

243/79

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 75-1448
)	
GENERAL SERVICE ADMINISTRATION,)	
)	
Defendant.)	
_____)	

NOTICE OF FILING


On October 17, 1979, this Court held a hearing on plaintiff's motion for attorneys' fees and defendant's motion for a protective order to stay discovery. The defendant volunteered to provide a supplemental affidavit in support of its position that plaintiff is not a prevailing party because the institution of this action did not have a substantial causative effect on the release of two of the three documents at issue (the third was found to be lawfully withheld, a decision upheld by this Circuit).

The attached affidavit sets forth in more detail the explanation of why the CIA determined that the withholding of the two documents was no longer justified after public testimony was given by officials before the House Committee on Assassinations on September 15, 1979. Prior to the hearing, the Director of the CIA had reviewed the information and agreed to declassify it. After the testimony was given, the CIA independently initiated a review of the withheld documents and decided to release them, despite the fact that the District Court had held the withholding was proper and the case was on appeal.

Respectfully submitted,

CARL S. RAUH
United States Attorney

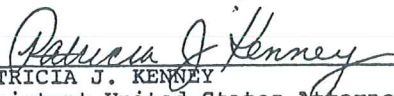
ROYCE C. LAMBERTH
Assistant United States Attorney



PATRICIA J. KENNEY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that the service of the foregoing Notice of Filing has been made upon plaintiff by mailing a copy thereof to plaintiff's counsel, James H. Lesar, Esquire, 910 16th Street, NW., #600, Washington, D. C. 20006, on this 3rd day of December, 1979.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Robert E. Owen, being first duly sworn, deposes and says:

1. I am the Information Review Officer for the Directorate of Operations of the Central Intelligence Agency (CIA). My authority and responsibilities remain as described in my affidavit of 26 July 1979. This affidavit is offered to provide supplementary information concerning circumstances surrounding my decision to declassify two of the Warren Commission transcripts at issue in the above-styled litigation.

2. The classification of the executive session transcripts of the Warren Commission meetings of 21 January 1964 (CIA Exhibit A) ⁽¹⁾ and 23 June 1964 (CIA Exhibit B) must be viewed in terms of the circumstances in which the transcripts came into existence. What is evident on the faces of the documents themselves provides only part of the rationale. The circumstances surrounding the events recorded in the documents were also essential causative factors in the classification process. Thus, the documents and factors external to, but related to, the documents must be part of the perspective from which the documents and their classification is viewed.

(1) CIA Exhibit A consists of pages 63 through 73 of the transcript.

3. In the early 1960s, the United States and the Soviet Union had been in active competition for most of two decades in numerous and varied arenas; military, economic and political. Both countries had proven their abilities in the area of nuclear destruction. Both countries were anxious and concerned about the unpredictable nature of the other. Neither trusted the other and each expected the worst from each other. The "Bay of Pigs" and the "Cuban Missile Crisis" had only recently taken place, raising the level of mutual tension. On 22 November 1963 the President of the United States was assassinated. Much of the world held its breath, waiting to see what would happen next. The accused assassin was an American who had defected to the Soviet Union and lived there for several years. He had returned to the United States about a year before the assassination. His personal behavior pattern was unusual. His untimely death made it impossible to resolve many of the mysteries surrounding his activities. One of the most disturbing questions at the time was whether Lee Harvey Oswald was a Soviet agent.

4. In February of 1964, Yuriy Nosenko, an officer in the KGB, the Soviet intelligence organization, defected to American intelligence. Among other things, he indicated he possessed information about Lee Harvey Oswald's contacts with the KGB while Oswald was in the Soviet Union. As Nosenko was debriefed, it became clear that Nosenko's information tended to establish that Oswald was not an agent of the Soviet KGB. The problem then became one of establishing Nosenko's bona fides. If Mr. Nosenko could be proven to be honest and his information to be believable, it would be possible to conclude that Oswald had no connection with the Soviet KGB and that the Soviet Union had nothing to do with President Kennedy's death. If, on the other hand, Mr. Nosenko was proven to be not bona fide but instead to have been

programmed by the KGB to provide false information to establish the "innocent" nature of Oswald's contacts with the KGB, it would have been possible to conclude that Oswald may have been an agent of the KGB and was acting on behalf of the KGB when he shot President Kennedy. The possible consequences of the conclusion based on the latter set of circumstances were staggering. Establishing Nosenko's bona fides was a critical element in making any judgment on the possibility of Soviet involvement in President Kennedy's death.

5. Establishing the bona fides of a defector from a hostile foreign country necessarily involves the ability to provide independent verification of a substantial portion of the intelligence information received from the defector. Such verification normally involves the use of other sources of information completely independent of the defector to cross-check the defector's information. An intelligence agency's ability to provide such verification is normally a well-guarded secret, since public acknowledgement usually prompts hostile action to negate such sources. Likewise, the public acknowledgement of a lack of such capabilities can be very effectively used against an intelligence service by hostile foreign intelligence services. In brief, the extent of an intelligence service's ability to provide independent verification of a defector's information is significant counterintelligence data. The significance of such circumstances is vastly increased when the defector is an intelligence officer and the independent verification requires other sources knowledgeable of the daily, inner workings of the defector's intelligence service. Hypothetically, acknowledgement of the CIA's ability to provide independent verification of information received from a KGB defector would establish the likelihood that the CIA had sources inside the KGB able to report

on and possibly influence KGB intelligence activities. On the other hand, if it became clear to the KGB that the CIA lacked the means of independently verifying certain information about the KGB, it might mean that the CIA had no source inside the KGB which could in turn signify that the CIA had no way of knowing about any KGB agents operating inside of the CIA or KGB attempts to establish such agents. These are only a few of the possible consequences of disclosures concerning the limitations of the CIA's ability to verify information concerning developments in the Soviet Union or in the Soviet KGB. The examples are hypothetical but concerns are real.

6. The two Warren Commission transcripts cited earlier are both concerned with different aspects of the U.S. intelligence capability of providing independent verification of information concerning developments in the Soviet Union. The transcript of 21 January 1964 reveals a discussion of the problems of how to verify information concerning activities in the Soviet Union related to Lee Harvey Oswald's personal experiences as a defector. It is clear that CIA representatives had briefed the Commission staff on the Agency's capabilities and have proposed to use the services of two Soviet KGB defectors in drafting questions to be put to the Soviet government and in reviewing the documents written by Oswald, see page 63 et seq, CIA Exhibit A. The fact that two officers had defected from the KGB was obviously not a secret to the Soviet KGB. However, the status of their relationship with the CIA and the manner in which they were proposed for use in support of the Warren Commission suggested a great deal about the level of confidence the CIA had in those defectors. Conversely, the fact that no other intelligence capabilities were discussed to support the same objective of the Commission suggested strongly that other assets were either not available or

Handwritten notes:
CIA Exhibit A
documents written by Oswald

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CIA
Soviet

not considered appropriate or reliable. This would have had particular meaning, for example, if there had been more than two KGB defectors available to the CIA at the time.

7. As a designated spokesman for the CIA, Mr. John Hart testified before the Select Committee on Assassinations of the U.S. House of Representatives on 15 September 1978, concerning the Soviet defector, Yuriy Nosenko. The final report of that Committee is titled "Investigation of the Assassination of President John F. Kennedy," hereinafter referred to as "Volume II" (CIA Exhibit C). Volume II contains the testimony of Mr. Hart and the Committee's staff study on Nosenko, based on classified information provided by the FBI and the CIA. The study appears on pages 439 through 481 of Volume II. The classified material on which the study was based was declassified at the request of the Committee, by the CIA and the FBI, to enable the Committee to include the study in the final report in Volume II. See remarks of Mr. Blakey in the first complete paragraph on page 487 and the third and fourth paragraphs on page 438 of Volume II. Regarding the transcript of 21 January 1964 in which the limitations on the CIA intelligence capabilities relating to certain kinds of activities in the Soviet Union are evident and which provided the principal and major justification of the classification of the transcript; Mr. Hart testified in the third paragraph on page 506 of Volume II "...and the Central Intelligence Agency had no particular, in fact, did not have any assets capable of making an investigation within the Soviet Union...." That statement, though brief, was obviously a comprehensive appraisal of the CIA ability to conduct a certain kind of investigation within the Soviet Union in 1964. That public acknowledgement of CIA's limitation on intelligence activities in the Soviet Union in 1964 could still, in 1978, be used by the Soviet KGB to the disadvantage of the CIA and in a manner in which identifiable damage could result. The amount of probable damage

in 1978 was low, however, CIA would have maintained the classification on the document except for the political necessity posed by the Congressional investigation.

8. The discussion of the Commission contained in the 23 June 1964 transcript (CIA Exhibit B) is primarily concerned with expressions of concern about the inability of the government agencies, principally the CIA, to establish the bona fides of Nosenko as a credible Soviet defector and the negative consequences of this uncertainty for the Commission's hope to use Nosenko's information. It might be noted that a variety of Nosenko-related information was being released to numerous Freedom of Information Act requesters by the CIA and the FBI in 1976 and 1977, including to the plaintiff. The material released was limited to what Nosenko claimed to know about Lee Harvey Oswald and his experiences in the Soviet Union, including contacts with the Soviet KGB. None of the documents released prior to the report of the House Committee in its Volume II contained details concerning the problems involved in establishing Nosenko's bona fides.

9. The House Committee on Assassinations Staff prepared a summary report based, in part, on classified material made available by CIA and the FBI. The report is titled "Investigation of Yuriy Nosenko" and commences on page 439 of Volume II. A section containing the kind of knowledge expressed by the Commission members in the 23 June 1964 transcript (CIA Exhibit B) appears commencing on page 444 of Volume II and is titled "Doubts About Nosenko's Bona Fides." The entirety of the staff report in Volume II is concerned with the details of Nosenko's debriefing; the various factual statements he made which were believable or which were in doubt, and the variety of efforts made to establish the truth in the matter.

10. Mr. Hart's testimony before the Committee, which appears in Volume II commencing with page 487, contains a much more detailed recitation of the nature of CIA's doubts about Nosenko's bona fides and the attempts to establish the truth. One of Mr. Hart's most succinct statements on the point appears on page 495, line 40, Volume II, where he stated, "The Agency's activity was devoted to breaking Nosenko, who was presumed, on the basis of supposed evidence given by Mr. X, that Nosenko was a 'dispatched KGB agent' sent to mislead the United States." Again on page 496, line 34, Volume II, Mr. Hart stated, "The question of just how to deal with Nosenko has been carefully examined, and it was decided that although the Agency was intensely suspicious of him, perhaps more than suspicious, they had concluded that he was being dispatched to mislead the U.S. Government." Finally, on page 523, line 31, Volume II, Mr. Hart stated, "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.... I believe that the Warren Commission decided that they simply would not take into consideration what it was that Nosenko had said."

11. Clearly, the problems that the U.S. Government had in 1964 in confirming the details of events taking place in the Soviet Union and in establishing the details of activities of the Soviet KGB, and particularly the bona fides of a Soviet KGB defector, were demonstrated in general terms in the Warren Commission transcripts which were declassified as a consequence of the more detailed disclosure on the same subjects made in the

House Committee's Volume II. The classification of the transcripts had been to protect against providing the Soviet KGB with the advantage of the insight into CIA that the transcripts could provide. The declassification and release of the study and testimony provided in Volume II made the continued classification of the transcripts untenable. The transcripts were declassified because of the declassification of material necessary for the release of Volume II, not because of plaintiff's litigation.

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 26 day of
November 1979.

Franklin A. Johnson
Notary Public

My commission expires: 14 June 1983



CIA EXHIBIT A

CIA EXHIBIT A

C.A. No. 75-1448

Page 63-73 from transcript of special session of the President's Commission on the Assassination of President Kennedy, Jan. 21, 1964

63
List No
of item

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(Discussion off the record.)

The Chairman. On the record.

Rep. Boggs. I would like to say only, to put it in the form of a motion maybe, that in the case of the widow of the late President, and in the case of the President and his wife, that the Commission authorize its Chairman, the Chief Justice, to take whatever steps he deems advisable to get whatever testimony may be pertinent from those people.

The Chairman. What motion would you make concerning Governor Connally and his wife?

Rep. Boggs. They would be included, I would think, under the same terms.

The Chairman. How about Senator Yarborough and whoever else was there in the front seat with President Johnson?

Mr. Boggs. What I was thinking of was of the top people that you as Chairman could handle it. The rest of them I wouldn't have any hesitancy about calling Ralph Yarborough in here and ask him what happened.

The Chairman. I understand. Is that the sense of the meeting, gentlemen? If it is, that will be done.

The next one is Item G under 2, Conference with CIA, decision as to disclosure of materials to CIA for purposes discussed at meeting of January 14, 1964.

Discussion
of item
G & A

Now, I will just state generally what it is, and then Lee can go on farther. But Lee has been having some discussions with

the CIA concerning any possible connections that Oswald might have had with the Soviets, and they would like to have us give to them certain of our records so they can show them to some of their people, namely a couple of persons who have defected from Soviet Russia, and I raised the question with Lee as to whether we should do that without taking some very careful precautions because if we should do that, and these people should turn out to be counter-intelligence agents, and then something would develop from Russia about this, about the thing as a result of what they saw, this Commission would look awfully bad before the world, and I myself question the advisability of showing those records to any defector.

I personally would be willing to bring the CIA here, let them see what we have in that regard, and then let the CIA do what it thinks should be done in order to verify or disprove it or amplify it in any way, shape or form. Now that is my own view.

Lee, would you like to express yourself further on it. You didn't agree with me exactly.

Mr. Rankin. Well, the Chief Justice also suggested that possibly we should have a meeting with the representatives of the CIA and the FBI and the Secret Service that gave us these materials and see what their suggestion was about handling them. These two defectors are men who were formerly in the service of the comparable unit of the Soviet Union.

Mr. Dulles. KGB.

Mr. Rankin. KGB, and the CIA people say they couldn't hardly

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defect back again without being in plenty of trouble and they don't believe there is any prospect and they say also when they have had anything like that they have had plenty of notice in advance that there was a consideration that they might go back but they do think they could be very helpful because they can interpret these materials and suggest inquiries that we should make to the Soviet, that the CIA personnel wouldn't know how to do in the same way because they don't know the detail of the operation like these defectors.

So they want to know if they couldn't see some basic material themselves and if they would be permitted to show them to these defectors, and that is our problem. They think that would be helpful.

Now they suggest, and our conference, Allen went with us on this conference with the CIA, and they suggest that, they think the inquiry to the Soviet should be made government-to-government if the State Department would approve that, and we would check it out with them, and that the questions to the Soviet should be very pointed, so that if they don't answer them, they can't just answer them in a very general manner and get away with it, but the questions would be in such pointed form, would be did you or didn't you, did Oswald do certain things or didn't he, as much as possible, I am talking about the CIA and the problem of furnishing them part of this information, and they would like to exhibit it to two defectors, who were a part of their intelligence system.

the Soviet before they came over here and defected, and they have great confidence in them, the CIA, but the question --

Mr. Dulles. They were not before, after they defected in these two cases. They were part of the KGB when they defected.

Mr. Rankin. Yes.

Mr. Dulles. And since then have been working very closely with us, one has been working six or seven years and one about two years.

Mr. Dulles. Yes, but prior to defecting they were with the KGB, isn't that right?

Mr. Rankin. They were with the KGB, one was in Vienna and one was in Finland and fairly high up in the KGB. The material they have in mind is nothing that is really classified in one sense. It would be the material that Oswald himself wrote, Oswald diary, letters and things of that kind in Russia, and it would be that type of material. They wouldn't want to show them any material that was sort of generally classified. Some of this has not been disclosed to the President. Some of it has been partially disclosed but it is the form of the writing, and so forth, and things of that kind that are very -- mean a good deal to a man who is working on the inside of the Soviet Secret Service. As I say, it is nothing that normally would be classified. It is only that all of what was obtained from Oswald has not yet been disclosed to the American press.

Sen. Russell. Do you have anything from Oswald by the way of

diaries or other writings other than what we have seen?

Mr. Dulles. You have seen it all.

Sen. Russell. And the FBI?

Mr. Dulles. There is one thing I have asked about today, that is referred to in the FBI report. We haven't any material at all.

Sen. Russell. They are not going to tell you anything. We would have to forward the questions to the State Department, it would have to be cleared through the Ambassador and cleared with the Foreign Minister and get to the equivalent of their Attorney General and say what are we going to tell these silly Americans.

Mr. Dulles. But they are in a bit of a box, Senator, because if they have any inkling of this and they may have some inkling of this, I don't know, for example, we know or we believe we know from Oswald that he got X amount of money at certain times. Now, I wouldn't tell that to the Soviet. But I would say that we have some information, we don't have to say how we got it, it would be from Mrs. Oswald or however it might be, some of it did come from her, that the Soviet had paid him certain money, would they kindly advise us how much and over what time.

Rep. Boggs. There is not over and beyond what the report shows.

Mr. Dulles. No. But I don't think you ought to tell. I mean, this is a question for this Commission to decide, if we are going to get anything, we have got probably to let the Soviet

know that we have, or let them induce that we have a good deal.

Rep. Boggs. Where did we get the information from, what he got?

Mr. Dulles. From his letters.

Rep. Boggs. Not from the Soviets?

Mr. Dulles. No. We haven't anything from the Soviet. We know he was hospitalized. We know he tried to commit suicide over there. We know they extended his permission. Now, I think we ought to -- there ought to be questions put to them but don't give them all the answers because they can just take our questions and answers and say these are the answers. I think we ought to give them a clue that we know a good deal because otherwise what is the situation going to be later if we do publish, and I think the Commission probably will publish later all this material. And they will say here you deceived us. I don't mind deceiving the Soviet particularly because I think that might be very helpful.

We can say we gave you a chance to answer these questions, we told you we knew something about this but you never gave us an answer so that the drafting of these questions I think is going to be rather delicate a matter but I think it can be done and I think it ought to be done quickly.

Rep. Boggs. Is it proposed that this be carried out by the CIA?

Mr. Dulles. No.

Sen. Russell. As I understand it, the CIA wants to show this

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to two former secret service men to get suggestions so they can, knowing the background of operations here, they can help the CIA prepare questions to give to the Department of State.

Mr. Dulles. The Department of State will send them without reference but saying from.

Rep. Ford. It would be a request by the Commission through the Department of State.

The Chairman. Yes.

Mr. Dulles. The Commission would request the Department of State, in consonance with their foreign policy, to make an inquiry, further inquiry -- the Soviet has furnished information, some of it about the United States, not a word about what happened in Russia, two and a half years he was there not a word, and we know--

Rep. Ford. And it would have the authority of a request by us through proper channels to the Department.

Mr. Dulles. Yes. From some talks I had, incidentally, that is the way the State Department would like it but they would like to see and I think it would be wise, if the Chairman agrees, and the Commission agrees, to show the State Department our letter, so that we don't ask them anything or create a record, I would show them our letter, work it out with Davis or others over there so that they are in entire agreement with what is sent, and the CIA I think has sent you today some suggestions as to questions, I don't know whether they have reached you yet or not.

Mr. Rankin. They have.

Rep. Ford. May I ask you this, in reference to your question, Mr. Chairman?

The Chairman. Yes.

Rep. Ford. Does it have to be a matter of record for anybody other than ourselves and CIA that these individuals within their agency have perused these documents?

Mr. Dulles. No, not unless they yell.

Mr. Rankin. He is afraid they might give it away.

Rep. Ford. I see.

The Chairman. I thought before we did it, if we were giving an FBI report to the CIA for that purpose, ordinarily, I would say yes, let them see everything, but to show to a Russian defector, before I did that, before I gave the CIA a report of the Secret Service or the FBI, I would want to get the CIA representative in the same room with the Secret Service and the FBI and tell them, "Now this is the situation we are presented with. Is there any objection to our doing it in this way"?

Rep. Ford. And have them as a matter of record approve it.

The Chairman. Yes, approve it.

Rep. Ford. I think that is fine.

The Chairman. I would be afraid to do it otherwise, we might get into trouble.

Rep. Ford. I think that is a good reservation, I agree.

The Chairman. Any objection to that, gentlemen?

Mr. Rankin. I would like to have the record show that we

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have talked to the State Department about designating a man we could talk to about the approach to make to the Soviet Union but we haven't yet gotten their approval to approach the government-to-government, and that is to be done yet.

The Chairman. Yes.

Mr. Rankin. So that is still ahead of us.

The Chairman. All right.

Sen. Cooper. We are not making a decision at this moment of showing these records to these defectors.

Sen. Russell. I understood if all these different agencies agreed to it, yes.

The Chairman. Yes.

Mr. Dulles. May I make just a slight amendment to that because if the FBI agrees to have its material, I don't think the Secret Service should be able to veto that or vice-versa. It seems to me one should, through this machinery, clear with the agencies whose report it is, and obviously these reports, I don't think, would ever be shown to the defectors in the form of an FBI report. They would be told it is a FBI report.

The Chairman. We don't know if we give it to them.

Mr. Dulles. I would just have that arrangement with them. I don't think they ought to be given it as an FBI report. The information in the report will be used in interrogating and questioning these fellows.

Sen. Cooper. Why then couldn't the CIA people read the

report, get from it such information as they needed to interrogate these men without ever discussing to them any source?

Mr. Dulles. They don't need to disclose this comes from the FBI or Secret Service. But if they used, let's say Oswald's memorandum, then that is different. No matter how that had been obtained, whether it had been obtained by the Secret Service or the FBI, they would want to show them the text and maybe the handwriting and the Russian, some of these things are in Russian, to the defectors.

Mr. Rankin. Yes. They said they wanted to show the particular documents because they also think there may be a possibility of codes.

Sen. Cooper. I see.

Mr. Rankin. They would want to go into that, too.

The Chairman. If there are no objections then, gentlemen, that is what we will do.

Mr. Dulles. Would it be clear if the agency involved gives its approval then there is no difficulty, without asking a third-party agency to concur, that is the only thing I was afraid of the way it was stated, Mr. Chairman.

The Chairman. Well, this whole thing is intermixed, the Secret Service found one thing in the home of Oswald, the FBI found another, and somebody else found another.

Now I think before we get into the thicket we probably ought to get them all together and if any one of them had a valid reason

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why it shouldn't be done, I would want to respect it whether it was his record or not. It isn't just permission that we are looking for. We are looking for a measure of protection after this thing is all over so there won't be any come back on from any organization that we disclosed something to the Soviets that were involved in this assassination.

I don't see any reason why we should fear any opposition from the other organization if --

Sen. Russell. They will all come out in the same place on that.

The Chairman. I think so. Do you have any reason to think otherwise, Allen?

Mr. Dulles. I don't know. I don't think anybody can say, Mr. Chairman. I have no reason.

Mr. McCloy. If they do that, they can come back to us.

Sen. Russell. The chap who vetoed it would be embarrassed.

Rep. Boggs. That disposes of that.

The Chairman. We will next go to Item H under Roman Number II, remains of Lee Harvey Oswald, letters received from Nicholas Katzenbach.

Now that situation is that this man is buried in a cemetery, and it takes officers around the clock to watch him, watch and see that they don't come in and exhume him and do something that would further injure the country, and so it has been suggested that to save expense they exhume him and then cremate him. But

CIA EXHIBIT B

Vol. 55
Copy 9 of 10

List 2A, et al 18

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at
Washington, D.C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

WARD & PAUL
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917 G STREET, N.W.
WASHINGTON, D. C. 20001
AREA CODE 202-628-4266

CIA EXHIBIT B

C.A. No. 75-1448

President's Commission
on the
Assassination of President Kennedy

EARL WARREN, *Chairman*
RICHARD B. RUSSELL
JOHN SHERMAN COOPER
HALE BOGGS
GERALD R. FORD
JOHN J. MCCLOY
ALLEN W. DULLES

J. LEE RANKIN, *General Counsel*

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PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Washington, D. C.

Tuesday, June 23, 1964

The President's Commission met, pursuant to notice, at
10:00 a.m., at 200 Maryland Avenue, Northeast, Washington, D. C.,
Chief Justice Earl Warren, presiding.

PRESENT:

Chief Justice Earl Warren, Chairman

Representative Gerald R. Ford, Member

Allen W. Dulles, Member

J. Lee Rankin, General Counsel

Albert Jenner, Associate Counsel

(Members present: Chief Justice Warren and Representative Ford.)

The Chairman. On the record.

Rep. Ford. Mr. Chief Justice, I received last Friday a number of these drafts, and I have looked over several of them. And the one entitled "Lee Harvey Oswald's Life in Russia", early preparations and so forth, about 170 some pages -- in the first 120 or 130 pages, I noticed at least 10 references, as I recall, to Mr. Mešenko's views.

First, to my knowledge, we have never had Mr. Mesenko before the Commission, nor have we taken depositions nor have I seen any F.B.I. or C.I.A. reports on him.

If we are going to use what he says -- I will tell you in a minute why I don't think we should -- we ought to have, the members of the Commission, the basis upon which these statements are included in the proposed draft.

Secondly, I have been led to believe, by people who I believe know, that there is a grave question about the reliability of Mr. Mesenko being a bona fide defector.

Now, if he is not a bona fide defector, then under no circumstances should we use anything that he says about Oswald or anything else in our record. And even if he is subsequently proven to be a bona fide defector, I would have grave questions about the utilization of what he says concerning Oswald.

(At this point, Mr. Dulles entered the hearing room.)

Rep. Ford. Now, --

The Chairman. Or anybody else.

Rep. Ford. Or anybody else.

I cannot help -- I feel so strongly about this that I just think that the Commission has got to make a decision on it.

I have a very strong suspicion - and I cannot document it any more than we can document what he says here about the Oswald case -- that Mr. Mesenko could very well be a plant -- not only for other reasons, but for the Oswald case, and if he is unreliable for other reasons, he could be thoroughly unreliable as far as Oswald is concerned. It would be a very easy thing for the Soviet Union to plant him here for a dual purpose -- one for other reasons, and one to extricate themselves from any implication in the assassination.

And, for these reasons, I think the Commission ought to take up, one, whether we ought to get more information about Mesenko -- as far as I know, we have none, except rumor and so forth. And, secondly, whether even if we got more information from him in direct testimony or deposition, whether we ought to use it under any circumstances at the present time.

The Chairman. I agree with you.

Lee, you will remember, I talked to you about that, too, some time ago -- that we should not rely on this man in any way -- certainly not unless the State Department and the C.I.A. vouch for him, which they will not do. And we had that -- that is in

the testimony here. At least it was talked here by the C.I.A. people. I think it was Mr. McCone who said that.

Mr. Rankin. That was off the record, Mr. Chief Justice, you remember.

The Chairman. Yes. But I am allergic to defectors, and I just think we shouldn't put our trust in any defector unless it is known absolutely and positively that he is telling the truth -- unless he can be corroborated in every respect. And we cannot corroborate this man at all. And it would be a tragic thing if we were to rely on him to any extent, and then it should later come out that he was a plant or was not a true defector.

So I think exactly as you do, Jerry. I would vote on the Commission not to use his testimony, when we come to discussing it.

Rep. Ford. I just wanted -- I thought at this point that we ought to bring it up. And I wanted you to know, and the other Commission members to know, my strong feelings in this regard.

I am delighted to get your reaction.

When the time comes to make the decision, we will all have to make it. But we should not start out at this point possibly using what we are using of his comments, when in the final analysis it might be completely unreliable and undesirable.

Mr. Dulles. May I just add that I concur in what you said, Mr. Chairman, and in what Jerry said.

Over the weekend I had an opportunity to discuss the Rosenko

matter in some detail with my former colleagues, and they are not yet in a position to determine his bona fides. And I gathered from what they said that it might be some time before they would reach any conclusions, if they ever can reach conclusions, because in these difficult situations you never can be entirely sure.

So I think the position that you have taken that we ought not to rely upon this testimony -- and I doubt whether we should let the name of Mosenko get into the printed report.

I think there is some question, as I say, as to whether we should in any way refer to Mosenko by name. Whether later we should use some of the information, depending upon their judgment as to bona fides, that is a question to be decided later.

Mr. Rankin. Mr. Chief Justice, I think I ought to report to you about the whole situation as far as the staff is concerned, so you will all -- the Commissioners -- will be familiar with all the facts as I know about it.

We have been trying to get an answer from the C.I.A. as to what they thought of the bona fides of Mr. Mosenko for some time. And, finally, after we waited, recently, for several weeks, they told us they could not come to a conclusion. And we then asked them what we could do about this material.

We have been furnished it by the F.B.I. in a report of an interview some time ago and they said that they didn't think we could rely on it, or at least they were not able to verify his

bona fides -- that is the C.I.A. And they said they thought we shouldn't use it.

We then have the problem that I think the Commission should decide at the proper time, that we will definitely not use it. I think that you need to have some place in a record that will be put in Archives, but not available to the public generally, except under security precautions, the fact that you did know about him. And that you did have this information that you do have. And that you decided not to use it upon careful consideration of the problem. So that the record will be complete. Because there will be people, in light of the fact that this was a public defection, that has been well publicized in the press, who will wonder why he was never even called before the Commission.

I think you will recall that we had the question up of whether we would call him for several months now, and we were waiting whether we could get any answer from the C.I.A. as to whether he was considered reliable before making that decision.

Since we could not get any answer in the affirmative, there was no purpose in bringing his testimony in here under these conditions.

Now, I just received a call from Mr. Helms this morning about it, and he learned that we even had papers that the Commissioners were looking at. And the staff felt that the Commissioners should bring to the attention -- or they should bring to the attention of the Commissioners such information as we

had, so that you were not in the dark about that information in considering this whole problem about the life in Russia. And Mr. Helms said that he thought that it shouldn't even be circulated to the Commissioners, for fear it might get out, about the name Mosenko, and what we had received.

The Chairman. The name Mosenko, you say?

Mr. Rankin. Yes.

The Chairman. Well, that name has been in the paper, hasn't it?

Mr. Rankin. As far as the information we have associated with that name, is what he was suggesting. And he said would it help if Mr. McCone sent a letter to the Chief Justice as Chairman of the Commission asking that no reference to Mosenko be used. And I said, "I think that would be helpful to the Commission," because then the Commission would have this position of the C.I.A. on record upon which they could act if they see fit when they consider the matter. And so that is what they propose to do.

The Chairman. Well, my own view is that we should not rely to any extent on Mosenko, that there would be grave danger in doing so, and I would have no confidence in anything I might say about his testimony.

We will just discuss that, and we ought to have a meeting in a day or two, on a number of questions that have arisen.

So we will put that on the agenda.

Rep. Ford. Very fine.

Mr. Dulles. I would like to raise the question whether we would like to have a letter, though, in our file asking us not to use it. It might look later to somebody as though this were an attempt by the C.I.A. to bring pressure on us not to use a certain bit of information. I don't see -- they can perfectly well say there are sensitive reasons for not having this name brought up in this connection -- but I hope they won't say we could not use it.

The Chairman. I wonder if they could not say they are not prepared to vouch for him, and if they don't vouch for him, certainly I am not going to.

Mr. Dulles. That is fine. Then we have a justification for not using it.

Now, the testimony, though, might have certain background interest for us, because there are two possibilities. Either the fellow is a plant, or there are certain bona fides in the case. If he is a plant and saying this, this is highly significant. We wouldn't use it as the truth, but it might influence our thinking on certain points.

Rep. Ford. This, I think, is getting down to the crux of the matter. We cannot pass judgment on the matter of whether he is bona fide or a plant. But it may be desirable for the Commission to indicate that information has been received about Hosenko, and what he alleges to know about Oswald's life in the Soviet Union. And then in our report, we can say we are in no

position to pass judgment on it.

But for us to ignore the fact that an agency of our Government has a man who says he knows something about Oswald's life in the Soviet Union, we ought to say something about it -- either say we are not in a position to say it is reliable, it may develop that he was or wasn't reliable. But for us to just ignore the fact, when we know somebody in the Government has information from a person who was in Russia, and who alleges he knows something about Oswald, would be unfortunate.

The Chairman. I think the crux -- I agree with you. And I think the crux of the whole matter is that the report should be clear to the effect that we cannot vouch for the testimony of Mr. Mosenko.

Isn't that your idea?

Rep. Ford. That is right.

But we perhaps shouldn't ignore the fact that there is some information that the Commission is familiar with. I don't know quite how you would phrase it in the report.

But to ignore it, I think would be unfortunate.

The Chairman. Yes.

I think Lee has got the feel of that thing, and it can be done.

Mr. Rankin. The staff was very much worried about just treating it as though we never heard anything about it, and having something develop later on that would cause everybody to

know that there was such information and that we didn't do anything about it, and it would maybe affect the validity of our whole report.

Mr. Dulles. If it has not already been done, I think it might be well, too, to ask the staff to go over this report and to make a brief report to us as to where this goes with others in certain cases -- it seems to me to go with what we have -- in certain cases it supplements it. But it might be useful to have a brief study of that kind, and see how much it goes with other independent information we have, and where it supplements, adds to or differs from it.

Rep. Ford. I think you have got to analyze this in two ways. One, if he is bona fide, then what he knows or allegedly knows could be helpful. But in the alternative, if he is not bona fide, if he is a plant, we would have to take a much different view at what he said and why he is here. This makes quite a difference.

And I don't think we can ignore the two alternatives. And there are only two of them. And we ought to discuss that in the report.

Mr. Dulles. Do you happen to know the date situation, as to the date of his defection in relation to the assassination?

Mr. Rankin. Well, that is one of the things that I inquired into, in trying to find out from the C.I.A. as to whether or not he might have been planted for the purpose of furnishing this

information -- because that was very disturbing to me and to the staff that were working in this area -- Mr. Coleman and Mr. Slawson. And they assured me that he had been what they call dangled before them, before the assassination occurred, for several months, so that they felt that it couldn't have been anything that was connected with the idea of furnishing a plant for this particular purpose.

I am entirely satisfied from what they told me about that.

Now, we don't have that in the record. This is just a telephone conversation.

Rep. Ford. It is my best recollection that he was actually a defector some time in December -- at a disarmament meeting in Geneva, Switzerland. And the original press releases were to the effect that he was a highly significant catch as far as we were concerned, because he was in Geneva with these Soviet disarmament experts.

There was great mystery about this particular defection, because the Soviet Union made such a protest -- they went to the Swiss Government, as I recall, and raised the devil about it.

Now, subsequent information has developed that he doesn't appear to be quite as big a catch, if any, as far as we are concerned.

Having absolutely no faith in what the Soviet Union tries to do in these kind of cases, he might have been dangled for one reason two or three months before the assassination, but pumped

the last three weeks subsequent to the assassination, and a man that was as high as he allegedly is, with the mental capacity he is supposed to have, could be very well filled with all the information which he is now giving us in reference to the Oswald case.

As I say, I am a complete and total skeptic and cynic about these kinds of people, and there would be no better way for the Soviet Union to try and clean its own skirts than to have a high ranking defector come and discount Oswald's importance, Oswald's significance, while he was in the Soviet Union.

So, in my opinion, we have got to be very hard-boiled, cynical, skeptical, about Mr. Mosenko, and any relationships he might have as far as the Oswald case.

The Chairman. Well, I think we are in agreement on almost everything you say.

(Whereupon, at 10:30 a.m., the Commission recessed, to go into further business.)