

Dr. James B. Rhoads, Archivist  
National Archives  
Washington, D.C. 20408

10/24/78

Dear Dr. Rhoads,

I regret that the fine statements of what American's should be able to expect of government, like the words of Mr. Justice Brandeis on appearances, are not the practise I encounter. Your Mr. Gustafson's letter dated the 17th and what it represents again makes me think this way.

On October 3 I nudged you about your continued classification and withholding of what was within the public domain, as earlier I had reminded Justice. On the 16th your counsel in No. 78-1731 phoned my counsel to inform him that the executive sessions of the Warren Commission of January 11 and June 23, 1964 were going to be released to me. Remarkably enough the day your brief was due. I asked my counsel to obtain assurances that my receiving the copies would not be delayed until after there was still another official adventure in news management with these transcripts. When he was not given such assurances by Department of Justice or GSA counsel I had to make a special trip to Washington to obtain copies and to give them to the press, with relevant records and making myself available for any information desired.

The I received the brief on your behalf and attached letters, all stating that I would receive these transcripts promptly. It now turns out that if I had not gone to the extra trouble and cost of the trip to Washington your adventure in news management might well have come to pass because those transcripts I was to have received immediately did not reach me until now, with the letter of the 17th.

Maybe it did take a week for overnight mail which had only 50 miles to go. Or maybe you were going to engage in some of the propaganda I recall of the past. But would it not have looked better, whatever the truth may be, if you had observed the normal standards of scholarship and of common decency and permitted me the first use of what you have withheld from me for a decade and what for three years I have suing you, at some cost, to obtain? Especially when this first use was public-service use, just giving the records away, at my cost?

I had also written you asking that as a supposed expert on classification you personally examine these transcripts to satisfy yourself that classification was justified. You never responded. Now I have read the transcripts. They confirm what I knew - that there never was justification or legitimate need to classify or withhold. (I knew because one of the CIA people involved in the improper withhold for ulterior purposes had blabbed to a reporter.)

The unclassifiable contents of the records you classified and withheld are a perfect example of the kind of information Congress intended not be withheld, a classic example of the kind of information about what their government is doing that the people have a right to know. You withheld those records only because they are embarrassing to the CIA and the personages involved and because they disclose the Commission was a bit less than the people had a right to expect it to be.

Mr. Gustafson's letter is not responsive, therefore I write you again. I asked by what legal right the GSA- family agreement was violated for immediate political and propaganda purpose. Mr. Gustafson says that Burke Marshall authorized it. This is not responsive. The letter agreement has meaning or it has no meaning. It is abided by in all circumstances or it is null and void. You denied me copies of pictures under this letter agreement and made false promises to a court relating to an alleged requirement that you withhold them. No, they have been on coast-to-coast TV and you do not respond to my inquiries or to my request for prints. I

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believe that after the same and more views have been on TV there is no right to continue to withhold what you revised your own regulations to withhold - after the fact - in a successful effort to defraud a court and me.

As you may know, I am past the point in my writing or work where I need these pictures for their evidentiary value, my only initial interest related to my writing. As you also know, you denied me prints of these identical pictures for court use. Now you continue to deny them to me while making them available for propaganda uses in support of an official position on a controversial question.

Mr. Gustafson's letter simply is untruthful in representing that the pictures for which I asked were "prepared to show you and other researchers instead of the clothing." You took them for me after I alone sued you. You refused to take them until after I sued you. You then didn't even take the pictures you assured the court you would until I reported your default to the court. They you still could not take them because you had permitted some of the evidence to be destroyed and atop this you refused to conduct an investigation to determine how this evidence was destroyed.

Mr. Gustafson says with regard to the withholding of the May 19 transcript that "we have seen no published information that makes it possible (sic) to release the transcript." You do not need any information "to make it possible." And, of course, I do not know what you see or refuse to see.

That transcript was withheld under shifting claims to exemption, pursuant to GSA policy that all exemptions be claimed, baselessly, in order not to have to make new claims to exemption when some were proven to be invalid. The actuality is that the transcript, in the latest interpretation, was withheld because it reflects deliberations. From what you have not seen that is public, no doubt because you are its custodian, any decision making was the final and published step in a unanimous decision. I believe that under the Act this stage is required not to be withheld. In any even, since I filed the suit you have an added reason to withhold that is not within any exemption. There was a virulent, racist effort to get two prestigious staff counsel fired by the Commission. The one member who sought this later became our first unelected President. Since then a Congressman who had interested him in that effort became a member of the House Select Committee on Assassinations, Mr. Devine, the former FBI agent.

Now I ask you again, what provision of the GSA-Marshall letter agreement permitted the public display of the President's bloody clothing and what provision permits you to permit photographs of it to be televised from coast-to-coast and to remain in the possession of those who televised the display and all of those who made home or other videotapes while you continue to deny me similar pictures to present to a court of law and for archival purposes?

Sincerely,

Harold Weisberg