

## Suits for Warren Commission Executive Session Transcripts

### FIRST TRANSCRIPT SUIT

Weisberg v. General Services Administration,  
Civil Action No. 2052-73 (District Court for  
the District of Columbia), Gerhard A. Gesell,  
Judge.

On November 13, 1973, Weisberg filed suit for the transcript of the Warren Commission executive session held on January 27, 1964. For several years prior to filing suit, Weisberg had previously requested disclosure of the January 27 transcript. However, the National Archives and Records Service, the custodian of the transcript, had rejected his demands, claiming that the transcript was classified "Top Secret" on grounds of national security.

Warren Commission member Gerald R. Ford had previously published parts of the January 27 transcript, including some extensive and purportedly verbatim quotations, in his book Portrait of the Assassin. On November 5, 1973, during the Senate hearings on his nomination to be Vice President, Ford swore that he had only used publicly available materials in his book. This testimony prompted Weisberg's suit for the transcript which Ford had used in his book, but which had been denied him.

In response to Weisberg's suit, the government submitted two affidavits from high government officials. National Archivist Dr. James B. Rhoads swore that the January 27 transcript was classified Top Secret under Executive Order 10501. J. Lee Rankin, formerly Solicitor General of the United States and General Counsel of the Warren Commission, swore that the Warren Commission had instructed

him classify its records, and that he had ordered that the January 27 transcript be classified Top Secret.

Weisberg met these claims head on. He accused Rhoads and Rankin of having filed false affidavits and supported his charges with numerous records taken from the Warren Commission's own files. He argued that these records showed that Ward & Paul, the Commission's reporting firm, had routinely "classified" all records, even house-keeping records, without regard to the content of the records.

On May 3, 1974, Judge Gesell ruled that the government had not shown that the January 27 transcript was properly classified. However, he went on to decide the case in the government's favor, ruling that under the decision of the Court of Appeals in Weisberg v. U.S. Department of Justice, 160 U.S.App.D.C. 71, 495 F. 2d 1195 (1973) (en banc), cert. denied, 416 U.S. 993 (1974) ("Weisberg I"), it was exempt from disclosure as an investigatory file compiled for law enforcement purposes. In a motion for reconsideration, Weisberg pointed out that the government's answers to interrogatories showed that no law enforcement agency or official had seen the January 27 transcript until at least three years after the Warren Commission had ceased to exist. The motion for reconsideration was promptly denied.

Weisberg planned to appeal Judge Gesell's decision. But the National Archives suddenly "declassified" the transcript and, ignoring its court-sanctioned exempt status as an investigatory file

compiled for law enforcement purposes, made it available to Weisberg on June 14, 1974. The eighty-six page transcript contained no material which could have placed the national security in jeopardy, nor any indication that it would be used for law enforcement purposes.

Weisberg reprinted the entire January 27 transcript in facsimile in his book Whitewash IV: Top Secret JFK Assassination Transcript. The transcript and the proceedings of the lawsuit which forced its disclosure are contained in Wrone, \_\_\_\_\_ . References to the transcript and/or the lawsuit are found in Roffman, \_\_\_\_\_ ; Clark \_\_\_\_\_ ; New Republic \_\_\_\_\_ ; Abzug \_\_\_\_\_ .

Two years after he obtained the January 27 transcript, Weisberg obtained documents during a subsequent lawsuit which showed that the National Archives had withheld the transcript at the insistence of the CIA, purportedly to protect its "intelligence sources and methods." In affidavits filed in other lawsuits, Weisberg has repeatedly asserted, without contradiction, that the January 27 transcript did not in fact reveal any such "sources and methods."

The disclosure of the January 27 transcript was followed by the release of the transcript of the Warren Commission executive session held on January 22, 1964, for which Weisberg and Dr. Paul Hoch had submitted a new request. The contents of these two transcripts were of a shocking nature and had a devastating impact on

credibility of the Warren Commission's findings. They revealed that the Commission distrusted and feared the FBI, that it knew that the FBI had reached its conclusion that Oswald was the lone assassin without having made a thorough investigation to determine if there had been a conspiracy, and that the Commission lacked the courage to investigate rumors that Oswald had worked for the FBI.

These revelations ended any lingering questions as to whether the Warren Commission had conducted a thorough investigation of the President's assassination and disclosed the whole truth in its Report. They helped create the climate of opinion which later caused the House of Representatives to establish a select committee to investigate the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr.

#### SECOND TRANSCRIPT SUIT

- A. Weisberg v. General Services Administration, Civil Action No. 75-1448. United States District Court for the District of Columbia. Aubrey E. Robinson, Judge. James H. Lesar, attorney for Weisberg.

On September 4, 1975, Weisberg filed suit for copies of all Warren Commission executive session transcripts which remained suppressed. These consisted of the complete transcripts of the May 19 and June 23, 1964 executive sessions, and pages 63-73 of the transcript of the January 21, 1964 session.

The General Services Administration cited various grounds for continuing to withhold these transcripts, including some claims

of exemption which had not been made when Weisberg had requested them in previous years.

The main ground for continuing the suppression of the January 21 and June 23 transcripts rested upon GSA's allegations that making them available would result in the release of classified information which would endanger the national security by disclosing "intelligence sources and methods." The primary justifications for withholding the May 19 transcript were assertions that it was exempt from disclosure because: (1) its release would constitute an unwarranted invasion of the personal privacy of two Warren Commission staff members whose continued employment and access to security classified information were discussed at that session; and (2) it contained discussions of policy matters which were immune from disclosure under the Freedom of Information Act's fifth exemption, which excepts "inter-agency or intra-agency memorandums or letters" from disclosure.

During the initial discovery phase of the lawsuit, the government refused to identify the subject of the June 23 transcript on the grounds that this was classified information. When Weisberg produced a letter from the National Archives to the New Republic Magazine which stated that Soviet defector Yuri Ivanovich Nosenko was the subject of the June 23 transcript, Judge Robinson ordered the government to answer Weisberg's interrogatory on this point. The government then admitted that Nosenko was indeed the subject of the June 23 transcript.

The government repeatedly resisted Weisberg's attempts to exercise discovery. Nevertheless, he did obtain some useful materials. For example, he learned that the January 27, 1964 executive session transcript had been withheld at the behest of the CIA, purportedly to protect its intelligence "sources and methods." He also learned that several copies of the January 21 and June 23 transcripts were missing; and that although they were allegedly classified in the interest of national security, no attempt to locate the missing copies had been made.

The government submitted two affidavits by a CIA official, Charles A. Briggs, who claimed that the January 21 and June 23 transcripts had been properly classified in accordance with the applicable Executive order, and that the national security would be damaged if they were made public. Ultimately, Judge Robinson accepted these affidavits at face value and ruled that these two transcripts were immune from disclosure under Exemption 3 of the Freedom of Information Act. In his March 4, 1977 order granting summary judgment to the GSA, he also ruled that upon in camera inspection of the May 19 transcript, he found it to be protected by Exemption 5 because it contained "policy discussions" by members of the Warren Commission.

B. Weisberg v. General Services Administration,  
Case No. 77-1831. United States Court of Appeals  
For the District of Columbia Circuit.

On appeal Weisberg contended, with respect to the January 21 and June 23 transcripts, that (1) the district court had erroneously ruled that they were protected under Exemption 3 by virtue of a stat-

ute which requires the Director of Central Intelligence to protect intelligence sources and methods from "unauthorized disclosure" without considering whether they were properly classified; (2) he had been denied discovery essential to an effective adversarial testing of the government's claims that the transcripts were exempt; and (3) the district court should have examined the transcripts in camera with the aid of his classification expert to determine whether they were being properly withheld. With respect to the May 19 transcript, Weisberg also argued that Exemption 5 should not apply because the Warren Commission was defunct.

While the case was pending before the Court of Appeals, new materials became available to Weisberg which he thought were relevant to the issues. Weisberg attached these materials as an addendum to his Reply Brief. He contended that some of them showed a deep-seated animosity toward him which gave the GSA a strong motive for withholding nonexempt records from him. In support of this contention, he submitted records showing that: (a) the National Archivist had directed that the January 27, 1964 Warren Commission executive session transcript be withheld from Weisberg because releasing it would "encourage him to increase his demands;" (b) FBI Director J. Edgar Hoover had ordered the FBI not to respond to Weisberg's Freedom of Information Act requests; and (c) the Secret Service and the National Archives had conspired to deny Weisberg access to a nonexempt record by transferring it from the former to the latter.

Weisberg also submitted materials which undermined the credibility of the CIA's affidavits which had proclaimed that the re-

lease of the June 23 transcript would endanger the national security. Thus, the CIA affidavits had proclaimed that the disclosure of the June 23 transcript would endanger the life of Soviet defector Yuri Ivanovich Nosenko. But Weisberg's addendum contained magazine articles and excerpts from the newly published book Legend, by Edward Epstein, which revealed, with the help of CIA officials, information about the identity and whereabouts of Nosenko, information which the CIA had sworn had to be protected.

The government moved to strike Weisberg's Reply Brief and/or the Addendum on the grounds that the new materials were not properly before the Court of Appeals. The Court of Appeals responded by ordering Weisberg to file a motion for new trial in the district court. It also ordered the district court to decide the motion within thirty days of its filing. The Court of Appeals judges who issued the order were Spottswood Robinson and Edward A. Tamm.

C. Weisberg v. General Services Administration, Civil Action No. 75-1448. Aubrey Robinson, Judge.

On May 12, 1978, Weisberg filed a motion in district court asking that it grant him a new trial on the basis of newly discovered evidence. In addition to the evidence previously reproduced in the Addendum to his Reply Brief, Weisberg added the fact that Nosenko's picture had been published in the Washington Post of April 16, 1978.

The government opposed the motion for new trial, contending that the "newly discovered evidence" was only irrelevant double or



triple hearsay. When Weisberg moved to take the deposition of the CIA's affiant, Mr. Charles A. Briggs, the government moved to quash it. Judge Robinson granted the motion to quash and also denied the motion for a new trial.

D. Weisberg v. General Services Administration,  
Case No. 78-1731 and Case No. 77-1831 (Consolidated)  
United States Court of Appeals for the  
District of Columbia Circuit.

Weisberg took a separate appeal from Judge Robinson's denial of his motion for a new trial. This new appeal, Case No. 78-1731, was consolidated with Case No. 77-1831, in which briefs had already been submitted to the Court. Weisberg's brief in this new appeal argued that the district court had abused its discretion in denying his motion for new trial on grounds of newly discovered evidence and fraud on the part of the government.

On the day the government's brief was due in court in this new appeal, counsel for GSA announced that the January 21 and June 23 transcripts had been "declassified" and would be made available to Weisberg. The pretext for this action was that the transcripts had been "declassified" as the result of a request by the Select Committee on Assassinations made in connection with the testimony regarding Nosenko before that committee. At the same time the government also moved for complete dismissal of Case No. 78-1731 and partial dismissal of Case No. 77-1831, with which it had been consolidated, on grounds that all issues save those pertaining to the May 19 transcript were moot.

Weisberg opposed the motion to dismiss. However, on January 12, 1979, the Court of Appeals granted it. But the Court also ordered the district court to vacate its orders with respect to the January 21 and June 23 transcripts and stated that the district court might, upon motion, consider such post-dismissal matters as it thought appropriate.

The only remaining issue before the Court of Appeals, the status of the May 19 transcript, was orally argued before Circuit Judges Spottswood O. Robinson, III, David L. Bazelon, and Edward A. Tamm on February 13, 1979. On March 15, 1979, the Court issued an order affirming the district court's finding that the May 19 transcript was exempt from disclosure.

E. Weisberg v. General Services Administration,  
Civil Action No. 75-1448. Aburey E. Robinson,  
Jr., Judge.

In May, 1979 Weisberg filed a motion for an award of attorney fees and costs in district court, arguing that the release of two of the three transcripts he had sought meant that he had "substantially prevailed" in this litigation and thus qualified for such an award. This issue is still pending in district court at this time.

SUITS FOR FBI RECORDS

Weisberg v. Bell, et al., Civil Action No. 77-2155.  
United States District Court for the District of  
Columbia. Originally assigned to Judge George L.  
Hart but was actually heard by Judge Gerhard Gesell,  
acting as motions judge, reportedly because Judge  
Hart was ill.

Suit under the Freedom of Information Act for preliminary injunction or other forms of relief, the object of which was to compel the Department of Justice to provide Weisberg with free copies of approximately 80,000 pages of FBI Headquarters' records on the assassination of President Kennedy.

The lawsuit was precipitated by an FBI plan to make these records available to the press in two unmanageable batches of 40,000 pages each while effectively excluding Weisberg from having any meaningful access to them. The first batch was released on December 7, 1977. Although Weisberg had requested many of these records as many as ten or twelve years before, the FBI had not responded to his requests as required by the Freedom of Information law. After having stalled his requests for many years, the FBI announced the release of these Headquarters' records but told Weisberg that he had a choice of either purchasing the entire 80,000 pages for some \$8,000 or else going to Washington, D.C. to search for what he had requested in the records put in the FBI Reading Room in the J. Edgar Hoover Building. Not having funds to pay for these records and unable to drive to Washington, D.C. every day from his home fifty miles away because of his circulatory problems, Weisberg brought suit instead.

At a hearing held on January 16, 1978, Judge Gerhard Gesell heard oral argument. James H. Lesar represent Weisberg. The Department of Justice was represented by Paul Figley, Lynne K. Zusman, Daniel Metcalfe, and Jo Ann Dolan, attorneys, Department of Justice, Assistant Attorney General Barbara Babcock; and Emil Moschella, Legal Counsel for the FBI.

At the conclusion of the hearing Judge Gesell found that Weisberg "has made a unique contribution in the area by his persistence through the courts and before Congress, without which there would be no disclosures" of FBI records on the assassination of President Kennedy. Considering such factors as Weisberg's indigency, the poor state of his health, the contribution he had made to public knowledge on the subject, the refusal of the FBI to even respond to his Freedom of Information Act requests, and his role in forcing Congress to amend the Freedom of Information Act so as to make <sup>the</sup> investigatory records of the FBI and other law enforcement agencies available to the public, Judge Gesell ruled that the "equities are very substantially and overwhelmingly in [Weisberg's] favor." Accordingly, he ordered the FBI to provide Weisberg with a free copy of the approximately 40,000 pages of records scheduled to be released on January 18, 1978.

As a result of this decision, Judge June L. Green ordered the Department of Justice to explain the basis of its decision to grant Weisberg only a partial waiver of copying costs in Weisberg v. Department of Justice, Civil Action No. 75-1996, his suit for records pertaining to the assassination of Dr. Martin Luther King, Jr. This led to a decision by the Department of Justice to grant Weisberg a waiver of all search fees and copying costs for all of its records on both the King and Kennedy assassinations.

To date, Weisberg estimates that he has received more than 200,000 pages of FBI records without charge. This achievement is unique in FOIA litigation.