

Dear Dave,

1/28/76

Thanks for your correspondence with Tim Ingram, staff director of the Abzug subcommittee and the Florence memo on WC classification markings and authority.

This is but another of the consistent, undeviating illustrations of that bunch's ego-tripping and compromising. It comes, as does the so-called "library of Congress report, from Jim's work and mine-- close to entirely, including the questions asked of Rhoads. Then they chickened out on everything while doing everything possible to make this appear as their original work. The extreme to which this was carried was asking Jim to appear as a witness, having him prepare a statement, and then Bella's banging the gavel instead of calling him. Once his statement was read, as they should have understood to begin with and with their intent not have bothered Jim to prepare a statement, all he could do is testify to first-person experience. However, this would have burst their personal bubble of self-importance, accomplishment and perhaps Bella's concept of publicity that could do her good.

I spent much time with these people, loaned them stuff I can't get back and spent money I can't spare for them, taking a private room in the hospital so we could communicate in confidence.

They were so anxious that Ingram pressed me to let him take me to the hospital so we could talk then. He got up early, drove up here and got me there on time. Meanwhile, all the way down, as later when he was here and again when his research man alone was, I laid out exactly what they did, exactly what the research memo says, even exactly what Florence says. They have added nothing except that Florence, without question, is an outstanding, authentic expert. But note he was careful not to identify the ligigants in a precedent suit and not to say how the government's position, under oath, was overturned.

I don't know how much time Jim spent with them. It was not little and it was time we could not spare. In plain English they stole our work. I've grown used to it but this kind of permeating unethical behavior is worse than merely depressing when it is by those of alleged principle. It is more than personal misconduct. It becomes counterproductive because it denies all with an interest to access to the material itself. I'm sure there is more substance in Jim's legal memo on this in WW IV than there is in ~~xxxx~~ Florence's memo.

Don't misunderstand. I wanted them to use our work--more than they had the guts to touch. It is not that they used it that is reprehensible. It is the way they did and the way they abused Jim. The only abuse of me was in the customary (today) lack of credit. Not only is this the proper norm but when I have done all this work, they get it free, they get paid and I don't, the least they could have done was credit, for what good it could have done to make it possible to continue the work through the sale of the relevant book.

I don't know if it did the trick, but they were refusing Jim a copy of the transcript of Rhoads' testimony until it is printed. It is public, is a public document, and we need more than Jim's notes for use in court. So, when they wasted Jim's time and said a committee rule prevented it, I wrote Tim a letter and said that much as I would regret having to do it I'd have no choice but to file an affidavit in which I told the court that we could not present it with a transcript of direct quotation from the public testimony because the "Government Information and Constitutional Rights" subcommittee refused us a copy. I think this got through loud and clear.

Thanks and best,

BELLA S. ABZUG, N.Y., CHAIRMAN
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NINETY-FOURTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
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January 13, 1975

Associate Professor David R. Wrone
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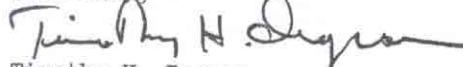
Dear Professor Wrone:

Congresswoman Abzug asked that I respond to your letter of December 16 regarding the Subcommittee's inquiry into the classification of Warren Commission records.

Our investigation of the handling of Freedom of Information Act requests by the National Archives for access to the Warren Commission holdings is not complete, and our November hearings have not yet been published. However, I enclose for your use a copy of an initial staff report on the question of classification of Commission generated staff papers and deliberations.

I would like very much to see copies of anything you have written on the question, both for our own background and for possible submission for the record for inclusion in our printed hearings or report. If you have any questions in this regard please call me or Subcommittee staff member Bill Florence at (202) 225-3741.

Sincerely,



Timothy H. Ingram
Staff Director

Enclosure

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October 27, 1975

MEMORANDUM

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

FROM: Mr. William G. Florence
Professional Staff Member

SUBJECT: Classification Markings on Warren Commission Records

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

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

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

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

(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original

classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter.

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

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

In his affidavit, Mr. Rankin stated that:

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

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

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

The District Court (Judge Gerhard A. Gesell) reviewed all of the Government's submissions in the case (Weisberg v. General Services Administration), including Mr. Rankin's affidavit. The Court concluded that they "fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501...as amended by Executive Order 10901." (However, the Court went on to hold that the Warren Commission transcript in question could be withheld as an investigatory file under exemption 7 of the Freedom of Information Act, and rested its decision on that ground.)

Memorandum to Mr. Timothy H. Ingram
October 27, 1975

Page 3

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

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

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

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

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