

FILED OCT 12 1976  
JAMES F. DAVEY  
CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
WITH RESPECT TO JANUARY 21, 1964, WARREN  
COMMISSION EXECUTIVE SESSION TRANSCRIPT

Comes now the plaintiff, by his attorney, and pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Court for summary judgment in his favor with respect to the disclosure of the January 21, 1964, Warren Commission executive session transcript, on the ground that there are no genuine issues as to any material fact and plaintiff is entitled to judgment as a matter of law.

In support of his motion, plaintiff submits herewith a statement of material facts as to which there is no genuine issue and a xerox of Copy 3 of the January 21, 1964, Warren Commission executive session transcript. (Plaintiff's Exhibit 1)

Respectfully submitted,

*James H. Legar*  
\_\_\_\_\_  
JAMES HIRAM LEGAR  
1231 Fourth Street, S. W.  
Washington, D. C. 20024

Attorney for Plaintiff .

CERTIFICATE OF SERVICE

I hereby certify that I have this 12<sup>th</sup> day of October, 1976, mailed a copy of the foregoing Motion for Summary Judgment with Respect to January 21, 1964, Warren Commission Executive Session Transcript to Assistant United States Attorney Michael 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  
.....

STATEMENT OF MATERIAL FACTS AS TO  
WHICH THERE IS NO GENUINE ISSUE

In support of his motion for summary judgment with respect to the January 21, 1964, Warren Commission executive session transcript, and in conformity with Local Rule 1-9(h), plaintiff submits herewith a statement of material facts as to which he contends there is no genuine issue:

1. On March 12, 1975, plaintiff made a request under the Freedom of Information Act, 5 U.S.C. §552, for disclosure of pages 63-73 of the January 21, 1964, Warren Commission executive session transcript.

2. On April 4, 1975, Assistant Archivist Edward G. Campbell denied plaintiff's request for disclosure of pages 63-73 of the January 21, 1964, Warren Commission executive session transcript.

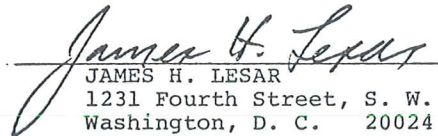
3. On April 15, 1975, plaintiff appealed this denial to the Deputy Archivist, Dr. James O'Neill.

4. By letter dated May 22, 1975, the Deputy Archivist upheld the refusal to disclose the withheld pages of the January 21 transcript.

5. On September 4, 1975, plaintiff filed suit under the Freedom of Information Act for disclosure of pages 63-73 of the January 21, 1964, Warren Commission executive session transcript.

6. The defendant invoked Exemption 1 as a ground for refusing to disclose the withheld pages of the January 21 transcript and in support of this contention submitted affidavits by Dr. James B. Rhoads of the National Archives and Mr. Charles A. Briggs of the Central Intelligence Agency swearing that this transcript is classified "Confidential".

7. Plaintiff's Exhibit 1, a xerox of the cover of Copy 3 of the January 21 transcript, shows that its classification was cancelled by authority of the Archivist of the United States on February 21, 1968.

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

Attorney for Plaintiff

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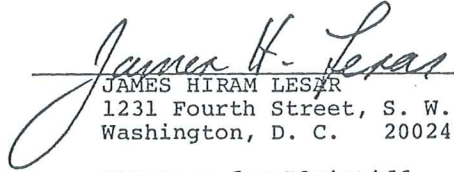
MEMORANDUM OF POINTS AND AUTHORITIES

The defendant has maintained that the withheld pages of the January 21, 1964, Warren Commission executive session transcript are exempt from disclosure under Exemption 1 to the Freedom of Information Act because they are in fact properly classified pursuant to Executive Order. The defendant has submitted affidavits by Dr. James B. Rhoads, Archivist of the United States, and Mr. Charles A. Briggs of the Central Intelligence Agency swearing to this fact. Defendant's answers to interrogatories further state that as of April 16, 1976, all copies of the the January 21 transcript were marked "Confidential". (See Dr. Rhoads' answer to interrogatory No. 57)

Attached hereto is a xerox of the cover of Copy 3 of the January 21 transcript which shows that its classification was cancelled by authority of the Archivist of the United States on February 21, 1968. Since this copy of the January 21 transcript is not presently classified, defendant cannot lawfully continue to withhold it under the authority of Exemption 1. Accordingly, plaintiff asks

that he be awarded summary judgment with regard to the withheld pages of this transcript, and that defendant be ordered to make them available to him immediately.

Respectfully submitted,

  
JAMES HIRAM LESAR  
1231 Fourth Street, S. W.  
Washington, D. C. 20024

Attorney for Plaintiff



PLAINTIFF'S EXHIBIT 1

~~The disclosure of this information is a matter of national defense of the United States with meaning of the Espionage Laws, Title 18, U.S.C. Sections 793 and 794. The transmission or revelation of its contents in any manner to an unauthorized person is prohibited by law.~~

Vol. 4  
Copy 3 of 9

~~CLASSIFICATION CANCELED~~

By authority of  
Archivist of United States

# PRESIDENT'S COMMISSION

By MAG

ON THE

Date 2/21/68 Case .....

# ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

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

CLASSIFICATION CANCELED

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GENERAL SERVICES ADMINIS-  
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S U M M A R Y J U D G M E N T

Upon consideration of plaintiff's motion for summary judgment with respect to the January 21, 1964, Warren Commission executive session transcript, the exhibit attached thereto and the entire record herein, and it appearing to the Court that there are no genuine issues of material fact and that the plaintiff is entitled to judgment as a matter of law, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1976,

ORDERED, that plaintiff's motion is hereby granted; and it is further

ORDERED, that defendant shall make pages 63-73 of the January 21, 1964, Warren Commission executive transcript available to plaintiff within five days of the date of this order.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE