

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA )  
CITY OF WASHINGTON ) ss.:

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:

64. Did the CIA review the classification of the January 27, 1964, Warren Commission executive session transcript prior to December 1972?

Answer: Defendant objects to this interrogatory. The transcript which is the subject of the interrogatory is not at issue in the present litigation and was made available to plaintiff in toto over 2 1/2 years ago. Therefore, the interrogatory is irrelevant, and is not the proper subject of the jurisdictional requisites of section 552 of title 5, United States Code, upon which plaintiff relies for jurisdiction.

65. If the answer to the preceding interrogatory is yes, state:

- a. the date(s) on which any such review was initiated;
- b. by whom the review was initiated;
- c. the date(s) on which any such review was concluded;
- d. the name(s) and position(s) of the person(s) making the review;
- e. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive orders 10501 or 11652 at the time of the review. (Please attach copies of any such authorization.)

- f. the name(s) of anyone consulted in making such review and his title or position;
- g. the result of any such review;
- h. the provisions of Executive orders 10501 or 11652 relied upon in classifying the January 27 transcript Top Secret;
- i. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability; and
- j. whether the person making the review took into account the fact that Congressman Gerald Ford had published large parts of this Top Secret transcript in his book Portrait of the Assassin.

Answer: See answer to No. 64, above.

66. Did the CIA review the classification of the January 27, 1964, Warren Commission executive session transcript on or about December 1972?

Answer: See answer to No. 64, above.

67. If the answer to the preceding interrogatory is yes, state:

- a. the date on which this review was concluded;
- b. the name and position of the person making the review;
- c. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive order 11652. (Please attach a copy of any such authorization.)
- d. the name(s) of anyone consulted in making such review and his title or position;
- e. the result of this review;
- f. the provision(s) of Executive order 11652 relied upon in classifying the January 27 transcript Top Secret;
- g. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability; and
- h. whether the person making the review took into account the fact that Congressman Gerald Ford published large parts of this Top Secret transcript in his book Portrait of the Assassin.

Answer: See answer to No. 64, above.

68. Attached hereto are pages 139-149 of the January 27, 1964, Warren Commission executive session transcript. Please have Mr. Charles A. Briggs, Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency, list or mark:

a. any of these pages or parts thereof which could have been validly classified under any provision of Executive order 10501, citing any provision relied upon for each classifiable segment;

b. any of these pages or parts thereof which could have been validly classified under any provision of Executive order 11652, citing any provision relied upon for each classifiable segment.

Answer: In addition to the objections raised in its answer to No. 64, above, defendant further objects to this interrogatory on the basis that neither Mr. Charles A. Briggs nor the Central Intelligence Agency is a party in the present litigation. Under Rule 33 of the Federal Rules of Civil Procedure plaintiff may not require a non-party to respond to its interrogatories.

69. On April 15, 1974, Mr. John S. Warner, General Counsel of the CIA, responded to the March 27, 1974 request of the National Archives that the CIA review the January 27 transcript by assuring Dr. James B. Rhoads, the Archivist, that the CIA had no objection to releasing this transcript to the public. Please state:

a. the name, title, and position of the person who reviewed the January 27 transcript for the CIA as a result of the Archives' March 27, 1974 request;

b. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive order 11652. (Please attach a copy of any such authorization.)

c. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability;

d. whether the person making the review took into account the fact that Congressman Gerald Ford had published large parts of this Top Secret transcript in his book Portrait of the Assassin;

e. the last date prior to March 27, 1974, on which the CIA had recommended or advised that the Top Secret classification of the January 27 transcript be continued; and

f. what occurred between the date stated in answer to the preceding interrogatory, No. 69e, and April 15, 1974, which caused the status of the January 27 transcript to plummet from Top Secret to unclassified?

Answer: See answer to No. 68, above.

70. Attached hereto is a copy of the October 1, 1974, letter from Mr. John D. Morrison, Jr., Acting General Counsel for the CIA, which informed Mr. Marion Johnson of the National Archives that the CIA wished to continue the Top Secret classification of the June 23 executive session transcript and pages 63-73 of the January 21 transcript.

a. who made the determination to continue the classification of the June 23 transcript and pages 63-73 of the January 21 transcript?

b. what position and title did he hold at the time?

c. was he authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

Answer: Defendant transmitted copies of the June 23, 1964 transcript and pages 63-73 of the January 21, 1964 transcript for a classification review in accordance with Executive Order 11652. Defendant can only assume that an agency like the CIA will handle classified documents and review them in accordance with established legal procedures. Defendant has no authority nor mechanism for monitoring the handling of classified documents within the CIA. Therefore, defendant assumes the individuals who reviewed the subject transcripts and requested their continued classification had the authority to do so. Defendant has no further knowledge responsive to this interrogatory. See answer to No. 68, above.

71. Page two of Mr. Morrison's October 1, 1974, letter contains two handwritten notes in the margins next to statements that the CIA wished to continue the Top Secret classification of the June 23 transcript and pages 63-73 of the January 21 transcript. The note in the left-hand margin, dated "1/23/75" and initialed by Mr. Marion Johnson, states: "The CIA told me that classification of these documents is to be continued under Executive Order 11652, Section 5(B)(2)."

a. who at the CIA told Mr. Johnson that the classification of these transcripts was to be continued?

b. was this person authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

c. if the person who told Mr. Johnson that the classification of these transcripts was to be continued did not himself make that determination, who did?

d. was the person who did make the determination authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

e. did the person who made the determination to continue the classification of these transcripts have access to them when he made that determination? Did he review the transcripts?

f. did the person who made the determination to continue the Top Secret classification of these transcripts compare their content with what was publicly known?

g. which of the three copies of the January 21 transcript maintained by the National Archives was reviewed by the person who made the determination to continue the Top Secret classification of the January 21 transcript?

h. was the CIA ever provided a copy of "copy 3 of 9" of the January 21 transcript? If so, when?

i. was the person who made the 1/23/75 determination to "continue" the Top Secret classification of the January 21 transcript aware that Mr. Marion Johnson had cancelled the Top Secret classification of this transcript on February 21, 1968?

Answer:

a. On January 23, 1975, Mr. Marion Johnson of the National Archives telephoned Mr. Charles P. Dexter of the CIA to ask that Dexter provide the specific exemption category of Executive Order 11652 to be cited as the reason for exempting from declassification the June 23 transcript and pages 63-73 of the January 21 transcript. Mr. Dexter responded with the information that the proper exemption category was Sec. 5(B)(2). Mr. Johnson noted this information

in the left hand margin of the October 1, 1974, letter from Mr. Morrison of the CIA. A new review did not take place at this time. The determination to continue classification was made in 1974. Mr. Johnson was attempting to correct the CIA's oversight of not citing the appropriate exemption category justifying continued classification in their letter to the Archives dated October 1, 1974.

b. through f. See answer to No. 70, above.

g. Pages 63-73 of the transcript marked "copy 3 of 9."

h. The National Archives provided copies of pages 63-73 of the "copy 3 of 9" of the January 21 transcript to the CIA for the review which took place in 1974. The CIA was not provided with a copy of the entire January 21 transcript since only pages 63-73 remained classified. The CIA's instruction to "continue" the Top Secret classification of the January 21 transcript applied only to the 10 classified pages of that transcript that the CIA had reviewed for purposes of declassification.

i. The National Archives is unaware whether or not the CIA knew that the remainder of the January 21 transcript had been declassified in 1968. The copy of the transcript that was marked declassified did not contain pages 63-73.

72. The June 23 transcript and pages 63-73 of the January 21 transcript were purportedly downgraded to Confidential as the result of a letter from Mr. Robert S. Young of the CIA dated May 1, 1975. What happened between January 23, 1975, and May 1, 1975, eleven years after the Warren Commission ceased to exist, which caused the classification of these transcripts to plummet from Top Secret to Confidential?

Answer: The CIA did not review the June 23 transcript and pages 63-73 of the January 21 transcript on January 23, 1975. As we have stated in our answer to No. 71, above, Mr. Marlon Johnson sought clarification by telephone from the CIA concerning the proper exemption category of Executive Order 11652 which was used by the CIA in its determination made in 1974, that the classification of the transcripts should be continued.

Another review of the transcripts was conducted by the CIA sometime between March 19 and May 1, 1975. In May 1975 the National Archives was informed by Mr. Robert S. Young of the CIA that it had determined that the June 23 transcript

and pages 63-73 of the January 21 transcript could be downgraded to Confidential. The defendant has no knowledge of the reason the CIA authorized downgrading of the transcripts. See answer to No. 70, above.

73. The note in the right hand margin of Mr. Morrison's October 1, 1974, letter is dated "3/19/75". It reads: "Mr. Charles P. Dexter of CIA again stated these are to be withheld. Asked for Lesar letter and transcripts for review."

- a. what was Mr. Dexter's title and position as of March 19, 1975?
- b. is Mr. Dexter authorized to classify documents Top Secret under Executive order 11652? As of when, and by what authority? (Please attach copies of any such authorization.)
- c. did Mr. Dexter himself make the determination stated in the note dated "3/19/75"? If he did not, who did?
- d. was the person who made the determination stated in the note dated "3/19/75" authorized to classify documents Top Secret under Executive order 11652 as of the date of that note? By what authority? (Please attach copies of any such authorization.)
- e. did the person who made the determination to continue the Top Secret classification of these transcripts have access to them when he made that determination? Did he review the transcripts?
- f. did the person who made the determination to continue the Top Secret classification of these transcripts compare their content with what was already publicly available?
- g. which of the three copies of the January 21 transcript maintained by the National Archives was reviewed by the person who made the determination to continue the Top Secret classification of the January 21 transcript?
- h. was the person who made the 3/19/75 determination to "continue" the Top Secret classification of the January 21 transcript aware that Mr. Marion Johnson had cancelled the Top Secret classification of this transcript on February 21, 1968?

Answer: Defendant objects to this interrogatory on the grounds cited in our answers to Nos. 70 and 68, above.

74. What happened between March 19, 1975, and May 1, 1975, eleven years after the Warren Commission had ceased to exist, which caused the purported classifications of the June 23 transcript and pages 63-73 of the January 21 transcript to plummet from Top Secret to Confidential?

Answer: Defendant has no knowledge of the reason the CIA authorized downgrading of the transcripts. See answer to No. 70, above.

75. Is Mr. Charles A. Briggs authorized to classify documents Top Secret under Executive order 11652? As of when, and by what authority? (Please attach a copy of any authorization for Mr. Briggs to classify documents under Executive orders 10501 and 11652.)

Answer: Defendant objects to this interrogatory on the grounds cited in our answers to Nos. 70 and 68, above.

76. Attached hereto is a copy of a June 21, 1971, letter from Acting Archivist Herbert E. Angel to Mr. Harold Weisberg which states that the Warren Commission executive session transcripts for January 27, May 19, and June 23, 1964, and pages 63-73 of the transcript for January 21, 1964, were being withheld from research under Exemption (b)(1) of the Freedom of Information Act.

Please state:

- a. all dates prior to June 21, 1971, on which the CIA reviewed, or was asked to review, the classification of the January 27 and May 19 transcripts;
- b. the person making each such review of the security classification of the January 27 and May 19 transcripts;
- c. whether the person making each such review of the January 27 and May 19 transcripts was authorized to classify documents under Executive order 10501. (Please attach copies of any such authorization.)

Answer: Defendant objects to the portion of this interrogatory pertinent to the transcript of January 27, 1964, on the grounds stated in our answer to No. 64, above.

The defendant has never sought review of the May 19, 1964 transcript by the CIA.

77. In the opinion of Mr. Charles A. Briggs, could the January 27 and May 19 transcripts have been validly classified Top Secret under any provision of



Executive order 10501 as of June 21, 1971? If the answer to this is yes,

- a. list each page or part thereof of each transcript which could have been validly classified under Executive order 10501; and
- b. cite the provision of that order under which it could have been properly classified.

Answer: Defendant objects. See answers to Nos. 76, 70 and 68, above.

78. Section 5(B) of Executive order 11652 provides:

An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed; and, unless impossible, a date or even for automatic declassification.

- a. who originated the classified information or material contained in the June 23 transcript and pages 63-73 of the January 21 transcript?
- b. did this person "specify in writing on the material the exemption category being claimed"? And if so, on what date? (Please attach a copy of any such specification or other relevant records.)
- c. why is it impossible to specify a date or event for the automatic declassification of the June 23 transcript and pages 63-73 of the January 21 transcript?

Answer:

The June 23 transcript and pages 63-73 of the January 21 transcript were created by the Warren Commission in 1964. Executive Order 10501 which was in effect at the time these transcripts were created did not require that the classifying official "specify in writing on the material the exemption category being claimed." This provision, which is included in Sec. 5(B) of Executive Order 11652, did not become effective until June 1, 1972. Sec. 5(D) of Executive order 11652 further states that "all other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order 10501, as amended, shall be excluded from the General Declassification Schedule." Subsequent reviews of these transcripts have been conducted pursuant to Sec. 11 of Executive Order 11652, which states:

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 the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

The National Archives does not usually send original records to other Federal agencies for declassification review. Copies of the records are provided for review purposes. Declassification or regrading markings are placed on the original records by the archivist in charge after authorization has been received from the reviewing agency.

Specification of a date or event for the automatic declassification of the June 23 transcript and pages 63-73 of the January 21 transcript is the responsibility of the reviewing agency, i.e., the CIA. The National Archives is unable to provide the reason that the CIA has been unable to specify such a date or event for automatic declassification. See answer to No. 70, above.

79. Is Mr. Marion Johnson of the National Archives authorized to classify documents Top Secret under Executive orders 10501 or 11652? As of when, and by what authority? (Please attach copies of any such authorization.)

Answer: Mr. Marion Johnson of the National Archives is not authorized to classify information or material at any level under Executive Order 11652, nor was he authorized to do so under Executive Order 10501.

80. The May 1, 1975, letter from Mr. Robert S. Young of the CIA to Dr. Rhoads in response to Mr. Marion Johnson's March 21, 1975, request for a review of the June 23 and January 21 transcripts states: "I regret the delay in responding, which was due in part to missing pages."

- a. what pages of the transcripts were missing?
- b. how were these pages transmitted?
- c. were they lost during or after transmission?
- d. what else besides missing pages occasioned the delay in responding?
- e. if the CIA received the transcripts on March 21, 1975, why did Mr. Briggs not see them until April 15, 1975?
- f. were the Top Secret "missing pages" ever located? If so, when?

g. what steps did the CIA take to locate the missing pages?

h. when was the National Archives first notified of the missing pages?

Answer: The National Archives does not have a record of which pages were not enclosed in the package which was sent to the CIA containing the copies of the June 23 transcript and pages 63-73 of the January 21 transcript. The package was transmitted by authorized CIA courier. Since the package arrived at the CIA still sealed there was never any suspicion of tampering or loss of pages. It was concluded that there had been an error in copying at the National Archives and that the missing pages had never been included in the package sent to the CIA. A representative of the CIA telephoned Mr. Marion Johnson at the National Archives to inform him that some of the pages had not been sent shortly after the CIA received the package. Mr. Johnson transmitted to the CIA copies of the pages which had not been sent in the previous shipment.

With respect to paragraphs (d) and (e) of this interrogatory, defendant has no knowledge about what other reason there may have been for the delay in responding to the review request. We have no knowledge about when Mr. Briggs first saw the transcripts. See answer to No. 70, above.

81. Apparently six copies of the January 21 transcript and three of the June 23 transcript are missing.

a. does this constitute a breach of national security? If not, why not?

b. what efforts has the CIA made to locate the missing copies of these transcripts?

c. if the CIA has made no effort to locate the missing copies, why not?

d. what efforts has the National Archives made to locate the missing copies of these transcripts?

e. if the National Archives had made no effort to locate the missing copies, why not?

f. in view of the fact that several copies of each of these transcripts is missing, can the CIA state for certain that no person not authorized to have access to classified information has seen them?

Answer: All of the copies of the June 23 transcript and the January 21 transcript which were transmitted to the National Archives as part of the records of the Warren Commission are accounted for. The fact that there may have originally been several other copies of the same transcripts does not

necessarily mean that they are "missing." Multiple copies of documents are often destroyed as non-record copies once there is no longer a need for the original number of copies. The fact that there are not nine copies of both transcripts located among the records of the Warren Commission does not necessarily mean that a breach of national security has occurred. The CIA has never had knowledge of the number of copies of the June 23 transcript and the January 21 transcript which are located among the records of the Warren Commission. Since the National Archives has had no reason to believe that copies of these transcripts have been alienated from the Warren Commission records, no "search" for missing copies has ever been initiated.

With respect to these portions of this interrogatory pertinent to the activities of the CIA, the defendant objects on the grounds stated in our answers to Nos. 70 and 68, above.

82. The National Archives received Mr. Robert S. Young's letter of May 1, 1975 on May 5. Why did Mr. Marion Johnson wait until September 25, 1975, to regrade the June 23 transcript Confidential? Does this comply with the requirements of Executive order 11652?

Answer: Mr. Robert S. Young's letter authorized regrading of the June 23 transcript. The transcript was, therefore, officially classified Confidential when Mr. Young's letter was transmitted to the National Archives. Physical marking of the transcript is an administrative action which can take place at any time after authorization for the regrading has been received, given the fact that no one was misinformed in the interim of the level of classification.

83. What is the date on which Mr. Weisberg first requested the Warren Commission executive session transcripts of January 21, January 22, January 27, May 19, and June 23, 1964?

Answer: Mr. Weisberg first requested access to the January 21, 1964, transcript (pages 63-73) on August 29, 1968. He requested access to the June 23, 1964, transcript on September 5, 1968. Mr. Weisberg first requested access to the May 19, 1964, transcript on May 20, 1971. Defendant objects to information sought concerning the transcripts of January 22 and January 27 on the grounds stated in our answer to No. 64, above.

84. Were any of the five transcripts listed in the preceding interrogatory validly classified under either the procedural or substantive criteria of Executive order 10501 at the time Mr. Weisberg first requested each transcript?

Answer: As expressed in my affidavit of March 29, 1976, previously introduced by defendant, 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 Executive Order 10501 listed these agencies and further stated that future additions or modifications must be specifically spelled out by Executive order (Executive order 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 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 Executive Order 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). Defendant has previously introduced copies of these documents as exhibits to my affidavit of March 29, 1976.

President Johnson's waiver of the requirement of Section 5(i) of Executive Order 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 Executive Order 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.

Names of individuals placing classification markings on documents were not required by Executive Order 10501. Therefore, the transcripts at issue give no indication of the individual who applied the classification markings. However, from documents previously introduced by defendant (e.g., affidavit of J. Lee Rankin), it is evident that Commission General Counsel Rankin ordered their classification.

The National Archives accepts the view that the transcripts at issue were validly classified in their entirety. Subsequent review by the agency of primary subject-matter interest has confirmed this opinion.

85. The attached June 21, 1971, letter from Acting Archivist Herbert E. Angel to Mr. Harold Welsberg states that the June 23 transcript and pages 63-73 of the January 21 transcript are withheld under Exemptions (b)(1) and (b)(7) and that the May 19 transcript is withheld under Exemptions (b)(1) and (b)(6). Why were these transcripts not withheld under Exemption (b)(5)?

Answer: The exemptions cited in Mr. Angel's letter were the primary exemptions justifying non-disclosure of the transcripts and were thus judged to be more than sufficient. Exemption (b)(5) is applicable and could have been cited. Exemption (b)(3) could also have been cited, with respect to the June 23 transcript and pages 63-73 of the January 21 transcript.

86. Were any Warren Commission executive session transcripts reviewed as part of the 1965 Warren Commission documents?

a. if the answer is yes, list all transcripts of Warren Commission executive sessions which were reviewed as part of the 1965 review and identify the person who reviewed each and state his title and position as of that time;

b. if the answer is no, why not?

Answer: In 1965, the review of Warren Commission documents was primarily limited to numbered Commission documents and did not include the executive session transcripts. The Justice Department Guidelines for review of Warren Commission records specifically stated that the guidelines pertained to records provided to the Commission by other agencies, i.e., numbered Commission documents.

87. The December 22, 1972, letter from Mr. Lawrence Houston, General Counsel for the CIA, to Dr. James B. Rhoads requests that the National Archives continue withholding the January 27, 1964, Warren Commission executive session transcript and other documents reviewed by it in order "to protect sources and methods." Does the January 27 transcript reveal any "sources and methods" of the CIA? (Please attach any pages of the January 27 transcript which do reveal "sources and methods" and state what source or method is disclosed.)

Answer: Defendant objects on the grounds stated in our answer to No. 64, above.

88. The Senate Select Committee on Intelligence Activities has issued a report entitled: "The Investigation of the Assassination of President Kennedy: Performance of the Intelligence Agencies." This report is commonly known as the Schweiker Report. Has Senator Schweiker or any member of the Senate Select Committee or its staff been given access to the June 23 transcript or pages 63-73 of the January 21 transcript?

Answer: Neither Senator Schweiker nor any member of the Senate Select Committee on Intelligence Activities nor its staff has sought access to the June 23 transcript or to pages 63-73 of the January 21 transcript.

89. Where are the original copies of the January 21 and June 23 transcripts?

Answer: The original typescripts of the January 21 and June 23 transcripts were not transmitted to the National Archives as part of the records of the Warren Commission. Defendant has no knowledge about the original typescripts.

90. Has the CIA, the National Archives, or anyone else made additional xerox copies of the seven copies of the June 23 transcript which the National Archives originally received from the Warren Commission? Of the withheld pages of the three copies of the January 21 transcript originally received from the Warren Commission?

Answer: Electrostatic copies of the June 23 transcript and pages 63-73 of the January 21 transcript have been reproduced by the National Archives to be used for review purposes in response to Freedom of Information Act requests or regularly scheduled classification reviews. The National Archives has no knowledge as to whether additional copies were reproduced by the CIA. See our answer to No. 70, above.

91. Have the January 21, May 19, or June 23 transcripts ever been referred to the Department of Justice for review? On what date?

Answer: The transcripts of January 21, May 19, and June 23 have not been referred to the Department of Justice for review.

92. Plaintiff's interrogatory No. 15 asked: "Is Yuri Ivanovich Nosenko the subject of the June 23, 1964, executive session transcript"? Defendant's opposition to plaintiff's motion to compel answers to interrogatories stated:

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

a. did this interrogatory in fact seek the disclosure of information which was security classified?

b. who informed the Assistant United States Attorney representing the government in this suit that this information was security classified?

c. did anyone at the CIA inform any officer or employee of the defendant that the information sought by this interrogatory was security classified?

(Please attach a copy of any record pertaining to this.)



Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant. In my affidavit of March 29, 1976, previously introduced by defendant, defendant admitted that Yuri Ivanovich Nosenko is the subject of the June 23 transcript and that this information is not classified.

93. The March 29, 1976, affidavit of Dr. Rhoads states that after having consulted with counsel, he refused to answer interrogatories 11, 12, 15, 16, and 17.

a. which counsel advised Dr. Rhoads to refuse to answer interrogatory No. 15?

b. who informed the counsel identified above that the identity of Nosenko was security classified information?

Answer: Defendant objects to this interrogatory on the grounds cited in our answer to No. 92, above. Defendant further objects on the grounds that the information sought involves privileged attorney-client communications.

94. Exemption 5 is designed to protect the confidentiality of advice on policy matters.

a. what policies were discussed in the June 23 transcript and pages 63-73 of the January 21 transcript?

b. did the Warren Commission advise anyone with respect to any such policies?

Answer: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant seeks to protect pursuant to exemption (b)(5) and other exemptions of the Freedom of Information Act in the instant action.

95. Pages 63-73 of the January 21 transcript are also being withheld on the authority of Exemption 5. Why are the other pages of this transcript not also withheld under Exemption 5?

Answer: Pages 63-73 of the January 21 transcript include information which has been determined must remain confidential under exemption (b)(5) as well as other exemptions. It has also been determined restriction of the remainder of the transcript is not appropriate. It has, therefore, been made publicly available in order that as much information as possible be released to the public.

96. Are Mr. Norman Redlich and Mr. Joseph Ball the subjects of the May 19 transcript?

Answer: Yes.

97. Plaintiff has recently obtained from the National Archives some 354 pages of Warren Commission records dealing with the campaign waged by certain right-wing political groups and congressmen against Warren Commission staff members Norman Redlich and Joseph Ball. Do these publicly available materials reflect in essence the subject of the May 19 transcript?

Answer: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant seeks to protect pursuant to Exemptions (b)(5) and (6) of the Freedom of Information Act. Defendant states for the record, however, that the materials previously released to plaintiff do not encompass, reflect or restate the essence of the May 19 transcript. Otherwise, defendant would have released this transcript to plaintiff.

98. Why are the 354 pages of Warren Commission records referred to in the preceding interrogatory not withheld under the authority of Exemption 6?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

99. Please define what is meant by "our operational equities" as that term is used in Robert S. Young's letter of May 1, 1975.

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

100. Paragraph 9(b) of the October 6, 1975, affidavit of Dr. James B. Rhoads states: "in withholding access pursuant to this statute [50 U.S.C. 403(d)(3)], the Archivist of the United States or his delegates within the National Archives and Records Service act as agents for the Director of Central Intelligence or his delegates." Has the Director of the CIA or any of his delegates ever informed the Archivist or any of his delegates that the June 23 transcript and pages 63-73 of the January 21 transcript are withheld pursuant to 50 U.S.C. 403(d)(3)? If so, please attach any correspondence or other record reflecting this.

Answer: In discussions between counsel for the CIA and defendant pertinent to Freedom of Information requests for these transcripts, the CIA counsel has stated that the continuing security classification, as exempted from mandatory declassification under Executive Order 11652, necessarily invoked the provisions of 50 U.S.C. 403(d)(3). Presumably, upon the declassification of these transcripts at a future date, this statute would not be invoked to prevent public access. Defendant is aware of no written communications between CIA and defendant on this matter.

101. Did Mr. Briggs review the June 23 transcript or pages 63-73 of the January 21 transcript before he was notified that plaintiff had appealed the denial of his Freedom of Information request for them?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 68, above.

102. Why does Exemption 5 apply to the January 21, May 19, and June 23 transcripts but not to any other Warren Commission executive session transcripts? Why, for example does Exemption 5 not apply to the January 22 and January 27 transcripts which have been publicly released?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above.

103. Please list all persons at the CIA who have had access to the January 21, January 27, May 19, and June 23 transcripts, giving the title and position of each such person, whether he was authorized to have access to Top Secret documents, and the date(s) on which he had access.

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

104. Has any agent or employee of the CIA made any information from the June 23 transcript and pages 63-73 of the January 21 transcript available to any person who is not a CIA employee?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

105. If the answer to the preceding interrogatory is yes,
- a. to whom?
  - b. by whom?
  - c. by what authority?
  - d. for what purpose?

Answer: See our answer to No. 105, above.

106. The Archives has stated that Mr. Charles P. Dexter of the CIA examined the June 23 transcript and pages 63-73 of the January 21 transcript on July 30, 1974, and again on March 21, 1975.

a. did Mr. Dexter make a determination on either occasion that either of these transcripts was properly classified Top Secret?

b. why didn't Mr. Dexter make the determinations that these transcripts are properly classified under Executive Order 11652 rather than have Mr. Briggs do it?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

107. Were the copies of the June 23 and January 21 transcripts Mr. Arthur Dooley of the CIA had on July 30, 1972, ever returned to the National Archives? If so, when?

Answer: Mr. Arthur Dooley had access to copies of the June 23 transcript and pages 63-73 of the January 21 transcript in November 1972 rather than July 1972. The July 1972 date was incorrectly stated in response to a previous interrogatory (No. 7) submitted in this complaint.

Copies of these transcripts were sent to the CIA on indefinite loan to facilitate future review requests. The copies have not been returned to the National Archives at this time.

108. If the copies of the transcripts which Mr. Dooley had on July 30, 1972, were not returned to the National Archives, where are they now, and who has them? Why weren't they returned?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

109. Defendant's answer to interrogatory No. 7 says that the CIA gave a copy of the June 23 transcript to the CIA only on November 11, 1972; July 30, 1974;

and March 21, 1975. How, then, did Mr. Dooley get access to a copy on July 30, 1972, and for what purpose?

Answer: As stated in the answer to interrogatory No. 107, the July 30, 1972 date which was previously cited is incorrect. The correct date is November 11, 1972. To defendant's knowledge, Mr. Dooley did not have access to the June 23 transcript until November 11, 1972.

110. Executive order 11652 states: "The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security." Which of the following criteria for determining "exceptionally grave damage to the national security" was used as a basis for informing the Archives on January 23 and March 19, 1975, or on any earlier review, that the June 23 transcript and pages 63-73 of the January 21 transcript should remain classified Top Secret?

- a. armed hostilities against the United States or its allies?
- b. disruption of foreign relations vitally affecting the national security?
- c. the compromise of vital national defense plans for complex cryptologic and communications systems?
- d. the revelation of sensitive intelligence operations?
- e. the disclosure of scientific or technological developments vital to national security?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above. Defendant further objects on the grounds that the interrogatory is irrelevant inasmuch as the subject transcripts are no longer classified "Top Secret."

Plaintiff expressly addresses interrogatories Nos. 111 through 186 inclusive to Mr. Charles Briggs of the CIA. For the grounds expressed in our answer to No. 68, above, defendant objects to each of these interrogatories and reserves judgment on the existence of other grounds for objection that may be applicable to particular interrogatories.

187. When Dr. Rhoads reviewed the January 27 transcript in 1967, did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: Defendant objects on the grounds stated in our answer to No. 64, above.

188. When Dr. Rhoads reviewed the June 23 transcript in 1967 did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: I did not personally conduct a classification review of the June 23 transcript in 1967. I instructed Mr. Marion Johnson to conduct a further review of the transcript. The transcript was reviewed and withheld because the subject of the transcript was Yuri Nosenko. At that time, both the FBI and the CIA had requested the National Archives to withhold all records relating to Nosenko.

189. When Mr. Marion Johnson reviewed the January 21 transcript in 1967, did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: Mr. Marion Johnson withheld from research pages 63-73 of the January 21 transcript because the FBI and the CIA had requested that all records reflecting the same subject matter be withheld for reasons of national security.

190. Did Mr. Briggs consult with anyone else in determining that the June 23 transcript and pages 63-73 of the January 21 transcript should be classified Confidential? Who?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

191. In determining that the June 23 and January 21 transcripts should be classified Confidential, did Mr. Briggs resolve all doubts in favor of declassification? Did he take into account the "overriding policy of the Executive Branch favoring the fullest possible disclosure"?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

192. Did Congressman Gerald Ford donate copies of classified Warren Commission executive session transcripts to the University of Michigan?

Answer: Congressman Gerald Ford deposited his Congressional papers which included classified executive session transcripts of the Warren Commission with the Bentley Historical Library, Michigan Historical Collections, University of Michigan. The National Archives now has indefinite custody of the subject transcripts which remain security classified.

193. If the answer to the preceding interrogatory is yes, were the copies of classified Warren Commission executive session transcripts disseminated to the University of Michigan in compliance with the provisions of Sections 7 and 8 of Executive order 10501?

Answer: Defendant has no knowledge of the manner in which copies of the Warren Commission executive session transcripts were transmitted by Congressman Ford to the Bentley Historical Library.

194. Does the January 21 transcript discuss whether Lee Harvey Oswald had worked for the CIA?

Answer: No.

195. Does the June 23 transcript discuss whether Lee Harvey Oswald worked for the CIA?

Answer: No.

196. When Mr. Weisberg sued for disclosure of the January 27, 1964, Warren Commission executive session, the National Archives invoked Exemptions 1, 5, and 7. After the District Court ruled that it was exempt under (b)(7), but not under (b)(1), the Archives suddenly "declassified" it and released it to the public. Why didn't the Archives continue to withhold it under Exemption 7?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above.

197. Does the Lyndon Baines Johnson Library or any other library under the National Archives contain classified Warren Commission documents?

- a. which ones?
- b. do these include executive session transcripts?
- c. which executive session transcripts?

Answer: Neither the Lyndon Baines Johnson Library nor any other Presidential Library under the control of the National Archives has in its custody any classified Warren Commission records.

198. If the answer to interrogatory 197(b) is yes, were the copies of these classified executive session transcripts disseminated in compliance with the provisions of Sections 7 and 8 of Executive order 10501?

Answer: Not applicable.

199. Has the National Archives ever discriminated against Mr. Weisberg in what was made available to him and denied to him as the result of his requests?

Answer: No.

200. At the time a few of the executive session transcripts were made available to David Wise, did Dr. Rhoads and Mr. Weisberg disagree on whether one of his requests covered some of these records?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

201. Did Mr. Weisberg thereafter engage in correspondence that constituted a request for every record relating in any way to the medical or autopsy evidence and what is relevant to them?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

202. Did the National Archives on any subsequent occasion make records of this description available to others without making them available to Mr. Weisberg?



Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

203. Did Mr. Weisberg request a copy of what is known as the GSA-Kennedy Family Letter Agreement?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

204. Did Dr. Rhoads refuse to give Mr. Weisberg a copy of the Kennedy Family Letter Agreement? If the answer to this is yes,

- a. when?
- b. why?
- c. are these conditions ever subject to change abruptly?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

205. After personally refusing to make the GSA-Kennedy Family Letter Agreement available to Mr. Weisberg, did Dr. Rhoads then personally solicit a request for it from another person who had not asked for a copy?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

206. Did Dr. Rhoads assure this other person that if he requested the Kennedy Family Letter Agreement under the Freedom of Information Act, the Archives would have no alternative but to give it to him?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

207. Did the National Archives then give the Kennedy Family Letter Agreement to this person on what amounted to an exclusive basis?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

208. How long after making the Kennedy Family Letter Agreement available to this other person did the National Archives wait before mailing a copy to Mr. Weisberg?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

209. Did Mr. Weisberg request what is known as the "Memorandum of Transfer"?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

210. Did the National Archives refuse Mr. Weisberg's request or the "Memorandum of Transfer"?

- a. how long did this decision take?
- b. on what was this decision based?
- c. did Dr. Rhoads thereafter claim that he had no control over the copy in the National Archives?
- d. is it not a fact that the custodian of that record was a Presidential library that is under the direction and control of the National Archives?
- e. did the Secret Service thereafter make a copy available to Mr. Weisberg, electing to do so through the National Archives?
- f. did the National Archives intercept this copy and then refuse to give it to Mr. Weisberg?
- g. was the Secret Service the agency of "paramount interest"?
- h. when Mr. Weisberg later renewed his request for the Memorandum of Transfer under the Freedom of Information Act, was his request again denied?
- i. how much time elapsed from the time Mr. Weisberg first requested the Memorandum of Transfer until the time the National Archives provided him a copy?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

211. Did Mr. Weisberg request that the National Archives provide him with copies of all records relating to the assassination of President John F. Kennedy as they were made available?

Answer: Mr. Weisberg has requested that the National Archives provide him with copies of every document or portion of a document which is made publicly available as a result of on-going reviews of the Warren Commission records.


212. Has the National Archives subsequently made records relating to the assassination of President Kennedy publicly available without notifying Mr. Weisberg?

Answer: The National Archives has attempted to comply with Mr. Weisberg's requests within the limits of our resources. However, we are unable to accept an open-ended, standing request for all documents or portions of documents relating to a given subject released over a period of years from one researcher and not provide this service to all researchers. It is impossible to provide this service for each of the thousands of researchers who come to the National Archives. We have tried to explain to Mr. Weisberg our policy of providing equal assistance and service to each researcher at the National Archives.

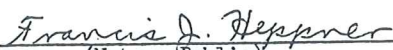
213. In his letter to Mr. Weisberg of July 31, 1975, Acting Assistant Archivist Albert H. Leisinger listed eleven records pertaining to Yuri Ivanovich Nosenko which were withheld, including the June 23, 1964, Warren Commission executive session transcript. Mr. Leisinger stated: "These records relating to Nosenko are denied to you under 5 U.S.C. 552(b)(5)." Why did Mr. Leisinger not claim that the June 23 transcript was denied to Mr. Weisberg under Exemption (b)(1)?

Answer: Mr. Leisinger inadvertently did not cite other exemptions pertinent to withholding the June 23 transcript.

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

  
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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 11<sup>th</sup> day of November 1976.

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

My commission expires: *August 31, 1979*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Defendant's Answers to Interrogatories has been made upon plaintiff by handing a copy thereof to counsel for plaintiff, James H. Lesar, Esquire, 1231 Fourth Street, S.W., Washington, D.C., 20024, on this 12th day of November, 1976.



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