

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

Civil Action No. 75-1448

FILED

MAY 11 1976

JAMES F. DAVNEY
CLERK

OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

In this action brought under the provisions of the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, plaintiff seeks the disclosure of two Warren Commission executive session transcripts still withheld in their entirety, those of May 19 and June 23, 1964, and pages 63-73 of the January 21, 1964 transcript. The defendant has moved for summary judgment, arguing that the January 21 and June 23 transcripts are exempt from disclosure under 5 U.S.C. 552(b)(1), (b)(3), and (b)(5); and that the May 19 transcript is similarly protected from disclosure by exemptions (b)(5) and (b)(6).

For the reasons stated below, plaintiff contends that none of these transcripts is exempt from disclosure under the Freedom of Information Act and therefore opposes defendant's motion for summary judgment.

- I. THE DEFENDANT HAS NOT SHOWN THAT THE JANUARY 21 AND JUNE 23 TRANSCRIPTS ARE EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. 552(b) (1)

In Schaffer v. Kissinger, 505 F. 2d 398, 391 (1974), the United States Court of Appeals for the District of Columbia held that where an agency refuses to disclose documents because they are security classified, "the burden is on the agency to demonstrate to the court that the documents withheld under the claim of §552(b) (1) exemption were properly classified pursuant to executive order." However, at the time Shaffer was decided the Supreme Court had held that the district court could not inquire into "the soundness of executive security classifications" Environmental Protection Agency v. Mink, et al., 410 U.S. 73, 84, (1973).

By Public Law 93-502, Congress subsequently amended exemption (b) (1) to read as follows:

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

As the Conference Report noted, Congress intended to override the Supreme Court's decision in Mink and to permit withholding of executive classified information only when it is in fact properly classified "pursuant to both procedural and substantive criteria contained in such Executive order." (Emphasis added. Conference Report No. 93-1200, 93rd Cong., 2d Sess. [1974], at p. 12)

Plaintiff contends that neither the June 23 transcript nor pages 63-73 of the January 21 transcript is in fact properly classified according to the criteria set forth in Executive Orders 10501 and 11652.

A. THE WARREN COMMISSION DID NOT HAVE AUTHORITY TO CLASSIFY DOCUMENTS PURSUANT TO EXECUTIVE ORDER 10501

The defendant maintains that the January 21 and June 23 transcripts were "originally classified under the provisions of Executive Order 10501, as amended" (Answers to plaintiff's interrogatories No. 1 and No. 2) Executive Order 10901 amended section 2 of Executive Order 10501 as follows:

Sec. 2. Limitation of authority to classify. The authority to classify defense information or material under this order shall be limited in the departments, agencies, and other units of the executive branch as hereinafter specified.

* * * * *

(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter. (Emphasis added)

The defendant has conceded, grudgingly, that "there never was a specific authorization from President Johnson to the Warren Commission by means of an Executive Order granting it the authority to security classify documents originally." (Answer to interrogatory No. 28) There is no mention of any such authority in Executive Order 11130 which created the Commission (see Exhibit R), nor do the Commission's own Rules of Procedure refer to any such authority. (See Exhibit T)

The defendant argues that "there is significant documentary evidence that the President, his top aides and the Warren Commission itself assumed that the Commission had the authority to classify materials." (Answer to interrogatory 28) This is, of course,

beside the point. In addition to being irrelevant to the legal issue of whether the Warren Commission actually possessed the authority to security classify documents under Executive Order 10501, this latest "assumption"¹ is not supported by "significant documentary evidence" as claimed. The alleged evidence consists primarily of a letter from President Johnson to Warren Commission Chairman Earl Warren which was published in the Federal Register on November 28, 1964 (29 F.R. 15893). The entire text of that letter reads:

The procedures set forth in Section 5 (i) of Executive Order 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.

The heading above this letter in the Federal Register is "Non-applicability of Declassification Procedures". As the text indicates, it pertains only to declassification, not to classification. All this letter did was to protect the Warren Commission against the charge that in publishing its Report and exhibit volumes the Commission had released information validly classified by federal agencies authorized to so classify that information without following the declassification procedures prescribed by Executive Order 10501. The fact is that the Report had already been on sale a month by the time the Warren Commission was granted authority to

¹Dr. Rhoads, who has answered plaintiff's interrogatories, has a predilection for assumptions which undermines his credibility. He once testified before Congress that he had "assumed" that the January 27, 1964, Warren Commission executive session transcript was classified pursuant to Executive Order 10501, undeterred by the fact that he had earlier stated under oath his "personal knowledge" that the January 27 transcript was in fact classified pursuant to Executive Order 10501. (See Exhibits H and I, which are attached to plaintiff's Stipulation to Defendant's Motion for an Extension of Time to Respond to Motion to Compel Answers to Interrogatories)

disregard the declassification procedures spelled out in Executive Order 10501. (Weisberg affidavit, ¶41) The unsigned letter of November 7, 1964, from the Warren Commission's General Counsel, Mr. J. Lee Rankin, to Acting Attorney General Nicholas Katzenbach (a copy of which is attached to the Rankin affidavit which is attached to Dr. Rhoads' answers to plaintiff's first set of interrogatories) shows that three weeks before the Warren Commission had authority to disregard declassification procedures the exhibit volumes were already "printed and bound and . . . ready for distribution."

Moreover, it should be noted that the President's November 23 letter to Commission Chairman Earl Warren refers only to the Commission's Report and exhibit volumes; it does not include the remaining volume of the Commission's records, including its executive session transcripts.

Finally, plaintiff contends that defendant's attempt to claim that these transcripts were validly classified by the Warren Commission is barred by the doctrine of collateral estoppel as a result of the May 3, 1974, order which District Judge Gerhard Gesell issued in Civil Action 2052-73, plaintiff's suit for the January 27, 1964, Warren Commission executive session transcript. Judge Gesell's order stated as follows:

Initially, the Court probed defendant's claim that the transcript had been classified "Top Secret" under Executive Order 10501, . . . since such classification would bar further judicial inquiry and justify total confidentiality. 5 U.S.C. §552(b)(1); E.P.A. v. Mink, 410 U.S. 73 (1973). However, defendant's papers and affidavits, supplemented at the Court's request, still fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501 . . . as amended by Executive Order 10901. (Exhibit DD)

B. CLASSIFICATION PROCEDURES REQUIRED BY EXECUTIVE ORDER 10501 WERE NOT FOLLOWED IN THE CLASSIFICATION OF WARREN COMMISSION EXECUTIVE SESSION TRANSCRIPTS

Executive Order 10501 sets forth numerous guidelines and procedures for classifying defense information. Some of the most important are set forth in the following provisions:

Sec. 3. Classification. Persons designated to have authority for original classification of information or material which requires protection in the interests of national defense under this order shall be responsible for its proper classification in accordance with the definitions of the three categories in section 1, hereof. Unnecessary classification and over-classification shall be scrupulously avoided. The following special rules shall be observed in classification of defense information or material:

(a) Documents in General. Documents shall be classified according to their own content and not necessarily according to their relationship to other documents. References to classified material which do not reveal classified defense information shall not be classified.

As plaintiff's attached affidavit states, Ward & Paul, a private court reporting firm, routinely classified all transcripts, whether of witness testimony or Warren Commission executive sessions. All of the executive session transcripts were classified Top Secret by Ward & Paul simply as a matter of routine and utterly without regard to content or considerations of national security. (Weisberg affidavit, ¶15) Indeed, Ward & Paul even classified transcripts which were sent to it unclassified by the United States Attorney. [See Weisberg affidavit, ¶17; Exhibits M, N, O, P]

Under the terms of Executive Order 10501, this was totally unnecessary classification. For the Ward & Paul bureaucracy, however, this improper classification was vitally necessary. When, on May 1, 1964, Mr. J. Lee Rankin ordered the transcripts of witness testi-

"declassified" from Top Secret to Confidential "so the printers can handle it," (Exhibit AA), it brought internal chaos to Ward & Paul. (Weisberg affidavit, ¶36)

The defendant's own exhibits establish that rather than the executive session transcripts being classified "according to their own content," as required by Executive Order 10501, they were classified in a blanket fashion by Ward & Paul. Thus, the May 1, 1964, letter attached to Mr. Rankin's affidavit (see Government Exhibit 1A) shows that the executive session transcripts were ordered classified into the indefinite future without exception and regardless of content.

This, of course, defeats the purposes of Executive Order 10501, which requires that the potential damage to the national defense be weighed against the public's right to know and measured against explicit criteria for determining whether defense considerations are present. Since the January 21 and June 23 transcripts sought by plaintiff were classified Top Secret immediately upon transcription, it is apparent that no such "weighing" took place.

Other violations of security regulations make it evident that the executive session transcripts were not classified out of a concern for national security. All transcripts of witness testimony and executive sessions done by Ward & Paul were classified Top Secret until May 1, 1964. But the firm of Ward & Paul sold copies of Top Secret witness testimony before it had been declassified. (See Exhibit V) The sale of classified transcripts was authorized by the Commission's rules. (See Exhibit T) The Commission was aware that this would enable the press to obtain copies of it. (Exhibit U)

With respect to executive session transcripts, one member of the Commission, Congressman Gerald Ford, and his campaign manager personally profited from the sale and publication of parts of the

January 27 transcript which plaintiff sought in Civil Action No. 2052-73. No action was taken to halt the publication of that classified transcript or to bring sanctions against those who disclosed it. The reason why is obvious: the January 27 transcript was not classified pursuant to Executive Order 10501, did not contain defense information, and the responsible authorities, including Mr. Rankin and Dr. Rhoads, knew it. Yet for nine years after Gerald Ford had declassified selective portions of it on his own hook by publishing them in his book, Portrait of the Assassin, the National Archives continued to suppress this transcript in its entirety under the guise, known to be false, that it was properly classified Top Secret.

Section 4(j) of Executive Order 10501, as amended, requires that "when classified material affecting the national defense is furnished authorized persons, in or out of Federal Service, other than those in the executive branch," the following notation is to be placed on such material:

This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Although all Warren Commission executive session transcripts were classified Top Secret and made available to persons outside the executive branch of government, only one transcript, that of January 21, 1964, bears this stamp. The cover sheet of that transcript does not show when or by whom it was placed there. (See Exhibit EE) As with all other executive session transcripts except that of January 21, 1964, the June 23, 1964, transcript does not contain this stamp warning of the violation of the espionage laws. (See Exhibit FF)

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The classification of the Warren Commission transcripts also did not adhere to the provisions of Executive Order 10501 pertaining to automatic downgrading or declassification of classified documents. Section 4(a) of Executive Order 10501 initially provided:

(a) Automatic changes. To the fullest extent practicable, the classifying authority shall indicate on the material (except telegrams) at the time of original classification that after a specified event or date, or upon removal of classified enclosures, the material will be downgraded or declassified. (Emphasis added)

In 1961 Executive Order 10964 amended this provision to require that classifying authorities categorize classified information or material into one of four groups according to a schedule for automatic downgrading and declassification. The amendment also added the following paragraph to Section 4(a) of Executive Order 10501:

To the fullest extent practicable, the classifying authority shall indicate on the information or material at the time of original classification if it can be downgraded or declassified at an earlier date, or if it can be downgraded or declassified after a specified event, or upon the removal of classified attachments or enclosures. The heads, or their designees, of departments and agencies in possession of defense information or material classified pursuant to this order, but not bearing markings for automatic downgrading or declassification, are hereby authorized to mark or designate for automatic downgrading or declassification such information or material in accordance with the rules or regulations established by the department or agency that originally classified such information or material. (Emphasis added)

Executive Order 10964 also amended Section 5 of Executive Order 10501 as follows:

(a) Downgrading-Declassification Markings. At the time of origination, all classified information or material shall

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be marked to indicate the downgrading-declassification schedule to be followed in accordance with paragraph (a) of section 4 of this order.

This provision of Executive Order 10501 was not followed with respect to any of the Warren Commission executive session transcripts. None of the transcripts were so marked at the time of their original classification, nor were they so marked during any of the classification reviews to which they were subjected while Executive Order 10501 was in effect.

Finally, in a most devastating admission, Dr. Rhoads states that the National Archives has only three copies of the January 21 transcript and seven of the June 23 transcript. (See answer to interrogatory No. 57) Yet Ward & Paul delivered ten copies of each transcript to the Warren Commission. (See Exhibits EE and FF) This fact makes a mockery of the pretense that these transcripts are being withheld for reasons of national security. If, indeed, that were the case, then there ought to be an immediate investigation to determine who has the missing copies and who is responsible for the fact that they are missing. Dr. Rhoads' evident lack of concern about the whereabouts of the missing copies is one more proof that these transcripts are not classified for national security reasons. (See answers to interrogatories 55 and 56)

C. THE JANUARY 21 AND JUNE 23 TRANSCRIPTS ARE NOT PROPERLY CLASSIFIED UNDER THE SUBSTANTIVE CRITERIA OF EITHER EXECUTIVE ORDER 10501 OR EXECUTIVE ORDER 11652

Executive Order 10501 defined the classification "Top Secret" by saying that it applied"

only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or de-

fense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

Although all Warren Commission executive session transcripts were originally classified Top Secret, and allegedly under the standard set forth above, those that have been released so far show that there never was any basis for assigning them any security classification. (Weisberg affidavit, ¶¶38, 42) The circumstances surrounding the classification of Warren Commission transcripts, including the failure to abide by the strict procedures relating to the classification and safeguarding of national security information, make it evident that the January 21 and June 23 transcripts are not properly withheld for reasons of national security.

The claim that the January 21 transcript is classified for reasons relating to national defense is disputed by the Warren Commission's General Counsel, Mr. J. Lee Rankin. In a March 11, 1964, letter to Senator Jacob Javits, Mr. Rankin stated flatly:

At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration. (See Exhibit CC)

Defendant's answers to interrogatories show that its claim that the June 23 transcript is classified for national security reasons is also baseless. When plaintiff asked whether Yuri Nosenko, a KGB official who defected from the Soviet Union after President Kennedy's assassination, was the subject of that transcript, the defendant initially refused to answer 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. (See answer to interrogatory No. 15)

After plaintiff pointed out that the National Archives had already informed The New Republic that Mr. Nosenko was the subject of the June 23 transcript, defendant admitted this. This admission shows that the defendant fraudulently invoked national security as a basis for suppressing information in the June 23 transcript when, in fact, it had freely given out that information in its own correspondence.

Plaintiff, who is the foremost authority on the Warren Commission, denies the claim of Mr. Briggs of the Central Intelligence Agency that revelation of these transcripts would "compromise currently active intelligence sources and methods" or "result in a perceived offense to the foreign nation involved with consequent damage to United States relations with that country," or "destroy the current and future usefulness of an extremely important foreign intelligence source and . . . compromise ongoing foreign intelligence analysis and collection programs." (Weisberg affidavit, ¶44) Plaintiff points out that twelve years have elapsed since the Warren Commission received information from Mr. Nosenko, that any intelligence source or method described in these transcripts is almost certainly known to the foreign nation which was the subject of it, and that the only FBI report on Mr. Nosenko which was ever classified was found, upon its declassification, to have no basis for ever having been classified. (Weisberg affidavit, ¶¶45-48)

The absence of any basis for classifying Warren Commission executive session transcripts for reasons of national security is further evidenced by the April 5, 1965 letter of Commission Chairman Earl Warren to Acting Attorney General Nicholas Katzenbach, in

which Warren states: "The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies." (Exhibit Y) While many documents supplied to the Warren Commission were classified by other agencies, the executive session transcripts were not.

D. PROCEDURES MANDATED BY EXECUTIVE ORDER 11652
HAVE NOT BEEN FOLLOWED IN CLASSIFYING THE JANUARY
21 AND JUNE 23 TRANSCRIPTS "CONFIDENTIAL"

In Shaffer v. Kissinger, 505 F. 2d 389, 391 (C.A.D.C. 1974), which involved a claim that not all copies of the Red Cross reports sought by plaintiff were stamped Confidential and that the classification was made in order to avoid disclosure and only after appellant requested the reports, the Court held:

. . . the burden is on the agency to demonstrate to the court that the documents withheld under the claim of the §552(b)(1) exemption were properly classified pursuant to executive order. In that regard, it was the responsibility of the court below to determine whether the Red Cross reports were in fact classified "confidential" and whether that classification, including the timing thereof was in accordance with Executive Order 11652. (Emphasis added)

Plaintiff has requested the executive session transcripts on many occasions over the past several years. Exhibit GG is an example of the response made to one such request in 1971, when Executive Order 10501 was in effect. Plaintiff contends that the defendant must show that the classification of the January 21 and June 23 transcripts was procedurally and substantively proper under Executive Order 10501.

However, should the Court rule that these transcripts could properly be originally classified Confidential pursuant to Executive Order 11652 in 1975, some eleven years after their origination,

then plaintiff maintains that they were not so classified in accordance with the procedures mandated by that Executive Order.

The timing of the classification of these transcripts under Executive Order 11652 is highly irregular. On July 27, 1972, the National Archives asked the CIA to review the security classification of Warren Commission documents, including the executive session transcripts sought here, under the provisions of Executive Order 11652. (Exhibit HH) The cover sheets of the January 21 and June 23 transcripts (Exhibits EE and FF) show that they were not marked classified under Executive Order 11652 as a result of the 1972 review. Nor were they marked classified pursuant to Executive Order 11652 as a result of another classification review which culminated in October, 1974. (See Exhibit JJ)

On March 12, 1975, plaintiff made a formal request for the January 21 and June 23 transcripts. (Exhibit A) Nine days later, on March 21, 1975, the National Archives sent these transcripts to the CIA for yet another classification review. (See answers to interrogatories 10 and 20) Although both transcripts were purportedly classified Confidential by Mr. Charles A. Briggs of the Central Intelligence Agency on May 1, 1975, neither transcript was so marked until after plaintiff filed this suit on September 4, 1975.

In light of these facts it is obvious that these transcripts have been classified under Executive Order 11652 only in response to plaintiff's Freedom of Information suit and not for national security reasons but simply as a means of avoiding disclosure. This, of course, is in violation of section 4 of Executive Order 11652, which provides:

Classification shall be solely on the basis of national security considerations. In no

case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department . . . or to prevent for any other reason the release of information which does not require protection in the interest of national security.

That the classification of these transcripts is not made for reasons of national security but simply to deny plaintiff access to them is further evidenced by the defendant's admission that only the file copies of these transcripts were initially marked Confidential and that "all the extra copies were not marked 'Confidential' until the date of receipt of these interrogatories." (See answer to interrogatory 57) This also violates the requirements of section 6 of Executive Order 11652, which provides that:

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

Other violations of Executive Order 11652 seem likely on the basis on defendant's unwillingness to answer plaintiff's interrogatories which ask whether all persons who have had access to these transcripts had the required security clearances. (See answers to interrogatories 16-17, 35-38) This belief is enhanced by the statement in paragraph 4 of Dr. Rhoads' March 29, 1976 affidavit (attached to the Opposition to Plaintiff's Motion to Compel Answers to Interrogatories):

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. (Emphasis added)

This evasive statement suggests an awareness that the CIA is leaking classified Warren Commission records to unauthorized persons.

Finally, plaintiff contends that defendant has not met its burden of showing that the January 21 and June 23 transcripts were properly classified under Executive Order 11652. Plaintiff notes, for example, that the affidavit of Mr. Charles A. Briggs, in addition to being vague and conclusory, does not recite that he is authorized to originally classify documents Confidential under section 2(C) of Executive Order 11652, nor does it state that he is authorized under section 3(A) or 3(B) to downgrade or declassify national security information.

II. THE DEFENDANT HAS NOT SHOWN THAT IT HAS COMPLIED WITH THE PRESIDENT'S GUIDELINES ON THE PUBLIC AVAILABILITY OF WARREN COMMISSION RECORDS

In January, 1965, in response to a grass roots protest of the National Archives' attempt to suppress Warren Commission records, (see Exhibit W), the White House directed the Attorney General to make a study with a view towards changing the announced policy of the defendant. As directed by the White House (Exhibit E), the Department of Justice solicited the views of Chief Justice Earl Warren on the public availability of the Commission's records. The Attorney General's April 13, 1965 memorandum (Exhibit X) summarized those views as follows:

The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission has concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established

law and policies of the Government. According to the Chief Justice, the Commission assumed that these determinations would be made in light of 'the overriding consideration of the fullest possible disclosure.' Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies. (Emphasis added)

As a result of this study, the Department of Justice promulgated guidelines governing the release of Warren Commission materials. Guideline 2 provided:

Security classifications should be respected, but the agency responsible for the classification should carefully re-evaluate the contents of each classified document and determine whether the classification can, consistent with the national security, be eliminated or downgraded.

The guidelines also stated:

Whenever one of the above reasons for nondisclosure may apply, your department should, in determining whether or not to authorize disclosure, weigh that reason against the overriding policy of the Executive Branch favoring the fullest possible disclosure.

The defendant has not shown that these guidelines have been used in making the determination to suppress the transcripts sought by plaintiff. Plaintiff's interrogatory No. 58 asked:

In determining that the January 21st and June 23rd transcripts are to be classified "Confidential" under Executive Order 11652, did Mr. Charles Briggs take into account the guidelines drawn up by the Department of Justice pursuant to the White House directive of April 19, 1965? Was Mr. Briggs instructed to take the Justice Department guidelines into account in making his determinations?

Dr. Rhoads answered:

I am not in a position to speculate on the bases for Mr. Briggs' determinations. While the National Archives provided the CIA with a copy of the Justice Department's guide-

lines at the time of a previous review of Warren Commission materials, we did not do so during the most recent review. It is our opinion that the Justice Department guidelines have largely been superseded in the review of Commission materials by the Freedom of Information Act and E.O. 11652.

This contradicts Dr. Rhoads' testimony before a Congressional subcommittee on May 11, 1972, six years after the enactment of the Freedom of Information Act and after the issuance of Executive Order 11652, where he said:

The records of the President's Commission on the Assassination of President Kennedy (the Warren Commission) are administered under guidelines prepared by the Department of Justice in 1965 (copy attached) which provide for periodical reviews of the Commission's records to make as many of them as possible available for research. Any records withheld from research under the guidelines, of course, must belong to one or more of the types exempted from disclosure by the terms of the "Freedom of Information Act" (Hearings, House Foreign Operations and Government Information Subcommittee, 92nd Cong., 2nd Sess., Part 7, p. 2610)

The guidelines have not been superseded by the Freedom of Information Act or Executive Order 11652. By their terms, which require that determinations as to the release of Warren Commission documents must be made in light of the "overriding policy of the Executive Branch requiring the fullest possible disclosure", the guidelines go beyond the disclosure that is required under the Freedom of Information Act or Executive Order 11652. Plaintiff contends that defendant must show that the disclosure of the transcripts he seeks must be weighed in accordance with the Department of Justice guidelines. The defendant is in violation of stated Executive Branch policy unless it can show that these guidelines have been consulted and followed.

III. DEFENDANT HAS NOT MET ITS BURDEN OF SHOWING THAT THE JANUARY 21 and JUNE 23 TRANSCRIPTS COME WITHIN THE PURVIEW OF EXEMPTION (b) (1)

Defendant argues that the January 21 and June 23 transcripts are exempt from disclosure by virtue of 5 U.S.C. 552(b) (3), which permits the withholding of materials "specifically exempted from disclosure by statute . . ." The statute cited by the defendant is 50 U.S.C. 403(d) (3), which provides that:

. . . the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosures"

In support of this claim, defendant relies upon the affidavit of Charles Briggs. However, the Briggs affidavit does not cite 50 U.S.C. 403(d) (3) as authority for nondisclosure of the January 21 and June 23 transcripts. Rather, Mr. Briggs declares that the transcripts are "exempt from the General Declassification Schedule pursuant to section 5(B) (2) of Executive Order 11652." Section 5(B) (2) exempts from the General Declassification Schedule: "Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods."

Apparently the defendant is under the misapprehension that "intelligence sources and methods" has the same meaning when used in Executive Order 11652 that it does in 50 U.S.C 403(d). The legislative history of this statute, which defendant has not shown to be an exemption (b) (3) statute, shows otherwise. Section 403 (d) (3) is contained within the National Security Act of 1947, P. L. 80-253, 61 Stat. 495-510, which established a unified Defense Department, the National Security Council, and the Central Intelligence Agency. It does not authorize withholding under exemption

(3) because it merely makes the Director of Central Intelligence "responsible" for protecting intelligence sources and methods from unauthorized disclosure without giving specific content to this responsibility. This proviso was nothing more than hortatory language inserted to allay inter-departmental rivalries among agencies with intelligence functions. (See Report to the President by the Commission on CIA Activities Within the United States 53 [1975]) This responsibility was not implemented until Congress passed the Central Intelligence Act of 1949, P.L. 81-110, 63 Stat. 208-213, 50 U.S.C. §§403a-403j. However, the implementing statute of the 1949 Act, codified as 50 U.S.C. §403g, is extremely narrow. It exempts the CIA from statutory requirements to report to Congress and the Bureau of the Budget (now the Office of Management and Budget) the "organization, functions, names, official titles, salaries, or number of personnel employed by the Agency" In short, it exempts only budgetary items which would reveal CIA "personnel data". (See 95 Cong. Rec. 6956, May 27, 1949)

The only statute which defendant has invoked in support of its exemption (3) claim is 403(d)(3). Assuming, arguendo, that this is an exemption (3) withholding statute, defendant must prove that the disclosure sought by plaintiff is unauthorized, a determination which must be made in light of the criteria set forth in Executive Order 11652, for unless the information is properly classified pursuant to that Executive Order, its disclosure is not unauthorized.

Finally, defendant has already revealed the intelligence source of the June 23 transcript as Yuri Nosenko, so that there is no longer any point to trying to protect the June 23 transcript from disclosure under this guise.

IV. DEFENDANT HAS NOT SHOWN THAT ANY OF THE TRANSCRIPTS ARE PROTECTED BY EXEMPTIONS (b) (5) OR (b) (6)

Defendant argues that all of the transcripts sought by plaintiff in this section are exempt under 5 U.S.C. 552(b) (5), and that the May 19 transcript is also protected by 5 U.S.C. (b) (6). Exemption 5 exempts from disclosure "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." In construing exemption (5) in Environmental Protection Agency v. Mink, 410 U.S. 73, 89 (1973), the Supreme Court drew a distinction between "materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other." The former are protected by the exemption, the latter are not.

In support of defendant's claim to exemption (5), the October 6, 1975, affidavit of Dr. James B. Rhoads (Government Exhibit 1) states:

These transcripts are the written record of the times when the Commission members met to express their individual ideas, opinions, conclusions and recommendations to the other members. The subject matter of the meetings included the Commission's methods of gathering evidence, the personnel of the Commission staff, the Commission's goals and public image, as well as a discussion of the evidence before the Commission. On several occasions individual commissioners expressed the opinion that their views and those of the other commissioners were given and should be maintained in confidence. As these transcripts clearly reflect the deliberative process of the Commission, NARS has determined that they may properly be withheld from public disclosure under the cited exemption.

Plaintiff contends that in order for defendant to meet its burden under exemption (5) it must at a minimum show 1) that the Warren Commission was engaged in making policy at these executive sessions, and 2) what that policy was. Dr. Rhoads' affidavit does

establish either one. Executive Order 11130, which established the Commission (Exhibit R) and Senate Joint Resolution 137 (Exhibit S) show that the Commission's functions were of an investigative rather than policy-making nature.

Moreover, by its own terms the Rhoads' affidavit admits that the transcripts contain "discussion of the evidence before the Commission" and other matters which clearly are not within the ambit of exemption (5). Yet the defendant has not made the showing required by Vaughn v. Rosen, 157 U.S.App.D.C. 368, 484 F. 2d 1086, cert. denied, 415 U.S. 977 (1974), which requires the government to itemize, index, and cross-reference all segregable portions of a document for which an exemption is claimed.

Recent cases also make it clear that exemption (5) does not protect from disclosure a number of matters which are not clearly covered by the policy-making/fact distinction. Thus, Vaughn v. Rosen 383 F. Supp. 1049 (D.D.C. 1974), aff'd, 523 F. 2d 1136 (C.A. D.C. 1975) held that "factual, investigative, and evaluative portions" of documents which "reflect final objective analyses of agency performance under existing policy" and "reveal whether the agencies' policies are being carried out" are subject to disclosure. Moore v. McCormack Lines, Inc. v. ITO Corp. of Baltimore, 508 F. 2d 945 (C.A. 4, 1975) held that inferences based on observed facts and which depend on the expertise of the investigating official were disclosable even though exemption (5) was invoked. Ash Grove Cement Company v. F.T.C. (C.A.D.C. 1975), held that an agency's chronological minutes containing "policy determinations" are subject to disclosure. Cf. Sterling Drug v. Federal Trade Commission, 146 U.S.App.D.C. 237, 450 F. 2d 698 (1971).

Finally, plaintiff notes that the above-quoted description in Dr. Rhoads' affidavit could be applied to all of the Commission's executive session transcripts. By making all such transcripts publicly available except the three sought here, the defendant has waived its right to invoke exemption (5) status for the transcripts which remain suppressed. The Freedom of Information Act was not intended to permit agencies to selectively make public those documents most favorable, or least embarrassing, to the government.

Dr. Rhoads' notes that on several occasions individual members of the Warren Commission expressed the opinion that their views and those of other commissioners were given and should be maintained in confidence. While this is true, it is beside the point. The National Archives has itself recently made public the horrifying but immensely important transcript of the January 22, 1964, Warren Commission executive session, at which members of the Commission, frightened by the evidence that Lee Harvey Oswald had worked for the CIA and/or FBI, asked that the record of their conversation be destroyed. In fact, no transcript of that executive session was made until just last year, when the Archives had the stenotypist's notes transcribed.

The defendant also claims that the May 19, 1964 transcript is exempt under (b) (6) which permits nondisclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The legislative history of this exemption indicates that it was intended to apply to "files containing intimate details" about persons maintained by "those Government agencies where persons are required to submit vast amounts of personal data usually for limited purposes," such as Veterans Administration, HEW, and Selective Ser-

vice. (S. Rept. No. 813, 89th Cong., 1st Sess. (1965) at p. 9. See also H.R. Rept. No. 1497, 89th Cong., 2d Sess. (1966) at p. 11.) It is evident that the May 19 transcript is neither a personnel, medical, or similar file as such a file is defined for purposes of exemption (b) (6). The affidavit executed in support of the claimed (b) (6) exemption was sworn to long before the recent Supreme Court decision in Dept. of Air Force v. Rose (No. 74-489). That decision makes it clear that documents which "lack the attributes of 'personnel files' as commonly understood" are not exempt. (Slip opinion, p. 22) As the Supreme Court noted in Rose:

. . . the general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspection matter in which the public could not reasonably be expected to have an interest. The case summaries plainly do not fit that description. They are not matter with merely internal significance. They do not concern only routine matters. (Slip opinion, p. 16)

The May 19 transcript is obviously not a personnel file. Nor are its contents "matter in which the public could not reasonably be expected to have an interest" or "matter with merely internal significance". The executive session of May 19, 1964, was held for public, not private, purposes. The firing or non-firing of the Commission's employees is an important public question because it relates to how the Commission functioned in its discharge of an awesome public duty.

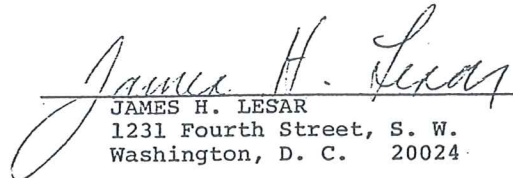
Moreover, the National Archives has waived any right to invoke exemption (b) (6) for Warren Commission transcripts because it has repeatedly made public records which do come within the ambit of that exemption, such as the 39 pages of pregnancy records compiled during Marina Oswald's stay at Parkland Memorial Hospital.

V. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT MUST BE DENIED BECAUSE MATERIAL FACTS ARE IN DISPUTE AND THE DEFENDANT HAS NOT MET ITS BURDEN OF SHOWING THAT ANY OF THE REQUESTED RECORDS ARE PROTECTED UNDER ANY OF THE FREEDOM OF INFORMATION ACT'S EXEMPTIONS

The function of summary judgment is to avoid a useless trial. Thus, it cannot be granted where there is a genuine issue as to a material fact. As the Supreme Court has stated: "Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them." Associated Press v. United States, 326 U.S. 1, 6 (1945). See Adickes v. S.H. Kress & Co., 398 U.S. 144, 153-61 (1970); National Cable Television Ass'n, Inc. v. FCC, 479 F. 2d 183, 186 (1973). In this regard, all "inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the (summary judgment) motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1972). And it is the government which has the burden of proving the applicability of an exemption from disclosure. 5 U.S.C. 552(a)(3). See Vaughn v. Rosen, 484 F. 2d 820, 8230826 (1973). Furthermore, courts are entirely in agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to material fact, which under applicable principles of substantive law, entitle him to judgment as a matter of law. Nothing may be assumed, and there may be no real doubt as to any material fact. Adickes, supra, at 157.


In the instant action, there are genuine issues of material fact with respect to each of the claimed exemptions. Further discovery, such as the depositions of Mr. Briggs, Dr. Rhoads and Dr.

Marion Johnson, is needed before the issues in this case can be definitively resolved. Accordingly, defendant's motion for summary judgment must be denied.


JAMES H. LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of May, 1976, mailed a copy of the foregoing Opposition to Defendant's Motion for Summary Judgment to Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D. C. 20001.


JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
: HAROLD WEISBERG,
:

Plaintiff,
:

v. :

Civil Action No. 75-1448
:

GENERAL SERVICES ADMINIS-
TRATION,
:

Defendant
:
.....

AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, being first duly sworn, depose as follows:

1. I am the plaintiff in the above-entitled action. I live at Route 12, Frederick, Maryland.

2. For the past twelve years I have devoted myself to an intensive study of political assassinations. I am author of six published books on the investigation into President Kennedy's assassination: Whitewash: The Report on the Warren Report; Whitewash II: The FBI-Secret Service Coverup; Photographic Whitewash: Suppressed Kennedy Assassination Pictures; Whitewash IV: Top Secret JFK Transcript; Oswald in New Orleans: Case for Conspiracy with the CIA; and Post-Mortem: JFK Cover-up Smashed!

3. I am also author of one book on the assassination of Dr. Martin Luther King, Jr.: Frame-Up: The James Earl Ray/Martin King Case.

4. In the 1930's I was an investigator for and editor of the record of a subcommittee of the Senate Labor Committee. After Pearl Harbor I served in the OSS, where my primary responsibilities were as an intelligence analyst. I have also worked with the FBI and several divisions of the Department of Justice in connection with my work for the Senate Education and Labor Committee or through my writing.

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

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

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

8. I was the plaintiff in *Weisberg v. United States General Services Administration*, Civil Action No. 2052-73, United States District Court for the District of Columbia, a suit which I brought to force disclosure of the January 27, 1964, Warren Commission executive session transcript. I read all papers filed in connection with that lawsuit, including the affidavit and answers to interrogatories sworn to by Dr. James B. Rhoads, the Archivist of the United States. Similarly, I have read all papers filed in connection with my present suit for disclosure of the Warren Commis-

sion executive session transcripts of January 21, May 19, and June 23, 1964, including the affidavit and answers to interrogatories sworn to by Dr. James B. Rhoads.

9. In the affidavit which he submitted in opposition to my suit for disclosure of the January 27 transcript, Dr. Rhoads swore that: "In accordance with Executive Order, at all times since . . . the transcript of the January 27, 1964, executive session of the Warren Commission . . . has been in the custody of the National Archives . . . , it has been and continues to be classified 'Top Secret.'" In answer to my second interrogatory in that suit, Dr. Rhoads swore that the January 27 transcript "was originally classified under the provisions of Executive Order 10501" and "is presently classified under the provisions of Executive Order 11652."

10. The inference to be drawn from Dr. Rhoads' sworn statements is that the January 27 transcript was originally and lawfully classified Top Secret pursuant to Executive Order 10501. In a counteraffidavit I stated: "This is false." I stated that the January 27 transcript had originally been classified Top Secret by an employee of Ward & Paul, the privately-employed court reporter for the Warren Commission. I charged that Dr. Rhoads' affidavit and answers to interrogatories had been deliberately framed so as to deceive the court on this point. Although Dr. Rhoads swore that his answers to interrogatories were based upon his own personal knowledge, he later testified before a congressional committee that he had just "assumed" that the January 27 transcript had been classified under the authority of Executive Order 10501. [See Plaintiff's Exhibit I, p. 71]

11. In his answer to interrogatory No. 1 in the present suit, Dr. Rhoads concedes that Warren Commission executive session transcripts were marked Top Secret by Ward & Paul. As I will show, this practice had nothing whatsoever to do with national security considerations.

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

13. Attached hereto as Exhibit K is a Ward & Paul worksheet itemizing the work which the firm did for the Warren Commission. The upper right-hand corner of this worksheet bears the designation "File No. PC-2", which is one of the Warren Commission's "house-keeping files". This worksheet was prepared by Ward & Paul. As the face of Exhibit K shows, Ward & Paul stamped even its house-keeping records Top Secret.

14. This worksheet also shows that all entries on it are classified Top Secret. Thus, each transcript of all executive sessions on and after January 21, 1964, was classified Top Secret by Ward & Paul. As the entries on this and other worksheets reflect, this includes the executives session transcripts for January 21, May 19, and June 23, 1964, which I now seek, as well as the January 27, 1964, transcript which I sought in Civil Action 2052-73.

15. Further evidence that the Warren Commission's executive session transcripts were classified Top Secret by Ward & Paul as a matter of routine and without regard to content is shown by Ward & Paul receipts No. 3001, No. 3013, and No. 3313, attached hereto as

Exhibit L. For example, receipt No. 3013 reflects that the January 27, 1964, transcript was delivered to the Secretary to the General Counsel for the Warren Commission, who signed for it at 9:10 a.m. on January 28, prior to a reading of it by any member or employee of the Commission and after it had been classified Top Secret by Ward and Paul. Receipts No. 3001 and 3313 reflect that the same is true of the transcripts of the January 21 and May 19, 1964, executive sessions.

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

17. The Ward & Paul practice of routinely classifying all transcripts Top Secret was not followed by Department of Justice employees who prepared and handled these transcripts. Attached hereto as Exhibit M is a letter of April 20, 1964, from Louis LaCour, then United States Attorney for the Eastern District of Louisiana, to Ward & Paul. Although the transcripts of the testimony of five of the witnesses deposed in New Orleans were forwarded with this letter, the letter bears no classification stamp. One of the transcripts which the United States Attorney forwarded to Ward & Paul contained the testimony of Julian Evans, who had been an elderly neighbor of the Oswalds when Lee Harvey Oswald was a boy. When this previously unclassified transcript of Mr. Evans' recollections of Oswald as a young kid reached Washington, Ward & Paul promptly classified it Top Secret, as shown by Exhibit N. But Exhibits O and P, the Preface and Table of Contents to Volume VIII of the Warren Commission Hearings, show that the Commission ignored Ward & Paul's Top Secret label and published Julian Evans' testimony anyway.

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

19. In support of its motion for summary judgment the defendant has submitted the April 8, 1974, affidavit of Mr. J. Lee Rankin. [See Exhibit A to Government Exhibit 1] This affidavit was originally filed in opposition to my previous suit for the January 27 transcript. In his affidavit Mr. Rankin states: "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."

20. Read together with the correspondence attached to it, Mr. Rankin's affidavit implies that before Ward & Paul was chosen as the Commission's reporter, the Commission instructed Rankin to direct Ward & Paul to classify all work done by it for the Commission.

21. I am familiar with the transcripts of all Warren Commission executive sessions except the two which are withheld in toto and the excised portions of those transcripts which are withheld in part. I have also carefully examined the files of the Warren Commission relating to the Commission's executive sessions.

I know of no document in the Commission's files directing Mr. Rankin to classify the executive session transcripts pursuant to Executive Order 10501. In response to a request for the production of any such instruction, the defendant has stated: "The National Archives has not found any instruction from the Warren Commission to its General Counsel, Mr. J. Lee Rankin, ordering him to classify the January 21 or June 23, 1964, or any other Warren Commission executive session transcript."

22. Under date of July 20, 1971, I asked Dr. James B. Rhoads, the Archivist of the United States, for a copy of any Executive Order which he regarded as relevant to the withholding of the Warren Commission's executive session transcripts. Dr. Rhoads never provided me with a copy of any such Executive Order.

23. Mr. Rankin states that he began work as General Counsel for the Commission on December 8, 1963. No transcript of an executive session held before that date was ever classified. In fact, those executive session transcripts made by the Department of Justice both before and after that date were never classified, neither at the time by the Department of Justice, nor subsequently by the National Archives.

24. The first executive session reported by Ward & Paul was that of January 21, 1964. No transcript of an executive session held between December 8, 1963, and January 21, 1964, was ever classified. The first transcript of an executive session to be classified was that of January 21, 1964, the date on which Ward & Paul became the Commission's reporter.

25. I have read all of the executive session transcripts not still withheld. At no point is there a directive from the Commission to Mr. Rankin ordering him to classify the executive session transcripts pursuant to Executive Order 10501. Nor was there even

any discussion of classifying executive session transcripts pursuant to Executive Order 10501.

26. The only executive session at which the Commission could have ordered Mr. Rankin to classify its executive session transcripts is that of December 16, 1963. That transcript is unclassified and a casual reading of its beginning pages discloses that the Commission was not concerned with and did not address any of the concerns of Executive Order 10501. [See Exhibit Q]

27. In addition to the actual physical safety and integrity of its files, the Commission's specific and articulated concern throughout its existence was over news leaks.

28. Neither Executive Order 11130, which created the Commission, nor Senate Joint Resolution 137, which gave it the power to subpoena witnesses and compel the production of evidence, authorized the Commission to classify documents pursuant to Executive Order 10501. [See Exhibits R and S]

29. Although the testimony of all witnesses transcribed by Ward & Paul was routinely classified, the Commission's own procedures for the taking of testimony did not provide for this. The Commission's procedures, adopted at its executive session of March 16, 1964, were themselves classified Top Secret by Ward & Paul. Although the Commission's procedures were reprinted in the Warren Report, the National Archives did not declassify them until more than three years later. [The Commission's resolution adopting these procedures is attached hereto as Exhibit T]

30. Notwithstanding the fact that Ward & Paul classified all witness testimony, Commission Rule "I-C" permitted witnesses to purchase transcripts of their testimony. [See Exhibit T] When discussing this provision at its January 21, 1964, executive session,

Mr. Rankin pointed out that copies of witness transcripts might be sold to the press. Representative Hale Boggs stated: "A witness has the right to look at his own testimony. If the press wants to buy it, they can buy. [See Exhibit U] Mr. Rankin personally authorized the sale of classified witness transcripts. Attached hereto as Exhibit V are Ward & Paul invoices reflecting the sale of classified transcripts to Mrs. Marina Oswald and news reporter Ike Pappas.

31. After the Warren Commission went out of existence with the filing of its Report on September 27, 1964, the National Archives attempted to throw a 75-year cloak of secrecy over the Commission's records. An eloquent letter of protest from the Mayor of Cedar Rapids, Iowa to the President [Exhibit W] served as the instrument by which the Executive Branch initiated action intended to override the Archives' suppression of Warren Commission documents. The White House directed the Attorney General to make a study with a view towards changing the policy announced by the General Services Administration. [See White House "Memorandum for Acting Attorney General Katzenbach", attached as Exhibit E to Plaintiff's request for production of documents]

32. As Directed by the White House, the Department of Justice solicited the views of Chief Justice Earl Warren on the public availability of the Commission's records. The Attorney General's Memorandum of April 13, 1965, states: "The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission has concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies of the Government. According to the Chief Justice, the Commission assumed that these

determinations would be made in light of the 'overriding consideration of the fullest possible disclosure.' Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies." [Emphasis added. The Attorney General's Memorandum is attached hereto as Exhibit X. Chief Justice Earl Warren's April 5, 1965, letter is attached hereto as Exhibit Y.]

33. The Attorney General's April 13 Memorandum outlined certain procedures to be followed in making Warren Commission records publicly available. The White House approved these guidelines and procedures on April 19, 1965, and directed the Department of Justice and the National Archives to implement them. [See Exhibit Z] In 1968 the National Archives wrote a student of the Warren Commission: "We are not aware of any documents from the office of President Johnson on which the withholding of Warren Commission documents from research is based, except the memorandum of Mr. McGeorge Bundy of April 19, 1965, approving the procedures proposed by the Attorney General for making records of the Commission available for research."

34. In his April 8, 1974, affidavit, Mr. Rankin also states:

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)."

As I have pointed out above, there is no record of any such agreement by the Commission and the defendant has produced none. All evidence is directly to the contrary. In addition, rather than "certain" of the executive session transcripts being classified, the fact is that all executive session transcripts made by Ward &

Paul were classified Top Secret. This is shown by the Ward & Paul worksheets. [See Exhibit K] These worksheets also show that all executive session transcripts were classified Top Secret by Ward & Paul as a matter of routine and utterly without regard to content.

35. In support of its motion for summary judgment, the defendant has submitted a May 1, 1964, letter from Mr. Rankin to Ward & Paul as evidence purporting to show that Mr. Rankin instructed Ward & Paul to classify executive session transcripts Top Secret. This letter was filed by the defendant in connection with my suit for the January 27 transcript, even though it postdates the date on which the January 27 transcript was classified by more than three months. It also postdates by more than three months the date on which the January 21 transcript I seek in this suit was classified Top Secret.

36. Mr. Rankin's affidavit and his May 1, 1964, letter to Ward & Paul leave the impression that in that letter he reissued a previous order to Ward & Paul to classify all executive session transcripts for reasons relating to national security. This impression is totally misleading. Mr. Rankin's letter relates to the executive session of the previous day, April 30, 1964, which had discussed the printing of the Commission's Report. The printing of the testimony of witnesses who had appeared before the Commission did not present a threat to the national defense but, for internal bureaucratic reasons, it was necessary to downgrade the witness testimony. As Mr. Rankin explained in making the motion to down grade: "I think at this time we ought to take action on declassifying our transcript so the printers can handle it, "from Top Secret to Confidential." [Emphasis added. See Exhibit AA]

37. Dr. Rhoads and Mr. Rankin are both familiar with the provisions of Executive Order 10501. Dr. Rhoads has testified be-

fore Congress as Chairman of the Interagency Classification Review Committee. From 1953 to 1956 Mr. Rankin was an Assistant Attorney General in charge of the Justice Department's Office of Legal Counsel where he reportedly held "the key assignment of advising the President on the preparation of proclamations and executive orders." [See Exhibit BB] Executive Order 10501 was issued by President Eisenhower on November 4, 1953.

38. In addition to being familiar with the requirements of Executive Order 10501, Dr. Rhoads and Mr. Rankin also knew the contents of the January 27, 1964, executive session transcript at the time I brought suit for it. Mr. Rankin had participated at that executive session and Dr. Rhoads reviewed the transcript of it in 1967. Yet the sworn statements of both men have sought to give the impression that the January 27 transcript was properly classified pursuant to Executive Order 10501. Both men have to have known this was false. The January 27 transcript is now publicly available and its content is totally devoid of any material which is, or could have been, classifiable on grounds of national security. That transcript did contain matter embarrassing to the CIA and the FBI, but it did not reveal any information which jeopardized the national security.

39. Although Mr. Rankin's affidavit asserts that the January 27 transcript was classified on national security grounds, Mr. Rankin states exactly the opposite in his March 11, 1964, letter to Senator Jacob Javits:

"At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration." [Exhibit CC]

In view of this statement it is obvious that the January 21 transcript was classified for other than national security reasons.

40. In his March 29, 1976, affidavit, a copy of which is attached to the defendant's opposition to my motion to compel answers to interrogatories, Dr. Rhoads argues that the November 23, 1964, letter from President Lyndon Johnson to Commission Chairman Earl Warren is evidence of the Commission's authority to classify documents. However, is nothing more than post facto authority for the Warren Commission to disregard the procedures normally followed in declassifying documents. It does not authorize or imply the power to classify documents. It does imply that the Warren Commission had no authority to classify or declassify documents before that date, which is long after the dates of the executive session transcripts which I seek.

41. The Warren Report was delivered to the President of the United States on September 24, 1964. Page proofs were made available to the press on September 24th. Printing of the Report began the night before it was delivered to the President and copies were made available for commercial distribution on September 27, 1964. As the November 7, 1964, letter from J. Lee Rankin to Acting Attorney General Nicholas Katzenbach shows, the exhibit volumes had already been printed and bound as of the date of that letter, some two weeks before the President authorized the declassification of the classified materials appearing in them.

42. All transcripts of Warren Commission executive sessions held on or after January 21, 1964, were classified Top Secret. I have read all such transcripts not still withheld. There was never any basis for classifying any of the now declassified executive sessions transcripts.

43. After first declining to identify the subject of the June 23, 1964, executive session on grounds of national security, Dr. Rhoads has now admitted that Yuri Nosenko is the subject of the

transcript and that the National Archives had so informed The New Republic before refusing to answer my interrogatory seeking to establish that fact.

44. I have read the November 5, 1975, affidavit of Mr. Charles A. Briggs, Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency. On the basis of my experience as intelligence analyst for the OSS and as a scholar who has spent twelve years studying the assassination of President Kennedy, I do not believe Mr. Briggs' assertion that disclosure of pages 63-73 of the January 21, 1964, executive session transcript would "not only compromise currently active intelligence sources and methods, but could additionally result in a perceived offense by the foreign nation involved with consequent damage to United States relations with that country." Nor do I believe his assertion that disclosure of the June 23rd transcript "would destroy the current and future usefulness of an extremely important foreign intelligence source and would compromise ongoing foreign intelligence analysis and collection programs.

45. In this connection I note that more than twelve years have passed since the assassination of President Kennedy. On this basis alone it is unlikely that disclosure would jeopardize any present or future intelligence source. More importantly, any intelligence source or method described in these transcripts is almost certainly known to the foreign nation which was the subject of it.

46. The June 23rd transcript relates to a Soviet defector, Mr. Yuri Nosenko. Only one of the FBI reports on Mr. Nosenko was ever classified. It has now been declassified and a reading of it shows that there never was any basis for classifying it.

47. Those documents relating to Nosenko which have been made public reveal that the CIA does have a motive for suppressing re-

ports on Nosenko. The reason for this is that Nosenko, a former KGB official stationed in Moscow, told government authorities that the KGB never trusted or had any interest in Lee Harvey Oswald, suspected that he was a "sleeper agent" of U.S. intelligence, and kept him and his mail under surveillance. What this means is that the KGB suspected that Oswald was a CIA agent. This, of course, provides motive for the CIA to withhold this transcript.

44. FBI Director J. Edgar Hoover, on the other hand, did not believe that Nosenko's information should be suppressed. In fact, he believed so strongly that Nosenko should be a Warren Commission witness that he made arrangements for Nosenko to testify without asking the Commission if it wanted him to be a witness. The Commission, however, did not take testimony from Nosenko, nor did it mention Nosenko or his information in its Report.

Harold Weisberg

Washington, D.C.
~~FREDERICK COUNTY, MARYLAND~~

Before me this 5th day of May, 1976, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 31, 1979.

Justith A. Vestell
NOTARY PUBLIC IN AND FOR
~~FREDERICK COUNTY, MARYLAND~~
Washington, D.C.

EXHIBIT J

Civil Action 75-1448

PRESIDENTIAL COMMISSION
TO INVESTIGATE THE ASSASSINATION
OF PRESIDENT KENNEDY

5 December 1963
National Archives
Washington, D. C.

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

PRESENT:

Chief Justice Earl Warren - Chairman

Senator Richard B. Russell

Senator John Sherman Cooper

Representative Hale Boggs

Representative Gerald R. Ford

Mr. Allen W. Dulles

Mr. John J. McCloy

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

PLACE:

Conference Room
National Archives
Washington, D. C.

TIME:

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

EXHIBIT L

Civil Action No. 75-1448

Receipt No. 3001

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
629-4265

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

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date January 22, 1964

Received from WARD & PAUL nina copies of transcript of proceedings
before the President's Commission on the Assassination of President Kennedy
in re TOP SECRET
held at Washington, D. C. on January 21, 1964

#1 of 9 thru #9 of 9

also, Reporter's notes, master sheets, carbon paper, waste

To President's Commission on the Assassination
of President Kennedy
200 Maryland Ave., N. E.
Washington, D. C. 20002
ATTENTION: J. Lee Rankin

By Jesse L. Ward, Jr.

Released by Jesse L. Ward, Jr.
Date 1-22-64 Time 8:55

Receipt No. 3013

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
628-4268

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

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date January 28, 1964

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

in re TOP SECRET

held at Washington, D. C. on January 27, 1964

01 of 9 thru 09 of 9

also, Reporter's notes, master sheets, carbon paper and waste.

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

By Jesse L. Ward, Jr.

*Released by Jesse L. Ward, Jr.
1/28/64 at 9:10 AM*

Receipt No. 3313
TS-277

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
628-4286

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

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date May 20, 1964

Received from WARD & PAUL 10 copies of transcript of proceedings
before President's Commission on the Assassination of President Kennedy
in re TOP SECRET -- Meeting of the Commission without witnesses
held at Washington, D. C. on May 19, 1964
copies # 1 of 10 thru # 10 of 10 Pages 6600 thru 6651

Also, Reporter's notes (2 takes)
Master sheets
Carbon paper
Waste

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

By R. G. [Signature]

Released by Wayne Birdsell
Date 5/20/64 9:10 am

EXHIBIT M

Civil Action No. 75-1448

Registry B2328

United States Department of Justice

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

April 20, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AIR MAIL

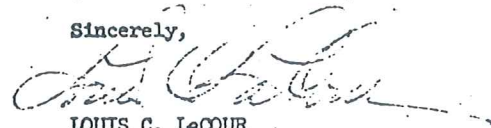
Mr. Jesse Ward
Ward and Paul, Inc.
917 "G" Street, N.W.
Washington, D. C.

Dear Mr. Ward:

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

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

Sincerely,



LOUIS C. LaCOUR
United States Attorney

LCL/ab
Encl.

TS 248(78)
TS 251(81)
TS 249(79)
TS 252(82)
TS 250(80)

EXHIBIT N

Civil Action No. 75-1448

Receipt No. 3237

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WASHINGTON, D. C., 20001
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T. S. 249(79)

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

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date April 22, 1964

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

in re TOP SECRET -- Deposition of: Julian Evans

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

copies # 1 of 8 thru # 8 of 8

Herewith original copy from which copies were made

Pages 1 thru 30

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

Washington, D. C. 20002

By B. C. Beckman

Released by Wayne Birdsell

Date 4/27/64 Time 11:00

Preface

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

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EXHIBIT Q

Civil Action No. 75-1448

PRESIDENTIAL COMMISSION
TO INVESTIGATE THE ASSASSINATION
OF PRESIDENT KENNEDY

16 December 1963
National Archives
Washington, D.C.

Reported and Transcribed by
Alex Dal Porto
Reporter
Office of the United States Attorney
Washington, D.C.

PRESENT:

Chief Justice Earl Warren - Chairman

Senator Richard B. Russell

Senator John Sherman Cooper

Representative Hale Boggs

Representative Gerald R. Ford

Mr. Allen W. Dulles

Mr. John J. McCloy

Associate Justice Stanley F. Reed
(Present to administer oath)

Mr. J. Lee Rankin
(General Counsel of the Commission)

PLACE:

Conference Room
National Archives
Washington, D. C.

TIME:

Approximately 2:00 PM to 4:30 PM, 16 Dec 1963

CHAIRMAN: Gentlemen, the meeting is open. I have brought Justice Reed over to administer our oath.

JUSTICE REED: Would each of you hold up your right hand?

(At this point all members of the Commission stood and raised their right hands.)

JUSTICE REED: I will support and defend the Constitution of the United States against all enemies foreign and domestic and I will bear true faith of allegiance to same. I take this obligation freely, without any mental reservation or purpose of evasion, and I will well and faithfully discharge the duties of the office which I am about to enter, so help you God.

(Chorus of "So help me God.")

CHAIRMAN: We'll sign them, Stanley, and we'll send them over to you. Thank you very much, Stanley.

(At this point, approximately 3:05 PM, Justice Reed left the conference room.)

CHAIRMAN: Gentlemen, I have tried to make up a little agenda here. We have had to make it on the run because we have been in a running operation here and we have been putting things on as they come to us. Gentlemen, I want to say that Mr. Rankin was able to accept our offer to become General Counsel of our Commission and he's been with me most of the time since our last meeting and we have been trying to tend to the housekeeping part of this thing so we will be in business.

I have no report of the minutes of the prior meetings as yet because they have not yet been written up. I have asked the Attorney General to write them up and send them to us and then we can have them approved at a later date.

As regards Number Three on the agenda, we have found some quarters which, I think, you will find are nearly ideal for our

purposes. They are located on the fourth floor of this little Veterans of Foreign Wars building, just a block or two away from here. The Government has leased ten thousand square feet of space in there. They have some other people in there but they were able to move them to give us the entire fourth floor of the building, and if we should need more space they tell us that they can give it to us on the floor below it. It is a brand new building. It's as clean as thistle and in all respects, I think, is adequate. We have a room on the fourth floor that is large enough for our Commission meetings, and if we need more space for more people to be in the room at one time we can use the meeting room of the Veterans of Foreign Wars. They use it very seldom and they have said we can use that. This will give you an idea of the size of it. It will set up to two hundred people, in addition to the Commission, or we can divide it off into three rooms. So I think we have every facility that we need over there. We have office space for those who are out of the city, Mr. Dulles and Mr. McCloy. I think all told that they are about as nice quarters as we can get. They are close to everybody.

We only have one problem. We have a little problem of parking there. Senator, the parking lot of the new Senate building is directly across the street, and I wonder if we can get a little space for some of our people. I'm told you have a large lot there and all of it is not used.

SEN. RUSSELL: I'm sure it can be arranged. If there is no unusual number I'm sure that can be arranged. I'd like to know how many spaces we'll need.

CHAIRMAN: We'll find out and let you know. The reason it's essential for us to have some space is that there are no other

places around there possible for more parking space, and we're in the winter season. It gets dark now about four-thirty or five o'clock, and I'm just afraid to have our women employees moving around that part of our city in the dark. I don't even let them go from our building over to our parking lot, which is a block away without officers being stationed there to look in their cars when they get there to see that there is no one around. I think you have had some experience.

SEN. RUSSELL: I think we have a policeman on duty at all times.

CHAIRMAN: Yes. So, if you like, the offices are open. We're in business over there. If we have time, and you'd like to do it, I'd like to have you go over and see it this afternoon, at the conclusion of the meeting. Are you in agreement that the place and everything is acceptable?

REP. FORD: I so move, if you want a resolution.

SEN. RUSSELL: I second it.

CHAIRMAN: Is there any further discussion?

(No response.)

CHAIRMAN: All in favor say "Aye"?

(Chorus of "Ayes.")

CHAIRMAN: Contrary minded?

(No response.)

CHAIRMAN: The "Ayes" have it.

REP. ROGGS: What's the address?

CHAIRMAN: 200 Maryland Avenue.

REP. BCGGS: That's right near the new Senate building.

CHAIRMAN: Right across the street from it.

MR. RANKIN: Do you want to give them the telephone

number?

CHAIRMAN: 961-3355.

MR. RANKIN: We are going to have a switchboard put in so that we can take calls.

CHAIRMAN: We're in business over there. Now, it's set up with new furniture for us. We have an office manager. GSA sent one to us. He's on duty this morning. We have an expert on files, who we got from Mr. Grover, the archivist. These people should know the filing business about as well as anyone I'm told, and he says this is one of his very best men. Mr. Rankin is there with his secretary. And we have an arrangement made with GSA so we can borrow our secretarial help.

SEN. RUSSELL: Mr. Chief Justice, that brings to mind the matter of the reporter. Will we utilize the Department of Justice reporters all the way through or are we supposed to get other reporters from some of the reporting agencies.

CHAIRMAN: Mr. Rankin and I were talking about that today. We came to the conclusion that we would suggest to you that we get a reporting agency of our own.

SEN. RUSSELL: I think that would be highly advisable, where we can. At least we won't be criticized for things that could be brought in, as so often happens.

SEN. COOPER: What worries me is the security.

CHAIRMAN: There will be a man. Before we get to that may we just finish this about the reporters. Do any of you know reporting systems which should be used? After we got through talking to Mr. Katzenbach today he mentioned some firm. Perhaps you would know it from your legislative committees. I don't know.

MR. DULLES: There's a good one in the Armed Services.

SEN. RUSSELL: Ward and Paul. We had them during the MacArthur hearing. They're very good. I'm not trying to sell

anyone. There are two or three different ones up on the Hill.

MR. RANKIN: Someone recommended the Alderson firm.

CHAIRMAN: Do any of you know that firm? Suppose Senator, you know these people, you have had a little more experience than any of us, suppose you let us know which one would be best to use.

SEN. RUSSELL: They all use practically the same system, if they're all cleared. Of course, our people have to have the very highest clearance over there.

CHAIRMAN: Who does your work over there?

SEN. RUSSELL: I think it's Ward and Paul.

MR. DULLES: That's familiar to me.

SEN. RUSSELL: They have been doing it ever since the Armed Services Committee was organized.

CHAIRMAN: Do any of the rest of you know any reporting firms? I don't know a reporting firm in the city. My recommendation wouldn't be worth anything. Will you be satisfied with that firm?

SEN. RUSSELL: Yes, indeed. I know they're topflight. The Appropriations Committee has a different firm. I think they're practically all cleared. I know this firm is cleared. We have some of the most sensitive hearings on the Hill and there have been no leaks at all.

CHAIRMAN: Is it agreeable to the rest of you to take the firm, whatever firm it is, that the Armed Services Committee has?

SEN. COOPER: I so move.

SEN. RUSSELL: I would prefer to have some staff get in touch with them and have them see Mr. Rankin. If that is agreeable I'll tell them to get in touch with Mr. Rankin.

CHAIRMAN: Is that agreeable with everyone? Very well, that will be done, and Mr. Rankin, you have the power to act after you discuss it with Senator Russell.

So I think that is about all we have on the housekeeping affairs. Can you think of anything?

MR. RANKIN: The question was asked about security clearance.

SEN. COOPER: Files, for example.

CHAIRMAN: Yes?

SEN. COOPER: You have to go in and get them, I suppose, go down there and get what you want to read and return it. What about the security investigation on whoever keeps those files?

CHAIRMAN: Well, of course, we wouldn't have anyone in there who doesn't have full clearance on top secret matters handling those files. We'll go through the Department of Justice and GSA on that. I'm hopeful that we won't have to have any investigations made, that we can borrow all of those people who have been already cleared, so that it won't take any time to do it. I would think, from what I've heard, that could be done. And then we have this whole floor, as I've told you, and GSA said they would have a guard on that floor twenty-four hours a day. So I think we're in pretty good shape from that standpoint, John. Does that answer your question?

SEN. COOPER: Yes.

MR. MC CLOY: When you take those documents out, for example, they have a regular procedure. I wish they would do that. In my office they sent up somebody and they prescribed the type safe to have and where it should be located, and maybe you want to do the same thing.

MR. DULLES: I have a safe that meets the qualifications. I don't have a guard. I don't think that's necessary.

CHAIRMAN: I suppose we all have safes, most of us that are in the Government service.

SEN. RUSSELL: I only have a file safe. The only thing I have is a guard on duty. He's on duty twenty-four hours a day. I don't intend to keep out anything that is essential.

SEN. COOPER: For those of us that are here it is rather simple. We can go to these offices, take anything out, and return it.

MR. MC CLOY: They have an FBI unit up there in New York that keeps a very close check. Lots of times they take them back at the end of the day and put them in their own safe.

MR. RANKIN: We can arrange to have a locked file cabinet in the office for you and Mr. Dulles, because you asked for offices here, and we can arrange with the FBI to check out any security.

MR. MC CLOY: That office doesn't have to be too formal. Just a place to sit down.

MR. DULLES: A separate office isn't necessary. I have an office here in my house.

CHAIRMAN: Very well.

MR. DULLES: I think that people that are in charge of the files should have Top Secret clearance.

CHAIRMAN: Yes. We won't deal with anything less than that.

MR. RANKIN: And for any of the members of the Congress we have a place over there where they can examine things.

MR. DULLES: What are you going to do about stenographic help?

CHAIRMAN: We hope to borrow all of that from secretarial help that has been cleared. It will enable us to start right in business. I have been given assurances that we would be able to get secretaries, without question, from the Department of Defense.

SEN. RUSSELL: I have one suggestion. If you can, get good ones.

MR. DULLES: I was trying to get you one from the CIA, one who had been in the CIA but who had to leave for maternity reasons. I think I can get one very quickly.

CHAIRMAN: Well, I would think, Mr. Rankin, you can confer with Mr. Dulles if you have any difficulty getting them from one of the departments here. But I hope we don't have to go out into the open market and employ anybody. That I don't want to do. I think it can be arranged without that.

MR. DULLES: We'll probably have to pay these, won't we?

MR. RANKIN: We hope they'll be given to us.

MR. DULLES: At least somebody else. I don't know.

SEN. FORD: It might jeopardize this continuity of employment or service, Allen.

CHAIRMAN: It might.

MR. DULLES: That's true.

CHAIRMAN: So I would be inclined to try to borrow them and we'll see, if it creates any problem we'll come back to discussing some other way.

Gentlemen, you all have, I am sure, a copy of the FBI report. We just got today one copy of the State Department report, and we're asking them, of course, to make other copies and send a copy to each member of the Commission. That was just handed to Mr. Rankin shortly before noon today.

MR. DULLES: They'll be delivered to Mr. Rankin. Will they be held in the office for us? My copy of the FBI report got to me all right but I was surprised. It got there in a big box and I thought it was some more of my books. I shoved it aside and I didn't have it under any security at all.

MR. MC CLOY: The FBI I thought was very particular in giving it to me. They delivered it in person.

MR. DULLES: If they're all delivered to you then we can pick it up from you.

MR. RANKIN: (Nods head.)

CHAIRMAN: We have been told that Mr. Rankin has been notified by the Secret Service that they'll perhaps have their report in before the end of the week. The CIA said that it has no big report to make but it has some communications that it wants to present to us and it will do so when Mr. Rankin tells them we're ready for it.

MR. DULLES: They have not seen the annexes to the FBI report. They do not have those. Their report could only be of value, in my opinion, unless they have something extraneous, after they have seen the FBI report.

MR. MC CLOY: But they do have something that is extraneous.

MR. DULLES: That we ought to get.

CHAIRMAN: Yes. They have the trip down to Mexico, for one thing, I know. Where he went to the Cuban Embassy down there, and possibly some other agency. So whatever ones there are that come in to play we'll see that there are copies made for all of you. And I think we also ought to make a formal recommendation of the Texas people to send us their reports. I had proposed to

talk to the Attorney General this afternoon, after our meeting, and invite him and his attorney, a man by the name of Jaworski, who bears an excellent reputation in his State for all purposes, and ask him to come down here and visit with us tomorrow and talk about the matter of liaison between the State of Texas and our Commission. From what I have learned from the Attorney General and from Mr. Jaworski I am satisfied that it will be forthcoming, we can do business with them on a very fine plane.

SEN. RUSSELL: Do you intend to ask about the police force or just go through the FBI?

CHAIRMAN: I have hoped, Senator, that we might be able, as far as Texas is concerned, to deal with the Attorney General of the State but, as you know, you're dealing with people who depend upon relationships between them, of which I'm not certain, and I felt it would be better if we could deal directly with the Attorney General of the State and get everything from him.

SEN. RUSSELL: I agree with that but I think it would be well for us to know if there are any independent files given by the State Police independent from that as kept by the Dallas Department of Police.

CHAIRMAN: We'll check that, Senator. If it is your desire we'll ask all of those agencies.

SEN. RUSSELL: I think you're exactly right in going through the Attorney General.

REP. BOGGS: In connection with this matter, prior to your arrival this afternoon, some of us inquired informally if there was any security with respect to Mrs. Oswald. She's a Russian citizen. She might just take off and leave.

MR. DULLES: I was rather worried about that. She's

been in touch with the Embassy, that we know, and of course she might just take off and go to Mexico.

CHAIRMAN: The only thing that I heard was that the Secret Service took her into protective custody so that nothing would happen to her. Now, what they have done since that time I don't know. They were afraid that something might happen to her, as happened to her husband, so they took her to some unknown place, I think.

REP. FORD: It would be another bad flavor, I think.

CHAIRMAN: You're exactly right.

MR. MC CLOY: There's another woman here that intrigues me and that is Mrs. Paine.

MR. DULLES: And her husband, too. I understand there's a report on that.

SEN. RUSSELL: There's nothing absolutely normal about any phase of it.

CHAIRMAN: Well, gentlemen, to be very frank about it, I have read that report two or three times and I have not seen anything in there yet that has not been in the press

SEN. RUSSELL: I couldn't agree with that more. I have read it through once very carefully, and I went through it again at places I had marked, and practically everything in there has come out in the press at one time or another, a bit here and a bit there.

MR. DULLES: Some of the details of the annexes are not in the press.

SEN. RUSSELL: That's true.

MR. DULLES: I wish we could get from the FBI more readable annexes. There are three, four, or five annexes there and I think they ought to assume the responsibility of writing them

so we can read them.

REP. FORD: I agree with you. I've had a terrible time trying to read some of the notes of Oswald and I think that, as a convenience to us, it would be very helpful if it was typewritten up so that it would be very readable.

MR. DULLES: His handwriting is very hard to decipher. They do a better job of deciphering the handwriting than we do.

MR. MC CLOY: I think that you've got to bear in mind that they were under pressure to get this to us, and this only purports to be a summary. The grammar is bad and you can see they did not polish it all up. It does leave you some loopholes in this thing but I think you have to realize they put this thing together very fast.

REP. BOGGS: There's nothing in there about Governor Connally.

CHAIRMAN: No.

SEN. COOPER: And whether or not they found any bullets in him.

MR. MC CLOY: This bullet business leaves me confused.

CHAIRMAN: It's totally inconclusive.

SEN. RUSSELL: They couldn't find where one bullet came out that struck the President and yet they found a bullet in the stretcher.

MR. MC CLOY: I think you ought to have the autopsy documents.

CHAIRMAN: By all means we ought to have the medical reports. We ought to have them as part of this document here because they might play a very important part in it.

MR. MC CLOY: I understand there are two. I may be wrong about this, but there's a report in Dallas by the surgeons who

IMMEDIATE RELEASE

NOVEMBER 30, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER
NO. 11130

APPOINTING A COMMISSION TO REPORT UPON THE
ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

Pursuant to the authority vested in me as President of the United States, I hereby appoint a Commission to ascertain, evaluate and report upon the facts relating to the assassination of the late President John F. Kennedy and the subsequent violent death of the man charged with the assassination. The Commission shall consist of--

The Chief Justice of the United States, Chairman;

Senator Richard B. Russell;

Senator John Sherman Cooper;

Congressman Hale Boggs;

Congressman Gerald R. Ford;

The Honorable Allen W. Dulles;

The Honorable John J. McCloy.

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

The Commission is empowered to prescribe its own procedures and to employ such assistants as it deems necessary.

Necessary expenses of the Commission may be paid from the "Emergency Fund for the President".

All Executive departments and agencies are directed to furnish the Commission with such facilities, services and cooperation as it may request from time to time.

LYNDON B. JOHNSON

THE WHITE HOUSE,

November 29, 1963.

APPENDIX III



Public Law 88-202
88th Congress, S. J. Res. 137
December 13, 1963
Solely Repealed

Authorizing the Commission established to report upon the assassination of President John F. Kennedy, to compel the attendance and testimony of witnesses and the production of evidence.

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purposes of this joint resolution, the term "Commission" means the Commission appointed by the President by Executive Order 11750, dated November 29, 1953;

(b) The Commission, or any member of the Commission when so authorized by the Commission, shall have power to subpoena and to examine under oath any person who is in the possession of any evidence that relates to any matter under investigation by the Commission. The Commission, or any member of the Commission, or any agent or agency designated by the Commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing;

(c) In case of contumacy or refusal to obey a subpoena issued to any person under subsection (b), any court of the United States in the district of which said person fully of continuity or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its member, agent, or agency, there to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(d) Process and papers of the Commission, its members, agent, or agency, or any subpoena, or any subpoena issued to any person, shall be served by the Commission, its members, agent, or agency, or any subpoena, or any subpoena issued to any person, or principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the number of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when required and mailed or telegraphed in a form and shall be proof of service of the same. Witnesses summoned before the Commission, its members, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall be treated in the same manner as witnesses in the courts of the United States.

(e) No person shall be excused from attending and testifying or producing evidence in obedience to a subpoena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be excused or subjected to any penalty or forfeiture (except donation or removal from office) for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed the privilege

77 STAT. 383. Pub. Law 88-202 -2- December 13, 1963
Aggravate self-incrimination, to testify or produce evidence, except that such individual be testifying shall not be excused from prosecution and punishment for perjury committed in so testifying.
(2) All process of any court to which application may be made under this Act may be served in the judicial district wherein the person required to be served resides or may be found.
Approved December 13, 1963.

LEGISLATIVE HISTORY
CONGRESSIONAL RECORD, Vol. 109 (1963):
Dec. 9, Passed Senate.
Dec. 10, Considered and passed House.

473
474

2732

Case No. 40
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TOP SECRET
PRESIDENT'S COMMISSION

ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Washington, D.C.

Monday, March 16, 1964

The President's Commission met, pursuant to recess, at 5.47 p.m., in the Hearing Room, Fourth Floor, 200 Maryland Avenue, Northeast, Washington, D.C., Chief Justice Earl Warren, presiding.

PRESENT:

- Chief Justice Earl Warren, Chairman
- Senator John Sherman Cooper, Member
- Representative Gerald R. Ford, Member
- John J. McCloy, Member

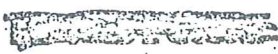
- J. Lee Rankin, General Counsel
- Norman Redlich, Special Assistant to General Counsel

CLASSIFICATION CANCELED

By authority of
Archivist of the United States

By *J.M.G.*

Date *2/13/82* Case



PROCEEDINGS

The Chairman. Gentlemon, I wish to read the following resolution governing the questioning of witnesses by members of the Commission staff:

"Pursuant to Executive Order No. 11130, November 29, 1963, which authorizes this Commission 'to prescribe its own procedures', it is therefore

"Resolved, that the following are hereby adopted as the rules of this Commission for the questioning of witnesses by members of the Commission staff.

"I. Sworn Depositions:

"A. Individual members of the staff are hereby authorized to administer oaths and affirmations, examine witnesses, and receive evidence in the form of sworn depositions on any matter under investigation by the Commission.

"B. Such sworn depositions may be taken only from witnesses designated in writing for questioning in this manner by the Commission, by a member of the Commission, or by the General Counsel of the Commission.

"C. A stenographic verbatim transcript shall be made of all sworn depositions. Copies of the witness' testimony shall be available for inspection by the witness or his counsel. When approved by the Commission, said copies may be purchased by the witness or his counsel at regularly prescribed rates from the official reporter.

CLASSIFICATION CA...
By authority of
Archivist of United States
Date 2/15/68

~~CONFIDENTIAL~~

"D. Process and papers of the Commission issued under Paragraph (d) of Joint Resolution S.J. 137, 88th Congress, 1st Sess., shall be returnable no less than three days from the date on which such process or papers are issued, and shall state the time, place, and general subject matter of the deposition. In lieu of such process and papers, the Commission may request the presence of witnesses and production of evidence for the purpose of sworn depositions by written notice mailed no less than three days from the date of the deposition.

"E. The period of notice specified in Paragraph D may be waived by a witness.

"F. A witness at a sworn deposition shall have the right to be accompanied by counsel of his own choosing, who shall have the right to advise the witness of his rights under the laws and Constitution of the United States, and the State wherein the deposition shall occur, and to make brief objections to questions. At the conclusion of the witness' testimony, counsel shall have the right to clarify the testimony of the witness by questioning the witness.

"G. At the opening of any deposition a member of the Commission's staff shall read into the record a statement setting forth the nature of the Commission's inquiry and the purpose for which the witness has been asked to testify or produce evidence.

"H. Any witness who refuses to answer a question shall state the grounds for so doing. At the conclusion of any

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By authority of
Archives of the State

BY MMQ

2/13/22

[REDACTED]

deposition in which the witness refuses to answer a question the transcript shall be submitted to the General Counsel for review and consideration whether the witness should be called to testify before the Commission.

"II. Sworn Affidavits.

"A. Members of the Commission staff are hereby authorized to obtain sworn affidavits from those witnesses who have been designated in writing by the Commission, a member of the Commission, or the General Counsel of the Commission as witnesses whose testimony will be obtained in this manner.

"B. A copy of the affidavit shall be provided the affiant or his counsel."

Representative Ford. I move the adoption of the resolution Mr. McCloy. Second.

The Chairman. All in favor say aye.

(There was a chorus of "ayes".)

The Chairman. Opposed?

(No response.)

The Chairman. The motion is carried unanimously.

(Whereupon, at 5:50 p.m., the Commission adjourned, subject to the call of the Chair.)

CLASSIFIED BY: [illegible]
BY: [illegible]
DATE: [illegible]
BY: M. G. [illegible]
DATE: 7/1/58

[Redacted]

or inspect only the transcript of his testimony before the Commission."

Did you get that from other commissions?

Mr. Rankin. That is right. They could sell that to the press possibly.

The Chairman. Beg pardon?

Mr. Rankin. They could sell that to the press if they want to do that but that is the usual provision for the commissions.

Rep. Beggs. A witness has the right to look at his own testimony. If the press wants to buy it, they can buy it.

Mr. Dulles. Can I ask one question, Mr. Chairman?

The Chairman. Yes.

Mr. Dulles. Does this wording imply that the Commission or the Commissioners sitting are bound by the legal rules of evidence?

The Chairman. No. There is no such implication. In no sense. No.

Mr. Dulles. Because of this language?

The Chairman. No.

Mr. Dulles. Because if so we would be pretty badly tied up.

The Chairman. No, but what we are thinking of was so that the public would know that we are not letting our counsel beat someone in here, the Commissioners shall take care of the rights.

Mr. Dulles. I wanted to take care of that point. I am not enough of a trial lawyer to be able to answer that.

By Col. ...
Date 2/1/68
Case

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BEFORE President's Commission on the Assassination
of President Kennedy

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Thanks Again!

WE APPRECIATE YOUR BUSINESS

January 4, 1964

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w/ [initials]
JAN 6 1964

Mr. President:

As one who read and believed the Warren Report on the assassination of President Kennedy I am disturbed and chagrined that you would permit a government agency to dictate to you what will be done with testimony and exhibits for the next 75 years.

Knowing that you believe in the public's right to know - a statement you have often made - it intrigues me that you would permit a 75 year cloak of secrecy to fall over the facts involved in the Kennedy assassination.

The decision of the National Archives Bureau to withhold from the public "off the record testimony and exhibits of the Warren Commission for 75 years" is inexplicable and inexcusable and gives cause to doubt the veracity of the published Warren Commission report.

I believe in national security but I fail to see the relationship between the facts of the Kennedy assassination and the security of the nation at this time.

May I suggest that if there is true justification for withholding from the public the facts of one of the most tragic events of our time, it is also incumbent upon our national leadership to make it clear why.

Franklin D. Roosevelt said: "the only thing we have to fear is fear itself." Secrecy creates fear.

Respectfully submitted,

Robert M. Johnson
Robert M. Johnson
Mayor

The President
The White House
Washington 25, D. C.

RMLJ/bw

APR 13 1965

MEMORANDUM FOR: Honorable McGeorge Bundy
Special Assistant to the President

RE: Public Availability of Materials Delivered to the
National Archives by the President's Commission
on the Assassination of President Kennedy.

The Department of Justice has completed the study, requested by you in your memorandum of January 15, 1965, concerning the advisability of modifying the usual restrictions which would govern the availability to the public of materials delivered to the National Archives by the President's Commission on the Assassination of President Kennedy. In the course of this study, the Department of Justice has obtained the views of the President's Commission, the Archivist of the United States, the interested Federal agencies and the Dallas Police Department.

Under normal regulations governing access to materials deposited in the National Archives, materials are made available to any competent adult with a definite, serious reason for requesting access, unless there is in effect an overriding restriction on disclosure or disclosure would violate obvious requirements of public policy or propriety. With respect to investigative reports furnished to the President's Commission by Federal agencies, the relevant restriction is a rule of nondisclosure for a period of 75 years unless the agency in which the report originated authorizes disclosure.

The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies

of the Government. According to the Chief Justice, the Commission assumed that these determinations would be made in light of "the overriding consideration of the fullest possible disclosure." Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies.

Based on the views of the Commission and the recommendations of the Federal agencies involved (summarized in the Attachment to this letter), the Department of Justice believes that there should be some modification of the normal procedures of the National Archives. The Department recommends that the following procedures be adopted in order to accomplish the most complete disclosure consistent with other legitimate interests:

1. All material furnished to the President's Commission by the Dallas Police Department and the Immigration and Naturalization Service should be made available to the public on a regular basis, since both agencies have authorized full disclosure.

2. Investigative reports and related materials furnished to the President's Commission by other Federal agencies should be administered in accordance with the existing regulations of the National Archives. These agencies should be requested to examine the materials furnished by them with a view to authorizing the immediate disclosure on a regular basis of as much of the materials as possible. (Where materials originated with an agency other than the one furnishing them to the Commission, the decision regarding disclosure should be made by the originating agency.) The following guidelines should be applied:

- a. Statutory requirements of nondisclosure should be observed;
- b. Security classifications should be respected, but the agency responsible for the classification should consider whether the classification can be eliminated or graded down consistently with the national security;

- c. All unclassified material which has been disclosed verbatim or in substance in the Report of the President's Commission or accompanying published documents should be made available to the public on a regular basis. (In this connection, it should be noted that the Archivist has advised that a final determination of which reports have been published in whole or in part, verbatim or in substance, will not be available before 1966.)
- d. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure
- 1) will be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
 - 2) may reveal the identity of confidential sources of information or the nature of confidential methods of acquiring information, and thereby prevent or limit the use of the same or similar sources and methods in the future;
 - 3) may lead to the incorrect identification of sources of information and thereby embarrass individuals or the agency involved;
 - 4) would be a source of embarrassment to innocent persons, who are the subject or source of the material in question, because of the dissemination of gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

- 5) will reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.

Where one of the above reasons for nondisclosure may apply, the agency involved should weigh such reason against the "overriding consideration of the fullest possible disclosure" in determining whether or not to authorize disclosure.

- c. Except in special cases, documents should be withheld or disclosed in their entirety.

3. Classified and unclassified material which is not made available to the public should be reviewed by the agency concerned five years and ten years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at ten-year intervals during the remainder of the 75-year period of nondisclosure. The Archivist should undertake to arrange for such review at the appropriate times.

4. When a request for limited disclosure of particular unclassified documents or groups of documents is received by the Archivist, he should communicate such request to the agency concerned, which should consider the request in the light of the criteria outlined above and, wherever consistent with those criteria, authorize the limited disclosure requested. In the application of the criteria, consideration should be given to the qualifications of the person requesting disclosure and the purpose for which the request is made.

It should be noted that the Archivist has indicated that the arrangements and preparation of an inventory of the material turned over to the National Archives by the President's Commission will not be completed until June 1, 1965. Accordingly, it is unlikely that a review of the material turned over to the Commission by the various agencies can be undertaken before that date. It is suggested that the Archivist be

asked to make arrangements with the various agencies for such review to be undertaken at the earliest possible date, to be carried out on an expedited basis.

The Archivist has advised that the disposition of materials originating with the President's Commission itself has been discussed with Mr. Rankin and that a final decision has been deferred until after June 1. He has advised also that pending a determination of the ownership of physical exhibits, requests for access to them will be referred to the Department of Justice. While it is anticipated that the fullest possible disclosure of those portions of the record will be authorized, in accordance with the desires of the President's Commission, the Department believes that particular decisions as to them should not be made until information regarding them is complete.

If these procedures meet with your approval, this Department will prepare the necessary instructions.

Attorney General

EXHIBIT Y

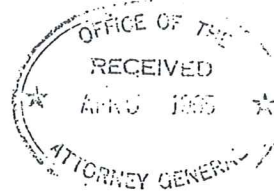
Civil Action No. 75-1448.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 5, 1965

Honorable Nicholas deB. Katzenbach,
Attorney General of the United States,
Justice Department,
Washington, D. C.

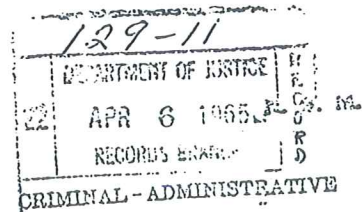


Dear Mr. Attorney General:

The President's Commission on the Assassination of President John F. Kennedy gave careful consideration to the proper disposition of its records before it delivered them to the National Archives. It wished them to be held there for the benefit of the American people. At that time, it decided that it was in the best interests of all concerned that the policy relating to the Commission's records provide for the fullest possible disclosure.

At the same time, the Commission recognized that its records contained investigative materials which were classified by the originating agencies to protect the security of the United States. Furthermore, among such materials were numerous items in which inhered serious potential for character assassination and other similar misuse to the injury of innocent persons.

The Commission, after full consideration, concluded that it did not have either the authority or the necessary information to determine the technical questions as to when the classified materials should be released without injury to the security of the country. It decided that the responsibility for that decision must of necessity be left with the originating agencies and the Attorney General, as the chief legal officer, in accordance with established law and policies of the Government. It also concluded that such agencies and the Attorney General could best determine what safeguards were necessary to protect innocent persons in the release of defamatory materials.



In arriving at the foregoing conclusions, however, the Commission assumed that all of the determinations by the agencies and the Attorney General would be made in recognition of the overriding consideration of the fullest possible disclosure, and that all other proper factors, including the disclosures that have been made, would be taken into account. The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies. It was with these thoughts in mind that the Commission, on its dissolution, committed its papers to the National Archives subject to the laws and regulations concerning the release to the public of classified and restricted materials.

We hope that this report of the attitude and conclusions of the Commission concerning the full disclosure of its records will be helpful to you in the formulation of your proposal for making the materials of this Commission now in the National Archives available to the public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Earl Warren".

MEMORANDUM EXHIBIT I

RECEIVED
 APR 23 10 34 AM '65
 THE WHITE HOUSE
 WASHINGTON, D.C.
 OFFICE OF LEGAL COUNSEL

April 19, 1965

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Public Availability of Materials
 Delivered to the National Archives
 by the Warren Commission

1. The procedures, described in your memorandum of April 13 about the above subject, have been approved.
2. In coordination with Archives, please instruct the appropriate agencies (a) to conduct the review of documents in accordance with the guidelines set forth in your memorandum and (b) to complete this review by September 1, 1965.
3. At the conclusion of this review, please inform us of the approximate percentage of the material in question which has been designated as available for public access.

Sumner

Amis

McGeorge Bundy
 McGeorge Bundy

cc: National Archives (Mr. Bahmer)

3343

OFFICE OF THE
 RECEIVED
 APR 21 1965
 ATTORNEY GENERAL

de



5069

20 what happened to [redacted] after he left the United States, went to Russia, came back -- I think we ought to get in the record what the State Department knows about him.

What about De Mohrenschildt?

The Chairman. He has had a full deposition. Off the record.

(Discussion off the record.)

The Chairman. Back on the record.

Mr. Rankin. I think at this time we ought to take action on declassifying our transcript so the printers can handle it, from Top Secret to Confidential.

The Chairman. Did I hear a motion?

Mr. McGloy. I move it.

Mr. Dulles. Seconded.

The Chairman. All in favor say aye.

(Chorus of aye)

The Chairman. Off the record.

(Discussion off the record.)

The Chairman. Back on the record.

The first item here is a report on printing of final report.

Mr. Rankin. We have been talking to the Budget people and GSA, and the printer, about the form of the report. And here is a draft that they have made up, first of the summary of the report, a form that they suggest that will be in a form that they can get out most reasonably and present it. And then the second



Morning Star

MORNING EDITION

DAY, DECEMBER 10, 1963—60 PAGES

Hor
Daily and Se

Assassination Probers Name Rankin Counsel

By MIRIAM OTTENBERG
Star Staff Writer

The presidential commission investigating the assassination of the late President Kennedy today named J. Lee Rankin, former Solicitor General of the United States, to serve as the commission's general counsel.

Chief Justice Earl Warren, in announcing the appointment,

Piece of Oswald's Shirt Found Snagged
in Rifle. Page A-4.

said the 56-year-old attorney has accepted and "is now in the performance of his duties".

The Chief Justice, who is chairman of the seven-man commission, did not spell out Mr. Rankin's duties but presumably his role will center on collecting investigative materials from all sources and presenting it to the commission for its evaluation.

The first investigative report is now in the hands of the commission.

Five Volumes

Chief Justice Warren said "a summary of the FBI report" was delivered to the commission late yesterday. He described it as "five volumes of summary and exhibits."

"No further announcement will be made concerning the report until the commission



J. LEE RANKIN

has had an opportunity to review it," the Chief Justice said. "A preliminary statement will thereafter be made public."

It had been assumed that the commission, which has already held two meetings, would get together again as soon as it receives the bulky FBI report. Chief Justice Warren said, however, that the date of the next meeting has not been determined.

Wide Experience

Mr. Rankin, a Republican, is now practicing law in New York. He has had wide experience. See RANKIN, Page A-4.

RANKIN

Continued From Page A-1
ence both in private practice and in the Federal service.

Born in Hartington, Nebr., on July 8, 1907, he practiced law in Lincoln, Nebr., from 1931 to 1953. He was one of the first Assistant Attorney Generals selected by Attorney General Herbert Brownell when he took office in January, 1953.

Mr. Rankin, as head of the Justice Department's Office of Legal Counsel, held the key assignment of advising the President on the preparation of proclamations and executive orders.

He was named Solicitor General in 1956, a post in which he represented the Government in all Supreme Court cases involving Federal interests. He returned to private law practice in January, 1961.

During his Justice Department service, he was active in the administration's legal battles for school desegregation and presented the Government's argument in the basic case that led to the Supreme Court ruling against segregation.

EXHIBIT CC

Civil Action No. 75-1448

JLR:HPW:al
3/9/64

MAR 11 1964

Honorable Jacob K. Javits
United States Senate
Washington, D. C.

Dear Senator:

I would like to acknowledge receipt of several communications regarding the work of this Commission which you have referred to this office for comment. I apologize for the delay in responding to your inquiry, but I am hopeful that events during this period of time will serve to clarify the position of the Commission on some of the issues raised by these letters.

As you know, this Commission was established by President Johnson to investigate and report upon all the facts and circumstances surrounding the assassination of President Kennedy and the subsequent murder of his alleged assassin, Lee Harvey Oswald. All facets of this matter will be investigated fully and reported upon by the Commission as requested by President Johnson. I would like to assure you and your correspondents that all allegations that Oswald was an informant or undercover agent for the Federal Bureau of Investigation or any other federal agency will be thoroughly investigated.

With regard to the issue of Mark Lane's participation in the hearings of the Commission, the Commission has decided that its mission would not be aided by such a procedure. Mr. Lane did appear before the Commission, however, in a public hearing on March 4, 1964, and the Commission will consider his observations carefully before the issuance of its final report. The Commission has not prejudged Lee Harvey Oswald's implication in the assassination, but is exploring all possibilities that other persons may be involved. We are making every effort to remain sensitive to the rights and reputation of Lee Harvey Oswald. For your information

cc: Mr. Willens - Chrono.
Mr. Rankin

I am enclosing the statement issued by the Commission announcing that the President of the American Bar Association has been appointed to assist the Commission in this effort.

As the events of the last few weeks have indicated, the press has interviewed Marina Oswald, who appeared before the Commission early last month. Neither the Federal Bureau of Investigation nor any other federal agency refused Mrs. Marguerite Oswald permission to see Marina Oswald. Ever since November 22, 1963, Marina Oswald has been free to see whomever she wishes to see.

The Chief Justice has authorized me to assure you that none of his remarks regarding the Commission were intended to suggest that the significant conclusions of fact developed by this investigation would not be made known to the American public. The final report of this Commission will be complete and documented by reference to relevant testimony and/or underlying investigative materials. At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration. On March 4, 1964, the Chief Justice stated as follows:

"The purpose of this Commission is, of course, eventually to make known to the President, and to the American public everything that has transpired before this Commission. All of it will be made available at the appropriate time. The records of the work of the Commission will be preserved for the public."

I hope that this letter is of some assistance to you in responding to this correspondence and I remain available to assist you in any way possible.

Sincerely,

J. Lee Rankin
General Counsel

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
Plaintiff,)
)
v.)
)
UNITED STATES GENERAL)
SERVICES ADMINISTRATION,)
)
Defendant.)

Civil Action No. 2052-73

FILED
MAY -5 1974

MEMORANDUM AND ORDER

JAMES F. DAVEY, CLERK

Plaintiff invokes the Freedom of Information Act, 5 U.S.C. § 552, in an effort to gain access to a transcript of the Warren Commission's January 27, 1964, executive session, presently in the custody of the National Archives. The defendant General Services Administration, which operates the Archives, has moved for summary judgment on the ground that the transcript at issue is shielded by the Act's first, fifth and seventh exemptions. 5 U.S.C. § 552(b)(1, 5, 7). The issues have been thoroughly briefed by all parties and are ripe for adjudication.

Initially, the Court probed defendant's claim that the transcript had been classified "Top Secret" under Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), since such classification would bar further judicial inquiry and justify total confidentiality. 5 U.S.C. § 552(b)(1); E.P.A. v. Mink, 410 U.S. 73 (1973). However, defendant's papers and affidavits, supplemented at the Court's request, still fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), as amended by Executive Order 10901, 3 C.F.R. 432 (Comp. 1959-63).

Defendant's reliance on the seventh exemption, on the other hand, appears to be fully justified by the record. The Warren Commission was an investigatory body assigned to look

into the assassination of President Kennedy and the subsequent murder of Lee Harvey Oswald. It can hardly be disputed that its findings would have led to criminal enforcement proceedings had it uncovered evidence of complicity in those events by any living person. The Archives' collection of Warren Commission transcripts therefore constitutes an "investigatory file . . . compiled for law enforcement purposes . . ." within the meaning of the seventh exemption. 5 U.S.C. § 552(b)(7).

The instant case is squarely controlled by the decision of this Circuit in Weisberg v. Dept. of Justice, 489 F.2d 1195 (D.C. Cir. 1973), in which the same plaintiff sought access to certain materials collected by the Federal Bureau of Investigation during its investigation into the assassination of President Kennedy. The Court concluded that the Bureau's intensive inquiry, undertaken at the special request of President Johnson, was clearly conducted for law enforcement purposes even if no violations of federal law were involved, so that the resulting investigatory files were protected. Id. at 1197-98. No less protection can be afforded to the files of the Warren Commission, which was also instituted by the President for the principle purpose of examining evidence of criminal conduct arising out of the assassination. See Executive Order No. 11130, 3 C.F.R. 795 (Comp. 1959-63).

It is therefore

ORDERED that defendant's motion for summary judgment is granted.


UNITED STATES DISTRICT JUDGE

May 3, 1974.

EXHIBIT EE

This document contains information of national defense of the United States within the meaning of the Espionage Laws, Title 18, U.S.C. Sects. 793 and 794. The transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law.

Vol. 4
Copy 6 of 9

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Authority: CIA ltr. 1 May 1975
By: *Merion M. [unclear]*, Date 3/25/77

EXEMPT from automatic declassification

per E.O. 11652, Sec. 5(e)(2)

Name: Chas. A. Briggs, CIA Date: 1 May 1975
Agency: CIA

Reason: E.O. 11652, Sec. 5(B)(1) - (5)
Declassify on: *Date impossible to determine*

PRESIDENT'S COMMISSION

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

PAGES 1 - 126

(Stenotype Tape, Master Sheets, Carbon and Waste turned over to Commission for destruction.)

~~CONFIDENTIAL~~
REGRADED

Authority: CIA ltr. 1 May 1975
By: *Merion M. [unclear]*, Date 3/25/77

EXEMPT from automatic declassification

per E.O. 11652, Sec. 5(e)(2)

Name: Chas. A. Briggs, CIA Date: 1 May 1975
Agency: CIA

Reason: E.O. 11652, Sec. 5(B)(1) - (5)
Declassify on: *Date impossible to determine*

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EXHIBIT FF

Vol. 55
Copy 9 of 10

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per CIA Ltr. 17 May 1975
by *Mark M. Jones* HARS
4/29/75

~~TOP SECRET~~
PRESIDENT'S COMMISSION

*Exempt from automatic
declassification
per E.O. 11652, Sec.
5(E)(2), under E.O.
11652, Sec. 5(B)(2)
and (3) by Charles
A. Briggs, Chief
of the Service Staff,
RFA, Dept. of
Justice
Decision in
informal February
1975*

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D.C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

Regraded
per CIA Ltr. 17 May 1975
by *Mark M. Jones* HARS
4/29/75

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WASHINGTON, D. C. 20031

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EXHIBIT GG

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

Washington, D.C. 20408

June 21, 1971



Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of May 20, 1971.

The following transcripts of proceedings of executive sessions of the Warren Commission and parts of these transcripts are withheld from research under the provisions of the "Freedom of Information Act" (5 U.S.C. 552) which are cited for each item:

Transcripts

- | | |
|---------------------|--|
| 1. December 6, 1963 | 5 U.S.C. 552, subsection (b) (6). |
| 2. January 27, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |
| 3. May 19, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (6). |
| 4. June 23, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |

Parts of Transcripts

- | | |
|-------------------------------|---|
| 1. Dec. 5, 1963, pages 43-68 | 5 U.S.C., subsection (b) (6). |
| 2. Dec. 16, 1963, pages 23-32 | 5 U.S.C., subsection (b) (6). |
| 3. Jan. 21, 1964, pages 63-73 | 5 U.S.C., subsection (b) (1) and (b) (7). |

As we have previously informed you, the transcripts withheld from research have not been made available to any researcher since they have been in our custody.

No additional material has been made available for research since the completion of the 1970 review, of which we informed you in our letter of February 5, 1971.

Sincerely,

HERBERT E. ANGEL
Acting Archivist
of the United States

EXHIBIT HH

JUL 28 1972

Honorable Richard Helms
Director, Central Intelligence Agency
Washington, DC 20505

Dear Mr. Helms:

Enclosed are copies of our letter of August 18, 1970, to you concerning the review of the ~~Numbered Document File~~ of the President's Commission on the Assassination of President Kennedy and of your reply of January 4, 1971. In addition to the Numbered Document File involved in these letters, the records of the Commission include correspondence and internal records of the Commission, some of which relate to the functions of other Government agencies and their part in the investigation of the assassination. These records were reviewed by the National Archives in 1967 at the request of the Department of Justice. Some of them were withheld from research, and it is now time for the five year review of these documents provided for in the guidelines that apply to the records. I would like to ask the Central Intelligence Agency to review those documents which relate to its functions. They consist chiefly of correspondence between the CIA and the Commission and related memoranda (about one inch).

Both the material that we are now asking the CIA to review and the documents withheld from research in the Numbered Document File of the Commission include security classified documents. The CIA may wish to consider these documents under the provisions of Executive Order 11652 of March 10, 1972 (37 F.R. 5209), to determine whether they should be declassified or downgraded, and if they are declassified, whether they should be made available for research or withheld under a different exemption to the "Freedom of Information Act" (5 U.S.C. 552) and a different guideline from Guideline 2.

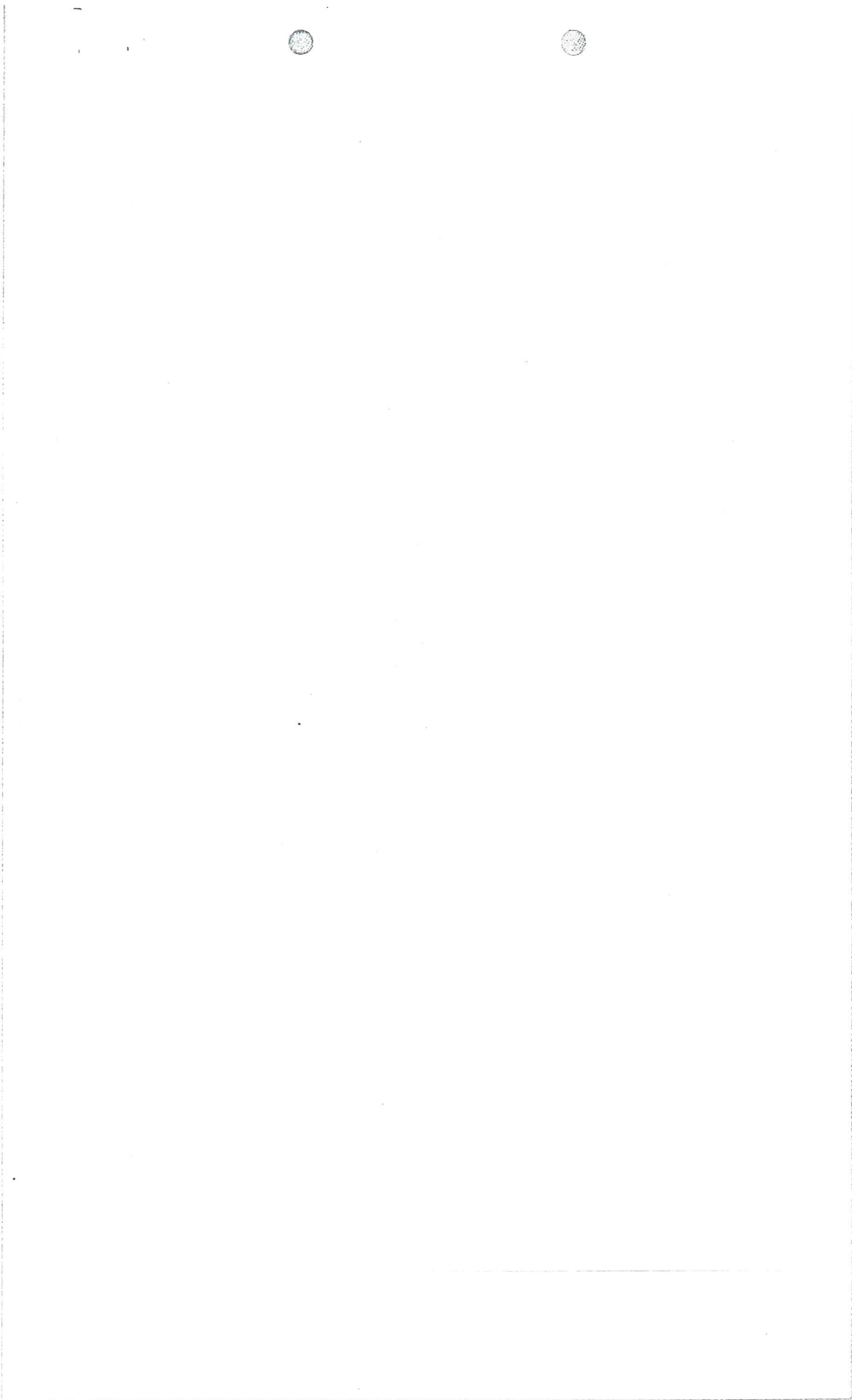
The following staff members of the National Archives will be pleased to furnish any further information that may be needed:



1



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2

Mr. Mark G. Eckhoff, Chief, Legislative, Judicial, and Fiscal Branch,
or Mr. Marion M. Johnson, on Code 13, Extension 23171.

Sincerely,

James E. O'Neill

JAMES E. O'NEILL
Acting Archivist
of the United States

Enclosures

cc: Official file - NNF
Reading file - NNFC
Day file - N

MJohnson:vk x23171 7-28-72

NNF *JK* NN *JK*

EXHIBIT JJ

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

1 October 1974

Mr. Marion Johnson
National Archives and Records Service
Pennsylvania Avenue at 8th Street, N.W.
Washington, D.C.
20408

Dear Mr. Johnson:

Pursuant to your request we have reviewed the enclosed four documents in order to determine whether the classifications ascribed to them need to be retained. Our conclusions are detailed below:

- (a) Top Secret Document, Subject: Conference with the CIA on March 12, 1964, (List No. 1, Item 19).

There are only two segments of this document which have continued to be classified at our request, specifically the name of one person in paragraph one and the entire second paragraph. We should now like to remove all restrictions concerning paragraph two, but we want to continue to withhold the person's name in paragraph one. However, the document may be downgraded to Confidential.

- (b) Top Secret Document, dated June 24, 1964, Subject: Yuri Ivanovich Nosenko (List No. 1, Item 27).

We have no objection to the declassification of this document in its entirety.

Mr. Marion Johnson
National Archives and Records Service
Page 2
1 October 1974

- (c) Top Secret Document, pages 63-73 from transcript of the Executive Session of the President's Commission of the Assassination of President Kennedy, January 21, 1964, (List No. 2A, Item 1).

11/23/75
The CIA file

on the classification
of this document
continued under
E.O. 11652, (d)
Sec. 5.5(a)(2).
mrg

We wish to continue the classification of this segment of the transcript.

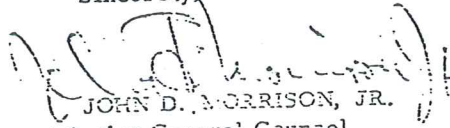
- Top Secret Document entitled "Report of Proceedings Held at Washington, D.C., June 23, 1964" (List 2A, Item 18).

We wish to continue the classification of this document.

3/19/75

Mr. Deane
Director of
System of
Files
to which
Access is
restricted
and from
no one

Sincerely,



JOHN D. MORRISON, JR.
Acting General Counsel

Enclosure (4) Under Separate Cover