

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant
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C.A. 75-1448
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AFFIDAVIT

1. My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff in this case.

2. My prior experiences include those of investigative reporter, Senate investigator and intelligence analyst.

3. My prior experiences with FOIA/PA matters are extensive. I know of no private person who has made as much use of FOIA and of no private person who has spent as much time litigating under FOIA. This includes suits against the Department of Justice, which provides defendant's counsel in this case, against the defendant and against the CIA, which is directly responsible for the withholding of the two Warren Commission executive session transcripts that remained withheld until this case was before the appeals court.

4. In this affidavit I address the defendant's Opposition of August 10, 1979, and its attachments first as they ostensibly address the manner in which the two transcripts in question were allegedly declassified and disclosed and then as they seek to make improper use of process in both respects as an effort to mislead the Court.

5. Neither the Opposition nor its attachments contains a single word descriptive of the content of the two transcripts. There are only deceptive generalities and conclusory references like "certain information" and "the information." The thrust of these false representations is to mislead the Court into believing that the information in the transcripts was disclosed by the House Select Committee on Assassinations. To deceive and mislead the Court the

Opposition states what is not true, "Plaintiff ignores the fact that the information released," meaning these two transcripts or their content, "was already within the public domain when he received the documents." (page 10) The Owen affidavit and its attachments are designed to give this impression but in fact they do not so state and Owen dares not so state because it is false. Owen never states what "information" he talks about.

6. Moreover, there is no reference at all to the January 21, 1964, transcript, the second transcript now in question. The Opposition and Owen ignore it entirely, apparently in the hope that the Court will be misled into believing that what they allege about the other transcript also relates to it, as it does not and cannot. (There is passing mention of the January 21 transcript on page 2 of the Opposition, but merely as involved in the suit.)

7. Also entirely missing is even a pro forma claim that either transcript was ever properly classified. In the face of the information I have provided, that false representation also is not dared. Yet Owen states that he is authorized to make classification determinations "up through TOP SECRET."

8. Instead, Owen undertakes to misrepresent to this Court in other ways. He states that some CIA information was declassified for the House committee - but he does not state what information or that it includes these transcripts or their content. He also states that the CIA provided committee testimony, again without stating that the testimony included these transcripts or their content. His CIA operational and disinformational device is:

After comparing the details of the declassified CIA information, which appeared in the aforementioned testimony before the House Committee on 15 September 1978, with the information withheld from release in the Warren Commission testimony (sic), I determined that the continued assertion of the Freedom of Information Act exemptions was no longer tenable. (Paragraph 3)

9. One wonders if Owen read anything when he refers to a meeting of Members of the Presidential Commission as "testimony."

10. As part of this CIA spooking, in the Owen account, the CIA advised the Justice Department and the Archivist of the United States that as a consequence of the declassified CIA information regarding Yuriy Nosenko being placed on the public record before the House Committee, the two aforementioned Warren Commission transcripts would no longer warrant being withheld... (Paragraph 3)

11. Here again he does not specifically state what he dares not state,

that it was one and the same information, in these transcripts and testified to before the House committee.

12. In a further effort to deceive and mislead the Court, Owen attaches as Exhibit A what he describes as "the first ten pages of the transcript of testimony taken before the Committee in open session on September 15, 1978." At the same point he also states that "the CIA information," still entirely undescribed, "is summarized in the testimony of Professor Robert G. Blakey, Chief Counsel and Staff Director of the House Committee Staff." (Paragraph 2)

13. Blakey did not testify. He narrated a background for the CIA's witness, John L. Hart.

14. What Owen describes as "the transcript" is not that at all, although the typescript as well as the printed official transcripts were available. Rather is his a transcription of the radio broadcast made for the CIA by a commercial service. Owen's choice is not accidental. It is part and parcel of the CIA's intent to deceive and mislead the Court. It also includes less than a printed page of the CIA's testimony on which the Opposition's and Owen's present allegations and representations are based.

15. Had Owen done otherwise, he would have given the Court absolute proof that the CIA had knowingly and deliberately sworn falsely to this Court in its representation that Nosenko's was a "model" case, designed by the CIA to make defections to it from foreign intelligence services more attractive. What Hart actually testified is exactly the opposite of what the CIA swore to this Court. Hart described Nosenko's treatment as illegal, barbarous, inhuman, an atrocity and the worst thing he knew about the CIA. He also testified that he and the CIA are so ashamed of it that the CIA has him giving internal lectures on it as the horror of horrors and that delivering these lectures sickens him.

16. In fact, virtually all of Hart's testimony was on Nosenko's treatment, which is not and could not have been referred to in the Commission transcript. (Before the Commission could listen to Nosenko, the CIA hid him away for three years of subhuman, virtually solitary, confinement. This was neither known to the Warren Commission nor within its mandate.)

17. Why the CIA spent public tax funds for an unofficial version of the

committee's proceedings when there was an official transcript - why it avoided the official transcript in what it presented to this Court - is apparent from examination of the committee's official transcript. It holds what Owen withheld - a description of the actual information used by the committee and not used by the committee.

18. The committee made no use of the content of the two Commission transcripts in question.

19. If Owen had used the committee's official press handout, for the Blakey introduction was prepared in advance and distributed at the hearing, that would have cost nothing. But that also would have disclosed what Owen and the Opposition withhold from the Court - proof that there is no relationship at all between what the CIA declassified for the committee and the content of the transcripts.

20. What Owen swears is "the first ten pages of transcript" is the Blakey narration of 41 printed pages. Aside from the fact that more words appear on the printed page, the Blakey narration and the committee's press handout include the committee's staff report on Nosenko, which Owen omits. It was not broadcast by radio. This accounts for Owen's use of an unofficial transcript of the radio broadcast instead of the official transcript.

21. Hart's testimony, of which Owen attaches less than a printed page and that of the introduction only, runs to 59 printed pages.

22. I attach as Exhibit 1 the table of contents of the committee's Nosenko report and its two pages headed "The Warren Commission and Nosenko."

23. The only way in which the House committee could have paid less attention to "the Warren Commission and Nosenko" would have been to ignore the matter entirely. What little is included - and it has nothing at all to do with any of the records Owen states were declassified for the committee, leading to his decision to disclose the transcripts to me - is restricted to the testimony of Richard Helms. It then is further restricted to what has been within the public domain for years, as part of the Commission's records available at the Archives.

24. This has nothing to do with the two transcripts in question, and neither here nor elsewhere is there any mention of these two transcripts or their content.

25. Originally, the CIA conned the Archives into withholding the fact that

it claimed to have doubts about Nosenko's credibility and to classify that TOP SECRET. However, that also was declassified years ago. Because it was not classified, Owen could not have declassified it after Hart's testimony.

26. Aside from what Hart referred to as Nosenko's credibility and the barbarities inflicted on him although he was a prize intelligence catch - he is now a CIA consultant - there is nothing else to which Hart testified. He refused to testify to anything else of substance and stated that this was his agreement with the CIA prior to agreeing to provide its testimony. Hart testified, to the committee's shock and chagrin, from a single page of notes with only four subtitles on it. (Pages 488-91, attached as Exhibit 2) At the outset Hart made it clear that he was going to testify to "the handling of Nosenko by the CIA," which he described initially as "counterproductive" rather than "model."

27. Pages 502-11 (attached as Exhibit 3) give more of the character and limitations of the Hart testimony, which has no relationship to the transcripts in question and is almost in its entirety limited to what the CIA did to Nosenko subsequent to the Warren Commission's executive session.

28. One of the points at which consideration of assassinating Nosenko is mentioned is on page 504. The same official also considered driving Nosenko mad and, as an alternative, institutionalizing him for life on the pretense that he was mad. (See also Exhibits 4 and 5 below.)

29. That Hart had "ruled out going into the Lee Harvey Oswald matter" is on page 506. This is the matter of interest to the Warren Commission, not what it knew nothing about, how Nosenko was abused by the CIA.

30. Hart testified that "the Agency failed miserably" in the handling of the case as it relates to Oswald. (Page 507)

31. What is opposite to the information the CIA gave the Commission staff is Hart's testimony that, with regard to Oswald, Nosenko's statements should be regarded as "made in good faith." (Page 508)

32. A more explicit ruling out of this testimony as justification for the decision to disclose these transcripts to me is on page 509: Hart told the CIA "that I will be the spokesman on the subject of the Nosenko case but I will not be the spokesman on the subject of Nosenko's involvement with Lee Harvey Oswald." This is all that was within the purview of the Warren Commission and it is entirely

outside Hart's testimony.

33. That the CIA was doing a job on the committee on this same question is the belief of one committee member, who stated that "what the Agency wanted to do was to send someone up here who wouldn't talk about Lee Harvey Oswald." (Page 509)

34. That the natural situation in the CIA is for its officials to be denied knowledge and thus led to lie is Hart's testimony from personal experience. (Page 511). When he was in charge of the "Cuban Task Force" he denied "in all good faith" that there had been CIA attempts to assassinate Castro because knowledge of it "had been kept from me."

35. Actually, the CIA made "no investigation" of "the activities of Oswald through Nosenko." (Page 522. Pages 522-5 are Exhibit 4) He would give this the lowest possible rating. Hart, in all his professional experience, had never seen a "worse handled operation."

36. Hart's testimony relating to the schemes an official considered for Nosenko's "disposal" (Pages 524-5) is that the only reason for considering assassinating him was to make it impossible to prove that the CIA had had him confined illegally for three years. (Page 525) Without this there would have been an imagined "devastating effect."

37. In short, someone inside the CIA considered murder in cold blood to hide CIA improprieties and illegalities. Alongside this, misleading a Court is a minor matter, as is false swearing to a Court.

38. The Hart testimony concludes (Exhibit 5, pages 532-6) with what dominated it, more on the treatment of Nosenko. Rather than the "model" to attract other defectors, he described it and lecturing on it for the CIA as "an abomination" and by far the worst experience of his professional life. (Pages 533-6)

39. In all of this, in all this committee's work and in all the more than ten million words of the Warren Commission's published materials, there is no reference to what Nosenko said that terrified the CIA and impelled it to what it did and did not do, including its virtually unprecedented abuse of Nosenko and its false swearing about this and related matters: The KGB suspected that Oswald was an American "agent in place" or a "sleeper agent;" and Oswald was anti-Soviet, not pro-Soviet, as reflected by Marina Oswald's uncle's plea to Oswald not to be

anti-Soviet when he got back to the United States.

40. As Allen Dulles stated, if Oswald was an American operative in the USSR, he could have been for the CIA but not the FBI. (This was at the January 27, 1964, executive session. It also was withheld by the CIA and it also was given to me when that case was about to go to the appeals court.)

41. I listened with care to the Hart testimony and I have read it, as I have also read the two transcripts in question. The Hart testimony does not address the content of the two transcripts at issue.

42. Hart's testimony is, for the most part, totally irrelevant to the two transcripts. Where it is not totally irrelevant, where it might be claimed that there is some slight relationship, it contains nothing that was not within the public domain before this special House committee existed.

43. It thus is not possible that the reason the transcripts were disclosed to me at the very moment the Government's brief was due at the appeals court can be because of declassification of the content for this committee.

44. I emphasize that Owen and the Opposition fail to make even the pro forma claim that there is anything classifiable in the two transcripts - the only one mentioned, that of June 23, 1964, and the unmentioned pages of January 21, 1964.

45. The uncontested information I have already provided in affidavits relating to defectors and the January 21 transcript makes any representations relating to it, even further false representations, too hazardous.

46. The following section of this affidavit addresses what I believe is an effort to prejudice the Court with regard to the matter before it and is an effort to misuse process for ulterior purposes. In this it is consistent with my long experience with the agencies involved in many other FOIA cases.

Abuses of the Act and of my counsel and me characterize all my FOIA cases, including this instant case. Similar abuses, in my C.A. 2301-70, led to the 1974 amending of the investigatory files exemption of the Act.

48. Without exception, all these agencies stall my requests and, when forced to defend them in court, continue to stonewall and to mislead the courts. My counsel and my prior affidavits explained why this is the official practice.

49. Beginning more than a decade ago, the National Archives, which is part

of General Services Administration, refused to honor my requests and then solicited another, who lacked my subject-matter expertise, to make the identical request, to which it responded promptly. By this means it was able to engage in news management, in influencing what would be known and believed. The Archives has conspired with other agencies to withhold public information it wanted withheld after the agency of which I made the request decided that it could not withhold the requested information under the Act. Internal Archives and GSA records disclose that these agencies denied information to me despite the requirements of the Act because they feared that once I had that withheld information I would request other information these agencies desired to withhold for political purposes - including the two transcripts in question.

50. The CIA has yet to comply with my information requests going back to 1971. To effect noncompliance, CIA components lied to the CIA's general counsel. They denied that I had made the requests and then denied having the information that in fact they did have. This was disclosed to me by inadvertence. The disclosure identified records and where they are filed. Yet the CIA denied having any such records. Repeated appeals from denials go without being acted on for years. When I ask the CIA when I may expect action on these appeals, I receive no response. In common with the agencies identified above and still other agencies, the CIA releases to later requesters what it refused and continues to refuse to provide to me.

51. My unmet information requests of the Department of Justice and its components go back much more than a decade. In 1976, in C.A. 75-1996, I testified to more than two dozen such unmet information requests. My testimony remains undenied and the appeals remain without action on them.

52. While the Opposition makes deprecating reference to my use of public domain information relating to the later Nosenko requests of Edward Epstein, it is the uncontested fact that the Archives, the CIA and the Department continue to withhold from me what they provided him. Moreover, when I filed requests for the information provided to Epstein, all three agencies refused to provide me with the information they had provided to him.

53. The reason for this discrimination is as my counsel stated in his Motion, I am neither a sycophant nor one of the legion of conspiracy theorists who exploit the great tragedies of the political assassinations.

54. I made Privacy Act requests of all the agencies involved. The records provided hold no substantial criticism of any of my writing. My writing is by far the most extensive in the field in which I work.

55. Moreover, going back to 1966 I have defended these agencies from the unfair criticisms of the irresponsibles who dominate the field in which I work.

56. My work is not the pursuit of a real-life whodunit. It is a serious study of the functioning of our basic institutions in times of great crisis and in their aftermaths. It is because my work cannot be faulted on the basis of fact that other means are resorted to by the agencies whose failings I expose to deter my exposure of them.

57. The CIA, despite the prohibition of domestic operations by it, has me in its domestic investigations. It also has monitored what I say. It has verbatim transcripts made of what I say, First Amendment or no First Amendment. With regard to the investigative reports, it provided me with records from which everything but my name was obliterated. I obtained unexcised copies by other means. It has not provided any of the above-mentioned transcripts. I also obtained copies of them by other means.

58. The Department of Justice went further. Its FBI actually plotted to file a spurious libel action against me to "stop" my writing. These are the actual words used in the records I have obtained.

59. One means of "stopping" me and my writing is to tie me up in litigation, to stonewall FOIA cases indefinitely. To this end all agencies have provided false affidavits. All are immune in this because the prosecutor does not prosecute himself.

60. Litigation is the only alternative when FOIA requests are rejected or ignored, the practice of all the aforementioned agencies.

61. My initial requests in this instant cause were more than a decade ago. Once I filed suit, Government counsel stalled by various means. These include taking months for partial response to interrogatories. Now I am accused of delaying in the Opposition.

62. To "stop" me, Rule 11 or not, there is no motion or pleading Government counsel eschews, no matter how unfaithful or unfair or plain false it may be, and all are common within my extensive experience. Nor is any means too petty.

63. I suffered the first of a series of serious illnesses in 1975. I was hospitalized after this case was filed. Thereafter I made arrangements with Government counsel in all cases for copies of all pleadings to be sent to me. I offered to pay the costs. The reason is that I live at a distance from my counsel and the time taken for mailings to reach him, for him to make copies, for them to reach me and for me then to provide anything to him can consume more time than is allowed. All Government counsel agreed to do this and did do it until they became aware of a further deterioration in my health, which prevents my driving to Washington. Since then not one has sent me a copy of any pleading, despite repeated requests. As a result, I did not receive the present Opposition until Thursday, August 16, a day I was not well. I read it the next day and was able to discuss it by phone with my counsel that evening. He then told me that he needed this affidavit over the weekend. There now is no time for me to provide a draft for his approval or suggestions. I am not a lawyer. The practical effect of this uniform refusal by all Government counsel to mail copies of pleadings directly to me is that my counsel never has the opportunity to review my affidavits and I am denied meaningful consultation with counsel in preparing them and in their content.

64. Because of my age (66) and the state of my health, which is well known to the Government, this amounts to an exploitation of my illnesses to effectuate noncompliance with the Act.

65. Commercial insurers will not provide me with medical insurance because I have more than three conditions that can require surgery. The most serious of these are circulatory. By the time I was hospitalized in 1975, thrombophlebitis had damaged the main veins in both legs and both thighs. This in itself required drastic changes in my life and imposed limitations on what I am permitted to do. In 1977 arterial illness also was discovered. The arteries near the heart and the supply of blood to the head are among the involvements of which I know. I must sit with my feet elevated, which presents problems in drafting and reading and correcting the drafts of affidavits. This work is interrupted regularly because I must get up and walk about periodically. I also am under doctor's orders to engage in those physical exercises of which I am capable, at intervals throughout the day. This is part of the medical treatment. I live on an anticoagulant that is a dangerous poison and can cause internal hemorrhaging, as it did this past April. I now live

on less than the optimum dosage; which is monitored carefully by weekly blood tests. When my doctor examined me on August 15 after a sharp alteration in the blood chemistry, he told me it is almost impossible to detect any pulse in my feet.

66. The state of my health and my age provide motive for Government stalling to "stop" me and my writing. It is my experience in all my FOIA cases that Government counsel do stall. They delay filing motions for months on end on the claimed need for supporting affidavits. When the motions are filed, it turns out that the affidavits had actually been executed and were on file. Government counsel rejected interrogatories as a means of discovery in one of my FOIA cases; the Government was supported by the appeals court, which ordered live testimony; then, after this ruling, other Government counsel, to stall another of my FOIA cases, argued that interrogatories, not live testimony, are the proper and preferred form of FOIA discovery.

67. Because it is not possible to fault my work on the basis of fact and because my information requests are never frivolous and all seek significant information that is embarrassing to officialdom, all Government counsel, in varying degrees, some blatantly, some subtly, attempt to try their cases on me and my counsel and on the prejudice that wipes off on all from the excesses and irresponsibilities of those who have attracted most attention in my field of work. In the instant Opposition this is subtle but it is present, regardless of Rule 11 and the Attorney General's statement that all Government counsel are to abide by this Rule.

68. This kind of approach also creates the kind of quotable record that within my experience is misused throughout the Government, including in FOIA litigation. I have obtained many records of this nature. They are false and defamatory and they have been misused with telling effectiveness. In one it was held that because I was not liked the Act did not require response to my requests. No responses were made, then or since. In a widely-distributed record, which went to the White House and Attorneys General and their Deputies, among others, my wife and I were charged with celebrating the Russian Revolution. The apparent basis for this libel was an annual religious outing - in September, not November - at a small farm we then owned.

69. An ostensibly proper request of the Opposition is to depose me. Allegedly, this is to determine whether I have commercialized the transcripts in question and/or other information I have obtained through FOIA and whether my counsel is attempting to defraud the Government by requesting counsel fees after I have already paid him for his services. These are not seriously intended, as the Government, particularly the Department of Justice, is well aware. When my counsel informed me of this after he read the Opposition, I asked him to arrange for the Department to depose me at the earliest possible date rather than argue the merits, to get that stalling device dispensed with as soon as possible. I will then provide in detail the information I assure the Court the Government has and does not need - if the Government does go ahead with this deposition, as I do not expect it will, because it knows full well what the result will be.

70. The Government, particularly the Department, knows that I have had no regular employment since the assassination of President Kennedy and that without any regular source of income (until I reached Social Security age) I devoted myself to an unpaid study of the investigation of that crime and the later assassination of Dr. King and their consequences.

71. Here and elsewhere in the Opposition, particularly with regard to the transcripts in question and the real reasons for their disclosure, the intent that is typical within my experience is to mislead the Court, as I set forth herein. Consistent with this there are subtly prejudicial suggestions guised as proper questions. In context, and particularly when considered with the nature and extent of other misrepresentations and their possible consequences if accepted by the Court, there is what I believe is abuse of processes. This amounts to the making of charges the Government does not dare make.

72. While it is not unusual for a defendant to refer to the other side as "plaintiff," I do not believe it is right and proper for this to be the form of reference when plaintiff's counsel only is intended, particularly not when in the Opposition the distinction is made where no ulterior purpose is served by not making it.

73. The issue is whether there will be an award of attorney's fees. Whether or not the check is made out to a plaintiff, these go to the attorney, not the plaintiff, absent a claim for the recovery of attorney's fees already

expended, which is not true in this case. In this case there is no possibility that any award would be to me personally.

74. Where the Opposition draws the distinction between plaintiff and his counsel is at the end (page 12), in "Should this Court decide to award fees, it is essential for plaintiff's attorney to establish that fees awarded are not being paid twice -- once by the government and once by plaintiff." (Emphasis added)

75. This allegation of an attempt to defraud the Government, laid to my counsel and to me without any basis and contrary to much and uncontroverted information the Department has, is presented as a question requiring an answer. While superficially this may appear to be a reasonable question, in fact it is not because there are Departmental administrative actions and there was a lawsuit, both providing definitive answers.

76. However, in making this allegation disguised as a question, the Opposition is explicit in distinguishing between me personally and my attorney.

77. Consistent with intent to suggest that in other ways I seek to defraud the Government, the Opposition opens with the representation that the award would be "a windfall for plaintiff," not for plaintiff's attorney. (Page 2)

78. Also consistent with intent to malign me and mislead the Court is another seemingly reasonable matter allegedly to be determined, "the use to which plaintiff put the released information and the extent to which he had benefitted financially from it. It is unclear from the record whether plaintiff's interest is merely scholarly or whether he is part of the 'legion.'" (Page 11)

79. "Legion" is a quotation from my counsel's Motion in which he distinguishes me and my work, as the courts and the Department have, from that of sensationalists and commercializers.

80. While I have no way of knowing what the defendant informed defendant's counsel or defendant's counsel asked the defendant, that the Archives knew in advance the use I planned and did make is without any question.

81. Because of many official leaks in the past, which were used to manipulate the media and what could and would be known and believed, I was explicit in informing the Archives I would pick up the copies of the transcript as soon as they were available and that I would hold a press conference promptly and would give copies to the press. I also said I wanted no leaking in advance of this.

82. I did precisely what I told the Archives I would do. I made a special trip to Washington by Greyhound. My counsel met me at the bus station and drove me to the Archives. I obtained the transcripts, had xerox copies made of them and of other pertinent records and that afternoon gave copies to the press at the press conference and by messenger. To be certain that the press was informed, I personally notified the wire services, which by their ticker services informed the press corps. I also phoned the Washington Post, the TV and radio networks and others I do not now recall. All of this was at my expense.

83. I gave and mailed free copies to others working in the field and made arrangements for still others who live in distant parts of the country to be provided with copies.

84. This is in accord with my practice since early 1975. To the degree possible I have made available to the press and to others what I obtain by FOIA. The Department is aware of this as it is aware that I have set aside a separate working area in my home for others to have private access to my records.

85. When the defendant knew in advance that I would be giving away this information before I could use it myself and made the arrangements for giving it away prior to even reading it, it is neither reasonable nor honest for the defendant, through counsel, to pretend a need "to determine the use to which plaintiff put the released information..." This is intended to prejudice the Court and as a slur.

86. Consistent with this is what follows (without omission), "and the extent to which he has benefitted financially from it." If intended as no more than a reasonable question, a proper formulation would have been "the extent, if any, to which he has profited." The intent is to imply what is not true, that I did profit financially. It is obvious that, even if I intended personal gain, that became impossible the moment I gave away many copies and drew the attention of the press to the information.

87. To the Government's knowledge there can be no seriousness in the pretended question, "whether plaintiff's interest is merely scholarly..." The Government knows other and better than this. The Department has made administrative determinations that leave no room for any doubt about it.

88. In C.A. 77-2155, which was decided last year, that Court was severely

critical of the Department and its treatment and mistreatment of me and of the Act. It ordered that the records in question, about 100,000 pages of records relating to the investigation of the assassination of President Kennedy, be given to me without charge. The uncontested evidence I produced in that case is that I am not of means; had no regular income for the preceding 15 years; devoted myself entirely to this work without foundation or other subsidy; that it and I are a service to the press and the country; and that I had already given away for a permanent public archive all my records of all sources and origins. There is and was no quid pro quo. (The request was made of me by the Wisconsin Historical Society. The deposit is at the Stevens Point branch of the University of Wisconsin. I have already transferred about 10 file drawers of materials. The remainder of my files, which now require about 60 file cabinets, have been willed to this university archive, along with any and all other materials I obtain. I mail records intermittently, as I am able to.)

89. As a result of its own reconsideration after the decision in C.A. 77-2155, the Department made the administrative determination that it would make no charges for any records relating to the assassinations of President Kennedy and Dr. King and to refund the charges that I had already paid.

90. The Department itself has eliminated any basis for any question having to do with profit, which is an obvious impossibility, or my scholarship.

91. With regard to my scholarship, the Department has represented to two different courts that I know more about the investigations of these two assassinations than anyone now in the employ of the FBI. It persuaded one Court to have me act as its consultant in my suit against it because of my scholarship.

92. When the Department is aware that I have given away everything I have and will have to a free public archive, for it now to pretend a need to know whether I am "public interest oriented" (on page 11) is dignified by calling it frivolous. It is another incitation to prejudice.

93. One of the ostensible reasons for these dark suspicions and allegations disguised as questions is that "Plaintiff has in the past published books based on information obtained through FOIA." (Emphasis added)

94. In fact, I have published but a single book "based on" FOIA information. I added to another book, published the end of 1975, what I had earlier given away

after I obtained it. Neither book has returned a profit or can. Both have facsimile reproductions of Warren Commission transcripts that had been withheld under the CIA's false pretenses and spurious claims to exemptions. Disclosure of them, as in this instant cause remains undenied even in the present Opposition, revealed that the information was not properly subject to classification. Then as now the real reason for the withholding was the avoidance of embarrassment to the Government.

95. The actual commercialization was by the defendant in this case, the National Archives. It was charging 25 cents a page when xeroxing was being done commercially for as little as a tenth of that charge. The single transcript I published in the book based on that transcript cost \$25 if purchased from the Archives. As published in facsimile in my book, it cost a fourth of this and the book held a large number of other formerly secret records also reproduced in facsimile.

96. That particular transcript reflects that the former Director of Central Intelligence, Allen Dulles, described false swearing as the highest dedication of the intelligence agent. My experience in this and other FOIA cases provides no basis for disputing him.

97. In the other of these two earlier transcripts, the Commissioners joined in expressing their terror of J. Edgar Hoover and his desire that they fold up and go home without making any investigation. That transcript concludes with the decision to destroy it. However, the stenotypist's tape escaped the memory hole and I did obtain a transcript under FOIA.

98. These illustrations, not what is falsely represented in the Opposition and its attachments, reflect the actual content of the two transcripts in question in this instant cause.

99. That the CIA's classification of the Warren Commission executive session transcripts was never justified is indicated by Exhibit 6. Exhibit 6 is two FBI records from the FBI's Warren Commission file. They are among the approximately 100,000 pages I received because of C.A. 77-2155, referred to in preceding paragraphs. I saw these particular records for the first time earlier this month.

100. While these records do not so indicate, the review of the transcript of the January 22, 1964, executive session of the Warren Commission was in response

to my efforts to obtain it. That effort was at the point where my next step was to file suit.

101. This particular one of the four interrelated transcripts is the one the terrified Commissioners decided to destroy, as mentioned above. It is the only transcript the content of which caused so much consternation and apprehension.

102. While the content of this transcript reflects seriously on the FBI, the review of the FBI's Intelligence Division concluded that none "of the information reported in this transcript merits classification."

103. By that time the defendant General Services Administration had withheld it for a decade, claiming TOP SECRET classification.

104. The FBI did not claim that the erosions of time justified downgrading and disclosure, the pretense of the Opposition. There is no content that justified classification and there is no content in the transcripts at issue that was ever properly classified, despite the fact that all the transcripts were classified TOP SECRET.

105. There is no content of the two transcripts in question requiring them to be withheld under any statute. The transparently apparent reason the CIA classified and withheld the two transcripts at issue is to shield itself from embarrassment because it had misled and deceived a Presidential Commission.

106. The false representations attributing disclosure to declassification for the House committee are a contrivance intended to protect the CIA and GSA from prior false representations and their consequences because by the time defendant's brief was due before the appeals court it had given abundant indication of what to expect from it. Without some such concoction to cloak them, these false representations would be naked to the Court, as they are to subject experts.

107. After all these years of official stalling and of shifting and improper claims to exemptions, I am now accused of causing the delays because I undertook to provide the courts with relevant information the Government had withheld from them.

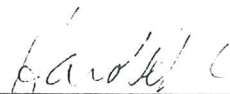
108. When any reading of the transcripts in issue discloses that all claims for any need to withhold them are fraudulent and that the Court and I were defrauded, the Opposition also seeks to turn this around and to pretend that my counsel and I are attempting to defraud the Government.

109. I believe this is outrageous. If I had more of my life ahead of me and enjoyed perfect health, it would still be outrageous to attempt to mislead the Court into believing I seek and am motivated by profit when I have undertaken a public responsibility without pay or possibility of personal profit.

110. I believe this entire matter violates Rule 11 and that I am entitled to whatever protection from such abuses the Court can provide.

111. The lack of any specificity with regard to the June 23 transcript and of any reference at all to the January 21 transcript should have let Government counsel know that at best the Owen affidavit is questionable. If any of the content of these transcripts had been disclosed for the first time before the committee, Owen could and would have cited the transcript and the committee's disclosure and established this. In its absence Government counsel should have known that the obligations imposed by Rule 11 were not met, more so from the total absence of any rebuttal to any of the information included in my detailed affidavits.

112. From long experience in FOIA matters, including litigation, I believe that the Courts will be needlessly burdened, the Act will be negated and the people will be denied their rights under the Act as long as such abuses are tolerated.



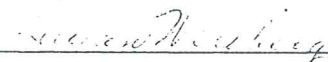
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 20th day of August 1979 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.





NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

OSWALD IN THE SOVIET UNION:
INVESTIGATION OF YURI NOSENKO

Index

ASSASSINATIONS

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hairman

SAMUEL L. DEVINE, Ohio
STEWART B. MCKINNEY, Conn.
CHARLES THONE, Nebraska
HAROLD S. SAWYER, Michigan

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Contrasted to these statements is the testimony of former CIA Director Richard Helms to the Committee. Asked if "questions concerning Oswald (did) constitute a major facet of the overall inquiry that was being made of Nosenko," Helms replied, "Yes, no question about it."

THE WARREN COMMISSION AND NOSENKO

The Warren Commission received FBI and CIA reports on Nosenko and his statements about Oswald but chose, in its final report, not to refer to them. And while Nosenko expressed a willingness to testify before the Commission, he was not called as a witness.

Richard Helms told the Committee he met with Chief Justice Warren to emphasize the CIA had not been able to establish Nosenko's contacts. Helms cautioned Warren of the "contingency that maybe the statements that he had made about Oswald's having no identification with the KGB were not accurate," and "the implication that, if he was not bona fide and had come for the purpose of covering up the tracks of Soviet intelligence, that this had implications which should be weighed on the scales."

J. Lee Rankin, General Counsel of the Warren Commission, told the Committee it was his recollection that no one from the Commission attempted to interview Nosenko about Oswald. He recalled further that the Commission decided it did not have experience to make a determination about Oswald's credibility. When asked whether he thought the knowledge of the Commission staff about Oswald might provide an advantage in questioning Nosenko, Rankin replied he didn't believe so. "We didn't have enough information about Oswald at any time to be informed in depth."

Asked if he believed the CIA had special knowledge of Oswald, Rankin replied:

"I always had the impression that they knew quite a bit about the history and that they appeared to know about as much as we did about his life."

- Q. Were you under any impression as to whether the Agency was specifically trying to check out any of the information given to them by Nosenko about Oswald?
- A. I got the impression that they were doing that and were going to do it carefully.

NOSENKO'S STATUS SUBSEQUENT TO THE 1968 REPORT

The CIA has informed the House Select Committee on Assassinations of Nosenko's status subsequent to the 1968 report:

would call an employee or an officer of the Agency. And I would like to have that made part of the record.

Chairman STROKES. The record may so show.

Mr. HARR. Mr. Chairman, it has never been my custom to speak from a prepared text. I have tried, and I never succeeded. Therefore, what I have before me are a series of notes which were finished about 8 o'clock last night, based on guidance which I got at that time from Admiral Stansfield Turner, the Director of Central Intelligence.

It is my purpose to tell you as much as possible about the background of the Nosenko case with the idea not of addressing what have been called his bona fides, but what has been described as his credibility.

Now, I must say that I have difficulty in distinguishing between credibility and bona fides, but in any case, the testimony and the evidence which has been presented regarding Nosenko simply cannot be evaluated properly unless I give you the background which I am about to present.

Mr. DODD. Mr. Chairman, I would like to make a request at this point if I could. As I understood it, last week, the agreement and understanding was that we would prepare a report of our investigation, submit it to the Agency, to which the Agency would then respond in a like report. We were notified earlier this week that a detailed outline of the Agency's response would be forthcoming. Am I to assume that this detailed outline consisting of a single page, listing four subtitles, is the summary of Mr. Hart's presentation? That is, as far as I can determine, the full extent to which we have any response relating to Mr. Hart's testimony at this juncture.

What I would like to request at this point is that this committee take a 5- or 10-minute recess, and we have the benefit of examining your notes from which you are about to give your testimony, so that we could prepare ourselves for proper questioning of you, Mr. Hart.

Mr. Chairman, I would make that request.

Chairman STROKES. Does the witness care to respond?

Mr. HARR. Mr. Chairman, I will do anything which will be of help to the committee. I want to state that I am not personally certain what was promised the committee. I was brought back on duty to be the spokesman for the agency. I spent my time preparing testimony which I am prepared to offer here. If it will be of assistance for the committee to see this in advance, I am perfectly happy to do so, if there is a way of doing that.

Chairman STROKES. Does the gentleman from Connecticut, Mr. Dodd, want to be heard further?

Mr. DODD. Yes, just to this extent, Mr. Chairman. It is not my intention to delay these proceedings any more than they have to be. I am not asking for a lot of time. If we could have just 5 or 10 minutes in which we might be able to make some Xerox copies of those notes, so that we could have the benefit of following you along in your testimony on the basis of that outline, it would be helpful I think in terms of the committee assessing the material and also preparing itself for the proper questions to be addressed to you at the conclusion of your statement. So I do it only for that

purpose, Mr. Chairman. It is not in any way designed to thwart the efforts of Mr. Hart or the Agency to make its presentation.

Chairman STROKES. Would the gentleman be agreeable to providing Mr. Hart the opportunity to proceed with his testimony, and then in the event that you deem it necessary to have additional time to review his notes, or to prepare an examination of him after his testimony, that the Chair would grant you that time at that time.

Mr. DODD. That would be fine, Mr. Chairman. I will agree to that.

Chairman STROKES. I thank the gentleman.

You may proceed, sir.
Mr. HARR. Mr. Chairman, I also want to emphasize that in order to be of as much help as possible, I am perfectly willing to take questions as we go along. This is not a canned presentation. It may be easier for the members of the committee to ask questions as we go along, in which case I will do my best to answer them as we go along.

Chairman STROKES. I think the committee would prefer to have you make your presentation. Then after that the committee will then be recognized—members will be recognized individually for such questioning as they so desire.

Mr. FRYMAN. Mr. Chairman, may I ask the witness to move the microphone a little closer in some way or another. We are having some difficulty in hearing from this angle.

Mr. HARR. Yes, sir. Is this all right?

Mr. Chairman, gentlemen, the effort in this presentation will be to point out some of the unusual factors in the Nosenko case which resulted in a series of cumulative misunderstandings. And I am hoping that once these misunderstandings are explained—and they were misunderstandings within the Agency for the most part—I am hoping that when these are explained, that many of the problems which are quite understandable, which the staff has had with the questions and answers from Mr. Nosenko, and also allegations concerning him, will be cleared up and go away.

I will endeavor to show that the handling of Nosenko by the Central Intelligence Agency was counterproductive from the time of the first contact with him in Geneva in 1962, and that it continued in a manner which was counterproductive until the jurisdiction over the case was transferred to the CIA Office of Security in late 1967, specifically in August of that year.

The manner in which the defector was handled, which I am going to outline, resulted in generating a large amount of misinformation and in creating difficulties, not only for an investigating body, such as yourself, but for people such as the Director of Central Intelligence, Mr. Helms, who was not well informed in many cases as to what was actually happening. I do not mean to imply that he was told untruths. He was simply not given the total picture of what was going on.

Since Admiral Turner has become Director of Central Intelligence, he has been quite concerned about this case, and he specifically requested that I come back periodically to the Agency, from which I retired in 1972, and give presentations to senior officials of the Agency on the nature of the case. The complexity of the case is

such that to give a minimally adequate presentation to the first group which I lectured took me 4½ hours of continuous lecturing. However, I think that since the interests of this committee are more pinpointed than that group I have been lecturing, I can certainly do it in a shorter time.

Now, the study which I made was made from mid-June 1976 until late December 1976. It required the full-time efforts of myself and four assistants.

We collected from various parts of the Agency 10 4-drawer safes full of documents, and we had also access to documents which were in repositories in other parts of the Agency, and which we simply didn't have room to collect in our office.

In making this presentation, I will be somewhat hampered, but not to the point where I can't do the job properly, by the fact that this session is, of course, open to the public. Most of the documentation which we had, in fact I would say, almost without exception was heavily classified, and we pulled together pieces of documentation which no single person had ever seen before. So we put together the first full picture which has ever been had of this activity.

The first specific question which I want to address myself to is this case as a human phenomenon, because the human factors involved have a direct bearing on some of the contradictions which have appeared in the case.

And unfortunately the human factors were the last to be considered by the people who conducted this case between 1962 and 1967. Some of them were ridiculously simple things which you might have thought would come to their attention.

I am about to discuss a psychological profile which was made of Mr. Nosenko on June 24, 1964. This would have been available to any of the persons working on the case, but they—and it probably was seen by them, but they paid no attention to it.

Let me say by way of qualification for giving you this evidence that although I am not a psychologist, I have had considerable training in psychology and specifically in giving of intelligence tests. And I am about to talk to you about what is known as the Wexler adult intelligence scale, which was administered to Mr. Nosenko. The Wexler adult intelligence scale measures 10 elements of the—of a person's intelligence. Of the 10 elements shown here on the measure which I have here, and which I will be happy to make available to the committee staff, if you wish, it is shown that Mr. Nosenko's memory was the weakest aspect of his overall intelligence. His memory in terms of the weighted scale came out as a 7. Now, the mean would have been a 10. Thus he was at the time tested, he was registering a memory well below the normal level. It is impossible to say what he would have scored under conditions which were more normal, because it must be taken into consideration that at the time he was—he was tested, he had been subjected to not only the stresses and strains of—involvement in defecting, but also in some rather rough handling which he had received since his defection. However—you will see that if this man—man's memory was below the normal to be expected for a person of his intelligence, that any of the testimony which he gave in the course of various interrogations could be expected to be flawed simply by the human factor of memory alone.

Second, I want to point out that defection is in itself a major life trauma. It has a very serious effect, which I cannot testify to from the medical standpoint, but it is—it has both psychological and physical effects on people, and anybody who has, as I have, had to do, had considerable contact over the years with defectors, knows that a defector is usually a rather disturbed person, because he has made a break with his homeland, usually with family, with friends, with his whole way of life, and above all he is very uncertain as to what his future is going to be.

I have had defectors whom I personally took custody of turn to me and the first question they asked was, "When are you going to kill me?" In other words, defection is an upsetting experience, and you cannot expect of a man immediately after he has defected that he will always behave in a totally reasonable way.

Another circumstance which I want to bring up is the fact that in the initial interrogations of Mr. Nosenko, which took place in Geneva in 1962, were handled under conditions which, while understandable, did not make for good interrogations. They did not make for good questioning.

Mr. Nosenko, as of the time he was being questioned in 1962, was still considered by the KGB to be a loyal member of that organization. He had considerable freedom because he actually did not have any duties in connection with the disarmament discussions. He was simply the security guardian of the delegates. He was the KGB's watchdog. And as such, he was able to move freely and in a manner of his own choice. He availed himself of this freedom to make contact with an American diplomat, who in turn turned him over to representatives of the CIA.

In making these contacts, which were recurrent, he each time was nervous that the local KGB element might for some reason be suspicious of him, and therefore he took about an hour and a half before each meeting in order to be sure that he was not being tailed. In his particular case, this countersurveillance measure consisted of visiting a number of bars, in each of which he had a drink. He had one scotch and soda in each of four or five bars. So by the time he got to the point where he was going to be questioned, he had had four or five drinks.

When he arrived on the spot where he was going to be questioned—this was a clandestine apartment, in the Agency's terms, Agency's jargon it is called a safe house, he was then offered further liquor. And he continued to drink throughout the interrogation.

In talking to Nosenko, and questioning him a few days ago, I asked him to describe his condition during these meetings, and he said, "I must tell you honestly that at all these meetings I was snookered."

And I said, "You mean that you were drunk?"
 "Yes, John," he said, "I was drunk." Therefore he was being interrogated about very important things while he was heavily under the influence of liquor. And he said to me that in some cases he exaggerated the importance of his activities, in some cases he really didn't know what he was doing, he was simply talking.

I am prepared to suggest to the staff, if they wish to look at it, they examine some evidence which has been scientifically collected specifically by the Russians which show that long periods of isolation do lead to hallucination.

So, it may have been well that in addition to the other problems which we face in connection with this, or have faced in connection with Mr. Nosenko, that there was a period when he was hallucinating.

Now, I am not here speaking as a technical expert on this subject, but I have examined some technical works on the subject of the effects which long confinement of this sort could have. I will have to pause here for a minute to get a date, if I may. Well, I will get the date for you in just a minute.

But Mr. Helms, the then Director, became very impatient with the large amount of time spent on this case and the failure to come to a conclusion as to the credibility of this man.

Specifically, this was on August 23, 1966. He set a limit of 60 days for the people who were handling this case to wind it up. This resulted in a period of frenetic activity because the people handling the case felt that it was impossible to prove the man's guilt and they couldn't conceive of any way of getting at the truth unless some additional measures were taken.

In September 1966 a proposal which they had made that the man be interrogated, Mr. Nosenko be interrogated under the influence of sodium amytal, which was believed to be a drug which lowered the defenses of a subject and made him more vulnerable to questioning, was turned down by the Director, who refused to permit interrogations using drugs.

The staff handling the case therefore took refuge once again on the polygraph and they submitted Mr. Nosenko to a second series of polygraphs, which continued from October 19 through October 28, 1966.

These are the series of polygraphs which we have been told by Mr. Arther of Scientific Lie Detection are the most valid of the polygraphs which were given the man.

We take serious exception to the statement, the judgment given by Mr. Arther that these were valid polygraphs for a number of reasons.

We take serious exceptions to them partly because we have no understanding of the basis for Mr. Arther's conclusions, and we have doubts that Mr. Arther examined all the relevant data in connection with making this judgment.

When Mr. Arther visited the Central Intelligence Agency in connection with evaluating the polygraphs, he did not, as I understand it, evaluate the 1962 polygraph, only the series of polygraph examinations made in 1966.

He was offered the Agency's own 1966 evaluations of the examinations as part of providing him with all the data available. He declined to see the Agency's evaluations.

Since the October 18 test was the most significant because it was the one which had to do with the Oswald matters— Chairman Strokes, I wonder if the gentleman would suspend for just a minute. It is about 1:30 now. I wonder if you could give the committee some indication as to about how much longer you think

you will go, and then perhaps we can judge whether this is an appropriate time for us to take a recess. Mr. HART. I can wind this up, Mr. Chairman, in about 15 minutes.

Chairman Strokes. You may proceed then, sir. Mr. HART. As I was saying, the Agency attempted to give the examiner, Mr. Arther, as much data as they could, in order to make a meaningful analysis. However, he did not accept all the data which they were offered.

The examiners at the Agency feel that it would be very hard for anybody, any expert, themselves or anybody else, to make an evaluation of these, of the tapes of this series of polygraphs without knowing the surrounding conditions, and there were a number of serious conditions which would interfere with a satisfactory polygraph.

For one thing, the times involved in this series of polygraphs were excessive, were very excessive. It is a principle of polygraphing, on which most polygraphers agree, that if you keep the person on the machine for too long, the results, the effectiveness of the polygraph declines.

In the case of this series, on the first day the man was kept on it, on the polygraph machine, for 2 hours. On the second day he was kept on the polygraph for a total of almost 7 hours, and for comparable periods of time leading to a total of 28 hours and 29 minutes of time on the machine. In addition to that, it was later discovered that while he was actually not being interrogated, he was also left strapped on the chair where he was sitting so that he could not move. And so while lunchbreaks were being taken, he actually was not being interrogated but he was still strapped to the chair.

Now these lunchbreaks, or whatever they were, perhaps they were also used as time for further preparation of questions. But at any rate, the record shows that they lasted, for example, on October 20, from 12:15 to 3:30, and on October 21, from 12:45 to 4:45. That is 4 hours that the man was left in the chair with no rest. In addition to that, the operator was guilty of some provocative remarks. He told, before the polygraph examination, one of the polygraph examiners began, he told Nosenko that he was a fanatic, and that there was no evidence to support his legend, and your future is now zero.

The operator also on another occasion preceded his interrogation by saying that the subject didn't have any hope, there would be no hope for subject, and he might go crazy, to which Nosenko replied that he never would go crazy. Thus the combination of an antagonistic operator who, I might add, was by now not operating under the auspices of the CIA Office of Security, but who was operating under the aegis of the chief of SB and the deputy chief of SB, the fact that the man was kept for extraordinary lengths of time strapped into the chair, all of these add up, in the estimation of the CIA examiners who have gone over this series of tests, to an invalid polygraph.

Now, in the handwriting of the deputy chief SB, who was a day-to-day supervisor of the activity which I have been describing, it is—there is an admission which implies fairly clearly that there was no intention that this 1966 series of polygraphs would be valid.

I read here a direct quotation which exists in writing, and most of it is in the handwriting of the deputy chief of SB. Speaking of the aims to be achieved by the 1966 polygraph examinations, he writes:

To gain more insight into points of detail which we could use in fabricating an ostensible Nosenko confession, insofar as we could make one consistent and believable even to the Soviets, a confession would be useful in any eventual disposal of Nosenko.

Now he doesn't clarify what he means in this document by "disposal," but it is apparent that——

Mr. SAWYER. Excuse me.

Did you use the term "eventual disposal of him"?

Mr. HART. I used the term "the eventual disposal," yes, sir. Mr. SAWYER. Thank you.

Mr. HART. I want finally to address myself very briefly to the two reports which were turned out, one of which, both of which have been described by Professor Blakey. One was actually about 900 pages, but it came to be called the thousand paper simply because of its extraordinary size.

That was originally, it had originally been hoped that that would be the official CIA write-up on the subject, but there was no agreement between the CI staff and the SB Division on this paper, in part because the SB paper had an implication in it that Mr. X, of whom I have previously talked, had contradicted himself and was not totally reliable. I read here an excerpt in which the chief of the SB Division is talking: "Chief CI said that he did not see how we could submit a final report to the bureau" meaning the FBI "if it contained suggestions that Mr. X had lied to us about certain aspects of Nosenko's past. He recalled that the Director of the FBI had stated that in his opinion Mr. X himself was a provocateur and a penetration agent."

Thus, what happened was that a long negotiation took place during which a briefer paper, which as I remember is 446 pages long, was eventually produced, and this became the agreed document, agreed between the CIA staff. I mean the CIA-CI staff and the SB Division, until such time as Mr. Helms, exasperated by the long delays on this case and dissatisfied with the results, took the matter out of the hands of both the SB Division and the CI staff, turned the matter over to his Director, Admiral Rufus Taylor, and Admiral Taylor brought in the Office of Security to try to resolve the case.

I have nothing more to say about the resolution of that case because it has been adequately covered by Professor Blakey's presentation, this morning.

That is all I have to say in this presentation, Mr. Chairman. Chairman Strokes. Thank you, sir.

I think this is probably an appropriate place for us, then, to take a recess.

The committee will recess until 2:30 this afternoon, at which time we will resume questioning of the witness.

[Whereupon, at 1:43 p.m., the select committee was recessed, to reconvene at 2:30 p.m.]

AFTERNOON SESSION

Chairman Strokes. The committee will come to order.

The Chair recognizes counsel for the committee, Mr. Klein.

Mr. Klein. Thank you, Mr. Chairman.

Mr. Chairman, I would only like to state for the record that I have spoken to Mr. Arther, the committee's polygraph consultant, and his account of the events leading to the writing of his report are significantly different than those stated today by Mr. Hart, and I understand that Mr. Hart has stated that he was only repeating what was told to him by the Office of Security. But for the record, Mr. Arther states that he accepted and read all materials made available to him by the CIA and considered all of these materials in reaching these conclusions.

That is all I have to say, Mr. Chairman.

Thank you very much.

Chairman Strokes. Thank you, Counsel.

The Chair will recognize the gentleman from Connecticut, Mr. Dodd, for such time as he may consume, after which the committee will operate under the 5-minute rule.

Mr. Dodd. Thank you, Mr. Chairman.

Mr. Hart, thank you for your statement this morning.

Mr. Hart, let me ask you this question at the very outset.

Would it be fair for me to conclude that it was the responsibility of the Central Intelligence Agency to find out, from whatever available sources between late 1963 and 1964, what the activities and actions of Lee Harvey Oswald were during his stay in the Soviet Union?

TESTIMONY OF JOHN HART—Resumed

Mr. HART. Congressman, I want to answer that by telling you that I do not know——

Mr. DODD. Let me say this to you, Mr. Hart.

Wouldn't it be a fair assessment that the Central Intelligence Agency had the responsibility during that period of time to examine whatever information could point to or lead to those activities, to provide us with information regarding Lee Harvey Oswald's activities in the Soviet Union? Isn't that a fair enough, simple enough statement?

Mr. HART. Sir, I can't agree to that in an unqualified manner for several reasons. May I give the reasons in sequence?

Mr. DODD. Go ahead.

Mr. HART. In a telephone conversation between the then Director of Central Intelligence, John McCone, and Mr. J. Edgar Hoover, which took place on the 16th of November 1963 at 11:20 a.m., Mr. McCone said:

I just want to be sure that you were satisfied that this agency is giving you all the help that we possibly can in connection with your investigation of the situation in Dallas. I know the importance the President plays on this investigation you are making. He asked me personally whether CIA was giving you full support. I said they were, but I just wanted to be sure that you felt so.

Mr. Hoover said "We have had the very best support that we can possibly expect from you."

Then the implication through the rest of this document, which I am perfectly happy to turn over to the committee, is that Mr. McCone and Mr. Hoover feel that the main responsibility for the investigation falls on the FBI.

My second point is that when I came on board in the Agency, having been recalled in mid-June, I asked about the responsibility for the Lee Harvey Oswald matter because I knew that he had entered into the overall Nosenko case. I was told that the responsibility for the investigation had rested almost entirely with the FBI. There were a couple of reasons for that.

First, it was understood, although I realize that there had been violations of this principle, Mr. Congressman, it was understood that the jurisdiction of the Central Intelligence Agency did not extend within the territorial limits of the United States, and the Central Intelligence Agency had no particular, in fact, did not have any assets capable of making an investigation within the Soviet Union, which were the two places really involved.

Third, I want to say that in my own investigation, since I intended to depend entirely or almost entirely on documentary evidence for the sake of accuracy, I ruled out going into the Lee Harvey Oswald matter because I realized that I could not possibly have the same access to FBI documents which I had in the Agency where I had formerly been employed which gave me complete access to everything I wanted.

Mr. DODD. Mr. Hart, as I understand what you have given me in response to my question is the fact that you assumed that the FBI was principally responsible for the investigation, and that Mr. McCone, as Director of the Central Intelligence Agency, in his conversation with Mr. Hoover, indicated that he would be cooperating fully in that investigation. So to that extent, and that is the extent I am talking about, it was the responsibility of the Central Intelligence Agency to cooperate in a responsible fashion in ferreting out whatever information would bear on the activities of Lee Harvey Oswald when he was in the Soviet Union, utilizing whatever sources of information were available to the Central Intelligence Agency in achieving that goal.

Is that not a correct and fair statement of the responsibilities of your Agency?

Mr. HARR. Insofar as I am aware of them. Keep in mind please, Congressman, that I had nothing to do with this case. I do not know about—

Mr. DODD. I am asking you Mr. Hart, for a comment about the activities of the Agency, not specifically your actions as one individual. You spent 24 years with the Agency, so you are familiar with what the responsibilities of the Agency are.

Mr. HARR. My response to that is that I believe that the Agency should have done everything that it could to assist the FBI. I do not know exactly what the Agency did to assist the FBI, nor do I know what relevant assets or capabilities the Agency had during the time we are concerned with to take any relevant action.

Mr. DODD. All right.

But you are answering my question; you are saying, "yes," in effect. It was their responsibility to assist the FBI or do whatever

else was necessary in order to gain that information about Lee Harvey Oswald's activities when he was abroad.

Mr. HARR. Congressman, I have to repeat that there may have been agreements between the Agency and Mr. Hoover or other parts of the Government of which I am not aware. I, for example, am virtually without knowledge of a very long span of time during which the Director of the Central Intelligence Agency and Mr. Hoover were barely on speaking terms. I know that it was very difficult for the two Agencies to get along. I do not happen to know the reasons for it, and I am in no position to judge what they did, why they did it or what they should have done in order to resolve the lack of cooperation.

Mr. DODD. Well, after listening to your statement for 1 hour and 40 minutes this afternoon, do I take it that you would concede the point that, as the CIA's activities pertain to one vitally important source, potential source of information namely, Mr. Nosenko, that in the handling of that potential source of information, as it bore on the assassination of a President of the United States, the Central Intelligence Agency failed in its responsibility miserably?

Mr. HARR. Congressman, within the context of the total case, I would go further than that. I would say that the Agency failed miserably in its handling of the entire case, and that since the Lee Harvey Oswald question was part of that case; yes.

Mr. DODD. And, Mr. Hart, I am not going to—I will ask you if you recall with me, basically, the conclusion or one of the conclusions of the Warren Commission report.

Were we not told in the conclusion of the Warren Commission report that "All of the resources of the U.S. Government were brought to bear on the investigation of the assassination of the President," and in light of your last answer, that conclusion was false?

Would you agree with me?

Mr. HARR. Well, Congressman, I do not like to have my rather specific answer extrapolated.

Mr. DODD. But we do consider the Central Intelligence Agency to be part of the U.S. investigatory body; don't we?

Mr. HARR. I do.

Mr. DODD. And you just said they failed miserably.

Mr. HARR. I said they failed miserably in the handling of this

whole case.

Mr. DODD. Therefore, it would be fair to say that the conclusion of the Warren Commission report in its statement that all of the resources of the U.S. Government were brought to bear in the investigation of the death of the President is an inaccurate statement. That is not a terribly difficult piece of logic to follow, I don't think.

Mr. HARR. It requires me to make a judgment, which I am not sure that I am willing to make, because I can think of possible other evidence which might come up which might show that there is a case to support the fact that the leader, top leadership of the Agency... may have thought they were bringing all their resources to bear. I simply do not know that.

Mr. DODD. The only question left, it would seem to me, in going back to Mr. Blakey's narration at the outset of this part of our

investigation, where he noted that the Nosenko case was important in two areas. One had to do with the efficiency, the effectiveness, the thoroughness of the CIA's performance, and, second, the credibility of Mr. Nosenko.

It would seem to me, in response to the last series of questions you have just given me, that we have answered the first question, and what is left is the second question, that is, whether or not this committee and the American public can believe Mr. Nosenko's story with regard to the activities of Lee Harvey Oswald during his tenure in the Soviet Union.

And Mr. Hart, I would like to ask you, in light of your testimony today, again going more than an hour and a half, why should this committee believe anything that Mr. Nosenko has said when, after your testimony, you state that he was intimidated, not interrogated, for more than 3 years, that he was probably hallucinating during various stages of that interrogation, that he was, according to your testimony, a man of a very short memory; that he was drunk or at least heavily drinking during part of the questioning; that there are no accounts, verbatim accounts, of some of the interrogation but rather notes taken by people who didn't have a very good knowledge of Russian. Why then should we believe any of the statements of Mr. Nosenko, which from point to point contradict each other, in light of the way he was treated by the Central Intelligence Agency from the time he detected in January of 1964 until today?

Mr. HARR. I believe that there are important reasons why you should believe the statements of Mr. Nosenko. I cannot offhand remember any statements which he has been proven to have made which were statements of real substance other than the contradictions which have been adduced today on the Lee Harvey Oswald matter, which have been proven to be incorrect. The important things which he has produced, which we have been able, which the Agency have been able to check on, have, by and large, proved out. The microphones were in the Soviet Embassy. He has clarified the identities of certain Soviet agents who are in this country. His information led to the arrest of an extremely important KGB agent in an important Western country. The volume of material which he has produced far exceeds my ability to have mastered it but it has been found useful over the years, and to the best of my knowledge, it has been found to be accurate.

Mr. DODD. What you are asking us, therefore, to believe is, because Mr. Nosenko may be credible on certain issues and in certain areas, he is therefore credible in all areas.

Mr. HARR. No, sir. I am not asking you to believe anything in connection with his statements about Lee Harvey Oswald. I am only asking you to believe that he made them in good faith. I think it is perfectly possible for an intelligence officer in a compartmented organization like the KGB to honestly believe something which is not true.

Mr. DODD. Which statements of Mr. Nosenko's would you have us believe? Have you read, by the way, the report that we sent you, a 40-page report, that was sent last week to the Central Intelligence Agency pursuant to the request of the Agency?

Mr. HARR. Are you speaking of the report which, the essence of which, Professor Blakey read today?

Mr. DODD. Yes, I am.

Mr. HARR. Yes, I have read that.

Mr. DODD. You have read that report?

Mr. HARR. Yes.

Mr. DODD. I am curious, Mr. Hart, to know why—it was my belief and understanding, and I am really curious on this point—why it was that you didn't address your remarks more to the substance of that report than you did? I don't recall you once mentioning the name of Lee Harvey Oswald in the hour and 30 minutes that you testified, and I am intrigued as to why you did not do that, why you limited your remarks to the actions of the Central Intelligence Agency and their handling of Nosenko, knowing you are in front of a committee that is investigating the death of a President and an essential part of that investigation has to do with the accused assassin in that case; why have you neglected to bring up his name at all in your discussion?

Mr. HARR. The answer is a very simple one, Congressman. I retired some years ago from the Central Intelligence Agency. About 3 weeks ago I received a call from the Central Intelligence Agency asking me to, if I would, consent to be the spokesman before this committee on the subject of the Nosenko case. I said that I will be the spokesman on the subject of the Nosenko case but I will not be the spokesman on the subject of Nosenko's involvement with Lee Harvey Oswald. That was a condition of my employment. And if they had attempted to change that condition before I came before this body, I would promptly have terminated my relationship because I do not want to speak about a subject concerning which I do not feel competent.

Mr. DODD. Do you appreciate our particular difficulty here today in that our responsibility and obligation is to focus our attention more directly on that aspect than on the other, and that we are a bit frustrated in terms of trying to determine what the truth is with regard to the activities of the Agency as they pertain to Mr. Nosenko's statements regarding the activities of Lee Harvey Oswald?

Mr. HARR. Congressman, I fully appreciate the difficulty, but I must observe that it is not a difficulty which I created. I was perfectly frank about what I was willing to testify about and what I was not willing to testify about.

Mr. DODD. So it would be fair for me to conclude that really what the Central Intelligence Agency wanted to do was to send someone up here who wouldn't talk about Lee Harvey Oswald.

Mr. HARR. I personally would not draw that conclusion, but I think that is a matter best addressed to the Director of Central Intelligence rather than to me.

Mr. DODD. Well, you told them you wouldn't talk about Lee Harvey Oswald and they said that is OK you can go on up there. Mr. HARR. I told them, once I came on board, that is as I saw it, a crucial question lay here in the credibility of Lee Harvey—of Nosenko, and that I thought I was qualified to address myself to the question of the credibility of Nosenko, now I mean the general credibility of Nosenko.

Mr. DODD. But you cannot really testify as to the credibility of Mr. Nosenko with regard to statements he may have made about Lee Harvey Oswald's activities in the Soviet Union.

Mr. HARR. I can say this, and here you realize that I am entering into an area of judgment, it is my judgment that anything that he has said has been said in good faith. I base that judgment on an enormous amount of work on this case in which I see no reason to think that he has ever told an untruth, except because he didn't remember it or didn't know or during those times when he was under the influence of alcohol he exaggerated.

Mr. DODD. You understand our difficulty. We are trying to find out which one of his statements are true. All right?

Do you have that report in front of you, by the way, the one that we sent you?

Mr. HARR. No, sir, I do not have it in front of me.

Mr. DODD. Mr. Chairman, could we provide the witness with the copy?

Chairman STOKES. Do you have it with you, sir?

Mr. HARR. I have what we were given this morning, which is substantially the same thing, I believe, as the one we received. I believe that Professor Blakey had some items in this morning which were not even in here; is that correct, sir?

Mr. BLAKEY. The report as read is a partial reading of what was there. The narration that preceded it was not given to you before you came, although of course it was given before you testified. The report that was given to the public is substantially the report that was given to you. There have been some grammatical changes in it, correction of some typographical errors, but all matters of substance are the same.

Mr. HARR. Thank you.

Mr. DODD. Is that a complete copy of the report that Mr. Hart has in front of him?

Mr. BLAKEY. Yes.

Mr. DODD. Mr. Hart, just some of them. I don't want to belabor this point but to impress upon you the difficulty we have in light of what you have said this afternoon, in terms of us trying to determine what in fact we can believe from Mr. Nosenko's story. Turn to page 27 or 28 of that report, if you would, please, 27 first. Look down around the middle of the page, and let me begin reading there in our report.

Speaking to the CIA on July 3, 1964, Nosenko was specifically asked whether there was any physical or technical surveillance on Oswald, and each time he replied "No."

In 1964, after stating to the CIA that there was no technical and physical surveillance of Oswald, Nosenko made the following statement upon being asked whether the KGB knew about Oswald's relationship with Marina before they announced that they were going to be married:

Answer: "They (KGB) didn't know she was a friend of Oswald until they applied for marriage. There was no surveillance on Oswald to show that he knew her. Although in 1978 Nosenko testified that there were seven or eight thick volumes of documents in Oswald's file, due to all of the surveillance reports and that he could not read the entire file because of them, in 1964 he told the FBI agents that he 'thoroughly reviewed Oswald's file.' There was no mention of seven or eight thick volumes of surveillance documents.

Now, there, and I should have probably started up above, but there we have two cases where, one, he is claiming that there was

no surveillance. Then he is stating there was surveillance. He is telling us that he, on the one hand, didn't have the opportunity or didn't see any reports on Oswald from Minsk and then turns around and says that he did have a chance to look at them.

Which can we believe? I mean these are two contradictory statements by a man who, according to your testimony, may be acting in good faith, but we are confronted with two different sets of facts.

Which do we believe? Can we in fact believe him, if we accept your testimony this afternoon that he went through this outrageous treatment for a period of more than 3 years?

Mr. HARR. Congressman, I think what this boils down to, if I may say so, is a question of how one would, faced with a choice as to whether to use this information or not, would do so. It would be a personal decision. If I were in the position of this committee, I frankly would ignore the testimony of Mr. Nosenko but I wouldn't ignore it because I think it was given in bad faith.

Let me express an opinion on Mr. Nosenko's testimony about Lee Harvey Oswald. I, like many others, find Mr. Nosenko's testimony incredible. I do not believe, I find it hard to believe, although I, as recently as last week, talked to Mr. Nosenko and tried to get him to admit that there was a possibility that he didn't know everything that was going on, I find it very hard to believe that the KGB had so little interest in this individual. Therefore, if I were in the position of deciding whether to use the testimony of Mr. Nosenko on this case or not, I would not use it.

I would like to say, just to conclude my remarks, let me tell you why I don't believe it. I had 24 years of experience in a compartmented organization, and I was chief of several parts of the organization which had done various things at various times which came under investigation, happily not while I was in charge of them. I will make one specific, give you one specific example.

I was once upon a time chief of what we can call the Cuban Task Force, long after the Bay of Pigs, within the Agency. At some point I was asked whether I knew anything, whether I thought there had been an attempt to assassinate Castro. I said in all good faith that I didn't think there had, I had absolutely no knowledge of this. It had been kept from me, possibly because my predecessor several times removed had taken all the evidence with him. I didn't know about it, but I said it in good faith. And I think it is very possible that an officer of Nosenko's rank might have functioned within the KGB and not known everything which was going on in regard to this particular man.

Mr. DODD. So you would suggest to this committee that we not rely at all on Mr. Nosenko for information that could assist us in assessing the activities of Lee Harvey Oswald in the Soviet Union?

Mr. HARR. I believe as a former intelligence officer in taking account of information of which there is some independent confirmation if at all possible, and there is no possibility of any information, independent confirmation of this, and on the face of it, it appears to me to be doubtful. Therefore, I would simply disregard it.

Mr. DODD. I would like to, if I could—first of all, do you still maintain your security clearance?

This much we know—Nosenko was in the possession of the CIA, not the FBI, isn't that true?

Mr. HARR. That is true, sir, yes.

Chairman STOKES. Now, we know that under American law the CIA has responsibility for matters outside the jurisdiction of the United States, don't we?

Mr. HARR. Yes, sir.

Chairman STOKES. We know that the FBI has primary responsibility within the confines or the jurisdiction of the natural borders of the United States, isn't that true?

Mr. HARR. Within the borders of the United States, yes, sir. Chairman STOKES. Therefore, it is simple logic under law that with reference to the activities of Oswald in Russia, that would fall within the domain and the jurisdiction of the CIA, would it not?

Mr. HARR. It would fall within the jurisdiction, but not necessarily the competence to do anything about that jurisdiction, yes. Chairman STOKES. Well, being a historian, and being a part of the CIA as long as you have, you know that the CIA had a certain responsibility in terms of the investigation of the facts and circumstances surrounding the assassination of President Kennedy, do you not?

Mr. HARR. Yes.

Chairman STOKES. Now, this much we also know, that Nosenko was under arrest and was in jail in the United States, isn't that true?

Mr. HARR. That is right, sir.

Chairman STOKES. And during the period he was under arrest and in jail, out of 1,277 days he was only questioned in part 292 days, and according to your calculation 77 percent of the time he was not being questioned, is that correct?

Mr. HARR. Absolutely correct, sir, yes.

Chairman STOKES. Then obviously the only conclusion that we can come to is that with reference to the activities of Oswald, through Nosenko, that there was no investigation of that matter by the CIA. Isn't that true?

Mr. HARR. Off the top of my head I would tend to say that was true, because I have not seen any indications in those files which I have read of any energy on the subject.

I do want to point out that simply by virtue of the fact that a piece of correspondence was about Lee Harvey Oswald it would have been in a file which I did not ask for because I had pointed out that I could not do an adequate job which met my standards of scholarship if I didn't have access to all the documents.

So, I don't think I am really quite—I don't think I am completely competent to answer that question.

Chairman STOKES. Let me ask you this. One of the responsibilities of this committee is to assess the performance of the agencies in relation to the job that they did, cooperating with one another and with the Warren Commission in terms of the investigation of the assassination.

In light of your statements here to other members of the committee with reference to the performance of the agency which you have described as being dismal, et cetera, if I were to ask you to rate the performance of the agency in this matter on a scale of 1 to

10, with 10 representing the highest number, top performance, where would you rate them?

Mr. HARR. I would rate it at the lowest possible figure you would give me an opportunity to use. I am perfectly willing to elaborate on that, Mr. Chairman.

I have never seen a worse handled, in my opinion, worse handled operation in the course of my association with the intelligence business.

Chairman STOKES. I have one other question I would like to ask you.

In the final report submitted by the Warren Commission, page 18 says this: "No limitations have been placed on the Commission's inquiry. It has conducted its own investigation, and all government agencies have fully discharged their responsibility to cooperate with the Commission in its investigation."

"These conclusions represent the reasoned judgment of all members of the Commission and are presented after an investigation which has satisfied the Commission that it has ascertained the truth concerning the assassination of President Kennedy to the extent that a prolonged and thorough search makes this possible."

Then at page 22 it further says this: "Because of the difficulty of proving negatives to a certainty, the possibility of others being involved with either Oswald or Ruby cannot be established categorically. But if there is any such evidence, it has been beyond the reach of all the investigative agencies and resources of the United States, and has not come to the attention of this Commission."

In light of your testimony here today with reference to the performance of the agencies, obviously the conclusions of the Warren Commission which I have just read to you are not true, are they?

Mr. HARR. May I add one point. It is my understanding that the Nosenko information was made available to the Warren Commission but it was made available with the reservation that this probably was not valid because this man was not a bona fide defector and that there was a strong suspicion that he had been sent to this country to mislead us.

And therefore again speaking, sir, from memory and as somebody who has already told you that he is not an expert on this subject, I believe that the Warren Commission decided that they simply would not take into consideration what it was that Nosenko had said.

Chairman STOKES. But in light of the fact that we now know that the CIA did not investigate what Nosenko did tell them about Oswald in Russia, then obviously the Commission then still could not rely upon that data for that reason. Isn't that true?

Mr. HARR. Mr. Chairman, I am not sure, when you use the word "investigate"—I am not absolutely certain, and I don't want to quibble about semantics needlessly, but I am not actually certain that there was much more to do.

I hesitate to judge in retrospect their actions on that basis. I would make harsh judgments on most other aspects. But I don't really know whether they did all they could or not because I do not happen to know whether, for example, all the other defectors were queried on this subject. No such file came to my attention.

So, I am once again having to say that I don't know for sure the answer to your question.

Chairman Stokes. My time has expired.
The gentleman from Connecticut, Mr. Dodd.

Mr. Dodd. Thank you, Mr. Chairman.
Mr. Hart, in response to Chairman Stokes' question in terms of how you would rate the CIA's performance if you had to rate it on a scale of 0 to 10, I gather from your answer that you would rate it zero, that being the lowest score.

Mr. HARR. Yes, sir.

Mr. Dodd. Let me ask you to hypothesize with me for a minute. Let's assume, given the level of performance that you have just rated the Central Intelligence Agency's activities during that period of time, let's just suggest that if in fact there had been a conspiracy, or had been some complicity—and by that statement I am not in any way suggesting that I believe there was, but let's just for the sake of argument say there was—are you saying in effect that even if there had been some involvement by the Soviets that the caliber of the activity of the CIA during that period of time was such that we wouldn't have ever found out anyway?

Mr. HARR. No, sir, I am not saying that.
Mr. Dodd. You used a word in response to Mr. Sawyer. During your testimony you raised a point. He heard you use the word "disposal"——

Mr. HARR. Yes, sir.

Mr. Dodd [continuing]. In talking about a memo that you were quoting, on how Mr. Nosenko would be treated if certain things didn't occur. Is that a word of art in the Central Intelligence Agency and, if so, what does it mean?

Mr. HARR. I would like to make——there is a two-part answer, Congressman. I would like to say that the word "disposal" is often used, I believe, rather carelessly because it can mean simply in the case of, say, a refugee whom you have been handling how do we dispose of this matter, how do we relocate him.
Now, the second part of my answer will be more specific. I think I know what it meant in this case, but I would prefer to depend on documents, and I will read you a document.

I am about to read you a very brief excerpt from a document, also written in the handwriting of deputy chief SB, which was not a document which to the best of my knowledge he ever sent anybody.

He appears to have been a man who didn't think without the help of a pencil. Therefore, he wrote, tended to write his thoughts out as they occurred to him.

I will read you the document. I don't believe that I am going to have to make any judgment. I think you will be able to draw your own conclusions, sir.

He was talking about the problems which were faced by the fact that a deadline had been given the organization to resolve the case. Mr. Helms had given them a deadline. As I have previously said, he believed that there would be "devastating consequences" if this man were set free.

What he wrote was, "To liquidate and insofar as possible to clean up traces of a situation in which CIA could be accused of illegally holding Nosenko."
Then he summed up a number of "alternative actions," which included—and I start with No. 5 simply because the first four were unimportant.

"No. 5, liquidate the man; No. 6, render him incapable of giving coherent story (special dose of drug, et cetera). Possible aim, commitment to loony bin." Some of the words are abbreviated, but I am reading them out in full for clarity.

"No. 7, commitment to loony bin without making him nuts."
Mr. Dodd. The word "disposal," was that the word "liquidation" you were talking about?

Mr. HARR. I am drawing the conclusion that disposal may have been a generalized word which covered inter alia these three alternatives.

Mr. Dodd. There is no question about what the word liquidate means, though, is there?

Mr. HARR. No, sir.
Mr. Dodd. Since I have got you here, and you have that memo right in front of you, the words "devastating effect" that were predicted if Nosenko were released, to your knowledge, Mr. Hart, are you aware of any contract that may exist between the Central Intelligence Agency and Mr. Nosenko that in payment of the money that he has received he would not tell his story and that, therefore, we averted the alternative suggested in that memo or that note by the payment of money to Mr. Nosenko?

Mr. HARR. No, sir. I can tell you that Mr. Nosenko will learn of this for the first time when he reads about it in the press because this information has been known to me, and I was the one in fact first to run across it.
I didn't feel that I needed to add to the miseries of Mr. Nosenko's life by bringing it to his attention. So, I did not do so.

Mr. Dodd. Let me ask you this. In response to Chairman Stokes, you really—and I appreciate the position you are in in not being able to comment on what steps have been presently taken by the current administration or the immediately previous administration to reform some of the practices that have gone on in the past. But can you tell us this, if you are not fully capable of talking about the reforms: Are some of these characters still kicking around the Agency, or have they been fired?

Mr. HARR. There is nobody now——well, I will make one exception to that. There is one person now in the Agency whose activities in this regard I could question, but I do not like to play God. I know that——

Mr. Dodd. Is it the deputy chief of the Soviet bloc?

Mr. HARR. No, sir.

Mr. Dodd. He is gone?

Mr. HARR. Yes, sir.
Mr. Dodd. I gathered by what you have told us here today that you really cannot rely on the statements of Mr. Nosenko for a variety of reasons, and that your suggestion to us was to discount his remarks, albeit you believe that in good faith he is a bona fide defector.

Mr. SAWYER. Well, do you know the answer to it?
Mr. HARR. I think I know the answer to it, but I believe that the Director of Central Intelligence should reply to that. I am not a lawyer, and I do not have counsel to consult here. But I do feel that is an improper question for me to answer.

Mr. SAWYER. Now, you say Helms had limited information, or at least some limitation on the information that he received on this. He must have known about this torture vault or whatever it is you had specially built. He would have known about that, wouldn't he?
Mr. HARR. He sent two people down to take a look at it before it was used. The two people happened to be the chief of the SB division, and the chief of the CIA staff.

Also, if I remember correctly, the chief of the Office of Security. They came back and said that it was a satisfactory place to keep someone.
Mr. SAWYER. But he must have known the general format of it, wouldn't you think?

Mr. HARR. I can't say how much he knew.
Mr. SAWYER. He also knew apparently that they had held him in solitary confinement for 1,277 days.
Mr. HARR. He did know that, yes, sir.

Mr. SAWYER. And actually, he thought they were interrogating him the whole 1,277 days, was that the thrust of the fact—
Mr. HARR. Well, I am not sure he thought they were interrogating him every day. But I—and here I want to make clear that I am entering into the realm of presumption—I never saw any indication that anybody told him that 77 percent of the time that this man was in this prison, that nothing was happening to him.

Mr. SAWYER. He knew, too, apparently that they wanted to use sodium pentathol on him, which he turned down.
Mr. HARR. Sodium amytal, but the same thing.
Mr. SAWYER. Did the Department of Justice know or were they advised what you intended to do with this man, when you were consulted?

Mr. HARR. I do not believe that that was spelled out in detail. At the time that Mr. Helms went over to see Mr. Katzenbach, as I interpret events, nobody realized that this man would be held that long. I am quite sure that nobody had any thoughts that he would be held that long.

Mr. SAWYER. Well, did they tell the Department of Justice that they planned to subject this man to torture over this period of time by depriving him of adequate food and reading material?
Did the Department of Justice have any information what they were proposing or even the outlines of what they were proposing to do to this man?

Mr. HARR. I do not believe that they did.
Mr. SAWYER. I don't have anything else. Mr. Chairman. Thank you.

Chairman STOKES. The time of the gentleman has expired.
Mr. HARR. I just have one question. It is based upon what I have heard here today. It troubles me, and I am sure that it is going to trouble some of the American people.

The American people have just spent approximately \$2.5 million for this congressional committee to conduct a 2-year investigation

of the facts and circumstances surrounding the death of President John Kennedy.
Pursuant to that, this committee met with Mr. Nosenko 2 successive evenings, where we spent in excess of 3 or 4 hours with him each of those evenings.

In addition to that, counsel for this committee, Kenny Klein, spent in excess of 15 hours with him preparing before the committee met with him. In addition to that, Mr. Klein has perhaps spent hundreds of hours at the CIA researching everything about Mr. Nosenko.

I want to predicate my question, my final question to you, upon this statement which appears in the staff report at page 17. It was read by Chief Counsel Blakey here earlier today in his narration.
It says:

Following acceptance of Nosenko's bona fides in late 1968, an arrangement was worked out whereby Nosenko was employed as an independent contractor for the CIA effective March 1, 1969.
His first contract called for him to be compensated at the rate of \$16,500 a year. As of 1978 he is receiving \$35,325 a year. In addition to regular yearly compensation in 1972, Nosenko was paid for the years 1964 through 1968 in the amount of \$25,000 a year less income tax. The total amount paid was \$87,052. 1964 through July 1973 He also received in various increments from March 1964 through July 1973 amounts totaling \$50,000 to aid in his resettlement in the private economy.

We know in addition to that now about the home we don't know the cost of, that the CIA has built for him.
To this date, Nosenko is consultant to the CIA and FBI on Soviet intelligence, and he lectures regularly on counterintelligence.

So that I can understand, and the American people can understand, the work of this congressional committee, do I understand you correctly when you say that with reference to what Nosenko has told this congressional committee about the activities of Oswald in Russia, this man who is today, not 15 years ago but today, your consultant, based upon everything you know about this bona fide defector, you would not use him?

Mr. HARR. Mr. Chairman, when the question arose about whether I would use—depend on the information which he offered on the subject of Lee Harvey Oswald, I replied that I find that information implausible, and therefore I would not depend on it.
I did not make that same statement about any other information which he has offered over the years or the judgments which he has given. I was addressing myself specifically to his knowledge of the Oswald case. I was making a judgment.

Chairman STOKES. Your judgment is that from everything you know about him, and from what you know that he knew about Oswald in Russia, you would not depend upon what he says about it?

Mr. HARR. I would not depend on it, but I am not saying that he wasn't speaking in good faith because I repeat that one of the principal qualities of an intelligence organization, whether we like intelligence organizations or don't like intelligence organizations, is compartmentation as it is called.

That means that a person at his level might well not know about something which was going on up at a higher level. The KGB is a very large organization, considerably dwarfing any intelligence organization which we have and, therefore, it is perfectly possible for

something else to have been going on which he wouldn't have known.

Chairman STOKES: Can we then leave the term "in good faith," and can you tell us whether he would be telling us the truth?

Mr. HARR: He would be telling us the truth insofar as he knows it, yes.

Chairman STOKES: Thank you.
The Chair recognizes counsel for the committee, Mr. Gary Cornell.

Mr. CORNWELL: Mr. Hart, may we look at the document that you referred to several times that has the list of the ways in which they could have disposed of the problem that Nosenko posed at the time of his contemplated release? Is that a document we could look at?

Mr. HARR: I would like, if I may, to simply excerpt this part of it. If that is an acceptable procedure, I will give you exactly what it was that I presented in my testimony.

I have here a mixture of things which have been declassified at my request, and not declassified and so forth. So, if you will allow me simply to make this available. There we are.

[The document was handed to counsel.]

Mr. CORNWELL: Mr. Hart, do you not have with you the items that would appear on the list prior to item number five?

Mr. HARR: I do not have that with me. It would be possible to dig them up. The reason that they are not in there is that I considered them insignificant. I consider this obviously very significant, and I simply wasn't using up space with insignificant things.

In many cases throughout my study I was using portions of rather long documents. But it would be possible to find that, yes.

Mr. CORNWELL: All right. The portion that you did bring with you, though, however, seems to refer to notes which were prepared prior to 1968, is that correct?

Mr. HARR: Yes, sir.

Mr. CORNWELL: By the deputy chief of the Soviet branch.

Mr. HARR: Yes, sir.

Mr. CORNWELL: And at a time in which the Agency was contemplating the release of Nosenko, the release from confinement.

Mr. HARR: Yes. The director said, as I remember his specific words, "I want this case brought to a conclusion."

First he asked for it to be brought to a conclusion within 60 days, which I think would have put the conclusion in sometime in September of 1966. Later on they went back to him and said, "We can't do it that fast," and he extended the deadline until the end of the year.

Mr. CORNWELL: And this was the same deputy chief of the Soviet branch who earlier in your testimony you stated had referred to potentially devastating effects from that release; is that correct?

Mr. HARR: He later used that term. That term was used by him much later after he was no longer connected with the Soviet Division. That was in the letter which I described he wrote, so that it bypassed me as his superior, and I happened to find it in the file.

Mr. CORNWELL: And you testified that at one point, I believe, you didn't know specifically what dangers this deputy chief foresaw might stem from his being released; is that correct?

Mr. HARR: He had refused to tell me. He refused to tell me. I can read you that.

Mr. CORNWELL: No, I think we remember that. But at least in this memo it appears that the principal fear that he had was with respect to the CIA being accused of illegally holding Nosenko; is that correct?

Mr. HARR: That was a fear expressed in there. I frankly think that there must have been something else in his mind, but I, for the life of me, don't know what it was. He had built up a picture which was based on a good deal of historical research about a plot against the West, and since I don't happen to be able to share this type of thing, I don't know.

Mr. CORNWELL: I think we understand.

Let me simply ask you this: Nosenko has never publicly complained of his illegal detainment, has he? He has never taken that to any authorities and asked that anything be done with it, has he?

Mr. HARR: He, I believe, when he was released, that in connection with the release but not as a condition of release, you must understand that this was not a condition of the release, but as of the time that the settlement was reached with him, I believe that he signed some type of document saying "I will no longer, I will not make further claims on the organization," something of that sort. I have never actually read the administrative details.

Mr. CORNWELL: That was the point that I was coming to.

Thank you.

Mr. HARR: Yes.

May I say something more, Mr. Cornell? He does periodically get very upset. He got very upset, for example, on the subject of the Epstein book. He is a very—he is a normal human being, and when he feels that he is being maligned, he gets just as upset as anybody else around.

Mr. CORNWELL: But your conclusion then is that in 1968 he was paid a large sum of money. In connection with it, he agreed not to voice any complaints about the way he was treated prior to that, and the fears that were at least in certain persons' minds prior to that did not come to pass.

Mr. HARR: I don't believe, I do not interpret these events, although they can be so interpreted, as his being paid off not to cause trouble. The fact is that two responsible members of the Agency had made commitments to him, and they are clearly, you can hear them, you can see the tapes and you can, I believe, hear them on the tapes if you listen to them talking. They made commitments to him that they were going to do this.

Mr. CORNWELL: Thank you.

I have no further questions.

Chairman STOKES: You don't think though, Mr. Hart, that if he were to sue the CIA for his illegal arrest and detention that they would continue to keep him as a consultant, do you?

Mr. HARR: Sir, you are getting into a point which I cannot speak about. I have no idea what they would do. As a matter of fact, I don't think he would do it. I think it is suppositions.

Mr. CORNWELL: Mr. Chairman, may we have the document that Mr. Hart provided marked as an exhibit and placed in the record?

Chairman Stokes. Without objection, and he may want to substitute a Xeroxed copy for the original.
Mr. CORNWELL. Thank you. It will be JFK F-427.
[JFK exhibit F-427 follows.]

-- 23 --

Deputy Chief, SA
in a series of handwritten notes, set forth the Task Force objective as he saw it: "To liquidate & insofar as possible to clean up traces of a site in which CIA cd be accused of illegally holding Nosenko." Further on, he summed up a number of "alternative actions," including:

5. Liquidate the man.
6. Render him incapable of giving coherent story (special dose of drug etc.) Poss aim commitment to looney bin.
7. Commitment to loony bin w/out making him nuts. 82

JFK EXHIBIT F-427

Chairman Stokes. Mr. Hart, at the conclusion of a witness' testimony before our committee, under the rules of our committee, he is entitled to 5 minutes in which he may explain or comment in any way upon the testimony he has given before this committee. I at this time would extend the 5 minutes to you if you so desire.
Mr. HART. I don't think I will need 5 minutes, Mr. Chairman, but I thank you for your courtesy.

The final remark that I would like to make is that I have had 31 years, approximately, of Government service, both military and civilian, and participated fairly actively both as a, first, as a military man in the Army, and then in quasi-military capacities as chief of station in two war zones.

It has never fallen to my lot to be involved with any experience as unpleasant in every possible way as, first, the investigation of this case, and, second, the necessity of lecturing upon it and testifying. To me it is an abomination, and I am happy to say that it does not, in my memory, it is not in my memory typical of what my colleagues and I did in the agency during the time I was connected with it.

That is all, Mr. Chairman. I thank you.

Chairman Stokes. All right, Mr. Hart.

We thank you for appearing here as a witness, and at this point you are excused.

There being nothing further to come before the committee, the Chair now adjourns the meeting until 9 a.m. Monday morning. [Whereupon, at 3:35 p.m., the select committee was adjourned, to reconvene at 9 a.m., Monday, September 18, 1978.]

○

UNITED STATES GOVERNMENT

Memorandum

C A 75-1448
EXHIBIT 6

TO : MR. BASSETT *W/B*

FROM : FRED B. GRIFFITH *FG*

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

DATE: 1/30/75

Dep. AD Inv. _____
Asst. Dir. _____
Adm. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

RWAB/FG

Attached hereto is self-explanatory memorandum and enclosure from Department requesting review of transcript of executive session of Warren Commission to determine if it can be declassified in whole or in part. Transcript pertains to emergency meeting of Commission on 1/22/64 to discuss information to effect Lee Harvey Oswald was a Bureau informant. Page 7 deals with discussion as to FBI capability to operate "people" in USSR.

ACTION:

In view of the subject matter of the transcript, particularly that on page 7 which may pertain to a continuing FBI intelligence operation, it is recommended this memorandum and attachment be forwarded to Intelligence Division to review and resolve.

Enclosure

FBG:wjmj

(4)

1 - Mr. Wannall (Branigan)

EX 117

REC 68 62-109090-634

FEB 25 1975

TOP SECRET MATERIAL (STRONG)

10/24

57 MAR 5 1975

*2-7-75
W/B*

Memorandum

83

- Dep. AD Adm. _____
- Dep. AD Inv. _____
- Asst. Dir. _____
- Adm. _____
- Comp. Syst. _____
- Ext. Affairs _____
- Files & Com. _____
- Gen. Inv. _____
- Ident. _____
- Inspection _____
- Intell. _____
- Laboratory _____
- Plan. & Eval. _____
- Spec. Inv. _____
- Training _____
- Legal Coun. _____
- Telephone Rm. _____
- Director Sec'y _____

TO : Mr. W. R. Wannall *wrk/jal*

DATE: 2/7/75

- 1 - Mr. W. R. Wannall
- 1 - Mr. W. A. Branigan
- 1 - Mr. F. B. Griffith
- 1 - Mr. J. P. Lee

FROM : W. A. Branigan *WAB*

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

This memorandum recommends that the transcript of an Executive Session of the Warren Commission for 1/22/64, now classified Top Secret, be declassified. *R. H. J.*

By memorandum of 1/30/75 from Mr. Griffith to Mr. Bassett, it was recommended that the Intelligence Division review the Executive Session testimony of the Warren Commission dated 1/22/64 to determine if it could be declassified. A review of the transcript shows this Session included discussion among the members of the Commission concerning the possibility that Lee Harvey Oswald had been a Bureau confidential informant based on information furnished by Wagner Carr, Attorney General of Texas. Carr said he had received the information from District Attorney Wade of Dallas County. The source of information, unnamed, was described as a member of the press who received this information from one of his sources, also unnamed. The discussion reveals that the members of the Commission felt that the Bureau would not admit that Oswald had been an "undercover agent" even if he had been. In discussing the ability of the FBI to operate agents abroad, Allen Dulles stated that the Bureau might have agents in Russia and "they have some people, sometimes American Communists, who go to Russia under their guidance and so forth and so on under their control."

REC 68 62-109090-633

It is not believed that any of the information reported in this transcript merits classification. The statement concerning our dispatching of American Communists to Russia is quite general and does not pinpoint any particular operation.

JPL:wsk (5)

FEB 25 1975
CONTINUED - OVER

wsk
WAB
57 MAR 10 1975

5/66
10/7/75

Memorandum to Mr. W. R. Wannall
Re: Warren Commission Transcript
Declassification Matter

ACTION:

It is recommended that the Office of Legal Counsel
of the Department of Justice be advised that this Bureau has
no objection to declassifying this document.

WFO/Tue

JPC

J. W. C.