

JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 77-1831

HAROLD WEISBERG,

Plaintiff-Appellant

v.

GENERAL SERVICES ADMINISTRATION,

Defendant-Appellee

On Appeal from the United States District Court for the
District of Columbia, Hon. Aubrey E. Robinson, Jr., Judge

James H. Lesar
910 16th Street, N.W., Suite 600
Washington, D.C. 20006

Attorney for Plaintiff-Appellant

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Route 8
Frederick, Md. 21701
Phone: [301] 473-2186

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS
SERVICE,
8th & Pennsylvania, N. W.
Washington, D. C. 20408

Defendant

ROBINSON, J.

Civil Action No. 75-1448

FILED
SEP -4 1975
JAMES F. DAVEY
CLERK

COMPLAINT

[Freedom of Information Act, 5 U.S.C. 552]

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561 [93 Cong., 2d Sess.].
2. Plaintiff is HAROLD WEISBERG, an author residing at Route 8, Frederick, Maryland.
3. Defendant is the NATIONAL ARCHIVES AND RECORDS SERVICE, 8th & Pennsylvania, N. W., Washington, D. C. 20408.
4. On March 12, 1975, plaintiff requested the disclosure of certain Warren Commission executive session transcripts. [See Exhibit A]
5. By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell granted plaintiff's request in part but denied disclosure of the following materials:
 - A. The Warren Commission executive session transcript of May 19, 1964;

B. The Warren Commission executive session transcript of June 23, 1964; and

C. Pages 63-73 of the January 21, 1964, Warren Commission executive session transcript. [See Exhibit B]

6. On April 15, 1975, plaintiff appealed the denial of these materials to the Deputy Archivist. [See Exhibit C]

7. By letter dated May 22, 1975, Deputy Archivist James E. O'Neill affirmed the decision of the Assistant Archivist denying disclosure of these transcripts. [See Exhibit D]

8. Having exhausted his administrative remedies, plaintiff now brings suit for records which he alleges must be made available to him under the terms of the Freedom of Information Act. Plaintiff notes that the Freedom of Information Act provides that the District Court shall determine the matter de novo, and that the burden is on the defendant to justify its refusal to disclose the requested documents.

WHEREFORE, plaintiff prays this honorable Court for the following relief:

- 1. That the defendant be compelled to disclose the records which plaintiff has requested;
- 2. That the Court award plaintiff reasonable attorney fees and the costs of bringing this action; and
- 3. That the Court issue a written finding that the circumstances surrounding the withholding of these documents raise questions as to whether agency personnel acted arbitrarily and capriciously with respect to such withholding.

JAMES HIRAM LESAR
 1231 Fourth Street, S. W.
 Washington, D. C. 20024
 Phone: 484-6023

Attorney for Plaintiff

FILED: 9-4-75

EXHIBIT A

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S.W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-8023

March 12, 1975

FREEDOM OF INFORMATION REQUEST

Dr. James B. Rhoads
Archivist of the United States
The National Archives
7th & Pennsylvania Ave., N. W.
Washington, D. C. 20408

Dear Dr. Rhoads:

On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I am requesting the disclosure of the following Warren Commission documents:

1. The executive session transcripts of December 6, 1963, and May 19 and June 23, 1964;
2. Pages 43-68 of the December 6, 1963 executive session transcript;
3. Pages 23-32 of the December 16, 1963 executive session transcript;
4. Pages 63-73 of the January 21, 1964 executive session transcript; and
5. The reporter's notes for the January 22, 1964 executive session.

These requests for disclosure are made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408



EXHIBIT B

APR 04 1975

FILED: 9-4-75

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in reply to your letter of March 12, 1975, requesting disclosure of certain Warren Commission documents on behalf of Mr. Paul Hoch and Mr. Harold Weisberg and citing the Freedom of Information Act (5 U.S.C. 552, as amended).

The following is in response to your requests:

1. Enclosed is a copy of the executive session transcript of December 6, 1963, of the Commission with deletions of names and identifying details of persons discussed in connection with the choice of the General Counsel of the Commission. The deleted information and your request for disclosure of the executive session transcript of May 19, 1964, which deals solely with a discussion of Commission personnel, are denied under 5 U.S.C. 552, subsection (b)(5) "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency"; and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Your request for disclosure of the executive session transcript of June 23, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B) matters "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order" and subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

2. Enclosed is a copy of pages 43 and 46-58 of the executive session transcript of December 5 (the correct date, instead of December 6), 1963, with deletions, including all of pages 44 and 45, of names and other identifying information concerning persons named or discussed in connection with

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the choice of the General Counsel of the Commission. The information deleted is denied under 5 U.S.C. 552, subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

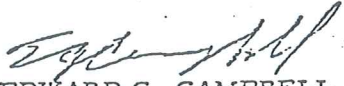
3. Enclosed is a copy of pages 23-32 of the executive session transcript of December 16, 1963. On page 29 there are deletions under the same exemptions of 5 U.S.C. 552 stated in item 2 above.

4. Your request for disclosure of pages 63-73 of the executive session transcript of January 21, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B), matters "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to each Executive order" and subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

5. Copies of a transcript of the reporter's notes of the executive session of January 22, 1964, have been sent to you, to Mr. Hoch, and to Mr. Weisberg.

You have a right to file an administrative appeal with respect to the material denied you. Such an appeal should be in writing and addressed to the Deputy Archivist of the United States, National Archives and Records Service, Washington, DC 20408. To expedite the handling of an appeal, both the face of the appeal and the envelope should be prominently marked, "Freedom of Information Appeal."

Sincerely,


EDWARD G. CAMPBELL
Assistant Archivist

Enclosure

FILED: 9-4-75

EXHIBIT C

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-8023

April 15, 1975

FREEDOM OF INFORMATION APPEAL

Dr. James O'Neill
Deputy Archivist of the United States
National Archives and Records Service
Washington, D. C. 20408

Dear Dr. O'Neill:

By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell has denied a request I made for the disclosure of the Warren Commission executive session transcripts of May 19 and June 23, 1964, and pages 63-73 of the January 21, 1964 executive session transcript. On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I hereby appeal that denial.

Sincerely yours,

Jim Lesar

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



EXHIBIT D

MAY 22 1975

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in response to your Freedom of Information appeal of April 15, 1975, on behalf of Harold Weisberg and Paul Hoch, seeking access to those portions of Warren Commission executive session transcripts denied your clients by Edward G. Campbell, Assistant Archivist for the National Archives, in his letter to you of April 4, 1975. We received your appeal in this office on April 17, 1975.

As a result of your appeal, we have reexamined the documents denied you, which included the transcript of June 23, 1964, pages 63-73 of the transcript of January 21, 1964, and the transcript of May 19, 1964. Our review of the first two of these documents, which remained at the time of the appeal security classified at the "Top Secret" level, involved consultation with the Central Intelligence Agency. We requested that the CIA review the transcripts to determine if they could be declassified. The CIA response, issued under the authority of Charles A. Briggs, Chief of the Services Staff, requested that the records remain security classified at the "Confidential" level and that they be exempted from the General Declassification Schedule pursuant to Subsections 5 (B)(2) and (3) of Executive Order No. 11652. The CIA further requested that should the authority of the Warren Commission to classify these documents be called into question, the documents were to be marked at the level of "Confidential" pursuant to the authority of the CIA to classify national security information.

Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, pursuant to the first, third and fifth exemptions to mandatory disclosure under the Freedom of Information Act, i. e., "matters that are . . . specifically authorized under criteria established by an Executive order to be kept secret in the interest of national

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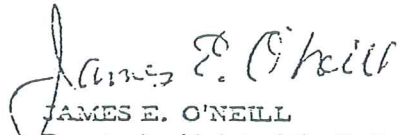
defense or foreign policy and are in fact properly classified pursuant to such Executive order . . . ; specifically exempted from disclosure by statute . . . ; inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" (5 U.S.C. 552(b)(1), (3) and (5), respectively).

The statute which specifically exempts these transcripts from disclosure provides, "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure . . ." (50 U.S.C. 403(d)(3)). Further, we have invoked the fifth exemption from mandatory disclosure on the basis that these transcripts reflect the deliberative process of the Warren Commission, and are not the written record of a Commission decision or opinion. To encourage free and full expression in the deliberative process, the Congress provided in the fifth exemption to mandatory disclosure a mechanism by which these records could be sheltered.

As stated in Dr. Campbell's letter, the transcript of May 19, 1964, is limited to a discussion of the background of Commission personnel. Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to this transcript pursuant to the fifth and sixth exemptions to mandatory disclosure under the Freedom of Information Act, i. e., "matters that are . . . inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency," and "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . ." (5 U.S.C. 552(b)(5) and (6), respectively).

This letter represents the final administrative consideration of your request for access to the withheld records. You have the right to seek judicial review of this decision by filing an action in the Federal District Court for the District of Columbia, or in the Federal District Court in which either of your clients resides or has his principal place of business.

Sincerely,


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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

NATIONAL ARCHIVES AND
RECORDS SERVICE,

Defendant.

FILED: 10-8-75

Civil Action Number 75-1448

A N S W E R

First Defense

The Court lacks jurisdiction over the subject matter of the action inasmuch as the documents plaintiff seeks fall within exemptions to 5 U.S.C. § 552, set forth at 5 U.S.C. § 552(b).

Second Defense

The National Archives and Records Service is not a proper party to the action inasmuch as the proper defendant would be the General Services Administration.

Third Defense

Defendant answers the numbered paragraphs of the complaint as follows:

1. This paragraph contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed necessary, it is denied.

2. - 4. Admitted.

5. - 7. Admit that by letter dated April 4, 1975, an Assistant Archivist, Edward G. Campbell, acted upon plaintiff's request (Exhibit A) and that the letter dated April 4, 1975, attached to the complaint as Exhibit B, is a true copy of said letter; that plaintiff transmitted a letter dated April 15, 1975 to the Deputy Archivist, a true copy of which is attached to the complaint as Exhibit C; that the Deputy Archivist, James E. O'Neill, affirmed the decision of the Assistant Archivist by letter dated May 22, 1975, a true copy of which is attached to the complaint as Exhibit D; and respectfully refer the Court to Exhibits A-D to the complaint for the contents of said correspondence.

8. This paragraph contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed necessary, it is denied.

Defendant further avers that all allegations of the complaint not hereinabove admitted, denied or otherwise qualified are denied.

EARL J. SIBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

MICHAEL J. RYAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer has been mailed to counsel for plaintiff, James Hiram Lesar, Esquire, 1231 Fourth Street, S.W., Washington, D.C. 20024, on this 8th day of October, 1975.

MICHAEL J. RYAN
Assistant United States Attorney
United States District Courthouse
Room 3421
Washington, D.C. 20001
Telephone: (202) 426-7375

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED: 1-9-76

HAROLD WEISBERG,

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS SERVICE,

Defendant.

Civil Action No. 75-1448

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:

1. As evidenced by correspondence among the records of the President's Commission on the Assassination of President Kennedy (Warren Commission) in the National Archives, the transcript of the executive session of June 23, 1964, was classified "Top Secret" immediately upon its transcription. It was classified by the Commission acting through its General Counsel, J. Lee Rankin, and marked as such, pursuant to Mr. Rankin's instructions, by the contractor reporting firm, Ward & Paul. The transcript was originally classified under the provisions of Executive Order 10501, as amended (3 CFR, 1949-1953 Comp., p. 979).
2. See answer to No. 1, above.
3. Yes.
4. Yes, under the authority of Executive Order 11130 (3 CFR 1959-1963 Comp., p. 795) and Executive Order 10501, as amended, cited above.
5. The National Archives has given a copy of the transcript of June 23, 1964, to the Central Intelligence Agency. The National Archives has not given the

Page 1 of 4 pages.

Deponent's initials CRX

transcript or a copy thereof to any of the other agencies listed.

6. None.

7. The National Archives gave the CIA a copy of the June 23, 1964 transcript on November 17, 1972, July 30, 1974, and March 21, 1975.

8. The National Archives has given a copy of the transcript of January 21, 1964 to the Central Intelligence Agency. The National Archives has not given the transcript or a copy thereof to any of the other agencies listed.

9. None.

10. The National Archives gave the CIA a copy of the January 21, 1964 transcript on November 17, 1972, July 30, 1974, and March 21, 1975.

11. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of the complaint.

12. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of the complaint.

13. Yes. ~~Yes.~~ ^{Yes}

14. The pertinent exemption is established in Subsection 5(B)(2) of Executive Order 11652 (37 F.R. 5209, March 10, 1972).

15. 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.

16. Defendant objects to this interrogatory on the grounds that the information requested is privileged.

17. Defendant objects to this interrogatory on the grounds that the information requested is privileged.

Page 2 of 4 pages.

Deponent's initials SP

18. The Central Intelligence Agency has advised the National Archives that the following criteria are pertinent to the prior "Top Secret" classification: "Disruption of foreign relations vitally affecting the national security;" and "the revelation of sensitive intelligence operations."

19. The entire transcript of June 23, 1964, is presently classified at the "Confidential" level. Pages 63-73 of the transcript of January 21, 1964, are presently classified at the "Confidential" level, while the remainder of that transcript is unclassified. The National Archives downgraded the classification of the June 23, 1964 transcript and pages 63-73 of the January 21, 1964 transcript subsequent to the recommendation of the CIA dated May 1, 1975.

20. In 1967, Dr. Robert Bahmer, then Archivist of the United States, Marion Johnson, Staff Archivist, and I, then Deputy Archivist, reviewed the classification of the transcripts. As a result, all but pages 63-73 of the transcript of January 21, 1964, which remained classified at the "Top Secret" level, was declassified. The transcript of June 23, 1964, remained classified at the "Top Secret" level. A classification review by the CIA culminating on December 22, 1972, resulted in no change to the classification of the transcripts. Reviews by the CIA initiated on July 30, 1974, and March 21, 1975, and culminating on May 1, 1975, resulted in the downgrading of the transcripts to the "Confidential" level.

21. The CIA informed the National Archives that Mr. Charles A. Briggs is so authorized.

22. The CIA has informed the National Archives that Mr. Briggs first viewed the transcripts on April 15, 1975.

23. 50 U.S.C. 403(d)(3) (1970).


24. The National Archives has no knowledge of the total number of Warren Commission executive sessions. Among its holdings are the transcripts for twelve sessions and the minutes of a thirteenth. This agency withholds access

to certain of these transcripts or portions thereof pursuant to the following statutory exemptions under the Freedom of Information Act:

- (a) 5 U.S.C. 552(b)(1): June 23, 1964; pp. 63-73 of January 21, 1964;
- (b) 5 U.S.C. 552(b)(3): June 23, 1964; pp. 63-73 of January 21, 1964;
- (c) 5 U.S.C. 552(b)(5): June 23, 1964; May 19, 1964; pp. 63-73 of January 21, 1964; and pp. 44-45 of December 5, 1963;
- (d) 5 U.S.C. 552(b)(6): May 19, 1964; pp. 44-45 of December 5, 1963; and
- (e) 5 U.S.C. 552(b)(7): June 23, 1964; and pp. 63-73 of January 21, 1964.


25. For the answer to this interrogatory, defendant defers to and incorporates the explanation contained in the affidavit of Charles A. Briggs, Chief of the Services Staff, Directorate of Operations, Central Intelligence Agency, dated November 5, 1975.

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



JAMES B. RHOADS
Archivist of the United States

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W., Washington, D.C., on this 24th day of November 1975.


(Notary Public)

My commission expires: August 31, 1979

Page 4 of 4 pages.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

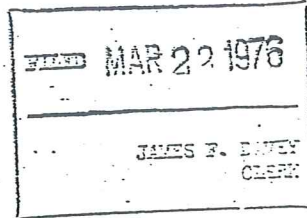
Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

Civil Action No. 75-1448



STIPULATION TO DEFENDANT'S MOTION FOR AN
EXTENSION OF TIME TO RESPOND TO MOTION
TO COMPEL ANSWERS TO INTERROGATORIES

Defendant has moved for an extension of fourteen days of the time within which to respond to plaintiff's motion to compel answers to interrogatories. In support of this motion defendant states that "plaintiff has made numerous allegations which purport to call into question the credibility of defendant in answering plaintiff's interrogatories" and asks additional time in order to research these allegations and "file a proper response by way of affidavit."

Plaintiff agrees that he has challenged the credibility of Dr. Rhoads' answers to his interrogatories and that the defendant's attorney should be granted the time needed to investigate this. Accordingly, plaintiff hereby stipulates to the extension of time sought by the defendant.

In order that the investigation of the United States Attorney for the District of Columbia into Dr. Rhoads' credibility not miscarry, plaintiff wishes to direct attention to the discrepancy between Dr. Rhoads' sworn statements in plaintiff's Freedom of In-

formation lawsuits and his testimony before the House Subcommittee on Government Information and Individual Rights of the Committee on Government Operations.

As the attorney for the defendant should recall, in Weisberg v. General Services Administration, Civil Action No. 2052-73, in which plaintiff sued for disclosure of the January 27, 1964, Warren Commission executive session transcript, Dr. Rhoads answered plaintiff's second interrogatory as follows:

2. The transcript was originally classified under the provisions of Executive Order 10501, as amended (3 CFR, 1949-1953 Comp.) It is presently classified under the provisions of Executive Order 11652.

Dr. Rhoads' swore that this answer was made "upon his personal knowledge and belief". [See attached Exhibit H, which contains both the questions and the answers to plaintiff's first set of interrogatories in Civil Action 2052-73]

However, in his November 11, 1975, testimony before the House Subcommittee on Government Information and Individual Rights, Dr. Rhoads testified that he had "assumed" that the January 27 transcript had been classified under the authority of Executive Order 10501. [See pp. 71 and 80 of hearing transcript, attached hereto as part of Exhibit I] As Mr. Steven Garfinkel, Counsel, Office of the General Counsel of the General Services Administration put it at that same hearing:

It also appears from the record that the President, and of course, his advisers, were the perpetrators of an oversight in that they never made a specific amendment to Executive Order 10501, which was in effect at that time, to include the Warren Commission among those agencies that had original classifying authority. [Hearing transcript, p. 69, a copy of which is attached hereto as part of Exhibit I]

In short, Dr. Rhoads, according to his own testimony, simply "assumed" what he swore he personally knew was true, and what he

swore to be true turns out to have had no basis in fact whatsoever.

Plaintiff also wishes to call attention to the testimony of Mr. David Belin, formerly Assistant Counsel to the Warren Commission, at the November 11, 1975, hearing before the House Subcommittee on Government Information and Individual Rights. There Mr. Belin testified that nearly everything the Warren Commission had was marked "Top Secret", even though "most of the matters before the Commission really had nothing to do with what you would ordinarily think of as Top Secret information"; that he did not know of any independent classifying authority that the Warren Commission had; that the court reporting firm of Ward & Paul marked the Warren Commission transcripts "Top Secret" but that he did not know upon what authority they did so; and that "It was a standard joke within the members of the staff that we were having access to documents that were marked Top Secret at a time when none of us had security clearances." [See pp. 5-9 of the hearing transcript, copies of which are attached hereto as part of Exhibit I]

Finally, plaintiff notes that defendant's motion for an extension of time speaks of filing an affidavit on this question of Dr. Rhoads' credibility. Plaintiff welcomes such an affidavit. However, plaintiff also notes that on February 27, 1975, he filed a request for the production of documents which asked, among other things, for a copy of the November 5, 1975, affidavit of Mr. Charles A. Briggs, Chief of Services Staff, Directorate of Operations, Central Intelligence Agency, which is referred to in the answer to plaintiff's interrogatory No. 25. Although this affidavit is presumably relevant to this case and is presumably not classified, plaintiff has not yet been provided a copy of it. Plaintiff would appreciate a copy of it at the government's earliest possible convenience.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 29 1973

JAMES P. BENTLEY

HAROLD WEISBERG,

Plaintiff

v.

CIVIL ACTION NO. 2052-73UNITED STATES GENERAL SERVICES
ADMINISTRATION,

Defendant

PLAINTIFF'S INTERROGATORIES

Under Rule 33 of the Federal Rules of Civil Procedure, Plaintiff addresses the following interrogatories to the Defendant:

1. Is there any Executive Order which specifically requires the transcript of the January 27, 1964, Warren Commission Executive Session to be kept secret in the interest of the national defense or foreign policy?
2. What is the number of any Executive Order cited in response to Plaintiff's interrogatory No. 1?
3. On what date was any Executive Order cited in response to Plaintiff's interrogatory No. 1 published in the Federal Register?
4. Has any Attorney General of the United States ever made a determination that it is not in the national interest to disclose the transcript of any Warren Commission Executive Session or the report of any interview or scientific test made by or for the Federal Bureau of Investigation during its investigation into the assassination of President John F. Kennedy?
5. If the answer to Plaintiff's interrogatory No. 4 is yes, when and by whom was this determination made?

6. Is the January 27 transcript being withheld from research on the grounds that it is part of an investigatory file compiled for law enforcement purposes?

7. If the answer to Plaintiff's interrogatory No. 6 is yes, what is the specific law enforcement purpose for which the January 27 transcript is being withheld?

8. Have any court proceedings been initiated relevant to any law enforcement purpose cited in response to Plaintiff's interrogatory No. 7?

9. If the answer to Plaintiff's interrogatory No. 8 is yes, what are the titles of these court cases and in what courts were they initiated?

10. Are any future court proceedings contemplated with respect to any law enforcement purpose cited in response to Plaintiff's interrogatory No. 7?

11. With respect to any court proceedings cited in response to Plaintiff's interrogatories No. 8 and No. 10, what harm or prejudice would the government suffer if the January 27 transcript were to be disclosed to Plaintiff Weisberg?

12. Has the disclosure of parts of the January 27 transcript by Representative Gerald Ford harmed the government in any of the court proceedings cited in response to Plaintiff's interrogatory No. 8?

13. Has the disclosure of parts of the January 27 transcript by Representative Gerald Ford prejudiced any future court proceedings cited in response to Plaintiff's interrogatory No. 10?

14. If Representative Gerald Ford's disclosure of parts of the January 27 transcript has harmed the government in any law enforcement proceeding cited in response to Plaintiff's interrogatories No. 8 or No. 10, what is the nature of that harm?

15. Has the Department of Justice or the General Services Administration recommended that any action be taken against Representative Gerald Ford for publicly disclosing parts of the January 27, 1964, transcript stated by the General Services Administration to be classified?

16. Has the Department of Justice or the General Services Administration communicated to the Senate Rules Committee or any other congressional committee the fact that Representative Gerald Ford publicly disclosed parts of the purportedly classified January 27 transcript?

17. Has the Department of Justice or the General Services Administration recommended that any action be taken against Representative Gerald Ford for testifying that he did not reveal any classified information in his book Portrait of the Assassin?

18. Was the January 27 transcript ever given to any law enforcement officer of the State of Texas, including:

- a) Dallas County District Attorney Henry Wade?
- b) Texas Attorney General Waggoner Carr?
- c) Special Assistant to the Texas Attorney General Leon

Jaworski?

19. Was the January 27 transcript ever given to any court or law enforcement agency in the State of Texas?

20. Was the January 27 transcript ever given to any federal agency, including, but not limited to, the following:

- a) The Central Intelligence Agency?
- b) The Federal Bureau of Investigation?
- c) The Office of Naval Intelligence?
- d) The Defense Intelligence Agency?
- e) The National Security Agency?

21. To what "recent developments in the state of the law" was Mr. Richard Q. Vawter, Director of Information, General Services Administration, referring in his February 8, 1972, letter (See Complaint, Exhibit D) to Mr. Harold Weisberg?

Please note that under Rule 33 of the Federal Rules of Civil Procedure you are required to serve upon the undersigned, within 30 days after service of this notice, your answers in writing and under oath to the above interrogatories.

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

DATED: November 29, 1973

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of November, 1973, served copies of the foregoing interrogatories upon the attorneys for the Defendant, the General Services Administration, by mailing them to the Attorney General for the United States, Mr. Robert Bork, U. S. Department of Justice, Washington, D. C., and Mr. Michael Ryan, Assistant United States Attorney for the District of Columbia, Civil Division, United States Courthouse, 3rd and Constitution, N. W., Washington, D. C. 20001.

JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

UNITED STATES GENERAL SERVICES

ADMINISTRATION,

Defendant

FILED: 3-22-76

CIVIL ACTION NO. 2052-73

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:

1. Yes.
2. The transcript was originally classified under the provisions of Executive Order 10501, as amended (3CFR, 1949-1953 Comp.) It is presently classified under the provisions of Executive Order 11652.
3. 37 F.R. 5209, March 10, 1972.
4. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter involved in the instant action, and divulgence of the information sought would be contrary to the jurisdictional requisites set forth at 5 USC 552.
5. Not applicable (N/A) in light of previous answer.
6. The transcript is withheld as falling within certain exemptions from mandatory disclosure cited at 5 U.S.C. 552(b) (1970).
7. The Warren Commission was established under Executive Order and recognized by statute to investigate the assassinations of President Kennedy and Lee Harvey Oswald.

8. The defendant is not aware of any such proceedings.

9. Not applicable (N/A) in light of previous answer.

10. The defendant is not aware of any contemplated future proceedings in this respect.

11. N/A

12. N/A

13. N/A

14. N/A

15. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter involved in the instant action. The General Services Administration has made no such recommendation.

16. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter involved in the instant action. The General Services Administration has made no such recommendation.

17. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter involved in the instant action. The General Services Administration has made no such recommendation.

18. No.

19. No.

20. The only Federal agencies which have examined a copy of the transcript other than the defendant General Services Administration are the Central Intelligence Agency and the Federal Bureau of Investigation.

21. Mr. Vawter's comment to "recent developments in the state of the law" in his letter of February 8, 1972, merely refers to an examination of newly issued judicial decisions on the Freedom of Information Act and the anticipated issuance of Executive Order 11652.



JAMES B. RHOADS
Archivist of the United States

28

Subscribed and sworn to me before this 16th day of January, 1974.

My Commission expires the 31st day of August, 1974.

1 STATEMENT OF MR. DAVID W. BELIN, ATTORNEY, FORMER ASSISTANT
2 COUNSEL, WARREN COMMISSION, AND FORMER EXECUTIVE DIRECTOR,
3 ROCKEFELLER COMMISSION ON DOMESTIC ACTIVITIES, CENTRAL
4 INTELLIGENCE AGENCY

5 Ms. Abzug. Let us see if we can have some questions
6 answered which have been raised.

7 How would you characterize the use of classification
8 markings of Warren Commission documents? Was it over-
9 extensive?

10 Mr. Belin. Almost everything that we had on the Warren
11 Commission was marked Top Secret.

12 I would have to say that it was over-extensive to the
13 extent that most of the matters before the Commission really
14 had nothing to do with what you would ordinarily think of as
15 Top Secret information.

16 When I took the testimony of Johnny Calvin Brewer of
17 Texas, who told how he heard police sirens coming down the
18 street and saw a man duck in a shoe store after the shooting
19 of Officer Tippett, he became suspicious of the man because
20 when the police sirens ebbed away, Brewer saw the man leave and
21 then Brewer followed him into the Texas Theater and the man
22 turned out to be Oswald; the fact that that was classified as
23 Top Secret was really, so far as I was concerned, not a proper
24 use of classification.

25 I think perhaps the reason it was classified Top Secret
was that they did not want things to leak out of the Warren

1 Commission hearing rooms.

2 But basically all of the testimony we took of witnesses
3 to the events in Dallas had the stamp of Top Secret on them.

4 Ms. Abzug. Are you aware as to whether the Warren
5 Commission was given any authority by the President in an
6 Executive Order to originally classify the documents?

7 Mr. Belin. I do not purport to be a classification
8 expert, but to the best of my knowledge I know of no such
9 independent classifying authority that the Warren Commission
10 had.

11 Ms. Abzug. In other words, as far as you know, the
12 markings of Top Secret on Executive Session transcripts of the
13 Warren Commission and of its Staff Memos, for example, were
14 really for a mixture of purposes?

15 Mr. Belin. To the best of my knowledge I know of no
16 other reason other than the administrative purposes, because
17 I know of no independent classification authority, although
18 there might be some indirect authority and I do not purport
19 to be an expert at that. I know that on many memoranda I
20 prepared myself, I did not put anything of a classification
21 nature on it.

22 Ms. Abzug. Assuming that nobody had the authority,
23 that is, to classify the Commission's documents, what is your
24 view as to whether they - let me say this. Do you think they
25 had been properly withheld or do you think they should be

1 withheld under some other concept?

2 Mr. Belin. I will exclude those Commission documents
3 which were prepared out of classified information that was
4 received, let us say, from the CIA because it is my understand-
5 ing that when you receive information from a classified docu-
6 ment, that theoretically that memorandum that you prepared,
7 which quotes from the classified source, must remain classified.

8 But I must candidly state to you that there has been an
9 over-classification, I believe, of Warren Commission documents
10 in general.

11 The one that stands out most in my mind, and that has
12 caused the most widespread public concern, related to the
13 autopsy photographs and x-rays of President Kennedy.

14 Ms. Abzug. This is a very interesting question. Would
15 you say it was a question of Ward and Paul marking the
16 transcripts Top Secret?

17 Mr. Belin. I think that Ward and Paul did mark every
18 transcript Top Secret and upon what authority I do not know.

19 Ms. Abzug. You do not know?

20 Mr. Belin. No, I do not know what authority they had, if
21 any.

22 Ms. Abzug. I am trying to get at, as to how it came
23 about. Do you think it was an administrative device?

24 Mr. Belin. I do not know whether they did it of their
25 own volition or whether they were directed to by the General

1 Counsel, Lee Rankin. All I can tell you is that every trans-
2 cript, including every witness whom we interrogated, was marked
3 or stamped Top Secret.

4 Ms. Abzug. Let me ask this then. What was generally
5 the staff's attitude toward the so-called classification
6 markings?

7 Mr. Belin. The general attitude of the staff was this.
8 I do not want to use the word 'ridiculous', but we thought
9 that it was over-classification, to say the least. In fact,
10 it was so classified that even though our building was under
11 a 24-hour a day security guard, we were directed to put all of
12 these transcripts in safes at night, and they were marked Top
13 Secret when they really were not Top Secret.

14 I am excluding the transcripts related to CIA matters or
15 what have you. I am talking about the general transcripts of
16 the area in which I was involved. I was one of the two
17 lawyers in Area 2 which was involved in analysis of all the
18 evidence to determine who killed President Kennedy and Officer
19 Tippett.

20 Ms. Abzug. Do you have any recollection of Mr. J. Lee
21 Rankin, the Counsel, claiming the Commission had authority to
22 classify its own information?

23 Mr. Belin. I do not remember a conversation with General
24 Counsel Lee Rankin. I do not think any of us really raised a
25 issue at the time.

1 Ms. Abzug. Did you have any difficulty getting informa-
2 tion?

3 Mr. Belin. None.

4 Ms. Abzug. Did any of the staff people have any difficul-
5 ty getting information?

6 Mr. Belin. Not to the best of my recollection.

7 Ms. Abzug. Did they require security clearance, that is,
8 staff members?

9 Mr. Belin. All of us had to go through a security
10 clearance. That perhaps relates to an earlier question you
11 asked. It was a standard joke within the members of the staff
12 that we were having access to documents that were marked Top
13 Secret at a time when none of us had security clearances.
14 Even after some of us had security clearances, there were one
15 or two that took a month, or two, or more to get security
16 clearances. It was an inside joke about the fact that what
17 would the Warren Commission do if one of the members of the
18 staff had not gotten the security clearance by the time the
19 Warren Commission had completed its investigation, and you
20 would have all of these hundreds of secret documents.

21 It would have been embarrassing to a lot of people.

22 I believe eventually all staff people were cleared.

23 Ms. Abzug. As Executive Director of the Rockefeller
24 Commission, do you recall any specific provisions which
25 authorized that Commission to classify documents?

1 consultation with the National Archives and other agencies,
2 and the recommendations resulting from the study were approved.

3 They called for immediate review of the material with-
4 held by the originating agencies. The purpose was disclosure
5 of as much of the material as possible. A key provision of
6 the guidelines prepared by the Department of Justice held that
7 originating agencies should review their classified and un-
8 classified withheld material 5 years and 10 years after the
9 initial review, and thereafter every 10 years.

10 The Attorney General dispatched the first review letters
11 to agencies in 1965, and the National Archives in 1970 sent
12 out similar letters seeking review of withheld material.

13 The regular 5-year reviews continue. The National
14 Archives wrote last July to the various agencies involved,
15 asking them to examine their withheld documents again with a
16 view to disclosure.

17 The reviews of 1955 and 1970 were not the only ones made
18 to speed disclosure. When the President's Commission on the
19 Assassination of President Kennedy went out of existence, the
20 status of previously undisclosed internal records and corres-
21 pondence of the Commission was uncertain.

22 With the assent of the Department of Justice, the Nationa
23 Archives in 1967-68 screened this material and opened most of
24 it. However, some correspondence between the agencies and the
25 Commission and other records relating to the agencies remained

1 closed.

2 The National Archives, therefore, went back again to the
3 agencies in 1972-73 for a further review of this type of
4 record. On the latter occasion the agencies were reminded
5 that Executive Order 11652 had been issued in the interim, with
6 provisions for declassifying or downgrading any classified
7 documents among those withheld.

8 More recently, in our letters to agencies relating to the
9 1975 review, we have asked them to keep in mind the provisions
10 of the Freedom of Information Act, as amended in 1974, and
11 Executive Order 11652 when making their determinations as to
12 what now can be opened in the material which is still with-
13 held.

14 As the result of the various reviews under the Department
15 of Justice guidelines, additional material in the Warren
16 Commission records has been disclosed by originating agencies
17 since that first general review in 1965. Moreover, researchers
18 now have recourse to mandatory review procedures of the Freedom
19 of Information Act and Executive Order 11652, both of which
20 have been effective in opening other withheld materials in the
21 Warren Commission records. They provide workable means for
22 researchers to challenge nondisclosure of material which they
23 believe should be opened.

24 I thank the Committee again for this opportunity to
25 discuss the policies and practices of the National Archives wi

1 Can you put this in some order for this simple mind?
2 Sometimes I have to spend weeks getting a document that is
3 marked Classified, and I have to put it in my safe and change
4 the combination and so on. I am so concerned about maintaining
5 classified secrets of this nation.

6 But suddenly I found out that in this whole maze of the
7 Archives there are documents which a stenotypist decided were
8 Top Secret. One day the Commission Counsel says "do not
9 bother to make it Top Secret. Let us make it Confidential."

10 Then I find there are a series of documents out there
11 running around in the libraries. However, we cannot get to
12 them in the Archives because they are marked Classified by
13 some unknown handwriting on the wall.

14 Mr. Garfinkel. I think if we examine every document of
15 the Commission which remains Classified, or has been classifi
16 at some time in the past, we will discover that the original
17 classifier was either an agency which specifically had the
18 authority to classify the records, or was the Commission
19 itself.

20 We will find that it was never the Archives on its own
21 authority.

22 What happened, apparently, is that the Warren Commission
23 naturally assumed, because it was handling a great deal of
24 security classified information, that it had the authority to
25 mark these documents as security classified.

1 It also appears from the record that the President, and
2 of course, his advisers, were the perpetrators of an oversight
3 in that they never made a specific amendment to Executive
4 Order 10501, which was in effect at that time, to include the
5 Warren Commission among those agencies that had original
6 classifying authority.

7 The Commission assumed it had that authority, and acted
8 under that assumption. We have an affidavit of its General
9 Counsel that the Commission had that authority, and that,
10 pursuant to that authority as delegated to him by the
11 Commissioners, he instructed the reporters of the Commission
12 transcripts and other Commission documents to mark documents
13 as classified.

14 We also had indirect evidence that it was the assumption
15 of the President that the Commission had that authority;
16 although we do not have a specific amendment to Executive
17 Order 10501, we have a letter from President Johnson to Chief
18 Justice Warren in his capacity as chairman of the Commission,
19 stating that the Commission was waived from a particular
20 provision of the Executive Order.

21 We can assume that the President —

22 Ms. Abzug. The Commission was what?

23 Mr. Garfinkel. These were waived from a particular
24 provision of the Executive Order. I can be more specific.

25 When the Commission's report came out, many of the

1 Ms. Abzug. Congressman Gerald Ford, as opposed to
2 President Gerald Ford, published this book called "Portrait
3 of the Assassin" in 1965. He quoted in it extensively from
4 the January 27th transcript.

5 For nine years after Mr. Ford had published parts of it,
6 the Archives continue to suppress the entire transcript on the
7 grounds that it had been classified Top Secret pursuant to
8 Executive Order 10501.

9 How did that happen?

10 Dr. Rhoads. I think we were not aware until fairly
11 recently of the fact that there was not a completely
12 regularized grant of authority to the Warren Commission to
13 classify. We assumed they had the authority, and for a number
14 of years proceeded on that basis.

15 Ms. Abzug. I find that fascinating.

16 We are entrusting to the Archives our whole history.
17 This is important to know about. This is part of knowledge.
18 We are almost in a situation where we have to have an archaeol-
19 gical expedition to discover the writings on the walls.

20 I find this remarkable that you do not know anything, or
21 you did not know for how many years?

22 Mr. Johnson. Nine years.

23 Ms. Abzug. Nine years.

24 You did not know for nine years by what authority, if
25 any authority, the documents of the Warren Commission were

1 to that effect.

2 When did you find that out?

3 Mr. Johnson. When the Weissberg case came up.

4 Ms. Abzug. That was three years ago.

5 You continue to testify, and just this year you released
6 that transcript. You are in a bad habit. We all know what
7 happens. You get a habit, it is hard to kick it. But the
8 point is you have got to get out of this habit.

9 This Committee is dealing with this issue because,
10 frankly, we have got to deal with this craziness which has
11 been going on in this Government for so long. We classify so
12 much we do not know the difference between secret and not
13 secret any more.

14 That stenotypist incident grabs me. For that stenotypist
15 to classify the notes --

16 Dr. Rhoads. The stenotypist did not classify the notes.

17 Ms. Abzug. It is my way of making the point. We do not
18 know anything about it. There was no authority. There really
19 was no person who had the right. It is a paranoia.

20 Dr. Rhoads. Under Executive Order 10501 there was a
21 great deal of looseness. There was a great deal of over-
22 classification, there was a great deal of improper classifica-
23 tion, there was no central control over it. I agree with you,
24 it was a bad a chaotic situation.

25 With the Order 11652 I do not claim that we have come in

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISEERG,

Plaintiff

-v-

GENERAL SERVICES ADMINISTRATION,

Defendant

FILED: 3-26-76

Civil Action No. 75-1448

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court for summary judgment in its favor on the ground that there are no genuine issues as to any material fact and defendant is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

In support of this motion, defendant submits herewith a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the affidavit of Dr. James B. Rhoads, Archivist of the United States (Government Exhibit 1), and the affidavit of Charles A. Briggs, Chief of the Services Staff for the Directorate of Operations, Central Intelligence Agency (Government Exhibit 2).

EARL J. SILBERT
United States Attorney

ROBERT W. FORD
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

In support of its motion for summary judgment and in conformance with Local Rule 1-9(h), defendant submits herewith a statement of material facts as to which it contends there is no genuine issue:

1. On March 12, 1975, relying on the provisions of the Freedom of Information Act, plaintiff requested disclosure of certain Warren Commission executive session transcripts (Exhibit A to the complaint).

2. On April 4, 1975, by letter from Assistant Archivist Edward G. Campbell, defendant granted plaintiff's request in part and denied disclosure of:

A. The Warren Commission executive session transcript of May 19, 1964;

B. The Warren Commission executive session transcript of June 23, 1964; and

C. Pages 63-73 of the January 21, 1964 Warren Commission executive session transcript (Exhibit B to the complaint).

3. On April 15, 1975, plaintiff appealed the denial of these materials to the Deputy Archivist (Exhibit C to the complaint).

4. On May 22, 1975, by letter from the Deputy Archivist, defendant affirmed the decision denying disclosure of these transcripts (Exhibit D to the complaint).

5. On September 4, 1975, plaintiff filed the instant action in the United States District Court for the District of Columbia to compel disclosure of the withheld documents.

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

MICHAEL J. RYAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

Preliminary Statement

Relying on the provisions of the Freedom of Information Act (FOIA) plaintiff brings this action to compel defendant to disclose two transcripts and a portion of a third transcript of the executive sessions of the Warren Commission. On March 12, 1975, plaintiff wrote to the Archivist of the United States, Dr. James B. Rhoads, and requested disclosure of

1. The executive session transcripts of December 6, 1963, and May 19, and June 23, 1964;
2. Pages 43-66 of the December 5, 1963 executive session transcript;
3. Pages 23-32 of the December 6, 1963 executive session transcript;
4. Pages 63-73 of the January 21, 1964 executive session transcript; and
5. The reporter's notes for the January 22, 1964 executive session.

The documents requested were disclosed with the exception of the

transcripts of May 19, 1964 and June 23, 1964, and pages 63-73 of the January 21, 1964 transcript.

Defendant maintains that the June 23, 1964 transcript and pages 63-73 of the January 21, 1964 transcript are protected by exemptions 1 and 3 of the FOIA, 5 U.S.C. 552(b)(1) and (3), and that all three transcripts are protected by exemption 5, 5 U.S.C. 552(b)(5). In addition, defendant contends that the May 19, 1964 transcript is protected by exemption 6, 5 U.S.C. 552(b)(6). Each of these exemptions will be discussed seriatim.

Argument

1. The June 23, 1964 Executive Session Transcript and Pages 63-73 of the January 21, 1964 Executive Session Transcript of the Warren Commission Are Protected From Disclosure By 5 U.S.C. 552(b)(3)

The third exemption to the FOIA permits the withholding of materials "specifically exempted from disclosure by statute . . ." 5 U.S.C. 552(b)(3). It bears emphasis that Exemption 3 preserves intact any authority an agency is granted by statute to protect or withhold information, including documents subject to the Information Act. Administrator, Federal Aviation Administration v. Robertson, 95 S. Ct. 2140 (1975). In other words, "Exemption 3 differs from the other exemptions enumerated in the FOIA in that its applicability does not depend on the factual contents of the specific documents, and therefore in camera inspection by the Court would be unnecessary and inappropriate * * *." National Airlines Inc. v. Civil Aeronautics Board, et al., D. D.C., Civil Action No. 75-613 (Memorandum and Order dated October 10, 1975).

Here, two transcripts are protected by statute, as specified² at Paragraphs 2 and 4 of the Briggs affidavit (Government Exhibit ¹..) and paragraph 9 of the Rhoads affidavit (Government Exhibit 1). Specifically, 50 U.S.C. 403(d)(3) provides "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" Thus, the Senate Report on the 1974 amendments to the FOIA (S. Rept. No. 93-654, 93d Cong., 2d Sess.) states:

By statute certain special categories of sensitive information * * * intelligence sources and methods (50 U.S.C. §403(d)(3)(G)) - must be given special protection from unauthorized disclosure. These categories of information have been exempted from public inspection under Section 552(b)(3), 'specifically exempted from disclosure by statute,' and (b)(1), 'specifically required by executive order to be kept secret in the interest of the national defense or foreign policy.'

The Conference Report is in accord with the Senate Report discussion on this point. (Conference Rept., S. Rept. No. 93-1260, p. 12.) Especially in view of the Briggs affidavit, it can be plainly seen that 50 U.S.C. 403 protects two of the transcripts plaintiff seeks. Accordingly, plaintiff may not obtain access to the transcripts under the terms of the FOIA.

II. The June 23, 1964 Executive Session Transcript and Pages 63-73 of the January 21, 1964 Executive Session Transcript of the Warren Commission Are Protected From Disclosure By 5 U.S.C. 552(b)(1)

Both the Briggs and Rhoads affidavits reflect that two of the transcripts sought by plaintiff herein are currently classified as "confidential" and have been determined to warrant this classification. Exemption 1, 5 U.S.C. 552(b)(1), was intended by Congress to protect material whose release would be harmful to the national defense and foreign policy as determined by the Executive

in accordance with Executive Orders. The 1974 amendments to the FOIA narrowed Exemption 1's scope to an extent. At the same time, the Congress considered the revised Exemption 1 as according the Executive broad powers to protect material:

However, the conferees recognize that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse effects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making de novo determinations in section 552 (b)(1) cases under Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.
[93d Cong., 2d Sess., S. Rept. No. 93-1200, p. 12 (the Conference Report).]

The Senate Report likewise states that amended Exemption 1 "does not allow the Court to substitute its judgment for that of the agency * * * only if the Court finds the withholding to be without a reasonable basis under the applicable Executive order or statute may order the documents released." (S. Rept. No. 93-854, 93d Cong., 2d Sess., p. 15.) In keeping with these criteria, the Briggs and Rhoads affidavits establish that Exemption 1 protects two of the transcripts plaintiff seeks. Wolfe v. Froehlke, 510 F.2d 654 (D.C. Cir. 1974). See also Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362 (4th Cir. 1975) (plaintiffs have filed a petition for a writ of certiorari). Accordingly, for this reason, defendant's motion for summary judgment should be granted.^{1/}

^{1/} All of the reports by congressional committees preceding enactment of the 1974 FOIA amendments confirm that in camera inspection is not required and the Court should first attempt to resolve the matter without in camera inspection. (S. Rept. No. 93-854, 93d Cong., 2d Sess., p. 15; H. Rept. No. 93-876, p. 3; S. Rept. No. 93-1200 (the Conference Report), pp. 9, 12).

III. All Three Documents Sought By
Plaintiff Are Protected From
Disclosure by 5 U.S.C. 552(b)(5)

The June 23, 1964 transcript, the May 19, 1964 transcript and pages 63-73 of the January 21, 1964 transcript are protected from compelled disclosure by Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5). Indeed, the fact that the transcripts reflect executive sessions of the Commission goes a long way toward establishing applicability of Exemption 5. Thus, Exemption 5 protects documents "disclosure of which 'would be 'injurious to the consultative functions of the Government'". NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). In other words, "the policy of protecting the 'decision-making processes of Government agencies' is incorporated in Exemption 5." NLRB v. Sears, Roebuck & Co., *supra*, 421 U.S. at Page 150. Just as appellate courts necessarily must meet in Executive Session, so must an Executive Branch Commission. Whatever the outer perimeter of Exemption 5, it plainly protects the deliberations at such Executive sessions. NLRB v. Sears, Roebuck & Co., *supra*; The Renegotiation Board v. Grumman Aircraft Engineering Corp., 421 U.S. 168 (1975); Environmental Protection Agency v. Mink, 410 U.S. 73 (1973). Montrose Chemical Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974); Washington Research Project, Inc. v. NEM, 504 F.2d 238 (D.C. Cir. 1974), *cort. denied*, - U.S. -. See also National Courier Association v. Board of Governors of Federal Reserve System, 516 F.2d 1229, 1241-1243 (D.C. Cir. 1975).

IV. The May 19, 1964 Executive Session
Transcript of the Warren Commission
Is Protected From Disclosure By 5
U.S.C. 552(b)(5)

One of the transcripts, as described in Paragraph 10 of the Rhoads affidavit, is withheld because it relates solely to discussion of the continued employment of two Commission staff members. As such, it is plainly protected from release by

Exemption 6 to the FOIA.

In enacting Exemption 6, Congress protected against an individual suffering "a clearly unwarranted invasion of personal privacy" (5 U.S.C. §552(b)(6)). The Court of Appeals has recently observed and considered the difficult privacy issues which are posed even where the plaintiff has a special need for the documents which may redound to the benefit of those individuals whose names and addresses are sought. Ditlow v. Schultz, 517 F.2d 166 (D.C. Cir. 1975). Thus, under Exemption 6, home addresses have been withheld where the addresses are "information that the individual may fervently wish to remain confidential or only selectively released." Wine Hobby USA, Inc. v. United States Internal Revenue Service, 502 F.2d 133, 137 (3d Cir. 1974). The possibility of invasion of privacy should be seriously considered. See Rural Housing Alliance v. Department of Agriculture, 498 F.2d 73 (D.C. Cir. 1974). See also the Privacy Act of 1974, Public Law 93-579, 5 U.S.C. §552(a) where Congress limited the power of the Government to disseminate information pertaining to individuals. In passing the Privacy Act, the Congress found that "the privacy of the individual is directly affected by the collection, maintenance, use and dissemination of personal information by Federal agencies." (Public Law 93-579, §2(a)(1).) In the light of the principles reflected by the congressional enactments and decided cases, Exemption 6 plainly protects a Commission's discussion regarding the continued employment of two of its personnel.

Conclusion

For the foregoing reasons, defendant respectfully requests
the Court to grant the instant motion and to dismiss this action. ^{2/}

EARL J. SILBERT
United States Attorney

ROBERT W. FORD
Assistant United States Attorney

MICHAEL J. RYAN
Assistant United States Attorney

^{2/} We have not discussed the applicability of Exemption 7, U.S.C. 552(b)(7)(D) and (E), relied upon at paragraph 9(d) of the Rhoads affidavit, since the material covered thereby is also covered by Exemptions 1, 3 and 5, discussed supra.

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

FILED: 3-26-76

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS SERVICE,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA) ss.:
CITY OF WASHINGTON)

I, JAMES B. RHOADS, Archivist of the United States, National Archives and Records Service, General Services Administration, Eighth and Pennsylvania Avenue, N. W., living at 6502 Cipriano Road, Lanham, Maryland, do hereby solemnly swear:

1. I have read and am familiar with the allegations contained in the plaintiff's complaint in the case of Weisberg v. National Archives and Records Service, Civil Action No. 75-1448, United States District Court for the District of Columbia.
2. At all times relevant to the circumstances of the complaint, I have served in the position of Archivist of the United States.
3. The General Services Administration [GSA], acting through the National Archives and Records Service [NARS], serves as the successor agency to the President's Commission on the Assassination of President Kennedy, popularly known as the Warren Commission (hereinafter, the "Commission").
4. Over the years that the National Archives has maintained custody and control over the records of the Commission and other documents and materials relevant to the assassination of President Kennedy, it has striven to make increasing numbers of these materials available for public access. In some instances, NARS has opened these materials subsequent to Freedom of Information Act requests for access, many of which were instituted by the plaintiff. To date, well over 90% of these materials are available for public inspection, and, in the case of documentar materials, copies are provided upon request.

JBR

5. Among the Commission records in the custody and control of the National Archives are the transcripts of those meetings in which the members of the Commission met in executive session. Although the Commission may have met in executive session on more occasions, the National Archives has in its possession the transcripts of twelve meetings and the minutes of a thirteenth.

6. At the time of their accessioning into the National Archives, the Commission had classified and marked each of the transcripts "Top Secret" (see Exhibit A, a copy of an affidavit with attachments, dated April 8, 1974, of J. Lee Rankin, General Counsel of the Commission). At regular intervals over the years in which the National Archives has had custody and control of these transcripts, it has conducted classification reviews of these documents to determine if any of them should be downgraded or declassified. In accordance with applicable provisions of law, these reviews have been conducted with the assistance of those agencies of the Federal Government which have subject matter interest in the particular transcripts. The most recent review of those transcripts which remained security classified was conducted in conjunction with the implementation of the recent amendments to the Freedom of Information Act and coincided with plaintiff's administrative request for access to those transcripts that remained closed at the time of the amendments.

7. As a result of these reviews, only the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, remain classified, and they have been downgraded to the "Confidential" level. These transcripts remain classified at the request of the Central Intelligence Agency, which agency has subject matter interest in the information contained within these transcripts. Further, the CIA has informed us that, should there be any question concerning the authority of the Warren Commission to classify documents, these transcripts shall be classified pursuant to the authority of the CIA to do so (see Exhibit B, a copy of a letter to me from Robert S. Young, CIA Freedom of Information Coordinator, dated May 1, 1975).

8. With the exception of names and other identifying details deleted from the transcript of a meeting in which the members discussed the qualifications of potential staff members, all of the transcripts and minutes except those at issue in this litigation, i.e., the transcript of May 19, 1964, the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, are available for public inspection and copying.

9. In accordance with the instructions and recommendations of the Central Intelligence Agency, the National Archives maintains the security classification of the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, at the "Confidential" level, and withholds these records from public access. In denying public access, NARS relies on those statutory exceptions to mandatory disclosure under the Freedom of Information Act which are pertinent to these materials. These include:

(a) The first exemption, 5 U.S.C. 552(b)(1), which permits the withholding of materials "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order" These transcripts are properly classified pursuant to the criteria established in Executive Order 11652 (37 F.R. 5209 (March 10, 1972); 3 CFR 1974 Ed., p. 339).

(b) The third exemption, 5 U.S.C. 552(b)(3), which permits the withholding of materials "specifically exempted from disclosure by statute" The specific statute which is pertinent provides, "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C. 403(d)(3)). In withholding access pursuant to this statute, 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 (see Exhibit B).

(c) The fifth exemption, 5 U.S.C. 552(b)(5), which permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" These transcripts are the written record of the times when the Commission members met to express their individual ideas, opinions, conclusions and recommendations to the other members. The subject matter of the meetings included the Commission's methods of gathering evidence, the personnel of the Commission staff, the Commission's goals and public image, as well as a discussion of the evidence before the Commission. On several occasions individual commissioners expressed the opinion that their views and those of the other commissioners were given and should be maintained in confidence. As these transcripts clearly reflect the deliberative process of the Commission, NARS has determined that they may properly be withheld from public disclosure under the cited exemption.

(d) Paragraphs (D) and (E) of the seventh exemption, 5 U.S.C. 552(b)(7)(D) and (E), which permit the withholding of

investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would . . . (D) disclose the identity of a confidential source and, in the case of a record compiled . . . by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source [or] (E) disclose investigative techniques or procedures

The pertinent transcripts reveal the identity of a source of national security intelligence information as well as information obtained from that source. They further reflect a discussion of intelligence methods and techniques that had been employed in gathering the existing information or could be employed in gathering additional information. Because the United States District Court has previously ruled that the executive session transcripts of the Warren Commission were "investigatory files compiled for law enforcement purposes . . . ,"

(Weisberg v. General Services Administration, Civil Action No. 2052-73 (D. D. C., May 3, 1974)), the National Archives and Records Service maintains that the

CBP

seventh exemption, as amended, remains a valid basis for withholding access to the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964.


10. The transcript of May 19, 1964, is no longer security classified. Moreover, the subject matter of the transcript has nothing to do with the Commission's investigation of the assassination of President Kennedy or the murder of Lee Harvey Oswald. Rather, the Commission met in executive session on May 19, 1964, solely to discuss the continued employment of two of its staff members. The reasons which gave rise to the Commission's concern over their continued employment had nothing to do with their performance as employees, but with certain alleged aspects of their personal histories. To release this transcript would "constitute a clearly unwarranted invasion of [the] personal privacy" of these individuals. Moreover, because of contemporaneous news accounts rumoring complaints about these employees, the deletion of their names and other identifying details would not succeed in protecting their identities. Therefore, we have withheld access to the entire transcript on the basis of the sixth exception to mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(6)). As explained in subparagraph 9(c), above, we have also withheld this transcript pursuant to the fifth statutory exemption, 5 U.S.C. 552(b)(5)).

I have read the above statement, consisting of 5 pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties to this action.



(Affiant's signature)

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W.,
Washington, D.C., on this sixth day of October 1975.


(Notary Public)

My commission expires: Aug. 31, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED: 3-26-76

----- x
HAROLD WEISBERG, :

Plaintiff, :

v. :

GENERAL SERVICES ADMINISTRATION, :

Defendant. :

Civil Action No. 2052-73

----- x
STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:.....

CITY OF NEW YORK)

I, J. LEE RANKIN, living at 35 Sutton Place, New York,
New York, do hereby solemnly swear:

1. From December 8, 1963, I served as General Counsel of
the President's Commission on the Assassination of President
Kennedy (Warren Commission).

2. Shortly after I had assumed the duties of General
Counsel of the Commission, I was instructed by the Commission
that among my duties was the responsibility to security classify
at appropriate levels of classification those records created by
the Commission in its investigation and report that should be
security classified under existing Executive order. The
Commission's authority to classify its records and its decision
to delegate that responsibility to me existed pursuant to
Executive Order 10501, as amended.

3. As agreed to by the Commission, I ordered that the transcripts of certain of the Commission executive sessions, including that of January 27, 1964, be classified "Top Secret," and I communicated the fact of said classification to Ward & Paul transcribers of the executive sessions (see attached copies of correspondence between Ward & Paul and me).

I have read the above statement, consisting of two pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.


J. LEE RANKIN

Subscribed and sworn to before me

at *New York, New York*
on this *8th* day of April, 1974.



PAUL F. CIRILLO
Notary Public, State of New York
No. 59-5522750
Qualified in Nassau County
Cert. Filed with the New York Co. Clerk
Commission Expires March 30, 1976

FILED: 3-26-76

Rankin

ml/jtc

December 21, 1963

Honorable Edward L. Boutin
Administrator, General Services
Administration
Washington, D. C.

Dear Mr. Boutin:

Pursuant to Executive Order 11129 of November 29, 1963, the Members of the President's Commission to Investigate the Assassination of President Kennedy, at a meeting of the Commission on December 6, 1963, agreed to solicit the services of J. Lee Rankin as General Counsel for the Commission. Mr. Rankin officially accepted the appointment on December 8, 1963.

Sincerely,

Chairman

FILED: 3-26-76

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C.
828-4266

WARD & PAUL
917 G STREET, N. W.
WASHINGTON, D. C.

354 L. WARD, JR.

OFFICIAL REPORTERS, FD
CONGRESSIONAL COMMITTEE

January 7, 1964

Hon. J. Lee Rankin, General Counsel,
Presidential Commission on the
Assassination of President Kennedy,
200 Maryland Avenue, N. E.,
Washington, D. C. 20002.

Re: Stenographic Reporting

Dear Sir:

Pursuant to our conversation of yesterday, in which a general outline of reporting services and needs was discussed, and at which time you asked for a statement of prices for work performed, I am happy to submit the following schedule of charges:

Original and two copies	\$1.65 per page	(Total)
4th copy	.15 per page	\$ 1.80
5th copy	.15 per page	1.95
6th copy	.15 per page	2.10
7th copy	.15 per page	2.25
8th copy	.15 per page	2.40
9th copy	.10 per page	2.50
10th to 20th copies	.05 per page	3.05
21st to 25th copies	.02 per page	3.15

The first eight copies are at the current Congressional rate for closed sessions, no sales permitted; the ninth and succeeding copies reflect a multiple copy rate with decreasing costs due to higher production of copies.

It is contemplated that the reporting services will be performed in Washington, D. C., and that transcription and duplication will be in the premises of Ward & Paul at the address given above. The work will be given Top Secret or Secret classification, so marked on each volume, volumes numbered in accordance with security regulations, and receipts obtained for material passing between the Commission and our firm. If desired, notes, waste paper and other materials will be delivered to the Commission daily, with the delivery of each transcript, or they can be retained by us, under security, and destroyed from time to time. I would suggest that all waste material be destroyed weekly, and the notes be turned over to the Commission at the end of each week, this for possible reexamination of any necessary page or phrase which might need it.

Mr. Rankin.

All reporting will be done on a Daily Copy basis, that is, work reported on one day will be delivered by 9:00 a. m. the following day, unless there is a night session, in which case the portion reported during the day will be delivered as indicated, and the night session delivered during the following day.

Only personnel having the full necessary clearance will be used in any phase of handling the work of the Commission.

In event reporting services are needed outside of the City of Washington, we will be able to service the hearing with reporter and typist, prepared to deliver a minimum number of copies in the field, perhaps an original and one copy, and forward the necessary copy back to Washington for duplication and delivery to the Commission as early as possible. Travel and other such expenses will be borne by the Commission in this event, to be thoroughly vouchered by the personnel involved.

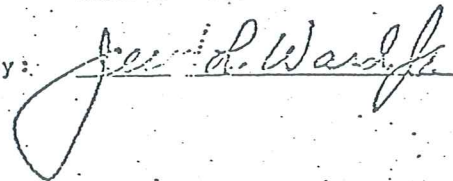
Please excuse this lengthy letter, but we feel that it is better to lay a proper groundwork for mutual understanding of the different phases of work involved.

Please allow me to thank you, sir, for the time you took to talk with me, and for your understanding of our problems. It is our hope that we may be chosen to serve the Commission, and that we may do so in a manner that will reflect credit on those who have been kind enough to suggest our firm for the work.

Respectfully submitted,

WARD & PAUL

By:



FILED: 3-26-76

MEMO
1/7/64

JAN 8 1964

Mr. Jesse L. Ward, Jr.
Ward & Paul
917 G Street, N.W.
Washington 1, D. C.

Dear Mr. Ward:

Thank you for your letter of January 7, 1964, setting forth the schedule of charges for your reporting service.

The arrangements set forth in your letter are satisfactory to me and I am confident that your organization will be of great assistance to this Commission. I would like you to handle the reporting of the meetings of the Commission as well as any hearings outside the city which may be held by the Commission. I shall advise you of the date of the next Commission meeting as soon as possible.

Thank you for your promptness in supplying me with this information.

Sincerely,

J. Lee Rankin
General Counsel

How
1/14/64
JLR

FILED: 3-26-76

JEP/wh

May 1, 1963

Ray and Paul
Ray & Stuart, Inc.
Washington, D. C. 20031

Commissions:

This is to inform you that as of this date all Gay relations and testimony handled by your firm for the Commission will henceforth be classified as confidential rather than top secret. The relations of the Commission will continue to be classified top secret.

Very truly yours,

J. Lee Berlin
General Counsel

FILED: 3-26-76

EXHIBIT B
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Received HA-M
MAY 5 1975

1 MAY 1975

Dr. James B. Rhoads
Archivist of the United States
National Archives and Records Service
Room 111, Archives Building
Seventh Street and Pennsylvania Avenue, NW
Washington, D.C. 20408

Dear Dr. Rhoads:

On 21 March 1975, Marion M. Johnson of the Civil Archives Division transmitted to this Agency for review certain Warren Commission documents requested under the Freedom of Information Act by James H. Lesar, on behalf of his clients, Harold Weisberg and Paul Hoch. The documents were the transcript of the executive session of 23 June 1964 and pp. 63-73 of the transcript of the executive session of 21 January 1964. I regret the delay in responding, which was due in part to missing pages. It is my understanding that these documents are currently the subject of an appeal from Mr. Lesar.

Mr. Johnson also asked the Agency to review p. 3 of the transcript of the executive session of 6 December 1963. He was informed by telephone that the CIA had no objection to the release of this page to Mr. Lesar. This letter confirms that position.

With regard to the documents cited in the first paragraph, it is our judgment that both transcripts must be denied under subsection (b)(1) of the Freedom of Information Act in order to protect sources and methods and other information related to our operational equities. The documents, under the criteria of Executive Order 11652, warrant classification at the Confidential level and exemption from the General Declassification Schedule pursuant to Sec. 1.3(2) and (3) of the Order. It is impossible at this time to determine

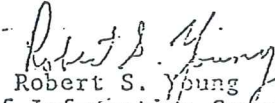


a date or event for automatic declassification. If there is any question concerning the authority of the Warren Commission to classify national security information, the Archivist should mark the documents appropriately, citing this letter as authority.

We have investigated the possibility of releasing segregable portions of the transcripts, but have concluded that the extensive deletions required would result in an incoherent text.

The official who made the decision to deny the two transcripts is Charles A. Briggs, Chief of the Services Staff.

Sincerely,



Robert S. Young
Freedom of Information Coordinator

FILED: 3-26-76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 75-1448

NATIONAL ARCHIVES AND RECORDS
SERVICE,

Defendant

AFFIDAVIT

Charles A. Briggs being first duly sworn, deposes and says:

1. I am Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency and am familiar with the contents of the complaint in this case and make the following statements based on personal knowledge obtained by me in my official capacity.

2. Pages 63-73 of the transcript record an executive session of the President's Commission on the Assassination of President Kennedy which session was held on 21 January 1964. I have determined that the information contained in these pages is classified, and that it is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

3. This portion of the transcript deals entirely with the discussion among the Chairman of the Commission, Chief Justice Warren; the General Counsel of the Commission, Mr. Rankin; and Messrs. Dulles, Russell, Boggs, McCloy,

and Ford, Commission members. The matters discussed concerned tactical proposals for the utilization of sensitive diplomatic techniques designed to obtain information from a foreign government relating to the Commission's investigation of the John F. Kennedy assassination. The specific question discussed concerned intelligence sources and methods to be employed to aid in the evaluation of the accuracy of information sought by diplomatic means. To disclose this material would reveal details of intelligence techniques used to augment information received through diplomatic procedures. In this instance, revelation of these techniques would not only compromise currently active intelligence sources and methods, but could additionally result in a perceived offense by the foreign nation involved with consequent damage to United States relations with that country.

4. Pages 7640-7651 of the transcript record an executive session of the President's Commission on the Assassination of President Kennedy which was held on 23 June 1964. I have determined that the information contained in these pages is classified, and that it is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

5. This portion of the transcript deals with a discussion among the Chairman of the Commission, Chief Justice Warren; the General Counsel of the Commission, Mr. Rankin; and Messrs. Ford and Dulles, Commission members. The matters discussed concern intelligence methods used by the CIA to determine the accuracy of information held by the Commission.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

FILED: 4-19-76

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

ANSWERS TO INTERROGATORIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Answer: Eleven pages.

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

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

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

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

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

Answer: No.

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

Answer: No.

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

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

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

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

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

Answer: See answer to No. 35, above.

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

Answer: See answer to No. 36, above.

39. List all persons who have had access to the May 19, 1954, Warren Commission executive session transcript and the date(s) on which each of them has had access.

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

Page 4 of 8 pages.

Deponent's initials Q/A

of the Warren Commission records, the Director of the Civil Archives Division, the Deputy Archivist of the United States, the Archivist of the United States, and the Chief Counsel, National Archives and Records Service, Office of General Counsel, GSA. I am unable to specify the dates on which each of these persons had access to this transcript.

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

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

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

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

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

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

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

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

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

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

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

Answer: N/A

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

Answer: Not to our knowledge.

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

Answer: Not to our knowledge.

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

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

58. In determining that the January 21st and June 23rd transcripts are to be classified "Confidential" under Executive Order 11652, did Mr. Charles Briggs take

into account the guidelines drawn up by the Department of Justice pursuant to the White House Directive of April 19, 1965? Was Mr. Briggs instructed to take the Justice Department guidelines into account in making his determinations?

Answer: I am not in a position to speculate on the bases for Mr. Briggs' determinations. While the National Archives provided the CIA with a copy of the Justice Department's guidelines at the time of a previous review of Warren Commission materials, we did not do so during the most recent review. It is our opinion that the Justice Department guidelines have largely been superseded in the review of Commission materials by the Freedom of Information Act and E. O. 11652.

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

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

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

Answer: No.

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

Answer: N/A

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

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

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

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


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

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

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

Answer: See answer to No. 62, above.

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



JAMES B. RHOADS
Archivist of the United States

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



(Notary Public)

My commission expires:

My Commission Expires August 14, 1979

FILED: 4-19-76

November 23, 1964

Dear Mr. Chairman:

The procedures set forth in Section 5(i) of Executive Order No. 10531 with respect to the declassification of material shall have no application to the Report of the President's Commission on the Assassination of President Kennedy and the exhibit volumes thereto.

This letter shall be published in the Federal Register.

Sincerely,

Lyndon B. Johnson

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

LBJ:vm

Handwritten notes:
11/27/64
C. Johnson
11/27/64

Lyndon Baines Johnson

FILED: 4-19-76



Office of the Attorney General
Washington, D. C.

HO 23 124

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

Dear Mr. Bundy:

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

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

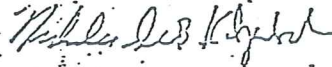
All material in the exhibit volumes has been declassified with the approval of the originating agencies. However, through inadvertence, the declassified material was printed in the exhibit volumes without being marked in the manner prescribed by Section 5(i). This is a purely technical defect which in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

C. Lyndon Baines Johnson

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

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

Sincerely,



Acting Attorney General

Lyndon Baines Johnson

FILED: 4-19-76

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

Dear Mr. Chairman:

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

This letter shall be published in the Federal Register.

Sincerely,

[Lyndon B. Johnson]

C. Lyndon Baines Johnson

FILED: 4-19-76

NOV 7 1954

*revised
hand
delivered
11/16/6*

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

Dear Mr. Katzenbach:

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

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

Your cooperation with the Commission is greatly appreciated.

Sincerely yours,

J. Lee Rankin
General Counsel

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

THE NATIONAL ARCHIVES
FEDERAL REGISTER
 OF THE UNITED STATES
 1934
 VOLUME 29 NUMBER 232

Washington, Saturday, November 28, 1964

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FILED: 4-19-76

Presidential Documents

Title 3—THE PRESIDENT

Letter of November 23, 1964

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

[Nonapplicability of Declassification Procedures]

THE WHITE HOUSE,
Washington, November 23, 1964.

DEAR MR. CHAIRMAN:

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

This letter shall be published in the FEDERAL REGISTER.

Sincerely,

LYNDON B. JOHNSON

HONORABLE EARL WARREN,

Chairman,

President's Commission on the Assassination of President

Kennedy,

200 Maryland Avenue NE.,

Washington, D.C.

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

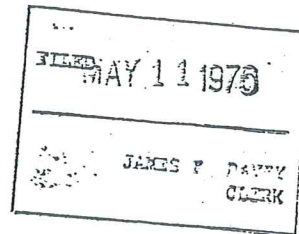
Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant

Civil Action No. 75-1448



OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendant's answers to interrogatories show that its claim that the June 23 transcript is classified for national security reasons is also baseless. When plaintiff asked whether Yuri Nosenko, a KGB official who defected from the Soviet Union after President Kennedy's assassination, was the subject of that transcript, the defendant initially refused to answer this interrogatory on the grounds that:

it seeks the disclosure of information which the defendant maintains is security classified and which the defendant seeks to protect on this and other bases in the instant action. (See answer to interrogatory No. 15)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have required that each person to whom these transcripts have been transferred provide the National Archives with an appropriate receipt documenting the transfer of classified material. However, once the transfer has been transacted, the Defendant is not in the position to police access to these materials in other Federal agencies.
(Emphasis added)

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

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

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

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

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

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

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

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

The guidelines also stated:

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

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

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

Dr. Rhoads answered:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

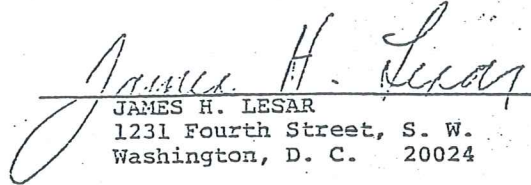
Moreover, the National Archives has waived any right to invoke exemption (b) (6) for Warren Commission transcripts because it has repeatedly made public records which do come within the ambit of that exemption, such as the 39 pages of pregnancy records compiled during Marina Oswald's stay at Parkland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

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

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

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

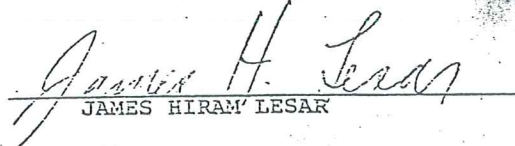
Marion Johnson, is needed before the issues in this case can be definitively resolved. Accordingly, defendant's motion for summary judgment must be denied.


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

Attorney for Plaintiff

CERTIFICATE OF SERVICE

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


JAMES HIRAM LESAR

FILED: 5-11-76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF HAROLD WEISBERG

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. In support of its motion for summary judgment the defendant has submitted the April 8, 1974, affidavit of Mr. J. Lee Rankin. [See Exhibit A to Government Exhibit 1] This affidavit was originally filed in opposition to my previous suit for the January 27 transcript. In his affidavit Mr. Rankin states: "Shortly after I had assumed the duties of General Counsel of the Commission, I was instructed by the Commission that among my duties was the responsibility to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be security classified under existing Executive Order. The Commission's authority to classify its records and its decision to delegate that responsibility to me existed pursuant to Executive Order 10501."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As agreed to by the Commission, I ordered that the transcripts of certain of the Commission executive sessions, including that of January 27, 1964, be classified 'Top Secret,' and I communicated the fact of said classification to Ward & Paul, transcribers of the executive sessions (see attached copies of correspondence between Ward & Paul and me)."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Handwritten signature]

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

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

My commission expires July 31, 1979.

[Handwritten signature]
NOTARY PUBLIC IN AND FOR
~~FREDERICK COUNTY, MARYLAND~~
Washington, D.C.

FILED: 5-11-76

EXHIBIT J

Civil Action 75-1448

PRESIDENTIAL COMMISSION
TO INVESTIGATE THE ASSASSINATION
OF PRESIDENT KENNEDY

5 December 1983
National Archives
Washington, D. C.

122

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

PRESENT:

Chief Justice Earl Warren - Chairman

Senator Richard B. Russell

Senator John Sherman Cooper

Representative Hale Boggs

Representative Gerald R. Ford

Mr. Allen W. Dulles

Mr. John J. McCloy

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

PLACE:

Conference Room
National Archives
Washington, D. C.

TIME:

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

TOP SECRET

FD No. PC-2

Ordered by _____
 ADDRESS: _____
President's Commission on the
Assassination of President Kennedy
200 Maryland Avenue, N. E.
Washington, D. C. 20002

BILL TO: _____

TITLE _____

ATTENTION: J. Lee Rankin

DATE	Vol	TYPE	Location	Total	Delivery	Date	Rec'd	Date	Packed	Shipped	TOTAL	Pages	Rate	Receipt	Invoice
1964	No.			Am	Requested	Rec'd	by	Flipped	by	via	COPIES	from	to	(\$ per)	Number
1/21	4	TOP SECRET	DAILY					1/22	B.H.	Wash	4	#1 of 9 thru #4 of 9		3001	67883
1/22	5	TOP SECRET	DAILY								9	#1 of 9 thru #4 of 9			
1/23	6	TOP SECRET	DAILY					1/25	S.H.	Wash	9	#1 of 9 thru #4 of 9		3013	
1/24	7	TOP SECRET	DAILY					1/23	B.H.		10	#1 of 10 thru #10 of 10 P.M. Session		3024	
1/25	8	TOP SECRET	DAILY					2/11	WAG	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3030	
1/26	9	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3036	
1/27	10	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3037	
1/28	11	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3040	
1/29	12	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3041	
1/30	13	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3042	
1/31	14	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3043	
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2/2	16	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3045	
2/3	17	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3046	
2/4	18	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3047	
2/5	19	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3048	
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2/7	21	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3050	
2/8	22	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3051	
2/9	23	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3052	
2/10	24	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3053	
2/11	25	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3054	
2/12	26	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3055	
2/13	27	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3056	
2/14	28	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3057	
2/15	29	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3058	
2/16	30	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3059	
2/17	31	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3060	
2/18	32	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3061	
2/19	33	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3062	
2/20	34	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3063	
2/21	35	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3064	
2/22	36	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3065	
2/23	37	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3066	
2/24	38	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3067	
2/25	39	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3068	
2/26	40	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3069	
2/27	41	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3070	
2/28	42	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3071	
2/29	43	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3072	
2/30	44	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3073	
3/1	45	TOP SECRET	DAILY					2/11	B.H.	Wash	10	#1 of 10 thru #10 of 10 P.M. Session		3074	

FILED: 5-11076

Civil Action No. 75-1448

EXHIBIT K

FILED: 5-11-76

EXHIBIT L

Civil Action No. 75-1448

Receipt No. 3001

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SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
820-4236

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

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

Date January 22, 1964

Received from WARD & PAUL nine copies of transcript of proceedings

before the President's Commission on the Assassination of President Kennedy

in re TOP SECRET

held at Washington, D. C. on January 21, 1964

#1 of 9 thru #9 of 9

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

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

Washington, D. C. 20002

ATTENTION: J. Lee Rankin

By J. Lee Rankin

Released by Jered L. Ward, Jr.

Date 1-22-64 JLS

Receipt No. 3013

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WASHINGTON, D. C., 20001
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WAYNE BIRDSELL

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date January 28, 1964

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

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

#1 of 9 thru #9 of 9

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

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

By Jesse L. Ward, Jr.

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

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TS-277

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WASHINGTON, D. C., 20001
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JESSE L. WARD, JR.
ALMA PAUL WICK
WAYNE BIRDSELL

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date May 20, 1964

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

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

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

By B. G. H. [Signature]

Released by Wayne Birdsell
Date 5/20/64

FILED: 5-11-76

EXHIBIT M

Civil Action No. 75-1448

Registry 8232

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS 2, LOUISIANA 70130

April 20, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AIR MAIL

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

Dear Mr. Ward:

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

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

Sincerely,



LOUIS C. LaCOUR
United States Attorney

LCL/ab
Encl.

FILED: 5-11-76

EXHIBIT N

Civil Action No. 75-1448

Receipt No. 3237

WARD & PAUL
SHORTHAND REPORTERS
917 G STREET, N. W.
WASHINGTON, D. C., 20001
828-4286

~~TOP SECRET~~
T. S. 249(79)

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

OFFICIAL REPORTERS FOR
CONGRESSIONAL COMMITTEES

Date April 22, 1964

Received from WARD & PAUL 8 copies of transcript of proceedings
before President's Commission on the Assassination of President Kennedy
in re TOP SECRET -- Deposition of: Julian Evans
held at Washington, D.C. New Orleans on April 7, 1964
copies # 1 of 8 thru # 3 of 8

Herewith original copy from which copies were made

Pages 1 thru 30

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

By B. G. [Signature]

Released by [Signature]

Date 4/24/64 Time 11:00

EXHIBIT O

Preface

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

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FILED: 5-11-76

EXHIBIT Q

Civil Action No. 75-1448

PRESIDENTIAL COMMISSION
TO INVESTIGATE THE ASSASSINATION
OF PRESIDENT KENNEDY

16 December 1963
National Archives
Washington, D.C.

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

PRESENT:

Chief Justice Earl Warren - Chairman

Senator Richard B. Russell

Senator John Sherman Cooper

Representative Hale Boggs

Representative Gerald R. Ford

Mr. Allen W. Dulles

Mr. John J. McCloy

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

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

PLACE:

Conference Room
National Archives
Washington, D. C.

TIME:

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

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

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

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

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

(Chorus of "So help me God.")

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. RUSSELL: I second it.

CHAIRMAN: Is there any further discussion?

(No response.)

CHAIRMAN: All in favor say "Aye"?

(Chorus of "Ayes.")

CHAIRMAN: Contrary minded?

(No response.)

CHAIRMAN: The "Ayes" have it.

REP. BOGGS: What's the address?

CHAIRMAN: 200 Maryland Avenue.

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

CHAIRMAN: Right across the street from it.

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

CHAIRMAN: 961-3365.

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

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

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

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

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

SEN. COOPER: What worries me is the security.

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

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

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

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

MR. RANKIN: Someone recommended the Alderson firm.

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

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

CHAIRMAN: Who does your work over there?

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

MR. DULLES: That's familiar to me.

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

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

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

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

SEN. COOPER: I so move.

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

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

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

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

SEN. COOPER: Files, for example.

CHAIRMAN: Yes?

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

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

SEN. COOPER: Yes.

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

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

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

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

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

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

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

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

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

CHAIRMAN: Very well.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN: It might.

MR. DULLES: That's true.

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

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

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

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

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

MR. RANKIN: (Nods head.)

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

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

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

MR. DULLES: That we ought to get.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN: You're exactly right.

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

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

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

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

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

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

SEN. RUSSELL: That's true.

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

So we can read them.

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

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

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

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

CHAIRMAN: No.

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

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

CHAIRMAN: It's totally inconclusive.

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

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

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

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

FILED: 5-11-76

EXHIBIT R

Civil Action No. 75-1448

IMMEDIATE RELEASE

NOVEMBER 30, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER
NO. 11129

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

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

The Chief Justice of the United States, Chairman;

Senator Richard B. Russell;

Senator John Sherman Cooper;

Congressman Hale Boggs;

Congressman Gerald R. Ford;

The Honorable Allen W. Dulles;

The Honorable John J. McCloy.

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

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

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

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

LYNDON B. JOHNSON

THE WHITE HOUSE,

November 29, 1963.

EXHIBIT T

Civil Action No. 75-1448

2752

Case No. 40

folo p. 34.

TOP SECRET
PRESIDENT'S COMMISSION

ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Washington, D.C.

Monday, March 16, 1964

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

PRESENT:

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

J. Lee Rankin, General Counsel

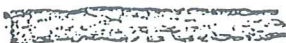
Norman Redlich, Special Assistant to General Counsel

CLASSIFICATION CANCELED

By authority of
Archivist of the United States

By *J. H. G.*

Date *2/13/82* Case #



PROCEEDINGS

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

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

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

"I. Sworn Depositions:

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

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

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

CLASSIFICATION CONTROLLED

By authority of
Archivist of United States

By *NAJ*

Date *2/15/68*

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

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

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

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

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

CLASSIFICATION CANCELLED
By authority of
Archivist, U.S. House of Representatives

BWV
2/13/62

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

"II. Sworn Affidavits.

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

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

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

The Chairman. All in favor say aye.

(There was a chorus of "ayes".)

The Chairman. Opposed?

(No response.)

The Chairman. The motion is carried unanimously.

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

CLASSIFIED BY: [illegible]
DATE: [illegible]
BY: [illegible]
DATE: [illegible]

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

Did you get that from other commissions?

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

The Chairman. Beg pardon?

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

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

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

The Chairman. Yes.

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

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

Mr. Dulles. Because of this language?

The Chairman. No.

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

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

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

By call... Since
Date 2/1/68
By A.A.G.

~~CONFIDENTIAL~~

FILED: 5-11-76

Civil Action No. 75-1448

EXHIBIT V

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Sept 6	1	Taken at Dallas, Texas	124		
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153



January 4, 1954

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Mr. President:

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

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

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

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

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

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

Respectfully submitted,

Robert H. Johnson
Robert H. L. Johnson
Mayor

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

RHLJ/bw

APR 13 1965

MEMORANDUM FOR: Honorable McGeorge Bundy
Special Assistant to the President

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attorney General

FILED: 5-11-76

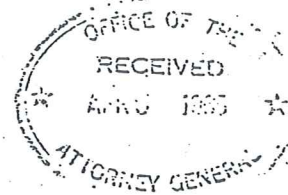
EXHIBIT Y

Civil Action No. 75-1448

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

CHAMBERS OF
THE CHIEF JUSTICE

April 5, 1965



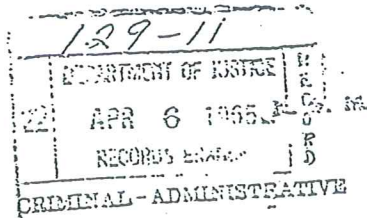
Honorable Nicholas deB. Katzenbach,
Attorney General of the United States,
Justice Department,
Washington, D. C.

Dear Mr. Attorney General:

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

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

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



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

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

Sincerely,

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

MEMORANDUM EXHIBIT I

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

April 19, 1965

MEMORANDUM FOR THE ATTORNEY GENERAL

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

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

Disapprove

Answer

McGeorge Bundy
McGeorge Bundy

cc: National Archives (Mr. Bahmer)

3343

OFFICE OF THE
RECEIVED
APR 21 1965
ATTORNEY GENERAL

5039

20

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

What about De Mohrenschildt?

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

(Discussion off the record.)

The Chairman. Back on the record.

h x g
2/14/8

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

The Chairman. Did I hear a motion?

Mr. McCloy. I move it.

Mr. Dulles. Seconded.

The Chairman. All in favor say aye.

(Chorus of aye)

The Chairman. Off the record.

(Discussion off the record.)

The Chairman. Back on the record.

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

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

[redacted]

EXHIBIT BB

Morning Star

MORNING EDITION

DAY, DECEMBER 10, 1963—60 PAGES

Hor
Daily and St

Assassination Probers Name Rankin Counsel

By MIRIAM OTTENBERG
Star Staff Writer

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

Chief Justice Earl Warren in announcing the appointment,

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

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

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

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

Five Volumes

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

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



J. LEE RANKIN

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

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

Wide Experience

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

RANKIN.

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

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

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

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

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

FILED: 5-11-76

EXHIBIT CC

Civil Action No. 75-1448

JLR:HPW:al
3/9/64

MAR 11 1964

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

Dear Senator:

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

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

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

cc: Mr. Willens - Chrono.
Mr. Rankin

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

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

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

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

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

Sincerely,

J. Lee Rankin
General Counsel

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

FILED: 5-11-76
Civil Action No. 2052-73

FILED
MAY - 5 1976

MEMORANDUM AND ORDER

JAMES F. DAVEY, CLERK

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

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

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

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

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

It is therefore

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

Samuel A. Rios
UNITED STATES DISTRICT JUDGE

May 3, 1974.

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

Vol. 4
Copy 6 of 9

~~CONFIDENTIAL~~

Authority: CIA Let., 1 May 1975
By: *Maxim M. G. [unclear]*, Date: 3/25/76
RECENT has automatic declassification
per E.O. 11652, Sec. 5(e)(2)
Name: Chas. A. Briggs, CIA Date: 1 May 1975
Agency: CIA
Reason: E.O. 11652, Sec. 5(B)(1)-(3)
Declassify on: *Date [unclear]*
to [unclear]

PRESIDENT'S COMMISSION

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

PAGES 1 - 126

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

~~CONFIDENTIAL~~
Authority: CIA Let., 1 May 1975
By: *Maxim M. G. [unclear]*, Date: 3/25/76
RECENT has automatic declassification
per E.O. 11652, Sec. 5(e)(2)
Name: Chas. A. Briggs, CIA Date: 1 May 1975
Agency: CIA
Reason: E.O. 11652, Sec. 5(B)(1)-(3)
Declassify on: *Date [unclear]*
to [unclear]

169

WARD & PAUL
OFFICIAL REPORTERS
917 G STREET, N.W.
WASHINGTON, D. C. 20001
AREA CODE 202-628-4265

EXHIBIT FF

Vol. 55
Copy 9 of 10

Regraded
CONFIDENTIAL
per CIA Ltr. 1173y 197.
by *M. J. [unclear]* 11/15
9/25/77

PRESIDENT'S COMMISSION

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

*Exempt from automatic
declassification
per E.O. 11652, Sec.
5(E)(2), and E.O.
11652, Sec. 5(B)(2)
and (3) by Charles
A. Briggs, Chief
of the Service Staff,
7/2/77, B. L. [unclear]
[unclear]
[unclear]
M. J.*

Report of Proceedings

Held at

Washington, D.C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

170

Regraded
per CIA Ltr. 1 May 1975
by *M. J. [unclear]* 11/15
9/25/77

WARD & PAUL
OFFICIAL REPORTERS
917 G STREET, N.W.
WASHINGTON, D. C. 20031

FILED: 5-11-76

EXHIBIT GG

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, D.C. 20408

June 21, 1971



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

Dear Mr. Weisberg:

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

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

Transcripts

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

Parts of Transcripts

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

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

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

Sincerely,

HERBERT E. ANGEL
Acting Archivist
of the United States

171

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

EXHIBIT HH

JUL 28 1972

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

Dear Mr. Helms:

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

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

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

2

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

Sincerely,

James E. O'Neill

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

Enclosures

cc: Official file - NMF
Reading file - NMF
Day file - N

MJohnson:vk x23171 7-28-72

NMF *[Signature]* NN *[Signature]*

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

1 October 1974

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

Dear Mr. Johnson:

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

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

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

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

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

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

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

11/23/75
The CIA

on the classification
of the transcript
E.O. 11652
Sec. 5.5(a)(2)

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

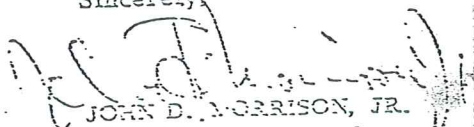
(d) Top Secret Document entitled "Report of Proceedings Held at Washington, D.C., June 23, 1964" (List 2A, Item 18).

mmg

We wish to continue the classification of this document.

3/19/75
Mr. De
Egler
Finn
Hess
Horn
Kane
Lynn
Muller
Patterson
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

Sincerely,



JOHN D. MORRISON, JR.
Acting General Counsel

Enclosure (4) Under Separate Cover

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 4
U.S. Courthouse
Washington, D.C.
Tuesday, May 25, 1976

The above-entitled matter came on for Hearing on
Pending Motions in open court at 10:02 o'clock a.m., before
THE HONORABLE AUBREY E. ROBINSON, JR., United States District
Judge.

APPEARANCES:

JAMES HIRAM LESAR, ESQ.,
appearing on behalf of plaintiff.

MICHAEL J. RYAN, ESQ.,
appearing on behalf of defendant.

EUGENE T. FEDORATION
OFFICIAL COURT REPORTER
6822 UNITED STATES COURT HOUSE
WASHINGTON, D. C. 20001

P R O C E E D I N G S

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THE DEPUTY CLERK: Weisberg versus General Services Administration, Civil Action 75-1448.

THE COURT: All right, you may proceed, counselor.

MR. RYAN: Good morning, Your Honor. My name is Michael J. Ryan, Assistant United States Attorney. I represent the defendant General Services Administration in this Freedom of Information Act suit.

Your Honor, last spring plaintiff made a Freedom of Information Act request to the General Services Administration by which he requested several executive session transcripts of the Warren Commission. In their response to plaintiff's request, the agency made available those transcripts with the exception of three which are the matters in issue in this complaint.

Those three are pages 63 to 73 of the January 21, 1964 transcript; the May 19, 1964 transcript; and the June 23, 1964 transcript.

Your Honor, defendants have filed a motion for summary judgment wherein they claim that various of these transcripts are exempt from disclosure under the Freedom of Information Act pursuant to Exemption 1, involving exemption of materials classified for national security or foreign policy reasons; Exemption 3, exempting materials which are otherwise exempt by statute; Exemption 5, exempting materials which

1 comprise intra-agency memoranda or interagency memoranda; and
2 Exemption 6 which involves matters, the disclosure of which
3 would involve a clearly unwarranted invasion of privacy.

4 If Your Honor wishes, I will proceed through each of
5 these exemptions and give the reasons we have stated in our
6 motion. If not, I would be happy to answer any questions with
7 regard to any of these particular transcripts the plaintiff
8 seeks.

9 I might add, Your Honor, that plaintiff has served
10 two sets of interrogatories which we have answered. He has
11 served two sets of document requests. We have responded to
12 one of those document requests. The other is still pending and
13 is due the first week in June. We expect to respond to that
14 on time.

15 Plaintiff has also made a motion to tape record
16 depositions. In that motion he sets forth his desire to depose
17 approximately nine individuals, I believe, of various agencies,
18 claiming that only in this way can he establish his claim that
19 the documents are in particular not properly classified
20 pursuant to executive order but certain other defenses that
21 he wishes to raise.

22 In response to that motion, Your Honor, we contend
23 that the affidavits which we have submitted should be suffi-
24 cient for this Freedom of Information Act proceeding.

25 Further, that the other discovery devices which are

1 available to plaintiff, namely, interrogatories and document
2 requests, should be sufficient for his purpose. We do not
3 believe that this should be made into an open-ended discovery
4 proceeding, which it has been nearly to this point.

5 THE COURT: Let me have the plaintiff state his
6 position.

7 MR. RYAN: Fine, Your Honor.

8 MR. LESAR: Jim Lesar for Mr. Weisberg.

9 Your Honor, I will address first the defendant's
10 motion for summary judgment which we contend is inappropriate
11 at the present time for the reason that discovery has not
12 been completed and that there are genuine issues of material
13 fact in dispute.

14 In addition, the government has not met its burden
15 with respect to any of the claimed exemptions. Some of the
16 discovery already obtained, I think, indicates that the claimed
17 exemptions are in fact rather ludicrous. The basic contention
18 is that these transcripts are classified "Top Secret."

19 Now, the fact of the matter is that all of these
20 transcripts, which originated in 1964 when the Warren Commis-
21 sion was meeting and holding its executive session, transcripts
22 were stamped "Top Secret" by Ward and Paul, the court reporter
23 for the Warren Commission. This was done totally without
24 regard to the content of the documents and as a matter of
25 routine.

1 Most of the transcripts have subsequently been made
2 public. Those, and all of those that have been made public,
3 show that there was no basis whatsoever for their classifica-
4 tion for reasons of national security.

5 The defendants are now trying after the fact, long
6 after the fact, to classify these documents under Executive
7 Order 11652. They have submitted an affidavit by Mr. Charles
8 Briggs of the Central Intelligence Agency. That affidavit
9 fails to recite that he has any experience in this field or
10 that he has authority to classify documents, and under the
11 terms of Executive Order 11652, that authority is required to
12 be stated in writing.

13 The language that he uses does not comply with the
14 terms of Executive Order 11652. It has very novel reference
15 to such things as -- he states that the disclosure of the ten
16 withheld pages of the January 21st transcript could, could, I
17 emphasize, result in a perceived offense to the foreign nation
18 involved. He has not specified what foreign nation is involved.
19 He refers to sensitive diplomatic techniques, which is a phrase
20 that we are unfamiliar with, which has no certain meaning, and
21 this is --

22 I will digress here for a second to say that we have
23 asked specifically to be able to take Mr. Briggs' deposition
24 by tape recording. I think it is very essential because since
25 the CIA is not a party to this action, the interrogatories that

1 we have addressed so far have only gone to the defendant, and
2 we need to get Mr. Briggs under oath where we can cross-
3 examine him about some of the statements that are contained in
4 his affidavit.

5 With respect to the June 23rd transcript, he states,
6 for example, that this would reveal a confidential source or
7 method. Mr. Weisberg denies that this is even possible.

8 And the answers to the interrogatories that the
9 defendant National Archives has given us show that they
10 originally, when we asked, "Is Mr. Nosenko," who is a Soviet
11 defector, "the source or subject of that transcript?" they
12 refused to answer that interrogatory and invoked Exemption 1
13 for doing it, and stated they could not answer that inter-
14 rogatory because it would reveal the information they were
15 trying to keep secret.

16 We pointed out that they had in fact in correspon-
17 dence with The New Republic Magazine identified Mr. Nosenko as
18 the subject of that transcript, and then they came back and
19 answered the interrogatory and admitted that he was in fact
20 the subject of that transcript.

21 Now, if that is what Mr. Briggs is trying to protect,
22 there is no point in it at all because it is already known.

23 Excuse me. I need a drink of water.

24 I think that the Court can probably get some indica-
25 tion of the suspect nature of the claims that these transcripts

1 are properly classified by the fact that the answers to
2 interrogatories establish that, and the materials produced in
3 response to our request for production of documents demon-
4 strate that with respect to the January 21st transcript, seven
5 of the ten copies which are known to exist are missing. The
6 Archives do not have them, and the Archives do not seem the
7 least bit concerned about it.

8 With respect to the June 23rd transcript, three of
9 the copies that are known to exist are missing. And again
10 there is no indication that they are in the least bit worried
11 about it.

12 But if this material really contained information
13 classified in the interest of national defense, I submit that,
14 one, they would never be lost in the first place and, secondly,
15 there would be a great deal of concern about their whereabouts
16 at the present time.

17 The answers to interrogatories further indicate that
18 the entire question of the classification of these documents
19 is being done not by virtue of the contents of the documents
20 but solely in an effort to defeat Mr. Weisberg's request for
21 them.

22 Their classification under Executive Order 11652
23 does not occur in 1972 when they were first sent to the CIA
24 with an inquiry as to whether or not they should be classified
25 under 11652. They are classified a long time after Mr. Weisberg

1 request for them. And then not all copies are classified but
2 only the file copies.

3 And when we asked in interrogatories, well, when were
4 the extra copies that the Archives has of these documents
5 classified under 11652, they come back and they state that the
6 non-file copies were stamped "Confidential" immediately upon
7 receipt of these interrogatories, all of which indicates that
8 the proper procedures are not being followed and that these
9 documents are not classified at all under the proper criterion
10 of Executive Order 11652.

11 The government has also invoked certain other
12 exemptions. They have invoked Exemption (b)(3) which exempts
13 from disclosure materials which are specifically exempted by
14 statute.

15 The government's motion for summary judgment refers
16 to a provision in 50 U.S. Code 403(d). That provision, first
17 of all, does not apply to the type of information sought here.
18 But more importantly, the motion for summary judgment cites in
19 support of this claim, paragraphs two and four of the Briggs
20 affidavit. Yet paragraphs two and four of the Briggs affidavit
21 do not refer to that statute at all. They refer instead to an
22 entirely different provision of Executive Order 11652.

23 So, then they have also invoked Exemptions 5 and 6.
24 I have outlined in the opposition some of the reasons why we
25 think that those are not justifiably invoked here.

1 In addition, we have raised very, very strongly the
2 question of waiver, because the transcripts already made public
3 contain exactly the same types of material which are contained
4 in this transcript. Assuming just for the purpose of argument
5 that they have a valid Exemption 5 or Exemption 6 claim, they
6 cannot selectively release Warren Commission transcripts simply
7 because it is less embarrassing to them to release some of
8 them and more embarrassing to release others. There has been
9 no consistent policy followed on this.

10 They have claimed, for example, that the entire
11 transcript of May 19, 1964, is not subject to disclosure
12 because it is protected by Exemption 6, which that exemption
13 is intended to protect personnel files. We submit that the
14 transcript of that session is not a personnel file within the
15 meaning of the that exemption, and that even if it were, the
16 National Archives has released scads of documents which contain
17 exactly that type of information. They have released documents
18 pertaining to security clearances and biographical sketches of
19 members of the Warren Commission.

20 The May 19th transcript, by way of an aside, we
21 think, deals with the opposition which was raised by certain
22 members of the political right in opposition to one particular
23 staff member of the Warren Commission, Mr. Norman Redlich, who
24 the political right in this country felt was too liberal to
25 be on the Warren Commission, and matters pertaining to this

1 whole controversy over Mr. Redlich's role in the Commission
2 are already a matter of public record. It is reflected in the
3 Congressional record and in newspaper articles and so forth.

4 So, our position is that the government has failed to
5 meet its burden and, in fact, the facts now on the record
6 indicate very strongly that it cannot meet that burden.

7 What we seek is the opportunity to cross-examine the
8 principal person who is responsible for claiming that these
9 documents -- that the January 21st and June 23rd transcripts --
10 are properly classified. We believe that we can establish as
11 a result of that deposition that the proper procedures were not
12 followed, the proper considerations were not given, and that
13 the transcript is in fact neither properly classified for
14 substantive reasons or for procedural reasons.

15 MR. RYAN: Your Honor, there are three transcripts
16 involved in this lawsuit. Two of the transcripts are presently
17 classified "Confidential," not "Top Secret" as counsel
18 indicated. Those are the January 21, '64 transcripts, pages
19 63 to 73, as well as the June 23, 1964 transcript.

20 Those are both classified "Confidential." They were
21 initially classified "Top Secret," and through periodic review
22 -- the last review being at the time the Freedom of Informa-
23 tion Act was amended -- the transcripts have been downgraded
24 to lower security classifications. Those two remain classified
25 "Confidential."

1 The other transcripts which plaintiff was provided
2 had been declassified, and, of course, they were made part of
3 the public demand at that point.

4 The transcript of May 19, 1964, is not classified
5 but it does deal with the continued employment of two members
6 of the Warren Commission staff. Due to material, investiga-
7 tory materials disclosing certain aspects of their past life,
8 that particular transcript, the May 19th transcript, continues
9 to be withheld on the grounds of unwarranted invasion of per-
10 sonal privacy of those individuals.

11 THE COURT: I think the difficulty with respect to
12 both of these transcripts, that is, that which is withheld
13 because of classification and that which is withheld because
14 of the alleged personal nature of the information that is
15 contained in them in the nature of personnel files -- that's
16 what you are relying upon in Exemption 7. But I don't think
17 your affidavits on record sustain that.

18 For example, with respect to your claim as to the
19 May 19th transcript and its involvement in personal matters
20 that would reflect adversely on somebody, it's only in the most
21 general terms that you have described what allegedly exists
22 in that transcript, and I don't think it's sufficient to sus-
23 tain that exemption on the face of it.

24 I think the affidavit without more detail is not one
25 upon which a third party, such as the Court, can make a

1 judgment as to the validity of that application of that
2 exemption.

3 MR. RYAN: Your Honor, that's a short transcript. We
4 would be happy to tender for Your Honor's in camera inspection
5 with respect to the application of the sixth exemption to that
6 transcript. I believe we do feel that it does contain those
7 matters, but we would be glad for the Court to determine that.

8 THE COURT: It may well contain them, but the way
9 you have set it forth in this record, the record would not
10 sustain a judgment that it contains what you say it does, put
11 it that way. It's too conclusory.

12 And that's the difficulty in these cases. Nobody
13 is impugning the good faith of the government. But when you
14 bring the matter to court, the court has to have a record upon
15 which that --

16 MR. RYAN: Yes.

17 THE COURT: -- is obvious and evident, because
18 otherwise we are right back where we were before they ever had
19 the Freedom of Information Act.

20 MR. RYAN: Well, Your Honor, as I indicated, the
21 May 19th transcript regarding the two individuals does not
22 deal with the investigation that the Warren Commission was
23 about. Rather it does deal with these two individuals, without
24 naming them. Of course, naming would be to compromise the
25 information which the agency seeks to withhold.

1 And it does say that their continued employment was
2 a matter of discussion and questioned by the other members of
3 the Commission for the reasons set forth, namely, that their
4 past history disclosed questionable material. It doesn't deal
5 with that questionable material because that might readily
6 identify the two individuals.

7 As I said, Your Honor, we would be glad to tender
8 that for the Court's in camera inspection. I believe that
9 would be an expeditious way to resolve that particular docu-
10 ment and the exemptions applicable to that document.

11 That document is not classified. We have never con-
12 tended that it was classified in this proceeding. It was
13 originally classified, but it has been downgraded to a no
14 security classification. It is only being withheld under the
15 5th exemption which we contend applies to all of those for
16 intra-agency memoranda and the 6th exemption, the clearly un-
17 warranted invasion of personal privacy, which would apply to
18 personnel files, medical files or similar files, I believe the
19 exemption reads.

20 So, we would be happy to tender that document, Your
21 Honor. We feel that that would be an expeditious way of
22 resolving the claim of unwarranted invasion of personal privacy
23 rather than going around and around the question with further
24 affidavits.

25 THE COURT: No, I don't think we should go around

1 around on it, and I don't intend to conduct this litigation in
2 that fashion.

3 What we are going to do is to get a record that I
4 think is sufficient upon which the Court can base its judgment.
5 And if you disagree, then you can take it to the appellate
6 court.

7 But I don't think that this record as it is now
8 constructed will sustain my hearing the motion for summary
9 judgment. I don't intend to decide the motion for summary
10 judgment because I don't think the plaintiff has had full
11 opportunity to probe, for example, this classification question.
12 It's a weird set of circumstances that have been disclosed in
13 the record to date.

14 Who had the authority to classify?

15 MR. RYAN: Your Honor, we --

16 THE COURT: And I don't think that your affidavits
17 in that regard nor your statutory authority is clear.

18 MR. RYAN: We contend that on the face of the record
19 -- and, Your Honor, we would submit that this could not be
20 improved upon in a deposition. The Warren Commission was not
21 given specific original authority to classify documents. But
22 the President, President Johnson, and the members of the
23 Commission acted as though it did have the authority to classify
24 documents. And there was a letter from the President of the
25 United States, Mr. Johnson at that time, to the Chairman of

1 the Commission informing him that the declassification schedule
2 set forth in Executive Order 11652 did not apply to documents
3 generated by the Warren Commission; that is, they did not have
4 to undergo declassification review at the regularly scheduled
5 intervals set forth in the executive order.

6 So, there was a clear assumption by the members of
7 the Warren Commission and the President of the United States
8 that there was that authority.

9 In subsequent administrations, the provisions of the
10 Executive Order requiring that original authority be specifi-
11 cally given to an agency -- that provision was complied with.

12 But our review has not disclosed any document -- we
13 admit that in our answers to interrogatories and in our affi-
14 davits -- that that specific authority was not given to the
15 Warren Commission.

16 So that it becomes a matter of judicial interpreta-
17 tion, we would submit, Your Honor, whether or not for purposes
18 of this proceeding those documents were properly classified
19 pursuant to the Executive Order. We feel that the matter is
20 ripe on that particular question for the Court's thumbs up or
21 thumbs down, whether the documents were properly classified.

22 As I said, they are classified "Confidential" at this
23 time. They have been downgraded. It may be that the docu-
24 ments will be declassified completely within the near future.
25 I don't know what the schedule is on another classification

1 review. I know that the last one was conducted at the time of
2 the amendment of the Freedom of Information Act a year ago.

3 I might also add, Your Honor, that plaintiff has
4 noted in his motion to tape record deposition that he wishes
5 to depose nine individuals. At least he has proposed a list
6 of nine individuals whom he may wish to depose.

7 We would submit that that is an extraordinarily high
8 number of persons to be involved in discovery of the limited
9 issues which are involved in this proceeding, namely: whether
10 two documents were properly classified and whether a third
11 document relates to matters which would involve personal
12 privacy of individuals.

13 On that ground, Your Honor, we have opposed his
14 motion and suggested that he can clearly obtain the information
15 he seeks through the answers to interrogatories. We have
16 answered two sets of interrogatories and two document requests.
17 We will have answered two document requests by the beginning
18 of June, plus the affidavits which we have supplied in an
19 attachment to our motion for summary judgment and in our
20 motion in opposition to compel interrogatories.

21 THE COURT: Well, what is the objection that you
22 have to answering Interrogatory No. 5? I fail to see why the
23 specific information in that interrogatory, which deals with
24 classification, was not provided. Who classified? When?
25 Under what authority?

1 It certainly is not irrelevant. And you contend
2 that it has something to do with the violation of the attorney/
3 client privilege. But I don't see that at all. I think he is
4 entitled to an answer to that interrogatory.

5 MR. RYAN: Your Honor, if that is the judgment of
6 the Court, I will convey that to the agency and request that
7 they answer the interrogatory --

8 THE COURT: Well, that's going to be an order.

9 MR. RYAN: -- as expeditiously as possible.

10 THE COURT: It won't be a request. It will be an
11 order.

12 MR. RYAN: Fine, Your Honor.

13 THE COURT: Because that's the only way that Congress
14 fashioned this in terms of litigation, for there to be court
15 decisions, and the agency has no alternative except to take it
16 to a higher court.

17 It's not a matter that once we get a Freedom of
18 Information Act case that we sit and try to persuade the
19 agency to do something. There's no persuasion here at all.
20 It's the interpretation of the statute.

21 And with respect to the question of tape recording
22 depositions, Mr. Lesar, I don't understand why you can't get
23 the information that I think you are entitled to with a properly
24 fashioned set of interrogatories.

25 MR. LESAR: Well --

1 THE COURT: I don't see why you have to drag eight,
2 nine, ten people in for depositions, whether taken by tape
3 recording -- I understand that tape recording is much less
4 expensive than court reporters, and we are not trying to impose
5 additional expense.

6 But focusing on this area of our concern, about the
7 propriety of the classification, getting sufficient details
8 of that classification to see whether or not there was any
9 statute or any properly extant executive order under which
10 the classification could have been done, I think we can get
11 that data, get that information by interrogatories.

12 Then if the government has to get it from eight or
13 nine people, they can make telephone calls and whatnot, and it
14 will be under oath.

15 MR. LESAR: Well, Your Honor, the government has
16 previously taken the position in other Freedom of Information
17 cases that I have handled for Mr. Weisberg that I cannot
18 address interrogatories to persons other than the defendant,
19 and the Central Intelligence Agency is not a defendant in this
20 case.

21 In addition to that --

22 THE COURT: Well, they can take that position if
23 they want. But if the defendant has the ability to get the
24 information that is responsive to the interrogatories and that
25 information is in someone who is not a named party, I take the

1 position that the government still has the obligation to
2 answer the interrogatory. Otherwise we would have to name
3 every employee of the government in every one of these cases,
4 not just Freedom of Information Act cases.

5 MR. LESAR: Well, Your Honor --

6 THE COURT: Now, don't interrupt me, Mr. Lesar. When
7 you are winning, you keep your mouth shut.

8 No, it makes no sense at all. We know that the
9 CIA is not a named defendant here. There's no need to name
10 them. You are not seeking that kind of publicity to name them
11 as a defendant.

12 I don't think we will have any problem. Mr. Ryan is
13 not going to have any difficulty, if the interrogatories are
14 properly framed, from whatever source within the government
15 that he needs to get the information to properly answer the
16 interrogatory, that answer will be put forward.

17 MR. LESAR: I suppose I have one difficulty in that
18 I have encountered problems before where the information is
19 not obtained on personal knowledge of the person who is swear-
20 ing to the interrogatory. Now, if they are going to have Mr.
21 Briggs swear out answers to interrogatories, I certainly would
22 agree to that.

23 If they are going to have Dr. Rhoads say that Mr.
24 Briggs told me thus and such, that puts us in a very difficult
25 position.

1 THE COURT: Let me suggest, Mr. Lesar, that Mr.
2 Ryan has enough work to do not to play games in this case.

3 MR. LESAR: I hope so.

4 THE COURT: All the government lawyers. And I don't
5 have any time to play games, nor do you representing Mr.
6 Weisberg.

7 We have a piece of litigation here that we should
8 get ready for final disposition. We anticipate that there
9 will only be questions of law.

10 Now, if there are more than that, then these eight,
11 nine, ten people are going to be sitting in the anteroom out
12 there waiting to testify in this court.

13 The government has its choice. This litigation will
14 not go away. It will not evaporate. And I don't think that
15 we are going to have any difficulty in this court.

16 Now, I don't know what your experience has been in
17 any other court, but I intend to get the record developed in
18 this case and dispose of it as expeditiously and as fairly as
19 we can to both your client and the government.

20 MR. LESAR: Fine. Then we will prepare --

21 THE COURT: So, you get your interrogatories ready,
22 and I don't think Mr. Ryan will have any difficulty in putting
23 that information in proper form so we can make our determina-
24 tions. And if we can't get it that way, as I indicated, then
25 we will issue subpoenas and --

1 MR. LESAR: All right.

2 THE COURT: -- bring them in.

3 MR. RYAN: Your Honor, I can assure that the individ-
4 ual or individuals who answered the interrogatories have
5 personal knowledge through the answering --

6 THE COURT: I have no question about that, Mr. Ryan.

7 And they are going to answer your interrogatory you
8 filed about the persons who reviewed the documents, et cetera,
9 et cetera.

10 MR. LESAR: All right.

11 THE COURT: Now, as I indicated, I don't think that
12 we are in a position on this record yet to determine the motion
13 for summary judgment. When the record is more fully developed
14 as it will be as a result of these interrogatories.

15 And I will expedite it, so you won't have to go
16 through interrogatories in connection with this personnel
17 claim. On the representation of Mr. Ryan, that's not a
18 lengthy transcript. I will look at it and make that deter-
19 mination as to their Exemption 6 claim on that May 16th item.

20 MR. LESAR: Your Honor, will we be afforded an
21 opportunity to rebut that claim? It places us in a position
22 to try and rebut an Exemption 6 claim submitted in camera.

23 THE COURT: Well, you take the basic position that
24 there's no way it could be a personnel file.

25 MR. LESAR: Yes, that's correct.

1 THE COURT: I understand that.

2 MR. LESAR: Right. But we take a further position
3 that they have waived this type of material with respect to
4 other transcripts, and that some of the materials, for example,
5 in that transcript may already be matters of public fact,
6 public knowledge, and the Court will not necessarily know that
7 without our opportunity to address that question.

8 THE COURT: Well, now, do you want to go that route
9 or do you want to go the route with the government going to
10 submit it to the Court?

11 MR. LESAR: May I confer with my client?

12 THE COURT: Well, you certainly can.

13 (Mr. Lesar confers with Mr. Weisberg.)

14 MR. LESAR: Your Honor, we will agree to in camera
15 submission.

16 THE COURT: If I have any questions about it then,
17 I will tell you.

18 MR. LESAR: All right.

19 THE COURT: I will make the government come back and
20 do it the other way.

21 MR. LESAR: All right.

22 THE COURT: I don't like in camera review of any-
23 thing.

24 MR. LESAR: We don't either. I feel pretty confi-
25 dent about the outcome, but I just have an aversion to in

1 camera inspection.

2 THE COURT: So do I. But you know what the courts
3 have said about it --

4 MR. LESAR: Yes.

5 THE COURT: -- the courts I have to listen to. Under
6 certain circumstances it is an appropriate thing for a court
7 to do in a Freedom of Information Act case. I have no alter-
8 native but to do that.

9 MR. LESAR: I understand that.

10 THE COURT: I will do that. If I am not satisfied
11 as a result of my inspection, then I will make the government
12 come in with some more information about it.

13 MR. LESAR: All right.

14 THE COURT: So, we will take care of those two
15 matters. And I think that if we go through that, if you want
16 to supplement your response to the government's motion for
17 summary judgment --

18 MR. LESAR: Yes.

19 THE COURT: Have you filed a cross-motion?

20 MR. LESAR: No, I have not; not yet.

21 THE COURT: Well, it may be --

22 MR. LESAR: Yes.

23 THE COURT: -- that after you have completed this
24 discovery, that you will be in a position to file a cross-
25 motion.

1 MR. LESAR: That's my intention.

2 THE COURT: And the government will have an oppor-
3 tunity, if it wants --

4 Mr. Ryan, if you want to reply, just let us know
5 so that we don't hold up the --

6 MR. RYAN: Thank you, Your Honor.

7 THE COURT: And I will make a determination when all
8 the papers are in whether we should have a hearing on it.
9 Sometimes you write so well and so cogently that we can go to
10 work without listening to you. Most of the time you don't say
11 anything in court that's going to make any difference, but
12 lawyers like to talk.

13 So, if I find the time and you want to bring your
14 client in, I will have a hearing.

15 But if you do your papers well, give me the citations
16 to the record and whatnot, I think that we can probably --

17 MR. LESAR: All right.

18 THE COURT: -- decide it on the papers. But if I
19 think that it would be helpful, I will bring you in and ask
20 for an oral hearing on that.

21 Now, you want me to set a time frame? Well, the
22 time frame for the written interrogatories could be controlled
23 by statute, that is, your interrogatories in connection with
24 this classification business. The government -- it will take
25 you, Mr. Ryan, some time to get your answers to file.

1 When do you think you could have it in?

2 MR. RYAN: Probably within a week or so.

3 THE COURT: Well, I will give you ten days. That's
4 the answers to the interrogatories that he has not --

5 MR. LESAR: After I submit the interrogatories --
6 oh, or are you talking about the ones that are outstanding?

7 THE COURT: You have already submitted interrogatories
8 he hasn't answered.

9 MR. LESAR: Yes.

10 THE COURT: He is going to answer that in ten days.

11 MR. LESAR: Right, all right.

12 THE COURT: You are going to get your interrogatories
13 out. It's your business how soon you get them out.

14 MR. LESAR: Fine.

15 THE COURT: Then they will have the statutory time
16 to answer unless they file a motion for extension or unless
17 you stipulate a few days. Don't bother me about a two or
18 three-day extension of time. Any time that you think is un-
19 reasonable, then let me know and I will do something about it.

20 But you have to recognize the fact that the public
21 does not recognize, the fact that these cases put a tremendous
22 burden on the government, a tremendous burden. There are
23 logistical problems. There are only so many government lawyers,
24 as big as the government is, who can deal with these questions,
25 and only so many judges. People want all this business, but

1 they haven't increased the judiciary, you know, in quite a
2 while. So, we have quite a volume of litigation.

3 So, try to work out as many matters as you can with-
4 out --

5 MR. LESAR: We will do our best.

6 THE COURT: But I will be here if you need me,
7 without question.

8 Is there anything else that we should resolve this
9 morning?

10 MR. RYAN: Your Honor, I just had one point of lack
11 of clarity on my part.

12 Your Honor, there were five interrogatories which
13 the government did not answer. In one of those interrogatories,
14 I believe, we made mention of attorney/client privilege. One
15 interrogatory we did answer. And that leaves four interroga-
16 tories which we haven't answered. I understand your order --

17 THE COURT: I will rule on each one of them right
18 now. Tell me the ones that you --

19 MR. RYAN: Your Honor, the first interrogatory which
20 we have not answered is, "List the names of all persons who
21 have been given copies of or who have had access to the June
22 23, 1964 executive session transcript and state (a) the date
23 on which each person listed was given a copy of or had access
24 to this transcript; (b) the employer of each person listed."

25 "Answer. Defendant objects to this

1 interrogatory on the grounds that it is not relevant
2 to the subject matter of this complaint."

3 There are persons outside of GSA who have been given
4 copies or have had access to this transcript, Your Honor. And
5 "(b) the employer of each person so listed."

6 THE COURT: Well, I don't know about the employer.
7 that is going a little far afield. But who they are and when
8 they were given, certainly you will tell them.

9 MR. RYAN: Very well, Your Honor.

10 THE COURT: There's no question in my mind about
11 that. So, the only portion of that interrogatory you don't
12 have to answer is who their employer is. If it becomes im-
13 portant, I will let Mr. Lesar persuade me at a later date that
14 he has got to know what employed them.

15 MR. RYAN: Your Honor, the second interrogatory which
16 we have not answered is the same question with respect to the
17 January 21, 1964 transcript.

18 THE COURT: You will answer it the same way.

19 MR. RYAN: The same way. There is one further sub-
20 part of that interrogatory which asks whether the copy or access
21 given to each person listed included pages 63 to 73 of this
22 transcript.

23 Those are the pages which remain classified
24 "Confidential," and I assume that if the copy were given to a
25 person, that those pages would be included. But I believe we

1 can overcome that in our answer.

2 THE COURT: You can find that out. You can answer
3 yes or no. Just find out. You can find the answer.

4 MR. RYAN: Very well, Your Honor.

5 The next interrogatory which defendants have not
6 answered is, "Did any of the United States attorneys repre-
7 senting defendant examine either the January 21st or June 23rd
8 transcript before October 8, 1975? If the answer is yes, which
9 ones and on what dates?"

10 "Answer. Defendant objects to this inter-
11 rogatory on the grounds that the information
12 requested is privileged."

13 Now, Your Honor, that was a sort of indirect
14 reference to attorney/client privilege.

15 THE COURT: I don't understand the relevance. I
16 don't understand what you are driving at, Mr. Lesar. Explain
17 that.

18 MR. RYAN: I can speak for myself. As a United
19 States Attorney, I have not had access to or seen either of
20 these transcripts.

21 THE COURT: Let me hear from Mr. Lesar.

22 MR. LESAR: Well, Your Honor, the relevance is I
23 want to know first whether or not the transcripts have been
24 given to anyone not entitled to it, anyone not authorized to
25 have access to it.

1 Secondly, when we filed suit in 1973 for the January
2 27th transcript, the government came into court maintaining
3 that it was properly classified "Top Secret," and I feel cer-
4 tain that there were government attorneys --

5 THE COURT: Well, now we don't have any "Top Secret"
6 to worry about.

7 MR. LESAR: "Confidential," we have, yes. But the
8 fact is that if any attorneys did read that transcript, they
9 have to have known that it was not classified because there
10 was no information in it. It's now a public document. We now
11 know that there was no information in it properly classified.

12 Now, the same may be true of these transcripts. And
13 I want to know whether or not the attorneys are aware of the
14 contents, whether they are defending simply on the basis of
15 the agency say so.

16 In other words, it goes to whether or not the
17 government is spuriously representing something to be properly
18 classified which it in fact knows is not properly classified.

19 THE COURT: Well, this is just another way of getting
20 at this correct classification question; isn't it?

21 MR. LESAR: In a way, yes.

22 THE COURT: Well, then why bother with it? We are
23 going to determine that head-on. We are going to determine
24 that head-on. You don't have to go through the back door route.

25 MR. LESAR: I would state that --

1 THE COURT: No. That interrogatory does not have
2 to be answered at this juncture.

3 MR. RYAN: Your Honor, the final interroagory of
4 the four unanswered interrogatories is the same question with
5 respect to the Department of Justice or Central Intelligence
6 Agency's attorneys, "Has any attorney for the Department of
7 Justice or Central Intelligence Agency" --

8 THE COURT: Well, my ruling is the same until we
9 get the information. I am going to see how your interroga-
10 tories are responded to. We are going to deal with the
11 classification question as directly as we can.

12 MR. RYAN: Thank you, Your Honor.

13 THE COURT: And if we get any finagling, then you
14 might consider the back door.

15 All right, I think we understand each other rather
16 clearly.

17 MR. RYAN: Thank you, Your Honor.

18 THE COURT: All right.

19 (Whereupon, at 10:48 o'clock a.m., proceedings
20 in the above-entitled matter were concluded.)

21 -o0o-

22 REPORTER'S CERTIFICATE

23 Certified to be the official transcript of proceedings.

24

25

Eugene T. Fedoration

EUGENE T. FEDORATION, C.S.R.
Official Court Reporter

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,
v.
GENERAL SERVICES ADMINISTRATION,
Defendant.

FILED: 6-9-76

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

ANSWERS TO INTERROGATORIES

JAMES E. O'NEILL, Acting 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:

11. List the names of all persons who have been given copies of or who have had access to the June 23, 1964, executive session transcript and state:
- The date on which each person listed was given a copy of or had access to this transcript;
 - The employer of each person listed.

Answer: The following persons are known to have examined or have been requested to examine a copy or copies of the transcript of June 23, 1964:

Marion M. Johnson, National Archives, 1965-1976;
James B. Rhoads, National Archives, 1967;
Robert H. Bahmer, National Archives, 1967;
James M. Leahy, National Archives, 1974-1976;
James E. O'Neill, National Archives, 1975;
Steven Garfinkel, Office of General Counsel, GSA,
1972 and September 18, 1975;
Arthur Dooley, CIA, July 30, 1972;
Charles P. Dexter, CIA, July 30, 1974 and
March 21, 1975; and
Charles A. Briggs, CIA, April 15, 1975.

The following persons, retired or deceased employees of the National Archives, are not known to have examined the transcript of June 23, 1964, but in the course of their archival work on Warren Commission materials would have been in a position to have had access to it:

J.E.O.

John F. [unclear] [unclear], 1964-1974;
Ray Shurtleff, 1964-1965;
Toussaint Prince, 1965; and
R. L. Jacoby, 1965.

The following persons, present employees of the National Archives, are not known to have examined the transcript of June 23, 1964, but in the course of their archival work on Warren Commission materials would have been in a position to have had access to it:


Marilla Guptil, 1975-1976;
Donald S. Post, 1975-1976; and
William Grover, 1975-1976.

12. List the names of all persons who have been give (sic) copies of or who have had access to the January 21, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed;
- c. Whether the copy or access given to each person listed included pages 63-73 of this transcript.

Answer: See answer to No. 11, above. In all instances pages 63-73 of the transcript were included.

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



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

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W., on this ninth day of June, 1976.



(Notary Public)

My Commission expires: Aug. 31, 1979

[The following 10 pages are Attachment 1
to Plaintiff's Third Set of Interrogatories.
They are from the January 27, 1964 Warren Commission Executive
Session Transcript formerly
ATTACHMENT 1
C.A. No. 75-1448
classified Top Secret]

FILED: 7-28-76

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Mr. Rankin. To examine Hosty, the FBI Agent who was working in that area, and to examine the Special Agent in Charge of the area, and to examine Mr. Hoover, under oath, right up the line.

I felt, however, as I told the Chief Justice, that I thought this Commission was entitled to have the full cooperation of another Government Agency, and that we don't have what I would consider any substantial proof of this rumor.

We do have a dirty rumor that is very bad for the Commission, the problem and it is very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission.

So it seemed to me in light of that the way I would treat it if I were in their position would be to have someone approach me, tell me the problem and see what I frankly could do to clear my skirts if there was a way to do it and as long as the Commission didn't agree not to go further, if they felt that would not satisfy them, I don't see how the Commission would be prejudiced.

Rep. Boggs. Mr. Wade, what significance did Wade attach to this?

Mr. Rankin. I don't think he -- you could say he believed. I don't think you could say he disbelieved it. He had just thought there was too much there to disregard but he just thought, he seemed to indicate, in his statements, that he couldn't believe that it would be possible.

But he didn't indicate by any statement that he didn't

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believe it couldn't happen. He just couldn't believe that the FBI would ever let that happen to get to that position.

The Chairman. Well, Lee and I both agreed that we shouldn't leave this thing in this present posture, that we should go ahead and try to clear the matter up as best we can. We did argue a little about the approach, whether we should go first to the FBI and ask them for an explanation or whether we should first go and try to see if there is any substance to the claim by interrogating the newspaperman who claims that he has the knowledge of the situation, or whether we should first go to the Bureau.

Now, my own suggestion was to Lee that we find out first from these people as far as we can if there is any substance to it or whether it is just plain rumor.

We were told that Sweatt says he got his information from one fellow, Alexander claims he got it from Sweatt, and somebody else claims he got it from the newspaper man.

Now I thought that if it were necessary we could get these three people in one room at the same time, and find out if anybody claims or has claimed in the past to have had actual knowledge of it, and if they don't claim to have it, we will find out why they spread the rumor.

It may be that Houston will, or whatever his name is, Hudkins would claim privilege. If he did, I thought that after we tried to get him to see that it was in the interest of his country to state the facts that we might go to the publisher of his paper.

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3 and see if we couldn't get -- enlist him to have this man tell us where he got his information.

I think it is one thing for a newspaper man to claim a privilege after he has written a story and published it, and it is another thing for him to claim a privilege when he is peddling gossip around the community.

Sen. Russell. I think you are right about that as a matter of law. If he hadn't published the story, I doubt if he can claim it.

The Chairman. I think so, too. In these circumstances, if he wants to deal fairly with the Government, he would tell, and if he didn't, I think his publisher ought to feel the responsibility of telling him.

I said to Lee that if I were in the position of the FBI, and I was asked to respond to a rumor, just a plain rumor of this kind, that I would be inclined to ask for what facts, what the facts were and what they were based on before I was obliged to make a statement.

I think that would -- you don't like to talk into an empty barrel. You want to attach your writing to something substantial.

Lee, on the other hand, felt it would be the better part of cooperation to go over and see Mr. Hoover and tell him frankly what the rumor was, state that it is pure rumor, we haven't evaluated the facts, but ask him, first, if it is true, and secondly if he can supply us with information to establish that

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these facts are not true, and they are inconsistent with what would be the way of operation of their Bureau.

Now I don't know, whatever you agree to would be all right with me. Lee thought that if he went down and asked those people to come up here and testify that they might use the fact that we had asked them to testify as the springboard for an article which would blow this thing out into the public domain, and that we might do a disservice in that way.

But I am not so sure of that. I rather dislike going to the FBI and just ask them to establish to us that a rumor can't be true until we have at least looked into it.

Sen. Russell. There are two reasons for that, Mr. Chairman. One would be if you went down there in the first instance to the FBI and got a statement and when you start pursuing it you would look like you are impeaching.

The Chairman. That is my point.

Rep. Boggs. Exactly.

Sen. Russell. I think the best way to handle it would be to try to exhaust it at the other hand before you go to the FBI. That would be my judgment.

Rep. Boggs. Well, the point you make is the thing that has been running through my mind all through this discussion. If you got a statement from responsible officials in that agency and then you say, "Well, we are not going to take this statement on face value, we are going to go behind it", this could become a

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5 matter of grave embarrassment to everybody.

Mr. Dulles. Hasn't it gone maybe a little further in the press. Here is the New York Times of Sunday, January 25, that is yesterday. Here are 12 questions, this is an article from Dallas by Jack Langguth of the Times. Here are 12 questions sometimes asked and the most authoritative answers now available.

The first question, "Did Oswald serve at some period as a paid informer for the Federal Bureau of Investigation?"

"A spokesman for that agency denied today that Oswald was at any time employed by the Bureau in any capacity.

"Newspapers and magazine articles have speculated that Oswald was in the service of the FBI infiltrating leftist organizations at its request.

"The Bureau's denial is categorical."

So we have --

Mr. McCloy. We don't know who the spokesman is.

Sen. Russell. If Oswald never had assassinated the President or at least been charged with assassinating the President and had been in the employ of the FBI and somebody had gone to the FBI they would have denied he was an agent.

Mr. Dulles. Oh, yes.

Sen. Russell. They would be the first to deny it. Your agents would have done exactly the same thing.

Mr. Dulles. Exactly.

Sen. Russell. Say I never heard about the man who may have

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been on the payroll for five years.

Sen. Cooper. Yes.

Mr. Dulles. But it is out in the domain, it is in the public domain.

Sen. Cooper. If you know, if you have these people up and examine them, of course the FBI will know that.

Mr. Rankin. They already know about this apparently.

Sen. Cooper. That these people came up?

Mr. Rankin. Yes.

Rep. Boggs. You mean the other people?

Mr. Rankin. Yes, that is right. I had thought that the probabilities are that when we get these people under oath that they will say that they have heard this rumor, that someone told them but they can't remember now, and that is about as far as we go with it.

I just don't think that they are going to come out and say they fabricated this, if it is a fabrication. It is too serious for that.

Rep. Boggs. Of course, we get ourselves into a real box. You have got to do everything on earth to establish the facts one way or the other. And without doing that, why everything concerned, including everyone of us is doing a very grave disservice.

Sen. Cooper. There is a point I want to raise. If it is possible the FBI knows now, we should have these people up here.

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before.

Mr. Rankin. Yes.

Sen. Cooper. Of course, if we bring a reporter, they will know that, and they will know we are looking into matters that concern them.

I was thinking about another alternative and that is that you advise them about these rumors and that you have to look into them before you ask them, to prevent any evidence to the contrary.

But I think I would maintain a kind of relationship with them where they would not feel you were around investigating the FBI. Is that possible?

Mr. Rankin. Well, I think that is possible. I would think that if it is definitely untrue, if it were my agency, I would be all over saying "let me prove it. Let me show you anything you can to satisfy you that it isn't true."

Sen. Cooper. We have a duty which is outside the FBI's position, which is if you believe there is something which should be looked into it, and we wouldn't believe that if we weren't talking about it.

My only point is whether or not it would be reasonable to inform the FBI that you have had these statements, therefore you have to ask those people where they got their information.

Before you asked Mr. Hoover you present us with all the proof to the contrary, because as you say, if he presents all

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this proof to the contrary, then the situation changes a little bit. It would appear to him that you are trying to impeach his testimony.

In the other way, it seems to me we are just telling him that it was brought to us and we ought to inquire into it.

Mr. McCloy. Do we have a statement from Mr. Hoover that this man was not an agent? Was that communicated in the record?

Mr. Rankin. Yes.

The Chairman. It was? A letter.

Sen. Russell. I know there was a letter, I don't know who it was written to, a very short letter.

The Chairman. It was in one of those letters we responded to last week, it was in that letter --

Rep. Boggs. I think that was a letter that had to do with a request directed to us on what degree of cooperation we should give the defense counsel in the Ruby trial, isn't that right?

Mr. Rankin. Yes.

The Chairman. That is right. It was one of those letters, there were three of them. It was in one of those letters, and I remember in the letter of counsel for Ruby, it was also stated that that accusation had been made but that in their opinion it was preposterous, and I wondered why at the time that the defense counsel for Ruby would put such a statement in the letter to us. It seemed as though it were dragged in by the hairs.

Rep. Boggs. Deliberately.

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Sen. Cooper. That was in the letter from Tonahill.

The Chairman. Tonahill, yes.

Mr. McCloy. I would like to examine again this relationship between the Department of Justice and the FBI. Just why would it be embarrassing for the Attorney General of the United States to inquire of one of his agencies whether or not this man who was alleged to have killed the President of the United States, was an agent.

Does the embarrassment supersede the importance of getting the best evidence in such a situation as this?

Mr. Rankin. Well, I think it is a question of whether we have to put him into that position in order to get the job done, because there is, in my opinion, not any question but what there will be more friction, more difficulty with his carrying out his responsibilities, and I think we have a very real problem in this Commission in that if we have meetings all the time and they know what it is about that they know these people are up here, and they know this has come out in the paper now, it is in The Nation article, and we are meeting rather rapidly here in the last few days, and they can guess probably what it is about, certainly after the meeting with the Texas people.

Rep. Boggs. Who was The Nation, do you have it?

Mr. Rankin. The Nation article deals with it and tries to show all the various other materials that would contribute to this kind of conclusion that there is something to the rumor.

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Rep. Boggs. That is exactly the kind of thing that you can anticipate being written.

Sen. Cooper. I would like to suggest something else. In view of all the rumors and statements that have been made not only here but abroad, I think to ask the President's brother, the dead President, to do this, it wouldn't have any backing in it. It would have no substance in his purpose but some crazy people would translate it from his official position to a personal position. It may sound far fetched but he would be implying as a person that something was wrong. You can't overlook any implications.

Mr. McCloy. I think that would perhaps be an element in the thing, but it still wouldn't divert me from asking this man who happens to be the Attorney General whose sworn duty it is to enforce justice, to ask him just what is within his knowledge in regard to such a serious thing as this. It is awkward affair. But as you said the other day, truth is our only client.

Rep. Boggs. Yes.

Mr. McCloy. I think we may have to make this first step, that the Senator speaks about, but I don't think that we could recognize that any door is closed to us, unless the President closes it to us, and in the search for the truth.

Mr. Rankin. I was asking the question and talking with the Chief Justice, and say we ran this out with Hudkins and these other people, and found that they said they would not give us the source

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED OCT 12 1976

JAMES F. ...
CLERK

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

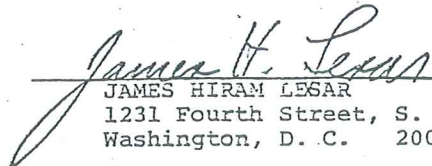
Defendant
.....

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

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

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

Respectfully submitted,

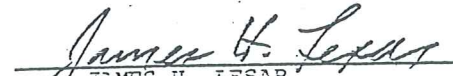

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

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

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

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

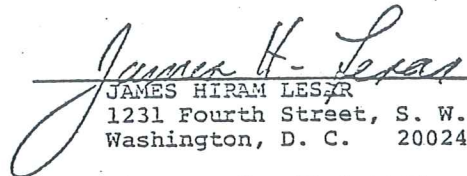


JAMES H. LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

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

Respectfully submitted,


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

Attorney for Plaintiff

FILED: 10-12-76

~~CONFIDENTIAL~~

The disclosure of information relating to the national defense of the United States within the meaning of the Espionage Laws, Title 18, Sections 793 and 794, the transmission or revelation of information in any manner to an unauthorized person is prohibited by law.

Vol. 4
Copy 3 of 9

CLASSIFICATION CANCELED

By authority of
Archivist of United States

PRESIDENT'S COMMISSION

By MAG
Date 2/21/68 Case _____

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

PAGES 1 - 126

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

CLASSIFICATION CANCELED

By authority of
Archivist of United States

By MAG
Date 2/21/68 Case _____

WARD & PAUL

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AREA CODE 202-623-4266

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED OCT 13 1978
JAMES F. DAVY
CLERK

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:
HAROLD WEISBERG,
:
Plaintiff,
:
v.
:
GENERAL SERVICES ADMINIS-
:
TRATION,
:
Defendant
:
.....

Civil Action No. 75-1448

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
WITH RESPECT TO MAY 19, 1964, WARREN
COMMISSION EXECUTIVE SESSION TRANSCRIPT

Comes now the plaintiff, by and through his attorney, and moves the Court for summary judgment in his favor with respect to the disclosure of the May 19, 1964, Warren Commission executive session transcript, on the ground that there are no genuine issues as to any material fact and plaintiff is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

In support of his motion, plaintiff submits herewith a statement of material facts as to which there is no genuine issue, an affidavit (Plaintiff's Exhibit 1) and its attachments.

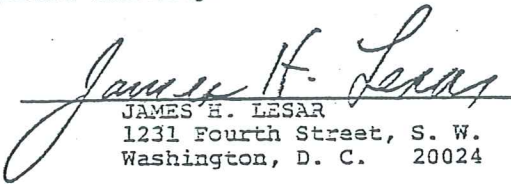
Respectfully submitted,

James H. Lesar

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

6. The defendant maintains that the May 19 transcript is exempt from disclosure under the provisions of 5 U.S.C. §552(b) (5) and (b) (6).

7. The affidavit of James Hiram Lesar and its attachments show that the essential facts and ^{existence} subsistence of the May 19 transcript are already matters of public knowledge.


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

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....

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

.....

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant continues to suppress the May 19, 1964, Warren Commission executive session transcript under the claim that it is protected from disclosure by Exemptions 5 and 6 to the Freedom of Information Act. Exemption 5 exempts from disclosure "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." In construing Exemption 5 in Environmental Protection Agency v. Mink, 410, U.S. 73, 89 (1973), the Supreme Court drew a distinction between "materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other." The former are protected by the exemption, the latter are not.

In support of defendant's claim to Exemption 5, the October 6, 1975, affidavit of Dr. James B. Rhoads characterizes the three transcripts which are the subject of this lawsuit as follows:

These transcripts are the written record of the times when the Commission members met to express their individual ideas, opinions, conclusions and recommendations

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

Plaintiff contends that in order for defendant to meet its burden under Exemption 5 it must at a minimum show: 1) that the May 19 transcript qualifies as an "inter-agency or intra-agency memorandum or letter"; 2) that the Warren Commission was engaged in making policy at these executive sessions; and 3) what that policy was. Dr. Rhoads does not establish any of these essential facts in his affidavit. Executive Order 11130, which created the Commission shows that the Commission was to "ascertain, evaluate, and report upon the facts," not to engage in policy-making. (Plaintiff's Exhibit 2)

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

Recent cases construing Exemption 5 make it clear that it does not protect from disclosure a number of matters which are not clearly covered by the policy-making/fact distinction. Thus, Vaughn v.

Rosen, 383 F. Supp. 1049 (D.D.C. 1974), aff'd, 523 F. 2d 1136 (C.A. D.C. 1975) held that "factual, investigative, and evaluative portions" of documents which "reflect final objective analyses of agency performance under existing policy" and "reveal whether the agencies' policies are being carried out" are subject to disclosure. Moore v. McCormack Lines, Inc. v. ITO Corp. of Baltimore, 508 F. 2d 945 (C.A. 4, 1975) held that inferences based on observed facts and which depend on the expertise of the investigating official were disclosable even though Exemption 5 was invoked. Ash Grove Cement Company v. F.T.C., 519 F. 2d 934 (C.A.D.C. 1975), held that an agency's chronological minutes containing "policy determinations are subject to disclosure. Cf. Sterling Drug v. Federal Trade Commission, 146 U.S.App.D.C. 237, 450 F. 2d 698 (1971).

Finally, plaintiff notes that the above-quoted description in Dr. Rhoads' affidavit could be applied to all of the Commission's executive session transcripts. By making all such transcripts publically available except the three sought in this lawsuit, the defendant has waived its right to invoke Exemption 5 in attempting to justify its continued suppression of the May 19 transcript.

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

The defendant also claims that the May 19, 1964, transcript is exempt under 5 U.S.C. §552(b)(6) which permits nondisclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The legislative history of this exemption indicates that it was intended to apply to "files containing intimate details" about persons maintained by "those Government agencies where persons are required to submit vast amounts of personal data usually for limited purposes," such as Veterans Administration, HEW, and Selective Service. (S. Rep. No. 813, 89th Cong., 1st Sess. [1965] at p. 9. See also H.R. Rep. No. 1497, 89th Cong., 2d Sess. [1966] at p. 11.) It is evident that the May 19 transcript is neither a personnel, medical, or similar file as such file is defined for purposes of Exemption 6. Dr. Rhoads' affidavit was executed before the recent Supreme Court decision in Dept. of Air Force v. Rose (No. 74-489, decided April 21, 1976). That decision makes it clear that documents which "lack the attributes of 'personnel files' as commonly understood" are not exempt. (Slip opinion, p. 22) As the Supreme Court noted in Rose:

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

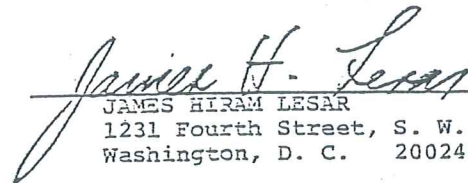
The May 19 transcript is obviously not a personnel file. Nor are its contents "matter in which the public could not reasonably be expected to have an interest" or "matter with merely internal significance." The executive session of May 19, 1964, was held for public, not private, purposes. The firing or non-firing of the

Commission's employees is an important public question because it relates to how the Commission functioned in its discharge of an awesome public duty.

Moreover, the affidavit of James Hiram Lesar (Plaintiff's Exhibit 1) and its attachments show that the substance of the May 19 transcript is already public knowledge and that the National Archives has itself made public hundreds of documents which pertain to the May 19, 1964, executive session and reveal the essence of what was before the Commission for discussion at that meeting. Even assuming that defendant ever had any proper Exemption 6 claim with respect to the May 19 transcript, an assumption for which there is no support in the record, it has been waived the the defendant's own actions in making public all its other records which pertain to the issue resolved at that meeting, even those records which have no purpose other than to defame the reputation of two Warren Commission staff members, Prof. Norman Redlich and Mr. Joseph Ball.

For the reasons stated above, plaintiff should be given immediate access to the May 19, 1964, Warren Commission executive session transcript.

Respectfully submitted,


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

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF JAMES HIRAM LESAR

I, James Hiram Lesar, being first duly sworn, depose as follows:

1. In order to aid the Court's in camera inspection of the May 19, 1964, Warren Commission executive session transcript, I telephoned Mr. Marion Johnson of the National Archives and requested that the Archives provide Mr. Weisberg with copies of all records in the Warren Commission's PC-8 file pertaining to the right-wing political campaign against two Warren Commission staff members. I named Mr. Norman Redlich as one of these staff members; Mr. Johnson volunteered that Mr. Joseph A. Ball was the other.

2. On June 28, 1976, the National Archives gave me some 354 pages of Warren Commission papers relating to the campaign against Ball and Redlich and the Warren Commission's response to it.

3. Since that time, Mr. Weisberg and I have both reviewed these records. In the interest of time I, rather than Mr. Weisberg, am executing an affidavit summarizing their contents.

4. While the records obtained on Messrs. Ball and Redlich are not complete, they establish that the National Archives has made no discernible effort to restrict public access to the defamatory materials on these Warren Commission staff members in its possession.

5. The records on New York University Law Professor Norman Redlich begin with his personal letter to Chief Justice Earl Warren of December 1, 1963, which congratulated Warren on his appointment as head of the President's Commission on the assassination of President Kennedy and offered his assistance. [Attachment 1] A copy of a "biographical sketch" which Mr. Redlich submitted to the Warren Commission is attached to a January 10, 1964, routing slip addressed to Mr. Howard P. Willens, an Assistant Counsel to the Warren Commission. [Attachment 2]

6. The great mass of the records in the PC-8 file reflect a vicious and virulent campaign by right-wing political organizations and commentators to smear Prof. Redlich and force the Warren Commission to fire him so that its findings "will have no taint of communist connections." [Attachment 3]

7. The campaign against Prof. Redlich began as early as February 12, 1964, when Tocsin, an Oakland, California paper describing itself as "The West's Leading Anti-Communist Weekly", printed a front-page story claiming that a "prominent member of a Communist front", Mr. Redlich, was a member of the Warren Commission staff. [Attachment 4]

8. Less than two weeks later, Francis J. McNamara, Director of the House Committee on Un-American Activities (HUAC), sent Congressman Gerald Ford a "report" on Norman Redlich compiled from unevaluated information contained in HUAC files. [Attachment 5] This "report" listed Prof. Redlich as a speaker, sponsor, or sup-

porter of three "communist fronts", each of which was engaged in activities to abolish HUAC, the compiler of this "report".

9. These files refer to at least two broadcasts against Mr. Redlich which were carried nation-wide by the electronic media, one by Paul Harvey on ABC, the other by Fulton Lewis, Jr. on Mutual. Mr. Weisberg has informed me that Mr. Lewis employed several former members of HUAC's staff on his own staff, and this his son, Fulton Lewis, III, made a movie in defense of HUAC and spearheaded its use of public funds to resist the efforts made to terminate it by legal and proper means.

10. Local radio stations and newspapers joined in the campaign against Mr. Redlich. Citizens and members of civic organizations frequently attached copies of such broadcasts and newspaper clippings to angry, hate-filled letters which they sent to their Congressman, the Commission, and Chief Justice Warren himself.

[Attachments, 6-9]

11. By March 16, 1964, this campaign caused the Warren Commission's General Counsel, Mr. J. Lee Rankin, to request that the FBI conduct a full field investigation of Messrs. Ball and Redlich. The campaign against Mr. Redlich also evoked a response from his friends and supporters, not to mention concerned citizens and the members of at least one civic organization. Thus, the PC-8 file also contains letters of praise from members of the New York University law faculty and a twenty-one page petition which his friends and students submitted on his behalf.

12. Ultimately, the members of the Warren Commission met in executive session on May 19, 1964, to discuss the allegations raised against Ball and Redlich. The files contain some indication that Congressman Gerald Ford moved for the dismissal of Mr. Redlich

from the Commission staff. [Attachment 10] The Commission, however, sent out a form letter stating:

On May 19, 1964, at a meeting attended by all the Commissioners, the Commission unanimously cleared all the members of its staff to handle classified information. The members of the staff who were cleared included Mr. Redlich.

13. The Warren Commission was unique in that only two of its seven members were from the Democratic Party and none were from the wing of the Democratic Party represented by the murdered President, John F. Kennedy. Two liberals on the Commission's staff were subjected at the outset to a sustained campaign of public villification which diverted the Commission's energies and very limited resources from the important tasks at hand. The impairment to the Commission's proper and unfettered functioning caused by his campaign is an important matter of public interest. Congressman Gerald Ford's performance on the Warren Commission, including his role in the campaign against Mr. Redlich, is also a matter of public interest, particularly in a year in which he is a candidate for the office of President.

14. Under Exemption 6 which the government has invoked as a justification for continuing to suppress the May 19 executive session transcript, the Court must weigh the public interest against the harm which might be caused an individual by an invasion of his right of personal privacy. Having reviewed the Warren Commission's PC-8 file, it is my judgment that the public interest in disclosure of the May 19 transcript far outweighs any right of privacy which might be claimed on behalf of Messrs. Ball and Redlich. In fact, this file makes it abundantly clear that subject matter of that executive session has been public knowledge for the past twelve years. It has been broadcast over the airwaves, printed in news-

papers, newsletters, and the Congressional Record. Whatever claim to an invasion of personal privacy might have been advanced on behalf of Messrs. Ball and Redlich evaporated when the National Archives made its collection of defamatory materials available to the public. Since Messrs. Ball and Redlich were reportedly cleared as a result of the action taken by the Warren Commission at its May 19, 1964, executive session, I am of the opinion that further suppression of the transcript of that session only serves the political interests of Commission member Gerald Ford in hiding his part in the campaign against them. Such suppression certainly does not serve the public interest, nor can it further harm individuals who are already thoroughly villified in the publicly available records.


 JAMES HIRAM LESAR

WASHINGTON, D. C.

Before me this 27th day of July, 1976, deponent James Hiram Lesar has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires April 14, 1979


 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

FILED: 10-13-76

ATTACHMENT 1

C.A. No. 75-1448

NEW YORK UNIVERSITY
SCHOOL OF LAW
WASHINGTON SQUARE, NEW YORK 3, N.Y.

Redlich, Norman

FACULTY OF LAW

December 1, 1963

AREA CODE 212 SP 7-2000

Chief Justice Earl C. Warren
United States Supreme Court
Washington, D.C.

Dear Justice Warren,

Your appointment as head of the Presidential Commission was gratifying to all of us who have admired your work and who recognize the importance of the task you are undertaking.

Like most citizens I would like to contribute in some way at this time. I do not know what plans your Commission has for legal staff, but if there is anything I could do to help, please call on me.

Sincerely,

Norm Redlich

Norman Redlich
Professor of Law

237

RECEIVED
DEC 3 9 02 AM '63
CHAMBERS OF THE
CHIEF JUSTICE

FILED: 10-13-76

ATTACHMENT 2

C. A. No. 75-1448

GSA Form 74 October 1953		GENERAL SERVICES ADMINISTRATION	
ROUTING SLIP			
TO— NAME		BUILDING, ROOM NUMBER, ETC.	
1.	<i>Mr. Williams</i>		
2.			
3.			
4.			
5.			
FOR—			
<input type="checkbox"/> APPROVAL	<input type="checkbox"/> IMMEDIATE ACTION	<input type="checkbox"/> RECOMMENDATION	
<input type="checkbox"/> AS REQUESTED	<input type="checkbox"/> INITIALS	<input type="checkbox"/> SEE ME	
<input type="checkbox"/> CORRECTION	<input type="checkbox"/> NECESSARY ACTION	<input type="checkbox"/> SIGNATURE	
<input type="checkbox"/> FILING	<input type="checkbox"/> NOTE AND RETURN	<input type="checkbox"/> YOUR COMMENT	
<input type="checkbox"/> FULL REPORT	<input type="checkbox"/> READ AND DESTROY	<input checked="" type="checkbox"/> YOUR INFORMATION	
<input type="checkbox"/> HANDLE DIRECTLY	<input type="checkbox"/> ALLOTMENT SYMBOL		
<input type="checkbox"/> PREPARE REPLY FOR SIGNATURE OF _____			
<input type="checkbox"/> ANSWER OR ACKNOWLEDGE BEFORE _____			
FROM	<i>J. P. R.</i>	DATE	<i>1-10-64</i>
REMARKS	<i>J</i>		

U. S. GOVERNMENT PRINTING OFFICE : 1957 O-7-31110

Biographical Sketch - Norman Redlich

Born - November 12, 1925, New York, New York.

BA - Williams College (Magna Cum Laude) - 1947

LL.B. - Yale Law School (Magna Cum Laude) - 1950
While at Yale was Executive Editor of the Yale Law
Journal and ranked first in class.

LL.M. - New York University School of Law - 1955.

After a career in business and law entered the full-time teaching of
law in 1959 at New York University School of Law. Achieved rank of
Associate Professor in 1960 and Professor of Law in 1962.

Honorary Societies: Phi Beta Kappa and Order of the Coif

Memberships: American Bar Association and Association of the Bar of
the City of New York.

Current Professional Activities: Counsel, New York Committee to Abolish
Capital Punishment. Member of the Com-
mission on Law and Social Action of the
American Jewish Congress. Member of the
Advisory Board of the New York University
Institute on Federal Taxation. Editor-
in-chief of Tax Law Review of New York
University School of Law.

Civic Activities: Member of Planning Board No. 2 of Borough of Manhattan.
Member of Executive Board of the Greenwich Village Assn.

Publications: Have written for the Tax Law Review, New York Univ. Law
Review, Syracuse Law Review, author of the Constitutional
Law Article in the Annual Survey of New York Law.

Military Service: United States Army - 1943 to 1945.

Overseas Service: 100th Infantry Division - 1944 to 1945. Received
Combat Infantryman's Award.

Married Evelyn Jane Grobow, M.D., June 3, 1951. Three Children ages 5, 7, and 9.
Residence: 29 Washington Square, New York City.

Redlich White

The Virginia Society of the Sons of the American Revolution

THOMAS NELSON JUNIOR CHAPTER

PRESIDENT
EDWIN K. PHILLIPS
P. O. BOX 18
NEWPORT NEWS, VA.

VICE-PRESIDENT
HON. CONWAY H. SHEILD, JR.
232 JAMES RIVER DRIVE
NEWPORT NEWS, VA.

SECRETARY AND REGISTRAR
CAPT. ROBERT W. ORRELL
~~NEWPORT NEWS, VA.~~
CARDINAL, VA.

TREASURER
DOUGLAS M. BRAXTON
3201 CHESAPEAKE AVE.
TOHAMPTON, VA.

CHAPLIN
THE REV. MR. SAMUEL H. SAYRE
MATHEWS, VA.

THOMAS NELSON JR.
COMMEMORATIVE
COMMITTEE

W. M. HARRISON, CHAIRMAN
THE DAILY PRESS, INC.
NEWPORT NEWS, VA.

LEWIS H. HALL
219 - 27TH STREET
NEWPORT NEWS, VA.

ARTHUR D. STRONG
P. O. BOX 1867
WILLIAMSBURG, VA.

THE WARREN COMMISSION,

Chief Justice Earl Warren
Senator Richard B. Russell
Senator John Sherman Cooper
Representative Gerald Ford
Representative Hale Boggs
Mr. John J. McCloy
Mr. Allen Dulles
Chief Counsel J. Lee Rankin

GREETINGS:

Whereas, it has come to the attention of the Thomas Nelson Jr., Chapter of the Sons of the American Revolution, that the Warren Commission appointed to investigate the assassination of President John F. Kennedy has employed as an assistant one, Norman Redlich, a former professor of New York University.

Whereas, Mr. Redlich has definite associations with known communist fronts, and particularly, the Emergency Civil Liberties Committee, so designated by the House Committee on Un-American Activities. Recently Mr. Redlich's name appeared as a co-signer in a large advertisement in the NEW YORK TIMES as a birthday celebration for the ECLC.

Whereas, this Chapter has taken notice of the above information,

Therefore, be it Resolved that this Chapter, by Resolution, requests the removal of Mr. Redlich from the Warren Commission work so that its findings, when made public, will have no taint of communist direction, because the alleged assassin of our former President had definite communist connections.

It was requested that the Chapter Secretary forward the above Resolution to each member of the Warren Commission, the Virginia Senators and Representatives in Washington.

By direction of Chapter President,

9 June 1964
Chapter Meeting

Edwin K. Phillips,

Robert W. Orrell
Secretary

copies to:

President Lyndon B. Johnson
President General of S. A. R.
Virginia D. A. R.
Mr. J. Edgar Hoover

TOCSIN

THE WEEKLY LEADING ANTI-COMMUNIST WEEKLY

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Vol. 5, No. 6

OAKLAND, CALIFORNIA, FEBRUARY 12, 1964

20 Cents

ON WARREN COMMISSION STAFF

Red-Fronter in Death Probe

A prominent member of a Communist front is a member of the staff of the Warren Commission investigating the slaying of President Kennedy.

He is Norman Redlich, a professor at New York University Law School, who is acting as assistant counsel to the commission.

Redlich is listed on a July 1963 letterhead of the Emergency Civil Liberties Committee as a member of the group's executive committee. The Emergency

The Emergency Civil Liberties Committee is an organization with headquarters in New York, whose avowed purpose is to abolish the House Committee on Un-American Activities and eliminate the FBI," the 1959 annual report of the ECILC stated.

"The committee finds that the Emergency Civil Liberties Committee, established in 1951, otherwise progressing itself as a non-Communist group, actually operates as a front for the Communist Party. It has repeatedly assisted, by means of funds and legal aid, Communists involved in Smith Act violations and similar legal proceedings. One of its chief activities has been and still is the dissemination of voluminous Communist propaganda material."

Civil Liberties Committee has been named a Communist front by both the House Committee on Un-American Activities and the Senate Internal Security Sub-Committee.

One of the ECILC's executives has been identified Communist Frank Wilkinson, a present leader of the Communist-run National Committee to Abolish the House Committee on Un-American Activities.

COMMUNIST CLENAGNY

When Wilkinson and his co-defendant, Communist Carl Braden, were in prison for contempt of Congress in 1951, Redlich was among persons who signed an appeal to the President for clemency. This is revealed in the Dec. 4, 1951, issue of the Communist National Guardian, the New York-based weekly which has led the campaign to disqualify Lee Harvey Oswald in the President's assassination (see accompanying story).

The 1953 letter from the Emergency Civil Liberties Committee makes an appeal for support for two groups accused of supporting Communist causes. One was Advance, cited as a subversive organiza-

tion and required so to register under the McCarran Internal Security Act. The other involved three University of Indiana students accused of violating state sedition laws while members of the Trotskyite-Communist Young Socialist Alliance.

Redlich had earlier publicly condemned a decision by the Supreme Court to enforce registration by Communists under the McCarran Act, according to the Communist Worker of June 24, 1962.

The Worker also names Redlich as among "notables (who) denounce attack on the peace movement" during the 1962 hearings by the House Committee on Un-American Activities on the avowedly Communist-backed Women for Peace organization (Worker, Dec. 18, 1962).

A member of the advisory committee. Information of the New York Council to Abolish the HCUA. Redlich signed a petition in the New York Times Feb. 22, 1962, condemning the anti-subversive committee.

He was a scheduled speaker Feb. 24, 1961, at an anti-HCUA meeting in New York City, along with Frank J. Donner, an identified Communist lawyer. Sponsor of the meeting was the Emergency Civil Liberties Committee.

The Communists In the Co-ops

Identified Communists elected as congressmen of the Northern California chain of Consumers Cooperatives last summer included Charles G. Drasinin, Russian-born former veterans director of the South Berkeley branch of the Communist Party.

Drasinin, 53, of 748 81st St., Oakland, was elected to serve at the Telegraph Avenue Co-op center in Berkeley.

A registered Communist voter in Alameda County in the 1940's, Drasinin later listed his affiliation with the Communist-run Independent Progressive Party until 1955.

He was convicted of illegally distributing Communist literature during a 1941 East Bay strike.

Drasinin is wed to the former Wenonah Medelsky who has recently served as

(continued on page 2)

GERALD R. FORD
FIFTH DISTRICT, MICHIGAN
WASHINGTON, D.C., ADDRESS:
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
GRAND RAPIDS, MICHIGAN, ADDRESS:
425 CHERRY STREET SE.
GRAND RAPIDS 2, MICHIGAN

COMMITTEE ON APPROPRIATIONS

Congress of the United States
House of Representatives
Washington, D. C.

March 27, 1964

Mr. Lee Rankin, General Counsel
Presidential Commission on the Assassination
of President Kennedy
Washington, D. C.

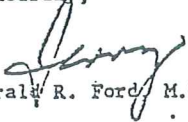
Dear Lee,

Pursuant to your telephone call this afternoon I am forwarding to you a letter I received from Francis J. McNamara dated February 27th with certain enclosures. Also enclosed is a letter which I received from Mr. McNamara dated March 17th.

When the enclosed have served your purposes will you please return them.

Warmest personal regards.

Sincerely,


Gerald R. Ford, M.C.

GRF:mr

Encl.

EIGHTY-EIGHTH CONGRESS

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FRANCIS J. McNAMARA, DIRECTOR

FRANK E. TAVENNER, JR., GENERAL COUNSEL
ALFRED M. MITTLE, COUNSEL

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON UN-AMERICAN ACTIVITIES
WASHINGTON

February 27, 1964

Honorable Gerald R. Ford
351 House Office Building
Washington, D. C.

Dear Congressman Ford:

Pursuant to conversations he has had with you, Mr. Willis has asked me to forward to you the enclosed reports on Norman Redlich, staff member of the President's Commission on the Assassination of President Kennedy, and on Mark Lane, who unsuccessfully attempted to represent the interests of Lee Harvey Oswald before the Commission.

Re: Norman Redlich Report

The first sheet of this report, which contains only references to groups officially cited as Communist, is the normal report furnished by the Committee in response to requests for information on Redlich. The second page, as noted, contains references to activities not officially cited as Communist. They are being furnished only to members of the Commission who desire information on Redlich because they shed additional light on his activities or association with groups and causes which -- though not officially cited as Communist -- are Communist influenced, originated, or oriented.

It may interest you to know that during the past few days Frank Wilkinson, who has been identified as a member of the Communist Party by two witnesses who have appeared before this Committee, has been in the House Office Building attempting to "lobby" Members to vote against this Committee's appropriation for the current year. Wilkinson is the Executive Director of the National Committee to Abolish the House Un-American Activities Committee, a group cited as Communist by this Committee in House Report 1278 of the 87th Congress.

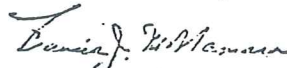
Wilkinson has been distributing in the House Office Building the February 21, 1964 issue of "Abolition News," bulletin of the National Committee to Abolish the House Un-American Activities Committee, which lists "Prof. Norman Redlich, Law, New York University," as one of the sponsors of the committee. A reproduction of this bulletin is enclosed for your information.

It may also interest you to know that certain facts on Redlich's background are now in the "public domain." Enclosed is a reproduction of page 1 of the February 12, 1964 issue of "Tocsin," a West Coast newsletter, which features an item on Redlich.

Re: Mark Lane Report

The two-page report, dated February 10, 1964, is the normal report furnished by the Committee in response to requests for information on Mark Lane. The longer report, dated February 20, 1964, contains supplementary information of the same general character as the information contained on the second sheet of the report on Mr. Redlich, and is being furnished for the same reasons.

Sincerely yours,



Francis J. McNamara
Director

Enclosures

PC 8
Radlich
P. f. H.

INFORMATION FROM THE FILES OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES
U. S. HOUSE OF REPRESENTATIVES

DATE: February 24, 1964

FOR: Honorable Gerald R. Ford

SUBJECT: Norman Radlich

This Committee makes NO EVALUATION in this report. The following is only a compilation of recorded public material contained in our files and should not be construed as representing the results of any investigation or finding by the Committee. The fact that the Committee has information as set forth below on the subject of this report is not per se an indication that this individual, organization, or publication is subversive, unless specifically stated.

Symbols in parentheses after the name of any organization or publication mentioned herein indicate that the organization or publication has been cited as being subversive by one or more Federal authorities. The name of each agency is denoted by a capital letter, as follows: A—Attorney General of the United States; C—Committee on Un-American Activities; I—Internal Security Subcommittee of the Senate Judiciary Committee; J—Senate Judiciary Committee; and, S—Subversive Activities Control Board. The numerals after each letter represent the year in which that agency first cited the organization or publication. (For more complete information on citations, see this Committee's "Guide to Subversive Organizations and Publications.")

COMMUNIST PARTY MEMBERSHIP

No evidence

COMMUNIST FRONTS

- 1955- EMERGENCY CIVIL LIBERTIES COMMITTEE (C-1958; I-1956)
1963 Speaker on the Fifth Amendment at Conference on an Appeal to Congress for a Rebirth of Freedom, New York City, April 16, 1955. [Call and Program of Conference. To speak at meeting called to promote abolition of House Committee on Un-American Activities, February 24, 1961, New York City. [The Worker, February 19, 1961, p. National Council member. ["Rights," an ECLC publication, May, 1961, p. 6; letterheads, January 9, May and December 1962, April 29 and October 1, 1963] Among 25 professors who signed a statement published by ECLC condemning the Supreme Court decision of June 5, 1961 upholding the registration provisions of the Internal Security Act. [The Worker, June 24, 1962, p. 14]
- 1961- NEW YORK COUNCIL TO ABOLISH THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE (C-1961)
1963 sponsor of rally to be held April 21, 1961, New York City, jointly sponsored by above organization and Youth to Abolish the House Un-American Activities Committee (C-1961). [letterhead, April 15, 1961; and press release, April 21, 1961, pp. 12 Member, Advisory Committee (in formation). [letterheads, April 20 & Oct. 12, 1961 Signer of statement protesting ECLA's hearings of May 6, 1963 on Violations of State Department Travel Regulations and Pro-Castro Propaganda Activities in the United States. [press release, May 6, 1963, p. 2]
- 1961 YOUTH TO ABOLISH THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE (C-1961)
Sponsor of rally to be held April 21, 1961, New York City, jointly sponsored by above organization and New York Council to Abolish the House Un-American Activities Committee (C-1961). [See item above under New York Council to Abolish the House Un-American Activities Committee]

THE FOLLOWING ACTIVITIES AND ORGANIZATIONS HAVE NOT BEEN OFFICIALLY
CITED AS COMMUNIST. THEY WOULD NOT BE INCLUDED IN A NORMAL COMMITTEE REPORT
ADDITIONAL INFORMATION

- 1961 PETITION FOR CLEMENCY FOR WITNESSES CONVICTED FOR CONTEMPT OF CONGRESS
Signer of petition to the President asking for clemency for Carl Braden and Frank Wilkinson, who were both serving prison sentences for contempt of congress [undated, printed PETITION FOR CLEMENCY TO THE PRESIDENT OF THE UNITED STATES; and the Nations Guardian, December 4, 1961, p. 8]. Braden and Wilkinson, identified Communist Party members, appeared before the Committee on Un-American Activities, July 29, 1958, during its hearings on "Communist Infiltration and Activities in the South." Braden refused to answer pertinent questions relating to membership in the Communist Party and Communist propaganda activities in the South, basing his refusal to answer on the first amendment, invalidity of the committee, and lack of pertinency of the questions to the subject under inquiry. Wilkinson based his refusal to answer questions relating to the activities and purposes of the Emergency Civil Liberties Committee in the Atlanta area on the claim that the Committee on Un-American Activities was illegally established and on what he termed "a matter of conscience and personal responsibility."
- 1961- PETITIONS TO CONGRESS TO ABOLISH THE HCUA
1962 Signer of petition to the 87th Congress to eliminate the HCUA as a standing committee [advertisement, "Petition to the House," Washington Post, January 2, 1961]
Signer of "An Appeal to the House of Representatives-Abolish HUAC," a full-page ad of the Ad Hoc Committee, 160 N. 15th St., Philadelphia. [New York Times, February 22, 1962, p. C-17]
- 1962 PROTEST AGAINST COMMITTEE HEARINGS
Signer of statement on HCUA's hearings of December 11-13, 1962, asking: "... In the name of democracy and survival, ...cancel the proposed investigation into the peace program." [press release, Woman Strike for Peace, December 12, 1962; and The Worker, December 18, 1962, pp. 4 & 6]
- 1964 COMMITTEE TO AID THE BLOOMINGTON STUDENTS (three leaders of the Bloomington, Indiana Young Socialist Alliance, the youth section of the Socialist Workers Party (A-1947; C-1948), indicted for subversive activity under a state sedition law)
Sponsor (letterhead states: Sponsorship in no way implies agreement with the political ideas of the defendants.) [letterheads, January 28 and February 5, 1964]

EIGHTY-EIGHTH CONGRESS

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RICHARD H. ICHORD, MO. HENRY C. SCHADEBERG, WIS.
GEORGE F. SENNER, JR., ARIZ. JOHN M. ASHBROOK, OHIO

FRANCIS J. MCNAMARA, DIRECTOR

FRANK S. TAVERNIER, JR., GENERAL COUNSEL,
ALFRED M. NUTTLE, COUNSEL

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON UN-AMERICAN ACTIVITIES
WASHINGTON

March 17, 1964

Honorable Gerald R. Ford
351 Cannon House Office Building
Washington, D. C.

Dear Mr. Ford:

Since I last wrote to you at the request of Mr. Willis relative to the matter of Mr. Norman Redlich, some additional background data has come to the attention of the Committee.

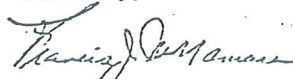
I am enclosing for your information a reproduction of a letter written by Redlich and published in the New York Times of October 13, 1961. It may interest you to know that the rally referred to by Mr. Redlich, the National Assembly for Democratic Rights, was one of the most blatantly Communist operations to take place in this country in recent years. Copies of the Committee's two-part hearing and report are still available should you desire to have a set.

The other item which has come to the Committee's attention is the fact that the Nation Magazine, issue of June 6, 1953, featured an article entitled "Does Silence Mean Guilt?" co-authored by Redlich and Laurent B. Frantz.

Frantz, with whom Redlich wrote this article, testified before the Special Committee on Un-American Activities on April 19, 1940. At that time he denied present or past membership in the Communist Party. Subsequently, however, he was identified as a member of the Communist Party by three ex-Communists who testified before the Committee -- Paul Crouch, on May 6, 1949; Howard A. Bridgman, on April 29, 1950; and Ralph V. Long, on November 30, 1954. Both Crouch and Bridgman testified that they knew Frantz as a member of the Communist Party in the 1930's. If their testimony was true -- and the Committee has no reason to doubt it -- this meant that Frantz had perjured himself when he denied on April 19, 1940, ever having been a Party member.

Frantz again testified before this Committee on May 14, 1960. At that time he invoked the Fifth Amendment privilege when asked about present and past Communist Party membership.

Sincerely,



Francis J. McNamara
Director

Enclosures

*PC
Redline, Newman
file
B. J. [unclear]*

May 25, 1964

President Lyndon B. Johnson
White House
Washington, D.C.

Dear Mr. President:

As an American citizen, deeply concerned with the welfare of our Country, I enclose an interesting news release which was broadcast by a local Dayton radio station and I believe it merits your immediate consideration.

In the past Justice Warren has rendered decisions very favorable to Communists or the Communist cause; therefore I am not surprised at the enclosed comments however I demand, as a citizen, that the matter in question be investigated.

I am an American first and secondly a Democrat, therefore I am sending copies of this letter and news release to the gentlemen, as listed, in case you may feel it is not politically expeditious to take action in this matter.

God help our degenerating nation!

Yours truly,



Louis J. Wrona
319 Central Ave., Apt. 2
Dayton, Ohio 45406

- c.c.- J. Edgar Hoover, Esq., F.B.I.
- Attorney General Robert Kennedy
- Mr. Walter Cronkite, C.B.S. News
- Senator Kenneth Keating
- Senator Everett Dirksen
- Chief Justice Earl Warren
- Editor - New York Times
- Editor - Washington Post
- Huntley-Brinkley News

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WAVI

Editorial

By: Gregg Wallace, News & Editorial Director
BROADCAST: Thursday, May 14, 1964

Mystery and uncertainty have surrounded the special committee selected by President Johnson to investigate fully the assassination of President Kennedy. At the outset there was criticism of having Chief Justice Earl Warren on the committee for fear that, at some later date, the Supreme Court might be faced with a case directly or indirectly connected with the tragic events of last November 22nd.

Then, after President Johnson emphasized the committee was to give the American people a complete and clear report on what occurred, Justice Warren suggested there may be some testimony that may never be revealed.

Later, Dictator Khrushchev sent the committee a supposed complete dossier on the activities of Lee Harvey Oswald, suspected slayer of the late president. This, to say the least, was rather fishy.

Now comes another incredible aspect of the Warren Commission: WAVI understands that the commission has hired at \$100.00 a day, as an assistant to James Lee Rankin, chief counsel to the committee, a man who is reportedly a Communist sympathizer!

38 year old NORMAN REDLICH, former New York University law professor, has, among other things, called for the abolition of the House Un-American Activities Committee, signed a petition asking executive clemency for communists, Carl Braden and Frank Wilkinson...and appeared in a letter-head as a member of the executive committee of the Emergency Civil Liberties Committee. The ECLC has been branded by two Congressional investigating committees as a Communist front organization. In fact, HUAC reports the ECLC was formed in 1951 and is actually operated as a front for the communist party!

This means that Norman Redlich, apparently a communist front, is helping investigate the assassination of an American president, who was gunned down by a Marxist advocate! And, he's being paid a handsome salary from your tax dollars.

We wonder if your congressman knows this? In fact, we're even curious as to whether the members of the Warren commission have been alerted to this shocking situation?

That's Today's Editorial, I'm Gregg Wallace....

"It is the policy of WAVI to express its editorial opinion on matters of importance to our Community. Where comments are controversial, we invite opposing points of view, making equal time available to qualified groups or individuals."

WAVI BROADCASTING CORPORATION, DAYTON 8, OHIO

ATTACHMENT 7

C. A. No. 75-1448

RADIO STATION

WDIX

IN DIXIE

5,000 WATTS

THE AMERICAN BROADCASTING COMPANY

ORANGEBURG, SOUTH CAROLINA

Your opinion is welcome--
for or against these views

W.C. ...
EDITORIAL *4/2/76*

JUN 12 1964

Title: Accommodation or the Truth, Which?

(Best Date)

Norman Redlich is a New York University law professor. Mr. Redlich is one of the top-men in the Emergency Civil Liberties Committee. Mr. Redlich is one of the national council in the Emergency Civil Liberties Committee. Mr. Redlich's Emergency Civil Liberties Committee is specifically organized to (quote) "...defend the cases of Communist law breakers", end quote the House Committee on Un-American Activities. Mr. Redlich volunteered for a job as consultant to the Warren Commission. Mr. Redlich's offer to work for the Warren Commission was accepted. The Warren Commission KNEW that Mr. Redlich asked for the job as consultant. The Warren Commission KNEW that Mr. Redlich is on the national council of the Emergency Civil Liberties Committee. The Warren Commission KNEW that this committee is organized to "defend the cases of Communist law breakers". Knowing these things, the Warren Commission employed Mr. Redlich as its consultant.

These are not obscure facts. There is no secret about these things. Roulhac Hamilton, who is the Charleston (S. C.) News and Courier's Washington correspondent, provided this news on May 1, just past. This information is available to all newsmen and all news media.

When President Johnson appointed the Warren Commission, the President stated that he wanted these men to bring out the full and complete truth about the murder of President Kennedy. That is the President's announced purpose in appointing the Warren Commission. Do you think that you will get the truth about the Oswald murder of President Kennedy? Why not? We do not here state that we question the sincerity of President Johnson, Chief Justice Warren, Senator Richard Russell of Georgia or any of the Commissioners - or, of Mr. Redlich, who is in the business of defending Communist law breakers. We do here state that there is an impelling reason why ALL of these gentlemen would want no reaction of the people of the United States against the official policy of the U. S. government. That policy is the accommodation of your life to that of Communism. We have used the official word in government terms, "accommodation". One other element is interested in the truth of Oswald's murder of President Kennedy. We quote, "Justice and the internal security of the nation call for the most complete investigation and revelation of all factors...(by a committee) headed by Chief Justice Warren", end quote the (Communist) Worker on page 8 of the November 26, 1963 issue. The Communists offered Chief Justice Warren. President Johnson appointed him. Mr. Redlich offered himself. Chief Justice Warren accepted him. Is it important to accommodate your life to Communism - or, to know the truth about President Kennedy's murder? President Johnson and Senator Russell can be reached with your letters and those of your friends and relatives all over this nation. Accommodation or the truth - which?

ATTACHMENT 8

C. A. No. 75-1448

Redlich

May 8, 1964

RECEIVED
MAY 13 10 15 AM '64
CHAMBERS OF THE
CHIEF JUSTICE

Mr. Earl Warren, Chief Justice
United State Supreme Court Building
Washington, D. C.

Dear Justice Warren:

In recent days the newspapers have carried information relative to a Mr. Herman Redlich who is serving as a member of the legal staff investigating the assassination of President Kennedy. From the articles I also ascertain that Mr. Redlich is considered one of your investigators for this special commission.

In view of the background of Mr. Redlich and his association with communist front organizations, I am very much interested in your answer as a member of the legal profession. In view of the circumstances surrounding the President's death, how can you with knowledge so dispatch a person with Mr. Redlich's background to investigate or in any way participate in the commission's activities to determine the truth regarding Lee Harvey Oswald?

I respectfully request an answer in view of the information enclosed in the attached article. The American people have the right to know through what reasoning a jurist of the highest court in the land arrived at such a conclusion.

Sincerely yours,

Marion Hickingsbottom

Marion Hickingsbottom (Mr.)
105 South Turner
Searcy, Arkansas

Warren's Aide Grows Redder

Communist Ties Revealed Of Assassination Group's Legal Consultant

From The Commercial Appeal
Washington Bureau

WASHINGTON, May 6.—Official sources Wednesday revealed additional information about the Communist associations of Norman Redlich, the Warren Commission's \$100-a-day legal consultant.

Members of Congress have asked the commission, headed by Chief Justice Earl Warren, to fire the 33-year-old New Yorker since his membership in organizations cited as Communist-controlled has become known.

Within recent days it has become known that he is a member of the Emergency Civil Liberties Committee, the National Committee to Abolish the House Un-American Activities Committee and the Youth Committee to Abolish the House Un-American Activities Committee.

The Warren Commission is investigating President Kennedy's assassination, including rumors that his death was the result of either a right-wing or Communist plot.

Additional details disclosed Wednesday about Redlich's past activities and associations included:

That he was one of the signers of a leaflet distributed in November by the permanent student committee for travel to Cuba which supported the defiance by 53 Americans, mostly students, of a State Department ban on travel to Cuba.

One of the 53 Americans, Phillip Luce, a student, is employed by the Emergency Civil Liberties Committee, which has been cited as Communist controlled. Redlich is a national councilman of the committee.

Redlich and others signed an April 13 newspaper advertisement condemning the House un-American Activities Committee. Another signer was Waldo Frank, one of the original organizers of the fair play for Cuba committee, which has been cited as a Communist front by the Senate Internal Security Subcommittee.

Other signers of the April 13 advertisement included persons who have invoked the protection of the Fifth Amendment rather than answer questions about any Communist connections.

Redlich was attorney for Harry Magdoff, who invoked the Fifth Amendment May 31, 1951, when asked about his Communist ties. Magdoff was identified in July, 1943, as a Communist.

Redlich was among 25 law professors who signed a statement disagreeing with a Supreme Court decision requiring the Communist Party, U.S.A., to register with the Subversive Activities Control Board.

Redlich has made speeches and signed statements urging abolition of the House Un-American Activities Committee, a favorite target of Communists.

He has been associated with appeals for donations for Carl Braden and Frank Wilkinson, both of whom are associated with the Communist movement.

ATTACHMENT 9

C.A. No. 75-1448

*Redacted,
Hanson*

JOLLAY AND WOLTER
ATTORNEYS AT LAW
WINTER HAVEN, FLORIDA

P. O. BOX 979

TELEPHONE 293-1114

July 21, 1964

HENRY L. JOLLAY
RUTHELED B. WOLTER

Warren Commission
Washington, D.C.

Gentlemen:

The enclosed material, which is highly critical of certain actions of the Warren Commission and of the State Department, has been distributed by the Florida State Elks Americanism Committee to all the members of the Elks organization in Florida.

I am a member of the Elks and am interested in any comments or additional information you may have with respect to the matters discussed in the brochure enclosed. If you wish, I will be glad to pass this material on to the State Elks' office and request that they advise each member of the State Elks organization of the contents of your reply.

Very truly yours,

Rutheled B. Wolter

Rutheled B. Wolter

RBW:AB
Enc.

A SECURITY RISK ON THE WARREN COMMISSION

On 12/20/63, Norman Redlich was hired by the Warren Commission - named to investigate the assassination of President Kennedy - as a \$100.00 a day legal consultant.

The following is a brief sketch of some of Mr. Redlich's activities:

1. He is a member of the National Council - the governing body - of the Emergency Civil Liberties Committee. This Committee has been identified by two Congressional committees and the F.B.I. Director, J. Edgar Hoover, as a communist front organization which serves, among other things, as a propaganda and legal defense arm for the communists.
2. Redlich has solicited funds for the legal defense of three youths indicted by a Federal Grand Jury last September for illegal travel to Cuba as guests of Castro's government and for "conspiring to organize and promote a trip to Cuba in violation of United States travel laws."
3. Early last year, Redlich protested hearings of the House Committee on Un-American Activities on violations of State Department travel regulations and pro-Castro propaganda activities in the United States. Abolition of the House Committee on Un-American Activities has long been a goal of the communist party.
4. On 2/21/64, Abolition News, the bulletin of the National Committee to Abolish the House Committee on Un-American Activities, carried Redlich's name as one of the committee's sponsors. Seven of the thirteen top leaders of this organization are identified communists.

In spite of Norman Redlich's background, The Warren Commission has refused to terminate his employment and has even given him access to classified material.

Last February, the Warren Commission chairman, Chief Justice Earl Warren, stated that some of the testimony gathered by his commission might not be released in our lifetime. Doesn't it seem unfair that a man who promoted communist goals should be paid \$100.00 a day by American taxpayers and even allowed access to classified material, while patriotic Americans are told they might not ever know all the results of an investigation for which they are paying.

WHAT YOU CAN DO:

Those readers who are concerned about this unfair and dangerous situation should immediately write their United States Congressman and their two United States Senators and demand that Mr. Redlich be dismissed and that ALL of the testimony by the Warren Commission be made public.

For further details regarding Redlich see Congressional Record, 5/14/64, p. 10608 and Congressional Record, 5/25/64, p. 11418.

SECURITY RISKS IN OUR STATE DEPARTMENT

A series of recent developments offer a key to exposing security risks now operating in the United States State Department. Since few Americans are aware of the developments, it is doubtful that a full exposure of the subversives and their dupes will be made unless the American public is awakened to the facts and demands action.

HERE ARE THE FACTS:

1. A memorandum dated 7/27/56 and signed by the late Scott McLeod, then administrator of the Bureau of Security and Consular Affairs in the State Department, has been recently turned up by Congressional investigators. The memorandum reveals the existence of a secret official list containing the names of over 800 employees and officers of the U.S. State Department who have been declared as security risks. The list includes the names of pro-communists, homosexuals, alcoholics and officers suspected of being communist agents. The list was compiled under the direction of the State Department's top security officer.
2. A Polish defector from the Soviet Secret Police (KGB), Michal Goleniewski, has bared the existence of "cells" of the KGB in the U.S. State Department and the Central Intelligence Agency both in Washington and in U.S. Embassies overseas. Goleniewski also revealed that:
 - Three American scientists with access to classified material were KGB agents.
 - About \$1.2 million of CIA funds in Vienna was secretly passed to the communists.
 - All important embassies and agencies of the United States "except the FBI" had been infiltrated by at least one KGB operative.
3. Otto Otopka, top professional security officer of the State Department, was dismissed last November for having cooperated with the Senate Internal Security Committee in its investigation of the security situation. Otopka had put together the evidence exposing the role played by the U.S. State Department in bringing Castro to power. He was also responsible for blocking some security risks from being placed in sensitive positions.

WHAT YOU CAN DO: Write your U.S. Congressman and two U.S. Senators and request a full scale investigation of the U.S. State Department. Use the facts given in this article and point out that the Red penetration of our State Department and other government agencies should be eliminated and halted. It will not solve the problem to merely expose those who are security risks. It will be necessary to also hold accountable those officers who employed, promoted, and protected these subversives and undesirables. If you desire further details concerning the security risks in our State Department, we refer you to Congressional Record, 3/3/64, p. 4112 and Congressional Record, 5/26/64, p. A2777.

OPERATION CITIZENSHIP

We would appreciate having those readers who participate in Operation Citizenship, by writing their Congressional Delegation, complete the form below and return to:

NAME _____
ADDRESS _____

ELKS AMERICANISM BULLETIN
P. O. BOX 966
TALLAHASSEE, FLORIDA

I wrote my Congressional Delegation regarding: () The Warren Commission
() The State Department

We appreciate the many copies of letters which previous participants in Operation Citizenship have mailed to us.

ATTACHMENT 10

C. A. No. 75-1448

SAMUEL L. DEVINE
12TH DISTRICT, OHIO

DISTRICT OFFICE:
POST OFFICE BUILDING
COLUMBUS 15, OHIO

Congress of the United States
House of Representatives
Washington, D. C.

PC - 801, W.
COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE
SUBCOMMITTEE,
TRANSPORTATION AND
AERONAUTICS
COMMITTEE ON HOUSE
ADMINISTRATION
SUBCOMMITTEE,
ELECTIONS

August 28, 1964

J. Lee Rankin
General Counsel
200 Maryland Ave., N.E.
Washington, D. C. 20002

Dear Mr. Rankin:

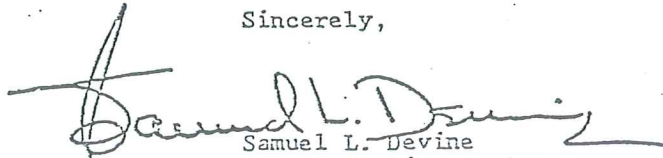
Thank you for your reply to my inquiry addressed to the Chief Justice concerning the method of appointing staff members of the President's Commission on the Assassination of President Kennedy.

You probably realize my comments were directed at Norman Redlich because of his alleged support of Communist-front activities. My colleague, Congressman Johansen, indicated that Mr. Redlich had maintained his membership on the National Council of the Emergency Civil Liberties Committee which has been identified by two Congressional Committees and the F.B.I. as a Communist-front activity.

If this is true, it seems exceedingly strange that a man of this background would be appointed to a Commission investigating the circumstances of the assassination of President Kennedy by a Communist oriented assassin.

I am also led to believe that Congressman Gerald Ford moved for the dismissal of Norman Redlich from the Commission and that his motion was overruled. If this is true, it would seem unusual that the members of the staff were unanimously cleared by all of the Commissioners. A copy of your letter is being sent to Congressman Ford for his comments.

Sincerely,


Samuel L. Devine
Representative to Congress

SLD/mp
cc: Gerald Ford, M.C.

256

FILED: 10-13-76

IMMEDIATE RELEASE

NOVEMBER 30, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER
NO. 11139

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

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

The Chief Justice of the United States, Chairman;

Senator Richard D. Russell;

Senator John Sherman Cooper;

Congressman Hale Boggs;

Congressman Gerald R. Ford;

The Honorable Allen W. Dulles;

The Honorable John J. McCloy.

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

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

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

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

LYNDON B. JOHNSON

THE WHITE HOUSE,

November 29, 1963.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED: 11-12-76

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. Foads, 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)

Page 4 of 28 pages

Deponent's initials CSJ

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. Morrisson'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. Angal 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 event 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

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 Weisberg 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. Foads 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.

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Deponent's initials CLK

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.

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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. Foads 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.

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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 page 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.

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Defendant's initials CBP

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. Knocads 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?

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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 on 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.



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 11th day of November 1976.



(Notary Public)

My commission expires: August 31, 1979

FILED: 11-18-76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

vs.

Civil Action No. 75-1412

~~GENERAL SERVICES ADMINISTRATION,~~

Defendant

ORDER

Upon consideration of plaintiff's motion to compel answers to the third set of interrogatories and upon review of the answers filed with the court by the defendant on November 12, 1975,

and oral argument thereon,

it is this 12th day of November, 19 75,

RECOMMENDED that after defendant's counsel has had an opportunity further to review and confer with the agency's representatives concerned that supplementary answers will be filed so far as possible no later than November 22nd, 1975, and that a further hearing will be conducted at 11:00 a.m. December 2nd, 1975, before the undersigned.

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UNITED STATES MAGISTRATE

COPIES TO COUNSEL (in person) 11/13/75
(by mail) (Date)

HAROLD WEISBERG,

Plaintiff

vs.

Civil Action No. 75-1443

GENERAL SERVICES ADMINISTRATION,

Defendant

ORDER

Upon consideration of defendant's request on behalf of the CIA for an additional 60 days within which to respond plaintiff's third set of interrogatories, plaintiff's objections thereto

and oral argument thereon,
it is this 2nd day of December, 19 76,

RECOMMENDED that the CIA be given until January 3, 1977, to respond.

A hearing on plaintiff's Motion to Compel and defendant's objections to interrogatories will be conducted on January 14, 1977, at 2:00 p.m.

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UNITED STATES MAGISTRATE

COPIES TO COUNSEL (in person) 12/2/76
(~~by~~) (Date)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,
v.
GENERAL SERVICES ADMINISTRATION,
Defendant

FILED: 1-3-76

Civil Action No. 75-1448

NOTICE OF FILING

The United States Attorney for the District of Columbia, counsel for defendant General Services Administration, respectfully notes the filing herewith of the Affidavit of Charles A. Briggs, Chief, Information Services Staff of the Directorate of Operations, CIA, by way of providing information relating to the substance of plaintiff's interrogatories numbered 72, 74-75, 78(c), 87, 92, 99, 101, 104-105, 111-118, 124-126, 133, 130-132, 135-136, 190-191. In addition, it is noted that the following interrogatories have already been satisfactorily answered by the responses of the National Archives, GSA: 78(a) and (b), 79-86, 88-91, 93-98, 100, 107-109, 154-155, 187-189, 192-213.

Counsel also notes the filing herewith of Objections to Interrogatories in which the CIA declines to respond, in whole or in part and for the reasons stated, to the following interrogatories: 64-73, 76-77, 87, 102-103, 105-106, 110, 119-123, 127-153, 156-179, 183-184.

EARL J. SILBERT
UNITED STATES ATTORNEY

ROBERT N. FORD
ASSISTANT UNITED STATES ATTORNEY

MICHAEL J. RYAN
ASSISTANT UNITED STATES ATTORNEY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

AFFIDAVIT

Charles A. Briggs, being first duly sworn, deposes and says:

1. I am the Chief, Information Services Staff of the Directorate of Operations, Central Intelligence Agency (CIA) and hold the rank of GS-18. As Chief of that staff, I am responsible for maintaining record systems within the Directorate of Operations and for establishing secure procedures and systems for handling intelligence documents. I have ready access to intelligence experts versed in the technical requirements of the pertinent Executive orders, National Security Directives and other regulatory issuances, as well as experts in the substance of a wide variety of classified documents and records for which I am responsible; and in my deliberations, I made full use of such experts. The statements made herein are based on my personal knowledge, upon information made available to me in my official capacity, upon conclusions reached therewith and in my deliberation I made full use of this.

2. Through my official duties I have become acquainted with the Freedom of Information Act (FOIA) request submitted to the National Archives by the plaintiff in the above-captioned litigation and I have read the two documents at issue; pages 63-73 of the transcript record of an executive session of the President's Commission on the assassination of President Kennedy of 21 January 1964 and the transcript of a similar session of 23 June 1964. I have concluded that the documents are properly withheld from the plaintiff pursuant to exemptions (b)(1) and (b)(3) of the FOIA, as amended. These exemptions have been asserted in that the documents are currently properly classified pursuant to Executive Order 11652 and contain information which, if released, would jeopardize foreign intelligence sources and methods which the Director of Central Intelligence Agency is responsible for protecting from unauthorized disclosure pursuant to the National Security Act of 1947, as amended (50 U.S.C.A. 403(d)(3)).

3. My authority to classify documents, up to and including TOP SECRET, is set forth in Exhibit A attached.

4. Classifying documents under Executive Order 11652 is not an exact science. Classification determinations are not susceptible to some form of precise mathematical formula. The Executive Order requires a judgment as to the likelihood that an unauthorized disclosure of a document could reasonably be expected to result in damage to the national security. A judgment involving probabilities, not certainties. The Executive Order provides a listing of examples of categorical areas in which it is possible to anticipate damage to the national security. The listing is varied and general; it suggests

concern over hazards to the national security in the fields of foreign relations, military or defense activities, scientific and technical developments, communications security systems, as well as intelligence activities. The list is illustrative, not exhaustive. In the case of classified intelligence documents, current international developments are usually prominent among the classification determinants. The classification decision usually is a function of the relationship between U.S. national security interests and the foreign development. Usually, there are a number of interrelated factors which, in the flow of events, are constantly changing in terms of their relative significance and their interrelationships. An individual document is usually a short-term glimpse of a moving chain of related events. The national security significance of a document cannot usually be judged in isolation. The judgment must take into account what events preceded those recorded, as well as those likely to follow. Consequently, a classification judgment is not valid indefinitely. The circumstances which justify classification may change, sometimes without warranting a change in the classification. Likewise, a classification judgment which is amended at a later date is not thereby proven to have been initially in error. Changes in classification typically result in a lower level of classification. Such a change is usually, as in this case, a result of a judgment that the hazard anticipated has been reduced in magnitude or likelihood with the passage of time.

5. The prime purpose of an intelligence organization is to protect its country from hostile foreign surprises. Concealing such knowledge of hostile intentions and capabilities of foreign countries is a prime role of the

classification system as applied to intelligence documents and information. Concealing the methods and sources used in acquiring such knowledge is also an essential requirement in maintaining such capabilities. Using the classification system to protect intelligence sources and methods, as well as the substantive content of documents, can result in documents which, on their face, bear no apparent justification for classification. In such cases, it is often essential to have access to other classified information to be able to recognize the reason for the classification. For example, an intelligence report detailing a policy decision by a foreign government might not appear to warrant classification unless the reader also knows that the policy decision is a violation of a secret mutual defense commitment that country has made with the U.S., a decision that country intended to keep secret from the U.S. The reader recognizing that, would also recognize that the report proved that the reporting intelligence organization possessed the means of learning of such "secret" policy decisions. The latter fact alone would warrant classification under Executive Order 11652. In sum, a document can warrant classification without the justification being apparent from the text of the document.

6. The transcript of the 21 January 1964 executive session, pages 63-73, is currently classified CONFIDENTIAL and is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652. As I stated in my affidavit of 5 November 1975, the matters discussed in the transcript concerned tactical proposals for the utilization of sensitive diplomatic

techniques designed to obtain information from a foreign government relating to the Commission's investigation of the John F. Kennedy assassination. The specific question discussed concerned intelligence sources and methods to be employed to aid in the evaluation of the accuracy of information sought by diplomatic means. In this instance, revelation of these techniques would not only compromise currently active intelligence sources and methods but could additionally result in a perceived offense by the foreign country involved with consequent damage to United States relations with that country. A more detailed delineation of the nature of the intelligence methods and sources involved in this document would, in effect, defeat the protective intentions of the classification. In arriving at the classification determination, I employed the professional disciplines described in earlier paragraphs and made full use of the professional experts available to me. I have determined, by repeating the review of the document for purposes of this affidavit, that the classification determination was and is valid.

7. The transcript of the 23 June 1964 executive session, pages 7640-7651, is currently classified CONFIDENTIAL and is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652. In my earlier affidavit, I indicated that the document discussed intelligence methods used by CIA to evaluate the accuracy of information available to the Warren Commission. Since that time, the information on the public record has been supplemented to the extent that it has been revealed that the subject of the document is Yuriy Nosenko. Nevertheless, the contents of this document may not be disclosed for the following reasons: Mr. Yuriy Nosenko is a former counterintelligence officer in the Second Chief Directorate of the KGB (Soviet Committee for State Security) who defected to the United States in February 1964

and has, since this defection, provided intelligence information of great value to the United States. When Mr. Nosenko first agreed to provide this Agency with information, it was with the clear understanding that this information would be properly safeguarded so as not to endanger his personal security and safety. He has maintained clandestine contact with the CIA since his defection and continues to maintain such contact. After his defection, Mr. Nosenko was tried in absentia by the Soviet Union and was condemned to death as a result thereof. Any disclosure of his identity or whereabouts would put him in mortal jeopardy. He is now, in fact, a naturalized American citizen and his name has been legally changed. Every precaution has been and must continue to be taken to avoid revealing his new name and his whereabouts.

8. At present, there is no way the Soviet Union can determine exactly what information has been provided by Mr. Nosenko. Until such disclosures are made, the Soviet Union can only guess as to how much information the defector, Mr. Nosenko, had within his possession at the time of his defection, how much he disclosed to the CIA and, consequently, to what degree its security has been compromised by Nosenko's defection. Revealing the exact information which Mr. Nosenko -- or any defector -- has provided can materially assist the KGB in validating their damage assessment and in assisting them in the task of limiting future potential damage. Moreover, the disclosure of the information provided by Mr. Nosenko can only interfere with American counterintelligence efforts since the KGB would take control measures to negate the value of the data. Finally, any information officially released may be exploited by the KGB as propaganda or deception.

9. A guarantee of personal security to a defector is of utmost importance in the maintenance of a vital intelligence service. Every precaution must continue to be taken to protect the personal security of Mr. Nosenko. The manner in which Mr. Nosenko's security is being protected by the CIA is serving as a model to potential future defectors. If the CIA were to take any action which would compromise the safety of Mr. Nosenko by release of this information or would take any action to indicate that the CIA cannot safeguard information provided by a defector, future defectors might, consequently, be extremely reluctant to undertake the serious step of defection. Defection from intelligence services of nations that are potential adversaries of the United States constitutes an invaluable source of intelligence and counterintelligence information. Any action by the CIA that would result in an unwillingness of persons like Mr. Nosenko to defect in the future would have a serious adverse effect on this nation's ability to obtain vital intelligence. The suggestion that Mr. Nosenko's identification as the subject of the document means the whole document must be declassified, fails to recognize that factors other than simple identity combine to warrant the classification of the document. Likewise, the suggestion that since intelligence exploitation of defectors is admitted, all information received from such defectors and the manner in which they are treated must consequently be declassified. The invalidity of such a position would be more obvious if the suggestion were similarly made that since the U.S. admits possession of tactical nuclear weapons, details of the design and disposition of such weapons must consequently be declassified.

10. In response to plaintiff's specific concerns, I further depose that I determined that the classification of the two documents at issue should be reduced from TOP SECRET to CONFIDENTIAL. The determination was cited in Mr. Robert S. Young's letter of 1 May 1975. My determination was based on both classified and unclassified information available to me. I determined that the magnitude and likelihood of damage to the national security reasonable to be expected, should the documents be subject to an unauthorized disclosure, had been reduced to a point which justified a CONFIDENTIAL classification. The potential for damage continues to exist; consequently, the documents remain classified. The kind of damage most likely is in the area of foreign intelligence operations (sources and methods) with a somewhat less threatening possibility of damage in the field of foreign relations.

11. There is nothing in either document that is embarrassing to the CIA.

12. It is not possible to determine a date on which the documents may be declassified because it is impossible to predict, with any certainty, when the potential threats to the intelligence sources and methods involved will no longer exist. Consequently, the documents have been designated as exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

13. In his letter of 1 May 1975, Mr. Young of the CIA uses the phrase "our operational equities." In Agency parlance, that phrase compares closely with "sources and methods." The phrase normally encompasses a wide variety of things which the Agency may "invest in an intelligence

operation. It may cover such things as agents, case officers, cover facilities and similar kinds of entities which have been committed to an intelligence operation and which are, consequently, at some risk as a result of that involvement should the operation be exposed.

14. CIA does not have records from which it is readily possible to calculate an average time it takes to review the classification of an eleven-page document. As indicated earlier, however, the review of classification of a single document cannot be done in isolation without regard to all other documents concerned with the same development or sequence of developments. Frequently, the retrieval of other pertinent documents and information is complex and time consuming and not likely to be apparent to individuals not involved in the process. The amount of time required will thus vary.

15. There are no readily available records reflecting that the two documents were ever handled in a manner inconsistent with their classification.

16. It is normal for the "clandestine branch," known as the Directorate of Operations, to classify documents originated within the Directorate. Classification is not an exclusive function of the "intelligence branch."

17. In determining the classification of the documents at issue, I did take into account the policy of the executive branch that, "If the classifier

76-32

DDA 76-4276

25 AUG 1975

MEMORANDUM FOR: Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Delegation of Authority to Classify Top Secret

1. Action Requested: Reaffirmation of Top Secret classifying authority.

2. Basic Data:

a. The provisions of Executive Order 11652 require that Top Secret classifying authority be delegated by the head of an Agency in writing.

b. Per MW 10-110 dated 31 May 1972 (attached), Mr. Charles A. Briggs, Director of Planning, Programming and Budgeting, was delegated Top Secret classifying authority.

c. The need has developed for the Top Secret classifying authority delegated to Mr. Charles A. Briggs, as noted in paragraph 2(b), to be reaffirmed.

Name	Position	Position No.
Charles A. Briggs	Chief, Services Staff	CT 35

3. Recommendation: It is recommended that Top Secret classifying authority be reaffirmed for Mr. Briggs.

/s/ John F. Blake
John F. Blake

Attachment: 2/s

APPROVED (✓)

DISAPPROVED ()

/s/ George Bush

29 AUG 1975

George Bush
Director

Date

CONFIDENTIAL

This document becomes UNCLASSIFIED when separated from attachment.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG;

Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant.
.....

Civil Action No. 75-1448

OBJECTIONS TO INTERROGATORIES

The Central Intelligence Agency (CIA) declines to respond to and objects to certain interrogatories, partially or in their entirety. CIA believes that the specified interrogatories are irrelevant in the following respects:

A. They relate to earlier classification reviews which are not at issue; 64-71, 73, 76, 77, 87, 102, 106, 110 and 113,

B. They relate to documents which are not at issue; 64-69, 76, 77, 87, 102, 110, 183 and 184, or

C. They do not relate to the substance of the documents at issue or their denial; 103, 119-123, 127-153, 156-179 and 183;

or they call for information protected against such disclosure by Executive Order

11652, section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C.A.
403g or section 102(d)(3) of the National Security Act of 1947, 50 U.S.C.
403(d)(3), as implemented by exemptions (b)(1) and (b)(3) of the Freedom
of Information Act; 72, 74, 103, 105, 107, 108, 112 and 127.

Earl J. Silbert
United States Attorney

Robert N. Ford
Assistant U.S. Attorney

Michael J. Ryan
Assistant U.S. Attorney

As a result of the conference with the United States Magistrate held on November 18, the Central Intelligence Agency was given until November 30 to respond in affidavit form to interrogatories it was supposed to have answered by September 1, 1976.

On November 24, 1976, counsel for plaintiff phoned defendant's attorney and was informed that the Central Intelligence Agency would respond to approximately half of plaintiff's third set of interrogatories, but not to the rest.

The Central Intelligence Agency requested a 60 days extension of the time in which it must respond to plaintiff's interrogatories. The Magistrate granted an extension of 30 days and on January 3, 1977, the defendant served on plaintiff by mail an affidavit of Mr. Charles A. Briggs of the Central Intelligence Agency which purported to respond to 29 of plaintiff's 150 interrogatories.

In short, both the General Services Administration and the Central Intelligence Agency are stonewalling the discovery which the Court ordered on May 25, 1976.

Both the General Services Administration and the Central Intelligence Agency object to a large number of interrogatories on the ground that they are not relevant to the present suit because they relate to the transcript of the January 27, 1964, Warren Commission executive session transcript. The January 27 executive session transcript was made public in June, 1974, as the result of a previous Freedom of Information lawsuit by this plaintiff, Civil Action 2052-73.

While the January 27 transcript is not the subject of this suit, it is clearly related to issues which are present in this action. For example, defendant maintains that the Warren Commission executive session transcripts were classified pursuant to Executive order 10501 and has submitted sworn affidavits to that

effect by Dr. James B. Rhoads, the Archivist, and Mr. J. Lee Rankin, General Counsel for the Warren Commission. Plaintiff asserts this is false. Plaintiff seeks to impeach the credibility of these affiants by compelling the GSA and the CIA to answer questions relating to the classifiability of the January 27 transcript and the determinations that it was to be kept classified. Matters that affect the credibility of a deponent or that might be used at trial in impeaching or cross-examining a witness may be inquired into on discovery. Broadway v. Ninety-Sixth St. Realty Co. v. Loew's, Inc., 21 FRD 347 (S.D. N.Y. 1953); Da Silva v. Moore McCormack Lines, Inc., 47 FRD 364 (E.D. Pa. 1969); United States v. 364.82 Acres of Land, More or Less, In The County of Mariposa, State of California, 38 FRD (N.D. Calif. 1965).

The importance of this discovery to plaintiff's case is enhanced by the fact that the legislative history to the Amended Freedom of Information Act expressly states that where the government invokes exemption 1 to prevent the disclosure of a record, the district court "will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." H.R. Rep. No. 1380, 93d Cong., 2d Sess. (1974).

In this case the only affidavits submitted in support of the claim that the June 23 and January 21 transcripts are presently classified "Confidential" is that of Mr. Charles Briggs of the Central Intelligence Agency. Because the January 27 transcript is now public and its text makes it patently clear that there never was any basis for classifying it, plaintiff seeks to ascertain what role Mr. Briggs or other officials of the Central Intelligence Agency played in wrongfully classifying or suppressing it.

In addition, plaintiff seeks to ascertain Mr. Briggs' competency by having him indicate any portions of the January 27 transcript

which were properly classified under Executive order. Because the January 27 transcript has been made public, this affords a rare opportunity to test the veracity and judgmental reliability of an affiant who is invoking national defense or foreign policy as a justification for continuing the suppression of documents which are now nearly thirteen years old. Unless plaintiff is allowed to test the credibility of the classifier of the transcripts at issue in this suit, then there is the risk, in this case a certainty, that the Court will be the victim of a fraud like the one which this defendant pulled in maintaining that the January 27 transcript was classified Top Secret under Executive order 10501 when, in fact, there was never any basis for classifying that transcript.

The General Services Administration has objected to interrogatories 92 and 93 on the grounds that they are irrelevant. The Central Intelligence Agency claims to have answered interrogatory 92, but has not. It also claims that interrogatory 93 was answered satisfactorily by the General Services Administration, which, however, refused to answer it at all. These interrogatories seek to learn whether the CIA informed the defendant that the fact that Yuri Ivanovich Nosenko was the subject of the June 23, 1964, executive session transcript. They are relevant to this lawsuit because the credibility of all the CIA's assertions of an exemption 1 claim in this case is suspect if the CIA did make such false representations to the defendant or its counsel.

Interrogatory 94 seeks to learn the basis for the exemption 5 claim which the defendant has made for the June 23 transcript and pages 63-73 of the January 21 transcript by inquiring what policies were discussed by the Warren Commission in those transcripts and whether the Warren Commission advised anyone with respect to any such policies. The General Services Administration has objected

to this interrogatory on the ground 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." However, plaintiff has not asked for the substance or nature of the advice allegedly given at the January 21 and June 23 Warren Commission executive sessions. Plaintiff has merely asked what policy issues were discussed and who was given the advice. Thus, this interrogatory does not inquire into matters within the ambit of exemption 5. Plaintiff seeks only to determine whether the assertion that these transcripts are protected by exemption 5 is credible in light of the surrounding circumstances. Plaintiff has asserted that the purpose of the Warren Commission was to ascertain and evaluate facts, not to set policy. If this is correct, then exemption 5 would not apply to transcripts of Warren Commission executive sessions. The burden is on the defendant to establish a basis for invoking exemption 5 by showing that a policy was discussed and advice given as a result. Without affirmative answers to the two parts of this interrogatory, the exemption 5 claim must fail.

The General Services Administration has objected to interrogatory 102 on the ground that it is not relevant because it relates to two executive session transcripts which are now public. Plaintiff contends that it is relevant because the answer will show that there is no basis for invoking exemption 5 with respect to the transcripts sought in this action but not having applied it to other Warren Commission executive session transcripts which have been disclosed in the past. Even assuming that an exemption 5 claim ever existed with regard to any Warren Commission executive session transcripts, unless the defendant can properly distinguish between those transcripts previously released and the ones at

issue in this suit, then the exemption 5 claim has been waived.

Defendant General Services Administration has objected to interrogatories 201-210. These interrogatories are relevant because they attack the credibility of those who have sworn out affidavits in support of defendant's attempt to continue suppressing the records which are the subject of this lawsuit. Plaintiff contends that answers to these interrogatories will establish bias and discrimination against him by the General Services Administration and the Central Intelligence Agency and that this gives motive to the efforts of these agencies to continue withholding documents from him even though no basis for the withholding exists under the Freedom of Information Act. Moreover, the defendant has waived any objection to answering this series of interrogatories by stating in answer to interrogatory No. 199 that it has not discriminated against plaintiff in what it has made available to him under the Freedom of Information Act.

In light of the above, plaintiff contends that the General Services Administration should be compelled to answer interrogatories 64-67, 69, 87, 92-94, 98, 102, 187, 196, and 200-210; and that the Central Intelligence Agency should be compelled to submit an affidavit which specifically responds to plaintiff's interrogatories 68, 70-77, 78(c), 80, 81(a)-(c) and (f), 84, 87, 92, 93(b), 94, 100, 101, 104-106, 108, 110-112, 116, 119, 186, and 190-191.

Plaintiff again calls attention to the delay in responding to his interrogatories, the refusal to answer most interrogatories, and the evasive and incomplete or inadequate answers to many of them, and requests that satisfactory responses be compelled immediately. If plaintiff's interrogatories are not to be answered satisfactorily and promptly, then plaintiff requests sanctions in the form of striking from the record the affidavits submitted by

Dr. Rhoads, Mr. J. Lee Rankin, and Mr. Charles A. Briggs. Or, alternatively, that this case proceed to trial as soon as is practicable.

Respectfully submitted,

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

Attorney for Plaintiff

FILED: 1-14-76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

vs.

Civil Action No. 75-1443

GENERAL SERVICES ADMINISTRATION,

Defendant

ORDER

Upon consideration of plaintiff's motion to
~~compel~~ compel interrogatories ~~and~~

and oral argument thereon,

it is this 14th day of January, 19 77,

It is ^{ED}ORDER sua sponte that plaintiff be given
until February 1, 1977, to file a motion to compel
under Rule 1-9~~8~~ of the Rules of this Court, and the
Government is given until February 15, 1977, to respond
thereto. A further hearing will be conducted at 2:00 p.m.
on February 8, 1977.

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UNITED STATES MAGISTRATE

COPIES TO COUNSEL (in person) 1/24/77
(by mail) (Date)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant

Civil Action No. 75-1448

FILED

JAN 19 1977

JAMES F. DAVEY
CLERK

OBJECTION TO
APPEAL FROM MAGISTRATE'S
ORDER AND DEMAND FOR TRIAL

On January 14, 1977, United States Magistrate Jean Dwyer ordered, sua sponte, "that plaintiff be given until February 1, 1977, to file a motion to compel under Rule 1-9A of the Rules of this Court, and the Government is given until February 16, 1977, to respond thereto." The order also provides that: "A further hearing will be conducted at 2:00 p.m. on February 18, 1977."

(See Exhibit 1)

Pursuant to Rule 3-9(a)(3) of the Rules of this Court, plaintiff ^{objects to} ~~appeals from~~ the Magistrate's order. Plaintiff further demands that this case proceed to trial as soon as possible.

This is a Freedom of Information Act suit for two entire Warren Commission transcripts and eleven pages of a third. Even by defendant's own admission, plaintiff's initial request for two of these transcripts goes back at least to 1968, and the third to 1971.

310-A

Over the years plaintiff repeated his requests for the disclosure of these and other Warren Commission executive session transcripts many times. On March 12, 1975, plaintiff made request under the 1974 Freedom of Information Act for the transcripts at issue in this suit. On September 4, 1975, he filed a suit for them.

On October 28, 1975, plaintiff initiated discovery by filing his first set of interrogatories. When no answer had been made a month after the answers were due, on December 29, 1975, plaintiff filed a motion to compel answers. When answers were finally served on plaintiff, some had been objected to, so a further motion to compel was filed on March 1, 1976. Subsequently, on May 25, 1976, this Court ordered the defendant to answer some of the interrogatories to which it had filed objections.

On March 2, 1976, plaintiff filed a motion for leave to take depositions by tape-recording. At the hearing on May 25, 1976, this Court rejected that motion but firmly stated its resolve "to get the record developed in this case and dispose of it as expeditiously and as fairly as we can . . ." The Court stated that if the factual was not adequately developed by means of interrogatories, then the case would proceed to trial with the anteroom filled with the witnesses plaintiff had sought to depose.

When plaintiff's counsel indicated that on the basis of his prior experiences it was not going to be all that easy, the Court suggested that the Government attorney, Mr. Ryan, "has enough work to do not to play games in this case." (See Exhibit 2, May 25, 1976 hearing transcript, pp. 17-21)

Unfortunately, what has transpired is exactly what counsel for plaintiff foresaw. On July 28, 1976, plaintiff filed his

third set of interrogatories, many of them directed at the Central Intelligence Agency. In September, the answers to these interrogatories not having been timely filed, plaintiff's counsel reminded counsel for the defendant that they were overdue. This producing no response, on October 15, 1976, plaintiff filed yet another motion to compel.

Subsequently, plaintiff received a notice that the motion to compel would be heard before the United States Magistrate on November 18, 1976. On that date it developed that mysteriously, and not in conformity with the provisions of Rule 3-9(a)(1) of the Rules of this Court, the case had been referred to the Magistrate not by the judge to whom it was assigned but by Judge Bryant.

Shortly before the November 18 hearing, defendant General Services Administration finally served, nearly three months late, answers to approximately 20 percent of the 150 numbered interrogatories submitted by plaintiff. And although this Court had ordered at the May 25, 1976, hearing that the Central Intelligence Agency would either respond to appropriate or the case would go to trial, the Central Intelligence Agency did not respond to any of plaintiff's interrogatories. Instead, as plaintiff had warned the Court would happen, defendant General Services Administration objected to interrogatories addressed to the Central Intelligence Agency on the grounds that the CIA did not have to respond under Rule 33 because it was not a party to the lawsuit.

At the November 18 conference with the Magistrate, defendant General Services Administration was given until November 30, 1976, to obtain answers or objections to plaintiff's interrogatories from the Central Intelligence Agency. The Central Intelligence Agency did not comply. Instead, it requested an extension of time of 60

days in which to respond to the interrogatories. The Magistrate granted it 30 days, until January 3, 1977, to do so.

On January 4, 1977, plaintiff received an affidavit from Mr. Charles Briggs of the Central Intelligence Agency purported to respond to some of the interrogatories. However, the overwhelming majority of interrogatories were either objected to or responded to in an evasive or incomplete manner. The Briggs affidavit did not state which specific interrogatories it addressed. It did not comply with the requirement of Rule 1-9A(a) of the Rules of this Court by identifying and quoting each interrogatory in full immediately preceding the statement of any answer or objection thereto.

On January 7, 1977, plaintiff filed a motion to compel answers to interrogatories by both the General Services Administration and the Central Intelligence Agency. Because the motion had to be filed by that date in order to be considered at the January 14th hearing, it was hastily drawn. The motion sought to compel answers to 24 interrogatories by the General Services Administration and to 96 interrogatories by the Central Intelligence Agency. It did not attempt to demonstrate that each specific interrogatory was relevant and should be answered. Rather it categorized the interrogatories which had not been answered and gave examples as to why they are relevant to the issues presented by this lawsuit.

At the January 14th hearing the counsel for the Central Intelligence Agency stated that the interrogatories had not been transmitted to the CIA until sometime in November, 1976. This made it abundantly clear that games, very dirty games, are being played with plaintiff's Freedom of Information Act request. This has been the rule in all of the several Freedom of Information lawsuits which plaintiff has filed in this Court.

During the January 15th hearing the Magistrate raised, sua sponte, the objection that plaintiff's motion to compel did not comply with Rule 1-9A(a) of the Rules of this Court. The Magistrate then ordered that plaintiff would be given until February 1, 1977, to file a motion to compel which sets forth the full text of each interrogatory plaintiff wants answered and responds to the objections made to each interrogatory by the Government. The Magistrate then set February 16, 1977, as the date for the Government to make its response to the latest motion to compel. A new hearing on the matter was scheduled for February 18, 1977.

Plaintiff appeals from this order and demands that the case proceed immediately to trial. Plaintiff is widely recognized as the foremost authority on the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. He has devoted the last thirteen years of his life to a study of those assassinations and the investigation of them which was made by the Government. Unlike many critics of the Government's investigation of these assassinations, plaintiff does indulge in speculation about who committed these crimes. His work focuses on an examination of what the evidence shows about the crimes and the way our most basic institutions functioned, or failed to function, in times of crisis.

Plaintiff's work depends, therefore, on access to official documents and records. Plaintiff is now 64 years old. In October, 1975, shortly after this suit was filed, plaintiff suffered an attack of acute thrombophlebitis. The entire main vein in his left leg is now gone. If this case continues on the present course to which it has been diverted, plaintiff will be dead before this Court enters judgment on his Freedom of Information Act request. There is no doubt that the Government is aware of this and would rejoice if it happened, but it would be a most shameful chapter in

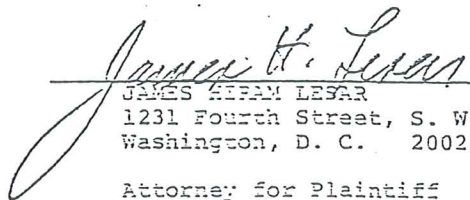
our national history should this Court allow it.

Plaintiff cannot afford any further delay in this case. The clock is literally running out on his life and his life's work.

It is time to put a halt to the Government's arrogant stonewalling. The only way this can be done under the present circumstances is to proceed to trial as rapidly as possible so plaintiff can obtain by subpoena what he cannot obtain through interrogatories.

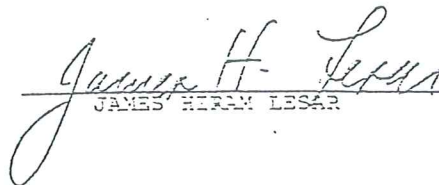
Accordingly, plaintiff asks that the Magistrate's January 14, 1977, order be vacated, and the case set for trial.

Respectfully submitted,


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

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of January, 1977, delivered a copy of the foregoing Appeal from Magistrate's Order and Demand for Trial to the office of Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D. C. 20001.


 JAMES HIRSH LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Courtroom No. 4
U.S. Courthouse
Washington, D.C.
Friday, March 4, 1977

The above-entitled matter came on for hearing in open court on Motion to Compel at 10:10 o'clock a.m., before THE HONORABLE AUBREY E. ROBINSON, JR., United States District Judge.

APPEARANCES:

JAMES HIRAM LESAR, ESQ.,
appearing on behalf of plaintiff.

MICHAEL J. RYAN, ESQ.,
STEVEN GARFINKEL, ESQ.,
ADRIAN THOMAS, ESQ.,
LAUNIE ZIEBELL, ESQ.,
appearing on behalf of defendant.

EUGENE T. FEDORATION
OFFICIAL COURT REPORTER
8322 UNITED STATES COURT HOUSE
WASHINGTON, D. C. 20001

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THE DEPUTY CLERK: Harold Weisberg versus General Services Administration, Civil Action 75-1448.

MR. RYAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Ryan.

All right, are you ready to proceed?

MR. RYAN: Yes.

May it please the Court, Your Honor, my name is Michael J. Ryan, Assistant United States Attorney. I represent the defendant General Services Administration in this Freedom of Information Act matter.

With me this morning, Your Honor, are three associate counsel in this case, Mr. Steven Garfinkel from the General Counsel's Office, General Services Administration; Adrian Thomas from the National Archives, and Launie Ziebell from the General Counsel's Office at the Central Intelligence Agency.

Your Honor, pending before Your Honor are a motion for summary judgment filed by defendant General Services Administration supported by affidavits of Mr. Briggs of the CIA and Dr. Rhoads of the Archives. Also pending are plaintiff's partial summary judgment motion on two of the three transcripts which are at issue in this proceeding.

Your Honor, just to recap in a few seconds --

THE COURT: Don't recap because I have read every-

1 thing all over again. I know exactly where we are.

2 MR. RYAN: Fine, Your Honor.

3 We have also a motion to compel answers to
4 interrogatories which, I might say, are the third set of
5 interrogatories which we have answered. We have also
6 responded to two document production requests by plaintiff.

7 If Your Honor wishes, I could address the motion to
8 compel or I could go right on the summary judgment motion,
9 whichever Your Honor prefers.

10 THE COURT: Well, let's put the horse in front of
11 the cart. Let's go to the summary judgment motion.

12 MR. RYAN: Very well, Your Honor.

13 As Your Honor knows, there are three transcripts
14 involved in this FOIA request, and I will deal with each one
15 separately.

16 Your Honor, first of all, there is a transcript --

17 THE COURT: Well, two of the transcripts, the same
18 things apply to two of the transcripts.

19 MR. RYAN: That's correct.

20 THE COURT: The same exemptions you claim.

21 MR. RYAN: That's correct, Your Honor.

22 THE COURT: One and three.

23 MR. RYAN: The January 21, 1964, transcript, pages
24 63 to 73, and also the June 23rd, 1974 transcripts of the
25 executive sessions of the Warren Commission. As to those

1 transcripts, we have claimed Exemption b(1), which exempts
2 national security material; Exemption b(3), which, as Your
3 Honor knows, exempts material otherwise exempted by statute,
4 and Exemption (5), which exempts intra-agency memoranda.

5 Your Honor, those two transcripts, the one transcript
6 and the portion of the other transcript, continue to remain
7 classified Confidential, and at this point I think it's very
8 important --

9 THE COURT: Well, I don't think that we are going to
10 get very far arguing about the Confidential classification
11 because you have some problems about that; don't you?

12 MR. RYAN: Your Honor, I am not sure. Plaintiff has
13 made a motion for partial summary judgment as to one of those
14 transcripts, claiming that it has been declassified, and I
15 would like to clear that up right now.

16 Plaintiff has submitted the cover page of the
17 January 21, 1964 transcript, which shows that that particular
18 edition of the transcript has been declassified and no
19 classification applies. We are talking about ten pages of that
20 transcript which remain Confidential, Your Honor, and in that
21 particular edition of the transcript, those ten pages have
22 been removed.

23 So, obviously, for purposes of researchers and
24 historians and others who wish to look at that transcript,
25 that particular transcript minus those ten pages is declassified.

1 Then I think there may be a misunderstanding on plaintiff's
2 part.

3 So, we have submitted affidavits and we also have
4 submitted answers to interrogatories which we feel, Your
5 Honor, justify those transcripts continuing to be classified
6 Confidential; at least that they were properly classified at
7 the time that they were classified and that the agency has
8 followed the proper procedures in downgrading them from the
9 Top Secret classification to their present classification of
10 Confidential.

11 Your Honor, we have also claimed that b(3) exempts
12 disclosure of these particular transcripts as well as
13 Exemption b(5).

14 Your Honor, perhaps it would be easier to deal with
15 Exemption b(5) first.

16 As Your Honor knows, the transcripts of the
17 executive sessions of the Warren Commission reflect the free
18 exchange of opinions, recommendations as to what the final
19 report of the Warren Commission would be. It was on that
20 basis that the agency decided to invoke b(5), which in our
21 opinion, Your Honor, is a permissive exemption; in other words,
22 an exemption which we can invoke but which, absent other
23 exemptions, we could in our discretion choose to release that
24 particular transcript.

25 A great number of the executive session transcripts

1 have been released. I believe these three transcripts are the
2 last ones which have not been released. And there were a
3 great many, thousands of pages in those Warren Commission
4 transcripts.

5 Your Honor, were it not for the continuing applica-
6 tion of the b(1) exemption, I think that it might be the case
7 that we would exercise the permissive discretion to release
8 those transcripts. So, we are really talking about the
9 continued application of the b(1) exemption to those two
10 transcripts. That's primarily what we are discussing.

11 As to the b(3) exemption which we have invoked,
12 Your Honor, that is on account of the application of -- I
13 believe it's Section 403(d) of the CIA statute which requires
14 a director to continue to withhold or try to protect
15 confidential sources and methods.

16 Your Honor, the subject matter of those transcripts
17 does deal with methods employed by the Central Intelligence
18 Agency in a confidential way to protect those particular
19 methods.

20 Your Honor, the May 19th transcript has been sub-
21 mitted to Your Honor for in camera inspection. We are not
22 claiming classification with respect to that transcript; merely
23 that it is exempted under b(5) as an intra-agency memorandum
24 b(6) because its disclosure would constitute a material
25 invasion of privacy of the individuals discussed in that

1 transcript.

2 Your Honor, we have submitted the affidavits. We
3 feel that the affidavits of the government would be entitled
4 to great weight at this point inasmuch as we have pursued the
5 discovery route which Your Honor required back on May 25,
6 1976. We have gone through quite lengthy discovery. We have
7 had three sets of interrogatories, two document production
8 requests.

9 We have not answered every single interrogatory.
10 We filed objections to certain of those interrogatories.

11 Plaintiff has contested our objections with a
12 motion to compel. We have responded to the motion to compel.

13 The most recent motion to compel we argued before
14 Magistrate Dwyer. The Magistrate requested that the motion be
15 re-cast and re-filed. Plaintiff chose not to do that but
16 instead to request a trial in this case. As a result, we did
17 not respond to that motion to compel.

18 But we feel that in view of the fact that we have
19 responded to the interrogatories which are the subject of
20 the motion to compel and have noted our objections, that our
21 position stands on the record.

22 Your Honor, if there are any questions with respect
23 to our position in this matter, I would be happy to try to
24 answer them. I think the matter has been before Your Honor
25 one other time and Your Honor is familiar with our position.

1 THE COURT: Your memorandum clearly states it.

2 MR. RYAN: I have representatives here from the
3 agency. If Your Honor wishes to pose any particular questions,
4 I think we can attempt to answer them.

5 Thank you, Your Honor.

6 MR. LESAR: James Lesar, attorney for plaintiff
7 Harold Weisberg.

8 Your Honor, I will make things very brief since you
9 have stated that you are familiar with what is at issue.

10 The first question at issue with respect to the
11 motion to compel answers to interrogatories is that this
12 Court indicated very clearly nearly a year ago that we were
13 entitled to discovery and that we would be allowed to proceed
14 with it, and if we did not get it, this case would go to
15 trial.

16 It has been one frustration after another for nearly
17 a year trying to get the relevant information, and we don't
18 have it.

19 The defendant has objected to basic questions
20 relating to --

21 THE COURT: Stand up, counselor.

22 MR. LESAR: Yes.

23 -- has objected to basic questions which relate to
24 the credibility of its claims that the transcripts are
25 properly classified.

1 We face in this situation the customary situation of
2 a litigant who must try to counter the authoritative affidavits
3 of persons who have seen documents that we have not. That
4 makes the discovery all the more essential.

5 But in this case they claim, with respect to two
6 transcripts, that they were classified as of a certain date
7 by the CIA at a Top Secret level, and then in a period of
8 less than three months they suddenly plummet to Confidential.
9 They refused to provide any answer as to what event or
10 circumstance caused that plummet in the level of classification.

11 Obviously, that's important for us to know.
12 Obviously, it gives us the basis of attacking the credibility
13 of that classifier.

14 With respect to the two classified transcripts, the
15 most important question is whether or not they were properly
16 classified originally. The uncontradicted evidence is that
17 they were not.

18 The defendant has admitted that the provisions of
19 the executive orders were not followed, that the Warren
20 Commission did not have authority to classify these documents.

21 The affidavit of Mr. Weisberg has been uncontradicted.
22 It states that the transcripts, in violation of the executive
23 classification procedures, were classified routinely without
24 regard to content, and that there were other irregularities in
25 the classification proceedings.

1 They now claim that they have been classified
2 properly by the CIA at a level of Confidential. But they also
3 state in the same breath that there are copies of documents
4 missing -- of classified transcripts missing, and that no
5 search has been made to try and recover these.

6 THE COURT: Well, what's that got to do with it?
7 The ones that we are talking about are not missing.

8 MR. LESAR: There are several copies of each of
9 these transcripts and there are copies missing. They do not
10 know where the original type scripts of these transcripts are.
11 They never made any attempt to search for any of these copies.

12 THE COURT: Well, what has that got to do with this
13 litigation?

14 MR. LESAR: Well, I think --

15 THE COURT: All you want is one copy. It doesn't
16 make any difference if they lost or burned up or threw away
17 ten others.

18 MR. LESAR: What it bears on is the credibility of
19 their claim that the content of this is classified in the
20 interest of national defense. If it were classified in the
21 interest of national defense and were that essential to our
22 national security, I am sure that they would have tried to have
23 recovered any copies or find out where there might be copies
24 missing that someone could make available to someone else in
25 violation of the classification.

1 The other obvious fact is that the basis for with-
2 holding these under Exemption (1) is to protect the confi-
3 dential source or confidential source and methods.

4 At one point in this proceeding, very early on,
5 we addressed a question with respect to the June 23rd
6 transcript as to whether or not Mr. Nosenko was not the subject
7 of that transcript. They refused to answer that on the
8 grounds that it was getting at the information that they were
9 trying to protect under Exemption b(1).

10 We then pointed out that it was public knowledge
11 that Mr. Nosenko was the subject of this transcript, and they
12 admitted it. This bears on the spurious nature of the claims
13 that they are making.

14 Now, there is a transcript, the January 27, 1964
15 transcript, which was the subject of a previous lawsuit. They
16 claimed that it was classified.

17 We now have, as a result of some of the discovery
18 in this case, documents indicating that the CIA instructed
19 that that be withheld to protect sources and methods.

20 That document is now public. There never was any
21 basis for its classification. Mr. Weisberg has so stated in
22 his affidavit, without contradiction.

23 Not only has he stated without contradiction that
24 it was never classified, properly classified, but it reveals
25 no source or method. Yet that was the basis on which the CIA

1 was withholding it.

2 THE COURT: You don't know what it reveals.

3 MR. LESAR: Yes. We have it.

4 THE COURT: Yes. But you don't know really what it
5 reveals. That's the problem that we are faced with in these
6 classifications.

7 MR. LESAR: No. I think you misunderstand me. We
8 have a transcript.

9 THE COURT: I understand what you are saying very
10 clearly. You have the whole transcript. You have read it
11 word for word. You know exactly what it says.

12 MR. LESAR: Yes.

13 THE COURT: And to you it reveals nothing either
14 with respect to source or method.

15 MR. LESAR: Well, we have asked, in one of our
16 interrogatories, the CIA to state what it reveals.

17 THE COURT: Well, that's getting the information;
18 isn't it?

19 MR. LESAR: Well, it seems obvious to me that if
20 it revealed anything, they wouldn't have released it, or if
21 it could have revealed anything.

22 Now, what these transcripts involve are defectors
23 to the Soviet Union.

24 Now, just on the basis of common sense alone, you are
25 not going to get --

1 Who is being protected from the revelation of this
2 information? The Soviet Union is not. They know. So, who
3 is being protected? What national security purpose can
4 possibly be served by withholding this information? And if
5 there is one, why is the agency fighting so hard to answer
6 simple interrogatories?

7 Now, with respect to the May 19th transcript, they
8 have claimed primarily two exemptions, Exemption (5) and
9 Exemption (6). Exemption (5) deals with the protection of
10 policy advice.

11 It is evident that the Warren Commission had as its
12 purpose the evaluation of evidence and not the formulation of
13 policy.

14 Interrogatories have been addressed to the
15 defendants to state what policy was discussed or whether it
16 was made available to anyone, and they have refused to answer
17 that.

18 The obvious reason is because there was no policy
19 that was properly within the purview of the Warren Commission.
20 Their job was to evaluate evidence, and that is disclosable
21 under Exemption (5).

22 In addition, the agency invokes Exemption (5)
23 capriciously because it has released other transcripts to
24 which the same objection would apply. I suggest that is a
25 waiver of their right to claim Exemption (5) in this case.

1 THE COURT: What is that argument? Once they are
2 wrong, every other time that you make a demand is to presume
3 they're wrong?

4 MR. LESAR: No. What I am saying is you have a
5 series of transcripts. All of them are part of the same
6 proceeding. They're all Warren Commission transcripts. Each
7 of these transcripts is of meetings at which the Warren
8 Commission discusses the matter before it: the assassination
9 of President Kennedy.

10 Now, if Exemption (5) applies to one, it applies to
11 all.

12 If they invoke it only for certain ones, then we're
13 back to the point where we have no longer a freedom of
14 information law but we have an exemption which can be used
15 capriciously by the agency to deny a litigant any material
16 that is embarrassing to the government.

17 Exemption (6) is also invoked with respect to the
18 May 19th transcript. That deals with the clearly unwarranted
19 invasion of personal privacy.

20 The affidavit which has been submitted in support of
21 the government's motion for summary judgment does not establish
22 that there was a clearly unwarranted invasion of privacy.
23 It doesn't even come close to it.

24 The most that is alleged -- it doesn't even allege,
25 for example, that there would be grave personal damage

1 resulting to any individuals as a result of the disclosure
2 of these documents.

3 In fact, there are reams of material publicly
4 available which indicate that two Warren Commission staff
5 members were the subject of that transcript, and that the
6 defendant has admitted this in answers to interrogatories.

7 The information that is publicly available is
8 vicious; it is defamatory in the extreme. There is some
9 reason to believe that the transcript in fact clears the
10 two staff members of the vicious and defamatory campaign which
11 is publicly available for the cost of a phone call to the
12 National Archives.

13 So, on what possible grounds can it be contended
14 that any invasion of privacy outweighs the public interest
15 in making this document available?

16 Finally, this is not properly a subject of Exemption
17 (6) because it is not a personnel file. The legislative his-
18 tory quite clearly indicates that Exemption (6) was to be
19 applied to certain types of government personnel files which
20 contained very personal details about a person who was applying
21 for a job or who worked for a government agency.

22 This is not that type of a file, and I think that
23 the Supreme Court decision in Department of the Air Force v.
24 Rose quite clearly indicates that this is not within the
25 purview of Exemption (6).

1 The government has cited one case, *Ditlow v. Schultz*,
2 in which the Court of Appeals in this Circuit did uphold a
3 decision which suppressed the name of individuals on customs
4 declaration forms. But that quite clearly was proper. It
5 quite clearly was the kind of information sought to be
6 protected.

7 In another case, *Goetman v. NLRB*, names and addresses
8 of individuals were released of union members because the
9 court felt that whatever minimal loss of privacy there might
10 be, it was outweighed by the public purpose of the person
11 seeking the disclosure of the information. In this case, even
12 that is not involved because the names of these individuals
13 are known.

14 So, I respectfully submit that there is no ground
15 for withholding the May 19, 1964 transcript.

16 MR. RYAN: Your Honor, I will be very, very brief.

17 Your Honor has, of course, the May 19th transcript.

18 Your Honor, we have asserted the sixth exemption to
19 protect the privacy of the individuals discussed. Your Honor
20 knows well the balancing tests. We will abide by the Court's
21 decision with respect to the application of Exemption (6) to
22 the May 19th transcript.

23 As Your Honor observed with respect to the other
24 two transcripts which remained classified Confidential, Your
25 Honor, plaintiff's questions addressed to the release or the

1 declassification of another transcript, we submit, are totally
2 irrelevant to these two transcripts.

3 The subject matter of those other transcripts in
4 this Warren Commission investigation, which have been de-
5 classified, is different from the subject matter of the two
6 transcripts which continue to remain classified Confidential.

7 Your Honor, we submit that under the standards
8 appropriate for consideration at the time these transcripts
9 were classified, they were properly classified. The agency
10 is simply following its procedures in the declassification of
11 these transcripts. At some time, more than likely, it is
12 inevitable that these transcripts will be completely declassi-
13 fied.

14 THE COURT: Yes. You don't think ten years is
15 long enough?

16 MR. RYAN: Your Honor, there is a schedule for
17 declassification.

18 THE COURT: No. But, you see, that schedule for
19 declassification just is not something that you can rely upon
20 in the face of litigation.

21 MR. RYAN: Your Honor --

22 THE COURT: They will get around to it when they
23 feel like it. Yet, in the meantime, we have got four or five
24 suits pending.

25 MR. RYAN: Your Honor, I might --

1 THE COURT: I think there needs to be, obviously,
2 some real judgment exercised with respect to that. I am
3 talking about the Nosenko business.

4 MR. RYAN: Your Honor --

5 THE COURT: It's all out in the open; isn't it?

6 MR. RYAN: Your Honor, the fact of Mr. Nosenko's
7 name is out in the open. But the subject matter of those
8 transcripts is not out in the open.

9 And we contend that the subject matter goes beyond
10 the discussion of that particular name, Your Honor. It
11 involves other matters which we continue to request that they
12 be kept classified Confidential.

13 Your Honor, I might point out --

14 THE COURT: But it would only be to protect the
15 national security; is that correct?

16 MR. RYAN: That's right, Your Honor. Under b(1),
17 that is the purpose of our continuing to request that it be
18 classified Confidential, and it has been so classified.

19 THE COURT: Well, how do you propose that we test
20 this? You see, this is the problem that's proposed to the
21 Court.

22 MR. RYAN: Your Honor --

23 THE COURT: There is nothing that I can see to
24 prevent an affidavit being constructed by the head of an
25 agency that very carefully -- as it was done here -- that makes

1 it impossible for the Court to exercise any rational judgment.
2 That's the difficulty we have in this thing.

3 I have no desire to second guess anybody in the
4 CIA as to what is or is not in the public interest.

5 But by the same token, we have no assurance in any
6 particular matter that it's any more than just a general desire
7 not to let us have information that should be available.

8 MR. RYAN: Your Honor --

9 THE COURT: I can understand very clearly. I don't
10 think I would have any difficulty if this case were being
11 tried in 1967. But this is 1977, and the affidavit would lead
12 us to believe that the same exact circumstances that existed
13 for the classification in 1964 exist in 1977.

14 MR. RYAN: Your Honor --

15 THE COURT: Now, that's the purport of the affidavit.
16 That's the purport of your argument; is it not?

17 MR. RYAN: Your Honor, we would --

18 THE COURT: Of course, to some extent.

19 MR. RYAN: -- submit that it has been declassified
20 from Top Secret to Confidential.

21 THE COURT: Surely. And in 1987 you might get it
22 down to some other classification. In 1997 you will say,
23 "Here it all is. Nosenko is dead. They have got a new
24 regime in Russia. We have got a new administration here --
25 will have had three or four.

1 MR. RYAN: Your Honor, we would submit that our
2 Court of Appeals has addressed this problem, this problem that
3 the Court is faced with in the case of Weissman v. CIA, and
4 has, in addressing that problem, stated only in the extreme
5 cases would the Court look behind what it considers to be an
6 inadequate affidavit.

7 If the affidavit is not adequate, Your Honor, it
8 seems that the burden would be upon the government to redo the
9 affidavit, to submit a more adequate affidavit for the Court's
10 satisfaction.

11 But I would submit that it's important to keep in
12 mind that the agency does review these documents when a
13 Freedom of Information Act request comes in. It just doesn't
14 rely upon the schedule.

15 As a matter of fact, the case which the plaintiff
16 referred to where a transcript was declassified a short time
17 after a decision in favor of the government was rendered by
18 Judge Gesell, that particular transcript was reviewed as a
19 result of plaintiff's Freedom of Information Act request when
20 it was made. It just so happened that the declassification
21 review took slightly longer than the litigation took to
22 process.

23 So that after Judge Gesell had ruled that the
24 transcript was exempt as an investigatory file under b(7), a
25 short while thereafter the declassification review was

1 completed and the transcript was released.

2 So, these transcripts are looked at a second time
3 again and again, not only according to the schedule, but when
4 a Freedom of Information Act request comes in, Your Honor.

5 So, we submit that there is nothing in the record
6 to derogate from the good faith of the agency in conducting
7 an ongoing review of this transcript.

8 We submit that the decisions will be made at the
9 appropriate time, and we hope that that is a time in the nearer
10 as opposed to the distant future, to continue this de-
11 classification process, and at some time in the future these
12 two transcripts will be declassified.

13 If Your Honor is not satisfied with the affidavits
14 which we have submitted, Your Honor, we can consider that and
15 attempt to provide additional material. I don't know that
16 that is necessary, but we submit that we have made the showing
17 required under the cases for the sustaining of the invocation
18 of the b(1) exemption.

19 So, Your Honor, we would rest on that presentation.

20 If Your Honor has any further questions --

21 THE COURT: No, I don't have any further questions.

22 I understand your position. I understand the plaintiff's
23 position.

24 MR. RYAN: Thank you very much, Your Honor.

25 THE COURT: All right.

1 MR. LESAR: Your Honor, may I just correct a couple
2 of things?

3 First of all, it is not true that the plaintiff's
4 request for the January 27th transcript was reviewed when he
5 requested it. He made that request in 1968. It was not
6 reviewed until 1974.

7 THE COURT: I know. I have had other Freedom of
8 Information Act cases. They don't do anything until they go
9 to court. That's the pattern throughout the government.

10 MR. LESAR: It is also --

11 THE COURT: The presumption is that you are not
12 entitled to it. That's the way they operate. You have got to
13 fight for it.

14 I haven't had a single case yet where they said yes,
15 under the statute you are entitled to it. Not when it gets
16 down to close decisions of any kind. The presumption is very
17 much to the contrary.

18 Now, I cannot take any more time in this matter. I
19 told you, I have read everything that you have submitted. I
20 will take it under advisement. I will issue the appropriate
21 order.

22 Thank you.

23 MR. RYAN: Your Honor, I am advised by counsel that
24 under the terms of Executive Order 11652, the classification
25 order, plaintiff also has a right to seek classification review

1 by the Intra-agency Classification Review Committee. So, that
2 is an alternate route the plaintiff can go. I don't know
3 whether he has exercised that prerogative.

4 THE COURT: Well, he is not required to. I know
5 it's an alternate.

6 MR. RYAN: He is not required to, but it is available.

7 THE COURT: Yes. But if he gets the same thing that
8 he has had over the years --

9 MR. LESAR: As a matter of fact --

10 THE COURT: I am not going to hear any more. I told
11 you. This could go on for the rest of the day.

12 I understand your problem. I will wrap it up and
13 you can get it to the Court of Appeals as fast as you can,
14 because that's where it's ultimately going to be decided.

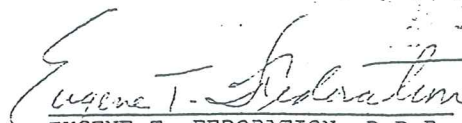
15 All right.

16 (Whereupon, at 10:40 o'clock a.m., proceedings
17 in the above-entitled matter were taken under
18 advisement.)

19 -oOo-

20 REPORTER'S CERTIFICATE

21 Certified to be the official transcript of proceedings.

22
23 
24 EUGENE T. FEDORATION, R.P.R.
25 Official Court Reporter

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :
Plaintiff, :

v. : CIVIL ACTION 75-1448

GENERAL SERVICES :
ADMINISTRATION, :
Defendant. :

FILED

MAR 10 1977

ORDER

JAMES F. DAVEY, CLERK

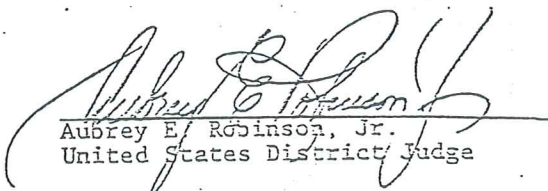
Upon consideration of the parties cross motions for summary judgment and upon consideration of the arguments advanced by counsel at oral hearing and it appearing to the Court that with respect to the May 19, 1964 transcript the in camera inspection reveals that it reflects deliberations on matters of policy with respect to the conduct of the Warren Commission's business. These discussions are not segregable from the factual information which was the subject of the discussion. To disclose this transcript would be to impinge on and compromise the deliberative process. Exemption 5 of the Freedom of Information Act (5 U.S.C. §552(b)(5)) is therefore applicable and the Defendant is entitled to Summary Judgment on this transcript.

It further appearing to the Court as regards 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)).

It is therefore this 10th day of March, 1977,
ORDERED, that the Plaintiff's Motion for Summary
Judgment be and it is hereby DENIED; and it is

FURTHER ORDERED, that the Defendant's Motion
for Summary Judgment be and it is hereby GRANTED and
that the action be and it is hereby DISMISSED.


Aubrey E. Robinson, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED: MARCH 21

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: HAROLD WEISBERG,
:

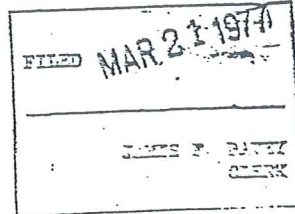
Plaintiff,
:

v.
:

Civil Action No. 75-1448
:

GENERAL SERVICES ADMINIS-
TRATION,
:

Defendant
:
.....



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.

* * *

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 suggest:

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 foreign 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 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 Commission went out of existence in 1964 and engages in no more policy discussions.

Respectfully submitted,

341

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....

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

.....

AFFIDAVIT OF 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, Alexandria, 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 inquiries 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 need^{ed}/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 accommodate 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 personally 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 challenged, 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 functioning 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 Archives 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. L.

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires April 14, 1979

BELLA S. ARZU, N.Y. CHAIRWOMAN
LEO J. RYAN, CALIF.
JOHN CONYERS, JR., MICH.
TOMBERT H. MACDONALD, MASS.
JOHN E. MOSS, CALIF.
MICHAEL MURKIN, MASS.
ANDREW MACUIRE, N.J.
ANTHONY MOFFETT, CONN.

4
SAM STEIGER, ARIZ.
CLARENCE J. BROWN, OHIO
PAUL N. McCLOSKEY, JR., CALIF.
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-319-B-C
WASHINGTON, D.C. 20515

October 27, 1975

MEMORANDUM

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 investigatory file under exemption 7 of the Freedom of Information Act, and rested its decision on that ground.)

Memorandum to Mr. Timothy H. Ingram
October 27, 1975

Page 3

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.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the plaintiff in the above-entitled 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 indispensable 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 initiative 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 dependable 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 indispensable 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 COLUMBIA

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

B. J. King
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My Commission expires April 14, 1979.

June 21, 1971



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

FILED: 3-21-77

Dear Mr. Weisberg:

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

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

Transcripts

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

Parts of Transcripts

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

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

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

Sincerely,

HERBERT E. ANGEL
Acting Archivist
of the United States

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

FILED: 3-21-77

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).

RECEIVED SOPT

23 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 Next to date acq, strike field report number.
3 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, J. 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. Delete from Para. 2 |
1216 Para. 3, delete |

- 4 -

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,

A handwritten signature in cursive script, appearing to read "Lawrence R. Houston". The signature is written in dark ink and is positioned above the typed name.

Lawrence R. Houston
General Counsel

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

	<u>Date</u>	<u>From</u>	<u>To</u>	<u>Subject</u>	<u>Security Classification</u>	<u>Release or Withhold</u>
1.	1/21/64			Transcript of executive session of the Commission, p. 63-73	TS	
2.	<u>1/27/64</u>			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, Liebel, 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		

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PAGE 375

UNAVAILABLE.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :
Plaintiff :
v. : CIVIL ACTION 75-1448
GENERAL SERVICES ADMINISTRATION, :
Defendant :

FILED

JUN 7 1977

ORDER

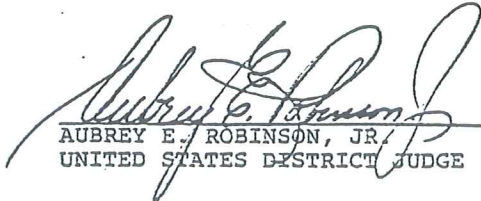
JAMES F. DAVEY, CLERK

Upon consideration of Plaintiff's Motion for Reconsideration and upon consideration of the Opposition filed thereto; it is by the Court this 7th day of June, 1977,

ORDERED, that the Order entered March 10, 1977, be amended to read as follows:

"The statute relied on by Defendant as respects Exemption 3 is 50 U.S.C. §403(d). That this is a proper exemption statute is clear from a reading of Weissman v. CIA, No. 76-1566 (D.C. Cir. Jan. 6, 1977). The agency must demonstrate that the release of the information can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods. Upon such a showing the agency is entitled to invoke the statutory protection accorded by the statute and Exemption 3. Phillippi v. CIA, No. 76-1004 (D.C. Cir. Nov. 16, 1976). On the basis of the affidavits filed by the Defendant it is clear that the agency has met its burden and summary judgment is appropriate."

The Plaintiff's Motion in all other respects is DENIED.


AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

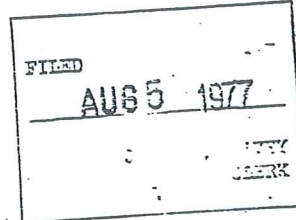
Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....



NOTICE OF APPEAL

Notice is hereby given that Harold Weisberg, plaintiff above-named, hereby appeals to the United States Court of Appeals for the District of Columbia from the March 10, 1977 order of this Court granting defendant's motion for summary judgment and dismissing this action, as amended by the Court's order of June 7, 1977.

James H. Lesar

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Attorney for Harold Weisberg

DATED: August 5, 1977