UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. GENERAL SERVICES ADMINISTRATION, Defendant	Civil Action No. 75-1448

FILED MAR 21 1977
JAMES F. DAVEY
CLERK

MOTION FOR RECONSIDERATION, CLARIFICATION, AND IN CAMERA INSPECTION OF TRANSCRIPTS WITH AID OF PLAINTIFF'S SECURITY CLASSIFICATION EXPERT

Pursuant to Rule 59 of the Federal Rules of Civil Procedure, plaintiff moves this Court to reconsider its Order filed March 10, 1977, in light of the considerations set forth below and the affidavits of Mr. William G. Florence and Mr. Harold Weisberg and the exhibits attached hereto. In addition, pursuant to Rule Rule 52 (b) of the Federal Rules of Civil Procedure and the requirements established in Schwartz v. IRS, 511 F. 2d 1301 (D.C. Cir. 1975), plaintiff hereby requests additional findings of act and conclusions of law clarifying the Court's holding that the documents in issue are exempt from disclosure under 5 U.S.C. 552(b)(3) and (b)(5). Lastly, plaintiff moves the Court to conduct an in camera inspection of the January 21 and June 23, 1964, Warren Commission executive session transcripts with the aid of plaintiff's security classification expert, Maj William G. Florence (U.S.A.F. Ret.)

STATEMENT OF THE CASE

In September, 1975, plaintiff filed suit for the two Warren Commission executive session transcripts still withheld in their

entirety and ten pages of a third. On May 25, 1976, this Court held a hearing on various pending motions, including defendant's motion for summary judgment and plaintiff's motion to take tape-recorded depositions of certain specified individuals. The Court stated that the factual record would not support defendant's summary judgment motion in its present state. Although the Court refused to grant plaintiff's motion for tape-recorded depositions, it stated that plaintiff would be allowed to address interrogatories to the Central Intelligence Agency, a non-defendant, and that the Court expected the government's attorney to see that a proper factual record was established so the Court could properly dispose of the case. When plaintiff's counsel sought to warn the Court about the danger of proceeding in this fashion, the Court stated that if plaintiff's discovery was not complied with, the jury box would be filled with witnesses.

In reliance upon the Court's representations, plaintiff sought to obtain additional discovery through the use of interrogatories directed both to the defendant General Services Administration and, more importantly, to the Central Intelligence Agency. After six months of obstructive delays, plaintiff returned to Court to ask that a trial of this case be scheduled. Instead, the Court scheduled a hearing on a motion to compel answers to interrogatories and then promptly awarded defendant summary judgment with respect to each of the requested documents, even though no discovery of benefit to defendant's position had been obtained since the May 25, 1976, hearing at which the Court declared that there was insufficient evidence to support defendant's summary judgment motion.

In Schwartz v. IRS, 511 F. 2d 1301 (D.C. Cir. 1975), the Court of Appeals held that when district courts decide FOIA cases

with brief, conclusory opinions, it is an abuse of discretion for the district court to deny a plaintiff's motion for clarification of an adverse summary judgment order:

> [T]he summary judgment orders with which this Court has been confronted in FOIA cases have almost invariably been "stated in very conclusory terms, saying simply that the information falls under one or another of the exemptions to the Act." Invariably such appeals have resulted in remands for some form of further proceedings or clarification.
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> * * *
>
> Appellant seeks to short-circuit the requirement for remand by securing a clarification from the District Court before an appeal is taken. In light of our experience with FOIA cases we are convinced such clarification would not only be useful in a case such as this one, but that the denial of such a clarification is an abuse of discretion. 511 F. 2d at 1307 (citations omitted).

Such clarification may be required not only as to the legal basis for the decision, but its factual underpinnings as well. Ackerly v. Ley, 420 F. 2d 1336 (D.C. Cir. 1969).

For the reasons set forth below, this Court's March 10, 1976 order fails to establish the factual and legal basis both for decision and appellate review that is required by Schwartz.

I. THE COURT'S ORDER HAS FAILED TO ESTABLISH AN ADEQUATE FACTUAL OR LEGAL BASIS FOR SUPPRESSING THE JANUARY 21 AND JUNE 23 TRANSCRIPTS UNDER Exemption 3

The Court's March 10, 1977, order states simply: "as regard the January 21, 1964, and June 23, 1964 transcripts the Defendant is entitled to Summary Judgment on the basis of exemption 3 of the Freedom of Information Act (5 U.S.C. § 552(b)(3)." Except for this totally conclusory statement, there is no basis whatsoever for granting summary judgment with respect to these two documents.

The defendant has invoked Exemption 1 with respect to both of these transcripts, alleging that they are properly classified pursuant to Executive Order 11652 in order to protect intelligence sources and methods. This is a contested fact, vigorously disputed by plaintiff. (See, for example, the two attached affidavits of Mr. William G. Florence and Mr. Harold Weisberg.) This Court did not rule on the Exemption 1 claims in reaching its conclusion that these transcripts fall within the ambit of materials protected by Exemption 3.

Yet plaintiff maintains that there can be no valid Exemption 3 claim on the basis of 50 U.S.C. § 403(d)(3), the proviso invoked by the defendant, without a determination that the information said to be protected by that statute has in fact been properly classified pursuant to Executive Order 11652. Thus, the attached affidavit of plaintiff's security classification expert, Mr. William G. Florence, states:

> 24. The basic fact about lawful authorization for designating information as secret to protect intelligence sources and methods is that the classification criteria set forth in Executive Order 11652 must be met. That Executive order is the current implementation by the President of 50 U.S.C. 403(d)(3) with respect to determining whether a specific item of information must be kept secret to protect an intelligence source or method.

Because the Court has not determined whether or not the June 23 and January 21 transcripts are validly classified, it should reconsider its summary judgment ruling declaring them nondisclosable on the basis of an unsupported Exemption 3 claim. In addition, the Court should clarify factual questions not yet answered: for example, is the CIA claiming that it is protecting its own intelligence "sources and methods" or those of some other agency? (A close reading of the November 5, 1975, Briggs affidavit suggests

that it may be claiming protection of its own "sources and methods" in only one of the two transcripts.)

II. THE COURT SHOULD EXAMINE THE JANUARY 21 AND 23 TRANSCRIPTS IN CAMERA WITH THE AID OF PLAINTIFF'S SECURITY CLASSIFICATION EXPERT

In Weissman v. CIA, No. 76-1566, the United States Court of Appeals for the District of Columbia has recently held that:

> If exemption is claimed on the basis of national security the District Court must, of course, be satisfied that proper procedures have been followed, that the claim is not pretextual or unreasonable, and that by its sufficient description the contested document logically falls into the category of the exemption indicated. It need not go further to test the expertise of the agency, or to question its veracity when nothing appears to raise the issue of good faith. (Slip op. at pp. 10-11)

In this case there are a number of factors which raise the issue of veracity and good faith. With respect to the Exemption 3 claim, the defendant never invoked that exemption until after the Freedom of Information Act was amended in 1974, despite many opportunities to do so. (See Exhibit 1) Even then, it did so only on appeal.

More importantly, plaintiff's security classification expert has reviewed the January 27, 1974, Warren Commission executive session transcript which in December, 1972, the CIA withheld on the grounds that it needed to protect "intelligence sources and methods." He concludes that there never was any legitimate basis for security classifying that transcript in the interest of national defense or foreing policy, nor was there any justifiable claim that the transcript's revelation would disclose "intelligence sources and methods." (See attached affidavit of William G. Florence, ¶¶13-21)

As plaintiff has repeatedly noted in seeking additional discovery, the fact that the CIA fraudulently withheld the January 27 transcript on grounds of national security to protect "intelligence sources and methods" which were in fact non-existent in that transcript weighs heavily on the credibility of the affidavits submitted by the CIA in this case. Accordingly, the holding of the Court of Appeals in the Weissman case clearly requires this Court to conduct in camera inspection of these transcripts before awarding defendant summary judgment, plaintiff moves the Court to inspect these transcripts in camera with the aid of plaintiff's se-security classification expert. As the affidavit of plaintiff's expert recites, there is precedent for this procedure in the case of United States v. Victor L. Marchetti (Civil Action No. 179-72-A, District Court, Alexandria, Va.).

III. THE COURT SHOULD RECONSIDER WHETHER EXEMPTION 5 PROPERLY APPLIES TO A DECEASED COMMISSION

The March 10, 1977, Order of this Court granted summary judgment with respect to the May 19, 1964, Warren Commission executive session transcript on the grounds that that it reflects deliberations on matters of policy with respect to the conduct of the Warren Commission's business. Plaintiff respectfully suggests that, even so, Exemption 5 does not apply to a Presidential commission which went out of existence 13 years ago. The legislative history of Exemption 5 indicates that it is intended for the protection of policy discussions which take place in the context of an ongoing agency and even ongoing litigation. Frank and free discussion of policy matters is not protected by suppressing the May 19 transcript because the Warren Commissior went out of existence in 1964 and engages in no more policy discussions.

Respectfully submitted,

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

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of March, 1977, delivered a copy of the foregoing Motion for Reconsideration, Clarification, and In Camera Inspection with Aid of Plaintiff's Expert Witness to the office of Mr. Michael J. Ryan, U.S. Attorney's Office, United States Courthouse, Washington, D.C. 20001.

JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. GENERAL SERVICES ADMINISTRATION, Defendant	Civil Action No. 75-1448

O R D E R

Upon consideration of Plaintiff's Motion for Reconsideration, Clarification, and In Camera Inspection with Aid of Plaintiff's Expert Witness, and the entire record herein, it is hereby

ORDERED, that plaintiff's motion is granted, and the Court will reconsider its Order of March 10, 1977, and conduct an in camera examination of the January 21, 1964, and June 23, 1964, Warren Commission executive session transcripts with the assistance of plaintiff's expert witness, Mr. William G. Florence.

UNITED STATES DISTRICT COURT

DATED: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT OF WILLIAM G. FLORENCE

I, William G. Florence, being first duly sworn, depose and say as follows:

1. I reside at 708 Sixth Street, S. W., Washington, D. C. I am self-employed as a security policy consultant.

2. My 43 years of military and civilian service began in 1928, when I enlisted in the United States Army as a private. I was on active Army, and later Air Force, duty in combat and non-combat assignment until 1950, when I was separated with the rank of Major, United States Air Force. Beginning in 1950--on the first working day after I left the military--I was employed by the Government as a civilian in the same position I had held in the military: Security Policy Officer. From 1945 until my retirement on May 31, 1971, I worked continuously in a number of Government positions directly involving the development and implementation of policies for safeguarding official information in the interests of the defense of the United States. Following my retirement from Government ser-

vice, and continuously to date, I have been engaged in studying the development and implementation of United States security classification policies.

3. Prior to September, 1951, Executive branch agencies developed their own policies for classifying and safeguarding information. On that date the various voluntary classification systems were superseded by the promulgation of a single Executive branch system set forth in Executive Order 10290. That Order was superseded by Executive Order 10501 in November, 1953, which was in turn superseded in March, 1972, by the current Executive Order 11652. Although the systems prescribed by the various Executive Orders vary in their details, there has been no basic change in the security classification system in at least the past 32 years.

4. From November, 1945 to May, 1960, I was assigned to Headquarters, U.S. Air Force, Washington, D. C. During that period I had several titles: first, Intelligence Staff Officer, Information Security Branch, Office of Assistant Chief of Staff, Intelligence; then, Chief, Information Security Branch; then, Assistant for Security Policy to the Deputy Inspector General. My functions and duties during that period included developing and publishing Air Force policies and procedures for evaluating, classifying, safeguarding, and declassifying defense related information, including information involving intelligence sources and methods. My duties involved representing the Air Force on Department of Defense committees and on interdepartmental committees of the Federal Government concerned with development of Executive branch policy for classifying information. On this basis, I worked with representatives of the Executive Office of the President in preparing the final draft of Executive Order 10290 for signature by the President.

5. My responsibilities during that period for interpreting and implementing security classification policy promulgated by Executive order are also reflected by the fact that I drafted DoD Directive 5200.9, September 27, 1958, Subject: "Declassification and Downgrading of Certain Information Originated Before January 1, 1946." That unprecedented Directive mandated the automatic declassification of certain information at least 12 years old. In 1958, the proposal that the Secretary of Defense should exercise command responsibility over information of his Department was such a marked departure from the prevailing secrecy philosophy that it was deemed necessary to obtain Presidential approval before the Directive was promulgated. I briefed the Assistant to the President on the meaning of the proposed declassification Directive and on the authority of the Secretary of Defense to accomplish the action under Executive Order 10501.

6. From May, 1960, to July, 1967, I served in security specialist positions with the Air Force Missile Test Center, Patrick Air Force Base, Florida, and with Headquarters Air Force Systems Command, Andrews Air Force Base, Maryland. My titles during that period included: Industrial Security Specialist, Headquarters Air Force Missile Test Center; and, Chief, Industrial Security Branch, Security Division, Headquarters Air Force Systems Command. My functions during that period involved working closely with military units and civilian contracting firms throughout the United States which were engaged in research, development, testing, and evaluating weapon systems and in other scientific and technical projects essential to the defense of this nation.

7. From August, 1967 until retirement from Government service on May 31, 1971, I served as Deputy Assistant for Security and Trade Affairs, Headquarters, U.S. Air Force, Washington, D. C. The

Assistant reported to both the Deputy Chief of Staff, Research and Development, and the Deputy Chief of Staff, Systems and Logistics. Under his supervision, I was responsible for the performance of functions involving all matters relating to technical program security policy.

8. During 1967-1971 my day-to-day functions included exercising responsibility for classifying and declassifying information relating to major Air Force developments. My efforts were devoted to: (a) assigning security classifications, endorsing the assignment of security classifications proposed by other officials, and precluding the assignment of security classification for information maintained under the jurisdiction of the Department of Defense, including weapon systems information, operations of weapon systems in Southeast Asia, international programs, and testimony of Air Force officials given to Congressional Committees; and (b) endorsing and cancelling security classifications previously assigned by other officials to information under the jurisdiction of the Deputy Chief of Staff, Research and Development, and the Deputy Chief of Staff, Systems and Logistics. Intelligence factors were considered on a continuing basis in performing these functions.

9. This work included making determinations that classifications had been assigned to information in violation of criteria stated in Executive Order 10501 and applicable implementing regulations. Most of the improper classifications which I reviewed were readily discernible to me as either a failure by the classifier to inform himself of basic classification principles and rules, or as an intentional misuse or violation of security classification rules for personal reasons of the classifier. I had occasion to review thousands of security classifications involving virtually every

facet of Air Force weapons-related activity. In my experience, excessive and improper original classification was rampant.

10. After retiring from Government in May, 1971, I began work as a self-employed consultant to government contractors, Congressional committees, and others who are concerned with matters involving Executive branch security classification policies and practices. My major accomplishments are:

a. From October, 1971 until May, 1973, I served as the consultant on government secrecy policies and practices to counsel for the defendants in the Ellsberg-Russo ("Pentagon Papers") case, and was accepted by the Court as an expert witness during the trial of that case.

b. In April and May, 1972, I served as consultant on government secrecy policies to defense counsel in the case of United States v. Victor L. Marchetti, U.S. District Court, Alexadria, Virginia (Civil Action No. 179-72-A). In that case the Central Intelligence Agency sought an injunction against publication of a book Marchetti had written. Under a court order, five different items of information that the C.I.A. wanted to protect were disclosed to me for review under the rules for classification set forth in Executive Order 10501.

c. From June through November, 1974, I made a survey of the practical application of the security classification system in Executive Order 11652 to contract procedures of industry and academic institutions. I visited research and development and manufacturing organizations with more than 1200 Secret and Top Secret Department of Defense contracts totalling more than $550,000,000. I also made inquires of numerous other companies working on approximately 1300 classified contracts worth more than $600,000,000. A

report of this survey was published in the Congressional Record for December 20, 1974, p. E7304, in the form of a letter from me to Congressman William S. Moorhead, Chairman, Subcommittee on Government Operations, U.S. House of Representatives. Among the conclusions stated in my Report was the following: "Dissemination of technological knowledge that is needed for national defense projects as well as civilian technological advancement is hampered by unnecessary security classifications."

d. From October 1, 1975, to May 31, 1976, I was employed by the U.S. House of Representatives Committee on Government Operations on a temporary basis as the staff expert on Executive branch security classification for the Subcommittee on Government Information and Individual Rights. In that capacity I studied and prepared reports on the security classification practices of Government agencies. I also helped draft legislation to eliminate security classification abuses. I had clearance for access to Top Secret information and access to classified information in the performance of my duties.

e. I served as an expert consultant to the defense in United States v. Sahag K. Dedeyan, both prior to and during the trial of that case, which was held July 19-29, 1976, in the United States District Court in Baltimore, Maryland. This case involved questions as to whether a document bearing a classification marking was properly classified pursuant to Executive Order 11652.

f. From September 14 to October 31, 1976, I served as an expert consultant to the Commission on Federal Paperwork regarding the security classification policies and practices of the Executive branch.

11. During my service in the Department of Defense and since retirement, the most serious security classification problems I have observed have stemmed from officials wanting to assign or retain a classification marking on a document or item of material

even though the purpose of its creation or the requirements for its use did not permit adherence to prescribed secrecy rules. In such cases the rules of security classification have simply been relaxed or disregarded to accomodate assignment of a classification or retention of an assigned classification marking. A few examples will serve to illustrate the innumerable instances of improper and excessive classification which I personnally have observed:

a. In the trial of Sahag K. Dedeyan, the Government introduced into evidence 72 pages of a document marked "Secret". Under the Judge's ruling they became a public record immediately upon introduction in evidence. Nevertheless, the government maintained during and after the trial that the "Secret" marking on the 72-page document was a valid security classification. Based on facts developed during the trial, the purpose was to protect intelligence sources and methods. However, the government did not explain how any intelligence source or method could have been compromised. The testimony of the expert witness called by the defendant, which was not successfully challanged, showed that there was no reasonable basis for the government to allege that the information in the indictment document could disclose intelligence sources or methods. After Mr. Dedeyan's trial ended in his conviction, I obtained a copy of this document from the U.S. Navy by making a Freedom of Information Act request for it. It was furnished me on February 2, 1977. The cover sheet of this document, which became a public record when it was introduced into evidence on July 20, 1976, had the following notation: "Declassified by CNO Op-009D 26 Jan 1977".

b. Eleven of the documents introduced into evidence in the Ellsberg-Russo ("Pentagon Papers") trial in January, 1973 had a

current "Top Secret" classification, according to the government. The judge ruled the documents to be public records. They were used by the court and by the public as public records. This notwithstanding, the Defense and State Departments refused to declassify the documents. Long after the trial some of the documents were declassified as a result of Freedom of Information Act requests for them. Four have not yet been declassified.

c. The external configuration of missiles which were standing on launch pads at Cape Canaveral where the public could plainly see them was classified "Confidential".

d. A note written by one of the Chiefs of Staff in the Joint Chiefs of Staff stated that too many papers were being classified "Top Secret". The note itself was classified "Top Secret".

12. Another misuse of security classification which I have observed is the practice of assigning a so-called overall classification marking on a document containing no classified information. For example, two or more non-classifications are added together to make a "Confidential" or "Secret" classification. This practice was the subject of Freedom of Information Act litigation in William G. Florence v. United States Department of Justice, et. al., in the United States District Court for the District of Columbia (Civil Action No. 75-1869). The district court ordered disclosure of all information in a document that had a so-called overall "Confidential" classification. The Government is so devoted to the practice of assigning overall classifications to non-classified information that a motion to stay the order for disclosure was made in order to prepare an appeal of the ruling. Eventually, on June 14, 1976, the Supreme Court denied the Government's motion.

13. To assist in evaluating the credibility of the affidavits submitted by Mr. Charles Briggs and Dr. James B. Rhoads in the instant case, Weisberg v. General Services Administration, Civil Action No. 75-1448, I have reviewed the transcript of the Warren Commission executive session held on January 27, 1964.

14. A December 22, 1972 letter from the Central Intelligence Agency advises the Archivist of the United States that the January 27 transcript, marked "Top Secret", could not be released "because of the continuing need . . . to protect intelligence sources and methods." According to a notation on the copy of the transcript I examined, it was declassified on June 12, 1974.

15. The truth is that there was no logical basis for the January 27 transcript ever to have been marked "Top Secret" or otherwise designated for protection against disclosure. The Warren Commission was never granted authority to assign a security classification to information under Executive Order 10501, which was the applicable order in effect in January, 1964. On October 27, 1975, I prepared a memorandum on this for the Staff Director, House of Representatives Subcommittee on Government Information and Individual Rights. My memorandum on "Classification Markings on Warren Commission Records" was published on page 61 of the Report of the hearings held by the Subcommittee on November 11, 1975. A copy of my memorandum was forwarded to the Archivist of the United States on December 9, 1975. [A copy of my memorandum is attached hereto as Attachment 1]

16. Furthermore, none of the information in the January 27 transcript could have qualified for classification under Executive Order 10501, since disclosure could not have resulted in damage to the national defense. Nor could disclosure of the transcript have compromised intelligence sources or methods in January, 1964 or at any later time.

17. It is possible that the CIA claim of a need for secrecy in December, 1972 was based on some comments on page 135 of the transcript about a former FBI agent stationed in South America before 1943 having paid money to informers and other people, including the head of the Government of Ecuador. Obviously, these comments did not qualify for secrecy. But people throughout the Executive branch frequently invoke secrecy on information having no greater importance to the defense of this nation or the successful funtioning of the CIA than those comments about the former FBI agent.

18. I have reviewed the affidavits of Mr. Charles Briggs of the Central Intelligence Agency dated November 5, 1975, and December 30, 1976, which have been submitted on behalf of the defendant in this case. My review was made in the light of the relevant facts regarding the preparation of the transcripts of Warren Commission executive sessions held on January 21 and June 23, 1964, as well as Executive Order 11652.

19. The substance of the first Briggs affidavit is repeated and included in the second Briggs affidavit. Therefore, my evaluation of the first affidavit applies also to the second.

20. It is my opinion, in summary, that the November 5, 1975, Briggs affidavit:

a. Is overburdened with statements regarding his recollection and understanding of policies, procedures, and philosophy concerning the classification of information under Executive Order 11652 and the safeguarding of what is referred to in that Executive order and 50 U.S.C. 403(d)(3), without any definition, as intelligence sources and methods;

b. Does not show that information in either of the two transcripts qualifies for protection under the procedural and policy

provisions of Executive Order 11652 or the authorization for protection that is in 50 U.S.C. 403(d)(3); and

c. Does not show that the disclosure, in itself, of either transcript could reasonably be expected to damage the national security within the meaning of Executive Order 11652 or compromise an intelligence source or method which requires protection.

21. It has been my experience that the generalities of policy and the varying applications of it to different sets of circumstances are commonly used by individuals in intelligence agencies as a basis for attempting to protect whatever they want to keep secret. The claim of a need for the protection of information in the January 27, 1964, Warren Commission executive session transcript in order to preclude disclosure of non-existent intelligence sources and methods is typical of the view of intelligence personnel that any item of information qualifies for secrecy protection if they say that it does.

22. In response to inquiries as to what criteria the CIA uses in determining whether an item of official information revealing an intelligence source or method requires protection under 50 U.S.C. 403(d)(3) and Executive Order 11652, the Director of Central Intelligence wrote in his March 1, 1976, letter to the House Subcommittee on Government Information and Individual Rights:

> Official information bearing on intelligence sources and methods which require protection inherently involves a mosaic of isolated and often seemingly unrelated bits and pieces of information which if improperly disclosed could endanger or reveal such sources and methods. The main criterion involves the application of experienced judgment to all aspects of the intelligence process in order to insure that any disclosure will not lead to counteraction which would jeopardize the continued existence and productivity of an intelligence source or method. In short, the criteria used to determine whether an item of information reveals an in-

telligence source or a method are not easily defined nor are they static.

23. In the same letter to the Subcommittee, the Director of the CIA advised that there were 537 persons in the agency authorized to classify information "Top Secret"; 1,344 persons with "Secret" classification authority; and 62 persons with "Confidential" classification authority. Thus, a total of 1,943 individuals at the Central Intelligence Agency were authorized to impose secrecy restrictions on information belonging to the American people by personally applying the "mosaic" classification theory expressed in the Director's March 1, 1976, letter to the Subcommittee.

24. The basic fact about lawful authorization for designating information as secret to protect intelligence sources and methods is that the classification criteria set forth in Executive Order 11652 must be met. That Executive order is the current implementation by the President of 50 U.S.C. 403(d)(3) with respect to determining whether a specific item of information must be kept secret to protect an intelligence source or method.

25. In carrying out his responsibility under the statute for protecting intelligence sources and methods, the Director of the Central Intelligence Agency has no choice but to comply with the President's Executive Order 11652. That order is all-inclusive in its application to "official information or material," as referred to in Section 1, except that Section 8 provides that Atomic Energy "Restricted Data" must be protected according to the Atomic Energy Act of 1954, as amended. It must be emphasized that Executive Order 11652 makes no exception for intelligence sources and methods. On the contrary, the provisions of Sections 1, 5, and 9 of Execu-

tive Order 11652, which apply specifically to intelligence operations and to intelligence sources and methods, clearly include all information regarding intelligence sources and methods which qualify for protection against unauthorized disclosure.

26. Therefore, if there is information in the January 21 and June 23, 1964, Warren Commission executive session transcripts involving intelligence sources and methods which require protection under Executive Order 11652, and if such information is in fact properly classified pursuant to Executive Order 11652, including both the procedural and substantive provisions of that order, then the mandatory disclosure requirements of the Freedom of Information Act would not apply. But if the transcripts do not contain information that is properly classified under Executive Order 11652, then there is no authorized basis for withholding them because of a claim that they would or might disclose intelligence sources or methods.

27. Thus, the issue with respect to the January 21 and June 23, 1964, Warren Commission executive session transcripts is whether they are: (a) specifically authorized under criteria established by Executive Order 11652 to be kept secret in the interest of national defense or foreign policy; and (b) in fact properly classified pursuant to such order.

28. In making a determination as to whether these transcripts are validly classified, the facts stated in my memorandum (Attachment 1) must be considered. This includes the fact that:

a. The classification marking of "Top Secret" that was originally put on these transcripts was not a valid classification under Executive Order 10501, which was the President's order on classifying information in 1964. Neither the Warren Commission, as an entity, nor any member or official serving with it had any authority to assign a classification to information or to determine that

an item of information was required or authorized to be kept secret in the interest of national defense or foreign policy under the provisions of Executive Order 10501.

b. With regard to the after-the-fact decisions which CIA personnel, including Mr. Briggs, made to classify these transcripts, there is no evidence that a determination was made as to whether information sought to be protected has already been disclosed.

29. I have reviewed the records of this case made available to me by counsel for the plaintiff, including the affidavits of Mr. Charles Briggs, Dr. James B. Rhoads, and Mr. J. Lee Rankin and the defendant's answers to interrogatories. On the basis of my study of these records I conclude: 1) That these records contain no evidence that the Warren Commission executive session transcripts of January 21 and June 23, 1964, were properly classified under any Executive order at the time they were originated; 2) there is no specific evidence to show that they are in fact currently properly classified "Confidential" under Executive Order 11652 as claimed by the C.I.A.; 3) if the disclosure, in itself, of information in these transcripts at this time actually could reasonably be expected to cause damage to the national security by (a) compromising intelligence sources or methods, or (b) disrupting relations with a foreign country; or (c) leading to the assassination of a defector from the Soviet Union, as suggested in the second Briggs affidavit; then the Director of the Central Intelligence Agency unquestionably would have already arranged for the transcripts to be removed from the custody of the librarians at the National Archvies and provided a degree of protection far more effective than that accorded information bearing a "Confidential" classification marking.

William G. Florence

WILLIAM G. FLORENCE

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 21st day of March, 1977.

B. B. [illegible]

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires April 14, 1979.

ATTACHMENT 1--Florence Affidavit Civil Action No. 75-1448

BELLA S. ABZUG, N.Y., CHAIRWOMAN
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225-3741

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

October 27, 1975

M E M O R A N D U M

TO: Mr. Timothy H. Ingram
Staff Director, Subcommittee on Government Information and Individual Rights

FROM: Mr. William G. Florence
Professional Staff Member

SUBJECT: Classification Markings on Warren Commission Records

This is in response to your request for comments on the question whether the Warren Commission had authority to originally classify information as Confidential, Secret or Top Secret under the Executive branch security classification system.

According to available facts, the Warren Commission did not have original classification authority. Neither the chairman nor the Commission as a whole could have exercised such authority or delegated such authority to any Commission personnel.

The President's policy for classifying official information during the period that the Warren Commission existed was stated in Executive Order 10501, as amended by Executive Orders No. 10816, 10901, 10964 and 10985. Subsections 2(a) and (b) of the Executive Order 10501 listed the departments, agencies and commissions which exercised the authority of the President to originally classify information. The list did not include the Warren Commission.

Subsection 2(c) of Executive Order 10501 stated the President's restriction on exercising original classification authority:

> (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.

There is sound reason for concluding that authority for original classification was never conferred upon the Warren Commission. It was not included in Executive Order 11130, which established the Commission to Investigate the Assassination of President Kennedy. Representatives of National Archives have advised that the Commission files contain no record of any delegation to the Commission of classification authority subsequent to the Commission being established.

Consideration has been given an affidavit regarding the use of classification markings on Warren Commission records that was executed by Mr. J. Lee Rankin on April 8, 1974, for use in a Freedom of Information Act case in United States District Court for the District of Columbia (Civil Action NO. 2052-73). Mr. Rankin had served as General Counsel of the Warren Commission. The case involved a request for access to the transcript of a Warren Commission meeting held on January 27, 1964, which bore the marking "TOP SECRET."

In his affidavit, Mr. Rankin stated that:

1) He was instructed by the Commission "to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be classified under existing Executive order."

2) The Commission's authority to classify its records and its decision to delegate that responsibility to him existed pursuant to Executive Order 10501, as amended.

3) He ordered that the transcripts of certain executive sessions of the Commission, including that of January 27, 1964, be classified "TOP SECRET."

The District Court (Judge Gerhard A. Gesell) reviewed all of the Government's submissions in the case (Weisberg v. General Services Administration), including Mr. Rankin's affidavit. The Court concluded that they "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." (However, the Court went on to hold that the Warren Commission transcript in question could be withheld as an invstigatory file under exemption 7 of the Freedom of Information Act, and rested its decision on that ground.)

On the basis of facts available, none of the classification markings assigned by Mr. Rankin to documents originated by the Warren Commission have any validity. They need not be subjected to declassification action since one cannot declassify that which was never properly classified.

As for any past or future action by an official of a Federal agency to assign a security classification to a Warren Commission paper, such classification could be viewed as official and authorized only if it met both the procedural provisions and the secrecy criteria of Executive Order 10501 or the current Executive Order 11652.

Section 1 of Executive Order 10501 permitted the use of the lowest security classification, Confidential, on official information only if an authorized classifier determined that the unauthorized disclosure of the information could be prejudicial to the defense interests of the nation. Section 1 of Executive Order 11652 permits the use of the lowest security classification, Confidential, on official information only if an authorized classifier determines that unauthorized disclosure of the information could reasonably be expected to cause damage to the national security, a collective term for national defense or foreign relations of the United States.

The problem with an attempt to apply a security classification to information that has existed for a period of time is that the classifier normally would be unable to determine that the information had not already been disclosed. A future unauthorized communication of information could not in itself be expected to prejudice or cause damage to the national defense or national security if the information originated and was known outside the rules prescribed for classifying information.

Therefore, in the light of all facts in this case, the information originated by the Warren Commission could be viewed as having been non-classifiable since the date the Commission ceased to exist.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. GENERAL SERVICES ADMINISTRATION, Defendant	Civil Action No. 75-1448

AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the plaintiff in the above-entitled cause of action.

2. For the past thirteen years I have devoted myself to a study of the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. I have written six published books on the assassination of President Kennedy and its investigation and one on the assassination of Dr. Martin Luther King, Jr. and its investigation. I have nearly completed a second book on Dr. King's murder and the efforts of the man framed of that crime to obtain a trial.

3. The work I do is not done in pursuit of a detective mystery story, a whodunit. Essentially it is a study of the function, malfunction, and non-function of the basic institutions of our society in response to these crises.

4. I have reached only a few conclusions as the result of my work. The most fundamental is that our basic institutions--the law enforcement agencies, the courts, the press--have all failed.

5. Each of these crimes is unsolved. The available evidence shows that Lee Harvey Oswald did not shoot President Kennedy. The hard physical evidence also proves that more than one person fired on the President.

6. With respect to the assassination of Dr. King, the evidence shows that James Earl Ray did not shoot him and that the murder could not have been committed in the manner alleged by the prosecution.

7. Because the federal agencies resist the disclosure of vital information about these assassinations by every device known to man, including lying, confusion, subterfuge, perjury and all other manner of deceit and trickery, the use of the Freedom of Information Act has become indispensible to my work. Virtually all of the significant new evidence on these assassinations which has come to light within the past several years is the result of my work, much of it obtained or corroborated through the Freedom of Information Act requests I have made.

8. At present I am obtaining all federal records pertaining to Dr. King's assassination. I have already received more than 10,000 pages on this subject from the Department of Justice and ultimately expect to get more than 200,000 documents from this agency alone. Arrangements have been made to make these records part of an archive of my work which will be deposited with a university.

9. Howevermuch I would like to obtain the Warren Commission executive session transcripts which are the subject of this lawsuit, the viability of the Freedom of Information Act is of considerably greater importance. I do not mean this in terms of benefit to my own work, but for the good of our nation, especially as concerns the continuation and furtherance of representative society.

10. I am dismayed and angered by the Court's decision in this case. Not just because it denies me transcripts to which I think I am legally entitled, but, more importantly, because it foreshadows another judicial evisceration of the Freedom of Information Act. This time, apparently, the disemboweling is to take place under the guise of Exemption 3, whereas previously it was done under Exemptions 1 and 7.

11. This Court has ruled that I am to be denied access to the January 21 and June 23, 1964, Warren Commission executive session transcripts on grounds of an unsupported Exemption 3 claim. In order for the implications of this ruling to be fully understood, it must be put in context.

12. The context begins in 1968, when I made several written requests for transcripts of the executive sessions of the Warren Commission. Such requests were denied. On May 20, 1968, the Archivist of the United States, Dr. James B. Rhoads, denied my request for the January 27, 1964, transcript on grounds that it "is correctly withheld from research under the terms of existing law (5 U.S.C. 552)."

13. On June 21, 1971, in response to a letter I had written a month before, the National Archives listed the withheld executive session transcripts and the provisions of the Freedom of Information Act which allegedly justified their suppression. The transcripts of January 27 and June 23 and pages 63-73 of the January 21 transcript were withheld only under Exemptions 1 and 7. No claim was made that any of these transcripts was being withheld under Exemption 3. Nor did the National Archives claim that any of these transcripts was protected from disclosure by Exemption 5. (See Exhibit 1, Archives letter of June 21, 1971)

14. In his book Portrait of the Assassin, published in 1965, then Congressman and former Warren Commission member Gerald R. Ford quoted extensively from the January 27 transcript. This not-

withstanding, the National Archives withheld it from the public for the next nine years on the grounds that it was classified "Top Secret" and was also exempt as an investigatory file compiled for law enforcement purposes.

15. In November, 1973, Mr. Ford testified at his confirmation hearings for the Vice-Presidency that he had not used classified material in his book. I immediately brought suit for the still-suppressed January 27 transcript.

16. The National Archives maintained in court that the January 27 transcript was properly classified pursuant to Executive Order 10501. It submitted affidavits to that effect. It also claimed that the transcript was exempt as an investigatory file compiled for law enforcement purposes. During the entire history of this lawsuit, it never once suggested that the January 27 transcript could be withheld on Exemption 3 grounds.

17. Judge Gerhard Gesell ultimately ruled that the Government had not shown that the transcript was properly classified under any Executive order. He also ruled that it was protected from disclosure as an investigatory file. Before that ruling, ludicrous in light of the fact that the answers to interrogatories established that no law enforcement official had seen the transcript, could be appealed, the Archives "declassified" the transcript on June 12, 1974, and made it public.

18. Any person can now read the January 27 transcript. Any person who does read it can now see that there never was any legitimate basis for withholding this transcript under the Freedom of Information Act. It contains no information which ought ever to have been withheld from the American people on the grounds that it would damage national defense or foreign policy. The grounds for withholding it were entirely spurious. Or, to put it more

bluntly, the National Archives committed fraud upon me, the court, and the American people.

19. In exercising the limited discovery which I have been accorded in this suit I have obtained a letter from the CIA's former General Counsel, Mr. Houston, to the Archivist, Dr. Rhoads, dated December 22, 1972. This letter states that the January 27 transcript is among those documents being withheld by the CIA "because of the continuing need . . . to protect sources and methods." (See Exhibit 2) But the text of the January 27 transcript plainly shows that there was no CIA source or method which could be revealed to the detriment of national defense or foreign policy. (Exhibit 3)

20. Yet under the ruling handed down by this Court in this case, all the Archives would have had to do to preclude access to the January 27 transcript was to invoke Exemption 3. The result of this Court's decision is to deny me, on the basis of mere words alone, and untested words at that, what I would have been able to obtain under the Freedom of Information Act before it was amended to prevent just such abuses.

21. The transcripts now withheld from me under Exemption 3 deal with Soviet defectors. Although the Government originally claimed it was classified information, it has been forced to admit that it is public knowledge that a Soviet defector known as Yuri Ivanovich Nosenko is the subject of the June 23 transcript. My own knowledge of this came from the Warren Commission's files, not from the Archivist's belated admission.

22. The FBI saw no reason not to inform the Warren Commission about what Nosenko had told it relevant to the assassination of President Kennedy. It did so in a series of unclassified memos. FBI Director J. Edgar Hoover even undertook to arrange for Nosenko to testify. This frightened the CIA. Evidence of this is in the staff memo attached as Exhibit 4. It is classified "Top Secret".

Yet to my knowledge the obliterated second paragraph deals with Nosenko and Richard Helms' request of the Warren Commission that it hold off on Nosenko. Helms and the CIA were so successful in this that despite FBI Director Hoover's intitiative there is no mention of Nosenko in the Warren Report.

23. The reason for this is apparent: Nosenko said that the Russians considered Oswald an American agent. This gets back to the January 27, 1964, transcript, which was originally withheld from me on grounds now proven to be totally spurious. In that transcript former CIA Director Allen Dulles said quite candidly that the FBI would not be likely to have agents in Russia. The CIA would, of course.

24. There has been no secrecy about Nosenko for years. Although the government originally refused to identify him as the subject of the June 23 transcript until this Court compelled it to answer my interrogatory No. 15, the fact is that the CIA is responsible for the first public reference to Nosenko and to this evidence. It appears in the book KGB by John Barron. The first of four Reader's Digest editions of this book was published in January, 1974. This is quite obviously a CIA book. It glorifies the CIA and the author expresses his indebtedness to it.

25. The first of many references to what Nosenko told the CIA is in the first chapter of KGB. This includes Nosenko's personal knowledge that the KGB did not trust Oswald, that it "ordered that Oswald would be routinely watched, but not recruited in any way," and what Nosenko told the FBI, that the KGB regarded Oswald as an "American sleeper agent." These considerations, not national security, account for the CIA's efforts to withhold information relating to Nosenko.

26. In fact, I now have dependible information that the CIA, Reader's Digest, the same Mr. Barron, and another author are now engaged in a massive publishing enterprise, involving a $500,000 contract, which is intended to portray Lee Harvey Oswald as a KGB agent. This disinformation operation is directly counter to what Mr. Nosenko told the CIA, the FBI, and the Warren Commission. It may well explain the unusual lengths to which the CIA has gone to suppress the January 21 and June 23 transcripts which I seek in this lawsuit.

27. The CIA has built up a mystique about defectors and sources and security needs. There is no defector whose defection is not known to the agency and country he served. There is no knowledge he may impart that is not known to those from whom he defected. In this case, Nosenko's, the only secrets are those withheld from the American people.

28. While there is some danger in having defected, not all of those who do live in fear. My knowledge of Nosenko came first from another Russian defector who sought me out, first in a series of phone calls to me. He arranged a meeting with me in a public place. We then had a long lunch in another public place, during which he informed me not only about Nosenko but also about the book KGB, which I had not read.

29. When it serves the CIA's political needs rather than its security interests, it makes available information about and from defectors. It also provides new identities for defectors. This has been done in Nosenko's case.

30. I have read the affidavit of Mr. William G. Florence submitted in this cause. In paragraph 17 of his affidavit Mr. Florence writes that with respect to the January 27, 1964, Warren Commission executive session transcript: "It is possible that the CIA claim of a need for secrecy in December, 1972 was based on some comments on page 135 of the transcript about a former FBI

agent stationed in South America before 1943 having paid money to informers and other people, including the head of the Government of Ecuador. Obviously, these comments did not qualify for secrecy."

31. At the time he wrote this analysis, Mr. Florence did not know that this former FBI agent was publicly identified by the FBI as Mr. Henry Wade, the District Attorney of Dallas, Texas, when it suited Mr. Hoover's purposes to embarrass him. The FBI made all of this material available, including the bribery of foreign officials, and the Warren Commission published. Because this information was public long before the CIA determined in 1972 to withhold the January 27 transcript to protect "sources and methods," this cannot explain the decision to withhold the transcript. In short, there was no legitimate reason for suppressing the transcript. There was however, a reason not authorized by law. The January 27 transcript is acutely embarrassing to the CIA. Among other reasons, because its former Director, Allen Dulles, is recorded as stating that FBI and CIA officials lie and commit perjury.

32. The Henry Wade information referred to in paragraphs 30-31 above is an excellent example of why thorough subject knowledge is indispensible in countering the claims which an agency may make on behalf of suppressing what, for reasons of embarrassment, it doesn't want made public. It also demonstrates why full and complete discovery is necessary in this case to make it possible for me to effectively counter affidavits which I believe have been submitted in bad faith. Yet this Court has denied me this discovery, after first representing to me that this case would go to trial if an adequate factual record was not developed through discovery. I relied on the Court's word, to my prejudice.

33. Another example of withholding to prevent embarrassment to the CIA is found in the memorandum of 13 April 1964 which is at-

tached hereto as Exhibit 5. It is explicit in stating the intent to frustrate the President's directive to the Warren Commission; in regarding it necessary to "reply" to the FBI's factual and unclassified reports on Nosenko, and in avoiding any discussion of Nosenko and the embarrassment his evidence presented to the CIA. Although this document contains no information which should be classified in the interests of national defense or foreign policy, it remain classified until June, 1976.

34. In the course of my study of the assassinations of President Kennedy and Dr. King, I have examined thousands of formerly classified documents. I cannot recall a single one that was ever properly classified in the interests of national defense or foreign policy. For example, when I went to court to obtain the records introduced in evidence at the extradition proceedings of James Earl Ray in London's Bow Street Magistrate's Court, I found that these public court records had been confiscated by the American government and then classified.

Harold Weisberg
HAROLD WEISBERG

DISTRICT OF COLQMBIA

Subscribed and sworn to before me this 21st day of March, 1977.

B. A. Ling
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My Commission expires April 14, 1979.

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

HERBERT E. ANGEL
Acting Archivist
of the United States

Keep Freedom in Your Future With U.S. Savings Bonds

Exhibit 2

Civil Action No. 75-1448

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

22 December 1972

Dr. James B. Rhoads
Archivist of the United States
Washington, D.C. 20408

Dear Dr. Rhoads:

Subject: Release of Documents Furnished to the Warren Commission by the Central Intelligence Agency

Reference is made to Mr. Houston's letter dated 2 August 1972. Since that time we have been in close contact with Mr. Marion Johnson of your staff who recently provided us with additional documents for review. We have completed this task and, unless stated otherwise, we have no objections to the release of the following items:

List No. 1

2, 3, 7, 14, 15, 18, 29, 31, 32, 33.

List No. 1A

1, 4, 6, 8, 9, 10, 12.

List No. 2

3, 5, 6, 7, 10, 12 (including CIA letter 8 Feb. 64), 16, 20, 22, 23, 25, 28, 37, 38 (including our reply 3 June 64), 40 (including our reply 1 July 64), 44 (including our reply 22 July 64), 48 (including our reply 11 Sept. 64), 51, 53 (including our memo 19 May 64 - CD-944), 54, 55, 58, 59, 64(A) (including our reply 13 Oct. 64).

CERTIFIED COPY

28 DEC 1972

List No. 2A

3, 5, 9, 11, 15, 17, 22, 23, 24, 25, 26, 27, 28, 29.

The following documents can be released providing they are modified as follows:

List No. 1

No. 19 Delete" P. 1, Para. 1, L 6;
P. 8, Para. 1, L 3.
Delete P. 1, Para. 2 (relating to Nosenko).
Delete P. 6, Para. 1

30 Delete P. 1, Para. 1 (relating to "N").

List No. 1A

No. 1A
3 Next to date acq, strike field report number. Release only source description and Para. 3 down to "peace" (L. 8). Strike reference to Texans and Dallas bank.

5 Delete words Para. 3, L 1-2.

7 Memo. Delete reference to P. 2, last Para., L 1 and 3.

11 Delete no. 1 on list (communist control techniques) and withhold the attached publication, same name dated 2 April 56.

List No. 2

No. 29 Delete last Para.

30 Delete first sentence, Para. 2 thru

List No. 2 (con't)

No. 31 Delete first sentence, P. 2, Para. 6.

32 Delete Para. 1, L 5, reference to|

List No. 2A

No. 6 Delete| Para. 2, L 1-2.

8 Delete P. 3 top lines 5 thru 9 ("the way. . . exist").

10 Delete Para. 5 ("we would. . . discussed").

14 Delete P. 5 and 6 last Para. ("at 3:30. . . spot"), P. 8, Para. 2, strike| P. 38 (delete entire page), delete P. 46, Para. 2 ("we then. . . Andersons"); withhold P. 52 top "Anderson . . . job."

16 Delete Para. 2.

Miscellaneous

We have no objections to the release of Commission exhibits 631 and 1054. The following documents also can be released with certain modifications:

CD 692 Withhold Attachment G. Please remove CIA file numbers on the five internal CIA notes.

Com. No. 1216 Delete from Para. 2| Para. 3, delete|

We cannot agree to the release of the remaining documents at this time because of the continuing need in their case to protect sources and methods. Accordingly, we request that Guideline No. 2 be observed in each case. Approvals apply only to the exact document(s) listed and not to related items in the Commission's files. Since some of the items listed originated with other U. S. agencies, we suggest that they be consulted, as appropriate, before the documents are released. Any CIA file markings thereon should be removed.

We will be glad to examine the remaining classified documents again when the next prescribed review period arrives.

Sincerely,

Lawrence R. Houston

Lawrence R. Houston
General Counsel

List No. 2A
Internal Memoranda and Other Records of the Warren Commission

	Date	From	To	Subject	Security Classification	Release or Withhold
1.	1/21/64			Transcript of executive session of the Commission, p. 63-73	TS	
2.	1/27/64			Transcript of executive session of the Commission	TS	
3.	2/14/64	Coleman and Slawson		Memo. on "Mexican Trip," p. 8, 9, 10, 13, 14		
4.	3/9/64	Slawson	Jenner, Liebeler, Ball, Belin	Testimony of Nosenko, recent Soviet defector		
5.	3/17/64	Rankin	Dulles	Rumors that Oswald was a paid informant		
6.	3/26/64	Coleman		Mexico - CIA Dissemination of Information on Lee Harvey Oswald on March 24, 1964		
7.	3/27/64	Slawson	"Record"	Tentative Conclusions on Lee Harvey Oswald's Stay in Mexico City: Visits to Soviet and Cuban Embassies	S	
8.	4/1/64	Coleman and Slawson		Statement of Pedro Gutierrez Valencia		
9.	4/2/64	Coleman and Slawson		Statement of Gilberto Alvarado Ugarte		

Exhibit 4

Civil Action No. 75-1448

CIA

3/12/64

MEMORANDUM

TO : Records

FROM : W. David Slawson

SUBJECT : Conference with the CIA on March 12, 1964

At 11:00 a.m., on March 12, 1964 the following individuals gathered in J. Lee Rankin's office to confer on how best the CIA and the Commission could work together at this juncture to facilitate the remaining work of the Commission: J. Lee Rankin, Howard P. Willens, William T. Coleman, Jr., Samuel A. Stern, Burt Griffin, W. David Slawson, Richard Helms, and Raymond Rocca, the latter three from the CIA. The meeting lasted until about 1:15 p.m.

The Commission's staff members pointed out to the CIA that we had developed materials which might be of help to the CIA in assessing the Russian situation, in particular, the testimony of Marina Oswald, Robert Oswald, Marguerite Oswald, John Martin and other witnesses scheduled to appear before the Commission. Mr. Rankin pointed out that it was established Commission policy that transcripts of testimony were not to be taken out of the offices of the Commission but that we would of course make these transcripts available in our offices to CIA representatives. It was agreed that a CIA man would come over in the near future to read these transcripts, especially Marina's, and that they would contact either

y [illegible] of the United States
[illegible] date 3/10/23

Exhibit 5

Civil Action No. 75-1448

Attachment C

13 April 1964

MEMORANDUM FOR THE RECORD

1. [redacted] called me in at 0900 and showed me in draft a memorandum recording his conversation with Allen Dulles on Saturday 11 April re CIA assistance to the Warren Commission. In essence, the conversation dealt with questions which the Warren Commission will direct to CIA. Copy follows?

2. [redacted] has suggested that nothing further be done re preparation of an analysis of the OSWALD affair pending receipt of the questions from the Commission. Answering these questions might make it unnecessary to prepare an analysis.

3. [redacted] asked that we prepare, on a priority basis, a reply to the FBI communication containing two reports on the OSWALD case from Nosenko. [redacted] is handling. [redacted] and [redacted] are to see it in draft.

P.S. [redacted] also returned to me the several items of Oswald production borrowed on 11 April.

Document Number 657-83
for FOIA Review on JUN 1976

13 April 1964

MEMORANDUM FOR: Deputy Director for Plans

SUBJECT: Memo on Discussions with Mr. Allen W. Dulles on the Oswald Case on 11 April

1. At the instructions of the DDP, I visited Mr. Dulles on 11 April to discuss with him certain questions which Mr. Dulles feels the Warren Commission may pose to CIA. Mr. Dulles explained that while the Commission wished to clarify certain aspects of the Oswald case in which a response from CIA seemed necessary it was not sure how the questions should be posed nor how CIA should respond. Mr. Dulles hoped that our discussions would enable him to advise the Commission on this matter. He first raised the allegation that Oswald was a CIA agent. He mentioned two sources for this accusation. One was Mrs. Marguerite Oswald, Lee Harvey Oswald's mother, and the other was Mr. Mark Lane, Mrs. Oswald's attorney. He suggested that the Commission, in asking us this question, might well forward a summary or pertinent excerpts of the testimony concerning this matter. He noted, however, that Mrs. Oswald's testimony was so incoherent that it would be difficult to find pertinent excerpts, thus it would be better for the Commission to summarize the testimony.

2. Mr. Dulles then suggested that the response to this question could be in the form of sworn testimony before the Commission by a senior CIA official or a letter or affidavit. He recalled that the Director of the FBI had replied by letter to a similar question. In any event, Mr. Dulles felt the reply should be straightforward and to the point. He thought language which made it clear that Lee Harvey Oswald was never an employee or agent of CIA would suffice. We should also state that neither CIA nor anyone acting on CIA's behalf was ever in contact or communication with Oswald. Mr. Dulles did not think it would be a good idea to cite CIA procedures for agent assessment and handling to show that it would have been unlikely for Oswald to have been chosen as a CIA agent to enter Russia. There are always exceptions to every rule and this might be misunderstood by members of the Commission with little background in activity of this sort. I agreed with him that a carefully phrased denial of the charges of involvement with Oswald seemed most appropriate.

CS COPY

Document Number 657-831

for FOIA Review on JUN 1976

3. The next question concerned the possibility of Oswald's having been a Soviet agent. Mr. Dulles suggested that the Commission's question on this matter be phrased somewhat as follows: "In the knowledge or judgment of CIA was Lee Harvey Oswald an agent of the Soviet intelligence services or the intelligence services of other communist states at any time prior to 22 November 1963, or was Oswald solicited by these intelligence services to become such an agent?" After considering this question, it became apparent that the problem of making a "judgment" as to whether Oswald might have become an agent of a communist power was subject to the same difficulties we would have encountered if we had tried to answer the allegation of CIA affiliation by citing CIA's own procedures. If CIA, in responding to the "judgment" portion of the question, were to say that in light of its knowledge of Soviet Bloc procedures it was unlikely that Oswald would have become their agent, we would have to admit that exceptions are always possible. Mr. Dulles and I felt that it would be better to avoid this and confine our response to a precise statement of fact. This statement, in Mr. Dulles' view, could note that CIA possessed no knowledge either gained independently or from its study of the materials supplied by the Commission tending to show that Lee Harvey Oswald was an agent of the Soviet intelligence services, or the services of any other Communist country, or for that matter of any other country.

4. Both questions were discussed individually but later Mr. Dulles suggested that because they were interconnected it would be better if the Commission posed them in one letter to CIA. I agreed that this might be simpler.

5. After covering these questions of direct interest to CIA, Mr. Dulles mentioned other issues which concerned the Commission. He remarked that members of the Commission could not understand why CIA had not begun an investigation of Oswald as soon as it received word that he had defected. I noted that this question had been discussed with Mr. Rankin and his staff and there seemed to be considerable understanding of the practical circumstances which made it impossible for CIA to undertake such investigation inside the USSR. I expressed the hope that it would not be necessa for CIA to place matters of this sort in the public record. Mr. Dulles agreed.

6. Mr. Dulles then asked if it were normal for the Soviet Government to permit a Soviet woman to marry a foreigner and then allow her to leave with her husband shortly after the marriage. This question perturbed the Commission and they would like to have an answer. I said that whereas the response could have some bearing on whether Oswald was an agent, the problem seemed to lie more in the consular field and I suggested that the best way to obtain an opinion on what constituted "normal practice" in marriage cases in the USSR would be to question the Department of State. Mr. Dulles agreed with this.

7. Mr. Dulles expressed his appreciation for the assistance accorded him and said that he would discuss the framing of the questions for CIA with Mr. Rankin on Monday, 13 April. At this point I did offer a personal opinion in regard to the way in which CIA should respond. Noting that testimony on questions such as these would be difficult to insert in the public record, I suggested that it would be best if the CIA response were in written form. However, much will depend on the form in which the questions are eventually put to us and I imagine that a final decision can be made at that time.

8. At no time during these discussions did Mr. Dulles make any inquiries about Nosenko and I volunteered no information on this score.