JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : HSCA
RECORD NUMBER : 180-10116-10332

RECORDS SERIES :
TRANSCRIPT OF EXECUTIVE SESSION HEARINGS

AGENCY FILE NUMBER :

DOCUMENT INFORMATION

ORIGINATOR : HSCA
FROM :
TO :

TITLE :
EXECUTIVE SESSION COMMITTEE BUSINESS

DATE : 07/15/77
PAGES : 28

SUBJECTS :
HSCA, ADMINISTRATION
HSCA, METHODOLOGY
HSCA, FILES
CIA

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : U
RESTRICTIONS : OPEN IN FULL
CURRENT STATUS : 0
DATE OF LAST REVIEW : 02/05/93

OPENING CRITERIA :

COMMENTS :
Regarding disclosure of HSCA files. Box 2.
The hearing convened, pursuant to notice, at 10:30 o'clock a.m., in Room H. 236, the Capitol, the Honorable Louis Stokes presiding.

Present: Representatives Stokes (Chairman of the Committee), Devine, Preyer, Burke, and Fithian.

Also present: Professor Robert Blakey, James Wolf, Rebecca Martin, and Robert Tannenbaum.

Mr. Stokes (presiding) The meeting will come to order, a quorum being present.

The matters under discussion today will relate to personnel and under the rules, such matters have to be discussed in Executive Session.

So for that reason I would entertain a motion at this time that the meeting be closed.

Mr. Devine. So moved, Mr. Chairman.

Mr. Stokes. All right, it has been moved that the Committee go into Executive Session to discuss personnel
matters, and under the rules, the Clerk must call the roll.

The Clerk. Mr. Stokes?

Mr. Stokes. Aye.

The Clerk. Mr. Devine?

Mr. Devine. Aye.

The Clerk. Mr. Preyer?

Mr. Preyer. Aye.

The Clerk. Mr. McKinney?

(No response)

The Clerk. Mr. Fauntroy?

(No response)

The Clerk. Mr. Thone?

(No response)

The Clerk. Mrs. Burke?

Mrs. Burke. Aye.

The Clerk. Mr. Sawyer?

(No response)

The Clerk. Mr. Dodd?

(No response)

The Clerk. Mr. Ford?

(No response)

The Clerk. Mr. Fithian?

(No response)

The Clerk. Mr. Edgar?

(No response)
The Clerk. Four aye votes.

Mr. Blakey. I think we need a majority present to close the meeting.

(Discussion off the record)

Mr. Stokes. At this time, the Chair will entertain a motion.

Mrs. Burke?

Mrs. Burke. I ask unanimous consent that we waive the rules and proceed with the meeting without transcript, in open session without transcript.

Mr. Devine. Suspend the rules?

Mrs. Burke. Suspend the rules.

Mr. Stokes. Okay. Mrs. Burke has requested unanimous consent that we suspend the rules and proceed without a transcript of the proceedings.

Is there objection?

(No response)

Mr. Devine. Reserving the right to object, Mr. Chairman, this is in order to suggest that in waiving the transcript, the secretary do maintain the minutes.

Mr. Stokes. All right. Is there further objection?

(No response)

Mr. Stokes. Without objection, then, the rules are suspended and a transcription of the proceeding is suspended and the secretary will transcribe minutes relating to the
(Discussion off the record)

Mr. Fithian. I move that this portion of the meeting be transcribed.

Mr. Stokes. It has been properly moved.

I suppose that we had better call the roll.

The Clerk. Mr. Stokes?

Mr. Stokes. Aye.

The Clerk. Mr. Devine?

Mr. Devine. Aye.

The Clerk. Mr. Preyer?

Mr. Preyer. Aye.

The Clerk. Mr. McKinney?

(No response)

The Clerk. Mr. Fauntroy?

(No response)

The Clerk. Mr. Thone?

(No response)

The Clerk. Mrs. Burke?

Mrs. Burke. Aye.

The Clerk. Mr. Sawyer?

(No response)

The Clerk. Mr. Dodd?

(No response)

The Clerk. Mr. Ford?
The Clerk. Mr. Fithian?

Mr. Fithian. Aye.

The Clerk. Mr. Edgar?

(No response)

The Clerk. Five aye votes.

Mr. Stokes. All right, we are back on the record with a transcription of this portion of the meeting.

Mr. Blakey?

Mr. Blakey. Mr. Chairman, I would like to explain to the Committee at this time the proposed model contract that will govern the relationship between the Committee and the Committee staff, those members of the Library of Congress who work for us, those consultants who work for us, and those staff persons who are associated with various members.

In general, the purpose of the contract is to secure non-disclosure, the objective of non-disclosure. It covers both classified and classifiable information, intelligence sources, and all information that comes into the possession of anyone as a result of their employment or association with the Committee, pursuant to Rule 6.4, which all information is to be held secret, in effect, is a blanket coverage. The effect of it is that there will be no disclosures by employees without, one, that there be written permission of the Select Committee or after the Select Committee's termination.
by the House, however the House shall determine. If the House does not make a determination on the issue, the agency from whom they obtained classified and classifiable information will occupy a third-party beneficiary status and be able to enforce the contract. It envisions that at the termination of the Committee, everything that is not classified and not classifiable will be made public.

It is important to underline the second aspect of classified and classifiable. If we have classified information that has been improperly classified, that information, and if that is disclosed, the person will have a full defense.

So that I think we are in a position here of saying that we are not going to use and could not use the classification system to cover anything up. Our own effort to maintain confidentiality stems only from the Committee.

So everything that is eventually not properly classified -- underline the word "properly" -- will be made public, but it will be made public in the context first of our own report and our own hearings. There should be no premature leaks or disclosures out of context by anyone associated with us.

The contract is based on the contract first formulated by the CIA itself and the Select Committee on Intelligence. It is not a simple translation word-for-word
of those models. We made an effort to improve it. I indicated
that area where the CIA legal staff has gone over the
contract and except for those quibbles that lawyers have
with other people's words, approves it.

In substance, the only issue in principle they
raise with us is that under this contract it is the Select
Committee that makes a determination as to whether classified
information in the possession of the Select Committee shall
be disclosed.

The CIA would prefer that it be the Director of
the CIA. This is an issue that we will have to face in the
negotiation of the agreement between the Committee and the
CIA. If they subsequently decide that someone other than
the Committee will decide to give information away, that
agreement, being narrower, will of course control. But
from the perspective of this contract, it will be the Select
Committee which makes its decisions and we are not
prejudicing ourselves either way.

Indeed, this contract is drafted on the assumption
that the integrity of Congress will obtain. That security
issues, obviously, will come back to us.

There has been a serious effort to set up this
contract in the most enforceable way possible pursuant to
Knopf v. Colby. There is a provision in here for prior
review before anyone publishes it, review by the Committee,
and we are contractually obligating ourselves to ask the
Director of Intelligence to comment on any of our decisions.
We would then be in a position to enforce through a prior
injunction any publication.

There are also provisions in here requiring employees
to read our rules to familiarize themselves with the appropriate
criminal statutes. There is a provision in here for surrender
of rights if someone publishes something. There is no
possibility of profit for them.

We also have in here, and this is new, a provision
for liquidated damages. That is one of the difficulties we
face legally, that if a disclosure is made, a violation of
contract may occur, but how do you assess damages.

I will be drafting a provision in here saying that the
parties agree that $5000 is the minimum, actual or $5000
whichever is greater.

So there will be ample incentive on the part of our
employees to live up to it. There is a severability clause
in here that if any part of the contract is felt to be
illegal or subsequently construed as such by a court, the
rest of the contract will be invalid.

I might indicate that we have envisioned the possibility
that we have a number of consultants from a number of places
and that these contracts might be signed in different places.

Nevertheless, the parties have agreed that the law of the
District of Columbia is the place where the contract is made and it is the place where our litigation will take place.

So we have envisioned a centralization of litigation in one place. Consequently, we should get a uniform interpretation of our agreement and its enforcement.

Are there any questions about it?

(No response)

Mr. Stokes. At this point in the proceedings, if there is no objection, why don't we put the entire proposed agreement into the record, and then we can discuss it with reference to any changes or alterations?

(The Contract Agreement follows:)
Mr. Stokes. Let me ask one question, initially.

In the case of a consultant to the Committee, how does the agreement affect his subsequent use of the fact that he has been a consultant to the Committee, let's say with reference to any writings or any publications where he lists himself as being consultant to the Select Committee on Assassinations?

Mr. Blakey. I would direct you to page 3, paragraph 3. It reads as follows:

"No consultant shall indicate, divulge, or acknowledge without written permission of the Select Committee the fact that the Select Committee has engaged him or her by contract as a consultant until after the Select Committee has terminated."

The purpose of that clause is, frankly, we do not want people who do work for us to appear on Johnny Carson the following week and have a little title, "I was a consultant to the Select Committee."

You note that his ability to identify himself as such, of course, terminates at the end of the Committee so that people will be motivated to work for us when the grounds subsequently they can indicate they worked for us, but at least our report will be out then and they will have to comment on the context of that.

But pending our report, no consultant should be able
to exploit his contractual relationship with us for any commercial reasons or publicity reasons.

This is particularly applicable in the context of consulting agreements that we will raise with you today. Two of those people are I guess what you would have to call "buffs." In fact, they are first-rate experts on photography and we can get a lot of information from them. But at the price of that information I hope, and this contract should guarantee, that we give them no special status they can then subsequently exploit.

I think that is a fair answer to the question.

Mr. Stokes. All right. Why don't we open it up for discussion.

Mr. Devine?

Mr. Devine. I think that it is well drafted. I think it covers all of the angles.

Is there any question that after the contract, we would have control of these people? Do you think it proceeds from the contract that they forever forego the right to publish?

Mr. Blakey. They will up until our termination, and after our termination they can publish all of the information that is let out publicly.

Mr. Devine. That is let out publicly, yes.

Mr. Blakey. If it is classified, they will not be
able to use it unless they get it disclosed pursuant to
the Freedom of Information Act or a waiver by the Committee
or the House of Representatives or the Director of the
Central Intelligence.

Mr. Devine. How about enforcement?

The Committee will probably be out of
existence when their services are terminated, anyway, and
I don't know whether enforcement provisions could be included
or initiated after we terminate.

So I guess it would be moot to even put them in.

Mr. Blakey. As to the classified information, the
agency from whom we obtain the information will be a third-
party beneficiary status and they can enforce this classified
information.

As to the non-classified information, my assumption is
everything will be public anyway.

Mr. Stokes. Mr. Preyer?

Mr. Preyer. It is a very thorough job. I can see why
you are a good law professor, Mr. Blakey. It ought to put
the fear of God into everyone.

(General laughter)

Mr. Preyer. I would just like to ask a couple of
questions to make clear what we can do under this.

Mr. Blakey. The members?
Mr. Preyer. The members of the Committee.

Mr. Blakey. The members are free to do whatever they want to do.

Mr. Preyer. You are saying that only staff signs this?

Mr. Blakey. I had not envisioned that the members themselves would sign this.

Mr. Preyer. All right, that might get around Mr. Thono's objection, if he were here.

Mr. Blakey. I take it if the members violate the Committee rules, that is a matter for the House.

Mr. Preyer. All right. I misunderstood you. I thought you said for the staff and the members.

Mr. Blakey. Oh, no.

Mr. Stokes. Is that it?

Mr. Preyer. Yes.

Mrs. Stokes. Mrs. Burke?

Mrs. Burke. My staff person raised a question here on page 2, number 5, as to the scope of the notification requirement, whether or not that would extend to any friend that informally inquired.

My evaluation is that it would. I don't know that it would be necessary to report in writing every friend who makes an inquiry.

Mr. Blakey. It is close to that. I suspect that this
contract, as all, would be interpreted with the concept of
diminimus. If your wife asked you what happened at work
today, you really should not have to report that the following
day. But if you are at a cocktail party and someone comes
up to you and says, "I hear that you talked to so and so as
a witness. What did he tell you?," I am inclined to think that
that would fit this contract.

Mrs. Burke. I have a couple of questions that have been
raised.

First of all, let me commend you. I think that this
is an excellent contract and I really think that we need this
very bad.

I have two questions that you may not want to discuss
now that have come to mind. As far as how we are going to
be able to disclose or make a public statement relating to
some of the material that is classified.

The first question I have is whether or not we have
any agreement with the CIA and FBI on the procedure for our
ultimate public hearings or public disclosure or report on
matters?

Mr. Blakey. We do not yet have an agreement. We
have Byzantine negotiations in process and I will be back
to you. It is one of my first order of priorities simply
because until we get an agreement, we cannot get access to
classified information. Until we get access to classified
information, we are really not in a much better position than
anyone else to investigate the problem.

Mrs. Burke. My second question is whether this Select
Committee that was voted yesterday, the Select Committee on
Intelligence, superimposes another layer of restriction,
and whether we have to have some kind of an agreement or
some kind of a statement from that Select Committee?

My understanding is that that Committee ultimately
has the power in classification and declassification and that
also that Committee can determine that material cannot be
released.

So that I would be very interested to see whether or
not, in effect, our report in any of our hearings would have
to be approved by that new layer.

Mr. Blakey. I will just have to find out the answer
to that. I do not know. But you can rest assured that I
will.

Mrs. Burke. Thank you. Those are the only questions
I have.

Mr. Stokes. I might say that we have a meeting
scheduled with Director Turner one day next week, and the
Subcommittee Chairman and Mr. Devine will be asked to join
us in that meeting.

Mr. Fithian?

Mr. Fithian. Thank you, Mr. Chairman.
Page 3, paragraph 11, I presume that this is purely an administrative question and has nothing to do with policy. But I presume that there will be some kind of a ready reference, two or three sheets or whatever, that is available, that we can show our staff and say, read these over.

Mr. Blakey. There will be a packet of materials which they will be expected to read and you can give them back to them and let them initial it, so that when they in fact sign this provision, which is an acknowledgement of what they have previously done, it will not be pro forma; it will be real.

Mr. Fithian. As you know, I am one of the strongest advocates of security, so I applaud the effort here. I am trying to visualize political problems that we might get into.

In recalling some of the difficulties that Pike got into with the CIA in the House and all of that furor, I can see us entering into an agreement with the CIA Director on how we would handle material that they had an interest in and perhaps entering into an agreement that is almost identical with Paragraph 9 on page 2 and on into Paragraph 10.

I am wondering if, where we say, and I am going to check which paragraph it is, where we indicate on the bottom of page 1, Paragraph 3, if by putting it in our rules --

I presume that this is going to be a published document, anyone can see this.
Mr. Blakey. Yes.

Mr. Fithian. I am wondering, Mr. Chairman, what kind of heat, disturbance and publicity, an item which we really don't need, is going to come from Paragraph 3.

Mr. Stokes. Which page is that, Mr. Fithian?

Mr. Fithian. At the bottom of page 1, where it says that "the Chairman of the Select Committee shall consult with the Director of the CIA for the purpose of the Chairman's determination as to whether or not the material contains information that I pledge not to disclose."

In other words, it does seem to give the power of approval or disapproval.

Mr. Blakey. Mr. Fithian, I would suggest that the purpose of that, and if the language is not clear, certainly we can change it, is simply to -- it is an assurance to the Director of the Central Intelligence that we will ask him before we do it. It is a notion that we will "touch base" with him.

But the notion is that the Chairman or the Committee makes the determination. It is just that we will ask the Director of Central Intelligence to comment before we do it, which is really a matter of courtesy and certainly not a matter of delegating to the Agency authority which ought properly rest with the Committee.

Mr. Preyor. Will the gentleman yield?
Mr. Fithian. I will be happy to.

Mr. Preyer. I think that this is a good provision and I don't think that we will be criticized for it because it does rest final authority in Congress. The South Korean investigation situation has got a treaty somewhat like this, an agreement with the CIA in which, and certainly in its original form and to some extent, even in its amended form, says that where there is disagreement, the President makes a decision as to whether it can be revealed or not and I think that that is properly subject to criticism, that the Congress is giving away its authority on that to the Executive Branch.

It seems to me that that has been avoided pretty carefully here, which I think is well to do.

Mr. Blakey. I think that whatever Presidential value this has is distinguishable to the degree that the CIA and the FBI are the subject of credible allegations of possible wrongdoings, it would be in Congress for the Committee to delegate decisions as to what would be disclosed and it would undermine the whole credibility of the report.

What is why, peculiarly, a final determination has got to rest here or those agencies have to take the responsibility for not having cooperated with the Committee.

Mr. Fithian. You are anticipating my next comment; that is, if in the course of this investigation you come upon
wrongdoing that you want to include in the report and they say that is classified or classifiable, then where are you?

But I take it that Judge Preyer is convinced that the final authority rests with the Committee to decide this is publishable. We are going to publish this in the report.

Mr. Stokes. If the gentleman would yield, though.

Mr. Fithian. I would be happy to.

Mr. Stokes. I think that that was true insofar as this particular agreement. We do not know yet what the agreement will be between the CIA and the Committee. That still has to be negotiated with reference to who will be the determinor of what is to be published in our final report.

And I would imagine our Committee position is going to be that in the final analysis, we will be the determinors.

As you know, the Select Committee and the CIA never did enter into an agreement because they were disagreeing that they had to have final authority in terms of what was to be released and the Committee wouldn't agree to it and they never entered into an agreement with the CIA.

Mr. Fithian. Don't you anticipate this being basically what is going to happen?

Mr. Stokes. I certainly do, but I would also think that we are going to have to do sort of like what the Select Committee on the Senate side has done. There was some
agreement over there as to what they could release, and they made the final determination of what they were going to release and proceeded in that way.

Mrs. Burke. If the gentleman would yield.

Mr. Fithian. I would be happy to.

Mrs. Burke. My present understanding is in view of the fact that the CIA exists by virtue of a Congressional authorization and Congressional legislation, that the authority to determine what is classified or non-classified rests with the Congress.

Now I have seen some of these documents as far as -- for instance, the President can determine, for instance, that a document is classified and there is a serious issue of whether or not, between the President and the Congress, who has the final determination because we got into that in Appropriations and see, in the past, there has never been a particular committee of the Congress who had that ultimate authority to de-classify.

For instance, anyone who had oversight had the right to declassify.

Now I think it is different. I think that now, with this Select Committee on Intelligence if we pass -- for instance, even though you have oversight, you have a right to see. But I don't think that because a Congressional committee has oversight it still has the right to de-classify. I think
the right to de-classify now is in the Select Committee on
Intelligence.

Now this is a part I think we have to be clear on.

Before -- remember, if you had, for instance, there was a
document that was marked "Classified," and you wanted to
release that document, an individual member of Congress did
not have the power to release it. But a Committee had a
right to de-classify a document and then, they notified the
CIA and if the CIA wanted to go to the President, the President
would have ultimate determination.

We considered a provision this year, at least in
Appropriations, where the President would not have the
ultimate right to stop it, but the ultimate de-classification
could lie with a committee of Congress rather than the
President. But we did not pass that. It was left with the
President.

Now I am not sure what the situation is.

Mr. Preyer. Will the gentlewoman yield?

Mrs. Burke. (Nods in the affirmative)

Mr. Preyer. I think you are exactly right. That
new committee sets out an elaborate procedure whereby if we
get into an argument between committee and the CIA as to
what should be released, that following the procedure,
Congress has the last word. But I am not clear whether it
just applies to the Select Committee on Ethics or whether it
applies to all of the other committees in the House. We could at least put all of those provisions in our agreement with the CIA. It would certainly make a precedent for that and perhaps it does apply to all committees of the House.

But I wondered if we wouldn't perhaps have to put it in the rules of the House to have it apply to every committee.

I do not know.

Mrs. Burke. It is a very complex area because no one really knows.

Mr. Preyer. I think it may just apply to the Select Committee on Intelligence as far as revealing the recourse.

Mrs. Burke. I think it does now, I really think it does.

Mr. Preyer. The ultimate recourse.

Mrs. Burke. The issue, as it was presented to us, was why should we put this new President at a greater disadvantage than all other presidents had been. And the decision was made that the Presidential authority would remain. But now I don't know whether that is still true.

Mr. Wolf. We will check on it.

Mrs. Burke. I think that is the reason we have the provision for the President to be required because that is where the power now is.

Mr. Stokes. Okay, anything further?
Mr. Stokes. Are you finished, Mrs. Burke?

Mrs. Burke. I am finished.

Mr. Stokes. If there is nothing further, Mr. Blakey, let me also join my colleagues in commending you for what all of us feel is an excellent document, one which should put us on the track of getting the kind of security that we want in terms of these documents.

Mr. Blakey. Mr. Chairman, what is before you is two resolutions. The first is approval of the consulting agreements with Groden, Sprague, White and Baden. Resolution 2 is the approval of the non-disclosure agreement as formed for these four gentlemen and all subsequent people we hire.

Mr. Stokes. Has everyone had a chance to read the resolutions?

Are there any questions?

Mrs. Burke. I have.

Mr. Stokes. All right. Mr. Devine, any questions?

Mr. Devine. I have no questions.

Mr. Stokes. Mr. Preyer?

Mr. Preyer. No questions.

Mr. Stokes. Mrs. Burke?

Mrs. Burke. I don't know who all of the people are. I would be interested in knowing something about them but the one problem I do have is with Richard Sprague. There has
been a charge made that this Committee has been unduly
influenced by Richard Sprague. It has been made by an
organization and I guess we can't win because the press
always says we have been unduly influenced by Mark Lane
and the organizations are charging that no one is listening
to anyone except Richard Sprague and that we are a super-
extension of his theories.

So I have some real -- I don't know how we approach
this. I think this really is a problem.

Could you tell us generally what each of these people
will be doing?

Mr. Blakey. Let me give you the general conception
and I will let Bob Tanenbaum tell you what they will actually
be doing.

We are indeed in a bind and some people who have spent
a good deal of time studying these photographs are in a
position to help us understand them, and that is, frankly,
all we hope to do with these four people.

Ultimately, when we got to the Committee hearings, we
had expected that information that they gave us -- we
would bring in people like Kodak, who designed and built
the Zapruder camera, and we would not use people who had
previous background in our testimony.

This is one of the reasons that the contract would
prevent Richard Sprague from capitalizing on the fact that he
will spend a couple of days next week with us working with
the photographs.

I think that is just a dilemma we will have to live with.

If we don't talk to him, then we are accused of not cooperating
with him. If we do talk to him, we are accused of depending
upon him.

This is another example of the kind of Catch-22 we
will have to live with between now and our hearings.

Ultimately, our hearings will speak for themselves.

Mrs. Burke. This portion of our --

Mr. Stokes: Do you want to be off the record?

Mrs. Burke. I would prefer to be off the record, if
there is no objection.

Mr. Stokes. All right. Why don't we entertain a
unanimous consent request that we --

Mrs. Burke. I ask unanimous consent we suspend the
rules, go off record, and have some amendments.

Mr. Stokes. You have heard the motion. Is there
any objection?

(No response)

Mr. Stokes. Without objection, then, at this point
we suspend and go off the record.

(Discussion off the record)

Mr. Stokes. We will go back on the record.

Mr. Preyer. I rule the adoption of the resolution, Mr.
Chairman.

Mr. Stokes. It has been properly moved that Resolutions I and II be adopted and the Clerk will call the roll.

(The resolutions referred to follow:)
The Clerk. Mr. Stokes?

Mr. Stokes. Aye.

The Clerk. Mr. Devine?

Mr. Devine. Aye.

The Clerk. Mr. Preyer?

Mr. Preyer. Aye.

The Clerk. Mr. McKinney?

(No response)

The Clerk. Mrs. Fauntroy?

(No response)

The Clerk. Mr. Thone?

(No response)

The Clerk. Mrs. Burke?

Mrs. Burke. Aye.

The Clerk. Mr. Sawyer?

(No response)

The Clerk. Mr. Dodd?

(No response)

The Clerk. Mr. Ford?

(No response)

The Clerk. Mr. Fithian?

Mr. Fithian. Aye.

The Clerk. Mr. Edgar?

(No response)

The Clerk. Five aye votes.
Mr. Stokes. The resolutions, then, are adopted.

Mr. Blakey?

(Pause)

Mr. Stokes. Off the record.

(Discussion off the record)

Mr. Stokes. On the record.

Let the record reflect all names of members' staff that are present. Do you want to identify yourselves for the record?

Mr. Spring. Hank Spring, Stewart McKinney's office.

Mr. McMullan. Bob McMullan, from Congressman Edgar's office.

Mr. Lennon. Peter Lennon, Chris Dodd.

Mr. Simon. David Simon for Ron Burke.

Mr. Stokes. The rest of the staff is from the Assassination Committee and the members who were present.

If there is nothing further, at this time the meeting will adjourn, subject to the call of the Chair.

(Whereupon, at 11:45 o'clock a.m., the Committee adjourned, to reconvene subject to the call of the Chair.)
The item identified below has been withdrawn from this file:

File Designation: Exec Session

Date: ____________

From: ____________

To: Radio Cassette

In the review of this file this item was removed because access to it is restricted. Restrictions on records in the National Archives are stated in general and specific record group restriction statements which are available for examination. The item identified above has been withdrawn because it contains:

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