

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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:   
HAROLD WEISBERG, :   
:   
Plaintiff, :   
:   
v. : Civil Action No. 75-1448  
:   
GENERAL SERVICES ADMIN., :   
:   
Defendant. :   
:   
----- X

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 4  
U.S. Courthouse  
Washington, D.C.  
Tuesday, May 25, 1976

The above-entitled matter came on for Hearing on  
Pending Motions in open court at 10:02 o'clock a.m., before  
THE HONORABLE AUBREY E. ROBINSON, JR., United States District  
Judge.

APPEARANCES:

JAMES HIRAM LESAR, ESQ.,  
appearing on behalf of plaintiff.

MICHAEL J. RYAN, ESQ.,  
appearing on behalf of defendant.

EUGENE T. FEDORATION  
OFFICIAL COURT REPORTER  
6822 UNITED STATES COURT HOUSE  
WASHINGTON, D. C. 20001

## P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Weisberg versus General Services  
3 Administration, Civil Action 75-1448.

4 THE COURT: All right, you may proceed, counselor.

5 MR. RYAN: Good morning, Your Honor. My name is  
6 Michael J. Ryan, Assistant United States Attorney. I represent  
7 the defendant General Services Administration in this  
8 Freedom of Information Act suit.

9 Your Honor, last spring plaintiff made a Freedom of  
10 Information Act request to the General Services Administration  
11 by which he requested several executive session transcripts of  
12 the Warren Commission. In their response to plaintiff's  
13 request, the agency made available those transcripts with the  
14 exception of three which are the matters in issue in this  
15 complaint.

16 Those three are pages 63 to 73 of the January 21,  
17 1964 transcript; the May 19, 1964 transcript; and the June 23,  
18 1964 transcript.

19 Your Honor, defendants have filed a motion for  
20 summary judgment wherein they claim that various of these  
21 transcripts are exempt from disclosure under the Freedom of  
22 Information Act pursuant to Exemption 1, involving exemption of  
23 materials classified for national security or foreign policy  
24 reasons; Exemption 3, exempting materials which are otherwise  
25 exempt by statute; Exemption 5, exempting materials which

1 comprise intra-agency memoranda or interagency memoranda; and  
2 Exemption 6 which involves matters, the disclosure of which  
3 would involve a clearly unwarranted invasion of privacy.

4           If Your Honor wishes, I will proceed through each of  
5 these exemptions and give the reasons we have stated in our  
6 motion. If not, I would be happy to answer any questions with  
7 regard to any of these particular transcripts the plaintiff  
8 seeks.

9           I might add, Your Honor, that plaintiff has served  
10 two sets of interrogatories which we have answered. He has  
11 served two sets of document requests. We have responded to  
12 one of those document requests. The other is still pending and  
13 is due the first week in June. We expect to respond to that  
14 on time.

15           Plaintiff has also made a motion to tape record  
16 depositions. In that motion he sets forth his desire to depose  
17 approximately nine individuals, I believe, of various agencies,  
18 claiming that only in this way can he establish his claim that  
19 the documents are in particular not properly classified  
20 pursuant to executive order but certain other defenses that  
21 he wishes to raise.

22           In response to that motion, Your Honor, we contend  
23 that the affidavits which we have submitted should be suffi-  
24 cient for this Freedom of Information Act proceeding.

25           Further, that the other discovery devices which are

1 available to plaintiff, namely, interrogatories and document  
2 requests, should be sufficient for his purpose. We do not  
3 believe that this should be made into an open-ended discovery  
4 proceeding, which it has been nearly to this point.

5 THE COURT: Let me have the plaintiff state his  
6 position.

7 MR. RYAN: Fine, Your Honor.

8 MR. LESAR: Jim Lesar for Mr. Weisberg.

9 Your Honor, I will address first the defendant's  
10 motion for summary judgment which we contend is inappropriate  
11 at the present time for the reason that discovery has not  
12 been completed and that there are genuine issues of material  
13 fact in dispute.

14 In addition, the government has not met its burden  
15 with respect to any of the claimed exemptions. Some of the  
16 discovery already obtained, I think, indicates that the claimed  
17 exemptions are in fact rather ludicrous. The basic contention  
18 is that these transcripts are classified "Top Secret."

19 Now, the fact of the matter is that all of these  
20 transcripts, which originated in 1964 when the Warren Commis-  
21 sion was meeting and holding its executive session, transcripts  
22 were stamped "Top Secret" by Ward and Paul, the court reporter  
23 for the Warren Commission. This was done totally without  
24 regard to the content of the documents and as a matter of  
25 routine.

1           Most of the transcripts have subsequently been made  
2 public. Those, and all of those that have been made public,  
3 show that there was no basis whatsoever for their classifica-  
4 tion for reasons of national security.

5           The defendants are now trying after the fact, long  
6 after the fact, to classify these documents under Executive  
7 Order 11652. They have submitted an affidavit by Mr. Charles  
8 Briggs of the Central Intelligence Agency. That affidavit  
9 fails to recite that he has any experience in this field or  
10 that he has authority to classify documents, and under the  
11 terms of Executive Order 11652, that authority is required to  
12 be stated in writing.

13           The language that he uses does not comply with the  
14 terms of Executive Order 11652. It has very novel reference  
15 to such things as -- he states that the disclosure of the ten  
16 withheld pages of the January 21st transcript could, could, I  
17 emphasize, result in a perceived offense to the foreign nation  
18 involved. He has not specified what foreign nation is involved.  
19 He refers to sensitive diplomatic techniques, which is a phrase  
20 that we are unfamiliar with, which has no certain meaning, and  
21 this is --

22           I will digress here for a second to say that we have  
23 asked specifically to be able to take Mr. Briggs' deposition  
24 by tape recording. I think it is very essential because since  
25 the CIA is not a party to this action, the interrogatories that

1 we have addressed so far have only gone to the defendant, and  
2 we need to get Mr. Briggs under oath where we can cross-  
3 examine him about some of the statements that are contained in  
4 his affidavit.

5 With respect to the June 23rd transcript, he states,  
6 for example, that this would reveal a confidential source or  
7 method. Mr. Weisberg denies that this is even possible.

8 And the answers to the interrogatories that the  
9 defendant National Archives has given us show that they  
10 originally, when we asked, "Is Mr. Nosenko," who is a Soviet  
11 defector, "the source or subject of that transcript?" they  
12 refused to answer that interrogatory and invoked Exemption 1  
13 for doing it, and stated they could not answer that inter-  
14 rogatory because it would reveal the information they were  
15 trying to keep secret.

16 We pointed out that they had in fact in correspon-  
17 dence with The New Republic Magazine identified Mr. Nosenko as  
18 the subject of that transcript, and then they came back and  
19 answered the interrogatory and admitted that he was in fact  
20 the subject of that transcript.

21 Now, if that is what Mr. Briggs is trying to protect,  
22 there is no point in it at all because it is already known.

23 Excuse me. I need a drink of water.

24 I think that the Court can probably get some indica-  
25 tion of the suspect nature of the claims that these transcripts

1 are properly classified by the fact that the answers to  
2 interrogatories establish that, and the materials produced in  
3 response to our request for production of documents demon-  
4 strate that with respect to the January 21st transcript, seven  
5 of the ten copies which are known to exist are missing. The  
6 Archives do not have them, and the Archives do not seem the  
7 least bit concerned about it.

8           With respect to the June 23rd transcript, three of  
9 the copies that are known to exist are missing. And again  
10 there is no indication that they are in the least bit worried  
11 about it.

12           But if this material really contained information  
13 classified in the interest of national defense, I submit that,  
14 one, they would never be lost in the first place and, secondly,  
15 there would be a great deal of concern about their whereabouts  
16 at the present time.

17           ~~The answers to interrogatories further indicate that~~  
18 the entire question of the classification of these documents  
19 is being done not by virtue of the contents of the documents  
20 but solely in an effort to defeat Mr. Weisberg's request for  
21 them.

22           Their classification under Executive Order 11652  
23 does not occur in 1972 when they were first sent to the CIA  
24 with an inquiry as to whether or not they should be classified  
25 under 11652. They are classified a long time after Mr. Weisberg's

1 request for them. And then not all copies are classified but  
2 only the file copies.

3           And when we asked in interrogatories, well, when were  
4 the extra copies that the Archives has of these documents  
5 classified under 11652, they come back and they state that the  
6 non-file copies were stamped "Confidential" immediately upon  
7 receipt of these interrogatories, all of which indicates that  
8 the proper procedures are not being followed and that these  
9 documents are not classified at all under the proper criterion  
10 of Executive Order 11652.

11           The government has also invoked certain other  
12 exemptions. They have invoked Exemption (b) (3) which exempts  
13 from disclosure materials which are specifically exempted by  
14 statute.

15           The government's motion for summary judgment refers  
16 to a provision in 50 U.S. Code 403(d). That provision, first  
17 of all, does not apply to the type of information sought here.  
18 But more importantly, the motion for summary judgment cites in  
19 support of this claim, paragraphs two and four of the Briggs  
20 affidavit. Yet paragraphs two and four of the Briggs affidavit  
21 do not refer to that statute at all. They refer instead to an  
22 entirely different provision of Executive Order 11652.

23           So, then they have also invoked Exemptions 5 and 6.  
24 I have outlined in the opposition some of the reasons why we  
25 think that those are not justifiably invoked here.



1           In addition, we have raised very, very strongly the  
2 question of waiver, because the transcripts already made public  
3 contain exactly the same types of material which are contained  
4 in this transcript. Assuming just for the purpose of argument  
5 that they have a valid Exemption 5 or Exemption 6 claim, they  
6 cannot selectively release Warren Commission transcripts simply  
7 because it is less embarrassing to them to release some of  
8 them and more embarrassing to release others. There has been  
9 no consistent policy followed on this.

10           They have claimed, for example, that the entire  
11 transcript of May 19, 1964, is not subject to disclosure  
12 because it is protected by Exemption 6, which that exemption  
13 is intended to protect personnel files. We submit that the  
14 transcript of that session is not a personnel file within the  
15 meaning of the that exemption, and that even if it were, the  
16 National Archives has released scads of documents which contain  
17 exactly that type of information. They have released documents  
18 pertaining to security clearances and biographical sketches of  
19 members of the Warren Commission.

20           The May 19th transcript, by way of an aside, we  
21 think, deals with the opposition which was raised by certain  
22 members of the political right in opposition to one particular  
23 staff member of the Warren Commission, Mr. Norman Redlich, who  
24 the political right in this country felt was too liberal to  
25 be on the Warren Commission, and matters pertaining to this

1 whole controversy over Mr. Redlich's role in the Commission  
2 are already a matter of public record. It is reflected in the  
3 Congressional record and in newspaper articles and so forth.

4           So, our position is that the government has failed to  
5 meet its burden and, in fact, the facts now on the record  
6 indicate very strongly that it cannot meet that burden.

7           What we seek is the opportunity to cross-examine the  
8 principal person who is responsible for claiming that these  
9 documents -- that the January 21st and June 23rd transcripts --  
10 are properly classified. We believe that we can establish as  
11 a result of that deposition that the proper procedures were not  
12 followed, the proper considerations were not given, and that  
13 the transcript is in fact neither properly classified for  
14 substantive reasons or for procedural reasons.

15           MR. RYAN: Your Honor, there are three transcripts  
16 involved in this lawsuit. Two of the transcripts are presently  
17 classified "Confidential," not "Top Secret" as counsel  
18 indicated. Those are the January 21, '64 transcripts, pages  
19 63 to 73, as well as the June 23, 1964 transcript.

20           Those are both classified "Confidential." They were  
21 initially classified "Top Secret," and through periodic review  
22 -- the last review being at the time the Freedom of Informa-  
23 tion Act was amended -- the transcripts have been downgraded  
24 to lower security classifications. Those two remain classified  
25 "Confidential."

1           The other transcripts which plaintiff was provided  
2 had been declassified, and, of course, they were made part of  
3 the public demand at that point.

4           The transcript of May 19, 1964, is not classified  
5 but it does deal with the continued employment of two members  
6 of the Warren Commission staff. Due to material, investiga-  
7 tory materials disclosing certain aspects of their past life,  
8 that particular transcript, the May 19th transcript, continues  
9 to be withheld on the grounds of unwarranted invasion of per-  
10 sonal privacy of those individuals.

11           THE COURT: I think the difficulty with respect to  
12 both of these transcripts, that is, that which is withheld  
13 because of classification and that which is withheld because  
14 of the alleged personal nature of the information that is  
15 contained in them in the nature of personnel files -- that's  
16 what you are relying upon in Exemption 7. But I don't think  
17 your affidavits on record sustain that.

18           For example, with respect to your claim as to the  
19 May 19th transcript and its involvement in personal matters  
20 that would reflect adversely on somebody, it's only in the most  
21 general terms that you have described what allegedly exists  
22 in that transcript, and I don't think it's sufficient to sus-  
23 tain that exemption on the face of it.

24           I think the affidavit without more detail is not one  
25 upon which a third party, such as the Court, can make a

1 judgment as to the validity of that application of that  
2 exemption.

3 MR. RYAN: Your Honor, that's a short transcript. We  
4 would be happy to tender for Your Honor's in camera inspection  
5 with respect to the application of the sixth exemption to that  
6 transcript. I believe we do feel that it does contain those  
7 matters, but we would be glad for the Court to determine that.

8 THE COURT: It may well contain them, but the way  
9 you have set it forth in this record, the record would not  
10 sustain a judgment that it contains what you say it does, put  
11 it that way. It's too conclusory.

12 And that's the difficulty in these cases. Nobody  
13 is impugning the good faith of the government. But when you  
14 bring the matter to court, the court has to have a record upon  
15 which that --

16 MR. RYAN: Yes.

17 THE COURT: -- is obvious and evident, because  
18 otherwise we are right back where we were before they ever had  
19 the Freedom of Information Act.

20 MR. RYAN: Well, Your Honor, as I indicated, the  
21 May 19th transcript regarding the two individuals does not  
22 deal with the investigation that the Warren Commission was  
23 about. Rather it does deal with these two individuals, without  
24 naming them. Of course, naming would be to compromise the  
25 information which the agency seeks to withhold.

1           And it does say that their continued employment was  
2 a matter of discussion and questioned by the other members of  
3 the Commission for the reasons set forth, namely, that their  
4 past history disclosed questionable material. It doesn't deal  
5 with that questionable material because that might readily  
6 identify the two individuals.

7           As I said, Your Honor, we would be glad to tender  
8 that for the Court's in camera inspection. I believe that  
9 would be an expeditious way to resolve that particular docu-  
10 ment and the exemptions applicable to that document.

11           That document is not classified. We have never con-  
12 tended that it was classified in this proceeding. It was  
13 originally classified, but it has been downgraded to a no  
14 security classification. It is only being withheld under the  
15 5th exemption which we contend applies to all of those for  
16 intra-agency memoranda and the 6th exemption, the clearly un-  
17 warranted invasion of personal privacy, which would apply to  
18 personnel files, medical files or similar files, I believe the  
19 exemption reads.

20           So, we would be happy to tender that document, Your  
21 Honor. We feel that that would be an expeditious way of  
22 resolving the claim of unwarranted invasion of personal privacy  
23 rather than going around and around the question with further  
24 affidavits.

25           THE COURT: No, I don't think we should go around

1 around on it, and I don't intend to conduct this litigation in  
2 that fashion.

3           What we are going to do is to get a record that I  
4 think is sufficient upon which the Court can base its judgment.  
5 And if you disagree, then you can take it to the appellate  
6 court.

7           But I don't think that this record as it is now  
8 constructed will sustain my hearing the motion for summary  
9 judgment. I don't intend to decide the motion for summary  
10 judgment because I don't think the plaintiff has had full  
11 opportunity to probe, for example, this classification question.  
12 It's a weird set of circumstances that have been disclosed in  
13 the record to date.

14           Who had the authority to classify?

15           MR. RYAN: Your Honor, we --

16           THE COURT: And I don't think that your affidavits  
17 in that regard nor your statutory authority is clear.

18           MR. RYAN: We contend that on the face of the record  
19 -- and, Your Honor, we would submit that this could not be  
20 improved upon in a deposition. The Warren Commission was not  
21 given specific original authority to classify documents. But  
22 the President, President Johnson, and the members of the  
23 Commission acted as though it did have the authority to classify  
24 documents. And there was a letter from the President of the  
25 United States, Mr. Johnson at that time, to the Chairman of

1 the Commission informing him that the declassification schedule  
2 set forth in Executive Order 11652 did not apply to documents  
3 generated by the Warren Commission; that is, they did not have  
4 to undergo declassification review at the regularly scheduled  
5 intervals set forth in the executive order.

6 So, there was a clear assumption by the members of  
7 the Warren Commission and the President of the United States  
8 that there was that authority.

9 In subsequent administrations, the provisions of the  
10 Executive Order requiring that original authority be specifi-  
11 cally given to an agency -- that provision was complied with.

12 But our review has not disclosed any document -- we  
13 admit that in our answers to interrogatories and in our affi-  
14 davits -- that that specific authority was not given to the  
15 Warren Commission.

16 So that it becomes a matter of judicial interpreta-  
17 tion, ~~we would submit, Your Honor, whether or not for purposes~~  
18 of this proceeding those documents were properly classified  
19 pursuant to the Executive Order. We feel that the matter is  
20 ripe on that particular question for the Court's thumbs up or  
21 thumbs down, whether the documents were properly classified.

22 As I said, they are classified "Confidential" at this  
23 time. They have been downgraded. It may be that the docu-  
24 ments will be declassified completely within the near future.  
25 I don't know what the schedule is on another classification

1 review. I know that the last one was conducted at the time of  
2 the amendment of the Freedom of Information Act a year ago.

3 I might also add, Your Honor, that plaintiff has  
4 noted in his motion to tape record deposition that he wishes  
5 to depose nine individuals. At least he has proposed a list  
6 of nine individuals whom he may wish to depose.

7 We would submit that that is an extraordinarily high  
8 number of persons to be involved in discovery of the limited  
9 issues which are involved in this proceeding, namely: whether  
10 two documents were properly classified and whether a third  
11 document relates to matters which would involve personal  
12 privacy of individuals.

13 On that ground, Your Honor, we have opposed his  
14 motion and suggested that he can clearly obtain the information  
15 he seeks through the answers to interrogatories. We have  
16 answered two sets of interrogatories and two document requests.  
17 ~~We will have answered two document requests by the beginning~~  
18 of June, plus the affidavits which we have supplied in an  
19 attachment to our motion for summary judgment and in our  
20 motion in opposition to compel interrogatories.

21 THE COURT: Well, what is the objection that you  
22 have to answering Interrogatory No. 5? I fail to see why the  
23 specific information in that interrogatory, which deals with  
24 classification, was not provided. Who classified? When?  
25 Under what authority?



1           It certainly is not irrelevant. And you contend  
2 that it has something to do with the violation of the attorney/  
3 client privilege. But I don't see that at all. I think he is  
4 entitled to an answer to that interrogatory.

5           MR. RYAN: Your Honor, if that is the judgment of  
6 the Court, I will convey that to the agency and request that  
7 they answer the interrogatory --

8           THE COURT: Well, that's going to be an order.

9           MR. RYAN: -- as expeditiously as possible.

10          THE COURT: It won't be a request. It will be an  
11 order.

12          MR. RYAN: Fine, Your Honor.

13          THE COURT: Because that's the only way that Congress  
14 fashioned this in terms of litigation, for there to be court  
15 decisions, and the agency has no alternative except to take it  
16 to a higher court.

17          It's not a matter that once we get a Freedom of  
18 Information Act case that we sit and try to persuade the  
19 agency to do something. There's no persuasion here at all.  
20 It's the interpretation of the statute.

21                 And with respect to the question of tape recording  
22 depositions, Mr. Lesar, I don't understand why you can't get  
23 the information that I think you are entitled to with a properly  
24 fashioned set of interrogatories.

25          MR. LESAR: Well --

1 THE COURT: I don't see why you have to drag eight,  
2 nine, ten people in for depositions, whether taken by tape  
3 recording -- I understand that tape recording is much less  
4 expensive than court reporters, and we are not trying to impose  
5 additional expense.

6 But focusing on this area of our concern, about the  
7 propriety of the classification, getting sufficient details  
8 of that classification to see whether or not there was any  
9 statute or any properly extant executive order under which  
10 the classification could have been done, I think we can get  
11 that data, get that information by interrogatories.

12 Then if the government has to get it from eight or  
13 nine people, they can make telephone calls and whatnot, and it  
14 will be under oath.

15 MR. LESAR: Well, Your Honor, the government has  
16 previously taken the position in other Freedom of Information  
17 ~~cases that I have handled for Mr. Weisberg that I cannot~~  
18 address interrogatories to persons other than the defendant,  
19 and the Central Intelligence Agency is not a defendant in this  
20 case.

21 In addition to that --

22 THE COURT: Well, they can take that position if  
23 they want. But if the defendant has the ability to get the  
24 information that is responsive to the interrogatories and that  
25 information is in someone who is not a named party, I take the

1 position that the government still has the obligation to  
2 answer the interrogatory. Otherwise we would have to name  
3 every employee of the government in every one of these cases,  
4 not just Freedom of Information Act cases.

5 MR. LESAR: Well, Your Honor --

6 THE COURT: Now, don't interrupt me, Mr. Lesar. When  
7 you are winning, you keep your mouth shut.

8 No, it makes no sense at all. We know that the  
9 CIA is not a named defendant here. There's no need to name  
10 them. You are not seeking that kind of publicity to name them  
11 as a defendant.

12 I don't think we will have any problem. Mr. Ryan is  
13 not going to have any difficulty, if the interrogatories are  
14 properly framed, from whatever source within the government  
15 that he needs to get the information to properly answer the  
16 interrogatory, that answer will be put forward.

17 MR. LESAR: I suppose I have one difficulty in that  
18 I have encountered problems before where the information is  
19 not obtained on personal knowledge of the person who is swear-  
20 ing to the interrogatory. Now, if they are going to have Mr.  
21 Briggs swear out answers to interrogatories, I certainly would  
22 agree to that.

23 If they are going to have Dr. Rhoads say that Mr.  
24 Briggs told me thus and such, that puts us in a very difficult  
25 position.

1 THE COURT: Let me suggest, Mr. Lesar, that Mr.  
2 Ryan has enough work to do not to play games in this case.

3 MR. LESAR: I hope so.

4 THE COURT: All the government lawyers. And I don't  
5 have any time to play games, nor do you representing Mr.  
6 Weisberg.

7 We have a piece of litigation here that we should  
8 get ready for final disposition. We anticipate that there  
9 will only be questions of law.

10 Now, if there are more than that, then these eight,  
11 nine, ten people are going to be sitting in the anteroom out  
12 there waiting to testify in this court.

13 The government has its choice. This litigation will  
14 not go away. It will not evaporate. And I don't think that  
15 we are going to have any difficulty in this court.

16 Now, I don't know what your experience has been in  
17 any other court, but I intend to get the record developed in  
18 this case and dispose of it as expeditiously and as fairly as  
19 we can to both your client and the government.

20 MR. LESAR: Fine. Then we will prepare --

21 THE COURT: So, you get your interrogatories ready,  
22 and I don't think Mr. Ryan will have any difficulty in putting  
23 that information in proper form so we can make our determina-  
24 tions. And if we can't get it that way, as I indicated, then  
25 we will issue subpoenas and --

1 MR. LESAR: All right.

2 THE COURT: -- bring them in.

3 MR. RYAN: Your Honor, I can assure that the individ-  
4 ual or individuals who answered the interrogatories have  
5 personal knowledge through the answering --

6 THE COURT: I have no question about that, Mr. Ryan.

7 And they are going to answer your interrogatory you  
8 filed about the persons who reviewed the documents, et cetera,  
9 et cetera.

10 MR. LESAR: All right.

11 THE COURT: Now, as I indicated, I don't think that  
12 we are in a position on this record yet to determine the motion  
13 for summary judgment. When the record is more fully developed  
14 as it will be as a result of these interrogatories.

15 And I will expedite it, so you won't have to go  
16 through interrogatories in connection with this personnel  
17 claim. On the representation of Mr. Ryan, that's not a  
18 lengthy transcript. I will look at it and make that deter-  
19 mination as to their Exemption 6 claim on that May 16th item.

20 MR. LESAR: Your Honor, will we be afforded an  
21 opportunity to rebut that claim? It places us in a position  
22 to try and rebut an Exemption 6 claim submitted in camera.

23 THE COURT: Well, you take the basic position that  
24 there's no way it could be a personnel file.

25 MR. LESAR: Yes, that's correct.

1 THE COURT: I understand that.

2 MR. LESAR: Right. But we take a further position  
3 that they have waived this type of material with respect to  
4 other transcripts, and that some of the materials, for example,  
5 in that transcript may already be matters of public fact,  
6 public knowledge, and the Court will not necessarily know that  
7 without our opportunity to address that question.

8 THE COURT: Well, now, do you want to go that route  
9 or do you want to go the route with the government going to  
10 submit it to the Court?

11 MR. LESAR: May I confer with my client?

12 THE COURT: Well, you certainly can.

13 (Mr. Lesar confers with Mr. Weisberg.)

14 MR. LESAR: Your Honor, we will agree to in camera  
15 submission.

16 THE COURT: If I have any questions about it then,  
17 I will tell you.

18 MR. LESAR: All right.

19 THE COURT: I will make the government come back and  
20 do it the other way.

21 MR. LESAR: All right.

22 THE COURT: I don't like in camera review of any-  
23 thing.

24 MR. LESAR: We don't either. I feel pretty confi-  
25 dent about the outcome, but I just have an aversion to in

1 camera inspection.

2 THE COURT: So do I. But you know what the courts  
3 have said about it --

4 MR. LESAR: Yes.

5 THE COURT: -- the courts I have to listen to. Under  
6 certain circumstances it is an appropriate thing for a court  
7 to do in a Freedom of Information Act case. I have no alter-  
8 native but to do that.

9 MR. LESAR: I understand that.

10 THE COURT: I will do that. If I am not satisfied  
11 as a result of my inspection, then I will make the government  
12 come in with some more information about it.

13 MR. LESAR: All right.

14 THE COURT: So, we will take care of those two  
15 matters. And I think that if we go through that, if you want  
16 to supplement your response to the government's motion for  
17 summary judgment --

18 MR. LESAR: Yes.

19 THE COURT: Have you filed a cross-motion?

20 MR. LESAR: No, I have not; not yet.

21 THE COURT: Well, it may be --

22 MR. LESAR: Yes.

23 THE COURT: -- that after you have completed this  
24 discovery, that you will be in a position to file a cross-  
25 motion.

1 MR. LESAR: That's my intention.

2 THE COURT: And the government will have an oppor-  
3 tunity, if it wants --

4 Mr. Ryan, if you want to reply, just let us know  
5 so that we don't hold up the --

6 MR. RYAN: Thank you, Your Honor.

7 THE COURT: And I will make a determination when all  
8 the papers are in whether we should have a hearing on it.  
9 Sometimes you write so well and so cogently that we can go to  
10 work without listening to you. Most of the time you don't say  
11 anything in court that's going to make any difference, but  
12 lawyers like to talk.

13 So, if I find the time and you want to bring your  
14 client in, I will have a hearing.

15 But if you do your papers well, give me the citations  
16 to the record and whatnot, I think that we can probably --

17 MR. LESAR: All right.

18 THE COURT: -- decide it on the papers. But if I  
19 think that it would be helpful, I will bring you in and ask  
20 for an oral hearing on that.

21 Now, you want me to set a time frame? Well, the  
22 time frame for the written interrogatories could be controlled  
23 by statute, that is, your interrogatories in connection with  
24 this classification business. The government -- it will take  
25 you, Mr. Ryan, some time to get your answers to file.



1           When do you think you could have it in?

2           MR. RYAN: Probably within a week or so.

3           THE COURT: Well, I will give you ten days. That's  
4 the answers to the interrogatories that he has not --

5           MR. LESAR: After I submit the interrogatories --  
6 oh, or are you talking about the ones that are outstanding?

7           THE COURT: You have already submitted interrogatories  
8 he hasn't answered.

9           MR. LESAR: Yes.

10          THE COURT: He is going to answer that in ten days.

11          MR. LESAR: Right, all right.

12          THE COURT: You are going to get your interrogatories  
13 out. It's your business how soon you get them out.

14          MR. LESAR: Fine.

15          THE COURT: Then they will have the statutory time  
16 to answer unless they file a motion for extension or unless  
17 you stipulate a few days. Don't bother me about a two or  
18 three-day extension of time. Any time that you think is un-  
19 reasonable, then let me know and I will do something about it.

20                 But you have to recognize the fact that the public  
21 does not recognize, the fact that these cases put a tremendous  
22 burden on the government, a tremendous burden. There are  
23 logistical problems. There are only so many government lawyers,  
24 as big as the government is, who can deal with these questions,  
25 and only so many judges. People want all this business, but

1 they haven't increased the judiciary, you know, in quite a  
2 while. So, we have quite a volume of litigation.

3 So, try to work out as many matters as you can with-  
4 out --

5 MR. LESAR: We will do our best.

6 THE COURT: But I will be here if you need me,  
7 without question.

8 Is there anything else that we should resolve this  
9 morning?

10 MR. RYAN: Your Honor, I just had one point of lack  
11 of clarity on my part.

12 Your Honor, there were five interrogatories which  
13 the government did not answer. In one of those interrogatories,  
14 I believe, we made mention of attorney/client privilege. One  
15 interrogatory we did answer. And that leaves four interroga-  
16 tories which we haven't answered. I understand your order --

17 ~~THE COURT: I will rule on each one of them right~~  
18 now. Tell me the ones that you --

19 MR. RYAN: Your Honor, the first interrogatory which  
20 we have not answered is, "List the names of all persons who  
21 have been given copies of or who have had access to the June  
22 23, 1964 executive session transcript and state (a) the date  
23 on which each person listed was given a copy of or had access  
24 to this transcript; (b) the employer of each person listed."

25 "Answer. Defendant objects to this

1           interrogatory on the grounds that it is not relevant  
2           to the subject matter of this complaint."

3           There are persons outside of GSA who have been given  
4           copies or have had access to this transcript, Your Honor. And  
5           "(b) the employer of each person so listed."

6           THE COURT: Well, I don't know about the employer.  
7           that is going a little far afield. But who they are and when  
8           they were given, certainly you will tell them.

9           MR. RYAN: Very well, Your Honor.

10          THE COURT: There's no question in my mind about  
11          that. So, the only portion of that interrogatory you don't  
12          have to answer is who their employer is. If it becomes im-  
13          portant, I will let Mr. Lesar persuade me at a later date that  
14          he has got to know what employed them.

15          MR. RYAN: Your Honor, the second interrogatory which  
16          we have not answered is the same question with respect to the  
17          January 21, 1964 transcript.

18          THE COURT: You will answer it the same way.

19          MR. RYAN: The same way. There is one further sub-  
20          part of that interrogatory which asks whether the copy or access  
21          given to each person listed included pages 63 to 73 of this  
22          transcript.

23          Those are the pages which remain classified  
24          "Confidential," and I assume that if the copy were given to a  
25          person, that those pages would be included. But I believe we

1 can overcome that in our answer.

2 THE COURT: You can find that out. You can answer  
3 yes or no. Just find out. You can find the answer.

4 MR. RYAN: Very well, Your Honor.

5 The next interrogatory which defendants have not  
6 answered is, "Did any of the United States attorneys repre-  
7 senting defendant examine either the January 21st or June 23rd  
8 transcript before October 8, 1975? If the answer is yes, which  
9 ones and on what dates?"

10 "Answer. Defendant objects to this inter-  
11 rogatory on the grounds that the information  
12 requested is privileged."

13 Now, Your Honor, that was a sort of indirect  
14 reference to attorney/client privilege.

15 THE COURT: I don't understand the relevance. I  
16 don't understand what you are driving at, Mr. Lesar. Explain  
17 that:

18 MR. RYAN: I can speak for myself. As a United  
19 States Attorney, I have not had access to or seen either of  
20 these transcripts.

21 THE COURT: Let me hear from Mr. Lesar.

22 MR. LESAR: Well, Your Honor, the relevance is I  
23 want to know first whether or not the transcripts have been  
24 given to anyone not entitled to it, anyone not authorized to  
25 have access to it.

1           Secondly, when we filed suit in 1973 for the January  
2 27th transcript, the government came into court maintaining  
3 that it was properly classified "Top Secret," and I feel cer-  
4 tain that there were government attorneys --

5           THE COURT: Well, now we don't have any "Top Secret"  
6 to worry about.

7           MR. LESAR: "Confidential," we have, yes. But the  
8 fact is that if any attorneys did read that transcript, they  
9 have to have known that it was not classified because there  
10 was no information in it. It's now a public document. We now  
11 know that there was no information in it properly classified.

12           Now, the same may be true of these transcripts. And  
13 I want to know whether or not the attorneys are aware of the  
14 contents, whether they are defending simply on the basis of  
15 the agency say so.

16           In other words, it goes to whether or not the  
17 government is spuriously representing something to be properly  
18 classified which it in fact knows is not properly classified.

19           THE COURT: Well, this is just another way of getting  
20 at this correct classification question; isn't it?

21           MR. LESAR: In a way, yes.

22           THE COURT: Well, then why bother with it? We are  
23 going to determine that head-on. We are going to determine  
24 that head-on. You don't have to go through the back door route.

25           MR. LESAR: I would state that --

1 THE COURT: No. That interrogatory does not have  
2 to be answered at this juncture.

3 MR. RYAN: Your Honor, the final interroagory of  
4 the four unanswered interrogatories is the same question with  
5 respect to the Department of Justice or Central Intelligence  
6 Agency's attorneys, "Has any attorney for the Department of  
7 Justice or Central Intelligence Agency" --

8 THE COURT: Well, my ruling is the same until we  
9 get the information. I am going to see how your interroga-  
10 tories are responded to. We are going to deal with the  
11 classification question as directly as we can.

12 MR. RYAN: Thank you, Your Honor.

13 THE COURT: And if we get any finagling, then you  
14 might consider the back door.

15 All right, I think we understand each other rather  
16 clearly.

17 MR. RYAN: Thank you, Your Honor.

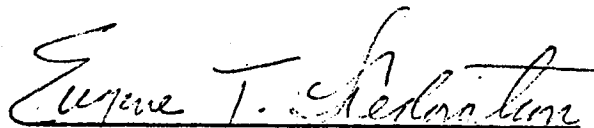
18 THE COURT: All right.

19 (Whereupon, at 10:48 o'clock a.m., proceedings  
20 in the above-entitled matter were concluded.)

21 -o0o-

22 REPORTER'S CERTIFICATE

23 Certified to be the official transcript of proceedings.

24 

25 EUGENE T. FEDORATION, C.S.R.  
Official Court Reporter