Dear Jim, Ryan's Motion to Dismiss; Memo Points, authorities, 75-1448 3/30/76

Your mailing did come today. To close to lunch time I've read to the attached affidavits. I have a few comments from a single hasty reading I'll start to make now and then will address individual points spearately, so I can give you this tomorrow. I don't know how much time you have but I think another and powerful, accusatory affidavit is called for. If you agree you may want to begin with asking for an extention of time for response.

Ryan's purposes that are obvious from the hasty reading include laying a basis for Robinson's being without the right to make any judicial determination. Our response therefore should be to lay a basis for Robinson's finding otherwise combined with a record that gives him not reasonable alternative. This means a polite cutting and slashing, beginning with Ryan who argues in the case execatly opposite his argument in 75-225 even on discovery. He is quite vulnerable and we should give Robinson the opportunity to do with Ryan what Ryan is trying to do with and to Robinson.

I won't now have time to go over the earlier record but I'm wondering, from recollection, if it is consistent with what Ryan here argues and alleges.

This is a close to perfect setup for a David-Goliath act if we can find the time, most of which will be your polishing what I do in the affidavit and your legal arguments. The fact is our way once we decide what fact we want to use. The case we can make out of their lying is powerful, even with Briggs.

I've skimmed the entire thing. I think that with my present time pressures, getting ready to leave tomorrow, when I'll give this to you, I'd best use a series of individual pages and let you assemble them at least to begin with. I'll have a carbon and if we have time after I return, which means beginning Saturday, I'll add to it.

Some of the dishonesties in citation are beyond belief in their selectiveness.

I'll also have some copying to do. If I can arrange it with Floyd I'll get that done Saturday if some students can come. Otherwise I'll get back to it for you. I mean such things as samples of perious suppressions where the same things were alleged. Some of these I'll leave to you rather than risking overlaoding you. Like what is in the executive sessions in IV and PM. They have, really, opened that door waide and I think we should fully, very fully, inform Robison. This, too, I think should be in an affidavit.

Aside from whether there is another proper way, I welcome the chance to lock horns with them on questions of fact, their fact, their files, which s ould be more impressive if Robinson is going to be, as I hope, fair and open-minded.

All of this can influence the current appeal and 1996.

We might want to think about why Ryan was assigned to this case. It may be that he is one of the few they have who knows the law, things like that; but it may also be because they want someone to take a possible fall. I believe it safe to work with the second possibility in mind, especially because he is vulnerable on the kinds of affidavits he presents, like Kilty's contradictory ones on the relevant, his misrepresentations (which are the norm, of course), etc.

In short, they have given us an exceptional opportunity if we can exploit it.

Best,

Re Statement of Material Facts. About which there is no dispute, it says.

And in recounting the history states a non fact, that my first request was March 12, 1975. False. My first request was in 1967, about eight years earlier. One proof is printed in WWIV. This is Item 1.

(But note the correlation between this date and the March 21 in Briggs letter. Briggs letter is proof that the CIA delayed long enough to violate the law. His explanation of lost pages is also suprious because 1) the CIA is supposed to have had copies of this earlier and 2) a phone call would have gotten him any missing pages.)

The government has advanced these same arguments since 1967. In every instance they have been proven false until now it is reduced to what is sought in this case. In every case what had been withheld contains the proof of the falsity. In every case the falsehood was deliberate, not accidental. Even the invocation of legal authority was false. It did not exist. Rhoads explanation before the Abzug committee, where he admitted there was no legal basis for the withholding, is that he didn t bother to check, he just assumed the authority existed. (Here perhaps his affidavit, where he calls himself the inheritor. Without any check of the Commission's authority, responsibilities, jurisdiction and powers?)

They have lied regularly in affidavits. I can recall no single one that did not have some degree of falsehood, including Rhoads.

The real purpose is disclosed by an abundant record to be to deny me these records which in every case were withheld only because the government saw the real possibility of embarrassment in them.

This is a nine-year record without a single variation from what is now the norm.

Because this involves the CIA we should perhaps include references to the Heine and Olson cases and their delaings with me.

Heine: they swore to the court that their affidavits could not be disclosed even to the plaintiff's counsel because any disclosure would do irreparable damage to the protection of intelligence sources within the United States. But once that case was passed and I used FOIA in asking for these affidavits they were given to me. The most casual reading of them shows no basis in fact for a single allegation and the allegations boil down to the totally unsupported CIA word, as in this case.

In the Olson case they lied after they killed a man and led his family into financially difficulty times and had them live under a cloud. Even then, in making disclosure to the Rockefeller Commission, they did not tell the full story. What was withheld from the public has nothing to do with national security and never did.

In my case they lied to their general counselm he lied to us or both in writing you that they had no files on me. They in fact later, without anything like full compliance, turned over quite a sheaf of papers, including proof of further withholding. They lied even after they were told I had copies of some files and what they gave me does not come from any of these files and does not include any of the papers I have. If there is one thing that on the record is totally undependable it is the CIA's and the Archives' word on these questions.

In this case they are depending on the impossibility of any judge knowing what is and is not known on the complicated subject. What can appear to be properly within the exemption may in fact be entirely non-secret and in these cases I am confident this is the case.

My own record is one of censoring what was improperly released in the past where improper release served official ourposes to conceal the identities of those who could have their privacy violated and could be damaged by it. (Like in Oswald in New Orleans, where they disclosed unsubstantiated allegations of homosexuality, with names.)

I'll address Nosenko separately.

On staff and personnel matters, they have already made numerous disclosures, including in these executive sessions that have been released. These range from the

the joing to the leaving the staff. It is not secrext that some left early (Adams and Hubert); that there was disenchantment and disagreement (Adams in particular); that there were false political allegations against members of the staff (that of Redlich, amount to accusations of comminism, were well publicized). To one who knows the fact the high probability is that official embarrassment not concern for rights is the real reason. The reflections would not be on the personnel but on the government.

Item 5 illustrates the point on "national security." That reason was advanced to justify withholding of it until the last minute. For years they pretended it did not even exist. Only when our next step was to file a complaint did they deliver it. (1/22)

Their use of the Conference Report:

It is limited to "a particular classified document." At the time of all my requests going back to 1967 not one of these had been classified in accordance with or by authority of any law or regulation of executive order. It is only in this extremity, when I had already proven this in court, that they koked up the new dodge disclosed in Briggs' letter, an ex poste facto classification that is also a downgrading of the illegal classification of Top Secret.

They cite 2052-73 out of context and do not tell the judge that in that case the illegality of the classification was a judicial determination. Meanwhile, I had a standing request for all the executive session transcripts. Not until long after this decision, under date of 1 May 1975, did the CIA grope for a fig-leaf. The CIA's letter of that date recognized the illegality of the classification:

"If there is any question concerning the authority of the Warren Commission to classify national security information, the Archivist should mark the documents appropriately, citing this letter as authority."

The downgrading is in the same letter:"Thex documents, under the criteria of Executive Order 11652, warrant classification at the confidential level and exemption from the xxxxxxxx General declassification Schedule."

(Question- does anything no higher than the lowest classification qualify under 11652?)

This is an ex poste facto classification and thus lacks the sanction of law. The documents were not properly classified for eight years after my request.

The Commission, as the CIA letter seeks to get around, had no authority to classify anything.

(We should check out files to see what happened between the March referral to CIA and thedelayed May response. Probably something I did forced this belated answer. I think it is in what followed ox conference with their general counsel and my requests of Archives and them. It is not free-standing, as he suggests, I'm sure. One cause may have been my Nosenko requests, to which the Archives made initial response the day we had the curbstone pictures taken, May 13.)

The same claims have been made in all the other cases. In all they have been proven wrong once I obtained what it withheld. In seven out of seven cases in court alone these false claims have been made in one form or another and in each of these cases some or all of what had been withheld was given to me. In other cases, when the filing of a complaint was clearly imminent, the government elected blandly to pretend it had made no such claims and did deliver. This includes all the exemptions here claimed, including the medical-right to privacy one. In fact, where the agency of paramount interest decided that what I asked for could be given to me properly the Archives and t the Department of Justice intercepted it, falsely made these spurious claims, and only when I was about to go to court later later relented. (Memo of Transfer and related papers.) The invocation of the exemption was knowingly spurious and the contortions to withhold in that case are close to unprecedented.

Exemption 3, pp. 2-3: I'll have to study that one and the relevance of their citations. I expect they invoked it to fit their citations.

In context this amount to a claim to a license to deceive a court and defraud a litigant without providing a judge even a perfunctory chance to see if he is being deceived or the litigant defrauded. I am without doubt that if I can see these transcripts from what I know I can prove it to the judge. (You might want to remind him that the Department of Justice says I know more than anyone in the FBI on this subject.)

Here you called. I asked about Exemption 3. I think you should not dismiss this as a tautology, that they have contrived a Rube Goldberg way of perhaps persauding the judge not to get involved in an in camera inspection because they can t survive an honest one.

On page 3 they claim the need "for protecting intelligence sources and methods." Nothing could be much more spurious. I'll be addressing this under Nosenko later. The citation of the Conference Report is limited to a number of things, here I note what cant be relevant, the foregoing. But it is only these special things that are to be protected, not anything and everything some bureaucrat wants to suppress. There here can t be any question"of the national defense or foreign policy." Their memo, in fact, claims no more but seeks to extend the interpretation to cover anything and everything.

On page 4 they again use the Conference Report but out of context and never having met its requirement. "Responsibility for national defense and foreign policy matters" is recognized as a proper responsibi,ity if there really are such questions. There is nothing her to support the allegation of congenital and habitual liars. It cant be true.

This is then further limited by reference to "a particular classified document." What I seek waa never legally classified until long after my request, so there is no "particular classified document."

Executive departments may indeed "have unique insights into what adversely effects might occur as a result of public disclosure of a particular classified document" but in this case that is impossible. There is nothing the CIA knew or could have known from Nosenko that the USSR didn't know. The only secrecy was from the American people.

In fact, the intelligence agencies have fostered a whole mythology out of this. The bona fide intelligence mehtods and sources secrecy is a fiction. There are few such secrets and in this case none is possible. Interrogation is not a secret method. It involved no special techniques, least of all with a voluntary defector. What is being hidden here is that what the defector said is contrary to the official story. There is no possibility of doubt on this, thus it was entirely suppressed from the Warren Report. It was no secret to the Russians that their man defected, no secret what he knew and could say, so they, as always, merely assume that he did remember and say all he could. But that the Russians suspected Oswald and had nothing to do with him is neither a secret i telligence method not a national defense secret. Nor is his opinion of the Commission's Oswald file.

When this claim to "unique insight" has been made in the past it has never been true. It sin t here and now. All that is unique is the falsehood.

Here on 4 they refer to "applicable executive order or statute." The President in his "unique" wisdom say fit not to confer any such rights or powers on his Commission. One of his advisers was a Supreme Court Justice. The Commission's chairman, then Chief Justice, never asked for such rights and powers. If the intent now claimed by the government had been intended the rights andpowers would have been included in the executive order and subsequent legislated added power, as of subpoena. But even then the Commission did not ask for it and these executive sessions, once Top Secret, show it.

The citation from page 12 of the Conference Report stipulates conditions not met in this case:"..."ederal courts...will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." The affidavits do not so inform this court. They do not give the history of classification. The attachments in fact show that there was no authority for classification, except for the proven and repeated after proven perjury of J. Lee Rankin, which was ruled on in

C.A. 2052-73, where the identical affidavit was found not to be proof and the decision on this exemption was against the government. (It cites this case without so informing this court.) Moreover, in the attached affidavit of Dr. Rhoads, which has been withheld from us since October 6, 1975 - more than seven months - he does not inform this court of what under the citation of the conference report is vital. Nor has he or the government remedied the defects in this affidavit after, under examination, he swore other than he informs this court.

Dr. Rhoads was a witness before the information subcommittee of the House Kudiciary Committee. He then swore than in denying me these transcripts on my requesting them he assumed he had the legal right; that he had never checked or consulted authority to see if they were properly vlassified; and that contrary to his affidavit and the attchements there was no authority in the Warren Commission to classify them as they were classified.

Can there be anything more essential to "the details of the classified status of the ~~classified~~ disputed record"than that they were illegally and improperly classified and denied an applicant without the most perfunctory inquiry into the legality,propriety and authority for this classification?

What weight can be given the word of an affiant who so deceives a court? Who executes a knowingly imporoper and inadequate affidavit, pretends it is full and complete, finally is forced to swear otherwise, and five months later files it without chanzgeof any kind and uses it to represent to this court that it informs the court as the court should be informed "concerning the details of the classified status of the disputed record."

This is consistent with Dr. Rhoads' prior record. For example, when compliance was the central issue in my C.A. 2069-70 Dr. Rhoads swore that I had not made the request with which all begins under the Freedom of Information Act, whereas the government's own attachements in that case included my request, my appeal and the rejection of that appeal.

And in that case, ~~for~~ a suit for pictures of President Kennedy's clothing, Warren Commission evidence, Dr. Rhoads assured the court that the pictures would be taken as I requested, again without any checking, and then, after the case was resolved, telling me it was impossible because some of the evidence of which he is custodian had been tampered with. In that case what is vital evidence, the knot of the tie, no longer exists. After the Warren Commission's use the tie was unknotted.

There was an entirely different issue in the Knopf case. Victor Marchetti had taken an oath on ~~joining~~ accepting his position with the CIA. The CIA then claimed that parts of his book violated that oath. What the government does not day is that most by far of what the CIA ~~excised~~ censored was censored without any basis at all, as the court determined.

On "the judgement of the Agency," they argue that the Congress passed a law that is a license to lie, to defraud, to msirepresent. The question here is not one of judgement. It is one of truth or falsehood.

In arguing on Exemption 5, "consultative functions," were this applicable there are relevant decisions not cited. American Mail v Gulick hold that any use is a waiver. Warren Commissioner Gerald R. Ford made commercial use of these executive session transcripts as soon as the Commission's life ended. That there is no such blanket immunity as here alleged is proven by the fact that all the hundreds of pages of these transcripts are available except the two and the part of one here at issue. They did not even argue this in earlier cases as a result of which they let me have other transcripts. There is, in fact, not even the showing that these sessions were "deliberative." The correlation with the Commission's work indicates they are of different character. Nor is there a showing that they involved "decision making." Rather do they deal with what is embarrassing to the executive branch, which therefore wants to suppress them.

These claims are consistent with the deceptions practised in all seven of my cases.

Any contraption to give the semblance of legality is contrived.

We can cite here until the chickens roost.

If this lets us cite properly, there are the most appropriate quotations that can be made from the transcripts, thoseof 1/22 and 27 in particular. Dulles on lying; all on the non-investigation of fact and of conspiracy and the destriction that was not carried out; on the pictures and X-rays and whether the Commission ever had them; the Secret Service statement that they did with the appropriate excerpts we have in IV, etc. There is a catalogue of the horrible if you want it. Hoover's prejudgement may also be appropriate here.

Lying and deceiving and misrepresenting are not sanctioned "functions of government."

Their invocation of "deliberative" and "consultative functions" give a fine chance to bring in the non-existing 9/15 executive session where there really was deliberation. There was faked pagination, a faked beginning of an executive session, but there never wa s any transcript despite the belief of members that there would be. There is thus no existing record of the essential deliberations and of the real consultative function.

This commission had two charges, to investigate and to report. Nothing is more essential to its functioning than that disagreements be deliberated. So, Rankin saw to it that there was no record but led members to believe there would be and was.

But even Rankin's affidavit does not make the claim to this exemption.

Some of the affidavit in that case is relevant. Or more than one, rather.

The claim that this could be "injurious to the consultative function" is entirely without support. It is not in any affidavit. And it is contrary to the decisions and opinions of the former chairman, the Department of Justice and the White House at the time the records were transferred to the Srchives. There is no mention of withholding any of these kinds of records and there is the clear inteht to disclose everything possible. Warren's letters and the memory holing might be appropriate, plus Wozencroft and Bundy.

On the original classification, remember that when the DJ supplied reporting services no singel executive session was classified. When Rankin took over all were, even of testimony that was published.

Rankin is parti pris in this/ The ~~xxxx~~ transcripts disclose what he did and how he did it. othey

While ~~xxxxxxxxxx~~ transcripts were classified/~~xxfxxxxxxxx~~ Top Secret he was simultaneously permitting the reporting firm to sell them for profit. Compare this with his affidavit.

5-6 and the claim that the 5/19/64 transcript "relates solely to a discussion of the continued employment of two Commission staff members."

If there is any transcript that relates solely to one subject it is not any of the great majority that I have and have studied.

There is no such representation in the Briggs affidavit and there is the opposite in the Young letter, which says excisions can be made. Young concludes that the result would be incomprehensible, which is not his decision to make but also does not support this claim.

Nor is this what the Rhoads affidavot says. It says only that the purpose of the meeting was"to discuss the continued employment of two of its staff members." Moreover, it is false to say that news accounts ~~xxxxxxxxxxxxxxxx~~went no farthur than "rumoring complaints." There were not rumors, there were explicit and official complaints and the allegations are and long have been public, from prior to the day of that executive session. So, there is no "protecting their identifies" by continued suppression.

Were these allegations the reality then the opposite of the claim is the case. Rather than hurting these staff members, whose identities are puvlic from Dr, Rhoads' own affidavit, disclosing the Commission's reasons for continuing their services can only help their reputations.

If there is any question of "a clearly unwarranted invasion of personal privacy"

clearly that lies in the prior publication, not in suppression of what from ~~xxxx~~ these representations can only be exoneration.

There is no relevance her to t e alleged seeking of "names and addresses" in the cited court of appeals case. Not can names and addresses be the subject of the session, from even the governments representations. This also is true of the representation of "Under Exemption 6, home addresses have been withheld where the addresses are 'information that the individual may fervently wish to remain confidential or only selectively released.'"

Not only is this not an issue and not in any way relevant, all the staff members were prominent, can ~~xxx~~ be lcoated through standard directories and have especially in one case, since the service to the Commission been in public posts - now dean of a law school. (Redlich)

However, there is a relevant decision I've recently cited to you, where public employees do not have this right as it relates to their official duties.

What follows, as it relates to me, is great, that stuff about collecting information on individuals. This session could ~~xxx~~ not have been of that nature.

But after many months the same epartment of Juctice that makes this claim has not responded to my request and the same CIA is not only withholding but hasn't even responded to an appeal on a request first made in 1971 and leid about in January 1975.

Too bad there isn t time to check all their citations. Those that are clear are irrelevant.

Have they not waised by prior executive session disclosures of personnel matters? ~~Smxxxxxxxxxxxxxxx~~

Want to throw in resignations from disenchantment? (Adams was first, Hubert also vert early.)

Good examples of ramblingfrom the agenda are those sessions where Rankin refers to the autopsy film and 1/22 and 27, which permit juicy quotations that are relevant elsewhere in this also. Esp. incontextDulles on perjury.

Have they also not waived on "decision making process" with 1/22 and 1/27 to cite the most recent cases? Can we argue it and bring in these fine excerpts that may interest the judge? There was what could be called decision-making there! and how on Hoover haveing them booxed in and destroying the record!

This whole approach is designed to reduce federal judges to no more than the rubber stamps of executive agencies.

Is it not a basic principle of law that one cannot be the beneficiary of his own illegal acts? These have been withheld from me illegally, when there was no legal classification. Rather than reclassifying them, which is suppose is of dubious legality anyway, Rhoads merely lied and thereby suprressed. Now he seeks judicial sanction for these wrongs, which denied me my rights under the law for years.

Rhoads' affidavit: 3 as the successor agency was it not his and GSA's obligation to know their authority, repsonsibilities and obligations at the very outset of becoming this successor agency, to know to begin with what the Commission's charter, mandate and limitations were? Once FOIA was enacted, did he not then have the added obligation of learning what was required to comply with the law? Did he not in fact draft and agrre to guidelines and regulations? Could he or his counsel of GSA and its counsel have met any obligations after passage of FOIA, when there waaa year before it became effective, without the kind of checking into the Commission's rights and powers, which he swore to the Abzug committee he did not do with regard to these executive session transcripts? Did he not in fact keep the transcripts of the published testimony classified Top Secret from several years after publication and sale by the Government Printing Office?

4 Actually this says that I forced him to make much available, while saying also

that he had withheld public information, despite White House, Department of Justice and Commission (through the chairman) statements of policy to the contrary. "...has opened these materials subsequent to the Freedom of Information Act requests for access, many of which were instituted by the plaintiff."

His personal record and that of the Archives have been other than he here represents. He claims they "have striven to make increasing numbers of these materials available for public access." From understaffing that partocular archive to refusing to replace missing records to intercepting and denying me what agencies of paramount interest decided was public information to which I was properly entitled to copies he has done the opposite of what he here represents. He has regularly and repeatedly refused to ask agencies of origin for copies of disappeared records when I asked him to. He denied when I wrote that the archives was understaffed that it needed more manpower. But when he had two employees add that archive to their existing responsibilities he was guaranteeing that public access to these unprecedented records would be delayed indefinitely. He has withdrawn records not subject to classification or withholding after I have seen them and asked for copies. He has, in fact, solicited others to make requests for what he denied me to assure first use more congenial to official purposes and then made these records available on an exclusive basis to others. This is but one example of his politicizing his authority. His denials of what other agencies have given me have the same political purpose, to prevent official embarrassment. Right now, when I am ill and for years have paid in adcance for all that was declassified when it was declassified he is refusing to send me copies when declassified. For years I have kept a non-interest bearing deposit account at the Archives to pay for these records. Now, arbitrarily, he refuses to send me what is declassified when it is declassified. Simultaneously he does not send me lists of what is declassified, so, when I am not permitted into that locked archive to make any examination at all he is effectively denying me access to public information even after he decides it is public information.

This partial record is more than enought to make it apparent that the realities of his decade-plus stewardship of the Warren Commission records is not one of his having "striven to make increasing numbers of these materials available for public access. If this had ever been his or the executive branch's intentions when they had more than two years of "custody and control" of these records prior to the effectiveness of FOIA all the records would have been examined prior to the effectiveness of the law, what the law required of the Archives would have been known, and these were not done.

Even the attachments to his affidavit prove the opposite.

With the Rankin affidavit he has the records and could have searched them to learn whether or not any such directive had been given to Rankin. He did not and it was not and I had to prove this in court to overcome his withholding of a public record.

With regard to the Briggs affidavit and the Young letter, they separately prove the opposite of intent to comply with the law.

My initial request was in 1967. From then on he never investigated the law or had it investigated. When he was forced to following my renewed request and referred it to the CIA on March 21, 1975, he did nothing when the CIA made no response during the time permitted under the law and regulations for his response and did nothing until long after the time for appeal expired. There was no response until May 1.

He accepts and palms off on this court the utterly ridiculous, that the CIA "lost" what Young calls "missing pages" of this supposedly Top Secret record. He also knows that copies of this record had been provided the CIA earlier so that "missing pages," which could have been replaced by a phone call were they the cause of this long delay, could not possibly be the explanation for that delay.

That after a dozen years about 10% of these records are still withheld, after all the pressures and suits and official White House policy that all possible would be made available is hardly an exemplary record. Rather does it reflect a policy of deterring use of the records and withholding what has in fact been a succession of embarrassments to the executive branch, especially the FBI and CIA.

5. There is a lack of faithfulness in his representation of the "minutes" of an executive session. They are in fact a counterfeit of an official transcript, even to the pagination. It was the last such session, on September 15, immediately prior to the issuance of the report. They are contrived not to represent the deliberations of that meeting, where Members expressed dissatisfaction with the Report and one told me he had refused to sign it because he disagreed with conclusions not ~~xxx~~ changed thereafter despite assurances given him that they would be. All of this meat, the Commission's basic cobclusions, is omitted from what Dr. Rhoads calls "minutes" but the thin gruel of who would get how many of what kinds of editions of the Report is recorded. These are not in any sense "minutes." The point here is that even Dr. Rhoads' pro forma representations to this court lack fidelity.

6. To Dr. Rhoads' knowledge from C.A.2052-73 it is false to state that "the Commission had classified and marked each of the transcripts 'Top Secret.'" To his knowledge the attached affidavit of J. Lee Rankin is false. Dr. Rhoads is custodian of those records. He has not produced any record supporting the Rankin false swearing and has produced records that do not address it instead. He has yet to refute the proof I advanced, that the Court reporting firm stamped all these records top Secret, that ~~xxxxxxxxx~~ when the publish transcripts were downgraded from Top Secret to Confidential in order for the government printing Office to set type the reporting firm lost control in its own offices, and that in fact the Commission never considered this question and never directed Rankin as he claims.

I believe and therefore aver that the Rankin affidavit is perjurious at the present state of this case. Ibelieve and therefore aver that if not before since C.A. 1052-73 Dr. Rhoads and his counsel have known this, at least that it is falsely sworn. I therefore believe there is currently a question before this court, when it is given proven falsehood under oath, of both perjury and its subornation. When to this Dr. Rhoads swears falsely when an issue if the propriety of classification, that the Commission did the classifying when he knew the court reporting firm did, I believe and therefore aver that there is the new questions of perjiry and its subornation with the clear intent of pretending the illegal classification which denied me these public records for none years was in fact other than an illegal classification.

To this should b added Dr. Rhoads' sworn admission prior to the filing of this affidavit so long withheld from me that there was, in fact, no legal authority for the classification. (Abaug testomony-appendix it)

Rather than the voluntary review of these executive session transripts I know of no case in which any was released except in response to a request, most of the requests coming from me and all of them being fiercely resisted.

~~xxxxxxx~~ Where Dr. Rhoads has claimed a law-enforcement purpose for the records of a Commission which was specifically precluded from any law-enforcement role he has failed for years to let any law-enforcement agency see any of those transcripts. There is no record of which I know of ajy such showing of any such transcript until after my initial request.

It is a not unreasonable interpretation of the language of the end of this paragraph(6) to say that even here the "review" was not voluntary but was in direct response to my requests. It is conspicuous here and in the paragraph numbered 7 that Dr. Rhoads fails to inform this court of the effect on him of my having filed C.A. 2052-73 for one of these transcripts and of my request ~~xxxxxxxxxxxxx~~ for and the initial denial of the trancript of the January 22, 1964 session. Here again the record is contrary to Dr. Rhoads' representation of voluntariness on his part.

7; When the original classification was an illegal classificatio , as Dr. Rhoads admitted to the proper committee of the Congress after executing this affidavit and months before filing it, to refer to the classification that for the firt time, whether or not properly, is attributed to an authority as a "downgrading" is to deliberately deceive this court by telling it that the original stamping was legal when Dr. Rhoads knows it was not.

Bearing on what the CIA told Dr. Rhoads and what he here states, it is one possible interpretation that the lowered classification was concocted ~~m~~ not because they had the doubt here indicated that "there be any question concerning the authority of the Warren Commission to classify documents." In fact prior to thisI had established in C.A. 2052-73 that the Commission had no such authority, as prior to the filing of this affidavit Dr. Rhoads admitted to the Abzug subcommittee. There is no reasonable doubt that the actual purpose of the CIA's advice to the Archives and the Archives' willingness to accept that advice is to avoid ~~the~~ certain embarrassment to the CIA if the content of the transcript were available/ to me. (Reference to Nosenko later)

JL: back to the Memo on the character of an executive session and comparison with the courts: it is not applicable here because there was one at which they had outsiders, not even members of the staff; and at that one there were also members of the staff with members of the Commission; it was deliberative- to decide what to do about an effort to make Oswald appear to be irrational. I have it. It also was originally withheld for spurious reasons. And, rather than protecting the innocent, when it was released there was no masking of the innecessary defamation of Marguerite Oswald, including the fact that she lived with Ekdahl for a long time before they were married. There is also the making available of all of Marina's medical records, of pregnancy, and the psychiatric records on Jack Ruby's mother (with other of her children alive) and countless ones on alleged homosexuality and zexual incapacity of living people I can name. In one case where it wa s never withheld I destroyed the identification in an otherwise direct quotation in Oswald in New Orleans and in the case of Valle I have not even let others know I have it. Or, the record is one of my concern for the rights of privacy of others, not of Rhoads' because he has in practise ignored it where ignoring served official ends.

9 Where he says he "maintains the classification of the transcripts...at the security Confidential level" he does not even claim that this is legal now and I believe Florence testified it is not. If the classification was not in accord with law and regulation ~~this~~ at the time of my initial and subsequent requests, he does not even pretend to cite any authority for either denying it to me then or authorizing the classification after my request when it was, by his own admission, illegal at the time of all the requests I made for it.

Here his own citation of the law repeats in disguised form that the classification and denial were both illegal: "(a) The first exemption...specifically authorized...and are in fact~~xxx~~ properly classified pursuant to such Executive order..." He has already sworn these did not meet this reqyirement and in this affidavit withholds that certainty from this court. (Emphasis added.)

He compoundsthis by saying merely that in his opinion, which he avoids saying is an opinion while not having qualified himself as an authority on the law, that "These transcripts are properly classified pursuant to the criteria established in Executive Order 11652..." This is a deception. My request was under Executive Order 10501 and his denial was under ~~that~~ his interpretation of that order. Aside from this there is no showing that with the origibal classification not "in fact priperly classified pursuant~~s~~ to "that order there is any authority in Executive Order 11652 to either continue denial or to ~~xxx~~ after so many years following the denied request the legal sanction for an ex poste facto classification.

I believe we should move to have the court reject all of this because Rhoads is not qualified as an expert on the law and he cites no directive to him by any legal authority, as GSA's general counsel, from whom such affirmation comes with at least the fig-leaf of propreity.

On (b) there is no showing in the Rhoads affidavit that there is even the possibility of the relevance of the third exemption, of the CIA Director's responsibility "for protecting intelligence sources and methods." That Nosenko was a source can't be protected because Hoover filed unclassified repirts that without classification this same Dr. Rhoads withheld for a decade and because the CIA itself leaked this to the author of a book that make it appear favorably, Barron's KGB, published five years ago.

(Bantam edition, pp.16,17, 85-7,164,188,229,241,299,300,412,431 and 452) There is in fact no reasonable doubt that the CIA, depite the language Dr. Rhoads here uses, was the major source for this book of more than 600 pages exto;ling the CIA. Onxiv xiv Barron credits both former KGB agents, who defect to and are given ned identities and hidden by the CIA (Specifically this applies to the one in this transcript) and "security services whc know the most about the KGB..." which means the CIA, whose responsibility that is. (The book was commenced in 1969, copyrighted in January 1974.) But even after this publication about the source the CIA claims to have to protect, through Rhoads, who is not competent to make the decision, Rhoads did continue to withhold the un classified FBI reports of identical content.)

There would appear to be a very real question about a May 1975 classification of otherwise unclassified material - I received it from the Archives that month - some of which was extremely widely puvlished, in a large Readers' Digest printing of the original book, in its magazine use, in a Book of the Month Club edition and in 4 ~~Bxtxx~~ Bantam mass printings, in the first four months of 1974. (ref to more under Nosenko to follow)

The question is not of Rhoads' acting as the CIA's agent but whether the CIA decision is based on either fact, law or plain common sense and honesty. An unsupported claim to exemption does not meet the burden of proof placed on the government, less so when it is made by those with a long history of lying and deceiving courts of law.

(c) A transcript is neither "memorandums or letters," the language of the law here quoted. If the Commission had preferred "memorandums or ~~xxxxxx~~ letters" it would have used them. Its"memorandums and letters" have almost entirely, from Rhoads' own affidavit (4.) been made available. Those transcripts in which the Commission members do "express[ed] the opinion that their views ... bem maintained in confidence" have been made available, which is a relevant precedent. This includes the transcript in which Commissioner/former Director, Cebtral Intelligence Allen Dulles forthrightly described false swearing, deceptionm misrepresentation and even perjury as the CIA's way."The subject matter of the meetings" is not withheld, despite the representation here. There were agendas and they are available and I have them. Nor was there any secrets about the other subjects Rhoads here enumerates. However, "public imagine" is ~~xxx~~ not an exemption under the law and in fact is precluded by the law; and again transcripts dealing with precisely this - never classified by the Justice Department which provided them - have been freely available for years. So the Commission did not withhold its discussions of its " public image" nor did th4 Justice Department, her defendant's counsel, when it could have at least suggested classifying the transcripts it made and did not.

(d) The authorization of the Commission and its own interpretayion of its authorization as represented by it in its own Report specifically preclude it from any "law enforcement purposes." The exemptio n is therefore not applicable. In earlier claims to the applicability of this exemption the government has attributed to the Commission no more authority and obliggtion than each and every citizen bears, to report wrongdoing to proper authority.

The misused citation continues with "disclose the identity of a confidential source...by an agency conducting a lawful national security intelligence investigation, confidential information furnished by the confidential source [or](E) ~~disxxxxxx~~ disclose investigatuve techniques or procedures...."

Not one of these is here applicable.

There was no "confidential source." Nosneko was not such a source, the FBI reports of their interviews with him were largely unclassified, never classified higher than minimum, Confidential, and have been made available by Rhoads. After the Briggs affidavit was executed the CIA did in fact makes its own Nosenko files available - prior to this fi,ing of that affidavit. I have them. In itself I believe and therefore aver that this constitutes a separate effort at deceiving this court.

The Commissionšs own records on Nosenko, which might be considered part of the "dåliberative process" and insofar as some are the recommendations to the Commission by two of its staff members, one now a Cabinet member, they are part of the deliberative process, have been made available by defendants and I have them. They disclose a coincidence in dates between this June 23 transcript and the review of the Commission's non-secret files on Oswald, all of which we collected by other agencies and given to the Commission and are not withheld.

In this there is and can be no "confidential source" or "confidential information" and it could not in any way "disclose investigative techniques or procedures" that are not well known to all t e world's intelligence agencies, all of which do precisely this kind of thing.

Moreover, were any of this true, there would still be the waiver under such decisions as American Mail because the Commission issued a Report based on this information, reached conclusions based on it. The reality is that the reason for withholding this is because what Nosenko actually said is diametrically opposite what my own published work establishes from the Commission's own files is its beginning preconception and the conclusions foisted off on it by the late J. Edgar Hoover.

Here use samples of the 1/22 transcript; the Coleman-Slawson report, the pages showing what was originally withheld, "elms'conning of the Commission, with perhaps an added JL dissertation on this and the appropriate pages of the Reports on no law-enforcement purpose, the number of pages of reports from the FBI and the conclusion os no conspiracy.

The claimed disclosures of the transcript inevitably have to be those provided by and made available by both the FBI and CIA, which I do have. A comparison of what the CIA provided with that by the FBI shows that the CIA provided less from the same source. And as previously noted, most of what the FBI provided Hoover himself did not classify at all. What is here intended to be kept secret is not "information obtained from that source," which is already ava ilable, but his expert opinion that was unwelcome.

The claim to danger to disclosure "of intelligence methods and techniques" is frivolous and lacks what is essential to its having any meaning, that there is, was or ever could be any secrecy about these alleged "methods and techniques." They are secret from the American peopleonly and in this case it defies reason to think that there could be any of any kind. The CIA has regularly sworn falsely about this over the years, as in the Heine case, before the Congress and whenever it was, as Dulles admitted, in any way expedient or even seemed to be by underlings.

I suggest addressing the Gessell decision beginning with whether this is a fair interpretation of it, including what he said in the recent Glomar case and noting that in that case, 2052-73, a) the government never even provided an affidavit, the minimum requirement of the law, to support the claim of investigatory file exemption; and b) the only reasonable interpretatuon of what Gessell did is give the appeals court this issue for determination. Bearing on this the government itself mooted that case rather than run this risk and after making the same spurious claims it does here it merely gave me that transcript rather than face th issue on the appeals level.

Rather than their interpretation Rhoads here makes he in fact did the opposite in thereafter makeing the 1/22 transcript available to me.

10. is addressed earlier. In addreesing it I recommend the previous material on gross and continuing violations of privacy in releasing what could and should have been withheld and comparing it with this, the embarrassing, as the meaning of the practise and the claim. Here we should realize that the judge has no way of knowing what is new in it, unpublished. But it is is "solely" on right to privacy, how can Exemption 5 apply?

JL: I now have to stop and finish getting ready. I'll go over the rest when I return. We have all we need on Rankin, I think without rereading it. This will leave only Young and Briggs, as I recall. I've indicated some of this above so it need not be much.