

CIA affidavit in 75-1448

Sylvia and Paul,

HW 10/17/79

C.A. 75-1448 is the suit in which I got the Commission's executive session transcripts of 1/21 and 6/23, of which you were provided with copies. These were provided the very day the GSA brief was due in the appeals court, with the claim that because of declassification for HSCA the contents of these transcripts could no longer be withheld and therefore were disclosed. We then went back to the district court and filed for lawyer's fees and costs. There was fierce opposition by the Government, many delays, some pretty nasty pleadings, and finally, today, there was a hearing. Typically, with no live testimony and with Government lawyers "testifying" to what they know nothing about. And often falsely, not merely misleadingly.

The remaining questions are will these sums be repaid of if so at what rate.

The Government was being clobbered pretty thoroughly when the CIA lawyer, Laurie Ziebell, "testified" in the course of making explanations that in fact the transcripts were properly classified and thus properly withheld for more than a decade. There is no judge willing to face a claim of "national security" and in this case it turned out that the judge had resolved "not to get involved in that morass," or fact of the case, and had not read my undisputed affidavits.

The CIA is to be allowed to overcome the evidentiary deficiency and provide an affidavit. I will be able to answer. (The only reason it has not done this to now and risked losing by not doing it is because any such claim is false and thus with the focus on it potentially dangerous. They have asked to do it now only because there is no real alternative and Jim would get paid and I'd get my provable expenses back, neither of which they want.)

One of the questions will relate to Nosenko's dependability as a source and thus, it is claimed, to the national security question of how the CIA handles its defectors.

It will be necessary to know all that the Commission's files show it knew about this, what the CIA had told it, and to have and provide the court with copies of records in which there is a question of Nosenko's dependability that were in the public domain - available at the Archives or in other public ways.

In addition to Commission records there are such things as the McCone CBS-TV broadcast, with Dan Schorr. Anything at all that was public in addition to the Commission's records.

This has now assumed a new and significant proportion. Important to Jim and me as his getting paid for this great work and my recovering those expenses of which I could have a record are to us, we have an opportunity to demolish the CIA's phoney national security claims contrived to withhold what was embarrassing but did not involve any question of authentic security. In their extremity they have forced this to an issue and there is no indication they will quietly moot by having a payment made.

I have some but probably not all the Coleman/Slawson memos and I do not recall the questions of dependability raised in books, like KGB. I believe ~~that~~ Epsteiniker may have bit I've forgotten....Any help can help us all and help these cases much.

Personal update: Two weeks ago my wife had a sudden amnesia, limited to two days she has not recovered and probably won't. All tests to date are normal so the doctors believe it was an obstruction in the supply of blood to a small part of the brain. ...I am still on not much more than half the optimum level of anti-coagulant because the doctor fears I'll hemorrhage again. With this lower level and with other problems I can't bend over much and I can suddenly get quite unsteady if I do. So the physical work that is best medicine and takes much of my time is more limited. Despite this and with the help of my "committee" of a heart/angina patient a year older and another neighbor and friend who is all crippled with arthritis and had to retire I have about a third of a winter's supply of firewood at the house. Despite the ruinous snow of which you may have heard, which ruined many trees around here and right here, I've not used the oil burner yet. (The work forces circulation by the action of the heart.) ...There have been no real developments in the other FOIA cases and the Dallas index has not yet been provided. The promised time is near and I'll let you know when I get it. I'm not letting this be known generally because it is beyond my capacity to search it for most others and I don't want to have to write and tell so many huts who won't believe the truth why I can't and why Gil can't now make the copies. Best wishes,