UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

REPLY TO DEFENDANT'S OPPOSITION TO
MOTION FOR ATTORNEY'S FEES AND COSTS

PREFACE

On April 24, 1979, plaintiff Weisberg moved, pursuant to 5 U.S.C. § 552(a)(4)(E), for an award of reasonable attorney fees and other litigation costs reasonably incurred in this lawsuit. In his motion, Weisberg contended that the government's release to him, after three years of bitterly contested litigation, of two of the three Warren Commission executive session transcripts at issue, mean that he had "substantially prevailed" within the meaning of section 552(a)(4)(E) and is therefore eligible for a discretionary award of attorney fees. Arguing that he had acted as a private attorney general vindicating the strong congressional commitment to a national policy of full disclosure of government information, Weisberg urged the Court to exercise its discretion in favor of an award of attorney's fees and costs in this case.

On August 10, 1979--some three and a half months later--the the government filed an Opposition to Weisberg's motion. Although the January 21 and June 23 transcripts were released to Weisberg on the very day that the government's brief in this case was due in

The Court of Appeals, the Opposition alleges that this was a "voluntary" release and one which occurred totally independent of this lawsuit. Because this lawsuit allegedly did not cause the release of these transcripts, the government argues that Weisberg has not "substantially prevailed" and is thus not eligible for an award of attorney's fees and other litigation costs.

Having just engineered for attorney fees, the government goes on to assert that if the Court does not award fees, the amount requested is not reasonable because "[s]ubstantial delays resulting in the accumulation of attorney's hours were not only countenanced by, but caused by plaintiff." [Opposition at 1] The only delay which the government specifically attributes to Weisberg, and upon which it bases this strange argument, is one which resulted from the fact that Weisberg complied with an order of the United States Court of Appeals directing him to file a motion for new trial in the District Court.1/ [See Opposition at 10] Weisberg took the

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1/ This litigation is replete with delays caused by the government. Under the Federal Rules of Civil Procedure, the government was required to answer or object to Weisberg's first set of 25 interrogatories by November 30, 1975. On December 29, 1975, Weisberg filed a motion to compel answers to these interrogatories. The government finally responded to them on January 9, 1976, nearly a month and a half after the time profided by Federal Rule 33.

In addition, the government unjustifiably objected to answering some of the interrogatories. For example, the government refused to answer interrogatory 15, which asked whether Yuri Nosenko was the subject of the June 23 transcript, on the ground that this information was national security classified, even though the National Archives had itself revealed it to The New Republic Magazine. In order to obtain the answers to this and other unanswered interrogatories, Weisberg had to file a second motion to compel. The government, after seeking a two week extension of time, to March 29, 1976, filed its opposition to the motion to compel on April 8, 1976. On May 25, 1976, this Court heard the motion to compel and ordered the government to answer certain interrogatories within ten days. On June 9, 1975, fifteen days later, the government filed its answers. Thus it took 7 and 1/2 months to obtain answers to Weisberg's first set of interrogatories.

Further delays were occasioned by the government's efforts to obstruct Weisberg's third set of interrogatories. In re-

the Court of Appeals' order seriously. The government, it seems, would have had him treat it as some kind of aberrational judicial joke.

The government's good faith, or rather the lack thereof, has been evident throughout this litigation. From the very outset, the

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jecting Weisberg's motion that he be allowed to take tape-recorded depositions, this Court stated that the information which Weisberg needed could be obtained through interrogatories. When Weisberg's counsel noted that he needed to obtain information from the CIA, a nonparty and therefore not subject to the provisions of Federal Civil Rule 33 governing interrogatories, this Court took the position that the government would have to obtain the information from the CIA and stated: "Let me suggest, Mr. Lesar, that Mr. Ryan has enough work to do not to play games in this case." (May 25, 1976 transcript, p. 20)

Accordingly, on July 28, 1976, Weisberg filed a third set of interrogatories. Some were intended to be answered by the GSA, others by the CIA. Many were expressly directed to Mr. Charles A. Briggs, Chief of the Services Staff, Central Intelligence Agency, the officer directly responsible for "classifying" the January 21 and June 23 transcripts under Executive Order 11652.

On October 15, 1976, two and a half months after Weisberg filed his third set of interrogatories, there still had been no response to them by either the CIA or the GSA, so Weisberg filed yet another motion to compel.

On November 12, 1976, the GSA finally filed a response in which they objected to most of the interrogatories. The CIA still did not answer the interrogatories addressed to it. Instead the GSA objected to the interrogatories addressed to the CIA and Mr. Briggs on the ground that "neither Mr. Charles A. Briggs nor the Central Intelligence Agency is a party in the present litigation" and hence could not be required to answer interrogatories under Rule 33. This was directly opposite what this Court had ruled at the May 25 hearing and was clearly a position taken in bad faith and simply as a means of stonewalling Weisberg's discovery and impeding his access to the January 21 and June 23 transcripts.

Before the GSA filed its largely non-responsive answers to Weisberg's third set of interrogatories, Weisberg received notice that his October 15 motion to compel would be heard before a United States Magistrate on November 18, 1978. What ensued was a series of off-the-record conferences in the chambers of the Magistrate which resulted in one delay and obstruction after another. On November 18, 1976, the Magistrate ordered that supplementary answers to Weisberg's third set of interrogatories be filed "so far as possible" no later than November 30, 1976. This was not done. Instead, at the hearing held on December 2, 1976, the Magistrate gave the

government has sought to delay and impede Weisberg's access to these transcripts by whatever obstructionist tactics were available to it. The first of Weisberg's motions to compel asserted that the government's delay in answering his first set of interrogatories was a manifestation of its lack of good faith:

> This is part of a deliberate tactic of stonewalling plaintiff's information requests. Time and again plaintiff, who the government well knows is without the financial resources to pay an attorney, has been forced to sue for documents for which there never was any possible basis for withholding except that of embarrassment to the government.

(December 29, 1975 Motion to Compel Answers to Interrogatories, Memorandum of Points and Authorities, p. 1)

The employment of delaying tactics in this case is one measure of the government's bad faith. The use of such tactics is perhaps more reprehensible in a Freedom of Information Act case than it might be in some others becuase the Act is intended to compel the

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CIA an additional extension of time to respond to the interrogatories. The pretense that the CIA would in fact respond to them was just that. Instead of answering the specific interrogatories posed by Weisberg, on January 3, 1977, the CIA filed a dishonest affidavit by Mr. Charles A. Briggs which did not answer specific interrogatories. In addition, it filed wholesale objections to the interrogatories.

This forced Weisberg to file yet another motion to compel. However, when this motion was to be heard by this Court, the Court decided to "put the cart before the horse" (March 4, 1977 transcript, p. 3) and hear the argument on summary judgment first. The end result of the government's stonewalling was that it obstructed Weisberg's discovery for more than seven months and enabled the government to procure a favorable decision from this Court based upon misrepresentations and falsehoods which this Court accepted at face value.

On appeal in Case No. 77-1831 the government sought successive extensions of time of 32 and 32 days each. On January 10, 1979, Chief Judge Bazelon granted the government's motion for an extension of time to file its brief to January 26, 1978. His order also specified, however, that no further extensions of time would be granted "except for extraordinary cause shown." Subsequently, upon a showing of extraordinary cause, the government's time was extended to February 2, 1978. Ultimately, the government's brief was finally filed in completed form on February 3, 1978.

speedy disclosure of nonexempt government information. But an even more important measure of the government's bad faith in this case is the ineluctable fact that there never was any basis for withholding the January 21 and June 23 transcripts. The government deliberately concocted a fraudulent national security claim as a means of denying Weisberg access to these records. To support its spurious allegations, it submitted false affidavits to the Court.

Unfortunately, the government's bad faith did not cease with the long-delayed delivery of these transcripts to Weisberg. Now it argues in favor of a Catch-22 proposition which puts to shame those conceived by Joseph Heller's fertile imagination. It fantasizes that an agency can defeat an FOIA litigant's claim to attorney's fees whenever it has released the requested records "independent" of the lawsuit for them, even if the agency concocted an entirely spurious basis for withholding them and thus delayed access to them for years. Common sense and the legislative history of the Freedom of Information Act rule out any possibility that this argument can be advanced in good faith.

The government's conduct in claiming that the January 21 and June 23 transcripts were exempt from disclosure on national security grounds amounts to fraud on the Court and an assault upon the integrity of the judicial system. Such conduct, if allowed to go unchecked, will not only effectively subvert the Freedom of Information Act but also will necessarily erode the independence of the district courts, who must and do place reliance upon the truthfulness and accuracy of government affidavits. The time has come for for this Court to act in a manner which warns federal agencies, and the attorneys who represent them, that such conduct will no longer be tolerated. All agencies, and particularly those which deal in national security matters, must be given to understand that severe conseuqences will be visited upon them if they continue to

play games with the Freedom of Information Act and make sport of the federal judges who decide cases arising under it.

ARGUMENT

I. WEISBERG HAS "SUBSTANTIALLY PREVAILED" IN THIS CASE

In order to qualify for a discretionary award of attorney fees under 5 U.S.C. §552(a)(4)(E), a Freedom of Information Act plaintiff must show, as a prerequisite, that he has "substantially prevailed" in the litigation. Alleging that in this case the defendant "voluntarily released two of the three documents withheld due to events entirely independent of this litigation" (Opposition, p. 1), the government argues that Weisberg has not substantially prevailed.

This contention is specious. In the first place, there never was any legitimate basis for withholding the January 21 and June 23 transcripts. Neither transcript was exempt under either Exemption 1 or Exemption 3 at the time this lawsuit was instituted. Significantly, the affidavit of Robert E. Owen filed in support of the government's Opposition makes no claim that either transcript was ever properly classified or that their release would have jeopardized national security by disclosing intelligence sources and methods. Yet the government has put Weisberg--and the courts--through four years of costly, time-consuming, and exasperating litigation, and the end is not yet in sight.

It would be unconscionable to reward the government for its efforts to obstruct Weisberg's access to wrongfully withheld records.

In Communist Party of the United States v. Department of Justice, Civil Action No. 75-1770 (D.D.C. 1975)(unpublished opinion), Judge Flannery noted that:

> [i]f the government could avoid liability for fees merely by conceding the cases before final judgment, the impact of the fee provision would be greatly reduced. The government would remain free to assert boilerplate defenses, and private parties who served the public interest by enforcing the Act's mandate would be deprived of compensation for the undertaking.

(Slip Op. at 3) The Court of A-peals has quoted this passage approvingly on at least two occasions. See Nationwide Bldg. Maintenance Inc. v. Sampson, 559 F.2d 704, 710 (D.C.Cir. 1977); Cuneo v. Rumsfeld, 553 F.2d 1360, 1365 (D.C.Cir. 1977).

If the government cannot avoid liability for attorney's fees merely by conceding cases before final judgment, neither can it avoid liability by conceding a case on appeal, particularly not in cases where it has procured a favorable decision from the district court by submitting false and misleading affidavits. Yet that is the "principle" which the government seeks to establish in this case.

Secondly, the claim that these transcripts were "declassified" because information regarding Yuri Nosenko was placed on the public record at the hearings conducted by the House Select Committee on Assassinations is simply a fabrication which the government has devised as a means of avoiding, first, the certainty of an adverse decision by the Court of Appeals in this case, and, second, an award of attorney's fees to Weisberg.

As Weisberg notes, neither the Opposition nor the Owen affidavit make any reference to the January 21 transcript. [8/20/79 Weisberg Affidavit, ¶6] And although the Owen affidavit does state that some CIA information was declassified for the House Select Committee on Assassinations (HSCA), Owen

> 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.

[8/20/79 Weisberg Affidavit, ¶8]

In addition,

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

[8/20/79 Weisberg Affidavit, ¶18]

These facts and others set forth in Weisberg's August 20, 1979 affidavit make it clear that no information released or "declassified" in connection with the HSCA hearings required or caused the "declassification" and "voluntary release" of the January 21 and June 23 transcripts. What required their release was the fact that the Court of Appeals decision in Ray v. Turner, 587 F.2d 1187, decided on August 24, 1978, made it clear that the government could not stonewall Weisberg's access to these records any longer without risking a certain reversal by the Court of Appeals and an even more dangerous (from the CIA's standpoint) precedent than it had already suffered in Ray v. Turner.

In Nationwide the Court of Appeals discussed the various factors which ought to be considered by the courts when ruling on an application for attorney's fees in an FOIA case. It stated that the four factors mentioned in committee reports should be considered by the courts but ruled that because the express intention of Congress in removing them from the statutory language was to avoid limited the courts' consideration, "[c]ourts should not inadvertently frustrate that intent by failing to search out and consider other factors that may be relevant to whether attorney fees should be awarded to a successful FOIA plaintiff." Nationwide, supra, 559 F.2d at 714. The Court of Appeals then noted that in Vermont Low Income Advocacy Council, the Second Circuit had articulated two other factors to be considered: 1) whether the prosecution of the plaintiff's action could reasonably have been regarded as necessary and 2) whether his suit had a substantial causative effect on the delivery of the information. Lastly, the Court of Appeals concluded its lengthy discussion of the attorney's fees issue by as-

serting that:

> As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage maximum feasible public access to government information and the fundamental purpose of section 552(a)(4)(E) to facilitate citizen access to the courts to vindicate their statutory rights. Each of the particular factors we have discussed must be evaluated in light of these fundamental legislative policies. The touchstone of a court's discretionary decision under section 552(a)(4)(E) must be whether an award of attorney fees is necessary to implement the FOIA. A grudging application of this provision, which would dissuade those who have been denied information from invoking their right to judicial review, would be clearly contrary to congressional intent. (Emphasis added)

Id. at 715.

Just as Kaye v. Burns, 411 F. Supp. 897 (D.C.N.Y. 1976) concluded that a proper construction of the "substantially prevailed" requirement of § 552(a)(4)(E), in light of that statute's legislative history and intent, would not preclude the recorvery of attorney's fees and litigation costs where the government acted to moot an FOIA suit in district court by supplying the material sought, so should this Court conclude, for precisely the same reasons, that this applies equally to the situation where an agency releases wrongfully withheld documents to moot an appeal. Unless the statute is so construed, the government will soon make a mockery of the attorney's fees provision of the Freedom of Information Act, and soon thereafter, of the Act itself.

In seeking to argue a contrary construction of § 552(a)(4)(E), the government relies heavily on Vermont Low Income Advocacy Council, Inc. v. Usery, 546 F.2d 509 (2d Cir. 1976). The government neglects to point out, however, that there is a vast difference between the facts in Vermont and those present here. In Vermont the district court had found that the FOIA plaintiff had chosen to "make a 'federal case' out of a matter that . . . had promise of amicable resolution." Id. at 514. It also found that the record

showed that the agency "sincerely desired to disclose all that the FOIA required and more but was delayed because of excusable delay in its administrative appeal process." Id. at 515. The good faith handling of the FOIA request that was evident in Vermont has not been present in this case at any stage of the proceedings.

In complete contrast with the Vermont case, here the government has resorted to various stalls, obfuscations, obstructions, and deceits in order to prevent access to records that should never have been withheld. Perhaps the best example of the government's lack of good faith in this case is the utter dishonesty of the government's representation that "[t]he manner in which Mr. Nosenko's security is being protected by the CIA is serving as a model to potential future defectors." (December 30, 1976 Briggs Affidavit, ¶9)

The truth is that the CIA's treatment of Nosenko would only serve to scare away potential defectors, not encourage them. When he testified before the House Select Committee on Assassinations, the CIA's John 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.

(8/20/79 Weisberg Affidavit, ¶15) The truth is that at one point a CIA official considered assassinating Nosenko. This, of course, would have provided terminal security for Nosenko. The same official also considered driving Nosenko mad or, alternatively, institutionalizing him on the pretense that he was mad. (See 8/20/79 Weisberg Affidavit, ¶28.) Such was the CIA's tender concern for Nosenko's security that it actually constructed what has been described as a "bank vault" and placed him on deposit for three years.

The truth of the matter is that the government deliberately misled this Court about Nosenko's treatment serving as a model for potential future defectors. It also misled this Court about the allegedly exempt status of the January 21 and June 23 transcripts as well. Such bad faith conduct distinguishes this case from the situation which the court found to exist in the Vermont case.

II. ASSUMING, ARGUENDO, THAT PLAINTIFF HAS NOT "SUBSTANTIALLY PREVAILED" WITHIN THE MEANING OF 5 U.S.C. § 552(a)(4)(E), THIS COURT MAY STILL AWARD ATTORNEY'S FEES BECAUSE OF THE GOVERNMENT'S BAD FAITH CONDUCT IN THIS LITIGATION

The United States Supreme Court has recently declared that it has "long recognized that attorneys' fees may be awarded to a successful party when his opponent has acted in bad faith, vexatiously, wantonly, or for oppressive reasons . . . ." F.D. Rich Co. v. Industrial Lumber Co., 417 U.S. 116, 129 (1973), citing Vaughan v. Atkinson, 369 U.S. 527 (1962) and other cases. See also J. Moore, Federal Practice ¶54.77[2], p. 1709 (2d ed. 1974).

Assuming, arguendo, that plaintiff has not "substantially prevailed" in this litigation, this Court may still award attorney's fees in this case on the basis of the Rich exception to the so-called "American Rule." An award on this basis would find abundant justification in the record of this case, which includes fradulent claims of exemption under 5 U.S.C. § 552(b)(1) and (b)(3), the employment of false and deliberately deceitful affidavits, obstruction of plaintiff's efforts to obtain discovery, and the use of delaying tactics.

III. THE ATTORNEY'S FEE AWARD SOUGHT BY PLAINTIFF IS REASONABLE

A. The Number of Hours

The government argues that plaintiff's request for attorney's fees is unreasonable. One point made is that plaintiff did not distinguish between hours spent on appeal and in the District Court litigating the status of the May 19 transcript as opposed to hours which were spent litigating the status of the January 21 and June 23 transcripts. The government argues that the request for fees "for approximately 340 hours" of work should be reduced by 55 5/12 hours (actually 53 5/12 hours--the government made a mistake in addition) of work done in the Court of Appeals after October 16, 1978, the date on which all issues except those with respect to the May 19 transcript became moot. (Opposition, p. 14)

By plaintiff's calculations, the "approximately 340 hours" mentioned by the government comes to exactly 348 1/3 hours. (See Supplemental Lesar Affidavit, ¶18) Plaintiff's counsel has eliminated some of the 53 5/12 hours to which the government has objected from the amended itemization of of attorney's hours which is submitted herewith. (See Attachment D to Supplemental Lesar Affidavit) However, 21 1/2 hours of those specifically objected to by the government were spent working on the attorney's fees motion and on an affidavit which has been used in support of it. (See Supplemental Lesar Affidavit, ¶¶17-21) Plaintiff maintains that this time is compensable and should be included in any award of attorney's fees.

Plaintiff's counsel has eliminated 31 11/12 hours which were originally included in his itemization of attorney's hours because those hours were spent on appeal on issues related to the status of the May 19 transcript and the "mootness" question. Plaintiff's counsel has also eliminated an additional two hours which were

spent in connection with plaintiff's motion for summary judgment with respect to the May 19 transcript at the time that motion was made in the District Court.

Given these adjustments, which come to 33 11/12 hours, plaintiff contends that the number of hours for which he seeks attorney fees is reasonable.

The government argues, however, that this case only involved two legal issues: whether the May 19 transcript was properly withheld under Exemptions 5 and 6 and whether the January 21 and June 23 transcripts were properly withheld under Exemptions 1 and 3. Starting from this erroneous premise, the government reasons that after first reducing the "approximately 340 hours" of attorney's time by 55 1/2 (sic) hours--to 284 1/2 hours--this figure should the be cut in half--to 142 1/4 hours.

There are several flaws in this argument. To begin with, there were several distinct legal issues with respect to the status of the January and 23 transcripts, not just one. Most importantly, however, the number of legal issues cannot be equated with the amount of time spent litigating the status of each transcript. Virtually no time was spent on the status of the May 19 transcript at the District Court level. There were two reasons for this. First, the two "classified" transcripts dealing with Soviet defectors were obviously more important than the May 19 transcript. Secondly, the factual and legal complexities were much greater with respect to the two "classified" transcripts than they were with respect to the May 19 transcript. Among other considerations, the litigation of the status of the former required extensive familiarity with two detailed Executive orders governing the classification of national security information, Executive orders 10501 and 11652, as well as with the National Security Council directive implementing E.O. 11652, the statute upon which the CIA based its

Exemption 3 claim, 50 U.S.C. § 403(d)(3), and the growing body of case law construing both exemptions. That virtually no time was devoted to litigating the May 19 transcript at the District Court level is perhaps best illustrated by the fact that of the some 200 interrogatories which plaintiff addressed to the defendant and the CIA, only five or six pertained to the May 19 transcript.

There is simply no basis whatsoever for dividing the attorney's hours in half. The assumption that this somehow reflects the actual work done on an issue on which plaintiff did not prevail is preposterous. It does not, as should be obvious from the most cursory review of the record in this case.

B. Reasonableness of the Rate

Plaintiff seeks compensation for attorney services at the rate of $85 an hour. On the one previous occasion whehn plaintiff's counsel received an award of attorney's fees for FOIA work, he submitted a bill to the government for payment at the rate of $85 an hour for work done in December, 1977 and January, 1978. When the government offered to pay him $75 an hour, he accepted.

The government argues that plaintiff has not substantiated his claim to $85 an hour because he has not submitted any evidence as to his attorney's reasonable hourly rate in the years 1975-1979. It also maintains that his attorney's billing rate at the time services were rendered "is an essential element in calculating his hourly rate." (Opposition, p. 13) The government does not state what it would consider to be a reasonable rate. Presumably, although it does not say so, it would not be less than the $75 an hour which the government paid plaintiff's counsel for work done in 1977 and 1978 in Weisberg v. Bell, Civil Action No. 77-2155.

The government asserts that plaintiff's counsel has admitted that the rate of pay which he requests "is based on current rates

in Washington--not on his rates and without regard to his rates when the services were offered." (Opposition, p. 13) From this it appears, although it is not expressly stated, that the government may be contending that plaintiff is not entitled to attorney's fees based upon the prevailing rate in Washington, D.C. at the time services were rendered, at least if his attorney's hourly billing rate is lower than the prevailing rate.

If this is the government's argument, it is contradicted by the legislative history of the Amended Freedom of Information Act. Thus Senator Kennedy stated during the congressional debate on the proposed amendments that

> courts should look to the prevailing rate on attorneys' fees, for example, rather than solely to whether the specific attorney is from Wall Street or a public interest law firm.

120 Cong. Rec. 9317 (daily ed., May 30, 1974).

In Consumers Union of U.S. v. Bd. of Gov'rs of F.R.S., 410 F. Supp. 63 (D.D.C. 1975), the government argued that the requested attorneys' fees were excessive because the litigation was conducted either by in-house salaried attorneys or by an attorney rendering his services on a pro bono publico basis. The District Court held that "[t]his argument is without merit." Citing National Treasury Employees Union v. Nixon, 521 F.2d 317 (D.C.Cir. 1975), District Judge Bryant ruled that: "When . . . counsel serve organizations for far less than fair market compensation because they believe those organizations further the public interest, the Court has the authority to award them the actual value of their service." Consumers Union, supra, at 65.

Plaintiff's counsel has represented plaintiff in some twenty FOIA cases. Those which were litigated before the amended Act went into effect were taken on a pro bono basis. No retainer or fee of any sort has been paid to plaintiff's attorney for the cases which have been litigated since the Amended FOIA went into effect. It has been understood, however, that if plaintiff "sub-

stantially prevailed," plaintiff would request payment for his attorney's services at the rate which prevailed in the Washington, D.C. area at the time the services were rendered.

Plaintiff maintains that $85 an hour is within the range of fees charged by attorneys of roughly comparable experience and expertise for FOIA work during the years 1975-1979. As evidence of this he submits "Stipulations" which the government entered into in two different FOIA cases to pay Alan Morrison, an attorney who has supervised and argued a number of important FOIA cases, at the rate of $85 an hour for work done between November, 1974 and May, 1976, and $90 an hour for work done in June-December, 1976. (See Attachments A and B to Supplemental Lesar Affidavit) Should the Court require further evidence as to the prevailing rate for any year since this litigation was initiated, plaintiff will seek to obtain it.

C. Risk of Non-Compensation

The government asserts, at page fourteen of the Opposition, that plaintiff has erroneously calculated the risk of noncompensation. Since the government is still arguing that plaintiff has not "substantially prevailed" and is entitled to no compensation whatsoever, it would seem that the government would have to concede that there was some risk of noncompensation, particularly since it continues to argue that this Court correctly decided the issues regarding the January 21 and June 23 transcripts on each occasion when they were before the Court. However, the government makes no effort to suggest what the risk of noncompensation actually was or why plaintiff has erroneously calculated it.

The risk of noncompensation is obvious from the very fact that plaintiff did not "substantially prevail" with respect to the May 19 transcript. Thus plaintiff's counsel has excluded from his

amended itemization of attorney's hours the 33 11/12 hours which he spent litigating the status of the May 19 transcript. Even if plaintiff's counsel is compensated for the rest of his work, he will still he denied reimbursement for this work.

No matter how accomplished any FOIA attorney is, he cannot hope to "substantially prevail" on all issues in every case, or even to "substantially prevail" in all cases. And even when he "substantially prevails," he may not be entitled to attorney's fees.

The danger of an adverse decision in this case which would result in a total loss of compensation for the considerable amount of time invested in it is illustrated by the fact that this Court did decided all issues adversely to plaintiff on each occasion when they were before the Court. Had this Court's decisions been completely upheld on appeal, plaintiff's counsel would have been denied any fees whatsoever for the work he had done. Indeed, the government argues that he should be denied any fees for this work.

Government counsel, who are paid an adequate salary regardless of whether or not they "substantially prevail," and who do not have to pay office rent and overhead, may not understand the nature and extent of the risk assumed by plaintiff's counsel. It is hoped that the Court does.

The risk is particularly large in this case because plaintiff's counsel is a sole practicioner. He does not receive a salary from any organization, as did counsel in the Consumers Union case cited above. In this respect, he is probably something of an anomaly among FOIA practicioners in the Washington, D.C. area.

Plaintiff's counsel has risked the income he could have earned from other legal work but which has been precluded by the fact that virtually all of his time has been consumed by this and the many other FOIA cases he has handled for plaintiff. He has also risked the interest on the income which could have been

earned if such income had been invested. Finally, he has also risked, and in fact lost, experience in handling other kinds of legal matters which he would have gained but for the fact that his FOIA work has deprived him of it.

Because of the very high risk of total noncompensation which plaintiff's counsel assumed in this case, this Court would be justified in doubling the amount of the base award sought by plaintiff.

D. Discovery

The government has requested, at page eleven of its Opposition, that if this Court is predisposed to award fees, limited discovery be permitted to determine the use to which plaintiff has put the released information and the extent to which he has benefited financially from it. In his attached August 20, 1979 affidavit, Weisberg states that as soon as the transcripts became available he notified the press, made copies of the transcripts at his cost, and provided the press and others with free copies. As he notes, from this alone it is obvious that he did not--indeed, could not--profit financially from the release of the transcripts.

If, however, the government wants to take discovery on this issue, plaintiff has no objection. However, because his health has deteriorated considerably in recent months, he would request that any such discovery be limited to a deposition taken at his home in Frederick, Maryland.

CONCLUSION

For the reasons stated above, plaintiff should be awarded attorney's fees in this case. The rate requested, $85 per hour, is in line with the rate awarded to other attorneys of comparable FOIA experience and accomplishments for work done during the years 1975-

1979. Plaintiff's counsel has amended his schedule of hours to eliminate work done on issues pertaining to the May 19 transcript. As adjusted to reflect the exclusion of these hours, and with the addition of the hours which have been spent on this case since plaintiff's motion for attorney's fees was filed, plaintiff now requests reimbursement for 363 1/3 hours. At the proposed rate of $85 an hour, this comes to $30,883.33. Because of the high degree of risk of noncompensation assumed, the partial noncompensation actually conceded, loss of interest due delay in payment, and the bad faith of the government in withholding documents which never were exempt and procuring a decision favorable to it by the use of fraudulent affidavits, this base award should be doubled to $61,766.66.

Respectfully submitted,

James H. Lesar

JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this ~~11th~~ 12th day of September, 1979 hand-delivered a copy of the foregoing Reply to Defendant's Opposition to Motion for Attorney's Fees and Costs to the office of Ms. Patricia J. Kenney, Rm. 3212 United States Courthouse, Washington, D.C. 20001.

James H. Lesar

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. GENERAL SERVICES ADMINISTRATION, Defendant	Civil Action No. 75-1448

SUPPLEMENTAL AFFIDAVIT OF JAMES HIRAM LESAR

I, James Hiram Lesar, first having been duly sworn, depose and say as folows:

1 I am the attorney for the plaintiff in the above-entitled cause of action.

2. I have read defendant's Opposition to plaintiff's motion for an award of attorney's fees and other litigation costs. I execute this affidavit to respond to questions raised by the Opposition and to update and supplement my previous affidavit.

3. The Opposition argues, at page fourteen, that "[s]hould 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 the plaintiff." Whether this is relevant to FOIA suits at all--and in my view there is good reason to think it is not--the simple fact is that I have not been paid any fee whatsoever for representing plaintiff in this case.

4. The Opposition asserts, at page thirteen, that I have not submitted any evidence as to my reasonable hourly rate in 1975-1979. It then declares: "Attorney Lesar merely states that $85 an hour is appropriate because of his experience in handling FOIA

matters' and because of the 'prevailing rates for attorney services in the Washington, D.C. area.'" This, it states, "is an admission that the rate suggested is based on current rates in Washington--not on his rates and without regard to his rates when the services were offered."

5. Since February 19, 1975, the date on which the amended FOIA became effective, I have spend most of my time working on the dozen FOIA cases which I have handled for Mr. Weisberg. Because Mr. Weisberg could not afford to pay me for this work, I have received no fee for any of it.

6. As my previous affidavit stated, I requested payment of $85 per hour for work done in Weisberg v. Bell, et al., Civil Action No. 77-2155. When the government offered $75 an hour, I accepted. This, I would think, is evidence of my hourly rate, at least for the period of late 1977 and early 1978.

7. I take the position that I am entitled to an hourly rate of $85 for the FOIA work I have done from 1975 to date. I base this upon my experience and expertise in this specialized area of law--experience and expertise acquired before the amended FOIA became effective--and on the fact that attorneys of roughly comparable experience and achievements in handling FOIA cases have sought--and obtained--fees at this rate or higher for work done during this period.

8. For example, court records in Aviation Consumer Action Project v. Civil Aeronautics Board, Civil Action No. 413-73, show that Alan Morrison charged $85 an hour for work done between November, 1974 and May, 1976, and $90 an hour for work done from June to December, 1976. Another attorney, Larry Ellsworth, charged at rate of $60-65 per hour during these two periods. The government signed a stipulation agreeing that payment of $24,479.25 based upon these fees was reasonable. (See Attachment A)

9. The government signed a similar stipulation in Vaughn v. Rosen, Civil Action No. 1753-72. The stipulation recited that a payment of $33,705 "is reasonable under the circumstances." The schedule attached to the stipulation shows that the government considered as "reasonable" payment to Alan Morrison at the rate of $85 an hour for work done in March-December, 1975. (See Attachment B)

10. In undertaking to represent Weisberg in his FOIA cases, I undertook work which I thought would be very much in the public interest. I believe that events have proven my judgment on this correct. However, I expect that it will be some time yet before the full significance of what has been accomplished is appreciated, or even comprehended.

11. In undertaking this work, I assumed a very large personal risk. Much larger, in fact, than I realized at the time I assumed it.

12. In personal terms, the economic risk has been enormous. After fours years largely devoted devoted to Mr. Weisberg's FOIA cases, I have received a total of $5,500 in attorney's fees. With the exception of a small portion which I used to buy a wedding gift for my wife, that sum has been entirely used to pay my office rent and expenses. Whether I will be compensated for any of the work which I have done on Weisberg's other FOIA cases remains to be seen. From the history of this case it seems likely that the government will oppose, delay, and appeal any such awards I might receive. Given the monumental power of the Department of Justice to grind any FOIA litigant it does not like into the dust, there is some question as to whether my client and I can hold out long enough to receive the remuneration due us for attorney's fees and costs. I can only hope that at some point before we go under for the last time some court will understand the war of attrition which the government is waging against us--and undoubtedly other FOIA

litigants and their attorneys--and take forceful action to put a stop to this latest of innumerable government tactics aimed at undermining the Freedom of Information Act.

13. The large amount of time which I have had to spend on Weisberg's FOIA cases, including this one, has kept me from earning income from other cases I could have taken had I had the time to do so. In addition, having to devote so much of my time to Weisberg's FOIA cases has deprived me of experience in handling other kinds of cases. Because experience in handling a variety of legal problems is particularly important to the viability of a solo practicioner, the relinquishment of the opportunity to gain such experience is also an important risk factor which I think should be taken into consideration.

14. Most of the work which I have done in Weisberg's FOIA cases was--and continues to be--entirely unnecessary if the government was concerning with implementing the FOIA rather than trying to obdurately forestall compliance to the extent possible. In this case, for example, the several hundred hours which I have expended upon it, and for which I now seek attorney's fees, could have been eliminated completely if the government had provided the June 21 and June 23 transcripts when they were requested, as it should have done.

15. In my previous affidavit I neglected to mention that in 1977 I was invited to attend--and did in fact attend--the Judicial Conference held at Hershey, Pennsylvania.

16. I also omitted to mention that in 1975 I submitted a statement in connection with a hearing of a subcommitte of the House Committee on Government Operations on "National Archives--Security Classification Problems Involving Warren Commission Files and Other Records." My statement was published in the committee print on that hearing. A copy of it is attached hereto as Attachment C.

17. The Opposition argues, at page fourteen, that the Court should not award any fees for work done in the case on appeal after October 16, 1978, the date on which all issues except those with respect to the May 19 transcript became moot. On this basis it argues that the request for fees "for approximately 340 hours" of work should be reduced by 55 5/12 hours.

18. I note, first, that the government has made a mathematical error in calculating the number of hours which it says should be deducted from the total. The hours it lists in the first full paragraph on page fourteen of the Opposition come to 53 5/12, not 55 5/12. The "approximately 340 hours" from which the government wishes to deduct this 53 5/12 hours comes, by calculations, to exactly 348 1/3 hours.

19. I agree that some of these hours should be eliminated because they relate solely to the May 19 transcript. However, the government has lumpted these together with hours which were spent on work directly related to the issues now before this Court. For example, the government wants to deduct 8 1/2 hours for work done on February 13, 1979 (2 hours), February 15, 1979 (2 hours), February 16, 1979 (2 1/2 hours), and February 17, 1979 (2 hours). The schedule attached as Exhibit 2 to my previous affidavit shows that this time was spent working on the motion for attorney's fees. Therefore, it is clearly compensable and should be included in the total.

20. The same applies, for the most part, to the 21 hours which are listed on my schedule as "work on opposition to motion to dismiss on grounds of mootness." This work, done on October 24, 1978 (1 1/2 hours), October 25, 1978 (11 1/2 hours), and October 26, 1978 (8 hours), was for the most part spent working on the 31-page affidavit of Harold Weisberg, which although originally filed in the Court of Appeals in support of the opposition to the motion

to dismiss on mootness grounds, was also submitted to this Court in support of plaintiff's motion for attorney's fees. Because the affidavit is directly concerned with issues now before this Court, the time spent working on it is compensable and should be included in the total hours for which an award of attorney's fees is made. I believe that 13 of the 21 hours listed as "work on opposition to motion to dismiss on grounds of mootness" were actually spent working on Weisberg's affidavit and should be included in the total number of hours for which reimbursement is made.

21. In summary, of the 53 5/12 hours which the government has specified as derserving elimination, I maintain that 21 1/2 are properly included in the total number of hours for which compensation should be paid. I would agree that 31 11/12 should be subtracted from the total.

22. The Opposition also contends, at page thirteen, that no distinction was made between attorney hours devoted to challenging the withholding of the May 19 transcript in the District Court and on appeal, and the time devoted to challenging the withholding of the January 21 and June 23 transcripts. Insofar as the time devoted to the May 19 transcript on appeal is concerned, this has already been dealt with in ¶¶17-21 above. Insofar as the time devoted to the May 19 transcript in the District Court is concerned, the simple fact is that the status of this transcript occupied a miniscule portion of the attorney time expended in the proceedings in the District Court. I did spend two hours on October 10, 1976 preparing a motion for summary judgment with respect to the May 19 transcript. I would agree that this 2 hours should also be deducted from the total of attorney hours for which compensation is sought.

23. In order to update and correct the itemization of attorney's time for which compensation is sought, I have prepared an "Amended Itemization of Attorney's Time." (See Attachment D)

As the amended itemization shows, after eliminating 33 1/2 hours of time previously listed, and updating the schedule to included hours expended since plaintiff moved for attorney's fees, the total number of hours for which compensation is now sought comes to 363 1/3.

24. Attachment E to this affidavit is a copy of the transcript of Judge Gesell's ruling in Weisberg v. Bell, Civil Action No. 77-2155, that Mr. Weisberg was entitled to a complete waiver of search fees and copying costs for 40,000 pages of documents pertaining to the assassination of President Kennedy. This transcript shows that Judge Gesell cited Mr. Weisberg's indigency and poor health as a basis for his ruling.

25. Attachments F-H are affidavits by Les Whitten, Howard Roffman, and Prof. David Wrone which were filed in Weisberg v. Bell, Civil Action No. 77-2155, and Weisberg v. Department of Justice, Civil Action No. 75-1996, in support of a complete waiver of search fees and copying costs for the documents involved in each case. These affidavits refute the government's suggestion in this case that Weisberg has commercially profited from records he has obtained under the Freedom of Information Act and establish the importance of his work and its benefit to the public.

26. Finally, because I think it very much addresses the bad faith of the CIA in its handling of FOIA requests by my client, I state that Mr. Weisberg has informed me by phone that he has pending requests for Nosenko materials, including those provided to author Edward J. Epstein, which date to 1975 and subsequent years. Despite the claim that Nosenko materials have been declassified, allegedly because of the interest of the House Select Committee on Assassinations, he has not been provided with the documents sought

by his requests.

James H. Lesar
JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 11th day of September, 1979.

Frances R. Gordon
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires March 14, 1980.

ATTACHMENT A

Civil Action No. 75-1448

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AVIATION CONSUMER ACTION PROJECT,

Plaintiff,

v.

CIVIL AERONAUTICS BOARD,

Defendant.

Civil Action No. 413-73

FILED

SEP 29 1977

JAMES F. DAVEY, CLERK

S T I P U L A T I O N

It is hereby stipulated and agreed, by and among counsel for the representative parties hereto, as follows:

1. That the plaintiff substantially prevailed on the merits in the litigation involved in Aviation Consumer Action Project v. Civil Aeronautics Board, Civil Action No. 413-73.

2. That the plaintiff was represented in the above-captioned litigation by Larry Ellsworth, Ronald Plesser, and Alan Morrison, and that Alan Morrison, Esquire, has been named as the attorney responsible for collecting all attorneys' fees due.

3. That the parties have agreed to settle the question of attorneys' fees and taxable district court costs in this litigation, and that a payment of $24,479.25 is reasonable under the circumstanc

4. That the parties agree that the settlement agreed to herein in accordance with the schedule (Exhibit A) attached hereto, shall constitute full settlement and satisfaction of all claims concerning attorneys' fees arising out of this litigation.

LARRY ELLSWORTH

ALAN MORRISON

Attorneys for Plaintiff

APPROVED:

U.S. DISTRICT JUDGE

DATED: Sept 28 1977

EARL J. SILBERT, U.S. Attorney

Robert N. Ford, Asst. U.S. Attorney

Michael I. Gewirtz, Asst. U.S. Att

Attorneys for Defendant

LARRY P. ELLSWORTH
ATTORNEY AT LAW
2000 P STREET N.W., SUITE 700
WASHINGTON D.C. 20036
(202) 785-3704

May 31, 1977

Robert N. Ford, Esquire
Chief, Civil Division
Office of the United States Attorney
United States Courthouse
Washington, D. C. 20001

Re: Attorneys' fee award in Aviation Consumer Action Project v. CAB, Civ. No. 73-413 (D.D.C.)

Dear Mr. Ford:

This letter is to request that the Government stipulate to an award of reasonable attorneys' fees to plaintiff pursuant to 5 U.S.C. § 552(a)(4)(E) in the above entitled Freedom of Information Act (FOIA) case. We are writing to you as Chief of the Civil Division because Mr. George A. Stohner, who previously handled the case for your office, has left your employ.

Plaintiff substantially prevailed both on his original complaint (412 F. Supp. 1029) and in subsequent proceedings initiated by defendant (418 F. Supp. 634). The required disclosures of CAB international route decisions at a time prior to Presidential action, so that the public still has the opportunity to make its views known, has significant public benefits, and is a result which the American Bar Association has long sought. See, e.g., ABA Report With Legislative Recommendation (Pl. Exh. E-1); ABA Resolution, adopted 1974 (Pl. Exh. E-2). However, a portion of the fees in this case predated the effective date of the amendment to the FOIA allowing awards of attorneys fees, and since the parties disagreed as to the retroactive effect of that fee provision, the parties stipulated on December 8, 1976, to a continuance of the costs and fees issue pending the outcome in the Court of Appeals for the District of Columbia Circuit of Cuneo v. Rumsfeld, No. 75-2219, which concerned that issue. On March 24, 1977, the Court of Appeals held that the attorneys' fee provision is retroactive, and

this month the Government's petition for rehearing was denied. We thus urge you to agree to pay plaintiff's reasonable attorneys' fees and other costs as outlined below.

This litigation began over four years ago, and has three times been appealed to the Court of Appeals, although the Government dismissed both of the latter two appeals. Mr. Ronald Plesser originally had principal responsibility for the case and Mr. Alan Morrison has continuously had supervisory responsibility. I took over principal responsibility for the case at the time of the first appeal in the fall of 1973 which resulted in a reversal of the dismissal of this action and a remand for further proceedings on the merits. To the best of my knowledge, the three of us, individually and as a group, have more FOIA litigation experience than any other three attorneys in private practice in the country.

Mr. Plesser, who is presently the General Counsel of the Federal Privacy Protection Study Commission, was the first private attorney in the country to work full time on Freedom of Information Act matters. He joined the Freedom of Information Clearinghouse in April 1972 and left in October 1974. He has in the past been active in the activities of the District of Columbia Bar (Unified), and is a past member of the Steering Committee for Division I (Administrative Law).

Mr. Morrison is and has been for the past five years the Director of the Public Citizen Litigation Group, and he has wide experience in FOIA matters. He was formerly the Assistant Chief of the Civil Division of the United States Attorney's Office for the Southern District of New York, and prior to that he was associated with the law firm of Cleary, Gottlieb, Steen and Hamilton in New York City. He is presently a member of the Board of Governors of the District of Columbia Bar. Similarly, I am presently the Chairperson of the Administrative Law Division of the District of Columbia Bar, and I have previously served as Chairperson and Vice-Chairperson of the Division's Committee on Access to Government Information. I have personally worked on over 30 FOIA cases, and I have lectured all across the country on freedom of information matters.

Mr. Morrison's present hourly rate for cases is $90, Mr. Ellsworth's is $65, and Mr. Plesser's would be a comparable figure if he were presently in private practice. These rates are in line with those charged by other attorneys of similar

experience in Washington law firms having primarily a Federal practice. However, we recognize that the rates have increased significantly over the period of this action, both because of a general increase in rates and, more importantly, because of the increasing experience and expertise which we have gained in the area. Therefore, for all but the most recent actions, the proposed hourly rates, set forth below, are charged at much lower levels.

Since February, 1975 when the FOIA attorneys' fee provision took effect, I have kept daily records of the time I have expended on this case. In addition, I have reconstituted time records for the time expended prior to the effective date, and the other attorneys have reconstituted the records of their work. My reconstituted records show, for example, that I expended 232-1/2 hours on this case prior to February, 1975, and 101-1/4 hours after that date. These figures do not include time expended on this fee application. My contemporaneous time records show that I actually spent 163 hours on the case during the latter time period, indicating that my reconstituted records are very conservative. Nonetheless, for purposes of settlement, we have adopted this very conservative method for figuring our time on the case whenever we do not have contemporaneous time sheets.

There have been several distinct stages of this litigation, and for convenience we have broken the work down into them:

	Attorney	Hours	Rate	Total
District Court I:	Ronald Plesser	48-1/4	$50	$2,412.50
(March-July, 1973)	Alan Morrison	6-1/2	$75	$ 487.50
Court of Appeals I:	Larry Ellsworth	171-1/2	$40	$6,860.00
(August, 1973 -	Ronald Plesser	16-1/2	$50	$ 825.00
September, 1974)	Alan Morrison	31	$75	$2,325.00
District Court II:	Larry Ellsworth	138	$60	$8,280.00
(November, 1974-	Alan Morrison	16-1/4	$85	$1,381.25
May, 1976)				
Court of Appeals II:	Larry Ellsworth	2	$65	$ 130.00
(July-November, 1976)				
District Court III:	Larry Ellsworth	23	$65	$1,495.00
(June-December, 1976)	Alan Morrison	3	$90	$ 270.00
Taxable Costs (Filing and Marshall's Fees)				13.00
Total				$24,479.25

These figures do not include the time which we have already expended on the attorneys' fee issue, including this letter, and the time spent assisting counsel in Cuneo v. Rumsfeld in their appeal on the retroactivity issue. Nor does it include the time expended by a law student on one aspect of this litigation, nor that of Reuben B. Robertson III of this office who has acted in an advisory capacity throughout the litigation. Of course, if it becomes necessary to seek an award from the court, we will probably seek payment for these items, as well as the additional time we will expend on such an application.

The award we seek -- $24,479.25 -- is fair and reasonable for this case. Thus, we hope that you will promptly agree to bring this litigation to an end by stipulating to pay such an award. If you have any questions, please call me.

Yours truly,

Larry P. Ellsworth

ATTACHMENT B

Civil Action No. 75-1448

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT G. VAUGHN,

PLAINTIFF,

v.

Civil Action No. 1753-72

BERNARD ROSEN,

DEFENDANT.

FILED

SEP 29 1977

JAMES F. DAVEY, CLERK

STIPULATION

It is hereby stipulated and agreed, by and among counsel for the representative parties hereto, as follows:

1. That the plaintiff substantially prevailed on the merits in the litigation involved in Vaughn v. Rosen, Civil Action 1753-72.

2. That the plaintiff was represented in the above-captioned litigation by Larry Ellsworth, Ronald Plesser, Mark Lynch, and Alan Morrison, and that Alan Morrison, Esquire, has been named as the attorney responsible for collecting all attorneys' fees due.

3. That the parties have agreed to settle the question of attorneys' fees in this litigation, and that a payment of $33,705.00 is reasonable under the circumstances.

4. That the parties agree that the settlement agreed to herein, in accordance with the schedule (Exhibit A) attached hereto, shall constitute full settlement and satisfaction of all claims concerning attorneys' fees arising out of this litigation.

Larry Ellsworth
LARRY ELLSWORTH

Earl J. Silbert
EARL J. SILBERT, U.S. Attorney

Alan Morrison
ALAN MORRISON

Robert N. Ford
ROBERT N. FORD, Asst. U.S. Attorney

Michael I. Gewirtz
MICHAEL I. GEWIRTZ, Asst. U.S. Attorney

Attorneys for Plaintiff

Attorneys for Defendant

APPROVED: John Pratt
UNITED STATES DISTRICT JUDGE

DATED: 29 Sept 77

LARRY F. ELLSWORTH
ATTORNEY AT LAW
2000 P STREET, N. W., SUITE 700
WASHINGTON, D. C. 20036
(202) 785-3704

June 8, 1977

Robert N. Ford, Esquire
Chief, Civil Division
Office of the United States Attorney
United States Courthouse
Washington, D.C. 20001

Re: Attorneys' fee award in Vaughn v. Rosen,
Civ. No. 1753-72 (D.D.C.)

Dear Mr. Ford:

This letter is to request that the Government stipulate to an award of reasonable attorneys' fees to plaintiff pursuant to 5 U.S.C. § 552(a)(4)(E) in the above entitled Freedom of Information Act (FOIA) case. We are writing to you as Chief of the Civil Division because Mr. Derek I. Meier, who previously handled the case for your office, has left your employ.

The two appellate opinions and the second district court decision in this case are unquestionably among the most important FOIA cases yet decided. Indeed, the first appellate decision (484 F.2d 820) is undoubtably the most important decision thus far concerning the procedures to be followed in FOIA litigation. In it, the court of appeals held that in order to meet its burden of proof the Government generally must submit a detailed index, itemization and justification covering each document withheld. The decision has been widely followed.

On remand from our procedural victory, the District Court ordered disclosure of virtually all of the information contained in the Civil Service Commission personnel evaluation management reports we sought, allowing withholding of only "action items" and the names of individual employees (383 F.Supp. 1049). The District Court broke new ground in applying exemption 5, classifying expert opinions as disclosable along with factual information,

C.A. # 1753-72
EXHIBIT "A"

and contrasting such disclosable expert opinions with exempt policy recommendations.

The Court of Appeals affirmed the District Court's opinion and, based on the analysis presented in our briefs, made the first detailed judicial analysis of exemption 2 (523 F.2d 1139). This decision has since been cited with approval and followed by the Supreme Court in Department of the Air Force v. Rose, 425 U.S. 352 (1976).

Obviously, there has never been any question that the plaintiff "substantially prevailed" under Section 552(a)(4)(E). However, a portion of the fees in this case predated the effective date of the amendment adding this attorneys' fee provision to the FOIA, and since the parties disagreed as to the retroactive effect of that fee provision, the parties agreed to a continuance of the costs and fees issue pending the outcome in the Court of Appeals for the District of Columbia Circuit of Cuneo v. Rumsfeld, No. 75-2219, which concerned that issue. On March 24, 1977, the Court of Appeals held that the attorneys' fee provision is retroactive, and the Government's petition for rehearing was recently denied. We thus urge you to agree to pay plaintiff's reasonable attorneys' fees, as outlined below, and taxable costs.

This litigation began over five years ago, and as previously noted has twice required lengthy opinions from the Court of Appeals. Plaintiff fully prevailed on both of these appeals, and he successfully opposed the Government's petition for a writ of certiorari from the first decision. Mr. Ronald Plesser originally had principal responsibility for the case, and Mr. Alan Morrison has continuously had supervisory responsibility. I have reviewed and edited many of the papers since the time of the first appellate decision. Mr. Mark Lynch took over principal responsibility for the case at the time of the second appeal in the spring of 1975, which resulted in the affirmance on the merits. To the best of my knowledge, we have more FOIA litigation experience than any other four attorneys in private practice in the country.

Mr. Plesser, who is presently the General Counsel of the Federal Privacy Protection Study Commission, was the first private attorney in the country to work full time on Freedom of Information Act matters. He joined the Freedom of Information Clearinghouse in April 1972 and left in October 1974. He has

in the past been active in the activities of the District of Columbia Bar (Unified), and is a past member of the Steering Committee for Division I (Administrative Law).

Mr. Morrison is and has been for the past five years the Director of the Public Citizen Litigation Group, and he has wide experience in FOIA matters. He was formerly the Assistant Chief of the Civil Division of the United States Attorney's Office for the Southern District of New York, and prior to that he was associated with the law firm of Cleary, Gottlieb, Steen and Hamilton in New York City. He is presently a member of the Board of Governors of the District of Columbia Bar. Similarly, I am presently the Chairperson of the Administrative Law Division of the District of Columbia Bar, and I have previously served as Chairperson and Vice-Chairperson of the Division's Committee on Access to Government Information. I have personally worked on over 30 FOIA cases, and I have lectured across the country on freedom of information matters.

Mr. Lynch, while with Congress Watch, was the principal lobbyist on behalf of the 1974 amendments to the FOIA. He later joined the Freedom of Information Clearinghouse where he litigated a wide variety of FOIA cases, and he is a frequent lecturer on the FOIA at seminars and conferences, including those sponsored by the Civil Service Commission for new Government employees. Mr. Lynch is presently the Chief Counsel of the American Civil Liberties Union's Project on National Security and Civil Liberties.

Mr. Morrison's present hourly rate for cases is $90, Mr. Ellsworth's is $65, Mr. Lynch's is $50, and Mr. Plesser's rate would be comparable to Mr. Ellsworth's if he were presently in private practice. These rates are in line with those charged by other attorneys of similar experience and reputation in Washington Law firms having primarily a Federal practice. However, we recognize that the rates have increased significantly over the period of this action, both because of a general increase in rates and, more importantly, because of the increasing experience and expertise which we have gained in the area. Therefore, for all but the most recent actions, the proposed hourly rates, set forth below, are charged at much lower levels.

Since February, 1975, when the FOIA attorneys' fee provision took effect, I have kept daily records of the time I have expended

on this case, and we have each reconstituted time records for periods for which daily time sheets were not maintained. These figures do not include time expended on this fee application. Our experience teaches that our reconstituted hours generally fall far below the actual hours expended on a case. Nonetheless, for purposes of settlement, we have adopted this very conservative method for figuring our time on the case whenever we do not have contemporaneous time sheets.

There have been several distinct stages of this litigation, and for convenience we have broken the work down into them:

	Attorney	Hours	Rate	Total
District Court I:				
(August, 1972- January, 1973)	Ronald Plesser	60	$45	$ 2,700.0
	Alan Morrison	9-1/2	$70	$ 665.0
Court of Appeals I:				
(January, 1973- November, 1973)	Ronald Plesser	97	$50	$ 4,850.0
	Alan Morrison	19-1/2	$75	$ 1,462.5
Supreme Court:				
(February, 1974)	Ronald Plesser	20	$50	$ 1,000.0
	Alan Morrison	8	$75	600.0
	Larry Ellsworth	6	$40	240.0
District Court II:				
(April, 1974- October, 1975)	Ronald Plesser	155	$60	$ 9,300.0
	Alan Morrison	15-1/2	$85	$ 1,317.5
	Larry Ellsworth	11	$60	660.0
Court of Appeals II:				
(March-December, 1975)	Mark Lynch	134	$50	$ 6,700.0
	Alan Morrison	25	$85	$ 2,125.0
	Larry Ellsworth	34-3/4	$60	$ 2,085.00
				$33,705.00

These figures do not include the time which we have already expended on the attorneys' fee issue, including this letter, and the time spent assisting counsel in Cuneo v. Rumsfeld in their

appeal of the retroactivity issue. Nor do they include the time which Mr. Plesser donated on a pro bono basis while he was in private practice, after leaving the Clearinghouse and prior to joining the Privacy Commission. Additionally, we have not charged for the time Mr. Lynch spent reviewing the extensive record at the time of the second appeal. Furthermore, we believe that we are entitled to a multiplier of at least 50% in view of the risk of non-compensation, the long delay in payment, the high quality of the work performed, the public benefit resulting from this suit, and other relevant factors. See Lindy Bros. Builders, Inc. v. American Radiator and Stand. Sanitary Corp., 540 F.2d 102 (3d Cir. 1976); National Treasury Employees Union v. Nixon, 521 F.2d 317 (D.C. Cir. 1975); Lindy Bros. Builders, Inc. v. American Radiator and Stand. Sanitary Corp., 487 F.2d 161 (3d Cir. 1973); American Fed. of Govt. Employees v. Rosen, 418 F. Supp. 205 (N.D. Ill. 1976). However, in the interest of securing a prompt settlement, we are willing to forego our entitlement to this incentive bonus. Of course, if it becomes necessary to seek an award from the Court, we will probably seek payment for these items, as well as for the additional time we will expend on such an application.

The fee award we seek -- $33,705 -- is fair and reasonable for this case. Thus, we hope that you will promptly agree to bring this litigation to an end by stipulating to pay such an award, plus taxable costs. If you have any questions, please call me.

Yours truly,

Larry P. Ellsworth

APPENDIX 9.—STATEMENT OF JAMES HIRAM LESAR, WASHINGTON, D.C., ATTORNEY, ON ACCESS TO COMMISSION DOCUMENTS (Nov. 11, 1975)

On November 29, 1963, President Lyndon Johnson announced the appointment of a Special Commission "to study and report upon all facts and circumstances relating to the assassination" of President John F. Kennedy. The White House press release expressly stated:

"The President is instructing the Special Committee to satisfy itself that the truth is known as far as it can be discovered, and to report its findings and conclusions to him, to the American people, and to the World." [Warren Report, p. 472]

The Special Commission appointed by President Johnson was headed by the Chief Justice of the Supreme Court, Earl Warren. Ten months later the Warren Commission issued its Report. Two months subsequent to the issuance of the Report, the Government Printing Office published twenty-six volumes of assorted documents and testimony which purportedly supported the Commission's findings and the Report's conclusion that Lee Harvey Oswald, acting alone, murdered President Kennedy.

The public impression created by this deluge of information was that the Warren Commission's findings and conclusions were true and that they were substantiated in overwhelming detail by the evidence which had been gathered as the result of a thorough and honest investigation by the federal agencies, principally the FBI, which served as the Commission's investigative arm. Most importantly, the release of the Commission's massive Report and the publication of its twenty-six volumes created the impression that the Government was leveling with the American people about the murder of their elected leader and would make public all of the relevant evidence pertaining to his assassination.

Nothing could be further from the truth.

Today, nearly twelve years after President Kennedy was assassinated, some of the most basic and most important information about his murder is still being suppressed.

On May 23, 1966, Warren Commission critic Harold Weisberg wrote FBI Director J. Edgar Hoover a letter in which he called upon Mr. Hoover to make public the FBI's critically important report on the results of the spectrographic analyses which it had performed upon bullets, bullet fragments, and items of evidence allegedly struck by them in order to determine their precise chemical composition. [See Attachment A] Mr. Hoover never responded to Mr. Weisberg's letter.

On August 3, 1970, Mr. Weisberg filed suit under the Freedom of Information Act for disclosure of the FBI's spectrographic report. Today, nine and a half years after his original request and five years after he first instituted suit for the spectrographic analysis, the FBI still has not provided him with a copy of this report.

Today, eleven years after the Warren Commission handed in its Report and dissolved, the entire transcripts of two of its executive sessions and part of a third are still being withheld from Mr. Weisberg and the American people. Two other Warren Commission executive session transcripts were obtained by Mr. Weisberg only within the past eighteen months, years after he originally requested them and only after protracted litigation under the Freedom of Information Act.

This policy of suppression is in direct contradiction to the Government's announced policy as set forth in the guidelines contained in the Attorney General's April 13, 1965, memorandum on the public availability of Warren Commission records. [See Attachment B]

The Attorney General's memorandum was drafted at the behest of the White House in response to a January 4, 1965, letter to the President from the Mayor of Cedar Rapids, Iowa eloquently protesting that "The decision of the National Archives . . . to withhold from the public 'off the record testimony and exhibits

of the Warren Commission for 75 years' is inexplicable and inexcusable and gives cause to doubt the veracity of the published Warren Commission Report"; and expressing chagrin that the President would permit "a 75 year cloak of secrecy to fall over the facts involved in the Kennedy assassination." [See Attachment C]

On April 19, 1965, the White House ordered the Attorney General to implement the guidelines set forth in his April 13, 1965, memorandum. Those guidelines severely curtail the instances in which government agencies may withhold records pertaining to the assassination of President Kennedy. They state that even where one of the enumerated reasons for nondisclosure may apply, the agency "should weigh such reason against the 'overriding consideration of the fullest possible disclosure' in determining whether or not to authorize disclosure." This adopts the identical language which Chief Justice Earl Warren used to express the Warren Commission's view in his April 5, 1965, letter to the Attorney General. [See Attachment D] The Attorney General's memorandum also noted Chief Justice Warren's statement that "The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies."

The policy of suppression which still continues also contradicts the Warren Commission's official assurances to the elected representatives of the American people. Thus, in his March 11, 1964, letter to Senator Jacob Javits, Warren Commission General Counsel J. Lee Rankin stated:

"The final report of this Commission will be complete and documented by reference to relevant testimony and/or underlying investigative materials. At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration." [See Attachment E]

In his letter to Senator Javits, Mr. Rankin quoted a March 4, 1964, statement by Chief Justice Warren as follows:

"'The purpose of this Commission is, of course, eventually to make known to the President, and to the American public everything that has transpired before this Commission. All of it will be made available at the appropriate time. The records of the work of the Commission will be preserved for the public.'"

I have represented Mr. Harold Weisberg in four Freedom of Information lawsuits for the disclosure of records pertaining to the assassination of President Kennedy. In my judgment, there was never any legal basis for denying Mr. Weisberg any of the records which he sought in these four lawsuits. Mr. Weisberg was forced to go to court to obtain these records not because there was any legitimate reason for withholding them but because their release would embarrass the government.

This is shown by the circumstances surrounding *Weisberg* v. *General Services Administration*, Civil Action No. 2052-73, in which Mr. Weisberg sought the release of the transcript of the executive session of the Warren Commission held on January 27, 1964. When Congressman Gerald Ford published his book "Portrait of the Assassin" in 1965, he quoted extensively from the January 27 transcript. Yet for nine years after Mr. Ford had published parts of it, the National Archives continued to suppress the entire transcript on the grounds that it had been classified Top Secret pursuant to Executive Order 10501.

In 1973, when Mr. Weisberg filed suit for the January 27 transcript, the National Archives claimed that it was exempt from disclosure under exemptions (b)(1), (b)(5), and (b)(7). The Archives submitted two affidavits swearing that this transcript had been classified pursuant to Executive Order 10501. Mr. Weisberg filed counteraffidavits disputing this claim. After considering the opposing affidavits the district court ruled that the government had failed to show that the January 27 transcript "has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501 . . ."

While denying the validity of the Archives' exemption (1) claim, the district court did rule that the January 27 transcript was exempt from disclosure under (b)(7), the "investigatory files" exemption, even though the answers to the interrogatories asked by Mr. Weisberg showed that no law enforcement official had seen the transcript until at least three years after the Warren Commission had ceased to exist.

Before Mr. Weisberg could appeal this decision, the Archives suddenly "declassified" the transcript which the district court had ruled was never properly classified and released it to Mr. Weisberg and the public. If declassifying a transcript whose national security status had already been desanctified by court order is not without comical overtones, making the transcript public had more

serious implications. Since the district court had upheld the Archives' claim to the "investigatory files" exemption, the Archives did not have to make the transcript public, even if it "declassified" it. But making the transcript public under these circumstances does demonstrate that the Archives had spuriously invoked the "investigatory files" exemption.

The text of the Jaunary 27 transcript shows that there was never any basis for classifying it Top Secret pursuant to Executive Order 10501. It contains no information affecting the national defense or foreign relations which warrants classification under the provisions of that or any other executive order.

For nearly 10 years the National Archives suppressed the January 27 transcript on the fraudulent pretext that it was entitled to protection under exemption (b) (1) to the Freedom of Information Act. This, of course, was not the real reason why the Archives kept it from the American people. The real reason is simply that the government knew that its release would severely embarrass two powerful government agencies, the FBI and the CIA, and seriously undermine the Warren Commission's credibility.

What is true of Mr. Weisberg's suit for the January 27 transcript is also true of his other Freedom of Information Act lawsuits. In not one of them is there any legitimate basis for withholding the information which he seeks. The greater the embarrassment to the government, the more desparately the government seeks to avoid disclosure. In the case of Mr. Weisberg's two suits for the spectrographic and neutron activiation analyses, this desperation has expressed itself in repeated attempts to deceive the courts. The same FBI Agent has submitted two contradictory affidavits to the district court and the government has refused to answer even simple interrogatories which seek to ascertain what scientific tests were performed on the bullets, bullet fragments, and items of evidence allegedly struck by them.

The use of false, misleading, or obfuscatory affidavits to support a spurious claim of exemption or to deny that the documents sought exist or can be found occurs repeatedly in lawsuits brought for the disclosure of records pertaining political assassinations. Often such affidavits are executed by the wrong government employee, someone selected to swear out an affidavit precisely because he does not have the requisite personal knowledge of the facts recited in his affidavit.

Such tactics have implications far beyond the quest for information about the assassination of President Kennedy. They defy the intent of Congress in enacting the Freedom of Information Act and subvert the law. If the Freedom of Information Act is to be a viable means of compelling the disclosure of government information wrongly suppressed, it is my belief that Congress will have to pay close attention to the government's misuse of affidavits as a means of defeating rightful claims to the disclosure of information.

[Attachment A]

MAY 23, 1966.

Mr. J. EDGAR HOOVER,
Director, Federal Bureau of Investigation, Washington, D.C.

DEAR MR. HOOVER: Enclosed is a copy of my book, "Whitewash—The Report On The Warren Report." In it you will find quotations from your testimony and that of FBI agents that I believe require immediate unequivocal explanations and from the FBI's report to the Commission. Of the many things requiring explanation, I would like in particular to direct your attention to these three, in which it would seem no question of national security can be involved:

(1) In your brief discussion of the assassination in the report to the Commission you say that three shots were fired, of which two hit the President and one the governor. This does not account for the bullet that hit the curbstone on Commerce Street, which you told the Commission you could not associate with the Presidential car or any of its occupants. In another part of this report, dealing with Oswald, you told the Commission that the bullet that did not kill the President struck him in the back—not the neck—and did not go through his body. Here you seem to fail to account for the well-known wound in the front of the President's neck. And thus, are there not at least five bullets, the three you accounted for and the two you did not account for? The Commission itself considered the curbstone strike a separate bullet, and the President most certainly was wounded in the front of the neck.

(2) In his testimony before the Commission, FBI Agent Robert A. Frazier did not offer into evidence the spectrographic analysis of this bullet and that of the various bullet fragments. Neither did FBI Agent John F. Gallagher, the

spectrographer. Agent Frazier's testimony is merely that the bullets were lead, which would seem to be considerable less information than spectrographic analysis would reveal. The custodian of this archive at the National Archives informs me this analysis is not included in his archive but is in the possession of the FBI. I call upon you to make it immediately available.

(3) In his testimony before the Commission, FBI Agent Frazier said that when the whole bullet was received by the FBI, it had been wiped clean. He does not reveal any FBI interest in this unusual destruction of evidence. He also testified that the cleansing of the bullet was not complete, that foreign matter remains in the grooves in the bullet. Yet his testimony does not show any FBI interest in learning what the nature of the residue was. Did the FBI make the appropriate tests? Could the residue be associated with either the President's body or the governor's? What effort, if any, was made to learn? And if no effort was made, why not?

Sincerely yours,

HAROLD WEISBERG.

[Attachment B]

APRIL 13, 1965.

Memorandum for: Honorable McGeorge Bundy, Special Assistant to the President.

Re: Public Availability of Materials Delivered to the National Archives by the President's Commission on the Assassination of President Kennedy.

The Department of Justice has completed the study, requested by you in your memorandum of January 15, 1965, concerning the advisability of modifying the usual restrictions which would govern the availability to the public of materials delivered to the National Archives by the President's Commission on the Assassination of President Kennedy. In the course of this study, the Department of Justice has obtained the views of the President's Commission, the Archivist of the United States, the interested Federal agencies and the Dallas Police Department.

Under normal regulations governing access to materials deposited in the National Archives, materials are made available to any competent adult with a definite, serious reason for requesting access, unless there is in effect an overriding restriction on disclosure or disclosure would violate obvious requirements of public policy or propriety. With respect to investigative reports furnished to the President's Commission by Federal agencies, the relevant restriction is a rule of nondisclosure for a period of 75 years unless the agency in which the report originated authorizes disclosure.

The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies of the Government. According to the Chief Justice, the Commission assumed that these determinations would be made in light of "the overriding consideration of the fullest possible disclosure." Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies.

Based on the views of the Commission and the recommendations of the Federal agencies involved (summarized in the Attachment to this letter), the Department of Justice believes that there should be some modification of the normal procedures of the National Archives. The Department recommends that the following procedures be adopted in order to accomplish the most complete disclosure consistent with other legitimate interests:

1. All material furnished to the President's Commission by the Dallas Police Department and the Immigration and Naturalization Service should be made available to the public on a regular basis, since both agencies have authorized full disclosure.

2. Investigative reports and related materials furnished to the President's Commission by other Federal agencies should be administered in accordance with the existing regulations of the National Archives. These agencies should be requested to examine the materials furnished by them with a view to authorizing the immediate disclosure on a regular basis of as much of the materials as possible. (Where materials originated with an agency other than the one furnishing them to the Commission, the decision regarding disclosure should be made by the originating agency.) The following guidelines should be applied:

(a) Statutory requirements of nondisclosure should be observed;

(b) Security classifications should be respected, but the agency responsible for the classification should consider whether the classification can be eliminated or graded down consistently with the national security;

(c) All unclassified material which has been disclosed verbatim or in substance in the Report of the President's Commission or accompanying published documents should be made available to the public on a regular basis. (In this connection, it should be noted that the Archivist has advised that a final determination of which reports have been published in whole or in part, verbatim or in substance, will not be available before 1968.)

(d) Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure:

(1) will be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;

(2) may reveal the identity of confidential sources of information or the nature of confidential methods of acquiring information, and thereby prevent or limit the use of the same or similar sources and methods in the future;

(3) may lead to the incorrect identification of sources of information and thereby embarrass individuals or the agency involved;

(4) would be a source of embarrassment to innocent persons, who are the subject or source of the material in question, because of the dissemination of gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

(5) will reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.

Where one of the above reasons for nondisclosure may apply, the agency involved should weigh such reason against the "overriding consideration of the fullest possible disclosure" in determining whether or not to authorize disclosure;

(e) Except in special cases, documents should be withheld or disclosed in their entirety.

3. Classified and unclassified material which is not made available to the public should be reviewed by the agency concerned five years and ten years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at ten-year intervals during the remainder of the 75-year period of nondisclosure. The Archivist should undertake to arrange for such review at the appropriate times.

4. When a request for limited disclosure of particular unclassified documents or groups of documents is received by the Archivist, he should communicate such request to the agency concerned, which should consider the request in the light of the criteria outlined above and, wherever consistent with those criteria, authorize the limited disclosure requested. In the application of the criteria, consideration should be given to the qualifications of the person requesting disclosure and the purpose for which the request is made.

It should be noted that the Archivist has indicated that the arrangement and preparation of an inventory of the material turned over to the National Archives by the President's Commission will not be completed until June 1, 1965. Accordingly, it is unlikely that a review of the material turned over to the Commission by the various agencies can be undertaken before that date. It is suggested that the Archivist be asked to make arrangements with the various agencies for such review to be undertaken at the earliest possible date, to be carried out on an expedited basis.

The Archivist has advised that the disposition of materials originating with the President's Commission itself has been discussed with Mr. Rankin and that a final decision has been deferred until after June 1. He has advised also that pending a determination of the ownership of physical exhibits, requests for access to them will be referred to the Department of Justice. While it is anticipated that the fullest possible disclosure of these portions of the record will be authorized, in accordance with the desires of the President's Commission, the Department believes that particular decisions as to them should not be made until information regarding them is complete.

If these procedures meet with your approval, this Department will prepare the necessary instructions.

ATTORNEY GENERAL.

[Attachment C]

JANUARY 4, 1965.

The PRESIDENT,
The White House,
Washington, D.C.

MR. PRESIDENT: As one who read and believed the Warren Report on the assassination of President Kennedy I am disturbed and chagrined that you would permit a government agency to dictate to you what will be done with testimony and exhibits for the next 75 years.

Knowing that you believe in the public's right to know—a statement you have often made—it intrigues me that you would permit a 75 year cloak of secrecy to fall over the facts involved in the Kennedy assassination.

The decision of the National Archives Bureau to withhold from the public "off the record testimony and exhibits of the Warren Commission for 75 years" is inexplicable and inexcusable and gives cause to doubt the veracity of the published Warren Commission report.

I believe in national security but I fail to see the relationship between the facts of the Kennedy assassination and the security of the nation at this time.

May I suggest that if there is true justification for withholding from the public the facts of one of the most tragic events of our time, it is also incumbent upon our national leadership to make it clear why.

Franklin D. Roosevelt said: "the only thing we have to fear is fear itself." Secrecy creates fear.

Respectfully submitted,

ROBERT M. L. JOHNSON,
Mayor, Cedar Rapids, Iowa.

[Attachment D]

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., April 5, 1965.

Hon. NICHOLAS DEB. KATZENBACH,
Attorney General of the United States, Justice Department,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The President's Commission on the Assassination of President John F. Kennedy gave careful consideration to the proper disposition of its records before it delivered them to the National Archives. It wished them to be held there for the benefit of the American people. At that time, it decided that it was in the best interests of all concerned that the policy relating to the Commission's records provide for the fullest possible disclosure.

At the same time, the Commission recognized that its records contained investigative materials which were classified by the originating agencies to protect the security of the United States. Furthermore, among such materials were numerous items in which inhered serious potential for character assassination and other similar misuse to the injury of innocent persons.

The Commission, after full consideration, concluded that it did not have either the authority or the necessary information to determine the technical questions as to when the classified materials should be released without injury to the security of the country. It decided that the responsibility for that decision must of necessity be left with the originating agencies and the Attorney General, as the chief legal officer, in accordance with established law and policies of the Government. It also concluded that such agencies and the Attorney General could best determine what safeguards were necessary to protect innocent persons in the release of defamatory materials.

In arriving at the foregoing conclusions, however, the Commission assumed that all of the determinations by the agencies and the Attorney General would be made in recognition of the overriding consideration of the fullest possible disclosure, and that all other proper factors, including the disclosures that have been made, would be taken into account. The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies. It was with these thoughts in mind that the Commission, on its dissolution, committed its papers to the National Archives subject to the laws and regulations concerning the release to the public of classified and restricted materials.

SINCERELY YOURS,

We hope that this report of the attitude and conclusions of the Commission concerning the full disclosure of its records will be helpful to you in the formulation of your proposal for making the materials of this Commission now in the National Archives available to the public.

Sincerely,

EARL WARREN.

[Attachment E]

MARCH 11, 1964.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I would like to acknowledge receipt of several communications regarding the work of this Commission which you have referred to this office for comment. I apologize for the delay in responding to your inquiry, but I am hopeful that events during this period of time will serve to clarify the position of the Commission on some of the issues raised by these letters.

As you know, this Commission was established by President Johnson to investigate and report upon all the facts and circumstances surrounding the assassination of President Kennedy and the subsequent murder of his alleged assassin, Lee Harvey Oswald. All facets of this matter will be investigated fully and reported upon by the Commission as requested by President Johnson. I would like to assure you and your correspondents that all allegations that Oswald was an informant or undercover agent for the Federal Bureau of Investigation or any other federal agency will be thoroughly investigated.

With regard to the issue of Mark Lane's participation in the hearings of the Commission, the Commission has decided that its mission would not be aided by such a procedure. Mr. Lane did appear before the Commission, however, in a public hearing on March 4, 1964, and the Commission will consider his observations carefully before the issuance of its final report. The Commission has not prejudged Lee Harvey Oswald's implication in the assassination, but is exploring all possibilities that other persons may be involved. We are making every effort to remain sensitive to the rights and reputation of Lee Harvey Oswald. For your information I am enclosing the statement issued by the Commission announcing that the President of the American Bar Association has been appointed to assist the Commission in this effort.

As the events of the last few weeks have indicated, the press has interviewed Marina Oswald, who appeared before the Commission early last month. Neither the Federal Bureau of Investigation nor any other federal agency refused Mrs. Marguerite Oswald permission to see Marina Oswald. Ever since November 22, 1963, Marina Oswald has been free to see whomever she wishes to see.

The Chief Justice has authorized me to assure you that none of his remarks regarding the Commission were intended to suggest that the significant conclusions of fact developed by this investigation would not be made known to the American public. The final report of this Commission will be complete and documented by reference to relevant testimony and/or underlying investigative materials. At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration. On March 4, 1964, the Chief Justice stated as follows:

"The purpose of this Commission is, of course, eventually to make known to the President, and to the American public everything that has transpired before this Commission. All of it will be made available at the appropriate time. The records of the work of the Commission will be preserved for the public."

I hope that this letter is of some assistance to you in responding to this correspondence and I remain available to assist you in any way possible.

Sincerely,

J. LEE RANKIN,
General Counsel.

Enclosure [not attached].

We hope that this report of the attitude and conclusions of the Commission concerning the full disclosure of its records will be helpful to you in the formulation of your proposal for making the materials of this Commission now in the National Archives available to the public.

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I hope that this letter is of some assistance to you in responding to this correspondence and I remain available to assist you in any way possible.

Sincerely,

J. LEE RANKIN,
General Counsel.

Enclosure [not attached].

Attachment D

C.A. No. 75-1448

AMENDED ITEMIZATION OF ATTORNEY'S TIME

Date	Description	Hours
9/4/75	Preparation of complaint	2*
10/26/75	Motion to substitute party	½*
10/28/75	First set of interrogatories	4*
12/29/75	Motion to compel answers to interrogatories	2*
2/19/76	Letter to Judge Robinson	½*
2/27/76	Request for production of documents	3*
3/1/76	Motion to compel answers to interrogatories	4*
3/2/76	Motion to take tape-recorded depositions	2*
3/2/76	Second set of interrogatories	6*
3/22/76	Stipulation	2*
5/4/76	Request for production of documents	2*
5/4/76	Opposition to defendant's motion for summary judgment	40*
5/25/76	Status call	2*
7/8/76	Preparation of interrogatories	3½
7/9/76	Preparation of interrogatories	6
7/14/76	Preparation of interrogatories	3
7/15/76	Preparation of interrogatories	4½
7/16/76	Preparation of interrogatories	3½
7/18/76	Preparation of interrogatories	2½
7/19/76	Preparation of interrogatories	7½
7/20/76	Preparation of interrogatories	3
7/24/76	Preparation of interrogatories	4½
7/25/76	Preparation of interrogatories	4
7/26/76	Preparation of interrogatories	4
10/8/76	Motion for summary judgment	2
10/10/76	Motion for summary judgment	2
11/4/76	Conference with client	½

Date	Description	Hours
11/18/76	Hearing in front of Magistrate	2*
11/29/76	Memorandum to the Court	2
12/2/76	Hearing before Magistrate	1*
1/6/77	Motion to compel answers to interrogatories	3
1/7/77	Motion to compel answers to interrogatories	3
1/14/77	Hearing before Magistrate	2*
1/19/77	Objection to Magistrate's order and demand for immediate trial	3*
3/3/77	Preparation for hearing on motion to compel answers to interrogatories and on motions for summary judgment	3*
3/4/77	Hearing on motion to compel answers to interrogatories and motions for summary judgment	2*
3/21/77	Motion for reconsideration	15*
10/14/77	Work on appeal appendix	4
10/18/77	Work on appeal appendix	5
10/19/77	Work on appeal appendix	2
10/20/77	Work on appeal appendix	4
10/21/77	Work on appeal appendix	7½
10/22/77	Work on appeal appendix and review of file	2
10/23/77	Work on appeal appendix and review of file	3
10/24/77	Work on appeal brief (writing)	4
10/26/77	Work on appeal brief (writing)	6½
12/31/77	Notes on brief in Weissman case	½
2/15/78	Work on reply brief (research)	3
2/18/78	Work on reply brief	5½
2/19/78	Work on reply brief	4
2/20/78	Work on reply brief	2
2/21/78	Work on reply brief	13½
2/23/78	Motion for leave to file reply brief with addendum	2½
2/24/78	Motion to expedite oral argument	1½
3/6/78	Research on judicial notice	2
3/7/78	Research on judicial notice	2

Date	Description	Hours
3/8/78	Work on opposition to motion to strike reply brief addendum	2½
3/9/78	Work on opposition to motion to strike reply brief addendum	6
4/16/78	Work on Weisberg affidavit for new trial motion	2
4/17/78	Work on Weisberg affidavit for new trial motion	6½
4/18/78	Motion for new trial	2
5/4/78	Notice to take depositions	½
9/1/78	Research for appellant's brief in Case No. 78-1731	3 2/3
9/2/78	Research for appellant's brief in Case No. 78-1731	1 1/6
9/3/78	Research for appellant's brief in Case No. 78-1731	2 2/3
9/4/78	Research for appellant's brief in Case No. 78-1731	1½
9/5/78	Research for appellant's brief in Case No. 78-1731	3½
9/9/78	Research for appellant's brief in Case No. 78-1731	1½
9/10/78	Work on brief in Case No. 78-1731	3
9/11/78	Work on brief in Case No. 78-1731	9½
10/20/78	~~Research on mootness issue in Case No. 78-1731 and Case No. 77-1831~~	~~1~~
10/21/78	~~Research on mootness issue~~	~~1~~
10/24/78	~~Work~~ on opposition to motion to dismiss on grounds of mootness	1½
10/25/78	Work on opposition to motion to dismiss on grounds of mootness	11½
10/26/78	~~Work on opposition to motion to dismiss on grounds of mootness~~	~~8~~
2/12/79	~~Preparation for oral argument~~	~~3~~
2/12/79	~~Preparation for oral argument~~	~~4~~
2/13/79	~~Oral argument~~	~~2~~
2/13/79	Research on attorney fees	2
2/15/79	Work on affidavit for attorney fees motion	2
2/16/79	work on affidavit for attorney fees motion	2½

Date	Description	Hours
2/17/79	Work on affidavit for attorney fees motion	2
2/29/79	~~Drafting Weisberg affidavit in 77-1831~~	~~1~~
3/2/79	~~Drafting Weisberg affidavit in 77-1831~~	~~1~~
3/3/79	~~Drafting Weisberg affidavit in 77-1831~~	~~1 3/4~~
3/4/79	~~Drafting Weisberg affidavit in 77-1831~~	~~4~~
3/5/79	~~Work on appellant's response to appellee's motion for permission to lodge affidavit with Court of Appeals~~	~~3 1/6~~
4/7/79	Work on memorandum of points & authorities on motion for attorney fees	2 1/12
4/9/79	Work on affidavit for attorney fees motion	1 ¼
4/15/79	Work on memorandum of points & authorities on attorney fees motion	3¼
4/16/79	Work on memorandum of points & authorities on attorney fees motion	1 5/6
4/17/79	Work on memorandum of points & authorities for attorney fees motion	5¼
4/18/79	Work on memorandum of points & authorities on motion for attorney fees	3

*An asterisk is used where the amount of hours expended is based not upon work records but rather upon counsel's estimate as to the time spent. In the early stages of the case counsel did not keep time records. When he did begin to keep such records, he occasionally forgot to record his time; thus it has been necessary for him to estimate the amount of time required to perform certain items of work he did.

Date	Description	Hours
4/22/79	Memorandum of Points & Authorities for Attorney's fees motion	6 1/2
4/23/79	Memorandum of Points & Authorities for Attorney's fees motion	5 3/4
5/2/79	Opposition to Motion to Reconsider in Case No. 77-1831	5
5/3/79	Opposition to Motion to Reconsider in Case No. 77-1831	4 1/2
8/14/79	Reply to Opposition to Attorney's fees motion	1 1/2
8/14/79	Work on interrogatories	1
8/17/79	Conf. with client on Opposition to attorney's fees motion	1/2
8/17/79	Work on interrogatories	1 3/4
8/22/79	Reply to Opposition	2
8/23/79	Reply to Opposition	5
8/24/79	Reply to Opposition	2
8/25/79	Reply to Opposition	2 1/4
8/27/79	Reply to Opposition	1 1/6
8/28/79	Reply to Opposition	1 1/2
8/29/79	Reply to Opposition	3 1/2
9/4/79	Reply to Opposition	1
9/6/79	Reply to Opposition	4
9/10/79	Reply to Opposition	4 3/4
	TOTAL:	363 1/3

ATTACHMENT E

Civil Action No. 75-1448

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff	
v.	Civil Action No. 77-2155
GRIFFIN BELL, et al., Defendants	

Washington, D. C.
January 16, 1978

The above-entitled cause came on for Hearing on Plaintiff's Motion for a Preliminary Injunction before the HONORABLE GERHARD A. GESELL, United States District Judge, at 11:00 a.m.

APPEARANCES:

JAMES H. LESAR, Esq.,
Counsel ror Plaintiff

PAUL F. FIGLEY, Esq.,
DANIEL J. METCALFE, Esq.,
JO ANN DOLAN, Esq.,
Department of Justice,
Counsel for Defendants

COURT'S RULING

IDA Z. WATSON
Official Reporter
U. S. Court House
Washington, D. C.

PAGES: 1-5

COPY FOR:
MR. LESAR

P R O C E E D I N G S

* * * * * * * * * * * *

THE COURT: In this case, Weisberg v. Griffin Bell, Civil Action No. 77-2155, Plaintiff seeks a preliminary injunction to enjoin the Department of Justice from going forward with its scheduled proposed release on Wednesday of this week of numerous documents relating to the assassination of President Kennedy.

The Department of Justice, responding to numerous overlapping Freedom of Information Act requests, has dealt with these requests on what it calls a project basis and is processing the requests as a group, leading to this broad disclosure of documents, which is the second such disclosure relating to the assassination.

Plaintiff initially sought the injunction resting substantially on the fact that he had some time ago sought a waiver of fee charges and the Department had not been respons to his request.

It is Plaintiff's theory that as one early interested in the assassination and as having long ago sought access to these documents, he is entitled to priority or at least equal treatment and should receive the documents at least coincident with their disclosure in the manner the Court has previously described.

Responding to this complaint, the Department responde

promptly on the waiver of fee request to Plaintiff, which had been long overdue, advising that the documents would be made available to him at six cents, rather than ten cents a copy.

At this stage the Defendants continue to oppose the preliminary injunction and seek a partial summary judgment, at least with respect to the waiver of fee aspect of the case; and an amended complaint has been filed.

The matter was argued and has been thoroughly briefed The Court has before it a number of affidavits, as well as the briefs.

Taking first the question of whether the disclosure on Wednesday, January 18, 1973, should be enjoined, the Court will not enter such an injunction.

The reasons are simply these: The great public interest in the disclosure of these documents seems to the Court the preeminent consideration. In addition, the Court is not satisfied that Plaintiff will be irreparably injured in any fashion by disclosure.

The whole purpose of the Freedom of Information Act is to bring about disclosures such as this; and it should go forward as scheduled.

The suggestion that the decision of our Court of Appeals in Open America is to contrary effect is rejected. That opinion, which did not involve a situation comparable to [illegible] the desirability of the Government in matters

of broad public interest, such as this, to proceed on a project basis; and there is no first-come-first-served rule, established by Open America or any other decision, which should be allowed to interfere under these circumstances.

The Court then turns to the question of Plaintiff's request for complete waiver of fees with respect to these particular documents.

The equities are very substantially and overwhelmingly in Plaintiff's favor. He has long sought such a waiver. The Defendants delayed response to his request, perhaps purposefully due apparently to past dealings with him.

The Defendants acknowledge that there will be benefits to the general public and hence it is in the public interest for the Plaintiff to receive these documents under a partial waiver.

The Plaintiff has made a unique contribution in this area by his persistence through the courts and before the Congress, without which there would be no disclosure, as the Government recognizes.

I have before me the entire administrative record relating to this waiver. It is apparent that no consideration whatsoever was given to Plaintiff's claims based upon his established poor health and indigency. Yet the rules and regulations contemplate that these considerations should be given weight.

Under all the circumstances, the Court is of the view that the Defendants have forfeited any right to remand with respect to this matter; that it is before the Court on a proper record for determination; and that his prayer to receive this group of documents being released on January 18 without payment of any fee should be honored with reasonable dispatch.

In making this ruling, I am prompted largely by the special circumstances of this particular case. In no way is the Court suggesting that any precedent is involved with respect to any future problems that the Plaintiff may have with this or any other agency of the Government.

The Court also wants to make clear that he feels there are many matters raised in the papers, some of them totally irrelevant, some of them marginally relevant, in which Plaintiff has used sharp adjectives in his characterization of governmental conduct.

The Court in no way is influenced by these and makes no determination at all that such claims were appropriate in this case or are supported by any proof.

I think, gentlemen, you ought to confer and prepare a simple one-page order covering these two determinations, whic can be submitted to the Court later this afternoon. Thank you.

MR. LESAR: Thank you, Your Honor.

- - - -

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on January 16, 1978, and that the foregoing Pages 1 to 5, inclusive, constitute the official transcript of the Court's Ruling.

Ida Z. Watson

ATTACHMENT F Civil Action No. 75-1448

I, Leslie H. Whitten, the undersigned, residing at 114 Eastmoor Drive, Silver Spring, Md., 20901, do swear and attest:

1. That I am a newspaper reporter and share the byline with Jack Anderson on the Washington Merry-Go-Round, the world's most widely syndicated news column; that I have worked fulltime with Anderson for eight years; that prior to that I have worked as a newsman, inter alia, with the Hearst Newspapers, as assistant bureau chief in Washington, The Washington Post, United Press International, International News Service; that I have been a newsman for 26 years; that I have won awards from the Washington Newspaper Guild, the California Health Association, the Disabled American Veterans, the Humane Society of the United States, the American Civil Liberties Union, among others.

2. That I have written voluminously for newspapers of general circulation about the two Kennedy assassinations, the Martin Luther King, Jr. assassination; that I have pursued many avenues related to both assassinations, including investigations of various CIA, FBI and other activities; grand jury probes, both state and federal; trials, hearings and diverse other offshoots of the events; that I have written extensively about other matters as an investigative reporter.

3. That beginning with the publication of Harold Weisberg's White Wash in 1966, I have had the occasion to consult with Weisberg on stories, theories and avenues to pursue in my work on the King, two Kennedy assassinations and a host of related matters.

4. That while I disagree vigorously with his theories on many aspects of these assassinations, I have found his research invaluable and even vital in pursuing the news; that he is reliable and accurate and his assessments of the importance of documents he has provided me and I have turned up on my own have been extraordinary; that I have found him uniquely reliable among the so-called "critics."

5. That Weisberg, on dozens of occasions, has cut through government red tape, using his library of documents to do so, saving time, making available material that would take months to locate in the maze of government files; that he is foremost organized, credible breaker of government monopoly on

such information; that he is contemptuous of cover-ups even when the documents seem to counter his ( ) theories.

6. That the information from Weissberg on which I have based numerous stories, and bulwarked stories already in the works, gave them more strata of meaning; that our office of 12 other reporters have called on Weissberg for help of the same nature ans has been given it; that he has helped, sometimes to may annoyance, my competitors with excellent stories (though always with the same fairhandedness with which he has helped our office.)

7. That he has steered me away from several pitfalls; that several stories looked plausible, but turned out under Weissberg's counseling to be false; that without such counseling and documentation, I would have printed false stories; that on occations, which I hope are rare, we have gone with stories that we might not have had Weissberg not been out of pocket at the time and thus unreachable for a check; that, finally, I seldom if ever write a piece touching on the assassinations without bouncing it off Weissberg.

8. That Weissberg has done these useful works without charge, and indeed, has even sometimes paid the duplication costs from his own pocket; that the providing of these documents have been afforded to other reporters as well, to my certain knowledge; that his files are available to us at all times when he is home and that he cheerfully (with the exception of a rare grump from time to time) guided us to the best available documentation.

9. That the press absolutely cannot rely on government agencies and conventional libraries for information on the Kennedy and King assassinations and related probes; that Weissberg's very independence and the integrity of his files are essential if the issues are to be dealt with properly; that, therefore, you simply have to have someone like Weissberg to find the key documents from the 25,000 in the King case and the -- I'm guessing -- millions scattered in various files on the Kennedy cases.

10. That any money spent to help Weissberg build up his files would be far better spent than in a government operation, and infinitely cheaper; through giving Weissberg the records free (the government really should give him a stipend and an assistant) the public will be served well as his work makes for better, more accurate, less inflamatory information being disseminated; his contribution so far in killing off kook theories and encouraging sound investigations is measureless.

11. That Weissberg helps keep the government honest, helps head off the coverups, the selected leaking, the favrications that have often characterize individuals in government. To often they have special axes to grind and special interests to protect, including their own jobs.

12. That to have the maximum number of documents in Weissberg's hand is the best way to ensure that scholars will have a record of proven worth; that his decision to donate them to the University of Wisconsin is a worthy idea.

13. That government assistance to duplicate the entire Weissberg files twice, one copy being kept on the East Coast, preferably in Washington, and one on the West Coast, perhaps San Francisco, would federal money splendily spent, for present media people and historians and for future ones.

Signed this day of October 1 , 1977.

Leslie H. Whitten

District of Columbia

Sworn and subscribed before me this 1st day of October, 1977

Notary Public

My Commission Expires January 14, 1982

ATTACHMENT G

Civil Action No. 75-1448

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Harold Weisberg, Plaintiff	
vs.	
United States Department of Justice, Defendant	Civil Action No. 75-1996

AFFIDAVIT OF HOWARD ROFFMAN

1. My name is Howard Roffman. I live at 5885 Edenfield Road, Apt. B-29, Jacksonville, Florida 32211.

2. This affidavit concerns Harold Weisberg's entitlement to remission of costs in this Freedom of Information Act lawsuit which he has brought against the United States Department of Justice to obtain records relating to the assassination of Dr. Martin Luther King

3. I am in a unique position to certify that Harold Weisberg's research into the assassinations of President John F. Kennedy and Dr. King have been for the direct benefit of the public and, more particularly, all interested, responsible researchers, historians, and media representatives, and not for his personal financial gain.

4. I am the author of a book on the assassination of President Kennedy entitled Presumed Guilty. I could not have written that book without the research assistance I received from Mr. Weisberg.

5. Mr. Weisberg and I first came in contact in 1969, when I was sixteen years old and a junior in high school. Mr. Weisberg knew tha I had done serious research on the Kennedy assassination and he invit me to his home in Frederick, Maryland, to spend the weekend and study his then-unpublished books on the assassination and records that he had recently obtained from the National Archives.

6. After that first weekend in 1969, Mr. Weisberg and I became close personal friends and associates. For the next five years I wou

visit his home in Frederick at least three times a year, often staying more than a week at a time. I always had unsupervised access to all of Mr. Weisberg's files and was free to copy whatever papers or documents I pleased. Mr. Weisberg faithfully kept me up to date on the latest releases of information that he obtained from the Government, often providing copies for my files.

7. Mr. Weisberg's sharing of his research with me took place at a time when he knew that I was writing a book which would inevitably compete with his own books on the Kennedy assassination (which he had published at his own expense). Still, he encouraged my work out of the belief that I would write a scholarly work in an area where there is a regretable lack of scholarship. I clearly came to know that Mr. Weisberg's commitment to the advancement of honest, responsib research and writing on the subject of political assassination in America not only outweighed but obliterated any profit motives he might have as a competing author.

8. When, as an undergraduate at the University of Pennsylvania, I undertook a history research project into President Kennedy's policy toward Southeast Asia, Mr. Weisberg opened his own research files on that subject to me, fed and housed me in his home at no charge to me while I worked, and finally sent me off with two cartons full of his own files.

9. When I left Philadelphia, Pa., in September 1974 to attend law school in Gainesville, Florida, I was limited in my ability to visit Mr. Weisberg (I went to his house for only one week during my time in law school), but we continued our correspondence and he continued to send me volumes of material, including documents on the Kennedy and King assassinations and court papers in his various Freedc of Information suits.

10. My book on the assassination was published while I was in law school. When it appeared in print, Mr. Weisberg helped to arrange promotional appearances for me, even though he was a competing author.

11. I am currently serving as law clerk to the Honorable Bryan Simpson, Circuit Judge, Fifth Circuit Court of Appeals. My work in this capacity is so time consuming that I am virtually unable to continue my former degree of research into the Kennedy assassination. Thus, my contribution to Mr. Weisberg's research is now limited to the small amount of documents I am able to secure administratively from various government agencies through the Freedom of Information Act. Still, the volume of material Mr. Weisberg sends to me --the fruits of his research--has actually increased because of his improved copying facilities.

12. In my close association with Mr. Weisberg, I saw that he followed a policy of openness toward all researchers willing to come to his home. Reporters, historians, students -- all were welcome to use the valuable research materials contained in Mr. Weisberg's files and to use his home as a place to do their research. In fact, I often became concerned that some people had abused the trust that Mr. Weisberg placed in them and had mistreated his files. I quickly learned that, because of his openness, Mr. Weisberg was willing to put up with much more than I would in allowing others to use my files.

13. In addition to this open policy about his files, Mr. Weisber has, to my personal knowledge, devoted countless hours to using his research for the benefit of the press and members of Congress. He is often called upon for background information and detail that is unavailable from any other source. He is asked to do this for free, usually even without credit or mention in public, and I have never known him to refuse. For example, I have been working with Mr. Weisb at his home when he would receive an urgent call from Fred Graham (th with the New York Times) or George Lardner (of the Washington Post), wanting to know the "scoop" behind a breaking story; Mr. Weisberg woul interrupt his own work for hours at a time to help these men, asking nothing in return except that the public be better informed.

14. To my personal knowledge, Mr. Weisberg's desire that as many people as possible share the fruits of his research is evidenced by his efforts to deposit his files with a reputable University library I have read Mr. Weisberg's correspondence relevant to these efforts and was present when he discussed plans to donate his files to the University of Wisconsin at Stevens Point. The discussions involved Mr. Weisberg, a professor of history at the school, Dr. David Wrone, and a University Chancellor, and took place in November of 1976 in Stevens Point.

15. Although such information is personal in nature, I think the Court should be aware of it in deciding the issue to which this affidavit is addressed: I know for a fact that Mr. Weisberg has not financially profited from his work on assassinations and that he has not undertaken this work out of a desire to "strike it rich." In my frequent stays at the Weisberg home, I was struck by the modesty of their lifestyle and the tremendous sacrafices of material goods that both Mr. Weisberg and his wife have made to enable Mr. Weisberg's research to continue. In my experience I have never witnessed such dedication to work and principle that resulted in so great a deprivati of material, financial comforts which some have come to regard as necessities. I cannot emphasize how much Mr. Weisberg's dedication and sacrafice has inspired me.

16. Mr. Weisberg's efforts in the present case indicate to me his unselfish motives.

17. Mr. Weisberg's book on the King assassination was published six years ago and is no longer commercially available. I cannot conce how he could write another book on that topic in the future, if only for reasons of time and other pressing research needs. Other books on the King assassination are commercially available today, and some are heavily promoted. Their authors, without exception, share profoun disagreements with Mr. Weisberg and have been publically contemptuous of him.

18. While these other authors have time to travel extensively to promote their books (for example, Mark Lane and William Bradford Huie), they apparently do not have time to assist the legal efforts undertaken by Mr. Weisberg to make public information about the crime through which theyare trying to sell books.

19. I assume that since the Government is in Court over disclosure of these King records, it has made whatever disclosures it has on less than a purely voluntary basis. Hence, someone had to use the Freedom of Information Act to force disclosure of information about this most important event in American history. Such disclosure serves the public and in this case cannot serve the personal financial interests of the man who forced disclosure, Mr. Weisberg.

Howard Roffman

DUVAL COUNTY, FLORIDA

Before me this 12th Day of October 1977 affiant Howard Roffman has appeared and signed this affidavit, having first sworn that the statements made therein are true.

My commission expires

WESLEY R. THIES, CLERK UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE, FLORIDA

By: Deputy Clerk

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ATTACHMENT H

Civil Action No. 75-1448

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant

AFFIDAVIT OF DAVID R. WRONE

I, David R. Wrone, being first duly sworn, depose as follows:

1. I am a professor of history at the University of Wisconsin-Stevens Point. I reside at 1518 Blackberry Lane, Stevens Point, Wisconsin.

2. I specialize in the ideas and institutions of reform and teach and publish in this area. My courses include lectures and seminars on recent American history and involve the direction of graduate work.

3. I have spent many years of scholarly research on the subject of institutional reform. In 1964 I received a PhD in history from the University of Illinois (Urbana). My doctoral thesis was on the importance of the press in the emergence of Abraham Lincoln. ("The Prairie Press in Transition, 1830-1860.")

4. I have published many articles and am coauthor of a volume on the institutionalization of racial prejudice against the American Indian: Who's The Savage? A Documentary History of the Mistreatment of the Native North American (Fawcett, 1973).

5. My study of the transformation of the roads of Illinois appears as a chapter in a general history of the state: An Illinois Reader (Northern Illinois Press, 1973).

6. I have lectured widely on the assassinations of President Kennedy and Dr. Martin Luther King, Jr. and appeared on numerous radio and television shows. I have served as a consultant for local media regarding national shows and have written articles and reviewed books on these subjects. I am author of a critical bibliography which examines and categorizes scores of books which have been published on the assassination of President John F. Kennedy: The Assassination of President John Fitzgerald Kennedy: An Annotated Bibliography (State Historical Society of Wisconsin, 1973).

7. In November, 1976 I directed a symposium on the integrity of basic institutions and the assassinations of President Kennedy and Dr. King. The lectures delivered at this symposium were televised for educational use and are now being circulated in video and audio form in colleges and high schools. Attached hereto is a brochure which lists the materials which are available from the University of Wisconsin-Stevens Point Office of Educational Services and Innovative Programs. (See Exhibit A)

8. I have an extensive familiarity with the literature on the assassination of Dr. Martin Luther King, Jr. I have read the voluminous court records of the several cases related to the conviction of James Earl Ray and his attempts to overturn that conviction and obtain a trial on the charge that he murdered Dr. King. I have also read the publications on this subject by the Department of Justice and committees of Congress, as well as the secondary accounts.

9. In the course of my study of the King assassination materials, I have become quite familiar with the work of Harold Weisberg on this subject and now consider myself an authority on his contribution. In the near future I intend to publish scholarly articles in journals and deliver lectures to learned societies on his work.

10. Mr. Weisberg's work on the assassination of Dr. King is the only significant work available for the person seriously interested in the evolution of this subject and its relationship to the fundamental institutions of American society. There is simply no way to approach this subject other than through Mr. Weisberg's prodigious efforts.

11. The University of Wisconsin at Stevens Point has a deep interest in the acquisition, maintenance, and dissemination of Mr. Weisberg's files, especially those on the assassination of Dr. Martin Luther King, Jr., both in terms of the immediate future and for future generations. The University plans to establish a Weisberg Archive where the records which Mr. Weisberg has accumulated and analyzed can be properly maintained and made accessible to scholars and the general public through a professional staff knowledgeable in the subject matter.

12. I am familiar with the volume and kinds of records Mr. Weisberg has on Dr. King's assassination (and also President Kennedy's) and the quality of his analysis of them. I have, in fact, made several visits to his home in Frederick, Maryland for the purpose of discussing his work with him and obtaining records from him. Mr. Weisberg's files on both the Kennedy and King assassinations are invaluable, unique, and in many respects cannot be duplicated from any other source. This, of course, explains the interest of the University of Wisconsin-Stevens Point in obtaining them.

13. The establishment of a Weisberg Archive, particularly where King assassination materials are concerned, will also facilitate the use of fellowships and grants to black students interested in this subject.

14. The University of Wisconsin-Stevens Point has already begun to draw upon a small portion of the materials which will ultimately comprise the Weisberg Archive. It has already developed a video tape series suitable for public broadcasting stations and for high school and college classes of some of the unique materials which Mr. Weisberg has donated to the University. These video tape materials can be purchased or rented by the public.

15. The University plans to continue developing and disseminating Mr. Weisberg's materials as they are deposited and made available. This will be done, first, through electronic media presentation in slides, video tapes, documentary handbooks, guides, indexes, and course aides. Additional plans are to develop support services for students from minority backgrounds who might desire to make scholarly use of the documents. Future plans also include the microfilming of some important segments, preparing of guides, and making these available to colleges throughout the nation and overseas.

16. Mr. Weisberg's work on political assassinations and the workings of our basic institutions--law enforcement agencies, the courts, the press, the intelligence agencies--and the establishment of an archive on it at Stevens Point are in the public interest. Mr. Weisberg's accomplishments are unique in character--they relate to far more of enduring public interest than just political assassinations--and are without precedent in scale. In total volume his materials exceed the nucleus collection on the frontier formed by Lyman C. Draper in the nineteenth century which established the State Historical Society of Wisconsin and the holdings of several other famed manuscript libraries gathered in America that are seen as part of our national treasure. The quality of the materials and his analysis of them is excellent. He possesses photographs, maps, taped interviews, letters, and other records that can be found in no other place.

17. Mr. Weisberg's scholarship is magisterial in its command of the documentary base and clear on the fundamental points at issue. He cannot be compared with the other authors on the King assassination from the perspective of scholarship and objectivity. His work on this topic stands in a totally different light from all others. He works from an objective base, seeking not merely to discover who killed Dr. King or to reap commercial profits but to establish what the evidence is and what it means not only in terms of the crime itself, but also in terms of the larger significance it holds for the workings of our basic institutions.

18. It is this last point which is of fundamental importance. Mr. Weisberg's work focuses on the performance and nonperformance of basic social institutions--the law, the press, publishers, Congress, the Department of Justice, and others--during a time of crisis. In so doing he reveals deep flaws which caused these institutions to malfunction in a manner which thwarted justice and hurt the ends of the nation.

19. I am of the opinion that Mr. Weisberg's work cannot be reduplicated by the government or by scholars. I have been informed that the FBI has established a file of King assassination documents in a reading room

accessible to members of the general public at its headquarters in Washington, D.C. This does not significantly assist the public interest in evaluating the facts of the King assassination or the FBI's investigation to it. The initial problem is, of course, that the selection of records contained in this file will be made by the FBI, which itself has been severely criticized in connection with its investigation of the King murder. In addition, these records will be largely inaccessible to all except casual tourists. Few scholars have funds sufficient to enable them to travel to Washington, D.C. and stay there long enough to peruse the more than 20,000 pages of documents contained in the FBI's Central Headquarters file on the King assassination. Moreover, scholars and citizens would not know where to begin studying this enormous volume of documents without extensive advance preparation. What is required is a scholar who can use the resources of a university system to assist those who wish to do work in this area.

20. Even the costs of duplication imposed by government agencies can impose a serious burden upon scholarship. A University archive such as the Weisberg Archive which is being established at Stevens Point can provide better and more economical service for duplicating records, including not only xeroxing but also making slides, photographs, and tapes. Moreover, it can offer a full range of other essential services, providing books, reference works, maps, newspapers, journals, and the like. It can also coordinate scholarly efforts in an area in such a manner that it will lead to increased dissemination to the public of knowledge about such an area through the publication of books, articles, dissertations, and so forth.

21. The crucial aspect of any archival collection, however, is that there must be a knowledgeable person associated with it and residing where it is located who can develop the material and guide students and scholars. This is the main reason for establishing a Weisberg Archive at the University of Wisconsin-Stevens Point.

22. Mr. Weisberg has stated that he intends to leave his records on the assassination of Dr. King to the University of Wisconsin-Stevens Point.

For the reasons which I have outlined above, the public interest will be served if the records which Mr. Weisberg has and is continuing to obtain are deposited at the Weisberg Archive in Stevens Point. More to the point, the public interest will be better served if records on Dr. King's assassination are made accessible to journalists, scholars, and the general public through the archive at Stevens Point than if they are only accessible through the FBI and other components of the Department of Justice in Washington, D.C.

23. Even were this not true, the caliber and importance of Mr. Weisberg's work on the King assassination are such that making all government records available to him without cost is more than justifiable. — The simple fact is that Mr. Weisberg uses the records he obtains to serve— not his personal interest--the public interest by informing journalists and scholars, and through them, the general public.

Professor David R. Wrone
PROFESSOR DAVID R. WRONE

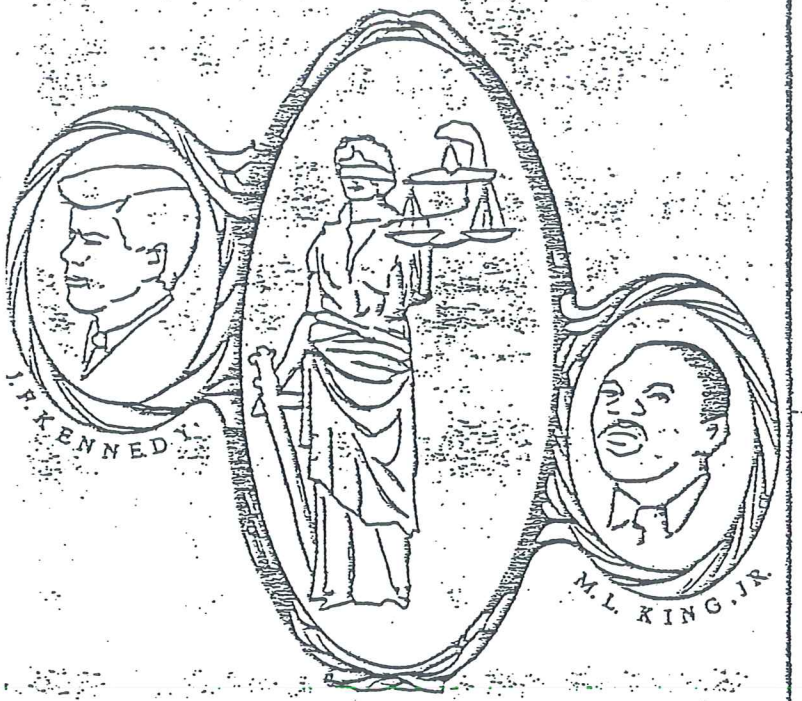
PORTAGE COUNTY, WISCONSIN

Subscribed and sworn to before me this 24TH day of October, 1977.

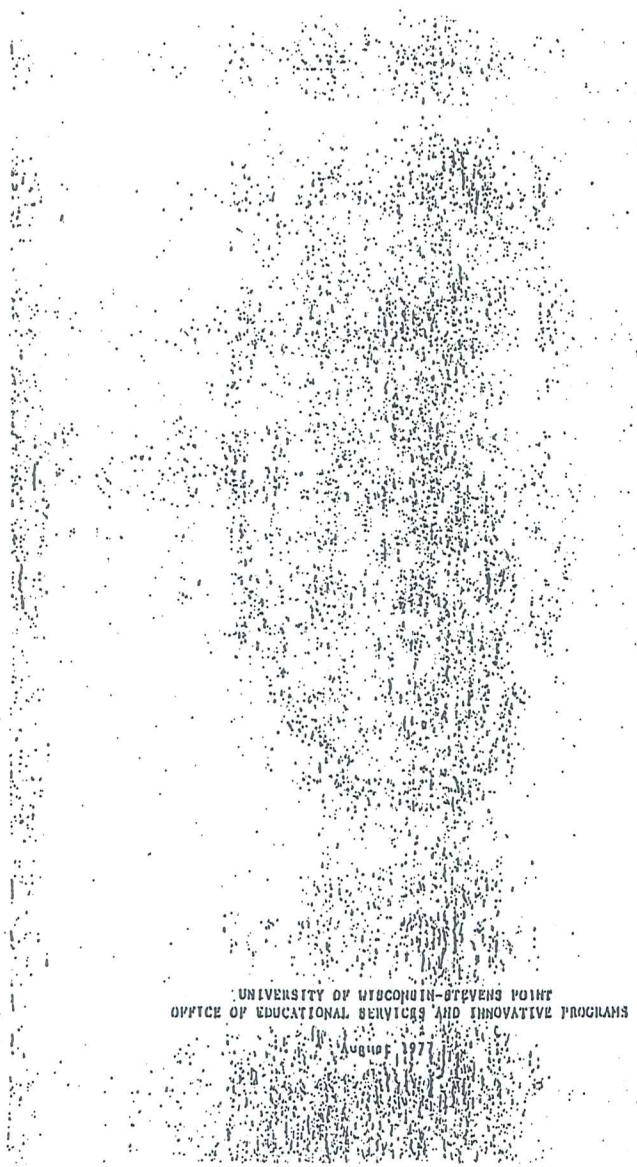
Carol A. Davies
NOTARY PUBLIC IN AND FOR
PORTAGE COUNTY, WISCONSIN

My commission expires 7/12/81.

Exhibit A Wrone Affidavit C.A. 75-1996



EQUAL JUSTICE FOR ALL



UNIVERSITY OF WISCONSIN-STEVENS POINT
OFFICE OF EDUCATIONAL SERVICES AND INNOVATIVE PROGRAMS
August 1977

PRESIDENT JOHN F. KENNEDY/DR. MARTIN LUTHER KING, JR.

ASSASSINATION MATERIALS

The materials listed in this brochure were developed from a symposium held on the University of Wisconsin-Stevens Point campus in November of 1976. The symposium was directed by Dr. David R. Wrone, Professor of History at the University of Wisconsin-Stevens Point and a nationally recognized authority on the President John F. Kennedy assassination.

Other symposium participants included: Harold Weisberg, author, former Senate investigator, editor, investigative reporter, OSS intelligence, political analyst and the man regarded by many as having done the definitive investigation, research and writing on the President John F. Kennedy/Dr. Martin Luther King, Jr. assassinations and their official inquests; James H. Lesar, Washington attorney, who has specialized in numerous freedom of information suits regarding the President John F. Kennedy/Dr. Martin Luther King, Jr. assassinations, and is an authority on the legal aspects of the investigation of the Dr. Martin Luther King, Jr. assassination; and Howard Roffman, attorney, recognized authority on the President John F. Kennedy assassination and its investigations, and author of Presumed Guilty, one of the key source books for an understanding of the Warren Commission investigation.

The President John F. Kennedy/Dr. Martin Luther King, Jr. assassination materials present the research of four scholars over the past 14 years, and emphasize the legal obstacles barring the path to the public's access to information. Several of the video-cassettes contain rare photographs never before made public.

I. ASSASSINATION SYMPOSIUM VIDEOCASSETTES

A. THE DR. MARTIN LUTHER KING, JR. MATERIALS — PURCHASE PRICE

Four 60 minute videocassettes and one 30 minute videocassette..... $175.00

1) David R. Wrone - One 60 minute videocassette. $40.00
"Dr. Martin Luther King, Jr. and the Transformation of the Civil Rights Movement."

2) James H. Lesar - One 60 minute videocassette. $40.00
"The Assassination of Dr. Martin Luther King, Jr. and the System of Justice--Reality and the Idea." Part I.

Part II - One 30 minute videocassette. $30.00

3) Harold Weisberg - One 60 minute videocassette. $40.00
"The Assassination of Dr. Martin Luther King, Jr.: A Case Study of the Malfunction of Government." Part I.

Part II - One 60 minute videocassette. $40.00
"Questions and Answers."

B. THE PRESIDENT JOHN F. KENNEDY MATERIALS

Nine 60 minute videocassettes & two 30 minute videocassettes..... $400.00

1) David R. Wrone - One 60 minute videocassette. $40.00
"The Assassination of President John F. Kennedy: The Malfunction of Criticism."

2) James H. Lesar - One 60 minute videocassette. $40.00
"The Assassination of President John F. Kennedy and the Impact on the Legal System, the Freedom of Information." Part I.

Part II - One 30 minute videocassette. $30.00

3) Harold Weisberg - One 60 minute videocassette, $40.00
"The Warren Commission Behind the Scenes--Their Secret Documents." Part I.

Part II - One 60 minute videocassette. $40.00

4) Harold Weisberg - One 60 minute videocassette. $40.00
"The Assassination of John F. Kennedy: Suppression of the Evidence." Part I.

Part II - One 30 minute videocassette. $30.00

5) Howard Roffman - One 60 minute videocassette. $40.00
"Lee Harvey Oswald and the Failure of American Justice." Part I.

Part II - One 60 minute videocassette. $40.00

6) Harold Weisberg - One 60 minute videocassette. $40.00
"Recent Developments: Schweiker Report, Ahzug Report, FBI Revelations." Part I.

Part II - One 60 minute videocassette. $40.00

II. ASSASSINATION SYMPOSIUM AUDIOCASSETTES

A. THE DR. MARTIN LUTHER KING, JR. MATERIALS — PURCHASE PRICE

Three C-90 audiocassettes and one C-60 audiocassette..... $10.00

1) David R. Wrone - One C-90 audiocassette. $5.00
"Dr. Martin Luther King, Jr. and the Transformation of the Civil Rights Movement."

2) James H. Lesar - One C-90 audiocassette. $5.00
"The Assassination of Dr. Martin Luther King, Jr. and the System of Justice--Reality and the Idea."

3) Harold Weisberg - One C-90 audiocassette, one C-60 $10.00
"The Assassination of Dr. Martin Luther King, Jr.: A Case Study of the Malfunction of Government."

B. THE PRESIDENT JOHN F. KENNEDY MATERIALS

Eight C-90 audiocassettes, one C-60 and one C-30 audiocassettes..... $45.00

1) David R. Wrone - One C-90 audiocassette. $5.00
"The Assassination of President John F. Kennedy: The Malfunction of Criticism."

2) James H. Lesar - One C-90 audiocassette. $5.00
"The Assassination of John F. Kennedy and the Impact on the Legal System."

3) Harold Weisberg - Two C-90 audiocassettes. $10.00
"The Warren Commission Behind the Scenes--Their Secret Documents."

4) Harold Weisberg - Two C-90 audiocassettes. $10.00
"The Assassination of President John F. Kennedy: Suppression of Evidence."

5) Harold Weisberg - One C-90 audiocassette, one C-60. $10.00
"Recent Developments: Schweiker Report, Ahzug Report, FBI Revelations."

6) Howard Roffman - One C-90 audiocassette, one C-30. $10.00
"Lee Harvey Oswald and the Failure of American Justice."

III. PRESIDENT JOHN F. KENNEDY/DR. MARTIN LUTHER KING, JR. MATERIALS

One 60 minute videocassette and one C-90 audiocassette..... $40.00

1) Harold Weisberg and James H. Lesar - One 60 minute videocassette. $40.00
"Recent Developments: Court Cases, House of Representatives Inquiry."

2) Harold Weisberg - One C-90 audiocassette. $5.00
"Recent Developments: Court Cases, House of Representatives Inquiry."

Exhibit C

~~Exhibit 9~~ ~~C.A. 75-1996~~

UNITED STATES GOVERNMENT

Attachment 1

Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: MURKIN

DATE: October 20, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. McDonough
1 - Mr. Bishop
1 - Mr. W. C. Sullivan

This is the case involving the murder of Martin Luther King, Jr.

Weisberg is apparently identical with Harold Weisberg an individual who has been most critical of the Bureau in the past.

By letter in April, 1969, Weisberg requested information on the King murder case for a forthcoming book. It was approved that his letter not be acknowledged. (100-35138)

Enclosures (2) 10-21-69 100-35138-5838

EJM:jmv
(8)

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CONTINUED - OVER

Exhibit F-5

~~Exhibit 10~~ ~~6-3-75-1995~~

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach DATE: 6/24/70

FROM : T. E. Bishop

SUBJECT: ASSASSINATION OF DR. MARTIN LUTHER KING

By way of background, on 4/27/70 Assistant Attorney General William Ruckelshaus, Civil Division, Department of Justice, advised the Director that Harold Weisberg, the author of the books "Whitewash I" and "Whitewash II," has filed a civil action against the Department of Justice and Department of State demanding copies of all the papers which were employed in the extradition in the James Earl Ray matter. These documents were used in the extradition proceedings against James Earl Ray in England and were thereafter returned to the State Department and were transferred to the Department of Justice. Included in the documents were a considerable number of affidavits of FBI Agents, affidavits covering fingerprints, ballistics' examinations, etc. Ruckelshaus asked if the release of these documents to Weisberg would in any way prejudice the work of the FBI. It is noted that Weisberg is an author who has been extremely critical of the FBI, the Secret Service and other police agencies in books which he has written about the assassination of President Kennedy.

By memorandum of April 30th the Director advised Ruckelshaus that the determination as to the release of the pertinent documents is within the province of the Department of Justice and the FBI interposes no objection. It was suggested, however, that the Civil Division communicate with the Civil Rights Division of the Department on this matter since Federal process was still outstanding against Ray charging a violation of a Federal Civil Rights Statute.

The Bureau is in possession of a copy of a letter dated May, 1970, from Jerris Leonard, Assistant Attorney General, Civil Rights Division, to Ruckelshaus stating that any release of any information in the files pertaining to the investigation regarding James Earl Ray would be inimicable to the investigation.

REC-3

Enc. 1 - ENCLOSURE

1 - Mr. DeLoach
1 - Mr. Bishop
1 - Mr. Rosen
1 - Mr. Sullivan
1 - Mr. Jones

(CONTINUED-OVER)

JUN 29 1970

JUN 29 1970

UNRECORDED COPY FILED IN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff,	:	
v.	:	C.A. 75-1448
GENERAL SERVICES ADMINISTRATION, Defandant	:	

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 mislead 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 justificaton 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 have 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 deterioriation 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 ofothose 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.

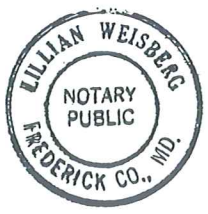
Harold Weisberg

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.



Lillian Weisberg

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

CA 75-1448
EXHIBIT 7

OSWALD IN THE SOVIET UNION:
INVESTIGATION OF YURI NOSENKO

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> "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.

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CA 75-1448
EXHIBIT 1

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

Chairman STOKES. The record may so show.

Mr. HART. 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 STOKES. Does the witness care to respond?

Mr. HART. 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 STOKES. 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 STOKES. 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 STOKES. I thank the gentleman.

You may proceed, sir.

Mr. HART. 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 STOKES. 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. FITHIAN. 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. HART. 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 the 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—involved 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 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 requestioning 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 STOKES. 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 STOKES. 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 examinations 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 STOKES. 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 STOKES. 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 STOKES. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. I do.

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

Mr. HART. 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. HART. 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 defected in January of 1964 until today?

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

Mr. DODD. Yes, I am.

Mr. HART. Yes, I have read that.

Mr. DODD. You have read that report?

Mr. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. No, sir.

Mr. DODD. He is gone?

Mr. HART. Yes, sir.

Mr. DODD. I gathered by what you have told us here today that we 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. Hart, 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 1969 in the amount of $25,000 a year less income tax. The total amount paid was $87,052.
>
> 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. HART. 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. HART. 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. HART. 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 Cornwell.

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. HART. 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. HART. 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. HART. Yes, sir.

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

Mr. HART. Yes, sir.

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

Mr. HART. 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. HART. 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. HART. 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. HART. 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. HART. 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. HART. Yes.

May I say something more, Mr. Cornwell? 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. HART. 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. HART. 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 suppositious.

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:]

Deputy Chief, SB [redacted], 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 sitn 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 commitmt to looney bin.

7. Commitment to looney 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.]

CA 75-1448
EXHIBIT 6

UNITED STATES GOVERNMENT

Memorandum

TO : MR. BASSETT

DATE: 1/30/75

FROM : FRED B. GRIFFITH

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

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

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:wmj
(4)
1 - Mr. Wannall (Branigan)

REC 68 62-109090-634

FEB 25 1975

TOP SECRET MATERIAL ATTACHED

10/74

57 MAR 3 1975

Memorandum

TO: Mr. W. R. Wannall

FROM: W. A. Branigan

DATE: 2/7/75

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

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

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

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

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.

FEB 25 1975

CONTINUED - OVER

JPL:wsk (5)

6 Lee

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.