pearl Harbor I served in the OSS, where my primary responsibilities were as an intelligence analyst. I have also worked with the FBI and

several divisions of the Department of Justice in connection with my work for the Senate Labor Committee or through my writing.

4. As an intelligence analyst for the OSS and Senate editor and investigator, I am familiar with the handling of the transcripts of official proceedings. I have handled such transcripts myself and had them printed. I have served as a Department of Justice expert on such transcripts and testified on them in court.

5. I am familiar with government classification procedures. During my government service I was supplied with an assortment of stamps for stamping classifications on documents, but I was never given any meaningful standards or guidelines to use in determining which classification label to apply. There was no review of any classifications I affixed to documents.

6. Having spent thousands of hours examining the records of the Warren Commission, I am familiar with the Commission's work, including its record-keeping and filing systems.

7. I am the plaintiff in Weisberg v. General Services Administration, Civil Action No. 2052-73, United States District Court for the District of Columbia. I have read the defendant's Motion To Dismiss Or, in the Alternative, For Summary Judgment, and the Statement of Material Facts and Memorandum of Points and Authorities in support of that motion, as well as the Affidavit and Answers to Interrogatories sworn to by Dr. James B. Rhoads, Archivist of the United States.

8. In his affidavit Dr. Rhoads swears that: "In accordance with Executive Order, at all times since . . . the transcript of the January 27, 1964 executive session of the Warren Commission . . . has been in the custody of the National Archives . . . , it has been and continues to be classified 'Top Secret.'" (Paragraph

3 of Government Exhibit 1) In his answer to interrogatory number two, Dr. Rhoads further swears that the January 27 transcript "was originally classified under the provisions of Executive Order 10501" and is presently classified under the provisions of Executive Order 11652.

9. The inference to be drawn from Dr. Rhoads' sworn statements is that the January 27 transcript was originally and lawfully classified Top Secret pursuant to Executive Order 10501. This is false. The January 27 transcript was originally classified Top Secret by an employee of Ward & Paul, the privately-employed court reporter for the Warren Commission. Affiant believes that the wording of Dr. Rhoads' affidavit and Answers to Interrogatories was deliberately framed so as to deceive the court on this point.

10. Before the Warren Commission hired the commercial reporting services of Ward & Paul, a private firm, the Department of Justice itself provided these services. The Department of Justice did not classify these transcripts. Nor did the National Archives classify them thereafter. Attached hereto as Exhibits A and B are the first two pages of the first Warren Commission executive session, held in the National Archives on December 5, 1963. The December 5, 1963 session was reported and transcribed by Oakie Dyer of the Office of the United States Attorney for the District of Columbia. Although the December 5 executive session discussed some questions of utmost sensitivity, no classification stamp was ever affixed to the transcript, either at the time it was transcribed or later.

11. Attached hereto as Exhibit C is the first of a series of Ward & Paul worksheets itemizing the work which that firm did for the Warren Commission. In the upper right-hand corner this sheet bears the designation "File No. PC-2." This is the designa-

tion for the Warren Commission's "housekeeping file." The sheet was prepared by Ward & Paul. As the face of Exhibit C shows, Ward & Paul stamped even its housekeeping records Top Secret.

12. This worksheet also shows that all twenty-one entries on it are classified Top Secret. Thus, each transcript of all executive sessions held between January 21 and March 4, 1963 was classified Top Secret by Ward & Paul. As the third entry on this sheet reflects, this specifically includes the January 27, 1964 transcript whose disclosure I seek.

13. Further evidence that the January 27 transcript was classified Top Secret by Ward & Paul as a matter of routine and without regard to content is shown by Ward & Paul Receipt No. 3013, attached hereto as Exhibit D. This receipt reflects that the January 27 transcript was delivered to the Secretary to the General Counsel for the Warren Commission, who signed for it at 9:10 a.m. on January 28, prior to a reading of it by any member or employee of the Commission and after it had been classified Top Secret by Ward & Paul.

14. The Warren Commission disregarded the Top Secret labels which Ward & Paul routinely affixed to all the transcripts listed on this worksheet. In fact, nearly all of the Top Secret transcripts recorded on this worksheet were published by the Warren Commission itself.

15. The Ward & Paul practice of routinely classifying all transcripts Top Secret was not followed by Department of Justice employees who prepared and handled these transcripts. Attached hereto as Exhibit E is a letter of April 20, 1964 from Louis LaCour, then United States Attorney for the Eastern District of Louisiana, to Ward & Paul. Although the transcripts of the testi-

mony of five of the witnesses deposed in New Orleans were forwarded with this letter, the letter bears no classification stamp. One of the transcripts which the United States Attorney forwarded to Ward & Paul contained the testimony of Julian Evans, who had been an elderly neighbor of the Oswalds when Lee Harvey Oswald was a boy. When this previously unclassified transcript of Mr. Evans' recollections of Oswald as a young kid reached Washington, Ward & Paul promptly classified it Top Secret, as shown by Exhibit F. But Exhibits G and H, the Preface and Table of Contents to Volume VIII of the Warren Commission Hearings, show that the Commission ignored Ward & Paul's Top Secret label and published Julian Evans' testimony anyway.

16. The Ward & Paul practice of classifying all transcripts Top Secret had nothing to do with national defense or foreign policy. In fact, at a later date Ward & Paul downgraded its classifications from Top Secret to Confidential. The result of this downgrading was internal chaos: without the Top Secret stamp the Ward & Paul bureaucracy was unable to keep track of the various copies of the transcripts it prepared.

17. The substance of the January 27, 1964 transcript is well-known. When Vice-President Ford was a congressman and member of the Warren Commission, he put his campaign manager on his payroll and had him ghost the book they co-authored, Portrait of The Assassin. Chapter One of Portrait is entirely devoted to the substance of the January 27 executive session and contains many verbatim quotes from the transcript. In this manner, parts of the transcript denied to affiant were sold to Simon & Schuster and Ballantine Books for a total of \$13,000.

18. The January 27 executive session dealt with the rumor that Lee Harvey Oswald had been an undercover agent for the FBI. Although this rumor had been withheld from the members of the Commission, it was not news when it reached them on January 27, 1964. This rumor had previously appeared in print in Texas and Pennsylvania. Indeed, both the FBI and the Secret Service had conducted investigations of it a month and a half earlier. The FBI and Secret Service reports pertaining to their investigations of this rumor were never classified or withheld. In fact, affiant has many such reports in his possession.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this _____ day of March, 197₄, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires _____.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND