

11/2/79

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 77-1831
)	No. 78-1731
GENERAL SERVICES ADMINISTRATION,)	Consolidated
)	
Defendant-Appellee.)	
)	
)	

RESPONSE TO APPELLANT'S OPPOSITION
TO APPELLEE'S MOTION TO DISMISS

In his Opposition to Appellee's Motion to Dismiss, Appellant concedes that he has received two of the three documents at issue in this Freedom of Information Act suit. All issues pertaining to the release of those documents are therefore moot. Ackerly v. Ley, 420 F.2d 1336, 1339-40, 137 U.S. App. D.C. 133, 136-137 (1969).

Nonetheless, Appellant urges this Court to render an advisory opinion on the legal issues presented in his two appeals. Even if this Court were inclined to expend its time and energy in accordance with Appellant's suggestions, it lacks jurisdiction to decide the merits of controversies which have become moot. Securities & Exchange Commission v. Medical Committee for Human Rights, 404 U.S. 403, 407 (1972).

Appellant asks this Court to exceed its jurisdiction on the theory that the government fraudulently withheld

documents to which he was legally entitled. Appellant's accusations are baseless. The documents, copies of which are attached to Appellant's Opposition, involve Soviet defectors, the degree to which they can be trusted and the ways in which they can be used. Appellant had no legal right to obtain these documents under the Freedom of Information Act, 5 U.S.C. §552(b)(1),(b)(3) and 50 U.S.C. §403(d)(3).

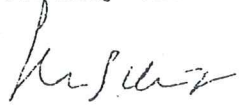
The documents became publicly available, not because of Appellant's FOIA request, but because of the specific requests for cooperation described in the attached letter from Mr. G. Robert Blakely, Chief Counsel and Director of the House Select Committee on Assassinations. Admiral Stansfield M. Turner, Director of Central Intelligence, personally reviewed the Congressional requests and decided to release information to the Committee which related closely to the information sought by Appellant. As a result of the Director's decision, agency personnel reconsidered Appellant's request, declassified the documents and made them available to him.^{1/}

^{1/} The Central Intelligence Agency duly notified the Department of Justice and the General Services Administration of its decision to declassify the documents and, on Friday, October 13, 1978, the GSA formally notified the Department of Justice that it would no longer contest disclosure. On Monday, October 16, 1978, the Department of Justice filed the instant motion to dismiss. Appellant picked up his copies of the transcripts at the National Archives on that same day.

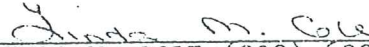
The Director's decision to cooperate with the Committee in no way establishes that the agency's initial refusal to grant Appellant's request was fraudulent or erroneous. It simply establishes that the national interests become more complex when it is the Congress that is seeking information from an agency and that the Director of Central Intelligence can authorize disclosure of intelligence sources and methods whereas Freedom of Information Act officers cannot.

For the foregoing reasons, Appellee respectfully requests this Court to grant its motion to dismiss.

Respectfully submitted,



LEONARD SCHAITMAN (202) 633-3321



LINDA M. COLE (202) 633-3524

Attorneys,
Appellate Staff,
Civil Division,
Department of Justice,
Washington, D. C. 20530.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 1978,
I served the foregoing Response To Appellant's Opposition
To Appellee's Motion To Dismiss upon the Plaintiff-Appellant
by causing copies to be mailed, postage prepaid, to:

James H. Lesar
910 16th Street, N.W., Suite 600
Washington, D. C. 20006

Linda M. Cole
LINDA M. COLE (202) 633-3524

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STEWART B. MCNINIS, CONN.
CHARLES THONE, NEBR.
HAROLD S. SAWYER, MICH.

(202) 225-4824

Select Committee on Assassinations

U.S. House of Representatives

3369 HOUSE OFFICE BUILDING, ANNEX 2

WASHINGTON, D.C. 20515

October 26, 1978

CLC #78-1583/B

Mr. Lyle Miller
Deputy Legislative Counsel
Office of Legislative Counsel
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Miller:

This letter is to confirm that this Committee requested that the Central Intelligence Agency provide it with full disclosure of all information and materials relating to the following:

1. The credibility of all statements made by Yuri Nosenko concerning Lee Harvey Oswald
2. The treatment of Yuri Nosenko by the Central Intelligence Agency during the years he was in its custody and control.

The information received as a result of these requests was put into a Committee Report. That report was thereafter submitted by the Committee to the CIA with the request that it be declassified for presentation at the Committee's public hearing on September 15, 1978. This request was complied with by the CIA, and the presentation was made on that date. In addition, the information elicited from the above materials was used by the Committee during public hearings on September 15 and 22, 1978 in questioning Mr. John Hart, who represented the CIA, and Mr. Richard Helms, onetime director of the CIA. Mr. Hart was provided by the CIA for testimony in response to a request for an Agency spokesman to testify on those issues, and Mr. Helms appeared, and the subject matters of his testimony were declassified by the Agency, at the request of the Committee.

Sincerely,



G. Robert Blakey
Chief Counsel and Director

GRB:CF