

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WELSBURG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA )  
CITY OF WASHINGTON ) ss.:

ANSWERS TO INTERROGATORIES

JAMES B. RHOADS, Archivist of the United States, having been first duly sworn, under oath, deposes and says that it is upon his personal knowledge and belief that he gives the following information in answer to interrogatories propounded by plaintiff:

26. Would disclosure of pages 63-73 of the January 21, 1964, Warren Commission executive session transcript constitute a violation of 18 U.S.C. §798?

Answer: Defendant objects to this interrogatory on the grounds that it calls for a conclusion of law.

27. Would disclosure of the June 23, 1964, Warren Commission executive session transcript constitute a violation of 18 U.S.C. §798?

Answer: Defendant objects to this interrogatory on the grounds that it calls for a conclusion of law.

28. Did the Warren Commission have authority to classify documents Top Secret pursuant to Executive Order 10501?

Answer: The authority of the Warren Commission to classify documents originally is clouded by an apparent oversight of the Johnson Administration. At the time the transcripts at issue were classified "Top Secret", security classifications were governed by Executive Order 10501, as amended (3 CFR 1949-1953 Comp., p. 979, November 5, 1953). While the original order contained no provision listing the agencies having classification authority, a subsequent amendment to E. O. 10501

listed these agencies and further stated that future additions or modifications must be specifically spelled out by Executive order (E. O. 10901, 3 CFR 1959-1963 Comp., p. 432, January 9, 1961). While this provision was complied with for the remainder of the Eisenhower Administration and the Kennedy Administration, a search of materials within the National Archives of the United States and the Lyndon Johnson Presidential Library has uncovered no evidence that it was ever complied with during the Johnson Administration, or that the President or his aides were familiar with this provision. As a result, there was never a specific authorization from President Johnson to the Warren Commission by means of an Executive order granting it the authority to security classify documents originally.

Nevertheless, 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. Just before the report of the Commission was to be distributed, it was realized that many of the exhibits to the report still retained national security markings, although those particular documents had been declassified by the Commission or the originating agency. These markings on declassified documents and the lack of markings denoting their declassification were not in accord with Section 5(i) of E. O. 10501. Commission General Counsel J. Lee Rankin called this matter to the attention of Acting Attorney General Nicholas de B. Katzenbach by letter of November 7, 1964. On November 23, 1964, Mr. Katzenbach wrote White House Special Assistant McGeorge Bundy, and recommended that the President write Chief Justice Warren and waive the Commission from the requirements of Section 5(i). The President did so on that same day, and that letter was published in the Federal Register on November 28, 1964 (29 F.R. 15893).

President Johnson's waiver of the requirement of Section 5(i) of E. O. 10501 would make no sense at all if the President did not assume that the Commission had the authority to classify documents in the first place. Because of the President's assumption, and because the overlooked requirements of the amendment to E. O. 10501 existed by Presidential fiat, the National Archives maintains that the Commission, in classifying documents as a derivative of the President's powers under Article II of the Constitution, was acting in accordance with the President's wishes. When this fact is taken into account with the purpose and functions of the Commission, which required its continuous examination of highly sensitive classified information,

the National Archives is satisfied that the Commission acted in all propriety in security classifying some of the materials which it created.

29. If the answer to the above interrogatory is yes, please cite any such authority and attach copies.

Answer: Copies of the documentary materials referenced in my response to No. 28 are attached as an Exhibit to these answers.

30. How many pages long is the June 23, 1964, executive session transcript?

Answer: Eleven pages.

31. Who determined that the June 23, 1964, executive session transcript is exempt from the General Declassification Schedule and on what date?

Answer: Charles A. Briggs, Chief of the Services Staff, Central Intelligence Agency, made that determination. The National Archives was informed of Mr. Briggs' determination by letter dated May 1, 1975, from Robert S. Young, Freedom of Information Coordinator, CIA.

32. Who determined that the January 21, 1964, executive session transcript is exempt from the General Declassification Schedule and on what date? Did this determination apply to the entire transcript or just pages 63-73?

Answer: See answer to No. 31, above. The determination applied only to pages 63-73.

33. Do pages 63-73 of the January 21, 1964, executive session transcript deal in any way with the autopsy of President Kennedy or related matters such as the medical and ballistics evidence?

Answer: No.

34. Do pages 63-73 of the January 21, 1964, executive session transcript deal in any way with the medical or ballistics evidence pertaining to the wounds suffered by Governor Connally?

Answer: No.

35. Has every person who has had access to the June 23rd transcript had a security clearance?



Answer: To the extent this transcript has been reviewed by persons within the National Archives and its parent agency, the General Services Administration, all persons who have had access have been acting in the scope of their duties and have the necessary security clearances. For all external accesses for purposes of classification review or legal preparations for defending actions such as the case at hand, the National Archives has complied with all regulatory requirements in transferring the transcripts.

36. Has every person who has had access to the June 23rd transcript been required to show his security clearance?

Answer: A person with a security clearance does not have a document reflecting that clearance which he is required to have on his person or to show other persons when handling classified materials. For employees of the National Archives, copies of the records of their security clearances are on file in the office of the Executive Director and the official records of their security clearances and the clearances of all other GSA employees are on file in the Security Division, Office of Investigations, GSA. If there is any question concerning an employee's level of clearance, it may be checked by making inquiry of these offices.

37. Has every person who has had access to pages 63-73 of the January 21st transcript had a security clearance?

Answer: See answer to No. 35, above.

38. Has every person who has had access to pages 63-73 of the January 21st transcript been required to show his security clearance?

Answer: See answer to No. 36, above.

39. List all persons who have had access to the May 19, 1964, Warren Commission executive session transcript and the date(s) on which each of them has had access.

Answer: Within the National Archives and GSA, only employees in the scope of their official duties have had access to this transcript. These include employees within the Legislative, Judicial and Fiscal Records Branch who have continuous custody.

of the Warren Commission records, the Director of the Civil Archives Division, the Deputy Archivist of the United States, the Archivist of the United States, and the Chief Counsel, National Archives and Records Service, Office of General Counsel, GSA.

I am unable to specify the dates on which each of these persons had access to this transcript.

40. Does the National Archives or the General Services Administration have authority to downgrade or declassify the June 23, 1964, executive session transcript or pages 63-73 of the January 21, 1964, executive session transcript?

Answer: Executive Order 11652 (37 F.R. 5209, March 10, 1972) provides the authority for the National Archives to downgrade and/or declassify records of the Warren Commission. Specifically, Sec. 11 of E. O. 11652 provides that:

The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultation with Departments having a primary subject matter interest, and (iii) provisions of Sec. 5.

41. Has the General Services Administration or the National Archives made any determination(s) as to whether the June 23rd transcript and pages 63-73 of the January 21st [transcript] are properly [classified] under either Executive Order 10501 or Executive Order 11652?

Answer: As provided in Sec. 11 of E. O. 11652, the Archivist of the United States has consulted with the agency of primary subject matter interest (CIA) to determine whether the information contained in the executive session transcripts of June 23 and January 21st continues to require security protection. The CIA's determination for the entire transcript of June 23rd and pages 63-73 of the January 21st transcript was that they could be downgraded to Confidential but were exempt from automatic declassification. The Archivist has, therefore, assured that the transcripts are properly classified pursuant to E. O. 11652.

Defendant notes that at this point plaintiff's interrogatories skip from No. 41 to No. 52.

52. If the answer to the above interrogatory is yes, give the date and the result of each such determination and the name of the person making it.

Answer: Based on the advice I received from the CIA in Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), I made that determination on May 5, 1975, the day I received his letter.

53. Has the Interagency Review Board ever been asked to review the classification of any of the Warren Commission Executive session transcripts?

Answer: The Interagency Classification Review Committee has never been asked to make a determination regarding the classification of a Warren Commission executive session transcript.

54. If the answer to the above interrogatory is yes, who made each such request and on what date(s)?

Answer: N/A

55. Are copies of any still-classified Warren Commission executive session transcripts maintained anywhere outside the control of the General Services Administration? Where?

Answer: Not to our knowledge.

56. Do the Allen Dulles papers at Princeton University contain any Warren Commission executive session transcripts? If so, please list.

Answer: Not to our knowledge.

57. How many copies of the January 21st and June 23rd transcripts does the National Archives have? Is every copy marked "Confidential" as of the date this interrogatory was received?

Answer: The National Archives has seven copies of the June 23, 1964, transcript and three copies of the January 21, 1964, transcript. The file copies of each were marked "Confidential" at the time the National Archives received Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), but all the extra copies were not marked "Confidential" until the date of receipt of these interrogatories. All copies are presently marked "Confidential".

58. 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?

Answer: 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 guidelines 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.

59. As amended by Executive Order 10964, Executive Order 10501 §5(a) provided:

At the time of origination, all classified information or material shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with paragraph (a) of section 4 of this order.

At the time of origination were the January 21st and June 23rd transcripts marked to indicate the downgrading-declassification schedule to be followed?

Answer: No.

60. If the answer to the above interrogatory is yes, to which of the four groups specified by §4(a) of Executive Order 10501 were the January 21st and 23rd transcripts assigned?

Answer: N/A

61. Section 5(i) of Executive Order 10501 provides that when classified information affecting the national defense is furnished authorized persons not in the executive branch of government, the following written notation shall be placed on the classified 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.

Did either the January 21, or June 23, 1964, executive session transcripts contain this notation at the time they were transmitted to the National Archives and Records Service?

Answer: Yes. The transcript of January 21, 1964, was so marked.


62. What date has been set for the automatic declassification of pages 63-73 of the January 21, 1964, transcript?

Answer: In Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), he stated: "It is impossible at this time to determine a date or event for automatic declassification." Accordingly, no such date has been set at the present time.

63. What date has been set for the automatic declassification of the June 23, 1964, executive session transcript?

Answer: See answer to No. 62, above.

I have read the answers above, and they are true and complete to the best of my knowledge and belief.

  
\_\_\_\_\_  
JAMES B. RHOADS  
Archivist of the United States

Subscribed and sworn to before me at Eighteenth and F Streets, N.W., Washington, D.C., on this sixteenth day of April 1976.

  
\_\_\_\_\_  
(Notary Public)

My commission expires:

My Commission Expires August 14, 1979



November 23, 1964

Dear Mr. Chairman:

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

This letter shall be published in the Federal Register.

Sincerely,

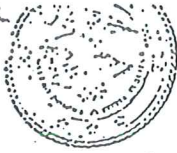
Lyndon B. Johnson

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

LBJ:vm

*Handwritten notes:*  
11/23/64  
C. Johnson  
John F. Kennedy  
11/23/64

Lyndon Baines Johnson



Office of the Attorney General  
Washington, D. C.

NOV 23 1964

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

Dear Mr. Bundy:

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

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

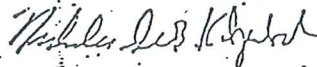
All material in the exhibit volumes has been declassified with the approval of the originating agencies. However, through inadvertence, the declassified material was printed in the exhibit volumes without being marked in the manner prescribed by Section 5(i). This is a purely technical defect which in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

C. Lyndon Baines Johnson

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

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

Sincerely,



Acting Attorney General

C. Lyndon Baines Johnson



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

Dear Mr. Chairman:

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

This letter shall be published in the Federal Register.

Sincerely,

[Lyndon B. Johnson]

C. Lyndon Baines Johnson

NOV 7 1964

*re-written  
hand  
delivered  
11/16/64*

*gms*

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

Dear Mr. Katzenbach:

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

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

Your cooperation with the Commission is greatly appreciated.

Sincerely yours,

J. Lee Rankin  
General Counsel

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

THE NATIONAL ARCHIVES  
  
**FEDERAL REGISTER**  
 OF THE UNITED STATES  
 1934

VOLUME 29

NUMBER 232

Washington, Saturday, November 28, 1964

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# Presidential Documents

## Title 3—THE PRESIDENT

Letter of November 23, 1964

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

[Nonapplicability of Declassification Procedures]

THE WHITE HOUSE,  
Washington, November 23, 1964.

DEAR MR. CHADMAN:

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

This letter shall be published in the FEDERAL REGISTER.

Sincerely,

LYNDON B. JOHNSON

HONORABLE EARL WARREN,  
Chairman,

President's Commission on the Assassination of President  
Kennedy,  
200 Maryland Avenue NE.,  
Washington, D.C.

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