

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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

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No. 77-1831

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HAROLD WEISBERG,

Plaintiff-Appellant

v.

GENERAL SERVICES ADMINISTRATION,

Defendant-Appellee

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

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ULTIMATE ISSUES

Only those at the inmost point saw things differently. To them, old Crow's article was a discreet masterpiece of disinformation; George Smiley at his best, they said. Clearly, the story had to come out, and all were agreed that censorship at any time was objectionable. Much better therefore to let it come out in the manner of our choosing. The right timing, the right amount, the right tone: a lifetime's experience, they agreed, in every brush-stroke. But that was not a view which passed outside their set.

John Le Carre, The Honourable Schoolboy

As this reply brief is being written, the Washington Star reports that a new book on the assassination of President Kennedy claims that the CIA strongly suspected that a Soviet KGB official

who defected to the United States in 1964 was a phoney sent to cover up Lee Harvey Oswald's links to Soviet intelligence. [See Addendum 1, at 1a] The Soviet defector is Yuri Ivanovich Nosenko, the subject of the June 23, 1964 Warren Commission executive session sought by plaintiff Harold Weisberg ("Weisberg").

The Star's UPI dispatch further reports that the new book "claims the CIA's suspicions were effectively smothered by J. Edgar Hoover, who allegedly feared the Russian might disgrace the FBI by testifying that Oswald, in truth, had been an unwatched Soviet agent." [1a]

The UPI dispatch serves to spread disinformation about the assassination of President Kennedy. The beneficiary and progenitor of this disinformation is the CIA, some of whose officials at the time of Kennedy's assassination sent raw, inflammatory, and unauthenticated reports directly to the White House and the State Department which could possibly have started a war against Cuba. [See plaintiff's unanswered interrogatories, some of which have been printed in Addendum 13. See in particular interrogatories 164-179, at 46a-47a]

In his March 21, 1977 Affidavit [JA-360/375], Weisberg advised the District Court that this disinformation operation was in the works and might explain the CIA's efforts to keep the January 21 and June 23 transcripts suppressed. In view of current developments, it is worth quoting the relevant portions of that affidavit at length:

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 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. [JA-364/366]

That this disinformation campaign has been launched without the public having access to the vital information which may be contained in the Warren Commission executive session transcripts sought

by Weisberg is attributable to: 1) the delays and obstructions which government agencies invariably practice in Weisberg's Freedom of Information Act cases, and which the lower courts tolerate; and, 2) the deference of courts to agency affidavits resting on claims that the national security would be endangered in the information requested were disclosed.

In this case the District Court did not consider the affidavits and evidentiary materials which Weisberg filed when it ruled that the June 23 transcript and pages 63-73 of the January 21 transcript are exempt under (b) (3). Instead, the Court rested its decision solely on the basis of the affidavits filed by the GSA. [JA-376]

In effect, then, the District Court has held that where the (b) (3) statute is 50 U.S.C. 403(d) (3), the Court must accept the agency's ipse dixit. The implications of this are profound and profoundly disturbing, as Weisberg noted in his March 21, 1977 affidavit:

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 or 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 disembowling is to take place under the guise of Exemption 3, whereas previously it was done under Exemptions 1 and 7. [JA-361/362]

The political and institutional implications of the District Court's ruling are even more important than its immediate legal consequences. The practical effect of the ruling is to exempt the Central Intelligence Agency from the Freedom of Information Act, a consequence which Congress clearly did not intend. It will result in an endless game in which the CIA makes sport of judges while subverting the law and spreading disinformation throughout the land.

Ultimately, then, the social issue which now confronts this Court is the same one expressed in the Warren Commission's tragic fate. The Warren Commission was appointed to "ascertain, evaluate and report upon" the facts relating to the assassination of President Kennedy. (E.O. 11130, November 30, 1975) That the Warren Commission failed to fulfill its presidential mandate is in large part due to the intelligence agencies, notably the FBI and the CIA, which misled the Commission, withheld relevant information, and manipulated it into adopting the FBI's instant solution to the crime in the face of all the evidence. The brief but horrofyng January 22, 1964 Warren Commission executive session transcript shows that rather than investigate troubling evidence that Oswald might have worked for the FBI, a task which required that the Commission confront FBI Director J. Edgar Hoover head on, the Com-

mission decided to support the FBI's conclusions and "go home." Because of its relevance to the ultimate issues in this case, the entire January 22nd transcript is reprinted here as Addendum 12.<sup>1</sup> [19a-31a]

In sum, the integrity of the judicial system is itself at stake in this case. Also at stake is whether the public mind will have the opportunity to free itself from the poisonous disinformation spread by the intelligence agencies and those in the media who, wittingly or otherwise, assist them. This is the promise of the Freedom of Information Act. It can only be accomplished if the intent of Congress to make Freedom of Information effective is honored. For the reasons set forth below, this requires the reversal of the District Court's decision in this case.

#### ARGUMENT

I. CIA IS NOT ENTITLED TO CLAIM EXEMPTION 3 UNDER PROVISIONS OF 50 U.S.C. §403(d)(3) UNLESS THE INFORMATION SOUGHT TO BE PROTECTED IS PROPERLY CLASSIFIED UNDER EXECUTIVE ORDER

On June 21, 1971, in response to Weisberg's letter of May 20, 1971, the acting Archivist of the United States, Mr. Herbert E. Angel, set forth the Warren Commission executive session transcripts which were still being withheld and cited the exemptions

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<sup>1</sup>This transcript was obtained by Weisberg in April, 1975, as a result of his Freedom of Information Act request in this action. For a decade the Archives claimed not to have any transcript of this session. It did, however, have the stenotypist's notes. The delay in typing them up apparently accounts for the misspellings and gaps.

for each. With respect to the June 23 transcript and pages 63-73 of the January 21 transcript, only exemptions 1 and 7 were invoked. Thus, the Archives failed to cite the exemption on which these transcripts are now withheld by court order until after exemption 1 was amended makes it clear the government did not regard exemption 3 as an independent grounds for withholding these transcripts at that time. Instead, the government sought to invoke it only after the amending of exemption 1 jeopardized that claim and they needed a new pretext on which to gull the courts.

GSA's brief argues that even where the statute involved is 50 U.S.C. §403(d)(3), which makes the Director of Central Intelligence responsible for protecting intelligence sources and methods against "unauthorized disclosure" (emphasis added), exemption 3 is wholly independent of exemption 1.

The difficulty with which GSA maintains this position is enhanced by its own admissions under oath. Weisberg's interrogatory No. 100 asked, in part, "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)?" The Archivist replied:

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. (Emphasis added) [41a-42a]

The clear implication of this answer to Weisberg's interrogatory is that the exemption 3 claim is dependent upon Executive Order 11652 and should no longer be invoked once the transcripts have been declassified. Since the transcripts are not now and never have been properly classified pursuant to Executive order, it is apparent that the exemption 3 claim based on 50 U.S.C. §403(d) (3) does not and can not protect them.

This issue is given an authoritative and logical treatment in the affidavit of Weisberg's classification expert, Maj. William G. Florence (Ret.):

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) (1) 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 Executive 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. [JA-353/354]

In support of Weisberg's position on this point, his brief quoted from this Court's decision in Phillippi v. Central Intelligence Agency, 178 U.S.App.D.C. 243, 249-250, n. 14, 546 F. 2d 1009, 1015-16, n. 14 (1976), and the Conference Report on the 1974 Amendments to the Freedom of Information Act. GSA contends in its brief, at page 22, that "neither of the passages stands for the proposition claimed. At most, they reflect an awareness on the part of Congress and the Court that material which is protected under Exemption 3 may also be protected under Exemption 3."

Weisberg agrees that the passage from Phillippi, while suggestive, does not firmly resolve the issue presented here. However, the meaning of the passage from the Conference Report is clear and unequivocal:

Restricted Data (42 U.S.C. 2162), communication information (18 U.S.C. 798), and intelligence sources and methods (50 U.S.C. 403(d) (3) and (g), for example, may be classified and exempted under section 552(b) (3) of the Freedom of Information Act. When such information is subjected to court review, the court should recognize that if such information is classified pursuant to one of the above statutes, it shall be exempted under this law. (Conference Report No. 93-1380, 934d Cong., 2d Sess., p. 12) (emphasis added)

This evinces Congressional intent to allow an exemption 3 claim based on 50 U.S.C. 403(d) (3) only if the information is classified. This is eminently reasonable because the only way in which the Director of Central Intelligence can meet his statutory obligation

to protect intelligence sources and methods is by having such information properly classified in accordance with the applicable Executive order and its implementing National Security Council directive. The phrase "unauthorized disclosure" is defined by the provisions of Executive Order 11652, and the disclosure of information not properly classified under that order does not constitute "unauthorized disclosure." Were this not so, the statutory mandate which requires the Director of Central Intelligence "shall" protect intelligence sources and methods from unauthorized disclosure would not be non-discretionary, as the GSA concedes it is (GSA brief, page 18), but totally subject to whatever meaning the Director of Central Intelligence and his delegates might choose to imbue that phrase with.

GSA does argue, however, that 50 U.S.C. 403(d)(3) also qualifies as a discretionary (b)(3) statute (GSA brief, page 18). In order to qualify as a discretionary statute under (b)(3)(B), it must be found that the statute "establishes particular criteria for withholding or refers to particular types of matter to be withheld." It is apparent that 50 U.S.C. 403(d)(3) does not establish "particular criteria" for withholding. While it is less apparent that this statute does not refer to "particular types of matter to be withheld," this becomes evident once one comprehends the peculiar and totally subjective way in which intelligence officials employ and interpret language. Considerable light was shed on this matter by the affidavit submitted by Weisberg's classification expert, Maj. William G. Florence:

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 intelligence 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. [JA-352/353]

In view of these uncontested facts, it is an obvious absurdity to maintain that this statute "refers to particular types of matters to be withheld" with sufficient definiteness to qualify as a discretionary (b)(3)(B) statute. The CIA's definition of "sources and methods" reduces to whatever is in a given employee's mind at a

given moment: "The criteria used to determine whether an item of information reveals an intelligence source or method are not easily defined nor are they static." In short, the criteria employed are not shown to have any objective basis whatsoever. A newspaper clipping or page from the telephone directory could qualify for protection in the eyes of the CIA.

In view of this, it is especially significant that in this case the CIA refused to answer such fundamental questions as:

1. Whether the classifier of the transcripts considers that the use of information supplied by defectors is an intelligence method which can be protected under Executive Order 11652, whether this intelligence method is one of those sought to be protected by withholding the January 21 and June 23 transcripts from the public, and whether this method is secret? [Interrogatories 124-126, 44a]
2. Whether Nosenko revealed anything of a national security nature to the FBI, the CIA, or the Warren Commission which is unknown to the KGB? [Interrogatory No. 127, 44a]
3. Do the June 23 transcript and pages 63-73 of the January 21 transcript reveal the identity of any intelligence source not publicly known? [Interrogatories 181, 182, 47a]

II. EVEN IF AN EXEMPTION 3 CLAIM BASED UPON 50 U.S.C. §403(d) (3) IS NOT DEPENDENT UPON PROPER CLASSIFICATION UNDER EXECUTIVE ORDER 11652, GSA STILL FAILED TO MEET ITS BURDEN OF DEMONSTRATING ENTITLEMENT TO THE EXEMPTION

Unless the CIA's ipse dixit is conclusive, the GSA has not met its burden of demonstrating entitlement to exemption 3. The decisions of this Court hold that the agency's word alone is not



sufficient. In Phillippi this Court held:

If the Agency can demonstrate, see 5 U.S.C. § 552(a)(4)(B) (Supp. V, 1975), that release of the requested information can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods, it is entitled to invoke the statutory protection accorded by 50 U.S.C. § 403(d) and 5 U.S.C. § 552(b)(3). Phillippi, at 178 U.S. App.D.C. 249, n. 14, 546 F. 2d 1015, n. 14.

The record in this case amply demonstrates that the GSA has not met this burden. Even if the exemption 3 claim in this case does not hinge upon proper classification as Weisberg has argued above, the classification or lack thereof is plainly an important factor which must be taken into account in determining whether the release of the transcripts at issue in this case "can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods." This Court in effect said so in Phillippi:

Since information which could reasonably be expected to reveal intelligence sources and methods would appear to be classifiable, see Executive Order 11652, . . . , 3 C.F.R. at 340, and since the Agency has consistently claimed that the requested information has been properly classified, inquiries into the applicability of the two exemptions may tend to merge. Phillippi, supra, at 178 U.S.App.D.C. 249-250, n. 14, 546 F. 2d 1015-16, n. 14.

The Warren Commission transcripts have never been properly classified, either under Executive Order 10501 or its successor, Executive Order 11652. At the time the transcripts originated they were marked Top Secret by a court reporter for the firm of Ward & Paul. They were thus "classified" by a person without authority to classify who marked them classified as a matter of routine and

without regard to content, all in violation of the strict procedures prescribed by Executive Order 10501. In addition, the Warren Commission itself was not authorized to classify information under Executive Order 10501. Moreover, the GSA has itself admitted to procedural violations, such as the failure to mark the January 21 and June 23 transcripts, at the time of their origination, to indicated the downgrading-declassification scheduled to be followed. [Interrogatory No. 59, 34a]

It seems apparent to Weisberg that the CIA's attempt classify these transcripts eleven years after their origination is invalid per se. In Schaffer v. Kissinger, 164 U.S.App.D.C. 282, 284, 505 F. 2d 389, 391 (1974), this Court seems to have suggested, without deciding, that post hoc classifications may not be valid.

But even if it is conceded that the CIA could have legitimately classified these transcripts under Executive Order 11652, the plain fact is that it did not do so because it failed to comply with the procedural requirements of that order as implemented by the National Security Council Directive of May 17, 1972, 37 Fed. Reg. 10053 (1972). The answers to Weisberg's interrogatories establish, for example, that the CIA made classification reviews of these transcripts in 1972 and again in 1974. Each time a decision was made to continue the Top Secret classification. [Answers to interrogatories 20 and 71, 32a, 36a-37a] Yet on neither occasion did the CIA comply with provision I(C) of the NSC Directive, which requires that the person at the highest level authorizing the classification must be identified on the face of the information or ma-

terial classified. Nor were the transcripts then marked then to indicate the downgrading-declassification schedule as required by § IV(A) of the NSC Directive.

The most serious violation, however, is the failure to comply with § IV(H) (4), which provides:

(4) Sensitive Intelligence Information.  
For classified information or material relating to sensitive intelligence sources and methods, the following warning notice shall be used, in addition to and in conjunction with those prescribed in (1), (2), or (3), above, as appropriate:

"WARNING NOTICE--SENSITIVE INTELLIGENCE  
SOURCES AND METHODS INVOLVED"

Neither the January 21 transcript nor the June 23rd transcript contains this warning, even though there have been no less than three classification reviews of these transcripts by the CIA since the effective date of the NSC Directive. This by itself seriously undermines the credibility of the CIA's affidavits which proclaim that disclosure of the transcripts would jeopardize sensitive intelligence sources and methods. The failure to affix the required warning is an indication that the CIA itself does not really believe the claims it made to the District Court in its affidavits.

The record is replete with other evidence indicating that the CIA's affidavits cannot be believed, or at least must be seriously doubted. The GSA has admitted that it does not know where the original typescripts of the January 21 and June 23 transcripts are. [Interrogatory No. 89, 40a] In addition, there are apparently six missing copies of the January 21 transcript and three of the June

23 transcript. The National Archives has not instituted any search for the missing copies and asserts that: "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." [Interrogator No. 81, 39a] Such a cavalier dismissal of the possibility that a breach of security has occurred when one-half the total copies originally made are missing is totally inconcsistent with the alleged sensitivity of the information contained in them.

The publicly known facts about Nosenko make the CIA's affidavits all the more suspect, even downright ridiculous. The GSA asserts, on the basis of the CIA's affidavits, that any disclosures as to Nosenko's whereabouts "could endanger" him, and that revelation of the actual transcript "would assist the Soviet Union in assessing the extent of the information provided and in taking measures to neutralize its value." [GSA brief, page 19] How a fourteen-year old transcript could disclose Nosenko's whereabouts, particularly since he has been given a new identity, is not explained. The liklihood of such harm flowing from the disclosure of the transcript seems less than was occasioned by the revelation in KGB, a CIA-assisted book, that in May, 1970 Nosenko walked unannounced into the Washington offices of the Reader's Digest less than four blocks from the Soviet embassy. [15a]

Equally unworthy of belief is the claim that disclosure of the June 23 transcript would assist the Soviet Union in assessing the extent of the information provided by Nosenko and in taking measures

to neutralize its value. There is nothing which Nosenko could reveal which was not known to his fellow KGB officers. In such cases intelligence agencies routinely operate on the "worst possible case" assumption in taking measures to neutralize the value of a defection. Any any event, the CIA-assisted book, KGB is liberally studded with instances of what Nosenko revealed to the CIA. [See Addendum 11, 12a-18a] Its revelations are probably far more than was needed for the KGB to make an accurate assessment.

In addition to the lack of credible assertions in the CIA's affidavits upon which to conclude that the disclosure of these transcripts could reasonably be expected to reveal intelligence sources and methods, other circumstances cast even more doubt on the CIA's claims. For example, in October, 1974 the CIA concluded a classification review of these two transcripts by determining that their Top Secret classification should be continued. This assessment was again repeated in instructions given to the National Archives on March 19, 1975. Yet by letter dated May 1, 1975 the CIA instructed the Archives to downgrade the classification level to Confidential. This precipitous decline in the alleged sensitivity of the transcripts, coinciding as it did with Weisberg's FOIA request under the Amended Act, suggest the politics of suppressing embarrassin information, not a sudden change in national security considerations, triggered the the plunge from Top Secret to Confidential. This suspicion is bolstered by the refusal of the GSA to explain what accounted for this rapid change. [See interrogatories 72 and 74, 37a-38a]

A GSA memorandum recently obtained by another requestor indicates that GSA conducted its own classification review of Warren Commission materials soon after Executive Order 11652 was issued on March 10, 1972. The memorandum states: "Our review of these records in light of Executive Order 11652 . . . has revealed that they are generally overclassified when classification at all is warranted." (Emphasis added) [11a] Weisberg sought to take tape-recorded depositions of both CIA and GSA personnel in order to exploit the possibility that the two agencies, or different classification reviewers within each agency, disagreed as to the classifiability or classification level of the transcripts at issue. The District Court did not allow Weisberg to take these depositions, a ruling which violates the decision of this Court in Colonial Times, Inc. v. Gasch, 166 U.S.App.D.C. 184, 509 F. 2d 517 (1975). The GSA's answers to interrogatories aimed at exploring this were not responsive. [See, for example, the answer to interrogatory No. 188, 48a]

In short, summary judgment for GSA was clearly inappropriate in light of all the evidence. In moving for summary judgment, the Government bears the burden of demonstrating that no genuine issue of material fact impedes its right to judgment as a matter of law, and matters of fact are to be viewed in the light most favorable to the party opposing the motion. Weisberg v. United States Dept. of Justice, 438 F. Supp. 492, 494 (D.D.C. 1977), Nyhus v. Travel Management Corp., 151 U.S.App.D.C. 269, 271, 466 F. 2d 440, 442 (1972). Considered in the light most favorable to Weisberg, the facts cast doubt on, in fact even refute, the necessary finding that the disclosure of the January 21 and June 23 transcripts "can

reasonably be expected to lead to the unauthorized disclosure of intelligence sources and methods." Therefore the motion should have been denied with respect to these transcripts.

III. WEISBERG'S ALLEGATIONS OF BAD FAITH ON PART OF GOVERNMENT ARE NOT FRIVOLOUS AND REQUIRED COURT TO CONDUCT IN CAMERA INSPECTION OF WITHHELD TRANSCRIPTS

In Weissman v. Central Intelligence Agency, \_\_\_\_\_ U.S.App.D.c.

\_\_\_\_\_, 565 F. 2d 692, (697 (1977), this Court held:

If exemption is claimed on the basis of national security the District Court must, of course, be satisfied that proper procedures have been followed, . . . 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.<sup>2</sup>

Weisberg's brief argued that the government's bad faith required the District Court to examine the transcripts in camera with the assistance of his classification expert, Maj. Florence. In part Weisberg's argument was based on the fact that in a previous suit, for the January 27, 1964 Warren Commission executive session transcript, the GSA had maintained that that transcript was classified, but when it was ultimately obtained by Weisberg it proved not to have contained any information that was even classifiable. Yet it had been withheld by the CIA on the same "intelligence sources and

---

<sup>2</sup>The ellipsis indicates a phrase, "that the claim is not pre-textual or unreasonable," which was deleted by the April 4, 1977 order of this Court but which nonetheless appears in the opinion as reported in the Federal Reporter, 2d Series.

methods" grounds as are invoked here.

The GSA responds by trying to dismiss this argument with the assertion that Weisberg's allegations of bad faith are frivolous. In view of the evidence which Weisberg has obtained in recent months, his allegations of bad faith on the part of this and other government agencies are not only not "unsupportable," as the GSA maintains, but can be proven in many instances.

For example, an October 20, 1969 from Rosen to DeLoach, shows that the highest levels of the FBI approved a policy of not answering Weisberg's FOIA requests. [Addendum 3, 3a] Another FBI memorandum shows that when Weisberg finally prevailed in a suit for public court records on the extradition of James Earl Ray, the Department of Justice informed the FBI that the same materials would be made available to the press and others because the Department "did not wish Weisberg to make a profit from his possession of the documents..." [Addendum 4, 4a-5a]

The records recently obtained by Weisberg and others show that the GSA has been involved in bad faith efforts to deny Weisberg records to which he was entitled. Thus, a November 15, 1968 memorandum by Archivist James B. Rhoads notes a decision not to supply Weisberg with portions of the January 27 transcript published by Congressman Gerald Ford because it would encourage him "to increase his demands for additional material from the transcript and from other withheld records." [Addendum 5, 6a] In fact, the Archives colluded with the Secret Service and the Justice Department to withhold from Weisberg a copy of the so-called "Memorandum of Transfer" by transferring it from the Secret Service, which admitted it had



no basis for refusing to make it available to Weisberg, to the National Archives, which was willing to contrive one. [Addendums 6 and 7, 7a-8a]

Moreover, there are numerous indications of bad faith in the handling of this lawsuit. These encompass such matters as:

1. Refusing to identify Nosenko as the subject of the June 23rd transcript on the grounds that this information was security classified;

2. Withholding the declassified copy 3 or 9 of the January 21 transcript at the time it made its response to Weisberg's request for production of documents;

3. Repeatedly delaying response to Weisberg's interrogatories for months at a time, forcing him to move time and again to compel responses;

4. Refusal on the part of the CIA to answer Weisberg's third set of interrogatories after the Court had ordered the defendant to secure the information sought by those interrogatories from the CIA;

5. Massive refusal to answer interrogatories and the filing of evasive responses to interrogatories;

6. Invoking the provision of Rule 33 which says that interrogatories may be addressed only to a party after the District Court had instructed the GSA to obtain such information from a non-party, the GSA, and the GSA's counsel had assured the Court it would do so.

7. Invoking exemptions in response to this suit which were not invoked at the time Weisberg requested the records.

These examples of bad faith should be sufficient, particularly when viewed in the light of the history of Weisberg's suit for the fraudulently classified January 27 transcript, to require that the CIA's affidavits be checked against the actual content of the transcripts themselves in an in camera inspection conducted by the District Court with the aid of Weisberg's classification expert. In this regard, Weisberg point out that Maj. Florence's affidavit states that he has performed this role before in other kinds of court proceedings.

IV. EXEMPTION 5 DOES NOT PROTECT THE MAY 19 TRANSCRIPT, OR, IF IT DOES, IT WAS STILL AN ABUSE OF DISCRETION NOT TO DISCLOSE IT

The GSA did not invoke <sup>ex</sup>~~ex~~emption 5 to protect the May 19 transcript at the time Weisberg originally requested it. This is one of many indications of the use of this exemption to defeat the purposes of the Freedom of Information Act. GSA has indiscriminately invoked exemption 5 in recent years. [See Addendum 10, 11a] In practice it chooses not to protect some executive session transcripts which involved policy discussions while refusing to do the same with others. There is no justification for this. If some of the Warren Commission's policies are open to public scrutiny, then all should be. The GSA refused to answer interrogatories addressed to this point.

In any event, it would appear that the law of this Circuit requires the disclosure of the May 19 transcript. The May 19 transcript "involves a discussion among the Commission members concerning two staff members [Prof. Norman Redlich and Mr. George Ball] who were accused of left-wing or Communist-front connections. [Addendum

Joseph

9, 10a] A rabid right-wing campaign sought to force the Warren Commission to dismiss these two staff members. The details of the vicious smear campaign which was launched against them are already public knowledge. [See Affidavit of James H. Lesar and attachments, JA-232-257]

The law of this Circuit is that an internal memorandum may lose its protected status when it is publicly cited by an agency as the sole basis for agency action. Bristol-Myers Company v. F.T.C., 138 U.S.App.D.C., 22, 26, 424 F. 2d 935, 939 (1970). American Mail Line, Ltd. v. Gulick, 133 U.S.App.D.C. 382, 389 (1970). In this case the the Commission sent out a form letter stating that:

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. [Lesar Affidavit, ¶12, JA-234/235]

Inasmuch as the May 19 meeting was publicly cited as the sole basis for the action taken with respect to these staff members, the transcript of that session has lost its status as an internal memorandum protected by exemption 5, if it ever had such status.

Finally, on finding that the May 19 transcript was exempt from disclosure, the District Court was required to next consider whether the GSA abused its discretion in refusing to disclose it. Charles River Park "A", Inc., v. Department of H. & U.D., 519 F. 2d 935, 943 (C.A.D.C. 1975). In view of the fact that the Attorney General's Guidelines For Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy require that

such determinations must be made by weighing the reason for non-disclosure "against the overriding policy of the Executive Branch favoring the fullest possible disclosure" (emphasis added), it is clear that the GSA abused its discretion and the District Court should have so found. Weisberg notes that the record on this issue is not adequate because the GSA refused to answer interrogatories which sought to ascertain why exemption 5 is applied to some transcripts but not to others. [See interrogatory No. 102, 42a]

Respectfully submitted,

.....  

---

James H. Lesar  
910 Sixteenth Street, N.W.  
Washington, D.C. 20006

Attorney for Appellant

A D D E N D U M

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# CIA Able to Control Minds By Hypnosis, Data Shows

United Press International

The Central Intelligence Agency shook the theory that "nice" people cannot be made immoral under hypnosis by getting one woman to act out a cold-blooded murder in 1951, according to declassified intelligence documents.

The Cold War-era mind control experiment climaxed when the hypnotized woman, described as peaceable and terrified of guns, fired a pistol point blank at a sleeping colleague—not knowing the gun had been unloaded.

The documents also described other experiments in hypnosis—always involving female subjects for reasons not stated—in which women were persuaded to simulate immoral, abnormal or disloyal behavior.

One report concluded:

"If it can be shown in a series of tests that our subjects will do things that they normally would not do in their everyday activities, it seems logical that individuals elsewhere can be also controlled thusly."

The once-secret documents were obtained by the weekly Washington newsletter Science Trends under the Freedom of Information Act, and made available to United Press International.

They described CIA-sponsored hypnosis experiments carried out from 1951 to 1954, when the agency was starting up its ultra-secret "Project MK-Ultra" research into mind and behavior control using witting and unwitting humans.

MK-Ultra ran into the 1960s, spurred initially by Korean War-era fears that the Soviets and Chinese had a big lead in "brainwashing" techniques that might enable them to induce confessions from any captured enemy and turn Western spies into helpless, obedient double-agents.

Names of subjects were blanked out in the released documents, but all were described as young, well-educated, highly motivated women who worked for the CIA and apparently volunteered for the experiments.

The simulated murder was described in a report dated Feb. 10, 1954, concerning a male hypnotist and a woman "who had expressed a fear of firearms in any fashion."

It said she was put in a trance and told to awaken another woman who had been put into a deep sleep.

When she could not awaken her colleague, the report said, she was ordered to "pick up a pistol nearby and fire it at Miss (blank)" and assured that "her rage would be so great that she would not hesitate to 'kill.'"

It said the woman "carried out these suggestions to the letter, including firing the (unloaded) gun at Miss (blank), then proceeding to fall into a deep sleep" as ordered.

When awakened, neither the "murderer" nor her "victim" had any recollection of what had happened, the document said. It added:

"The 'murderer' refused to pick up or accept the same gun and absolutely denied that she had ever fired it."

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: MURKIN

DATE: October 20, 1969

- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Malley
- 1 - Mr. McGowan
- 1 - Mr. McDonough
- 1 - Mr. Bishop
- 1 - Mr. W. C. Sullivan

Tolson \_\_\_\_\_  
 Ladd \_\_\_\_\_  
 Mohr \_\_\_\_\_  
 Bishop \_\_\_\_\_  
 Casper \_\_\_\_\_  
 Callahan \_\_\_\_\_  
 Conrad \_\_\_\_\_  
 Felt \_\_\_\_\_  
 Gale \_\_\_\_\_  
 Rosen \_\_\_\_\_  
 Sullivan \_\_\_\_\_  
 Tavel \_\_\_\_\_  
 Trotter \_\_\_\_\_  
 Tele. Room \_\_\_\_\_  
 Holmes \_\_\_\_\_  
 Gandy \_\_\_\_\_

This is the case involving the murder of Martin Luther King, Jr.

Weisberg is apparently identical with Harold Weisberg an individual who has been most critical of the Bureau in the past. He is the author of several books including one entitled, "Whitewash - The Report of the Warren Report" and has been critical of the FBI, Secret Service, police agencies and other branches of Government.

Weisberg by letter in April, 1969, requested information on the King murder case for a forthcoming book. It was approved that his letter not be acknowledged. (100-35138)

Enclosures (2) *10-21-69 11-3-69-5838*

EJM:jmv  
(8)

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CONTINUED - OVER



UNITED STATES GOVERNMENT

# Memorandum

Tolson	
DeLoach	
Mohr	
Bishop	
Casper	
Callahan	
Conrad	
Felt	
Gale	
Rosen	
Sullivan	
Tavel	
Trotter	
Tele. Room	
Holmes	
Gandy	

TO : Mr. DeLoach

DATE: 6/24/70

FROM : T. E. Bishop

SUBJECT: ASSASSINATION OF DR. MARTIN LUTHER KING

By way of background, on 4/27/70 Assistant Attorney General William Ruckelshaus, Civil Division, Department of Justice, advised the Director that Harold Weisberg, the author of the books "Whitewash I" and "Whitewash II," has filed a civil action against the Department of Justice and Department of State demanding copies of all the papers which were employed in the extradition in the James Earl Ray matter. These documents were used in the extradition proceedings against James Earl Ray in England and were thereafter returned to the State Department and were transferred to the Department of Justice. Included in the documents were a considerable number of affidavits of FBI Agents, affidavits covering fingerprints, ballistics examinations, etc. Ruckelshaus asked if the release of these documents to Weisberg would in any way prejudice the work of the FBI. It is noted that Weisberg is an author who has been extremely critical of the FBI, the Secret Service and other police agencies in books which he has written about the assassination of President Kennedy.

By memorandum of April 30th the Director advised Ruckelshaus that the determination as to the release of the pertinent documents is within the province of the Department of Justice and the FBI interposes no objection. It was suggested, however, that the Civil Division communicate with the Civil Rights Division of the Department on this matter since Federal process was still outstanding against Ray charging a violation of a Federal Civil Rights Statute.

The Bureau is in possession of a copy of a letter dated May, 1970, from Jerris Leonard, Assistant Attorney General, Civil Rights Division, to Ruckelshaus stating that any release of any information in the files pertaining to the investigation regarding James Earl Ray would be inimicable to the investigation.

Enc. / ENCLOSURE

- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Jones

(CONTINUED-OVER)

copy release  
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REC-3

6/25/70 JUN 29 1970

JUN 29 1970

JUN 29 1970

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Memorandum to Mr. DeLoach  
Re: Assassination of Dr. Martin Luther King  
Current Developments

On 6/24/70 Bill King in the Information Office, Department of Justice, advised that the Department subsequently decided that it would not be possible for the Government to successfully defend the civil action by Weisberg against the Department for the release of the documents in question. Accordingly, copies of these documents were furnished to Weisberg. King advised that in view of the fact that the Department had released the documents to Weisberg the Department did not wish Weisberg to make a profit from his possession of the documents and, accordingly, has decided to make similar copies available to the press and others who might desire them. King stated that the documents to be released consist of approximately 200 pages of copies of affidavits, autopsy reports, affidavits with regard to fingerprint examinations and ballistic tests, and copies of other documents which serve to link Ray with the assassination of Martin Luther King. At Bishop's request King furnished the attached set of the documents being released. King stated that these documents will be released to the press at 3 p.m. on 6/24/70.

The General Investigative Division has been orally advised of the above information.

RECOMMENDATION

None. For information.

*✓* *Wash* *TJB* *WBC*  
Did you get a written  
instruction from Dept  
confirming conversation  
King had with you?  
*K*

November 15, 1968

N

Correspondence with Harold Weisberg, Coq d'Or Press, Route 8,  
Frederick, Maryland 21701

I.

The transcript of the executive session of January 27, 1964, of the Warren Commission requested by Mr. Harold Weisberg in the attached letter was reviewed by GSA, the CIA, and the Department of Justice. Mr. Martin Richman of the Office of Legal Counsel of the Department recommended that the entire transcript be withheld from research, and we have withheld it.

As Mr. Weisberg says, there are certain quotations, presumably taken from a copy of the transcript in Congressman Ford's possession, that are published in Portrait of the Assassin (New York: Simon and Schuster, 1965) by Gerald R. Ford and John R. Stiles (pages 19-25). Some material is deleted from the quotations without any indication of the deletions, and there are other variances from the text of the transcript. The quoted material does not consist of a continuous passage, but of various passages chosen from different pages. Only one complete page (page 158) of the transcript is included in the quoted material. We feel that to tell Mr. Weisberg this, or to supply him with a copy of the page that has been completely published, would encourage him to increase his demands for additional material from the transcript and from other withheld records.

*James B. Rhoads*  
JAMES B. RHOADS  
Archivist of the United States

cc: Official File - NND ✓  
Reading File - NNDC  
N

MMJohnson/mc NNDC 69-89  
Ext. 23171 11/15/68

NND W.G.C.

NN

November 13, 1970

Mr. James B. Rhoads  
Archivist of the United States  
National Archives and Records Service  
Washington, D. C. 20408

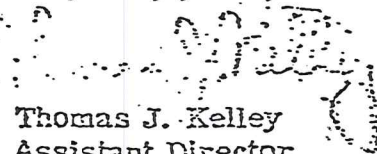
Dear Mr. Rhoads:

In connection with the civil action Weisberg vs The National Archives, Civil Action 2569-70, Mr. Weisberg called at this office recently and displayed a copy of the proceedings in the case. He stated that since the Government's answer reflected that the Archives should not have been a party to some of the requests being made by Weisberg, he was notifying us that under the Freedom of Information Act he was requesting a copy of the Memorandum of Transfer to the Archives dated April 26, 1965, covering material then in the possession of the Secret Service, which memorandum reflected that Mrs. Evelyn Lincoln had receipted for the material set out in the Memorandum of Transfer.

There may be some validity in Mr. Weisberg's contention that since this paper is in the possession of the Secret Service, we are the proper people for him to sue or to subpoena to produce the item. However, since another Government agency has declined to furnish him a copy of the item, we are seeking advice as to what action we should take if a suit is brought seeking to force us to produce the document, or if a subpoena is received to produce the document for his examination.

The position of the Secret Service is that we have no grounds upon which to refuse making the item available to Mr. Weisberg if he should invoke the provisions of the Freedom of Information Act.

Very truly yours,

  
Thomas J. Kelley  
Assistant Director

DEC 8 1970

Mr. Harold Weisberg  
Coq d'Or Press  
Route 8  
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of November 10, 1970, appealing from prior decision of the Archivist of the United States, not to make available to you a copy of the Government's copy of the "memorandum of transfer" of the materials relating to the autopsy of President Kennedy.

On August 19, 1970, you were advised by the Acting Archivist of the United States that this copy was withheld from research under the terms of 5 U. S. C. 552, subsection (b)(6), as a part of "medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" of the family of the late President Kennedy.

A careful review of the document in question, in the light of the cited statute, its legislative history and subsequent interpretations, has failed to adduce any grounds to warrant upsetting the considered judgment of the Acting Archivist.

Under the circumstances, I have no recourse but to advise that your appeal is denied. However, in the event the Kennedy family or its authorized representative should advise me that release of the "memorandum of transfer" does not constitute an unwarranted invasion of their personal privacy, I will reconsider my decision.

Sincerely,

(Signed) W. L. Johnson, Jr.

W. L. JOHNSON, JR.  
Assistant Administrator for Administration

Burke Marshall  
Tom Kelly, Secret Service  
cc: Official File - LC  
Mr. Yock - A  
Asst. Adm. for Admin. - B  
Mr. Vawter - ALI  
General Counsel - LJ  
Mr. Marion Johnson - NND  
Deputy Gen. Csl. - LL  
Asst. Gen. Csl. - LR  
Mr. Fauper - Dept. Justice  
Mr. Axelrad - Dept. Justice  
LC:RFWilliams:afh: 11-25-70  
Retyped:LL:mta 11/25/70

L \_\_\_\_\_ ALI \_\_\_\_\_

INTRASERVICE MEMORANDUM AND ENDORSEMENT

SUBJECT OR TRANSACTION

Correspondence with Mr. Harold Weisberg

FROM

TO

DATE AND MESSAGE

NNF

NN  
N

3-6-73. I did have misgivings about the last phrase of the last sentence in the Garfinkel memo, particularly in light of his statement in the second paragraph that "several complex legal questions," including the question of whether working papers or drafts etc. are in fact records for the purposes of the Act, "need not be examined until such time as there is an administrative appeal from their denial." This seems to contradict the last sentence in which he goes beyond our initial draft and deliberately injects this issue by including the reference to "working papers which are not records for the purposes of the Freedom of Information Act."

I informed Mark Eckhoff and Marion Johnson of my misgivings when I sent the file down for their comments. Mr. Johnson, as a lawyer, then discussed the matter with Mr. Garfinkel and their conversation is summarized on the attached routing slip. Mr. Garfinkel apparently feels that it is better legal procedure to give all possible reasons for withholding documents in the beginning, even if you withdraw one or more arguments on appeal, than to be in the position of having to produce an additional reason on appeal. Perhaps it would be desirable to get a policy decision from the Justice Department through its Freedom of Information Committee as to whether such "working papers" should be released and this can be done if Mr. Weisberg appeals the denial.

It is my understanding that certain working papers among the Warren Commission records have been made available to Weisberg, presumably as "records." The material currently at issue appears to

(Over)

APR 2 1975

Deputy Archivist of the United States - ND

FOIA Request from James H. Lesar

Attorney Advisor - IRR

Attached is a Freedom of Information Act request of March 12, 1975, from Mr. James H. Lesar as attorney for Mr. Paul Hoch and Mr. Harold Weisberg and a draft reply. He requests disclosure of certain Warren Commission transcripts.

As you suggested to Mr. Johnson, we have deleted names and identifying information relating to persons discussed in the transcripts as possibilities for employees of the Commission (particularly as General Counsel) who were not later employed by the Commission. This includes the name of Leon Jaworski at the bottom of page 48 of the transcript of December 5, 1963, but not the name of Thomas E. Dewey on page 49 because of the prominence of Dewey as a political leader. At the bottom of page 57 and the top of page 58 of that transcript there is a reference to Richard Olney, at one time Attorney General and Secretary of State. Should this entire passage be deleted on the ground that it would serve as a clue to the identity of Warren Olney III, who was discussed earlier in the transcript as Chief Justice Warren's candidate for General Counsel of the Commission, and that the passage is meaningless without the earlier references to Warren Olney, which have been deleted? Please note also the references to Jenkins and Welch on page 51.

We have requests from the CIA to withhold from research the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, that were made before the recent amendments to 5 U.S.C. 552. The CIA is now reviewing these transcripts again in connection with Mr. Lesar's request, as well as a portion of page 3 of the transcript of December 6, 1975. If Mr. Lesar appeals the denial of these transcripts, perhaps the General Counsel of the CIA should be consulted concerning the reasons for withholding the transcripts. The deadline for reply to Mr. Lesar is April 4. We will inform you if a reply is received from the CIA before then concerning its review of the transcripts.

The transcript of May 19, 1964, involves a discussion among the Commission members concerning two staff members who were accused of left-wing or Communist-front connections. It is difficult to see how a "reasonably segregable" portion of this transcript can be made public.

*James E. O'Neill*  
JAMES E. O'NEILL

cc: Official file NNFL  
Reading file - NNF  
- ND

MJohnson:ram

NNF      NN

Addendum 10

GENERAL SERVICES ADMINISTRATION

Office of General Counsel  
Washington, D.C. 20405



DATE: APR 4 1972

REPLY TO  
ATTN OF: General Counsel - L

SUBJECT: Warren Commission Materials and the Freedom of Information Act

Archivist of the United States - N

On March 13, Messrs. Garfinkel and Meszoly of the Records and Administration Division and Mr. Young of the Claims and Litigation Division of this office, along with Dr. Campbell and Mr. Johnson of the Office of the National Archives attended a meeting with the Committee on the Freedom of Information Act of the Department of Justice to discuss the mandates of the Act as they relate to heretofore restricted records of the Warren Commission, now in the custody of the successor agency General Services Administration. Although the topics discussed have been of continuing importance to the National Archives, the immediate stimulus to the meeting was the appeals by Dr. Hoch and Mr. Weisberg from GSA denials to their requests for access to these records. From the conclusions reached at this meeting, as well as from the extensive review of this material undertaken by this office in the past several months, the following recommendations are offered for your consideration.

1. A classification review of all of these Warren Commission materials that remain classified should be commenced as soon as possible. Our review of these records in light of Executive Order 11652 (37 F.R. 5209, March 10, 1972) has revealed that they are generally overclassified when classification is at all warranted. This office would be happy to assist the National Archives in such a review.
2. The executive sessions of the Warren Commission should remain exempt from disclosure as "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)(5)). Moreover, those parts of the executive sessions that remain classified after a classification review should be further exempted as "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy . . ." (5 U.S.C. 552(b)(1)).
3. Commission Document 365 should remain exempt from disclosure as "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" as well as "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency . . ." (5 U.S.C. 552(b)(6) and (7) respectively).
4. Mr. Rankin's letter of March 26, 1964, to Mr. Hoover, relating to the Fair Play for Cuba Committee and other organizations, should remain exempt from disclosure as "inter-agency or intra-agency memorandums or letters . . .," supra, No. 2. Moreover, should this document remain classified after the

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# KGB

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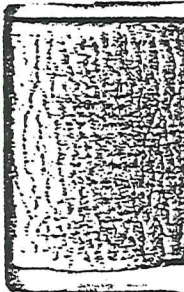
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The New York Times Book Review

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—Rowland Evans and Robert Novak,  
The Washington Post

"An explosive new book . . . Discloses many hitherto unpublished espionage cases."

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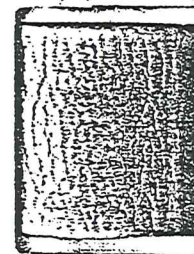
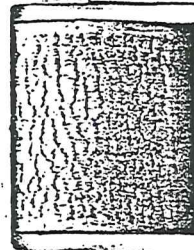
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U.S. Department of State



#### ABOUT THE AUTHOR

JOHN BARRON is a Senior Editor of the *Reader's Digest*. He received bachelor and master degrees from the University of Missouri School of Journalism before serving in the U.S. Navy. Mr. Barron attended Naval Intelligence School, specializing in the Russian language, and was assigned to Berlin for two years as an intelligence officer. Upon release from the Navy in 1957, he went to work for the *Washington Star*, where his articles gained him national attention. Mr. Barron is the recipient of the Raymond Clapper Award; the George Polk Memorial Award for national reporting; the Washington Newspaper Guild Front Page Award for national reporting and the Newspaper Guild's grand award. He lives with his wife and two daughters in Falls Church, Virginia.

some measure, and the contributions of several have been immense.

We believe we have interviewed or had access to reports from all postwar KGB defectors except two. Fearful of provoking retaliation against relatives in the Soviet Union, several have insisted upon anonymity. Those who may be thanked publicly are identified in the Acknowledgments on page 587.

Two of the most important former KGB personnel now in the West came to us of their own initiative. One was Yuri Ivanovich Nosenko, a KGB major who escaped to the United States through Switzerland in 1964. Although Nosenko testified in secret before the Warren Commission investigating the assassination of President Kennedy, he subsequently declined to grant any press interviews, and his considerable revelations have remained unknown outside the Western intelligence community. But in May 1970 Nosenko walked unannounced into our Washington offices, stated he had read of our project in the *Reader's Digest*, and offered his assistance. (Later I was told that the KGB long has hunted Nosenko with the intention of killing him. By coming unguarded to our offices, less than four blocks from the Soviet embassy, he created consternation among American authorities responsible for his safety. Nevertheless, we were able to interview Nosenko extensively on numerous occasions.)

On February 1, 1972, I received an unsolicited letter from Vladimir Nikolaevich Sakharov, who identified himself as a former Soviet diplomat and KGB agent. He suggested that he possessed information of possible interest. His story, which is told in Chapter II, proved to be one of the most significant of all.

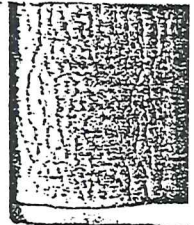
In most cases, we have succeeded in verifying from security services or other independent sources the essence of information acquired from former KGB personnel. In those cases where a defector is the sole source of given information, we so indicate in the Chapter Notes that explain the basis upon which each chapter is written.

At the outset of our research, we were fortunate enough to engage the services of Katharine Clark, who

and headed for the safes. The locksmiths, photographers, and specialists in opening sealed documents emerged in about an hour, their work done and undetected. The dog caused the only slight difficulty. The officer feeding him kept calling for more meat, complaining, "This dog is eating by the kilo."

Nosenko pinpointed for the State Department the location of forty-four microphones built into the walls of the American embassy when it was constructed in 1952. They were outfitted with covers that shielded them from electronic sweeps periodically made by U.S. security officers. American diplomats, of course, were instructed to be guarded in their talk because of the possibility of undetected listening devices. Nevertheless, the everyday conversations the microphones relayed for twelve years told the KGB much about what the embassy was reporting to Washington as well as about U.S. interests, concerns, and reactions to international events.

While apprehensive about alien ideas that foreigners may introduce, the leadership also fears propagation of dissident ideas by Soviet intellectuals whose access to the people is not so easily interdicted. Accordingly, the KGB infests the arts and sciences with officers and informants in an effort to police thought and creativity among the intelligentsia. The secretary of the Soviet Writers' Union from 1946 to 1956, Aleksandr Aleksandrovich Fadeyev, was a notorious collaborator who consigned at least six hundred intellectuals to concentration camps. After Khrushchev confirmed Stalin's mass murder and enslavement of innocent people, some of Fadeyev's surviving victims were rehabilitated and appeared in Moscow. Haunted by the reincarnation of men he had doomed, Fadeyev shot himself in 1956. He stated in his suicide note that he no longer could bear life in the Soviet Union. In September 1972 the Central Committee announced the appointment of Aleksei V. Romanov as editor of *Soviet Culture*, the Party publication that tells intellectuals what they are supposed to think. Romanov is the informant who caused the imprisonment of the author Aleksandr Solzhenitsyn back in 1945. Other methods by which



locks to the vault. Inside, he stuffed envelopes—some eleven by thirteen inches, others eight by eleven—into the blue flight bag. Locking the vault and then the outer door of the center, he ran to his Citroën and drove off to meet Feliks. All went precisely as rehearsed. At 3:15 A.M. Johnson recovered the envelopes by the cemetery and replaced them in the vault. By the time he reached home Sunday morning, a mass of American cryptographic and military secrets—some so sensitive they were classified higher than top secret—were already en route to Moscow.

The next Saturday night, December 22, Johnson again looted the vault without the least difficulty. This time he selected new envelopes that had arrived during the preceding two or three days. About a third contained cryptographic materials.

The day after Christmas, Feliks greeted Johnson jubilantly: "On behalf of the Council of Ministers of the U.S.S.R., I have been directed to congratulate you on the great contribution you have made to peace. I am told that some of the material we sent was so interesting that it was read by Comrade Khrushchev himself. In appreciation, you have been awarded the rank of major in the Red Army. I also have been authorized to give you a bonus of \$2,000. Take a holiday and go to Monte Carlo and live it up."

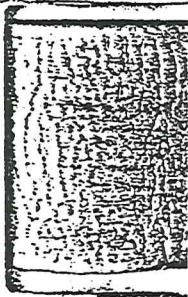
The supposed rank of major of course represented a fictitious award bestowed to stimulate Johnson's ego and motivate him further. But there is independent testimony to the effect that an excited Khrushchev did study the materials Johnson purveyed. Yuri Nosenko, who in 1963 was still stationed at the Center, states that the arrival of the first documents from the vault created such a sensation that rumors of a momentous new penetration in France spread through the upper echelons of the KGB. According to what he was told, the documents were adjudged so important that immediately after translation, copies were rushed to Khrushchev and certain Politburo members. Nosenko also heard that some of the stolen data disclosed numbers and locations of American nuclear warheads stored in Europe.

Clearly, the documents from the vault were extraordinary, not only because of their content but also because of their indisputable authenticity. Anyone studying them might as well have been admitted to the highest councils of the United States and been allowed to take notes. Some of the ultrasecret papers outlined major modifications or additions to the basic American strategic plan for the defense of Western Europe. No one document, by itself, provided an overall blueprint of the plan, but collectively they laid it bare to the KGB. The Soviet Union could now identify with certainty strengths to be countered and vulnerabilities that could be exploited. Great and decisive battles have been won with less intelligence than these first two penetrations yielded. And this was only the beginning.

Indeed, the initial yield was so spectacular that the Soviet Union adopted further precautions to safeguard the operation. Nosenko says that all subsequent entries into the vault required direct approval from the Politburo, and that with the approach of each, an air of tension and excitement pervaded the KGB command. This corresponds with instructions Johnson received in January 1963 from Feliks, who advised that henceforth the vault would be looted only at intervals of from four to six weeks, and that each entry would be scheduled a minimum of fourteen days in advance. "We must bring people in specially from Moscow," Feliks said. "The arrangements are very complicated."

A team of technicians was required to process the documents Johnson removed, but the KGB dared not station them permanently in Paris. It knew that French security would eventually recognize them as the specialists they were, and realize that their presence signified a leakage of considerable importance. The KGB also knew the technicians probably would be detected if they shuttled in and out of Paris too often. Therefore it chose to reduce the frequency of their journeys and to have them come to Paris individually and by various routes—via Germany, Algeria, Belgium, or Denmark.

Additionally, the KGB recognized that although Johnson had twice taken documents from the vault with ease, each penetration still entailed high risks. If



will hour after hour. Having cut countless trees in his youth, he now derives satisfaction from planting and nurturing them.

In his community he is known as a moderate Republican, an occasional churchgoer and the personification of respectability. The same disarming grin and manner that sustained him in Moscow, at Tiffany's, and on the New York waterfront have helped fill his new life with good friends.

In spite of the excellence of Tuomi's abilities as a spy, mysteries remain in this story that he knew and lived. How did the FBI know he was coming? How did it know who he was? Tuomi has never been able to ascertain the answers. Neither, it would appear, has the KGB.

The Russians for years evidently were uncertain about what actually happened to Tuomi. Certainly they must have suspected that he had changed allegiance. But they could not be sure that he had not died an anonymous death, the victim of a street thug or an automobile accident. Between 1964 and 1971 his name never appeared on the list of men and women whom the KGB hunts throughout the world. This list, published in a secret book bound in a blue cover, is distributed to all KGB Residencies abroad and all KGB offices in the Soviet Union. It provides brief biographical detail about the wanted man, a statement of his crime, and the sentence pronounced on him, either at a trial or in absentia. The current list, for example, shows that Yuri Nosenko has been sentenced in absentia to the "highest measure of punishment." So have most of the other KGB officers now in the West.

In 1971, after the *Reader's Digest* had published in slightly different form an excerpt from this book manuscript containing the story of Tuomi, the FBI warned him that the KGB now was hunting him. His name had been added to the official list of those upon whom the KGB seeks, by any means it can, to inflict the "highest measure of punishment."

Their sensitivity is well illustrated by the abject fear shown by the KGB leadership after Lee Harvey Oswald was arrested as the assassin of President Kennedy. The reaction has been disclosed by Yuri Nosenko, who, as deputy director of the American section of the Seventh Department, became involved with Oswald when he requested Soviet citizenship in 1959. Nosenko states that two panels of psychiatrists independently examined Oswald at KGB behest, and each concluded that though not insane, he was quite abnormal and unstable. Accordingly, the KGB ordered that Oswald be routinely watched, but not recruited or in any way utilized. Oswald returned to the United States in June 1962, then in September 1963 applied at the Soviet embassy in Mexico City for a visa to go back to Moscow. On instructions from the KGB, the embassy blocked his return by insisting that he first obtain an entry visa to Cuba, through which he proposed to travel. The Cubans, in turn, declined to issue a visa until he presented one from the Russians. Shunted back and forth between the two embassies, Oswald finally departed Mexico City in disgust and on November 22 shot the President.

With news of his arrest, the KGB was terrified that, in ignorance or disregard of the headquarters order not to deal with him, an officer in the field might have utilized Oswald for some purpose. According to Nosenko, the anxiety was so intense that the KGB dispatched a bomber to Minsk, where Oswald had lived, to fly his file to Moscow overnight. Nosenko recalls that at the Center officers crowded around the bulky dossier, dreading as they turned each page that the next might reveal some relationship between Oswald and the KGB. All knew that should such a relationship be found to have existed, American public opinion would blame the KGB for the assassination, and the consequences could be horrendous.

Concern over foreign opinion has produced some major restrictions of KGB operations. The revulsion caused by confessions of the KGB assassin Bogdan Stashinsky in 1962 influenced the Politburo to curtail the political murders which the Soviet Union had been



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1/22/64, 5:30 - 7:00 P.M.

Gentlemen:

I called this meeting of the Commission because of something that developed today that I thought every member of the Commission should have knowledge of, something that you shouldn't hear from the public before you had an opportunity to think about it. I will just have Mr. Rawkin tell you the story from the beginning.

Mr. Rawkin: Mr. Wagner Carr, the Attorney General of Texas, called me at 11:10 this morning and said that the word had come out, he wanted to get it to me at the first moment, that Oswald was acting as an FBI Undercover Agent, and that they had the information of his badge which was given as Number 179, and that he was being paid two hundred a month from September of 1962 up through the time of the assassination. I asked what the source of this was, and he said that he understood the information had been made available so that Defense Counsel for Ruby had that information, that he knew that the press had the information, and he didn't know exactly where Wade had gotten the information, but he was a former FBI Agent.

That they, that is, Wade before, had said that he had sufficient so that he was willing to make the statement.

Ford: Wade is?

A: The District Attorney.

Ford: Carr is the Attorney General.

Boggs: Right, of Texas.

Rawkin: I brought that to the attention of the Chief Justice immediately, and he said that I should try to get in touch with Carr and ask him to bring Wade up here, and he would be willing to meet with him any time today or tonight to find out what was the basis of this story. I tried to get Carr

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Q: And the other man, Carr, is the Attorney General?

A: That is right.

Q: And the other people who have knowledge of this story?

A: He indicated that the press down there had knowledge of this story, and that the information came from some informant who was a press representative, and he, that is, Wade, could guess who it was but his assistant knew and he never asked him. They were trying to get more explicit information.

A: Lee, would you tell them?

Mr. Dulles: Who were you talking with when you got this information, Wade himself?

A: I was talking with Carr.

Boggs: There is a denial of this in one of these FBI records, as you know.

A: Yes.

Cooper: In this file we had yesterday, one of the lawyers for this fellow who claims to represent --

Boggs: Thornhill, I think.

Cooper: Oswald or one of them, Ruby, told about this, do you recall it, he said it was being rumored around.

Rawkin: Yes, it was being rumored that he was an undercover agent. Now it is something that would be very difficult to prove out. There are events in connection with this that are curious, in that they might make it possible to check some of it out in time. I assume that the FBI records would never show it, and if it is true, and of course we don't know, but we thought you should have the information.

A: Lee, would you tell the gentlemen the circumstances under which this story was told?

A: Yes, When it was first brought to my attention this morning --

and he was out campaigning in Texarkana and so forth, and so it took us quite a while to get back to him and talk to him. I just got through talking to him and he told me the source of the information was a member of the press who had claimed he knew of such an agency, that he was an undercover agent, but he now is coming with the information as to his particular number and the amount he was getting and the detail as to the time when the payments started. Wade said he as well as him did not know the name of the informant but he could guess who it was, that it was given to his assistant, and he was sure that he knew, and he said he was trying to check it out to get more definite information. Carr said that he could bring Wade in some time the first of the week, but in light of the fact that it was this man of the press and that they did not think it would be broken by the press immediately, although there had been all kinds of stories down there but Carr said there were some 25 to 40 different stories about this being the case admonishing the press themselves, but this was the first time that he got something definite as to how they were handling it or how it could be handled by himself. But I was concerned of an undercover agent. He thought that the press would not bring the story without some further proof, and they are working on that now, he said. So he thought that if he brought Wade back on Monday or Tuesday, that that would still take care of any major problem. When he first told us, he said the press had it and he was fearful because he hadn't even gotten this from Wade. He got it from another man that the press would bring it before we could know about it and the Commission would be asked all kinds of questions without having information about it. Now he said Wade told him that the FBI never keeps any records of names.

Mr. Boggs: Wade is the District Attorney for Dallas County?

Rawkin: That is right.

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Boggs: What time was this, Lee?

A: 11. 10.

Boggs: That is after the Ruby episode of yesterday?

A: That is right.

Q: Yes.

A: And Mr. Carr said that they had used this saying before the Court that they thought they knew why the FBI was so willing to give some of these records to the Defense Counsel, and they were ing to the Defense Counsel being able to get the records and asking the Court to rule that they couldn't get them.

Q: That is, the District Attorney was?

A: That is right, and he said a number of these records were furnished by the Texas authorities, and that they should not be given up to the Defense Counsel, and that the reason he thought that they were so eager to help Ruby was because they had the undercover, that Oswald was the undercover agent and had the number of his badge and so much, he was getting two hundred a month and so forth, and that was the way it was explained as his justification to the Court as a basis for determining the records and that that was the excuse the FBI, the reason the FBI had for being so eager to give the records up. That is the way it was developed. Now Mr. Jaworski, who is associated with the Attorney General working on this matter was reported to you before, and

, story, I don't talk to Story about it but I did talk to Jaworski and he said he didn't think Wade would say anything like this unless he had some substantial information back of it, and thought he could prove it, because he thought it would ruin many in politics, in Texas, to be making such a claim, and then have it shown that there was nothing to it.

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Boggs: No doubt about it, it would ruin many.

A: And Jaworski is an able lawyer, mature and very competent. We have complete confidence in him as a person. Now that is the evaluation of the situation.

Ford: He hasn't made any investigations himself?

A: No, he has not.

Ford: Was Wade or anyone connected with Wade?

A: No.

Dulles: Talking about Story, just a few minutes ago just telling him I wasn't going to be down in Texas, I had told him I was going to be down at the time, he didn't indicate that he had anything of any importance on his mind. Maybe he won't offer it to him obviously.

Rawkin: I don't know that it was even brought to his attention.

Dulles: I don't believe it was, now. Of course, he is not in the hierarchy.

A: Well, I think they were planning on telling the Attorney General and Jaworski.

Ford: How long ago did they get a feeling that there was some substance to the rumors that apparently had been — I just assumed, and I didn't ask them that, that Carr called me and seemed to be in a matter of great urgency at 11:10 this morning, and that he was fearful that they would bring in the papers before we would even get to know about it, and that is the way he was talking and acting about it.

Cooper: He felt there was ... He didn't know the name of the informant?

A: No, he did not.

Q: What then would lead him to think it had substance?

A: Well, he said that the reason he thought it might have substance was because Wade had heard these rumors constantly, and his assistant had gotten

this information from the informant as to a definite badge number, and the amount and the date.

Cooper: How would you test this kind of thing?

A. It is going to be very difficult for us to be able to establish the fact in it. I am confident that the FBI would never admit it, and I presume their records will never show it, or if their records do show anything, I would think their records would show some kind of a number that could be assigned to a dozen different people according to how they wanted to describe them. So that it seemed to me if it truly happened, he did use postal boxes practically every place that he went, and that would be an ideal way to get money to anyone that you wanted as an undercover agent, or anybody else that you wanted to do business that way with without having any particular transaction.

Ford: There might be people who would see what was going on with that particular box, because the postal authorities do watch, they have means of watching in many places that no one could see. They can watch the clerks as to what they are doing in these boxes, and they can watch the individuals that are going in and out. They do that only when they have an occasion to be suspicious, but they might, in watching for somebody particularly, they might also see other things that they just have to note. That is a possibility.

Dulles: What was the ostensible mission? I mean when they hire somebody they hire somebody for a purpose. It is either. . . Was it to penetrate the Fair Play for Cuba Committee? That is the only thing I can think of where they might have used this man. It would be quite ordinary for me because they are very careful about the agents they use. You wouldn't pick up a fellow like this to do an agent's job. You have got to watch out for your

agents. You have really got to know. Sometimes you make a mistake.

Ford: He was playing ball, writing letters to both the elements of the Communist parties. I mean he was playing ball with the Trotskyites and with the others. This was a strange circumstance to me.

Dulles: But the FBI get people right inside you know. They don't need a person like this on the outside. The only place where he did any at all was with the Fair Play for Cuba Committee.

Boggs: Of course it is conceivable that he may have been brought back from Russia you know.

A: If he was in the employ from 1962, September 1962, up to the time of the assassination, it had to start over in Russia, didn't it, because didn't he get back in February? When did he get back here from Russia?

A: I think it was February; February of this year.

Q: Of '62. Was it of '62?

A: Oh yes, that is right, it was '62.

Dulles: They have no facilities, they haven't any people in Russia. They may have some people in Russia but they haven't any organizations of their own in Russia.

A: Yes.

Dulles: They might have their agents there. They have some people, sometimes American Communists who go to Russia under their guidance and so forth and so on under their control.

Cooper: Of course there are rumors all around Dallas, of course the FBI is acquainted with rumors too.

A: One of the strange things that happened, and it may have no bearing on this at all, is the fact that this man who is a defector, and who was under observation at least by the FBI, they say they saw him frequently, could

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walk about the Immigration Office in Orleans one day and come out the next day with a passport that permitted him to go to Russia. From my observations of the case that have come to us, such passports are not passed out with that ease.

Dulles: Mr., I think you are wrong on that.

A: I could be.

Dulles: Because the passports are issued valid for anywhere except specified countries. There is a stamp as I recall that says not good for Communist China, North Vietnam, and so forth. For a long time they had on the stamp not good for Hungary. But any American, practically any American, can get a passport that is good for anywhere. An American can travel and Russia is one of the countries that you can now travel to.

A: Well, maybe you can.

Dulles: You can get them quick.

A: I think our General Counsel and I both have some experience in cases that have come before our Court which would indicate that that isn't exactly the fact.

Dulles: I think in the State Department. . . .

A: They have great difficulty, some of them, in getting a passport to go to Russia.

Boggs: Particularly for someone who has any Communist . . . .

A: Oh, yes.

Dulles: Is there any evidence the State Department has that record in the files? I don't think that record has ever turned up.

Cooper: They admitted there wasn't any.

A: What record, that he was a defector?

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Dulles: Yes, I don't think the State Department or in the Passport Bureau, there was no record. It didn't get down to the Passport offices. That is one of the things we ought to look into.

A: The State Department knew he was a defector. They arranged for him to come back.

Dulles: But it don't get passport files or the passport records. They are issuing hundreds and thousands of passports. They have their own particular system.

A: Yes..

Dulles: They don't run around from time a man comes in. If they don't find any clue, and they don't according or our record here they don't find any warning clue in his file -- they should have a warning clue in his file but as I recall they don't.

Cooper: That is what they admitted, that they had not supplied the warning.

Dulles: And the Passport Office don't on its own usually go around and inquire. They wait until it is assigned there. Then they follow it up.

Cooper: This may be off the point a bit, but as I re-read the report, the chronology of the FBI checks on Oswald, they knew that he had gone to Texas. They learned from Mrs. Payne: they knew where Mrs. Oswald was living. They talked with her. They knew where he was working.

Boggs: Sure. That is all in the file.

Cooper: I know that. I say they knew where he was working.

Boggs: I am sure you went over that material that we received a few days ago. You will find the report from the FBI dated back last summer, and months before that and then months after that, why some agent would make a report on it.



Cooper: Sure.

A. I think it was in October.

Rawkin: They had a report on many, they had an agent go and see him when he was in prison.

Boggs: In New Orleans?

A: In New Orleans.

Q: Right.

A. And he lied to them before the police. He said his wife was a Texas girl, and he married her in Texas, and a whole string of stuff, and in Dallas they had a report prior to that that was definitely contrary to it.

Boggs: The fellow Butler, who works for the profit organizations that Dr. Oxnard heads to disseminate and tie Communist propaganda to Latin America, is the one who confronted him on the streets in New Orleans. I know Butler. He is a very fine young man. It was . . . Butler says that this was the first time that they established that he had been in Russia and that he had defected at one time and then returned. You have that undoubtedly in your files, that film, that tape that was made and borrowed in New Orleans?

A. Yes.

Boggs: Of course on that tape -- I listened to that tape -- he gives the normal Communist line, reaction to everything.

A: That is right.

Q: The same old stereotyped answer?

A: Yes.

Cooper: How do you propose to meet this situation?

Boggs: This is a serious thing.

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A: I thought first you should know about it. Secondly, there is this factor too that a consideration, that is somewhat an issue in this case, and I suppose you are all aware of it. That is that the FBI is very explicit that Oswald is the assassin or was the assassin, and they are very explicit that there was no conspiracy, and they are also saying in the same place that they are continuing their investigation. Now in my experience of almost nine years, in the first place it is hard to get them to say when you think you have got a case tight enough to convict somebody, that that is the person that committed the crime. In my experience with the FBI they don't do that. They claim that they don't evaluate, and it is uniform prior experience that they don't do that. Secondly, they have not run out all kinds of leads in Mexico or in Russia and so forth which they could probably -- It is not our business, it is the very --

Dulles: What is that?

A: They haven't run out all the leads on the information and they could probably say -- that isn't our business.

Q: Yes.

A: But they are concluding that there can't be a conspiracy without those being run out. Now that is not from my experience with the FBI.

Q: It is not. You are quite right. I have seen a great many reports.

A: Why are they so eager to make both of those conclusions, both in the original report and their experimental report, which is such a departure. Now that is just circumstantial evidence, and it don't prove anything about this, but it raises questions. We have to try to find out what they have say that would give any support to the story, and report it to you.

Ford: Who would know if anybody would in the Bureau have such an arrangement?

A: I think that there are several. Probably Mr. Belmont would know every undercover agent.

Q: Belmont?

A: Yes.

Q: An informer also would you say?

A: Yes, I would think so. He is the special security, of the division.

Dulles: Yes, I know.

A: And he is an able man. But when the Chief Justice and I were just briefly reflecting on this we said if that was true and it ever came out and could be established, then you would have people think that there was a conspiracy to accomplish this assassination that nothing the Commission did or anybody could dissipate.

Boggs: You are so right.

Dulles: Oh, terrible.

Boggs: Its implications of this are fantastic, don't you think so?

A: Terrific.

Rawkin: To have anybody admit to it, even if it was the fact, I am sure that there wouldn't at this point be anything to prove it.

Dulles: Lee, if this were true, why would it be particularly in their interest -- I could see it would be in their interest to get rid of this man but why would it be in their interest to say he is clearly the only guilty one? I mean I don't see that argument that you raise particularly shows an interest.

Boggs: I can immediately --

A: They would like to have us fold up and quit.

Boggs: This closes the case, you see. Don't you see?

Dulles: Yes, I see that.

Rawkin: They found the man. There is nothing more to do. The Commission supports their conclusions, and we can go on home and that is the end of it.

Dulles: But that puts the men right on them. If he was not the killer and they employed him, they are already it, you see. So your argument is correct if they are sure that this is going to close the case, but if it don't close the case, they are worse off than ever by doing this.

Boggs: Yes, I would think so. And of course, we are all even gaining in the realm of speculation. I don't even like to see this being taken down.

Dulles: Yes. I think this record ought to be destroyed. Do you think we need a record of this.

A: I don't, except that we said we would have records of meetings and so we called the reporter in the formal way. If you think what we have said here should not be upon the record, we can have it done that way. Of course it might. . . .

Dulles: I am just thinking of sending around copies and so forth. The only copies of this record should be kept right here.

Boggs: I would hope that none of these records are circulated to anybody.

A: I would hope so too.

Rawkin: We also give them to you Commissioners. Now if you don't want them, those are the only ones who get them but Sides himself: off the record.

E N D

DECLASSIFIED  
E.O. 11652, Sec 1.4

By [Signature] 3/27/15

WARS Date 3/27/15

SELECTED INTERROGATORIES--CIVIL ACTION NO. 75-1448

15. Is Yuri Invanovich Nosenko the subject of the June 23, 1964, executive session transcript?

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

18. Executive Order 11652 states that: "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" (listed in Section 1(A) of Executive Order 11652) were used as a basis for classifying the January 21 and June 23, 1964 transcripts 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 or complex cryptologic and communications intelligence systems?
- d. the revelation of sensitive intelligence operations?
- e. the disclosure of scientific or technological developments vital to national security?

ANSWER: 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."

20. State all dates on which the January 21 and June 23 transcripts have had their security classification reviewed, the persons or persons conducting such reviews, and the results of each such review.

ANSWER: 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.

25. Executive Order 11652 states that: "The test for assigning 'Confidential' classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security." Describe the kind of damage to the national security which could reasonably be expected to result from the disclosure of the January 21 and June 23, 1964, Warren Commission executive session transcripts.

ANSWER: 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.

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.

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.

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) provides:

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 to be followed?

ANSWER: No.

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.

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.

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 provisions 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.

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 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 not further knowledge responsive to this interrogatory. See answer to No. 68, above.

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

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

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

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

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

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

f. did the person who made the determination to continue the Top Secret classification of these transcripts compare their own 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 123/75 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: 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 classification.

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 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. Marion 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 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 the transcripts. See answer to No. 70 above.

73. The note in the right hand margin of Mr. Morrison's October 1, 1974, letter is dated "3/19/75". It reads: "Mr. Charles P. Dexter of the 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 continued 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.

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.

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

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

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

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

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

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

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

ANSWER: All of the copies of the June 23 transcript and the January 21 transcript which were transmitted to the National Archives as part of the records of the Warren Commission are accounted for. The fact that there may have originally been several other copies of the same transcripts does not necessarily mean that they are "missing." Multiple copies of documents are often destroyed as non-record copies once there is no longer a need for the original number of copies. The fact that there are not nine copies of both transcripts located among the records of the Warren Commission does not necessarily mean that a breach of national security has occurred. The CIA 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 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.

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.

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.

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

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

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.

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 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 is the subject of the June 23 transcript and that this information is not classified.

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.

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

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

100. Paragraph 9(b) of the October 6, 1975, affidavit of Dr. James B. Rhoads states: "in withholding access pursuant to this statute [50 U.S.C. 403(d) (3)], the Archivist of the United States or his delegates within the National Archives and Records Service act as agents for the Director of Central Intelligence or his delegates." Has the Director of the CIA or any of his delegates ever informed the Archivist or any of his delegates that

the June 23 transcript and pages 63-73 of the January 21 transcript are withheld pursuant to 50 U.S.C. 403(d)(3)? If so, please attach any correspondence or other record reflecting this.

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

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.

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.

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 determination 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.

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.

116. Under what circumstances did knowledge of Nosenko's defection first become public knowledge?
117. Did the CIA keep Nosenko in protective custody? For how long?
118. Did the CIA establish Nosenko with a new identity?
119. Is Mr. Briggs familiar with the book KGB by John Barron?
120. Is Mr. Briggs aware that in KGB Mr. Barron credits the CIA with assisting him?
121. Does not most of the text of KGB come from CIA sources and deal with classified CIA operations?
122. Does not KGB contain the essence of the Nosenko story on Oswald?
123. KGB was published in a Bantam edition in January, 1974. Why was the Nosenko story on Oswald contained in KGB thereafter kept classified?



124. Does Mr. Briggs consider that the use of information supplied by defectors is an intelligence method which can be protected under Executive order 11652?

125. Is the use of information by defectors one of the intelligence methods sought to be protected by withholding the June 23 and January 21 transcripts from the public?

126. Is this method secret?

127. Did Nosenko reveal anything of a national security nature to the FBI, the CIA, or the Warren Commission which is unknown to the KGB?

128. Did Nosenko state to the American intelligence agencies which interviewed him that the KGB believed that Lee Harvey Oswald was an American "sleeper" agent?

129. Did former CIA Director John A. McCone state on nationwide T.V. that the CIA had determined that Nosenko was a reliable and dependable informant?

130. Did the CIA subsequently tell the press that it did not regard Nosenko as a reliable informant?

131. Did the CIA provide the Rockerfeller Commission with its files on Nosenko? Were the materials which the CIA gave the Rockerfeller Commission:

- a. complete?
- b. masked?
- c. was the identity of Nosenko hidden?

132. The Senate Select Committee on Intelligence Activities investigated the performance of intelligence agencies in investigating the assassination of President John F. Kennedy. Did the CIA provide the Senate Select Committee with its files on Nosenko? Were the materials on Nosenko:

- a. complete?
- b. masked?
- c. was the identity of Nosenko hidden?

133. Is it normal for the clandestine branch of the CIA to make determinations as to whether documents must be security classified, or is this usually a function of the intelligence branch?

134. With respect to interrogatories 131 and 132, did the CIA ask that what is merely embarrassing to it be withheld?

135. Does what was withheld from the Rockerfeller Commission include a request by Richard Helms that the Warren Commission hold off on a Nosenko matter?

137. Was Mr. Briggs involved in the collection of records kept on Mr. Weisberg?

138. Was Mr. Briggs involved in preparing the CIA's General Counsel to report to Mr. Weisberg about the files which the CIA had on him?

139. Was Mr. Briggs responsible, directly or indirectly, for the letter which CIA General Counsel, Mr. John Warner, sent to Mr. Weisberg stating that the CIA had no files on Mr. Weisberg?

140. Did Mr. Briggs have any knowledge of the letter from Mr. Warner referred to in the preceding interrogatory?

141. Is Mr. Briggs aware that after Mr. Warner had denied the existence of any CIA files on Mr. Weisberg, the CIA did supply copies of some of them to Mr. Weisberg?

142. Is Mr. Briggs responsible for the cancellation of the memorandum to Mr. Warner informing him of other files on Mr. Weisberg?

148. Was Mr. Weisberg's notification to the CIA that he had copies of its records on him which the CIA had not provided him in response to his Freedom of Information and Privacy Act requests routed to Mr. Briggs? If so, on what basis did Mr. Briggs:

- a. provide records mentioning Mr. Weisberg to others?
- b. deny those same records to Mr. Weisberg?

149. Did the CIA request that the Senate Select Committee on Intelligence Activities withhold the identity of certain CIA employees who worked with the Warren Commission?

- a. who made this request on behalf of the CIA?
- b. are the names of these CIA employees publicly and readily available?

150. Did the CIA request that the Senate Select Committee on Intelligence Activities withhold the names of Nosenko and others, including two who are identified in the Schweiker Report as "D" and "A"? Who at the CIA made this request?

151. Was the identity of "D" not readily and publicly available prior to your withholding of it?

153. Is the name of "D" not readily available in the Warren Commission's public records and staff memorandums?

157. Is "A" Rudolph Richard "Ricardo" Davis or anyone connected with him?

158. Was Ricardo Davis in charge of a training camp on the North side of Lake Ponchartrain?

159. Did the CIA ask Ricardo Davis to break up this training camp after the FBI raided a depot of explosives?

160. Did Ricardo Davis work for the CIA, either directly or indirectly?

161. Does Mr. Briggs know whether at an earlier period Ricardo Davis worked in Cuban endeavors for a unit of the New York Police Department in which Jack Caulfield, of Watergate fame, worked as a supervisor?

162. Were there any arrests involving "A" and/or others connected with him?

a. are these arrests a matter of public record?

b. do they include the names: Victor Dominador Espinosa Hernandez, Carlos Eduardo Hernandez Sanchez, John Kock Gene, Acelo Pedros Amores, Miguel Alavares Jimenez, Antonio Soto Vasquez, Sam Benton, Byron Chiverton, Rich Lauchli (or Luchli), Earl J. Wasem, Jr., and Ralph Folerts?

163. Do the answers to interrogatories 157-162 constitute the reasons why the name of "A" is hidden in the Schweiker Report issued by the Senate Select Committee on Intelligence Activities, as well as in records on President Kennedy's assassination recently released to the public?

164. With regard to the first 106 numbered items of the 1,466 pages of documents which the CIA recently provided Mr. Weisberg on the assassination of President Kennedy, on what basis did you mask the names of signatories?

165. Do the names which are masked include that of the CIA's former Mexico City station chief, Mr. David Phillips?

166. Before these documents were publicly released, did Mr. Phillips leave the CIA to take up its defense?

167. Did Mr. Phillips then identify himself as having been Mexico City station chief at the time of President Kennedy's assassination?

168. Did Mr. Phillips do this on a number of public occasions, including on PBS at the time the Senate Select Committee on Intelligence Activities released the Schweiker report?

169. On what basis, therefore, has Mr. Phillips' name been masked from the documents which the CIA recently provided Mr. Weisberg?

170. In a report which the CIA prepared for the Rockefeller Commission in 1965, your masking of it includes the author of

the report, and in its place is written "staff employee".

a. was this report written by Raymond Rocca?

b. has Mr. Rocca's name been published elsewhere, including in publicly available Warren Commission files?

171. Did Mr. Rocca leave the CIA at about the same time as Mr. Angleton was forced out during the "watergate flap"?

172. Did the CIA thereafter rehire Mr. Rocca as a staff employee or only to draft the report which the CIA provided to the Rockefeller Commission?

173. On what basis has the identity of Rocca as author of the CIA's report to the Rockefeller Commission been withheld from the public?

174. Does Mr. Rocca's report or "analysis" attempt in any way to persuade the Rockefeller Commission to credit, a decade later, the admitted fabrication of "D"?

175. Could the original fabrication by "D" have started a war? Could it have inflamed passions against Cuba if used by the Rockefeller Commission? Did "D" ultimately admit this at the time?

176. Does the masking of the names of Mexico City signatories hide the fact that there was responsibility on the part of Mr. Phillips and the CIA for uncritical acceptance of what could have started a war against Cuba?

177. Did Mr. Phillips send raw, inflammatory, and unauthenticated reports directly to the White House (McGeorge Bundy) and the State Department (U. Alexis Johnson)?

178. Is it not a fact that these inflammatory and unauthenticated reports were dubious on their face and departed from the known practices and procedures of intelligence agencies?

179. In Mr. Briggs' opinion as an expert, could others believe that this withholding of the names of the Mexico City signatories was from embarrassment, not reasons of national security?

181. Do pages 63-73 of the January 21 transcript reveal the identity of any intelligence source not publicly known?

183. Does the June 23 transcript reveal the identity of any intelligence source not public known?

185. Do pages 63-73 of the January 21 transcript contain any material which is embarrassing to the CIA?

186. Does the June 23 transcript contain any material which is embarrassing to the CIA?

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.

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.

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.

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

- a. when?
- b. why?

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.

210. Did the National Archives refuse Mr. Weisberg's request for 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.

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

HAROLD WEISBERG, :  
 :  
 Plaintiff-Appellant :  
 :  
 v. : No. 77-1831  
 :  
 GENERAL SERVICES ADMINISTRATION, :  
 :  
 Defendant-Appellee :.

CERTIFICATE OF SERVICE

I hereby certify that I have this <sup>22nd</sup> 21st day of February, 1978 served copies of the Reply Brief for Plaintiff-Appellant by mailing them to Mr. Leonard Shaitman and Ms. Linda M. Cole, Attorneys, Appellate Section, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

  
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JAMES H. LESAR