

4/7/76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

-v-

GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES

Plaintiff brings this action under the Freedom of Information Act (FOIA) to compel disclosure of the May 19, and June 23, 1964, Executive Session Transcripts of the Warren Commission, and pages 63-73 of the January 21, 1964 transcript. Defendant has filed a motion for summary judgment, supported by affidavits, and relying on Exemptions 1, 3, 5 and 6 of the FOIA, 5 U.S.C. 552(b)(1), (3), (5) and (6). On October 28, 1975, plaintiff served defendant with a set of 25 interrogatories which were answered by the Archivist of the United States for defendant on November 24, 1975. Of the 25 interrogatories propounded, the Archivist, after consultation with counsel, declined to answer 5 interrogatories as follows:

11. List the names of all persons who have been given copies of or who have had access to the June 23, 1964 executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed.

ANSWER: Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of this complaint.

12. List the names of all persons who have been given copies of or who have had access to the January 21, 1964 executive session transcript and state:

a. The date on which each person listed was given a copy of or had access to this transcript;

b. The employer of each person listed;

c. Whether the copy or access given to each person listed included pages 63-73 of this transcript.

ANSWER: Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of the complaint.

15. Is Yuri Ivanovich Nosenko the subject of the June 23, 1964 executive session transcript?

ANSWER: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant maintains is security classified and which the defendant seeks to protect on this and other bases in the instant action.

16. Did any of the United States Attorneys representing the defendant examine either the January 21st or the June 23rd transcript before October 8, 1975. If the answer is yes, which ones, and on what dates?

ANSWER: Defendant objects to this interrogatory on the grounds that the information requested is privileged.

17. Has any attorney for the Department of Justice or the Central Intelligence Agency ever read or examined either the January 21st or June 23rd transcripts? State the names of any who have and the dates on which they read or examined the transcripts.

ANSWER: Defendant objects to this interrogatory on the grounds that the information requested is privileged.

In essence, all of the foregoing interrogatories, except for No. 15, deal with the identification of persons within the Federal Government, other than employees of the National Archives in their routine custodianship, who have had access to the Warren Commission executive session transcripts sought by plaintiff in this action. This line of inquiry is irrelevant, in defendant's view, to the issues presented by this lawsuit, for the identification of other persons who may have had access to the documents has little to do with whether the documents are properly classified and being withheld pursuant to Exemption 1. In any case, the attached affidavit of Dr. Rhoads (Government Ex. 1) establishes that GSA personnel handling the documents have held the necessary security clearances and that outside distribution to other government personnel has been effected pursuant to regulations designed to safeguard the classified material. Further, in addition to the objection of irrelevancy, defendant raises the objection of attorney-client privilege with reference to information regarding participation of Government attorneys in view of the documents or defense of this litigation. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975); Mead Data Central, Inc. v. U.S. Dept. of the Air Force, 402 F.Supp. 460, 463 (D.D.C. 1975). Finally, as set forth in defendant's motion for summary judgment, other exemptions in addition to Exemption 1 apply to the transcripts sought so that, in defendant's view, the relationship of these interrogatories to resolution of issues in the lawsuit is even more attenuated.

In view of the prior disclosure of the answer to No. 15, the attached affidavit of Dr. Rhoads provides an affirmative response to that interrogatory.

Wherefore, for the foregoing reasons, defendant respectfully requests the Court to deny plaintiff's motion to compel answers to interrogatories.

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

MICHAEL J. RYAN
Assistant United States Attorney

Certificate of Service

I HEREBY CERTIFY that service of the foregoing Opposition with supporting affidavit and proposed Order has been made upon plaintiff by mailing a copy thereof to James Hiram Lesar, Esq., 1231 4th Street, S.W., Washington, D. C. 20024 on this 7th day of April, 1976.

MICHAEL J. RYAN
Assistant United States Attorney
U.S. District Courthouse
Room 3421
Washington, D. C. 20001

Telephone: 426-7375

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

-v-

GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

ORDER

Upon consideration of plaintiff's motion to compel answers to interrogatories, defendant's opposition thereto, and the entire record herein, it is by the Court this ____ day of _____, 1976

ORDERED that plaintiff's motion to compel answers to interrogatories be and the same hereby is denied.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

I, JAMES B. RHOADS, Archivist of the United States, National Archives and Records Service, General Services Administration, Eighth and Pennsylvania Avenue, N. W., Washington, D. C., in support of Defendant's Opposition to Plaintiff's Motion to Compel Answers to Interrogatories, do hereby solemnly swear:

1. Of the 25 interrogatories served upon the Defendant by the Plaintiff in the above-captioned complaint on October 28, 1975, I, having consulted with counsel, refused to answer Nos. 11, 12, 15, 16 and 17. All but No. 15 concern the identification of persons within the Federal Government, other than employees of the National Archives in their routine custodianship, who have had access to the Warren Commission executive session transcripts which remain security classified and to which the Plaintiff is seeking access in the present litigation. These are the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964. Plaintiff has stated that he wishes to establish that the transcripts are improperly classified inasmuch as he may be able to establish that they may have been reviewed by persons who do not have security clearances at all or clearances equivalent to the level of security classification pertinent to the transcripts.

Page 1 of 5 pages.

Affiant's initials JBR

GOV'T EX. 1

2. To the extent these transcripts have been reviewed by persons within the National Archives and its parent agency, the General Services Administration, all persons who have had access in the scope of their duties have the necessary security clearances.

3. The National Archives has provided access to Federal officials outside this agency for two purposes: (a) officials of agencies having subject-matter interest in the documents have examined them in the course of regularly scheduled classification reviews or classification reviews precipitated by Freedom of Information requests; or (b) counsel have examined the documents in the course of preparing the Federal Government's defense to actions such as the case at hand. It should be noted that in some instances Government attorneys have participated in classification reviews unrelated to litigation because of their expertise in the law relevant to security classification.

4. For all external accesses described in paragraph 3, above, the National Archives has complied with all regulatory requirements to assure that the classified material is delivered to an official having an appropriate security clearance. We have required that each person to whom these transcripts have been transferred provide the National Archives with an appropriate receipt documenting the transfer of classified material. However, once the transfer has been transacted, the Defendant is not in the position to police access to these materials in other Federal agencies. We accept on good faith and in the knowledge that these other agencies are equally familiar with the legal requirements pertinent to classified documents that all persons having access to classified documents have appropriate security clearances.

5. In Attacking Defendant's contention that the two classified transcripts at issue are improperly classified, and, therefore, should be made available to him, Plaintiff also calls into question the authority of the Warren Commission to classify materials, inasmuch as the transcripts were originally classified at the behest of the Commission. Admittedly, the authority of the Commission to classify documents originally is clouded by an apparent oversight of the Johnson Administration. At the time the transcripts at issue were classified, security classifications were governed by the provisions of Executive Order 10501, as amended (3 CFR 1949-1953 Comp., p. 979, November 5, 1953). While the original order contained no provision listing the agencies having classification authority, a subsequent amendment to E. O. 10501 listed these agencies and further added that future additions or modifications must be specifically spelled out by Executive order (E.O. 10901, 3 CFR 1959-1963 Comp., p. 432, January 9, 1961). While this provision was complied with for the remainder of the Eisenhower Administration and the Kennedy Administration, a search of materials within the National Archives Building and the Johnson Presidential Library has uncovered no evidence that it was ever complied with during the Johnson Administration, or that the President or his aides were familiar with this provision. As a result, there was never a specific authorization from President Johnson to the Warren Commission granting it the authority to security classify documents originally.

6. Nevertheless, there is significant documentary evidence that both the Commission and the President assumed that the former had the authority to classify materials. We maintain that the President's assumption, in view of the Commission's purposes and activities, and the fact that the overlooked provision existed by Presidential fiat, remedies any doubts created by the initial oversight. Attached to this affidavit as Exhibit A is a copy of an affidavit, with attachments, of J. Lee Rankin, General Counsel of the Commission, dated April 8, 1974, in which he states that the Commission had the authority to classify documents, that the Commission delegated that authority to him, and that he instructed the reporting company which transcribed

Ask for...
the Commission executive sessions to mark them in accordance with his direction. Attached as Exhibit B are a series of documents, including a copy of a letter from President Johnson to Chief Justice Warren dated November 23, 1964, in which the President waives the Commission of certain marking requirements of Executive Order 10501. This waiver would make no sense at all if the President did not assume that the Commission had the authority to classify documents in the first place.

7. Notwithstanding the authority of the Warren Commission to classify documents originally, there are other reasons to support the present classification of the transcripts. First, in the course of classification reviews, an agency clearly having the authority to classify documents has instructed the National Archives to maintain the transcripts as classified, and, if there is some question about the Commission's authority to classify them, to classify them pursuant to its authority. Second, much of the information from which the transcripts are derivatives was obtained from agencies having the authority to classify documents originally. When this information was received by the Commission in documentary form, it was usually marked security classified. Finally, it is important to note that it is information, and not records per se, that is properly classified or unclassified.

Whether or not an agency may mark a particular document with a classification stamp is irrelevant if the informational content of that document could harm the Nation's security if disclosed to an unauthorized person. An agency having custody of such a document, no matter what its markings, would be bound to assure its continued protection as long as its informational content is pertinent to national security.

8. In light of the disclosure to The New Republic that the transcript of June 23, 1964, relates to Yuri Ivanovich Nosenko (see Exhibit C), I hereby answer Plaintiff's Interrogatory No. 15 of October 28, 1975, affirmatively.

I have read the above statement, consisting of 4 pages, and it is true and complete to the best of my knowledge and belief.



James B. Rhoads
(Affiant's Signature)

Subscribed and sworn to before me on this twenty-ninth day of March, 1976, at Eighth and Pennsylvania Avenue, N. W., Washington, D. C.

Francis J. Heppner
(Notary Public)

My commission expires: August 31, 1979

Page 5 of 5 pages.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- x
HAROLD WEISBERG, :

Plaintiff, :

v. :

Civil Action No. 2052-73

GENERAL SERVICES ADMINISTRATION, :

Defendant. :

----- x
STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

CITY OF NEW YORK)

I, J. LEE RANKIN, living at 35 Sutton Place, New York,
New York, do hereby solemnly swear:

1. From December 8, 1963, I served as General Counsel of
the President's Commission on the Assassination of President
Kennedy (Warren Commission).

2. Shortly after I had assumed the duties of General
Counsel of the Commission, I was instructed by the Commission
that among my duties was the responsibility to security classify
at appropriate levels of classification those records created by
the Commission in its investigation and report that should be
security classified under existing Executive order. The
Commission's authority to classify its records and its decision
to delegate that responsibility to me existed pursuant to
Executive Order 10501, as amended.

3. As agreed to by the Commission, I ordered that the transcripts of certain of the Commission executive sessions, including that of January 27, 1964, be classified "Top Secret," and I communicated the fact of said classification to Ward & Paul, transcribers of the executive sessions (see attached copies of correspondence between Ward & Paul and me).

I have read the above statement, consisting of two pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.


J. LEE RANKIN

Subscribed and sworn to before me

at *New York, New York*
on this *8th* day of April, 1974.



PAUL F. CIRILLO
Notary Public, State of New York
No. 29-5552750
Qualified in Nassau County
Cert. Filed with the New York Co. Clerk
Com. Mission Expires March 30, 1976

WARD & PAUL
NORTHAND REPORTERS
917 G STREET, N.W.
WASHINGTON 1, D. C.
628-4785

WARD & PAUL
917 G STREET, N.W.
WASHINGTON 1, D. C.

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

W. L. WARD, JR.

January 7, 1964

Hon. J. Lee Rankin, General Counsel,
Presidential Commission on the
Assassination of President Kennedy,
200 Maryland Avenue, N. E.,
Washington, D. C. 20002.

Re: Stenographic Reporting

Dear Sir:

Pursuant to our conversation of yesterday, in which a general outline of reporting services and needs was discussed, and at which time you asked for a statement of prices for work performed, I am happy to submit the following schedule of charges:

Original and two copies	\$1.65 per page	(Total)
4th copy	.15 per page	\$ 1.80
5th copy	.15 per page	1.95
6th copy	.15 per page	2.10
7th copy	.15 per page	2.25
8th copy	.15 per page	2.40
9th copy	.10 per page	2.50
10th to 20th copies	.05 per page	3.05
21st to 25th copies	.02 per page	3.15

The first eight copies are at the current Congressional rate for closed sessions, no sales permitted; the ninth and succeeding copies reflect a multiple copy rate with decreasing costs due to higher production of copies.

It is contemplated that the reporting services will be performed in Washington, D. C., and that transcription and duplication will be in the premises of Ward & Paul at the address given above. The work will be given Top Secret or Secret classification, so marked on each volume, volumes numbered in accordance with security regulations, and receipts obtained for material passing between the Commission and our firm. If desired, notes, waste paper and other materials will be delivered to the Commission daily, with the delivery of each transcript or they can be retained by us, under security, and destroyed from time to time. I would suggest that all waste material be destroyed weekly, and the notes be turned over to the Commission at the end of each week, this for possible reexamination of any necessary page or phrase which might need it.

Mr. Rankin.

All reporting will be done on a Daily Copy basis, that is, work reported on one day will be delivered by 9:00 a. m. the following day, unless there is a night session, in which case the portion reported during the day will be delivered as indicated, and the night session delivered during the following day.

Only personnel having the full necessary clearance will be used in any phase of handling the work of the Commission.

In event reporting services are needed outside of the City of Washington, we will be able to service the hearing with reporter and typist, prepared to deliver a minimum number of copies in the field, perhaps an original and one copy, and forward the necessary copy back to Washington for duplication and delivery to the Commission as early as possible. Travel and other such expenses will be borne by the Commission in this event, to be thoroughly vouchered by the personnel involved.

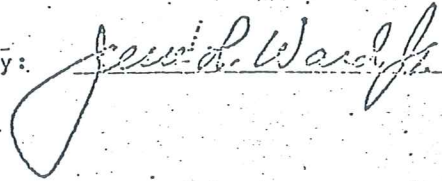
Please excuse this lengthy letter, but we feel that it is better to lay a proper groundwork for mutual understanding of the different phases of work involved.

Please allow me to thank you, sir, for the time you took to talk with me, and for your understanding of our problems. It is our hope that we may be chosen to serve the Commission, and that we may do so in a manner that will reflect credit on those who have been kind enough to suggest our firm for the work.

Respectfully submitted,

WARD & PAUL

By:



Adm. Sec.

HPW:al
t 1/7/64

4/20/64

JAN 8 1964

Mr. Jassa L. Ward, Jr.
Ward & Paul
917 G Street, N.W.
Washington 1, D. C.

Dear Mr. Ward:

Thank you for your letter of January 7, 1964, setting forth the schedule of charges for your reporting services.

The arrangements set forth in your letter are satisfactory to me and I am confident that your organization will be of great assistance to this Commission. I would like you to handle the reporting of the meetings of the Commission as well as any hearings outside the city which may be held by the Commission. I shall advise you of the date of the next Commission meeting as soon as possible.

Thank you for your promptness in supplying me with this information.

Sincerely,

J. Lee Rankin
General Counsel

Handwritten notes and signatures at the bottom of the page, including a large signature that appears to be "J. Lee Rankin" and other illegible scribbles.

EXHIBIT B

November 23, 1964

FG 135

Dear Mr. Chairman:

The procedures set forth in Section 5(i) of Executive Order No. 10501 with respect to the declassification of material shall have no application to the Report of the President's Commission on the Assassination of President Kennedy and the exhibit volumes thereto.

This letter shall be published in the Federal Register.

Sincerely,

Lyndon B. Johnson

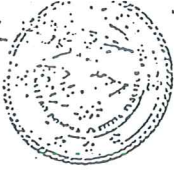
Honorable Earl Warren
Chairman
President's Commission on the
Assassination of President Kennedy
200 Maryland Avenue, N.E.
Washington, D. C.

LBJ:vm

Handwritten notes:
7-11-64
C. Johnson
11/27/64

C. Lyndon Baines Johnson

Handwritten note at bottom:
This was about a month after the Report was published...
only to the... of the...
...
...



Office of the Attorney General
Washington, D. C.

NOV 23 1964

Mr. McGeorge Bundy
Special Assistant to the President
The White House

Dear Mr. Bundy:

I am herewith enclosing a draft of a letter, prepared for the signature of the President, to Chief Justice Earl Warren, as Chairman of the President's Commission on the Assassination of President Kennedy, which has the effect of waiving the provisions of Section 5(i) of Executive Order No. 10501 of November 5, 1953, as amended, with respect to the publication of certain exhibits in the exhibit volumes of the Commission's Report.

The exhibit volumes contain material that was classified at one time, but which has now been declassified. Section 5(i) of Executive Order No. 10501 provides that whenever classified material is declassified the material shall be marked or stamped in a prominent place to reflect the change, the authority for the action, the date of the action, and the identity of the person taking the action. In addition, that provision requires the cancellation of the classification marking.

All material in the exhibit volumes has been declassified with the approval of the originating agencies. However, through inadvertence, the declassified material was printed in the exhibit volumes without being marked in the manner prescribed by Section 5(i). This is a purely technical defect which in no way impairs the national security. However, to maintain the integrity of the security procedures under that order, I recommend that the President expressly exempt those volumes from the procedural declassification requirements of Section 5(i). Since this is an isolated


C. Lyndon Baines Johnson

Handwritten notes:
1/10/65
1/10/65
1/10/65

situation, I suggest that the President's action be taken by a letter to the Chairman of the Commission rather than by a formal amendment to Executive Order No. 10501. The first volume of the exhibit volumes states that the material that was classified at one time is now declassified.

The letter should be published in the Federal Register after being retyped on White House stationery and signed by the President.

Sincerely,


Acting Attorney General

6 Lyndon Baines Johnson

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

Dear Mr. Chairman:

The procedures set forth in Section 5(i) of Executive Order No. 10501 with respect to the declassification of material shall have no application to the Report of the President's Commission on the Assassination of President Kennedy and the exhibit volumes thereto.

This letter shall be published in the Federal Register.

Sincerely,

[Lyndon B. Johnson]

C. Lyndon Baines Johnson

Approved by Lyndon B. Johnson

15-1-1
revisions
hand
delivered
11/16/64

NOV 7 1964

g

Honorable Nicholas de B. Katzenbach
Acting Attorney General
Department of Justice
Washington 25, D. C.

Dear Mr. Katzenbach:

In the preparation of the exhibit volumes of the Report of the President's Commission on the Assassination of President Kennedy, there were included among the documents published a number still bearing security classifications of TOP SECRET, SECRET, CONFIDENTIAL, OFFICIAL USE ONLY, and LIMITED OFFICIAL USE. The volumes in which these documents appear have already been printed and bound and are ready for distribution. All of these documents thus published had been previously declassified by the Commission or by the other originating agencies. To indicate that these documents had been declassified and that the classifications on them are therefore cancelled, the Preface to the first volume in the series includes a statement to that effect. It is believed that this statement in the Preface meets the intent of Executive Order No. 10501 with respect to change or removal of classification.

It is requested that you notify us whether this action by the Commission is in accordance with the appropriate provisions of Executive Order No. 10501 and conforms to the intent and purpose thereof.

Your cooperation with the Commission is greatly appreciated.

Sincerely yours,

J. Lee Rankin
General Counsel

Goldberg/11-16-64
CC: Mr. Goldberg, Mr. Rankin

THE NATIONAL ARCHIVES
FEDERAL REGISTER
 OF THE UNITED STATES
 1934
 VOLUME 29 NUMBER 232

Washington, Saturday, November 28, 1964

Contents

THE PRESIDENT

LETTER

✓ Letter of November 23, 1964; report of the President's Commission on the Assassination of President Kennedy; non-applicability of declassification procedures 15893

EXECUTIVE AGENCIES

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notices

Authority delegations:
 Assistant Administrator for Administration 15928
 Assistant Administrator for Africa 15928
 Principal U.S. diplomatic officer in Greece 15928
 U.S. Ambassador and Director of A.I.D. Mission, Karachi, Pakistan 15928

AGRICULTURAL MARKETING SERVICE

Rules and Regulations

Milk: handling in northwestern Ohio marketing area 15903
 Handling limitations:
 Lemons grown in California and Arizona 15903
 Navel oranges grown in Arizona and designated part of California 15902
 Tangerines grown in Florida; shipment limitations 15902

AGRICULTURAL RESEARCH SERVICE

Rules and Regulations

Okra from Colombia; treatment 15901
 Poultry improvement plans; miscellaneous amendments 15895

Notices

Brucellosis; stockyards and slaughtering establishments 15928

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Agricultural Research Service; Commodity Credit Corporation.

ATOMIC ENERGY COMMISSION

Notices

Carolinas Virginia Nuclear Power Associates, Inc.; extension of expiration date of provisional operating license 15930

CIVIL AERONAUTICS BOARD

Notices

International Air Transport Association; agreement relating to specific commodity rates (2 documents) 15930

CIVIL SERVICE COMMISSION

Rules and Regulations

Absence and leave; supporting evidence 15895
 Commerce Department; excepted service 15895

COMMODITY CREDIT CORPORATION

Rules and Regulations

Wheat; 1964 loan and purchase program 15912

FEDERAL AVIATION AGENCY

Rules and Regulations

Airworthiness directives; Curtiss-Wright Model C-46 Series aircraft 15897
 IFR altitudes; miscellaneous changes 15898

FEDERAL COMMUNICATIONS COMMISSION

Rules and Regulations

Organization; miscellaneous amendments 15923

Notices

Dominican Republic broadcasting stations; notification of new stations, changes or deletions in existing stations 15931

Hearings, etc.:

Cook, John Clarence 15931
 Estacada Telephone & Telegraph Co.; and Pacific Northwest Bell Telephone Co. 15931

FEDERAL MARITIME COMMISSION

Notices

Agreements and petitions filed for approval:
 North Atlantic Westbound Freight Association 15932
 U.S. Atlantic & Gulf-Venezuela & Netherlands Antilles Conference 15931

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
 Columbian Fuel Corp., et al 15922
 Pacific Power & Light Co. 15932

FEDERAL TRADE COMMISSION

Rules and Regulations

Prohibited trade practices:
 E.B.I. Sweater Co., Inc., et al 15915
 Greystone Corp 15915

FOOD AND DRUG ADMINISTRATION

Rules and Regulations

Food additives; miscellaneous amendments 15916

GENERAL SERVICES ADMINISTRATION

Notices

Government-wide automatic data processing sharing exchange program; temporary regulation 15922

(Continued on next page)

Presidential Documents

Title 3—THE PRESIDENT

Letter of November 23, 1964

REPORT OF THE PRESIDENT'S COMMISSION ON THE ASSASSINATION
OF PRESIDENT KENNEDY]

[Nonapplicability of Declassification Procedures]

THE WHITE HOUSE,
Washington, November 23, 1964.

DEAR MR. CHAIRMAN:

The procedures set forth in Section 5(1) of Executive Order No. 10501 with respect to the declassification of material shall have no application to the Report of the President's Commission on the Assassination of President Kennedy and the exhibit volumes thereto.

This letter shall be published in the FEDERAL REGISTER.

Sincerely,

LYNDON B. JOHNSON

HONORABLE EARL WARREN,

Chairman,

President's Commission on the Assassination of President

Kennedy,

200 Maryland Avenue NE.,

Washington, D.C.

[F.R. Doc. 64-12269; Filed, Nov. 27, 1964; 11:00 a.m.]

EXHIBIT C

September 5, 1975

Mr. Eliot Marshall
Associate Editor
The New Republic
1244 Nineteenth Street, NW.
Washington, DC 20036

Dear Mr. Marshall:

This is in response to your inquiries about certain transcripts of executive sessions of the President's Commission on the Assassination of President Kennedy.

No transcript for the executive session of September 13, 1964, has been found among the records of the Commission. The transcript of the executive session of June 23, 1964, is withheld from research under 5 U.S.C. 552 (b) (1) as amended, "matters that are...specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order." In response to a previous request for access, the transcript was reviewed by the Central Intelligence Agency because it relates to Yuri Nosenko, the Soviet defector. In response to our request for a review of the transcript the CIA asked that the request for access be denied "in order to protect sources and methods and other information related to our operational equities." The CIA further stated that the transcript warranted classification at the "Confidential" level under the criteria of Executive Order 11652 and exemption from the General Declassification Schedule pursuant to Sec. 5 (B) (2) and (3) of the Order. A copy of the relevant page of the Order is enclosed for your convenience.

The transcript of the executive session of May 19, 1964 (vol. 45), about which you also inquired, is withheld from research under 5 U.S.C. 552 (b) (6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

2

The transcript is limited to a discussion of the background of Commission personnel.

Sincerely,

(MISS) JANE F. SMITH
Director
Civil Archives Division
CC: Official file - NNFL
Reading file - NNF

MJohnson/pp
NNFL76-108

WV
md

THE NEW REPUBLIC

September 3, 1975

Mr. Miriam Johnson
The National Archives
Washington, D.C.

RECEIVED IN NY	9/3/75
DATE	9/10
NUMBER	76-108
TO	Johnson

Dear Mr. Johnson,

I wish to make a formal request to see the Ward and Paul typescript record of the executive session of the Warren Commission held on September 18, 1964. I understand that summarized minutes of this session are available to the public, but I would like to see the original record. If you cannot satisfy this request, I would appreciate getting an explanation in writing for your decision to withhold the document.

I also request to see a copy of
Volume 55 of the Commission
transcript.

Possibly you could also give some help with the transcript of an executive session held on January 22, 1964. Frankly, this document is puzzling to me. I have read a typed transcription of this session and seen it verified as an authentic Archives document, but it isn't listed in the official inventory of Archives documents published by the US Government. Indeed, this session of the proceedings seems to have dropped entirely out of view. This raises a couple of questions I hope you can help answer. I would like to know why the January 22 session wasn't listed in the index to proceedings, and I'd like to know what is the source, and who typed the record that now appears in the files. Secondly, it occurs to me that if one executive session could fall between the cracks, it's possible that others have. Could you give me a list, by date, of all executive or emergency sessions that have not yet been published, aside from those I've already learned about. At present, I know of transcripts for sessions held on December 5, 6, and 16, 1963; January 21, 22 and 27, 1964; February 24; March 16; April 30; May 19; June 4 and 23; and September 18. If there are no other unpublished transcripts of commission meetings, I would appreciate having a statement from you to that effect. Thanks for taking time to help me with these questions.

Sincerely,
Eliot Marshall
Eliot Marshall
Associate Editor