

TRANSCRIPT OF PROCEEDINGS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MARK A. ALLEN,

Plaintiff,

vs.

FEDERAL BUREAU OF INVESTIGATION,
et al.,

Defendants.

Civil Action
No. 81-1206

Deposition of W. RAYMOND COLLEY

Washington, D.C.
May 11, 1982

Pages 1 thru 50

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IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MARK A. ALLEN,	:
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Plaintiff,	:
	:
vs.	: Civil Action
	:
FEDERAL BUREAU OF INVESTIGATION, et al.,	: No. 81-1206
	:
Defendants.	:
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Washington, D. C.
Tuesday, May 11, 1982

Deposition of W. RAYMOND COLLEY, taken by the plaintiff
at James Madison Library, Independence Avenue, Southeast,
Washington, D. C., at 10:15 a.m., before Dorothy Fitzgerald,
a notary public in and for the District of Columbia, when
were present:

On behalf of Mark A. Allen:

JAMES H. LESAR, Esquire
1000 Wilson Boulevard
Suite 900, Arlington Boulevard
Arlington, Virginia 22209

On behalf of the United States
Department of Justice:

STEPHEN E. HART, Esquire
Civil Division
U. S. Department of Justice
Washington, D. C. 20530

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On behalf of the Federal Bureau of Investigation:

WILLIAM F. WELBY, Esquire
Federal Bureau of Investigation
J. Edgar Hoover Building
Room 3648
Tenth and Pennsylvania Avenue, Northwest
Washington, D. C. 20535

On behalf of the United States House of Representatives:

STANLEY M. BRAND, Esquire
MICHAEL L. MURRAY, Esquire
General Counsel to the Clerk
U. S. House of Representatives
H-105, The Capitol
Washington, D. C. 20515

Also Present:

MARK A. ALLEN, Plaintiff

- - -

C O N T E N T S

EXAMINATION BY COUNSEL
FOR THE PLAINTIFF

WITNESS

W. Raymond Colley

3

E X H I B I T S

Plaintiff's

IDENTIFIED

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P R O C E E D I N G S

Whereupon,

W. RAYMOND COLLEY

was called as a witness and, after having been first duly sworn by the notary public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. LESAR:

Q. Will you state your full name and address.

A. I would like to make a very brief statement for the record. My testimony is being given for what I am advised is necessary inquiry for a determination of the applicability of the exemption for congressional records and records generated pursuant to a duly authorized congressional investigation into the assassinations of Martin Luther King and President Kennedy. It is not a waiver of any rights under the Speech or Debate Clause or to permit general inquiry into the manner, means, policies or methods of the investigation or the performance of duties in connection with the investigation by any Member, officer or employee of the House, including the Clerk.

Q. Would you please state your name and address.

A. W. Raymond Colley, 1105 Dalebrook Drive, Alexandria, Virginia. My office address is H-105, The Capitol, Washington,

1 D. C. 20515.

2 Q. I wonder if you could begin by describing what
3 records the Clerk considered to be congressional records in
4 this case and how those records were generated?

5 A. I think I will take the last part of the question
6 first. The records that were generated, as far as to my
7 personal knowledge, resulted from the work of the Select
8 Committee on Assassinations, the Committee that was estab-
9 lished by a resolution of the House and continued in being
10 until its work was concluded. This includes anything that
11 the Committee obtained in its work, not only from the public,
12 but from the federal agencies. It includes any records that
13 they subsequently provided to the Clerk when the Committee
14 concluded its work, and are records that I would consider
15 congressional records that were returned to the agencies
16 after it concluded its work.

17 Q. All right, let us take the case of FBI records
18 that were requested by the Select Committee.

19 You contend those are congressional records?

20 A. That is our contention, yes, sir.

21 Q. First of all, did the Committee receive the
22 original FBI documents or copies of the FBI documents?

23 A. To my personal knowledge, I cannot answer that

1 regarding either FBI or other agencies, because I was not in
2 a day-to-day supervisory role with the Committee at that
3 point.

4 Q. So you do not know whether the records we are
5 talking about are copies of the FBI records or the original
6 FBI records?

7 A. I do not know of my own personal knowledge, no. I
8 do know, I have learned since we took over the Committee
9 records that in some instances the Committee did receive
10 copies. In some instances they received originals. But of
11 my personal knowledge from an examination of the records, I
12 do not know.

13 Q. Do you know whether the FBI retained a copy of
14 documents that were transmitted to the Select Committee?

15 A. No, I do not.

16 Q. Were there any records that you maintain are con-
17 gressional records that were never obtained by the Select
18 Committee; in other words, documents that were reviewed at FBI
19 headquarters or elsewhere, but which the Committee did not
20 obtain copies of?

21 A. We have contended because they related to the
22 Committee's inquiry, the work they were doing, they became a
23 part of the study and a part of the inquiry, and those were

1 included in the House records.

2 Q. Even though the House never obtained them?

3 A. Yes.

4 Q. Were any of these records that were obtained by the
5 Select Committee ever returned to the FBI?

6 A. It is my understanding, and this comes from dis-
7 cussions with the chief clerk of the Committee and the chief
8 counsel at the time the Committee was concluding its work
9 that certain documents, records, were returned with a
10 covering letter or a covering memorandum, or whatever, to not
11 only the FBI, but other agencies. Whether they were copies,
12 originals or what, I don't know of my own personal knowledge.

13 Q. Do you know whether or not these records that were
14 returned to the FBI were classified or unclassified?

15 A. I do not know specifically regarding the FBI. I
16 know that the Committee had extensive security arrangements
17 made with the Clerk's office for classified documents and for
18 sensitive documents. I assume that the records that were
19 returned, not only to the FBI or to other agencies, could have
20 been in either category, classified or at least sensitive.

21 Q. By whom would they have been classified?

22 A. I am using the term "classified" in the sense that
23 they are sensitive insofar as the Committee is concerned. I

1 assume you are asking the question as to the term "classified"
2 in the Executive Branch, is that correct?

3 Q Yes. First of all, does Congress have authority to
4 classify documents and, if so, what is that authority?

5 A I would have to say it is my understanding that the
6 Constitution gives us the authority to determine what records
7 should be made public and which should be kept secret. In the
8 sense of the word "classified" then, my answer would have to
9 be that I don't think so. I am speaking of the term "classi-
10 fied" as the Executive Branch would use it.

11 Q Were any of the records received by the Select
12 Committee classified by the Executive Branch?

13 A I am sure they were. I can't answer that of my own
14 personal knowledge. I might add, as I indicated, the
15 Committee had a very extensive security arrangement, including
16 a Chief of Security and a Deputy Chief of Security, and we
17 provided them with--the Clerk has all the property of the
18 House--We provided the Committee with a considerable number of
19 file safes to store--several hundred drawers--what would be
20 considered records that should be secure, whether they included
21 classified documents as the term would apply to the FBI or
22 other agencies or whether they were sensitive records that the
23 Committee determined should be kept secret and secure. I don't

1 know other than that.

2 Q. Did the FBI or any other agencies request that
3 these security measures be taken?

4 A. I can't answer that of my personal knowledge. I am
5 sure that they probably did. I know of my own personal
6 knowledge that--I can't recall and I am speaking strictly
7 from recollection in an effort to be helpful--I can't recall
8 whether it was the FBI or the CIA that had representatives who
9 met with the Committee regularly to determine security, to
10 ascertain that they were taking secure procedures.

11 Q. Let me hand you a document. I would like the court
12 reporter to mark it as Plaintiff's Exhibit No. 1 for identifi-
13 cation. It is styled a "Protocol."

14 (The document referred to was
15 marked Plaintiff's Exhibit
16 No. 1 for identification.)

17 MR. BRAND: You might want to have the record
18 reflect that this document appears to be a document which is
19 Exhibit 5 to the Intervenor's Motion for Summary Judgment.

20 BY MR. LESAR:

21 Q. Mr. Colley, do you know whether or not this document
22 was ever signed, this Protocol?

23 A. I do not. I know of its existence, but I do not

— 1 know what led up to its presentation or signature.

2 Q Do you know if it was, in fact, signed?

3 A I do not.

4 Q Do you know who drafted it?

5 A I do not. I assume it was drafted by the Counsel
6 for the Select Committee on Assassinations, or at least a
7 member of the staff of the Committee.

8 Q Do you know when it was drafted?

9 A Not to my personal knowledge, no.

10 Q Do you have any idea on information?

11 A My best recollection at the time we first met with
12 the Committee staff, as to the disposition of their records
13 when the Committee's work was drawing to an end, is that I
14 received information, either from the chief counsel or from
15 the chief clerk, that an arrangement, a protocol, if that is
16 what the word should be, was being prepared and worked out
17 with the agencies regarding certain files that were to be
18 returned. Of my own personal knowledge, I do not know what
19 transpired after that.

20 Q So you don't know whether any of the other agencies
21 signed this Protocol or not?

22 A I do not.

23 Q Who would have signed the Protocol?

1 As I understand this, you have indicated that the
2 Protocol, you think, was drawn up after the Select Committee--

3 MR. MURRAY: I don't believe that is what he testi-
4 fied to.

5 THE WITNESS: No, I did not say that. We met first
6 with the staff of the Committee in the late period of 1978, as
7 I recall. The Committee had been extended and was concluding
8 its work; and, as is normal with the coming of an end with
9 the Congress, we arranged to meet with all the committees of
10 the House as to the arrangement for the taking over of the
11 records by the Congress, which is provided in the House Rules.

12 In this instance, the Select Committee on Assassina-
13 tions was concluded. That is when we first started talking
14 to staff about their records. It was in November and
15 December of '78 that we discussed with the staff these arrange-
16 ments, and actually plans were started at that point to take
17 over the records. That is when I learned generally that this
18 sort of arrangement was being worked out.

19 BY MR. LESAR:

20 Q Directing your attention to Roman numeral IV on
21 page 3 of the Protocol, a description of categories of
22 records is contained there, and the first category is
23 "Classified materials on loan from federal agencies."

1 A. Yes.

2 Q Does the Clerk contend that materials that were
3 loaned by the federal agencies become congressional records?

4 A We contend that they are privileged, regardless of
5 who possesses the records.

6 Q What was the disposition of these classified
7 materials?

8 A I cannot answer on specific materials. It is my
9 understanding, again from general statements from the
10 Committee staff, that these would be returned to the agencies.
11 As it worked out on an individual basis, I assume we still
12 have perhaps some of those documents when there were copies
13 given to us in our files in the Archives.

14 Q When this says "classified materials," classified
15 here would indicate classification by the Executive Branch?

16 A That would be my understanding, yes.

17 Q The next category is "Classified materials from
18 federal agencies where no stipulation of loan was made."

19 What was the disposition of those records?

20 A I cannot really say because this Protocol came from
21 the files of the Committee, and I was not involved on a day-
22 to-day basis at the time it was written or at the time it was
23 being implemented what happened to those. Again, I would have

1 to state that I assume those materials are in the Committee
2 files.

3 Q What do you understand the phrase "where no stipula-
4 tion of loan was made" to indicate? Does it indicate that a
5 gift was being made of the records?

6 A I would simply take that to mean that those are
7 records that the House could retain without any question that
8 they should be returned. I am sure that we have several
9 drawers of material of that nature.

10 Q On the following page, page 4, there is a statement
11 that "Because of their historical significance, the Committee
12 was concerned about the ultimate disposition of these
13 materials once they were returned to their original custodians."

14 What was the Committee's concern in that regard?

15 A I can't answer that other than to read the statement
16 as you have read it. You see, I was not involved with the
17 Committee staff or the Committee on a day-to-day basis. We
18 became involved as we became the custodian of the records.

19 Q So you can't construe that as an indication that
20 Congress was trying to retain a property claim in the
21 documents?

22 A I would construe it simply the way it is written,
23 that the Committee, speaking for the Committee and for the

1 House, was concerned about the ultimate disposition.

2 Q But for what reason, you don't know?

3 A Not beyond what is stated here.

4 Q I note that further down on the page, under the
5 description of "The Central Intelligence Agency," it says,
6 "All classified materials," with certain exceptions, "were
7 returned to the agency" and that "The agency agreed to store
8 the materials separately from its other files."

9 Why was this provision--

10 MR. MURRAY: I object. It is irrelevant.

11 You can answer that question.

12 THE WITNESS: Again, I cannot answer the question
13 beyond what is stated in the Protocol. I would refer back to
14 the statement that I have made that we had asserted that these
15 were privileged materials. They were congressional records
16 and that they should be maintained in that fashion.

17 I might add, I intended to say earlier on con-
18 gressional records, the House and Congress are always con-
19 cerned about records of this nature, that they were received
20 with the understanding in many instances of being classified
21 or in many instances very sensitive and that they would be
22 privileged.

23 In connection with this type of separation of the
records in the files, we had the same problem in connection

1 with the impeachment hearings in the House Judiciary hearings.
2 We made the same arrangement with the Archives, when those
3 records went back to the Archives and to the agencies because
4 of the sensitivity of them.

5 Q All right.

6 With respect to the Federal Bureau of Investigation,
7 the same statement is made without the qualification "All
8 classified materials were returned to the Bureau"?

9 A Yes.

10 Q And that "They are to be maintained separately."

11 Again, do you know the reason for the provision
12 that they were to be retained separately?

13 A Not beyond what I stated and what is written in the
14 Protocol and of the concern that they be separate for accessi-
15 bility, I suppose, and things of that nature.

16 Q There is no mention in here of unclassified
17 materials. Were the unclassified materials returned to the
18 Bureau?

19 A I, frankly, cannot answer the question, because I
20 was not involved in the indexing of the record or what was
21 sent back to the agency.

22 Q There is a footnote at the bottom of page 4 with
23 respect to No. 3, "The Dallas Police Department" records.

1 It says, "An exception to this category was the dictabelts and
2 tapes of the police department containing the sounds received
3 on the department police radio on November 22, 1963," and that
4 "These materials were turned over to the Department of Justice."

5 Why was there a different disposition made of those
6 records?

7 A. I am only answering from general knowledge, not from
8 personal or specific knowledge, and it is my understanding
9 that the Chairman of the Committee transmitted a copy of the
10 Committee's Report along with certain other materials to the
11 Department of Justice for further review and investigation,
12 and that comes simply from the knowledge of having read a
13 statement in the Congressional Record and knowing that that was
14 a part of the Committee's decision.

15 Q. All right.

16 Would you agree with the statement that they were
17 turned over to the FBI, because it was a proper function of the
18 FBI to investigate the lead turned up by the Select Committee?

19 A. It was sent to the Department of Justice.

20 Q. Yes.

21 A. Whether that means the FBI, I can't really say.

22 Q. Let us assume it is the Department of Justice rather
23 than the FBI?

1 A. I am only speaking from the general knowledge I
2 gained since the Committee work was concluded. It is my
3 understanding that the Chairman proposed to the Department of
4 Justice that they investigate further and that these records
5 were sent back for them to pursue that further. Beyond that,
6 I can't add much to the answer I have previously given.

7 Q. Let me ask you a hypothetical. Assuming that
8 another agency had your subsequent need for some of the
9 records that were requested and turned over to the Select
10 Committee, say records dealing with organized crime. It is
11 your position that the FBI could not turn those records over
12 to the other agency without the permission of Congress?

13 A. That is our position, yes.

14 Q. You have stated that you have invoked a claim of
15 privilege regarding the agency materials that were provided
16 to the Select Committee. Does that claim of privilege extend
17 to materials that were submitted by private persons?

18 A. Definitely.

19 Q. Does your claim of privilege extend to materials that
20 have been made public?

21 MR. BRAND: I think you are asking Mr. Colley what
22 amounts to a legal question. The position that we have
23 exerted in our papers is that the privilege extends to all

1 records generated by the Select Committee or in response to a
2 Select Committee request. I am not sure Mr. Colley is compe-
3 tent to split hairs over claims of privilege beyond what he
4 has already stated here this morning.

5 Q Let me ask it in the context of a concrete
6 particular.

7 MR. BRAND: And as to the part of the question that
8 relates to applicability of the privilege as to public docu-
9 ments, our position would be that, even as to public documents,
10 to compel disclosure of public documents is prohibited under
11 the privilege as a matter of law.

12 If Mr. Colley can answer that in terms of his knowl-
13 edge at this point, he can do so.

14 BY MR. LESAR:

15 Q At the bottom of page 5, there is a footnote, and it
16 states, "An exception to this category was the picture taken
17 by Mary Mooreman of the assassination. It was turned over to
18 the Department of Justice."

19 Is it your contention that is (a) in a Congressional
20 Record and (b) is protected by your claim of privilege?

21 A. The answer is yes.

22 Q. To both parts of the question?

23 A. Both parts.

1 Q Does it make any difference, in your view, that that
2 picture has been widely published?

3 A I think counsel responded to that earlier.

4 Q Do you know whether or not any vote was taken on
5 this Protocol?

6 A I do not.

7 MR. LESAR: Please mark this as Plaintiff's Exhibit
8 2 for identification.

9 (The document referred to was
10 marked as Plaintiff's Exhibit
11 No. 2 for identification.)

12 BY MR. LESAR:

13 Q I have handed you a copy of a letter dated March 26,
14 1979, from Louis Stokes to the Honorable Griffin B. Bell,
15 Attorney General, which has been marked as Exhibit 2. Do you
16 know who drafted this letter?

17 A I do not.

18 Q Do you know whether or not the Clerk of the House
19 assisted, in any way, in this letter?

20 A It is my understanding that the Clerk's Counsel
21 assisted the Counsel for the Select Committee on Assassinations
22 in the preparation of the letter.

23 Q Do you know whether or not there had been any

1 Freedom of Information Act request made for these materials
2 prior to the date of this letter?

3 A. I do not. The request would have gone to the
4 agencies, and the Committee was actually still functioning
5 and operating at the time the letter was prepared.

6 Q. The Committee was still functioning?

7 A. Yes.

8 Q. Pursuant to what authority?

9 A. The Committee continued to function to finalize its
10 Report. The Report was filed with the Clerk on March 28 or
11 29, 1979. The work of the Committee, which included the
12 extensive report that I am sure you all are familiar with,
13 continued in the first two or three months of 1979; and, in
14 actuality, the staff of the Committee was still in its office
15 and working into April, 1979.

16 Q. Did the Select Committee hold any meetings after
17 January 3, 1979?

18 A. I cannot answer that of my personal knowledge, but
19 it is my understanding that the Committee did meet, did review
20 documents, provisions of the Report, items of that nature
21 that had to be approved before the Report actually was printed.

22 The work of the Committee was carried on by a much
23 reduced staff, but it is my recollection that we received the

1 Report in parts and that certain sections we had to delay
2 printing, because the Members of the Committee were still
3 signing off on it. That is just a recollection of what was
4 going on during that period of time.

5 Q After January 3, 1979, who paid the staff?

6 A The Clerk paid the staff.

7 Q Were there any hearings held after January 3, 1979?

8 A Not to my knowledge.

9 Q Were there any votes taken?

10 A Not to my knowledge, but as I stated, I know the
11 Committee was conducting business and meeting to review the
12 draft of the Report.

13 Q After January 3, 1979, did the Committee have the
14 power to subpoena witnesses?

15 (Witness and his counsel confer)

16 A It is our contention they would have the authority
17 to subpoena a witness if, in fact, it were necessary. I don't
18 know whether they did or endeavored to do so.

19 Q Pursuant to what resolution or act of Congress
20 would they have had the authority so to do?

21 MR. BRAND: Again, I think you are going beyond
22 Mr. Colley's competence, and I don't mean that in the ver-
23 nacular, but in the technical, legal sense. The Congress has

1 inherent authority to subpoena persons and papers relative to
2 its legislative inquiries under its Rules and under its
3 Constitution. That would extend to any matter on which
4 legislation could be had. To the extent that the Committee
5 had needed to subpoena persons or papers in that regard,
6 they would have the authority to do so.

7 Mr. Colley said he is unaware of any instance in
8 which they did after January 3. That is not to say that they
9 didn't have the power to do so.

10 BY MR. LESAR:

11 Q Did the Committee have the authority to take a vote
12 on anything after January 3, 1979?

13 MR. BRAND: Again, I think you are getting into an
14 area beyond this witness' competence. Those matters are
15 addressed by the Rules of the House, which are public documents
16 and available to this litigant as they are to everybody else.
17 If we are going to get into a civics lesson on how Congress
18 operates, we should suspend the deposition and have a lesson
19 on how the Congress operates.

20 BY MR. LESAR:

21 Q Let me ask you, in regard to the Stokes' letter that
22 is in front of you. What do you understand to be the scope of
23 the language in the second paragraph which says, "A great deal

1 of material has been generated by your Department in response
2 to specific requests or concerns of the Select Committee."
3 Then skipping a sentence, "The purpose of this letter is to
4 request specifically that this Congressional material and
5 related information in a form connected to the Committee not
6 be disclosed outside your Department without the written con-
7 currence of the House of Representatives."

8 MR. BRAND: We would like to have a minute for the
9 Deputy Clerk to consult or refamiliarize himself with the
10 pleadings in this case.

11 (Witness and Mr. Brand confer)

12 BY MR. LESAR:

13 Q Yes, could you answer the question now?

14 A It is our position, or our contention, and we have
15 stated it that anything connected with the Select Committee on
16 Assassinations and Investigations would be privileged, and I
17 think this paragraph restates that position very clearly.

18 Q What is Congressman Stokes referring to when he says,
19 "this Congressional material"?

20 A Any material that is in the Committee files or has
21 been returned to the agencies that was generated as a result
22 of the Committee's work.

23 Q It includes records reviewed by Committee staff?

1 MR. MURRAY: I think he already answered that.

2 THE WITNESS: It is the same answer. It is the
3 same question we had earlier. We have stated our position.
4 It includes any materials or records generated by the
5 Committee's investigation.

6 BY MR. LESAR:

7 Q Have you ever personally reviewed any of the
8 material at the FBI headquarters?

9 A No, I have not. It is my understanding that our
10 Counsel has reviewed some of the material.

11 MR. LESAR: Off the record a minute.

12 (Discussion off the record)

13 MR. LESAR: Mark that document as Plaintiff's 3,
14 please.

15 (The document referred to was
16 marked Plaintiff's Exhibit
17 No. 3 for identification.)

18 BY MR. LESAR:

19 Q This is Plaintiff's Exhibit No. 3 which is styled
20 "Memorandum of Understanding Between the Attorney General and
21 the Select Committee on Assassinations."

22 I note that the first paragraph of it says that the
23 Department of Justice and all divisions thereof, including the

1 Federal Bureau of Investigation, will cooperate with the
2 Select Committee by authorizing and providing access to infor-
3 mation within the releasing authority of the Department of
4 Justice.

5 And further down on the first page of the document,
6 it indicates that the Department of Justice cannot withhold
7 information from these documents.

8 To your knowledge, did the Department of Justice
9 ever withhold any such information?

10 A. This is a question that is beyond my knowledge to
11 answer. I simply have no knowledge of that.

12 Q. You don't know whether or not any of the materials
13 that were provided the Select Committee by the Department of
14 Justice contained excisions?

15 A. Not of my personal knowledge, I did not know.

16 Q. Did you ever see any of the documents that were pro-
17 vided to the Select Committee?

18 A. No.

19 Q. You have never seen a single document that was pro-
20 vided to the Select Committee by the FBI?

21 A. No.

22 Q. Page 3 of the document provides for a procedure
23 where there is a disagreement over whether or not certain

1 sensitive information should be disclosed to the Select
2 Committee. I am referring to the bottom of the page. Do
3 you know whether or not the Committee Chairman ever used this
4 procedure?

5 MR. MURRAY: Excuse me. Mr. Lesar, you are asking
6 about activities that took place during the activities of the
7 Committee when it was still functioning. Now, Mr. Colley, on
8 behalf of the Clerk, has testified as custodian of the
9 records, those records coming into his custody after the
10 Committee ceased to operate. I believe it is beyond his com-
11 petence to answer any questions about the day-to-day operation
12 of the Committee itself, and I am going to instruct him not to
13 answer the question.

14 BY MR. LESAR:

15 Q Could you briefly summarize what is the normal pro-
16 cedure followed by the Clerk of the House at the termination
17 of the Committee with respect to the disposition of its
18 records?

19 A Speaking very generally, we normally communicate
20 with the Chairman. That communication usually goes to the
21 Staff Director of the Committee, telling him or her at the
22 end of Congress or a specified time we would be assuming
23 control of the records for the immediate past Congress. We

1 would provide them with the general information as to how
2 this is done, a memorandum, indexing, where to obtain the
3 necessary file boxes that were used by the Clerk and the
4 National Archives and arrange at a mutually convenient time
5 for the Committee to transmit to your office the records of
6 communication, the various boxes of files they will turn over.

7 They give us an index to the boxes, an indication of
8 what each box contains. We assume control of them at that
9 point. Sometimes we maintain them in the complex here and
10 other times we would send them to the Archives, depending upon
11 what the Committee is about and what has been going on.

12 Q Do you customarily return them to the agencies or to
13 the Archives?

14 A No, we return them to the Archives--not return them
15 to the Archives, we send them to the Archives. We basically
16 maintain the records of the immediately preceding Congress
17 where they are available, if needed. At the end of two years,
18 if the Archives is ready to receive them, we submit them to
19 the Archives. We have an arrangement, a protocol, an under-
20 standing with the Archives as to any access to those records.
21 They remain the House records.

22 Q What is the reason for the different handling in
23 the case of the Select Committee?

1 A. As I stated in an earlier question, we knew the
2 sensitivity of these records, we knew that there would be
3 immediate requests from perhaps the media or the public for
4 access, we knew that they were classified materials, and as
5 we have done with other committee records that had the same
6 type of sensitivity, we arranged with the Archives for
7 immediate storage there, since classified materials were
8 included. We did this, as I recall, with an earlier committee
9 concerned with the investigation of the Pentagon Papers.

10 We did it with the House Judiciary Committee's
11 impeachment investigation, rather than maintaining the
12 records in our own facilities which are not as secure, we had
13 the archivist come to our office and meet with the Committee
14 staff and arrange for me to transfer.

15 Q. Were all of the Committee records, Select Committee
16 on Assassinations records, turned over to the Archives?

17 A. To the best of my knowledge, they were all trans-
18 mitted at the same time. If any at all were retained, it
19 might be a box that contained the indexes, documents of that
20 nature, but the primary records were all transmitted to the
21 Archives.

22 Q. When was this done?

23 A. I can ascertain from the Office of Records and

1 Registration, but my judgment would be that it had been in
2 April of 1979 that we were involved with the staff as they
3 closed out the office, preparing the records for transmittal.
4 To the best of my knowledge, it probably happened in the month
5 of April sometime.

6 Q Would these records have included records from other
7 agencies?

8 A Yes, agencies that had records not returned to other
9 agencies.

10 Q In addition to those that were sent to the Archives,
11 there were records that were sent to other agencies?

12 A I cannot speak of it to my own knowledge. Those
13 returns were carried out by committee staff and committee
14 chairmen prior to our receiving those records for storing in
15 the Archives.

16 Q You don't know if there were any FBI records that
17 were actually returned by the Committee to the FBI?

18 A I do not.

19 Q By the same token then, you do not know whether or
20 not any of the records that Mr. Allen has sought that the FBI
21 has identified as responsive to his request were in the
22 custody of the Select Committee?

23 A I do not.

1 Q What gives the Clerk standing to raise the Speech
2 or Debate Clause?

3 MR. BRAND: Objection, and I instruct the witness
4 not to answer.

5 BY MR. LESAR:

6 Q Are you aware of any cases in which the Clerk has
7 asserted the Speech or Debate Clause for agency records that
8 had been submitted to the Congress?

9 A Generally, it has been asserted in other cases,
10 other instances.

11 Q Under Rule 36 of the Rules of the House of
12 Representatives, there is a provision that "At the close of
13 each Congress, the Clerk of the House shall obtain all non-
14 current records of the House and each committee thereof, and
15 transfer them to the GSA for preservation, subject to the
16 order of the House."

17 Does the Clerk have authority to dispose of the
18 records in any other way than specified here?

19 (Witness and Mr. Brand confer)

20 THE WITNESS: Would you repeat the question, please.

21 (Pending question read)

22 MR. MURRAY: I need a clarification of that question.

23 By "dispose," do you mean transfer or do you mean
destroy?

1 MR. LESAR: I would like an answer to both.

2 MR. MURRAY: Okay.

3 BY MR. LESAR:

4 Q Please answer?

5 A I would have to answer as to what we what we do to
6 start with. We basically, as I have stated, take the records
7 from the committees and either transfer them immediately to
8 the Archives or, as a practical matter, since in the new
9 Congress the committees very often recall those records, we
10 maintain them on site for perhaps a year or two years before
11 we transfer them to the archivist. The problem there is also
12 one of space in the Archives. They have to be ready to receive
13 them. We maintain the records in a nearby location, in fact,
14 in this building as you have seen the boxes as you entered
15 the building, until we can make arrangements with the Archives
16 to transmit them.

17 The only other way to dispose of the records would
18 be by Order of the House as stated in the Rules. We do not
19 make any other disposition.

20 BY MR. LESAR:

21 Q By Order of the House, what form does that take?

22 A I think, in general, the Order of the House or the
23 Directive of the House could fall into various categories; it

1 could be by House Resolution, it could be by Directive of
2 the Speaker, it could be by Directive of the Committee
3 Chairman having control of the records in effect. I think
4 the Clerk, as legal custodian, would look at the situation
5 and look at the request and make a determination as to what a
6 proper order was as far as the records are concerned.

7 Q Can you dispose of the records or transfer the
8 records on the word of the Chairman of the Committee alone?

9 MR. BRAND: Again, you are getting into hypotheticals,
10 I think, for Mr. Colley to address in the abstract. He
11 stated that the Clerk looks at the totality of the circum-
12 stances and makes a judgment, based on precedent and law, as
13 to what he should do.

14 MR. LESAR: Let me make it less abstract.

15 BY MR. LESAR:

16 Q There was a brouhaha recently concerning some sub-
17 committee records which the subcommittee voted to disclose,
18 and then the CIA tried to intervene at that point, apparently,
19 according to an article that appeared in The Washington Post?

20 A Is this a current article?

21 Q Yes, May 7, 1982 Washington Post article. I will
22 show you a copy of it.

23 (Copy of article handed to witness and his counsel)

1 BY MR. LESAR:

2 Q My question with respect to this article, in the
3 instance alluded to in the Post, there was a vote taken by
4 the Committee, and then records were disclosed. Now, in a
5 situation in which there was no vote taken and the chairman
6 of a committee--

7 MR. MURRAY: That is the same.

8 MR. BRAND: I object to the hypotheticals. This
9 witness is here to address himself to this case and his
10 custodianship responsibilities with respect to the Assassina-
11 tions Committee. Again, to the extent we have to get into a
12 civics lesson on how Congress handles various and sundry
13 matters relating to papers, I think it would save us time if
14 we did that off the record at some other point.

15 BY MR. LESAR:

16 Q Can you recall any other instances in which the
17 Clerk has, in fact, transferred records on the instructions
18 of the chairman of a former committee of Congress?

19 (Witness and his counsel confer)

20 MR. BRAND: Just for the record again, your question
21 seems to presume that Mr. Stokes was the former Chairman on
22 March 6, 1979. Our contention is that he has had authority,
23 pursuant to the resolution, to act on behalf of the Committee.

1 Within that qualification, Mr. Colley can answer, if he can.

2 THE WITNESS: I don't accept the premise when you
3 state "a former Chairman" as being correct. I will answer
4 only that I have no knowledge of that situation ever occurring
5 during the time that I have been in the Clerk's Office, but
6 we take each request from the Chairman, from the Speaker
7 when we are functioning to follow an Order of the House as
8 a whole. We take each one into consideration as to who is
9 making the request, the entire background, or rule or law or
10 entire precedent that might apply.

11 BY MR. LESAR:

12 Q You took the totality in the case of the Select
13 Committee?

14 A Certainly. The Chairman was functioning, he was
15 filing a Report for the Committee. The House, by Resolution,
16 gave him authority to exercise the Committee authority. It
17 was obvious that he was the governing Chairman.

18 Q Did the Committee ever take a vote on disposition
19 of its records?

20 A That is not within my knowledge.

21 Q So, you did not take that factor into consideration
22 as to whether to follow Stokes' instructions?

23 A We follow the Committee Chairman's instructions very

1 often. We take instructions from the Chairman, assuming
2 that the Committee has given him authority to act.

3 Q You state that Stokes was acting pursuant to
4 authority of House Resolution 222, I believe?

5 A There were two or three resolutions establishing
6 the Committee, plus the final Resolution, H.R. 49. I don't
7 know the resolution of all of them.

8 Q I would like to show you House Resolution 49 and
9 ask you to point out to me where, in that Resolution--I would
10 like the court reporter to mark this as Plaintiff's Exhibit 4
11 for identification.

12 (The document referred to was
13 marked Plaintiff's Exhibit
14 No. 4 for identification.)

15 BY MR. LESAR:

16 Q All right, when you have had a chance to review
17 House Resolution 49, I would like to ask you to point out the
18 specific provision that authorizes Chairman Stokes to dispose
19 of the Committee records.

20 MR. BRAND: Before the witness answers, I am going
21 to, again, question the relevancy of this line of questioning.
22 The resolution is a public resolution passed by the House; it
23 is self-explanatory. To the extent, however, that it affects

1 the Clerk's appearance here in his deputy situation as
2 custodian, the Deputy Clerk can answer the questions as best
3 as he can.

4 THE WITNESS: I would refer to Section 2 of the
5 resolution, Section 2(b), but I might add that the authority
6 for the Clerk to receive the records of all committees is
7 clear in the Rules of the House. It doesn't necessarily say
8 that a chairman has to have authority to dispose of it to the
9 Clerk. I think the general Rules of the House provide very
10 simply what the Clerk does in obtaining records.

11 Q The provision that you are relying upon is this
12 provision in Section 2(b) that "The Clerk is authorized to
13 employ such persons as may be necessary and to expend the
14 funds referred to in the previous sentence for completion of
15 the report. Representative Louis Stokes is authorized to
16 exercise the authority of the former select committee with
17 respect to the handling of classified materials relating to
18 the operations of such committee."?

19 A Yes, that section, among some other authorities
20 that I mentioned.

21 Q Were all of the records of the Select Committee
22 classified?

23 A Not to my knowledge, no.

1 Q So, this does not authorize--

2 MR. MURRAY: I think Mr. Colley testified earlier
3 that they are really dual meanings. Classified, one is the
4 generic term of things classified by statute.

5 He also testified that Congress, under the authoriza-
6 tion clause, Congress can classify, in the congressional
7 sense, anything it chooses.

8 BY MR. LESAR:

9 Q Could you give me your interpretation of the
10 phrase "classified materials" as it appears in H. Res. 49?

11 A I would like to reiterate what I said to receive
12 all records of all committees.

13 Q I am not questioning the Clerk's authority at this
14 point. I am asking you about the authority of Louis Stokes.
15 In Paragraph 6 of your affidavit you say that House Resolution
16 49 passed January 18, 1979, and gave Chairman Louis Stokes of
17 the Select Committee on Assassinations--the Select Committee
18 gave him authority to supervise control of the records after
19 the dissolution of the Committee.

20 A I would again have to reiterate what I sense that
21 the term "classified" means in its broader sense the materials
22 of the Committee, all materials.

23 Q All materials of the Committee?

1 A. Very definitely, classified by the House.

2 Q. How?

3 A. Records of the Select Committee on Assassinations
4 and some classified by the Executive Branch in that sense,
5 but are all privileged records of the House.

6 Q. When did they become classified?

7 A. At the time they became records of the Committee.
8 At the time they were created, they became House records.

9 Q. In other words, you are saying that this passage
10 would express the same meaning if we simply struck the word
11 "classified" out of it?

12 MR. BRAND: We are going to object to that question,
13 and I instruct the witness not to answer. He has testified to
14 the full meaning of what he understands the terms to be and
15 what the classification authority of the House of Representa-
16 tives is.

17 BY MR. LESAR:

18 Q. Let me try once again to clarify my understanding of
19 what your contention is with respect to what constitutes con-
20 gressional records. If someone submits a request for FBI
21 records on George DeMohrenschildt or, say, Santos Trafficante,
22 who may be more familiar to you--

23 MR. MURRAY: I instruct the witness not to answer.

1 It is totally irrelevant to the custody of the records in
2 this case.

3 MR. LESAR: I think it is relevant to--

4 MR. MURRAY: You are asking hypotheticals.

5 MR. LESAR: I am trying to understand the scope of
6 the claim that has been put forward.

7 MR. BRAND: The scope of the claim is in the legal
8 papers. The witness is here to address himself to the ques-
9 tion of custodianship transfer in these specific questions.
10 Nothing could be clearer than what is in our legal pleadings.
11 We have said that Categories "E" and "F," as you have des-
12 cribed them, are congressional records, and all the other
13 records are privileged because they reflect the workings of a
14 congressional committee.

15 MR. LESAR: Perhaps you can answer the question.

16 MR. BRAND: I am not here to be deposed. This
17 witness is here to answer questions about his role in dis-
18 posing of the records. You are asking hypotheticals about
19 people this witness doesn't know.

20 MR. LESAR: No, I am asking questions to find out
21 what the Clerk's position is if somebody submits a request
22 for records on somebody who happened to have been the subject
23 of a Select Committee inquiry. Are you satisfying the

1 position that, ipso facto, they are congressional records, and
2 they are not obtainable under the Freedom of Information Act?

3 MR. BRAND: I think that is our position.

4 MR. HART: May we go off the record? May we talk
5 to you, Mr. Brand.

6 (Discussion off the record)

7 (Record read)

8 BY MR. LESAR:

9 Q. Let me maybe clarify the question a little bit.
10 Suppose you have a request for FBI records and the requester
11 does not phrase the request with respect to the Select
12 Committee's investigation, he simply asks for records on
13 John Doe. John Doe happens to have been a subject of the
14 Select Committee's proceedings; the Select Committee requested
15 FBI records on him. Under those circumstances, do you main-
16 tain that the FOI requester cannot obtain the documents,
17 because (a) the records he is requesting are congressional
18 records, or (b) the speech--

19 MR. BRAND: It is a compound question. I will
20 object. I will tell the witness not to answer. It is a
21 hypothetical. It goes beyond the competence of this witness
22 to answer about what would happen if certain conditions in
23 your question were to come to pass.

1 MR. LESAR: I direct the witness to answer the
2 question, if he is able.

3 MR. BRAND: If you are able?

4 (Witness and his counsel confer)

5 THE WITNESS: Accepting the fact that it is a
6 hypothetical question, my best answer would be what we would
7 do if we received a request on any matter relating to the
8 records of the House or this Committee, the first thing we
9 would do on the Select Committee on Assassinations would be
10 to ascertain from the Committee Report and from the 13
11 volumes of hearings whether that particular individual,
12 whether the document you might be requesting had been made
13 public. If it is in the report or in the hearings, and if
14 it is in our records, if it is in the Committee's records at
15 the Archives, we would authorize its release. That is the key
16 factor, whether it has been made public and whether we have
17 the authority to release it.

18 Obviously, if it has not been made public, if it
19 has been returned to either the FBI or another agency, we
20 would have to ascertain the status of the document, whether it
21 comes under our assertion that it is a congressional record
22 and privileged, or whether it is classified. We would have to
23 make an individual judgment; and, unless we received a request

1 and knew exactly what was involved, I don't think I can
2 answer the question any further.

3 Q Suppose the FBI receives the request and suppose
4 the records have not been made public by the Committee?

5 (Witness and his counsel confer)

6 A I think I would simply state that we would object
7 to the release if it is a part of the Committee work or it is
8 connected with anything that the Committee had done and the
9 records that are involved there.

10 Q So if the FBI writes you and says can we release
11 these records on John Doe and explains that the requester has
12 not mentioned the Select Committee, he has just asked for the
13 records on John Doe, you would interpose an objection?

14 A That wasn't in your question at the beginning.

15 Q I am asking another question.

16 A Again, I think it is a hypothetical question, and I
17 would answer the same way, that if it turns out when they
18 contact us that these are records that were associated with,
19 a part of, generated by, a part of--records transmitted by
20 the FBI as part of the Select Committee's work, we would
21 object.

22 Q You say if the records were made public, then you
23 would authorize release?

1 A. The House Rule is one of 50 years, unless they are
2 made public. That is the first question that the Clerk
3 interprets, or seeks an answer to when we receive any request
4 for information from Committee files.

5 Q Suppose you have a situation where you have a
6 request where part of a document has been made public. Would
7 you request all of it or a part of the document?

8 A. Because this is a hypothetical question again, I
9 cannot give you a straight yes or no answer. I simply would
10 reassert that each of these requests is looked at very care-
11 fully to determine the circumstances. If a part of the
12 document has been made public and the remainder of the
13 document has not, we probably would not advise that the
14 document be released. There was a reason for all of it not
15 being released.

16 Q Let us suppose that the content of a document is
17 quoted, either in hearings or in the report, or elsewhere in
18 the proceedings of the Committee?

19 A. I would give you basically the same answer, the
20 part that the Committee, in effect, the House determined
21 should be made public was made public in the report or in
22 the hearing, and the remainder of the document is part of our
23 privileged records.

1 Q What about documents that are referred to?

2 A The answer is no.

3 Q Cited?

4 A No, we would not make them public. We would not
5 release them.

6 Q You indicate in your affidavit some familiarity
7 with the circumstances of the Select Committee toward the
8 end of its existence. Are you aware of whether or not the
9 Committee ever took up the question in any meetings of the
10 disposition of its documents?

11 A I am not. Most of those meetings that they held
12 were in executive session.

13 Q Are you familiar with an affidavit filed by
14 Professor Robert Blakey in this case, in which he says that
15 the FBI records, that Committee records, more Committee
16 records were not released simply because the Committee ran
17 out of time and money? Would you be aware of any information
18 that would tend to confirm that?

19 A No, I am not.

20 Q Did the Select Committee have any meetings with the
21 Clerk's office about how to arrange for release of its
22 records?

23 A I believe I answered that question. I did not meet

1 with the Chairman of the Committee or the Committee itself.
2 I met with the chief clerk, with Professor Blakey, I believe,
3 after that, and I had two or three of my associate staff with
4 me when we got into the initial discussions of the disposition
5 of the records as far as turning them over to the Clerk and
6 to the Archives.

7 To the best of my recollection, I and others of my
8 staff then visited the Committee office two or three times
9 during the actual time that they were boxing the records,
10 indexing the records. As I recall, we had to make a special
11 purchase of storage boxes to provide them with adequate boxes
12 at that point. There were discussions about the actual trans-
13 mittal of classified records--things of that nature.

14 Q Was there ever any discussion as to what it would
15 cost to review these documents for public release or any plans
16 to do so?

17 A Not to my knowledge.

18 Q In response to the second interrogatory filed, the
19 Second Request for Admissions Made on the Clerk of the House,
20 which is, "At no time during the Ninety-fifth Congress did the
21 House Select Committee on Assassinations designate any of the
22 materials sought by Allen as records over which Congress
23 intended to exercise control"--

1 MR. BRAND: First of all, what is the question?

2 BY MR. LESAR:

3 Q I haven't got to it. That Request for Admission is
4 denied.

5 When did the House Select Committee so designate
6 materials?

7 A Well, no designation was required on any of the
8 materials. They are all House materials and Committee records.
9 A designation of any specific records is not required.

10 Q The third admission states, "The House Select
11 Committee never authorized its Chairman, Congressman Louis
12 Stokes, to designate records over which it intended to retain
13 control after the Committee expired.

14 "That admission also is denied."

15 When did the Select Committee authorize Stokes to
16 designate records?

17 A I would go back to one of my earlier answers that
18 that the Chairman of the Committee, when he is elected
19 Chairman, is authorized to control the records of the
20 Committee. The Rules of the House provide that the Clerk
21 shall receive them. The resolution I previously cited,
22 H. Res. 49, provided authority to the Chairman to exercise
23 control.

1 Q The fifth admission stated, "Upon expiration of
2 the Ninety-fifth Congress, the legal custodian of the House
3 Select Committee on Assassinations was the Clerk of the
4 House of Representatives."

5 That admission is admitted.

6 If the Clerk was the legal custodian, how could
7 Stokes then assert control?

8 A. Would you repeat the question, please.

9 (Question read)

10 THE WITNESS: The Clerk is the custodian and there
11 is nothing in the Rules of the House to prevent the Clerk
12 from exercising his judgment in consulting with the Chairman
13 or whoever he wished.

14 BY MR. LESAR:

15 Q The sixth admission asserts that the Clerk of the
16 House of Representatives never notified the Department of
17 Justice or the FBI prior to the Freedom of Information Act
18 requests made by the plaintiff in this case, that Congress
19 asserted control over four listed categories of documents.

20 That is admitted with a qualification which states
21 that "The Clerk, through his staff, asserted the so-called
22 Stokes' letter as a basis for denying the request under the
23 FOIA in informal discussions with agency personnel concerning

1 the status of these records.

2 Can you recall when those discussions took place?

3 A. Not specifically. My recollection is that they
4 took place on many occasions, based upon the need.

5 Q. Were there any discussions prior to the request?

6 A. We have several individuals involved in requests of
7 this nature, and I cannot give you a specific, to the best of
8 my recollection, but I am sure there are discussions that
9 take place from our Office of Records and Registration of a
10 routine nature, ascertaining where is this record, what is it,
11 and the nature of them.

12 Q. Do you recall the names of any of the other
13 requesters?

14 A. I do not.

15 Q. I take it your answer to the preceding question is
16 you do not know whether any of those discussions took place
17 prior to Mr. Allen's request?

18 A. I do not recall.

19 MR. LESAR: Okay, I think that concludes our examina-
20 tion. Do any of the other counsel wish to ask some questions?

21 MR. WELBY: The FBI has no questions.

22 MR. HART: The Department of Justice has no questions.

23 MR. LESAR: Surprise!

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Do you have anything you wish to clarify or add?

MR. BRAND: No. I speak to the Deputy Clerk not under oath, but under the normal discharge of his duties.

MR. LESAR: That concludes the deposition.

(Whereupon, at 11:50 a.m., taking of the deposition was concluded.)

(Signature not waived)

- - -

I have read the foregoing 48 pages, which contain a correct transcript of the answers made by me to the questions therein recorded.

W. Raymond Colley

Subscribed and sworn to before me this _____ day of _____, 1982.

Notary Public in and for:

My commission expires: _____.

(SEAL)

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CERTIFICATE OF NOTARY PUBLIC

1
2 I, Dorothy Fitzgerald, the officer before whom the
3 foregoing deposition was taken, do hereby certify that the
4 witness whose testimony appears in the foregoing deposition
5 was duly sworn by me; that the testimony of said witness was
6 taken by me stenographically and thereafter reduced to type-
7 writing under my direction; that said deposition is a true
8 record of the testimony given by said witness; that I am
9 neither counsel for, related to, nor employed by any of the
10 parties to the action in which this deposition was taken; and,
11 further, that I am not a relative or employee of any attorney
12 or counsel employed by the parties hereto, nor financially or
13 otherwise interested in the outcome of the action.

Dorothy Fitzgerald
Notary Public in and for
the District of Columbia

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19 My commission expires:

20 October 31, 1986

(SEAL)

