

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JAN 11 1990

JAMES E. DAVEY, Clerk

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant
.....

Civil Action No. 75-1448

PLAINTIFF'S RESPONSE TO SUPPLEMENTAL
AFFIDAVIT OF ROBERT E. OWEN

SYNOPSIS

While this case was pending in the United States Court of Appeals, defendant disclosed two of the three documents at issue. In opposing plaintiff's motion for an award of attorneys' fees and litigation costs under Section (a) (4) (E) of the Freedom of Information Act, 5 U.S.C. § 552, defendant contends that plaintiff has not "substantially prevailed" in this litigation because these documents were "declassified" and released to plaintiff as the result of developments independent of this litigation.

Defendant has the burden of demonstrating that plaintiff has not "substantially prevailed". This includes the burden of showing that at all times prior to their disclosure these records were properly withheld under the exemptions claimed and that they did not contain any segregable nonexempt portions.

In the context of this case, which involves claims that the release of these documents prior to September 15, 1978 would have endangered the national security, this means that the defendants must show: (1) that these records were in fact properly classified

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In the context of this case, which involves claims that the release of these documents prior to September 15, 1978 would have endangered the national security, this means that the defendants must show: (1) that these records were in fact properly classified

according to both the substantive and procedural criteria set forth in the appropriate executive order on national security classification; and, (2) that the release of these documents at any time prior to the September 15, 1978 testimony of the CIA's John L. Hart before the House Select Committee on Assassinations ("the HSCA") would have disclosed "intelligence sources and methods" not publicly known and thereby would have endangered the national defense or foreign policy of the United States.

Defendant has failed to meet its burden. Defendant has not demonstrated that the January 21 and June 23, 1964 Warren Commission executive session transcripts were properly classified procedurally and the record in this case makes it clear that they were not. Nor has defendant even attempted to show that these transcripts contained no segregable portions that were nonexempt.

By declaring that the January 21 and June 23 transcripts were "declassified" for reasons of "political necessity" (Supplemental Owen Affidavit, ¶7), defendant has confessed the bogus nature of its present national security claims. "Political necessity" is not a proper ground for revealing information that is genuinely classified in the interest of national security. Much information that was made available to the HSCA is still classified. Rather than being the basis for declassification of security classified information, "political necessity" is merely another CIA contrivance designed to conceal the fact that the transcripts were not properly classified, substantively or procedurally, and were wrongly withheld from plaintiff for years.

The Supplemental Owen Affidavit also contradicts the affidavits of Charles A. Briggs previously submitted to this Court by the defendant and shows that they contained deliberate misrepresentations calculated to intimidate and deceive this Court. For example, Mr. Briggs asserted that disclosure of the January 21 transcript

could result in "a perceived offense by the [Soviet Union] . . . with consequent damage to United States relations with that country." (See Attachment 1, November 5, 1975 Briggs Affidavit, ¶3) Mr. Owen, on the other hand, has it revealing to the Soviet Union that the CIA lacked the capability of conducting "a certain kind of investigation within the Soviet Union in 1964." (See Supplemental Owen Affidavit, ¶7) This would hardly result in the rupture of diplomatic relations foreshadowed by Mr. Briggs' fantasy. At best, and assuming the Soviet Union had drawn the same unwarranted inferences made by Mr. Owen, it might have caused the Soviet Government to accord the KGB some accolades for seemingly having resisted CIA infiltration of a couple of its units.

The attached affidavit of Harold Weisberg demolishes, one by one, the unfactual assertions, illogical conjectures, unwarranted conclusions, and baseless speculations which comprise Mr. Owen's supplemental affidavit. It conclusively proves that the information which the CIA now swears had to be withheld until September 15, 1978 in order to protect the national security was in fact made public years ago. To cite but one example, a March 23, 1976 article in a San Francisco newspaper carried a widely-publicized story which stated:

A recently released CIA memo shows that James Angleton, then head of CIA counterintelligence, told the [Warren] Commission that the CIA had no information that would either prove or disprove Nosenko's story.

(See December 22, 1979 Weisberg Affidavit, ¶93)

Such facts show beyond doubt that the basis for withholding the January 21 and June 23 transcripts vanished years before they were finally made available to plaintiff. If, indeed, it ever existed. Because defendant wrongfully withheld these records, it cannot plausibly maintain that plaintiff has not substantially prevailed."

Because defendant repeatedly stonewalled plaintiff's access to these transcripts and submitted false and misleading affidavits to this Court, it is clear that defendant has acted in bad faith. In order to prevent such subversion of the integrity of the judicial process from occurring again, this Court should not only exercise its discretion in favor of an award of attorneys' fees and costs but should double or even triple the amount of the award.

ARGUMENT

I. DEFENDANT HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT THE JANUARY 21 AND JUNE 23 TRANSCRIPTS WERE EXEMPT FROM DISCLOSURE AT ALL TIMES PRIOR SEPTEMBER 15, 1978

A. The Transcripts Were Not Properly Classified As Required By Exemption 1

Defendant resisted disclosure in this case by claiming that the release of the January 21 and June 23 transcripts would endanger the national security. The Freedom of Information Act clearly provides that in order to qualify for nondisclosure under Exemption 1, the material withheld must be classified in accordance with both the substantive and procedural requirements of the relevant Executive order. 5 U.S.C. § 552(b)(1). The Conference Report on the 1974 amendments explicitly states that material withheld under Exemption 1 must be properly classified "pursuant to both procedural and substantive criteria contained in such Executive order." H.Rep. No. 93-1200, 93d Cong., 2d Sess. 12 (1974). (Emphasis added)

The courts have hedged enforcing this provision of the law as it was written. However, the District of Columbia Circuit has held that where the materials fail to qualify for Exemption 1 because of the agency's failure to follow proper procedures and the government alleges that disclosure would constitute grave danger to national

security, the district court should examine the materials in camera to determine whether they may be withheld according to the exacting standard employed in First Amendment cases involving prior restraint. Halperin v. Department of State, 185 U.S.App.D.C. 124, 131-132, 565 F.2d 699, 706-707; Ray v. Turner, 190 U.S.App.D.C. 290, 318, 587 F.2d 1187, 1215, note 62 (concurring opinion of Chief Judge Wright).

Defendant has asserted that the January 21 and June 23 transcripts were classified by the Warren Commission under the provisions of Executive order 10501, as amended by Executive order 10901. However, Section 2(c) of Executive order 10501 restricted the exercise of original classification authority by providing that:

(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order, except as such authority may be specifically conferred upon such agency or unit hereafter.

Original classification authority was never conferred upon the Warren Commission. In Weisberg v. General Services Administration, Civil Action No. 2052-73, an earlier case which involved the same parties, issues, and facts but a different Warren Commission executive session transcript, that of January 27, 1964, United States District Judge Gerhard A. Gesell ruled that the GSA's submissions, including the affidavit of Warren Commission General Counsel J. Lee Rankin, "fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501 . . . as amended by Executive Order 10901." (See Attachment 2, May 3, 1974 Order in Civil Action 2052-73)

On November 11, 1975, a House of Representatives Subcommittee held a hearing on security classification problems involving War-

ren Commission records in the custody of the National Archives. The Subcommittee concluded that the Warren Commission did not have original classification authority and that in the absence of evidence that the President had delegated classification authority to the Commission any classification marking assigned by the Commission to information which it originated was not a valid classification. The Subcommittee also concluded that "any information originated by the Warren Commission which was not properly classified by an authorized classifier while the Commission was in existence should be viewed as having been nonclassifiable since the date the Commission ceased to exist." (See Attachment 3, December 9, 1975 letter from Subcommittee Chairwoman Bella S. Abzug to Dr. James B. Rhoads, Archivist of the United States, as printed in Hearing, "National Archives--Security Classification Problems Involving Warren Commission Files and Other Records," Government Information and Individual Rights Subcommittee, Committee on Government Operations, House of Representatives, 94th Cong., 1st sess. (1975), p. 61)

The conclusions reached by the Subcommittee were based on a memorandum by a member of its professional staff, Mr. William G. Florence, who also served as plaintiff's classification expert in this case. Mr. Florence's affidavit, filed in support of plaintiff's March 21, 1977 Motion for Reconsideration, attests to the facts stated in his memorandum to the Subcommittee. (See March 21, 1977 Florence Affidavit, ¶15. A copy of Mr. Florence's memorandum is attached to the Abzug letter found at Attachment 3, as well as to his affidavit.)

While the lack of classification authority on the part of the Warren Commission is fatal to the claim that the January 21 and June 23 transcripts were validly classified under E.O. 10501, the purported classification of these documents was flawed in other ways as well. Although Section 3(a) of E.O. 10501 provided that

"[d]ocuments shall be classified according to their own content and not necessarily according to their relationship to other documents," all Warren Commission Executive session transcripts were routinely classified Top Secret by the reporter, Ward & Paul, without regard to content or considerations of national security. (See May 5, 1976 Weisberg Affidavit, ¶15) The purported classification of these transcripts also failed to adhere to the downgrading-declassification of Section 4(a) and Section 5 of E.O. 10501, as amended by E.O. 10964. Nor was the June 23, 1964 transcript marked with the warning required by Section 4(j) of E.O. 10501, as amended. (See Opposition to Defendant's Motion for Summary Judgment, p. 8, and Exhibit EE thereto)

Aware that the Warren Commission transcripts were not validly classified under E.O. 10501, defendant submitted them to the CIA, which requested that they be classified under E.O. 11652. Inasmuch as these transcripts had lain unclassified for eleven years after the Warren Commission went out of existence, the CIA's 1975 efforts were of no effect whatsoever. As the Subcommittee rightly concluded, the information had become nonclassifiable as of the date the Warren Commission ceased to exist.

However, even if the CIA's attempt to classify these transcripts under E.O. 11652 had the potential of changing their legal status, the fact remains that the proper procedures required by E.O. 11652 were not followed.

In Schaffer v. Kissinger, 164 U.S.App.D.C. 282, 284, 505 F.2d 389, 391 (C.A.D.C. 1974), a case involving a claim that not all copies of the Red Cross reports sought by plaintiff were stamped Confidential and that the classification was made in order to avoid disclosure and only after plaintiff had requested the documents, the United States Court of Appeals held:

. . . the burden is on the agency to demonstrate to the court that the documents withheld

under the claim of the §552(b)(1) exemption were properly classified pursuant to executive order. In that regard, it was the responsibility of the court below to determine whether the Red Cross reports were in fact classified "confidential" and whether that classification, including the timing thereof was in accordance with Executive Order 11652. (Emphasis added)

The May 17, 1972 National Security Directive implementing E.O. 11652 unequivocally stated that:

[a]t the time of origination, each document or other material containing classified information shall be marked with its assigned security classification and whether it is subject to or exempt from the General Declassification Schedule.

Even assuming that the January 21 and June 23 transcripts could have been validly reclassified under E.O. 11652, the timing of the classification was highly irregular. On July 27, 1972 the National Archives asked the CIA to review the security classification of Warren Commission documents, including these transcripts, under the provisions of E.O. 11652. (See Attachment 4) The cover sheets of these transcripts show that they were not marked classified as a result of the 1972 review. (See Attachments 5 and 6) Nor were they marked classified pursuant to E.O. 11652 as a result of another classification review which culminated in October, 1974. (See Attachment 7)

On March 12, 1975, plaintiff made a formal request for the January 21 and June 23 transcripts. (See Complaint Exhibit A) Nine days later, on March 21, 1975, the National Archives sent these transcripts to the CIA for yet another classification review. (See defendant's answers to plaintiff's interrogatories No. 10 and No. 20) Although both transcripts were purportedly classified "Confidential" by Mr. Charles A. Briggs of the Central Intelligence Agency on May 1, 1975, neither transcript was so marked until after plaintiff filed this suit on September 4, 1975. Even then, only

the file copies of these transcripts were initially marked "Confidential." All extra copies, of which there were several of each transcript, were not marked "Confidential" until "the date of receipt" of plaintiff's interrogatories inquiring about this. (See defendant's answer to plaintiff's interrogatory No. 57)

Without question these facts establish a violation of Section 6(B) of E.O. 11652, which requires that:

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

In view of this, it is apparent that the procedural requirements of both E.O. 10501 and E.O. 11652 were violated. Because the proper classification procedures were not followed, defendant could not justifiably have withheld these transcripts from plaintiff unless it was prepared to make a claim that their disclosure would constitute a grave danger to the national security. Ray v. Turner, supra, 190 U.S.App.D.C. 290 at 318. No such claim has been advanced, and if it had been, the in camera inspection which this Court would have been required to make in light of "the exacting standard employed in First Amendment cases involving prior restraint" could not have sustained it. Because the transcripts were wrongfully withheld for years before they were finally made available to plaintiff, defendant cannot now argue that plaintiff has not "substantially prevailed" in this litigation because they were allegedly "independently declassified" while this case was pending on appeal and the handwriting on the wall was clear.

B. The Transcripts Were Not Properly Withheld Under Exemption 3

Defendant has previously maintained that the January 21 and June 23 transcripts were properly withheld under 5 U.S.C. § 552(b)(3), which exempts records that are:

(3) specifically exempted from disclosure by statute . . . provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matter to be withheld

The Exemption 3 statute which the CIA cited as justification for withholding these transcripts is 50 U.S.C. § 403(d)(3), which provides:

[t]hat the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure. (Emphasis added)

Whether disclosure of intelligence sources and methods constitutes "unauthorized" disclosure is determined by reference to the applicable Executive order governing disclosure of classified information. Indeed, unless § 403(d)(3) is read in light of the applicable Executive order it cannot qualify as an Exemption 3 statute because it then leaves withholding or disclosure at the discretion of the Director of Central Intelligence and does not establish particular criteria for his decision to withhold.

The legislative history of the 1974 Amendments to the Freedom of Information Act makes it clear that Congress intended that records for which an Exemption 3 claim was made based on § 403(d)(3) must be properly classified. Thus the Conference Report which accompanied the bill which amended Exemption 1 stated:

Restricted Data (43 U.S.C. 2162), communication information (18 U.S.C. 798), and intelligence sources and methods (50 U.S.C. 403(d)(3) and (g), for example, may be classified and exempted under section 552(b)(3) of the Freedom of Information Act. When such information is subjected to court review, the court should recognize that if such information is classified pursuant to one of the above statutes, it shall be exempted under this law. (Emphasis added)

(Conference Report No. 93-1380, 93rd Cong., 2d Sess., p. 12)

Because the Warren Commission transcripts were never validly classified, their disclosure could not have been "unauthorized" as

that term is used by Executive orders 10501 and 11652 and 50 U.S.C. § 403(d)(3).

Plaintiff's classification expert, Mr. William G. Florence, spelled out the reasons for this in his March 21, 1977 affidavit. Discussing this issue in light of the applicable Executive order then in effect, E.O. 11652, he stated:

24. The basic fact about lawful authorization for designating information as secret to protect intelligence sources and methods is that the classification criteria set forth in Executive Order 11652 must be met. That Executive order is the current implementation by the President of 50 U.S.C. 403(d)(3) with respect to determining whether a specific item of information must be kept secret to protect an intelligence source or method.

25. In carrying out his responsibility under the statute for protecting intelligence sources and methods, the Director of the Central Intelligence Agency has no choice but to comply with the President's Executive Order 11652. That order is all-inclusive in its application to "official information or material," as referred to in Section 1, except that Section 8 provides that Atomic Energy "Restricted Data" must be protected according to the Atomic Energy Act of 1954, as amended. It must be emphasized that Executive Order 11652 makes no exception for intelligence sources and methods. On the contrary, the provisions of Sections 1, 5, and 9 of Executive Order 11652, which apply specifically to intelligence operations and to intelligence sources and methods, clearly include all information regarding intelligence sources and methods which qualify for protection against unauthorized disclosure.

26. Therefore, if there is information in the January 21 and June 23, 1964, Warren Commission executive session transcripts involving intelligence sources and methods which require protection under Executive Order 11652, and if such information is in fact properly classified pursuant to Executive Order 11652, including both the procedural and substantive provisions of that order, then the mandatory disclosure requirements of the Freedom of Information Act would not apply. But if the transcripts do not contain information that is properly classified under Executive Order 11652, then there is no authorized basis for withholding them because of a claim that they would or might disclose intelligence sources or methods.

Defendant has in effect conceded that the Exemption 3 claim in this case was dependent upon the security classification status

of the two transcripts. Plaintiff's interrogatory No. 100 asked, in part: "Has the Director of the CIA or any of his delegates ever informed the Archivist or any of his delegates that the June 23 transcript and pages 63073 of the January 21 transcript are withheld pursuant to 50 U.S.C. § 403(d)(3)?" The Archivist, Dr. James B. Rhoads, replied:

In discussions between counsel for the CIA and defendant pertinent to Freedom of Information requests for these transcripts, the CIA counsel has stated that the continuing security classification, as exempted from mandatory declassification under Executive Order 11652, necessarily invoked the provisions of 50 U.S.C. 403(d)(3). Presumably, upon the declassification of these transcripts at a future date, this statute would not be invoked to prevent public access.

Defendant's conduct in this case is consistent with this admission that the viability of its Exemption 3 claim hinged upon the classification status of the two transcripts. As soon as a suitable pretext for "declassifying" these transcripts arose, it dropped its Exemption 3 claim and released the transcripts.

Since the transcripts were not classified in accordance with the procedures prescribed by either Executive order 10501 or Executive order 11652, there never was any justification for withholding them under an Exemption 3 claim based upon 50 U.S.C. § 403(d)(3).

C. The Transcripts Never Qualified for Withholding Under the Substantive Criteria for Exemption 1 or 50 U.S.C. § 403(d)(3)

In addition to the procedural considerations discussed above, it is now plain that the transcripts never qualified for withholding under the substantive criteria for Exemption 1 or 50 U.S.C. § 403(d)(3) because their release could not have disclosed "intelligence sources and methods" not already publicly known.

With respect to the June 23 transcript, the key part of Owen's Supplemental Affidavit is his claim that it had to be withheld because the discussion it contains "is primarily concerned with ex-

pressions 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." (Supplemental Owen Affidavit, ¶8)

If this was the real reason for refusing to release the June 23 transcript, it disappeared at least as long ago as the disclosure of CIA Document 498, which states at the bottom of page three that: "This agency has no information that would specifically corroborate or disprove NOSNEKO's statements regarding Lee Harvey OSWALD." (See December 22, 1979 Weisberg Affidavit, ¶48, and Exhibit 5 thereto) That this information was public knowledge soon after this lawsuit was filed is shown by the fact that a San Francisco newspaper carried a story in its March 23, 1976 issue which stated that:

A recently released CIA memo shows that James Angleton, then head of CIA counterintelligence, told the [Warren] Commission that the CIA had no information that would either prove or disprove Nosenko's story.

(See December 22, 1979 Weisberg Affidavit, ¶93)

On May 9, 1975--more than half a year before this lawsuit was filed--CBS TV carried an interview with former CIA Director John McCone in which he stated of Nosenko:

It is traditional in the intelligence business that we do not accept a defector's statements until we have proven beyond any doubt that the man is legitimate and the information is correct. It took some time to prove the bona fides of the man, which were subsequently proven.

(See December 22, 1979 Weisberg Affidavit, ¶94, and Exhibit 13 thereto)

Warren Commission documents released prior to plaintiff's March 12, 1975 FOIA request, while not as explicit, also provided information from which the KGB could have inferred that there was

doubt about Nosenko's bona fides. Thus a Warren Commission staff memorandum on a March 12, 1964 conference with the CIA states:

"The first topic of conversation was Yuri Nosenko, the recent Soviet defector . . . the CIA's recommendation being that the Commission await further developments." As Weisberg points out:

Ambiguous as this is, it would have told the KGB that the CIA was discouraging the Commission's interest in Nosenko and that it questioned the dependability of what he said.

(December 22, 1979 Weisberg Affidavit, ¶92) Defendant released this document on January 24, 1975.

With respect to the January 21 transcript, Owen claims that it had to be withheld because it made clear that the CIA had briefed the Warren Commission staff on its capabilities and "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 . . ." This had to be withheld in the interest of national security because "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 these defectors."

(Supplemental Owen Affidavit, ¶6)

As Weisberg points out,

This, obviously, is not true. The CIA, the State Department and/or the Commission could have ignored any and all suggestions made by the defectors in their "support," recommending questions to be asked of the Soviet Government.

(December 22, 1979 Weisberg Affidavit, ¶61) Moreover,

Consulting these two did not disclose the "level of confidence" imparted because their suggestions could have been ignored and because it is an obvious assumption that, once they had defected to the CIA, it would ask them questions based on their knowledge and prior experience.

(December 22, 1979 Weisberg Affidavit, ¶65)

One of the two Soviet defectors about whom Owen expresses such great concern is Petr Derjabin. The KGB had ample evidence of the "level of confidence" which the CIA reposed in him at least as early as 1965. As Weisberg states:

It cannot be claimed in late 1979 that there had to be withholding to keep secret the "level of confidence" or lack of it that was reposed in Derjabin when the CIA had already disclosed this by having him translate the published Penkovsky Papers, about which, over his name, Derjabin boasted in a letter to the editor of the Washington Post of November 19, 1965. *** Other ways in which his identification and career were public, including by Congressional testimony, are set forth in my earlier affidavits in this instant cause. That the CIA used Derjabin to translate the Penkovsky papers and permitted him to testify to a Congressional committee reflects the CIA's "level of confidence" in him.

(December 22, 1979 Weisberg Affidavit, ¶69) Similarly, the fact that the January 21 transcript reveals "a discussion of the problems of how to verify information concerning the activities in the Soviet Union related to Lee Harvey Oswald's personal experiences as a defector," another Owen justification for withholding it, was disclosed long ago when the defendant released copies of the agendas of the Warren Commission's executive sessions to plaintiff and others. (December 22, 1979 Weisberg Affidavit, ¶57)

While these are only some of the examples provided by Weisberg's December 22, 1979 affidavit, they show that he swore correctly when he stated in an earlier affidavit that:

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.

(August 20, 1979 Weisberg Affidavit, ¶42)

If, as Owen swears in his Supplemental Affidavit, "[t]he declassification and release of the study and testimony provided in

[the HSCA's] Volume II made the continued classification of the transcripts untenable" (Supplemental Owen Affidavit, ¶11), then the far earlier revelations cited by Weisberg did also.

The obvious conclusion to be drawn from the CIA's refusal to disclose what it had no basis for withholding is that stated by Weisberg, and not for the first time, in his latest affidavit:

The only "insight into the CIA that the transcripts could provide," Owen's words, is not the baseless and often unfactual conjectures he swears to but that it could and did mislead a Presidential Commission and did hide from it and from the country the KGB's suspicion that the officially designated Presidential assassin served American intelligence. Nothing else was of consequence or not known to the KGB at the time these transcripts were withheld from me and thereafter and Owen shows nothing else that was of consequence.

(December 22, 1979 Weisberg Affidavit, ¶109)

II. GOVERNMENT CANNOT MEET ITS BURDEN OF PROOF BECAUSE ITS AFFIDAVITS ARE FALSE AND CONTRADICTORY

The affidavits which defendant has submitted in this case are by turns false, vague, obfuscatory, inaccurate, illogical, and hallucinatory. In addition to these defects, they also contradict each other. Since no credence can be placed in such affidavits, they cannot support the judgment which defendant seeks to have this Court make, that plaintiff has not substantially prevailed in this litigation because the transcripts were independently "declassified" as a result of the testimony of the CIA's Mr. Hart before the House Select Committee on Assassinations.

The December 30, 1976 affidavit of Mr. Charles A. Briggs swore that the June 23 transcript was properly classified for the following reasons:

A. When Nosenko defected to the U.S. in February, 1964, he agreed to provide the CIA with information but did so "with the clear understanding that this information would be properly safe-

guarded so as not to endanger his personal security and safety."

(See Attachment 8, December 30, 1976 Briggs Affidavit, ¶7)

B. After his defection, Nosenko was tried in absentia by the Soviet Union and condemned to death; consequently, "[a]ny disclosure of his identity or whereabouts would put him in mortal jeopardy." Because of this, "[e]very precaution has been and must continue to be taken to avoid revealing his new name and whereabouts." (December 30, 1976 Briggs Affidavit, ¶7)

C. There is "no way the Soviet Union can determine exactly what information has been provided by Mr. Nosenko." However, "[r]evealing the exact information which Mr. Nosenko--or any defector--has provided can materially assist the KGB in validating their damage assessment and in assisting them in the task of limiting future potential damage." It could also "only interfere with American counterintelligence efforts since the KGB would take control measures to negate the value of the data." Moreover, "any information officially released may be exploited by the KGB as propaganda or deception." (December 30, 1976 Briggs Affidavit, ¶8)

D. Potential defectors will be dissuaded from defecting if the security of prior defectors is compromised. Therefore, "[e]very precaution must continue to be taken to protect the personal security of Mr. Nosenko." Finally, "[t]he manner in which Mr. Nosenko's security is being protected is serving as a model to potential future defectors." (December 30, 1976 Briggs Affidavit, ¶9)

The falsity of these representations has previously been pointed out by Weisberg, including in his affidavit of April 17, 1978. (See Attachment 9) Now that the transcripts have been released, the falsity of Mr. Briggs' representations is obvious and undeniable. Consequently, the CIA has resorted to an age-old trick; it has abandoned Mr. Briggs and his representations and substituted a different affiant who conjures up new and contradictory justifi-

cations for withholding on national security grounds information that never qualified for such withholding and that long had been public in any event.

The release of the transcripts in no way endangered Nosenko's personal safety and security, as Briggs would have had this Court believe. His defection was public knowledge as of the time of the Warren Commission's June 23, 1964 executive session, as the transcript of that meeting itself shows. Not only was his identity known, but the CIA itself made Nosenko available to writers who published details about his identity, employment and whereabouts. Weisberg's affidavits on this point have not been refuted or even responded to by the CIA.

That there "is no way the Soviet Union can determine exactly what information has been provided by Mr. Nosenko," Mr. Briggs' representation, is shown by the text of the June 23 transcript to have been a deliberate canard, since the transcript does not reveal any such information. Owen, of course, omits this as a basis for withholding the June 23 transcript.

The Supplemental Owen Affidavit claims that ". . . public acknowledgment 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." (Supplemental Owen Affidavit, ¶7) No specifics are given which would provide a basis for this conclusory claim. It should be pointed out, however, that this claim has been made with respect to the January 21 transcript only. No such claim has been made with respect to the June 23 transcript.

In addition, defendant has made no claim that there were no segregable, nonexempt portions of these transcripts. An examination of the transcripts shows that even assuming the validity of defendant's contentions about the need to withhold certain information on national security grounds, there were portions of the transcripts which could have been released without jeopardizing

the information allegedly sought to be protected in the interest of national security.

III. THE COURT SHOULD INCREASE THE AWARD BECAUSE OF DEFENDANT'S BAD FAITH IN RESISTING DISCLOSURE OF THE TRANSCRIPTS

In 1977 a proud and very capable judge of this Court made a public protest of the fact that he had been bamboozled in a Freedom of Information Act case involving the CIA as a defendant, stating, "It turns out that it was all just a game that was played over a period of a year in front of me." ^{See Attachment 10,} (June 28, 1977 transcript, p. 7, in Military Audit Project b. George H. Bush, Civil Action 75-2103)

In this case, the game has now been going on for over four years. The point of the game has been to grind down plaintiff and his attorney and to drive up the cost of obtaining information while at the same time delaying access to information which would embarrass the government, particularly the CIA. This is not the first time that the GSA and the CIA have combined to employ these tactics against this particular plaintiff. In Weisberg v. General Services Administration, Civil Action No. 2052-73, the CIA/GSA combined to stall plaintiff's access to records by filing false and misleading affidavits. Then after they won the case on the basis of their Exemption 7 claim but lost it on their Exemption 1 claim, they withdrew their spuriously invoked Exemption 7 claim before plaintiff could appeal and get it reversed. Similarly, in this case defendant withdraw its Exemption 3 claim and released the documents while plaintiff's appeal was pending in the Court of Appeals.

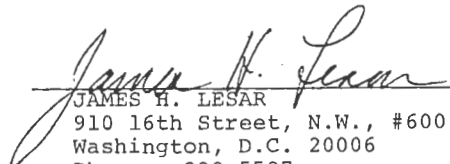
Plaintiff's claims that the CIA has not acted on a number of his Freedom of Information Act requests dating back to 1975 and 1976 is undisputed. This is evidence of the CIA's bad faith in handling plaintiff's FOIA requests. By wearing plaintiff down

in lengthy, expensive, and unnecessary litigation like that in this case, the government is preventing him from pursuing other information requests which have been pending without action for years.

The obstructive tactics employed by defendant, including the use of false, misleading, and obfuscatory affidavits, undermines the mandate of the Freedom of Information Act for prompt and effective disclosure of nonexempt government information and subverts the integrity of the courts.

It is time to put an end to the tactics employed by the defendant and its cohort, the CIA. Just as a jury in California used an award of punitive damages in the amount of \$125,000,000 to express its outrage that the makers of Pinto would deliberately build a car designed to burn its occupants to death in accidents, so should this Court use this occasion to send a message to government agencies that their "game-playing" will no longer be tolerated. To this end the Court should double or even triple the basic award of attorneys' fees and costs requested by plaintiff. Because this case has required an investment of time by plaintiff which likely equals, if it has not exceeded, that required of his attorney, a portion of the increase should be awarded directly to plaintiff himself.

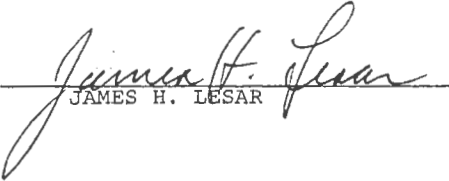
Respectfully submitted,


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 day of December, 1980,
hand-delivered a copy of the foregoing to the office of Ms. Patri-
cia Kinney, United States Courthouse, Washington, D.C. 20006


JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 75-1448

NATIONAL ARCHIVES AND RECORDS
SERVICE,

Defendant

AFFIDAVIT

Charles A. Briggs being first duly sworn, deposes and says:

1. I am Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency and am familiar with the contents of the complaint in this case and make the following statements based on personal knowledge obtained by me in my official capacity.

2. Pages 63-73 of the transcript record an executive session of the President's Commission on the Assassination of President Kennedy which session was held on 21 January 1964. I have determined that the information contained in these pages is classified, and that it is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

3. This portion of the transcript deals entirely with the discussion among the Chairman of the Commission, Chief Justice Warren; the General Counsel of the Commission, Mr. Rankin; and Messrs. Dulles, Russell, Boggs, McCloy,

and Ford, Commission members. The matters discussed concerned tactical proposals for the utilization of sensitive diplomatic techniques designed to obtain information from a foreign government relating to the Commission's investigation of the John F. Kennedy assassination. The specific question discussed concerned intelligence sources and methods to be employed to aid in the evaluation of the accuracy of information sought by diplomatic means. To disclose this material would reveal details of intelligence techniques used to augment information received through diplomatic procedures. In this instance, revelation of these techniques would not only compromise currently active intelligence sources and methods, but could additionally result in a perceived offense by the foreign nation involved with consequent damage to United States relations with that country.

4. Pages 7640-7651 of the transcript record an executive session of the President's Commission on the Assassination of President Kennedy which was held on 23 June 1964. I have determined that the information contained in these pages is classified, and that it is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

5. This portion of the transcript deals with a discussion among the Chairman of the Commission, Chief Justice Warren; the General Counsel of the Commission, Mr. Rankin; and Messrs. Ford and Dulles, Commission members. The matters discussed concern intelligence methods used by the CIA to determine the accuracy of information held by the Commission.

into the assassination of President Kennedy and the subsequent murder of Lee Harvey Oswald. It can hardly be disputed that its findings would have led to criminal enforcement proceedings had it uncovered evidence of complicity in those events by any living person. The Archives' collection of Warren Commission transcripts therefore constitutes an "investigatory file . . . compiled for law enforcement purposes . . ." within the meaning of the seventh exemption. 5 U.S.C. § 552(b)(7).

The instant case is squarely controlled by the decision of this Circuit in Weisberg v. Dept. of Justice, 489 F.2d 1195 (D.C. Cir. 1973), in which the same plaintiff sought access to certain materials collected by the Federal Bureau of Investigation during its investigation into the assassination of President Kennedy. The Court concluded that the Bureau's intensive inquiry, undertaken at the special request of President Johnson, was clearly conducted for law enforcement purposes even if no violations of federal law were involved, so that the resulting investigatory files were protected. Id. at 1197-98. No less protection can be afforded to the files of the Warren Commission, which was also instituted by the President for the principle purpose of examining evidence of criminal conduct arising out of the assassination. See Executive Order No. 11130, 3 C.F.R. 795 (Comp. 1959-63).

It is therefore

ORDERED that defendant's motion for summary judgment is granted.


UNITED STATES DISTRICT JUDGE

May 3, 1974.

APPENDIX 4.—1975 ATTORNEY GENERAL GUIDELINES FOR REVIEW OF
ACCESS RESTRICTIONS ON WARREN COMMISSION RECORDS

PREPARED BY THE ATTORNEY GENERAL, 1975

[Revised guidelines are set forth below. No language has been deleted. Additional language is in *italics*.]

GUIDELINES FOR REVIEW OF MATERIALS SUBMITTED TO THE PRESIDENT'S COMMISSION
ON THE ASSASSINATION OF PRESIDENT KENNEDY

As reviewed and revised in light of 1974 Amendments to Freedom of Information Act.

1. Statutory requirements prohibiting disclosure should be observed.
2. Security classifications should be respected, but the agency responsible for the classification should carefully re-evaluate the contents of each classified document and determine whether the classification can, consistently with the national security, be eliminated or downgraded. *See Attorney General's Memorandum on 1974 Amendments, pp. 1-4.*
3. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis or upon request under the *Freedom of Information Act* unless such material is exempt under the Act and its disclosure—

- (A) Would be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
- (B) Might reveal the identity of confidential sources of information and impede or jeopardize future investigations by precluding or limiting the use of the same or similar sources hereafter;
- (C) Would be a source of embarrassment to innocent persons, who are the subject, source, or apparent source of the material in question, because it contains gossip and rumor or details of a personal nature having no significant connection with the assassination of the President.

Whenever one of the above reasons for nondisclosure may apply, your department should, in determining whether or not to authorize disclosure, weigh that reason against the overriding policy of the Executive Branch favoring the fullest possible disclosure.

Unless sooner released to the public, classified and unclassified material which is not now made available to the public shall, as a minimum, be reviewed by the agency concerned five years and ten years after the initial examination has been completed, and in addition must be reviewed whenever necessary to the prompt and proper processing of a Freedom of Information request. 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 until all materials are opened for legitimate research purposes. The Archivist of the United States will arrange for such review at the appropriate time. Whenever possible provision should be made for the automatic declassification of classified material which cannot be declassified at this time.

(60)

APPENDIX 5.—SUBCOMMITTEE FINDINGS REGARDING VALIDITY OF
CLASSIFICATION MARKINGS ON ORIGINAL COMMISSION RECORDS

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C. December 9, 1975.

Dr. JAMES B. RHOADS,
Archivist of the United States,
National Archives and Records Service,
Washington, D.C.

DEAR DR. RHOADS: Thank you for your letter of November 24, 1975, forwarding some of the material that this Subcommittee requested while you were testifying at our hearing on November 11, 1975. Of special interest are those items relating to the question whether the President ever granted the Warren Commission the authority to originally classify information for secrecy under Executive Order 10501.

During the hearing, GSA Counsel Stephen Carlfoel referred to the letter of November 23, 1964, from President Johnson to Commission Chairman Earl Warren. As I read that letter it was simply a waiver of requirements in Executive Order 10501 for marking declassified documents to show that the previously assigned classifications had been cancelled.

It applied only to some documents which had been declassified by the agencies concerned and were printed in exhibits of the Warren Commission Report without the prescribed declassification notations. There is nothing in the letter to suggest that the Commission had been granted original classification authority.

Attached for your information is a copy of a memorandum by a member of the staff of this Subcommittee regarding classification markings on Warren Commission records. Facts presented show that the Commission did not have original classification authority.

In the absence of evidence that the President delegated classification authority to the Warren Commission, this Subcommittee must agree with the conclusion in the attached memorandum that any classification marking assigned by the Commission to information it originated was not a valid classification. We must also agree that any information originated by the Warren Commission which was not properly classified by an authorized classifier while the Commission was in existence should be viewed as having been nonclassifiable since the date the Commission ceased to exist.

With best regards, I am
Sincerely,

DELLA S. ANZIO,
Chairwoman.

Enclosure.

MEMORANDUM

OCTOBER 27, 1975.

To: Mr. Timothy H. Ingram, Staff Director, Subcommittee on Government Information and Individual Rights.
From: Mr. William G. Florence, Professional Staff Member.
Subject: Classification Markings on Warren Commission Records.

This is in response to your request for comments on the question whether the Warren Commission had authority to originally classify information as Confidential, Secret or Top Secret under the Executive branch security classification system.

According to available facts, the Warren Commission did not have original classification authority. Neither the chairman nor the Commission as a whole could have exercised such authority or delegated such authority to any Commission personnel.

(61)

The President's policy for classifying official information during the period that the Warren Commission existed was stated in Executive Order 10501, as amended by Executive Orders No. 10810, 10901, 10964 and 10985. Subsections 2(a) and (b) of the Executive Order 10501 listed the departments, agencies and commissions which exercised the authority of the President to originally classify information. The list did not include the Warren Commission.

Subsection 2(c) of Executive Order 10501 stated the President's restriction on exercising original classification authority:

"(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter."

There is sound reason for concluding that authority for original classification was never conferred upon the Warren Commission. It was not included in Executive Order 11650, which established the Commission to Investigate the Assassination of President Kennedy. Representatives of National Archives have advised that the Commission files contain no record of any delegation to the Commission of classification authority subsequent to the Commission being established.

Consideration has been given an affidavit regarding the use of classification markings on Warren Commission records that was executed by Mr. J. Lee Rankin on April 8, 1974, for use in a Freedom of Information Act case in United States District Court for the District of Columbia (Civil Action NO. 2052-73). Mr. Rankin had served as General Counsel of the Warren Commission. The case involved a request for access to the transcript of a Warren Commission meeting held on January 27, 1964, which bore the marking "TOP SECRET."

In his affidavit, Mr. Rankin stated that:

(1) He was instructed by the Commission "to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be classified under existing Executive order."

(2) The Commission's authority to classify its records and its decision to delegate that responsibility to him existed pursuant to Executive Order 10501, as amended.

(3) He ordered that the transcripts of certain executive sessions of the Commission, including that of January 27, 1964, be classified "Top Secret."

The District Court (Judge Gerhard A. Gesell) reviewed all of the Government's submissions in the case (*Weisberg v. General Services Administration*), including Mr. Rankin's affidavit. The Court concluded that they "fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501, as amended by Executive Order 10901." (However, the Court went on to hold that the Warren Commission transcript in question could be withheld as an investigatory file under exemption 7 of the Freedom of Information Act, and rested its decision on that ground.)

On the basis of facts available, none of the classification markings assigned by Mr. Rankin to documents originated by the Warren Commission have any validity. They need not be subjected to declassification action since one cannot declassify that which was never properly classified.

After-the-fact classification markings

As for any past or future action by an official of a Federal agency to assign a security classification to a Warren Commission paper, such classification could be viewed as official and authorized only if it met both the procedural provisions and the secrecy criteria of Executive Order 10501 or the current Executive Order 11652.

Section 1 of Executive Order 10501 permitted the use of the lowest security classification, Confidential, on official information only if an authorized classifier determined that the unauthorized disclosure of the information could be prejudicial to the defense interests of the nation. Section 1 of Executive Order 11652 permits the use of the lowest security classification, Confidential, on official information only if an authorized classifier determines that unauthorized disclosure of the information could reasonably be expected to cause damage to the national security, a collective term for national defense or foreign relations of the United States.

In short, the assignment of a classification is authorized only if the classifying official can and does determine that future unauthorized disclosure of the information could reasonably be expected to cause damage to the national security.

Information that was originated outside the prescribed Executive order classification and secrecy procedures, or which became known outside those procedures, could not qualify later for incorporation into the system. A non-secret cannot be changed into a secret by applying a classification label to it.

The problem with an attempt to apply a security classification to information that has existed for a period of time is that the classifier normally would be unable to determine that the information had not already been disclosed. A future unauthorized communication of information could not in itself be expected to prejudice or cause damage to the national defense or national security if the information originated and was known outside the rules prescribed for classifying information.

Therefore, in the light of all facts in this case, the information originated by the Warren Commission could be viewed as having been non-classifiable since the date the Commission ceased to exist.

APPENDIX 5.—SUBCOMMITTEE FINDINGS REGARDING VALIDITY OF CLASSIFICATION MARKINGS ON ORIGINAL COMMISSION RECORDS

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With best regards, I am
Sincerely,

BELLA S. ARSUE,
Chairwoman

Enclosure.

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In his affidavit, Mr. Rankin stated that:

(1) He was instructed by the Commission "to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be classified under existing Executive order."

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The problem with an attempt to apply a security classification to information that has existed for a period of time is that the classifier normally would be unable to determine that the information had not already been disclosed. A future unauthorized communication of information could not in itself be expected to prejudice or cause damage to the national defense or national security if the information originated and was known outside the rules prescribed for classifying information.

Therefore, in the light of all facts in this case, the information originated by the Warren Commission could be viewed as having been non-classifiable since the date the Commission ceased to exist.

EXHIBIT HH

JUL 28 1972

Honorable Richard Helms
Director, Central Intelligence Agency
Washington, DC 20505

Dear Mr. Helms:

Enclosed are copies of our letter of August 18, 1970, to you concerning the review of the Numbered Document File of the President's Commission on the Assassination of President Kennedy and of your reply of January 4, 1971. In addition to the Numbered Document File involved in these letters, the records of the Commission include correspondence and internal records of the Commission, some of which relate to the functions of other Government agencies and their part in the investigation of the assassination. These records were reviewed by the National Archives in 1967 at the request of the Department of Justice. Some of them were withheld from research, and it is now time for the five year review of these documents provided for in the guidelines that apply to the records. I would like to ask the Central Intelligence Agency to review those documents which relate to its functions. They consist chiefly of correspondence between the CIA and the Commission and related memoranda (about one inch).

Both the material that we are now asking the CIA to review and the documents withheld from research in the Numbered Document File of the Commission include security classified documents. The CIA may wish to consider these documents under the provisions of Executive Order 11652 of March 10, 1972 (37 F.R. 5209), to determine whether they should be declassified or downgraded, and if they are declassified, whether they should be made available for research or withheld under a different exemption to the "Freedom of Information Act" (5 U.S.C. 552) and a different guideline from Guideline 2.

The following staff members of the National Archives will be pleased to furnish any further information that may be needed:

2

Mr. Mark G. Eckhoff, Chief, Legislative, Judicial, and Fiscal Branch,
or Mr. Marion M. Johnson, on Code 13, Extension 23171.

Sincerely,

James E. O'Neill

JAMES E. O'NEILL
Acting Archivist
of the United States

Enclosures

cc: Official file - NNF
Reading file - NNFC
Day file - N

MJohnson:vk x23171 7-28-72

NNF *JS* NN *JS*

EXHIBIT EE

This document contains information... national defense of the United States within meaning of the Espionage Laws, Title 18, U.S. Sects. 793 and 794. The transmission or revelation of its contents in any manner to an unauthorized person is prohibited by law.

Vol. 4
Copy 6 of 9

~~CONFIDENTIAL~~
REFRAGED **CONFIDENTIAL**

Authority: CIA Ltr. 1 May 1975
By: Maxim M. [unclear], Date 3/25/77

EXEMPT from automatic declassification per E.O. 11652, Sec. 5(a)(2)

Chas. A. Briggs, CIA, 1 May 1975
Name Agency Date

E.O. 11652, Sec. 5(B)(1) [unclear]
Reason: Exempt from automatic declassification
Date: [unclear]

PRESIDENT'S COMMISSION

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

PAGES 1 - 126

(Stenotype Tape, Master Sheets, Carbon and Waste turned over to Commission for destruction.)

~~CONFIDENTIAL~~
REFRAGED **CONFIDENTIAL**

Authority: CIA Ltr. 1 May 1975
By: Maxim M. [unclear], Date 3/25/77

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Name Agency Date

E.O. 11652, Sec. 5(B)(1) [unclear]
Reason: Exempt from automatic declassification
Date: [unclear]

WARD & PAUL

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EXHIBIT FF

Vol. 55
Copy 9 of 10

Regraded
CONFIDENTIAL
per CIA Ltr. 17 May 1971
by Martin M. Johnson HARS
9/29/71

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

*Exempt from automatic
declassification
per E.O. 11652, Sec.
5(E)(2), under E.O.
11652, Sec. 5(B)(2)
and (3) by Charles
A. Briggs, Acting
Director, Office of
Management & Administration
11/12/75*

Report of Proceedings

Held at

Washington, D. C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

Regraded
per CIA Ltr. 1 May 1975
by Martin M. Johnson HARS
9/29/71

WARD & PAUL
OFFICIAL REPORTERS
817 G STREET, N.W.
WASHINGTON, D. C. 20001

AREA CODE 202

EXHIBIT JJ

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

1 October 1974

Mr. Marion Johnson
National Archives and Records Service
Pennsylvania Avenue at 8th Street, N.W.
Washington, D.C.
20408

Dear Mr. Johnson:

Pursuant to your request we have reviewed the enclosed four documents in order to determine whether the classifications ascribed to them need to be retained. Our conclusions are detailed below:

- (a) Top Secret Document, Subject: Conference with the CIA on March 12, 1964, (List No. 1, Item 19).

There are only two segments of this document which have continued to be classified at our request, specifically the name of one person in paragraph one and the entire second paragraph. We should now like to remove all restrictions concerning paragraph two, but we want to continue to withhold the person's name in paragraph one. However, the document may be downgraded to Confidential.

- (b) Top Secret Document, dated June 24, 1964, Subject: Yuri Ivanovich Nosenko (List No. 1, Item 27).

We have no objection to the declassification of this document in its entirety.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

AFFIDAVIT

Charles A. Briggs, being first duly sworn, deposes and says:

1. I am the Chief, Information Services Staff of the Directorate of Operations, Central Intelligence Agency (CIA) and hold the rank of GS-18. As Chief of that staff, I am responsible for maintaining record systems within the Directorate of Operations and for establishing secure procedures and systems for handling intelligence documents. I have ready access to intelligence experts versed in the technical requirements of the pertinent Executive orders, National Security Directives and other regulatory issuances, as well as experts in the substance of a wide variety of classified documents and records for which I am responsible; and in my deliberations, I made full use of such experts. The statements made herein are based on my personal knowledge, upon information made available to me in my official capacity, upon conclusions reached therewith and in my deliberation I made full use of this.

concern over hazards to the national security in the fields of foreign relations, 25
military or defense activities, scientific and technical developments,
communications security systems, as well as intelligence activities. The list sion
is illustrative, not exhaustive. In the case of classified intelligence documents,
current international developments are usually prominent among the
classification determinants. The classification decision usually is a function of
the relationship between U.S. national security interests and the foreign
development. Usually, there are a number of interrelated factors which, in the
flow of events, are constantly changing in terms of their relative
significance and their interrelationships. An individual document is usually
a short-term glimpse of a moving chain of related events. The national
security significance of a document cannot usually be judged in isolation. The
judgment must take into account what events preceded those recorded, as
well as those likely to follow. Consequently, a classification judgment is not 3T,
valid indefinitely. The circumstances which justify classification may
change, sometimes without warranting a change in the classification. Likewise,
a classification judgment which is amended at a later date is not thereby
proven to have been initially in error. Changes in classification typically result
in a lower level of classification. Such a change is usually, as in this case, uly
a result of a judgment that the hazard anticipated has been reduced in magnitude
or likelihood with the passage of time.

5. The prime purpose of an intelligence organization is to protect its
country from hostile foreign surprises. Concealing such knowledge of hostile s
intentions and capabilities of foreign countries is a prime role of the

2. Through my official duties I have become acquainted with the Freedom of Information Act (FOIA) request submitted to the National Archives by the plaintiff in the above-captioned litigation and I have read the two documents at issue; pages 63-73 of the transcript record of an executive session of the President's Commission on the assassination of President Kennedy of 21 January 1964 and the transcript of a similar session of 23 June 1964. I have concluded that the documents are properly withheld from the plaintiff pursuant to exemptions (b)(1) and (b)(3) of the FOIA, as amended. These exemptions have been asserted in that the documents are currently properly classified pursuant to Executive Order 11652 and contain information which, if released, would jeopardize foreign intelligence sources and methods which the Director of Central Intelligence Agency is responsible for protecting from unauthorized disclosure pursuant to the National Security Act of 1947, as amended (50 U.S.C.A. 403(d)(3)).

3. My authority to classify documents, up to and including TOP SECRET, is set forth in Exhibit A attached.

4. Classifying documents under Executive Order 11652 is not an exact science. Classification determinations are not susceptible to some form of precise mathematical formula. The Executive Order requires a judgment as to the likelihood that an unauthorized disclosure of a document could reasonably be expected to result in damage to the national security. A judgment involving probabilities, not certainties. The Executive Order provides a listing of examples of categorical areas in which it is possible to anticipate damage to the national security. The listing is varied and general; it suggests

concern over hazards to the national security in the fields of foreign relations, military or defense activities, scientific and technical developments, communications security systems, as well as intelligence activities. The list is illustrative, not exhaustive. In the case of classified intelligence documents, current international developments are usually prominent among the classification determinants. The classification decision usually is a function of the relationship between U.S. national security interests and the foreign development. Usually, there are a number of interrelated factors which, in the flow of events, are constantly changing in terms of their relative significance and their interrelationships. An individual document is usually a short-term glimpse of a moving chain of related events. The national security significance of a document cannot usually be judged in isolation. The judgment must take into account what events preceded those recorded, as well as those likely to follow. Consequently, a classification judgment is not valid indefinitely. The circumstances which justify classification may change, sometimes without warranting a change in the classification. Likewise, a classification judgment which is amended at a later date is not thereby proven to have been initially in error. Changes in classification typically result in a lower level of classification. Such a change is usually, as in this case, a result of a judgment that the hazard anticipated has been reduced in magnitude or likelihood with the passage of time.

5. The prime purpose of an intelligence organization is to protect its country from hostile foreign surprises. Concealing such knowledge of hostile intentions and capabilities of foreign countries is a prime role of the

classification system as applied to intelligence documents and information. Concealing the methods and sources used in acquiring such knowledge is also an essential requirement in maintaining such capabilities. Using the classification system to protect intelligence sources and methods, as well as the substantive content of documents, can result in documents which, on their face, bear no apparent justification for classification. In such cases, it is often essential to have access to other classified information to be able to recognize the reason for the classification. For example, an intelligence report detailing a policy decision by a foreign government might not appear to warrant classification unless the reader also knows that the policy decision is a violation of a secret mutual defense commitment that country has made with the U.S., a decision that country intended to keep secret from the U.S. The reader recognizing that, would also recognize that the report proved that the reporting intelligence organization possessed the means of learning of such "secret" policy decisions. The latter fact alone would warrant classification under Executive Order 11652. In sum, a document can warrant classification without the justification being apparent from the text of the document.

6. The transcript of the 21 January 1964 executive session, pages 63-73, is currently classified CONFIDENTIAL and is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652. As I stated in my affidavit of 5 November 1975, the matters discussed in the transcript concerned tactical proposals for the utilization of sensitive diplomatic

techniques designed to obtain information from a foreign government relating to the Commission's investigation of the John F. Kennedy assassination. The specific question discussed concerned intelligence sources and methods to be employed to aid in the evaluation of the accuracy of information sought by diplomatic means. In this instance, revelation of these techniques would not only compromise currently active intelligence sources and methods but could additionally result in a perceived offense by the foreign country involved with consequent damage to United States relations with that country. A more detailed delineation of the nature of the intelligence methods and sources involved in this document would, in effect, defeat the protective intentions of the classification. In arriving at the classification determination, I employed the professional disciplines described in earlier paragraphs and made full use of the professional experts available to me. I have determined, by repeating the review of the document for purposes of this affidavit, that the classification determination was and is valid.

7. The transcript of the 23 June 1964 executive session, pages 7640-7651, is currently classified CONFIDENTIAL and is exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652. In my earlier affidavit, I indicated that the document discussed intelligence methods used by CIA to evaluate the accuracy of information available to the Warren Commission. Since that time, the information on the public record has been supplemented to the extent that it has been revealed that the subject of the document is Yuriy Nosenko. Nevertheless, the contents of this document may not be disclosed for the following reasons: Mr. Yuriy Nosenko is a former counterintelligence officer in the Second Chief Directorate of the KGB (Soviet Committee for State Security) who defected to the United States in February 1964

and has, since this defection, provided intelligence information of great value to the United States. When Mr. Nosenko first agreed to provide this Agency with information, it was with the clear understanding that this information would be properly safeguarded so as not to endanger his personal security and safety. He has maintained clandestine contact with the CIA since his defection and continues to maintain such contact. After his defection, Mr. Nosenko was tried in absentia by the Soviet Union and was condemned to death as a result thereof. Any disclosure of his identity or whereabouts would put him in mortal jeopardy. He is now, in fact, a naturalized American citizen and his name has been legally changed. Every precaution has been and must continue to be taken to avoid revealing his new name and his whereabouts.

8. At present, there is no way the Soviet Union can determine exactly what information has been provided by Mr. Nosenko. Until such disclosures are made, the Soviet Union can only guess as to how much information the defector, Mr. Nosenko, had within his possession at the time of his defection, how much he disclosed to the CIA and, consequently, to what degree its security has been compromised by Nosenko's defection. Revealing the exact information which Mr. Nosenko -- or any defector -- has provided can materially assist the KGB in validating their damage assessment and in assisting them in the task of limiting future potential damage. Moreover, the disclosure of the information provided by Mr. Nosenko can only interfere with American counterintelligence efforts since the KGB would take control measures to negate the value of the data. Finally, any information officially released may be exploited by the KGB as propaganda or deception.

9. A guarantee of personal security to a defector is of utmost importance in the maintenance of a vital intelligence service. Every precaution must continue to be taken to protect the personal security of Mr. Nosenko. The manner in which Mr. Nosenko's security is being protected by the CIA is serving as a model to potential future defectors. If the CIA were to take any action which would compromise the safety of Mr. Nosenko by release of this information or would take any action to indicate that the CIA cannot safeguard information provided by a defector, future defectors might, consequently, be extremely reluctant to undertake the serious step of defection. Defection from intelligence services of nations that are potential adversaries of the United States constitutes an invaluable source of intelligence and counterintelligence information. Any action by the CIA that would result in an unwillingness of persons like Mr. Nosenko to defect in the future would have a serious adverse effect on this nation's ability to obtain vital intelligence. The suggestion that Mr. Nosenko's identification as the subject of the document means the whole document must be declassified, fails to recognize that factors other than simple identity combine to warrant the classification of the document. Likewise, the suggestion that since intelligence exploitation of defectors is admitted, all information received from such defectors and the manner in which they are treated must consequently be declassified. The invalidity of such a position would be more obvious if the suggestion were similarly made that since the U.S. admits possession of tactical nuclear weapons, details of the design and disposition of such weapons must consequently be declassified.

10. In response to plaintiff's specific concerns, I further depose that I determined that the classification of the two documents at issue should be reduced from TOP SECRET to CONFIDENTIAL. The determination was cited in Mr. Robert S. Young's letter of 1 May 1975. My determination was based on both classified and unclassified information available to me. I determined that the magnitude and likelihood of damage to the national security reasonable to be expected, should the documents be subject to an unauthorized disclosure, had been reduced to a point which justified a CONFIDENTIAL classification. The potential for damage continues to exist; consequently, the documents remain classified. The kind of damage most likely is in the area of foreign intelligence operations (sources and methods) with a somewhat less threatening possibility of damage in the field of foreign relations.

11. There is nothing in either document that is embarrassing to the CIA.

12. It is not possible to determine a date on which the documents may be declassified because it is impossible to predict, with any certainty, when the potential threats to the intelligence sources and methods involved will no longer exist. Consequently, the documents have been designated as exempt from the General Declassification Schedule pursuant to section 5(B)(2) of Executive Order 11652.

13. In his letter of 1 May 1975, Mr. Young of the CIA uses the phrase "our operational equities." In Agency parlance, that phrase compares closely with "sources and methods." The phrase normally encompasses a wide variety of things which the Agency may "invest in an intelligence

operation. It may cover such things as agents, case officers, cover facilities and similar kinds of entities which have been committed to an intelligence operation and which are, consequently, at some risk as a result of that involvement should the operation be exposed.

14. CIA does not have records from which it is readily possible to calculate an average time it takes to review the classification of an eleven-page document. As indicated earlier, however, the review of classification of a single document cannot be done in isolation without regard to all other documents concerned with the same development or sequence of developments. Frequently, the retrieval of other pertinent documents and information is complex and time consuming and not likely to be apparent to individuals not involved in the process. The amount of time required will thus vary.

15. There are no readily available records reflecting that the two documents were ever handled in a manner inconsistent with their classification.

16. It is normal for the "clandestine branch," known as the Directorate of Operations, to classify documents originated within the Directorate. Classification is not an exclusive function of the "intelligence branch."

17. In determining the classification of the documents at issue, I did take into account the policy of the executive branch that, "If the classifier

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, first having been duly sworn, depose and say as follows:

1. I am the plaintiff in the above-entitled cause of action.
2. In this Freedom of Information Act lawsuit, I seek the entire transcripts of two executive sessions of the Warren Commission and eleven pages of a third. According to affidavits filed in this cause by Charles A. Briggs, Chief, Information and Services Staff, Directorate of Operations, Central Intelligence Agency, the June 23 1964 transcript and pages 63-73 of the January 21, 1964 transcript are currently classified "Confidential" to protect intelligence sources and methods pursuant to 50 U.S.C. §403(d)(3). (Copies of Mr. Briggs' affidavits are attached hereto as Exhibits 1 and 2)
3. One of the interrogatories which I initially directed to defendant General Services Administration inquired whether Yuri Ivanovich Nosenko is the subject of the June 23, 1964 Warren Commission executive session transcript. The GSA initially refused to answer this interrogatory, claiming that it sought the disclo-

sure of security classified information. After I produced evidence that the National Archives had itself publicly identified Nosenko as the subject of the June 23rd transcript, the GSA admitted that this information was in fact a matter of public knowledge and not classified.

4. However, Mr. Briggs' December 30, 1976 affidavit maintained that the June 23rd transcript is properly classified for the following reasons:

A. When Nosenko defected to the U.S. in February, 1964, he agreed to provide the CIA with information but did so "with the clear understanding that this information would be properly safeguarded so as not to endanger his personal security and safety." (Exhibit 2, ¶7)

B. After his defection, Nosenko was tried in absentia by the Soviet Union and condemned to death; consequently, "[a]ny disclosure of his identity or whereabouts would put him in mortal jeopardy." Because of this, "[e]very precaution has been and must continue to be taken to avoid revealing his new name and whereabouts." (Exhibit 2, ¶7)

C. There is "no way the Soviet Union can determine exactly what information has been provided by Mr. Nosenko." However, "[r]evealing the exact information which Mr. Nosenko--or any defector--has provided can materially assist the KGB in validating their damage assessment and in assisting them in the task of limiting future potential damage." It could also "only interfere with American counterintelligence efforts since the KGB would take control measures to negate the value of the data." Moreover, "any information officially released may be exploited by the KGB as propaganda or deception." (Exhibit 2, ¶8)

D. Potential defectors will be dissuaded from defecting if the security/^{of}prior defectors is compromised. Therefore, "[e]very

precaution must continue to be taken to protect the personal security of Mr. Nosenko." Finally, "[t]he manner in which Mr. Nosenko's security is being protected is serving as a model to potential future defectors." (Exhibit 2, ¶9)

5. In its order of March 10, 1977, this Court ruled, without further elaboration, that the GSA was entitled to Summary Judgment "on the basis of exemption 3 of the Freedom of Information Act" with respect to the January 21 and June 23, 1964 transcripts. (See Exhibit 3)

6. On March 21, 1977, I filed a Motion for Reconsideration, Clarification and In Camera Inspection of Transcripts with Aid of Plaintiff's Security Classification Expert. In that motion, which was supported by my affidavit and that of my proposed security classification expert, Mr. William G. Florence, I warned the Court that a disinformation operation was in the works and that this might explain the CIA's efforts to keep the January 21 and June 23 transcripts from me. I also attacked the credibility of the Briggs' affidavits. Among other things, I stated that:

21. The transcripts now withheld from me under Exemption 3 deal with Soviet defectors. Although the Government originally claimed it was classified information, it has been forced to admit that it is public knowledge that a Soviet defector known as Yuri Ivanovich Nosenko is the subject of the June 23 transcript. My own knowledge of this came from the Warren Commission's files, not from the Archivist's belated admission.

22. The FBI saw no reason not to inform the Warren Commission about what Nosenko had told it relevant to the assassination of President Kennedy. It did so in a series of unclassified memos. FBI Director J. Edgar Hoover even undertook to arrange for Nosenko to testify. This frightened the CIA, Evidence of this is in the staff memo attached as Exhibit 4. It is classified "Top Secret". Yet to my knowledge the obliterated second paragraph deals with Nosenko and Richard Helms' request of the Warren Commission that it hold off on Nosenko. Helms and the CIA were so successful in this that despite FBI Director

Hoover's initiative there is no mention of Nosenko in the Warren Report.

23. The reason for this is apparent: Nosenko said that the Russians considered Oswald an American agent. This gets back to the January 27 transcript, which was originally withheld from me on grounds now proven to be totally spurious. In that transcript former CIA Director Allen Dulles said quite candidly that the FBI would not be likely to have agents in Russia. The CIA would, of course.

24. There has been no secrecy about Nosenko for years. Although the government originally refused to identify him as the subject of the June 23 transcript until this Court compelled it to answer my interrogatory No. 15, the fact is that the CIA is responsible for the first public reference to Nosenko and to this evidence. It appears in the book KGB by John Barron. The first of four Reader's Digest editions of this book was published in January, 1974. This is quite obviously a CIA book. It glorifies the CIA and the author expresses his indebtedness to it.

25. The first of many references to what Nosenko told the CIA is in the first chapter of KGB. This includes Nosenko's personal knowledge that the KGB did not trust Oswald, that it "ordered that Oswald would be routinely watched, but not recruited in any way," and what Nosenko told the FBI, that the KGB regarded Oswald as an American " sleeper agent." These considerations, not national security, account for the CIA's efforts to withhold information relating to Nosenko.

26. In fact, I now have dependable information that the CIA, Reader's Digest, the same Mr. Barron, and another author are now engaged in a \$500,000 contract, which is intended to portray Lee Harvey Oswald as a KGB agent. This disinformation operation is directly counter to what Mr. Nosenko told the CIA, the FBI, and the Warren Commission. It may well explain the unusual lengths to which the CIA has gone to suppress the January 21 and June 23 transcripts which I seek in this lawsuit.

27. The CIA has built up a mystique about defectors and sources and security needs. There is no defector whose defection is not known to the agency and country he served. There is no knowledge he may impart that is not known to those from whom he defected. In this case, Nosenko's, the only secrets are those withheld from the American people.

28. While there is some danger in having defected, not all of those who do live in fear. My knowledge of Nosenko comes first from another Russian defector who sought me out, first in a series of phone calls to me. He arranged a meeting with me in a public place, during which he informed me not only about Nosenko but also about the book KGB, which I had not read.

29. When it serves the CIA's political needs rather than its security interests, it makes available information about and from defectors. This has been done in the Nosenko case.

(For the complete text of my March 21, 1977 affidavit, see Exhibit 4)

7. On June 7, 1977, this Court amended its March 10, 1977 order by adding the following paragraph:

The statute relied on by Defendant as respects Exemption 3 is 50 U.S.C. §403(d). That this is a proper exemption statute is clear from a reading of Weissman v. CIA, (D.C.Cir. Jan. 6, 1977). The agency must demonstrate that the release of the information can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods. Upon such a showing the agency is entitled to invoke the statutory protection accorded by the statute and Exemption 3. Phillippi v. CIA, No. 76-1004 (D.C.Cir. Nov. 16, 1976). On the basis of the affidavits filed by the Defendant it is clear that the agency has met its burden and summary judgment is appropriate.

(The Court's June 7, 1977 order is attached hereto as Exhibit 5)

8. The June 7 order made it clear that the Court accepted without question the ipse dixit of the CIA's Mr. Briggs and disregarded my affidavits and the affidavit of Mr. William G. Florence. Because this ruling effectively nullifies the Freedom of Information Act and once again converts it, by judicial fiat, into an instrument for the suppression of information, I noted an appeal.

9. While this case was pending on appeal, the disinformation campaign about which I had warned this Court materialized. It began with the February 27, 1978 issue of New York magazine,

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which contained an interview of Edward Jay Epstein and excerpts from his book, Legend: The Secret World of Lee Harvey Oswald. The publication of Legend was accompanied by serialization in the March and April issues of Reader's Digest and an extensive advertising campaign to promote the book.

10. From prior experience, including that as one of the country's smallest publishers, I know that it is the custom for serialization to appear prior to publication of the book. It is atypical and unusual for the book to appear simultaneously with the serialization. In this case the book and the serialization were available at the same time. This considerably diminishes the value of the serialization and the book because the serialization is not exclusive and because the book does not enjoy the promotional value of the serialization. This atypical commercial behavior with Epstein's Legend is consistent with saturation attention to what the book argues; it is not consistent with obtaining maximum commercial return from the project. Given the fact that Legend reportedly involves a \$500,000 contract, this is even more unusual. Further bearing on this is the fact that a major part of the book's contents were disclosed in New York magazine prior to its appearance or to the first serialization in Reader's Digest.

11. From Epstein's own published statements, the arrangement which produced the book Legend coincides with the establishing of the Select Committee on Assassinations by the House of Representatives and an upsurge of national interest in the assassinations of President Kennedy and Dr. Martin Luther King, Jr. It also coincides, as did the earlier Barron book KGB, with moves toward detente in international relations.

12. The renewed interest in the assassination of President Kennedy meant that unless diverted, attention would focus on the unanswered questions about Oswald's relationship with American in-

telligence agencies. The Warren Commission never met its obligation to investigate these matters.

13. On January 22, 1964, the Warren Commission did meet in executive session to discuss information it was receiving about this very matter. The transcript of that executive session shows, however, that the Warren Commission was terrified by the implications of the information which had reached it. The Commission realized that FBI Director J. Edgar Hoover had boxed them in so effectively that they had to endorse his solution to the crime, a solution which predetermined that Oswald was the lone assassin. They concluded that the FBI "would like to have us fold up and quit." As Warren Commission General Counsel J. Lee Rankin said: "They found the man. There is nothing more to do. The Commission supports their conclusion, and we can go home and that is the end of it." (See the January 22, 1964 transcript, pp. 12-13, attached hereto as Exhibit 6. I obtained this transcript in 1975 as the result of a Freedom of Information Act request. The transcript was not actually typed up until ten years after the Warren Commission had ceased to exist.)

14. FBI Director J. Edgar Hoover also sought to divert attention from the FBI by arranging to have Nosenko testify before the members of the Warren Commission. Because Nosenko had previously told the FBI and the CIA that the Russians had suspected that Oswald was an American "sleeper agent," this would have focused attention upon the CIA's relations with Oswald, rather than upon his connections with the FBI. (There is reason to believe that he could have had a relationship with each agency at different times.) However, the CIA launched a secret and successful campaign to keep Nosenko away from the Warren Commission, which was best qualified to evaluate him.

15. The thrust of the disinformation propagated by Legend is two-fold. First, it diverts attention away from the question

of Oswald's relationship with American intelligence agencies. Second, it plants the idea that Oswald was a KGB operative. The CIA, and particularly the ousted wing of the CIA headed by its former chief of counterintelligence, James J. Angleton, are the beneficiaries of this disinformation. Angleton is also the source for much of the information and speculation which appears in Legend.

16. I have spent more than fourteen years conducting an intensive inquiry into President Kennedy's assassination. I have published six books on this subject. Several years ago I began work on a manuscript, still not completed, which deals with the evidence that Oswald worked for American intelligence agencies. Based on my study of the evidence and my prior experience as an intelligence analyst, I am of the opinion that the allegations made by Epstein in Legend are totally conjectural and completely untenable. The basic assumptions which Epstein makes lack even reasonableness. And, as Epstein states explicitly, they are also completely detached from the actual evidence of the crime itself.

17. Legend speculates that the KGB, as part of a KGB disinformation operation, sent the defector Yuri Ivanovich Nosenko to misinform the Warren Commission. This is an example of how spurious the basic assumptions of Epstein and Angleton are. At the time Nosenko defected in February, 1964, Oswald had already been officially determined to be the lone assassin of President Kennedy. This is readily apparent in the public press of the period. It is also explicit in official records, including the definitive five-volume FBI report that the FBI leaked to the press prior to its delivery to the Warren Commission on or about December 9, 1963. There never was a time when the Soviet Union had any reason to believe other than that the official solution to the assassination of President Kennedy would be that it was the work

of a lone nut--a "no conspiracy" conclusion. Thus, there never was any basis for the motive which Epstein and Angleton ascribe to Nosenko's defection. It is purely a figment of their imagination.

18. In addition to spurious assumptions, Legend also depends upon factual misrepresentations. In this lawsuit I seek the transcript of the Warren Commission executive session held on June 23, 1964. Epstein gives an account of what happened at that session. He states, however, that the session was called by Chairman Warren following a conference he had with the CIA's Director of Plans, Richard Helms, on the morning of June 24. This is a direct reversal of the actuality. The executive session took place on June 23, not June 24. In meeting with Warren the day after the June 23rd executive session, Helms could have argued against the use of the content of that session, but he did not cause the session.

19. A particularly significant factual misrepresentation is Epstein's assertion that Oswald reached England on October 9, 1959, and embarked for Finland the same day. This is false. Oswald's passport is stamped with the embarkation date of October 10, 1959, not October 9, as Epstein represents. Because Oswald is known to have registered at a Helsinki hotel on October 10, 1959, a question arises as to how he could have accomplished this the same day he left London. Richard Helms reported to the Warren Commission that the CIA's investigation showed that there was no commercial carrier by which Oswald could have left England on October 10, 1959 and arrived in Helsinki in time to register at the hotel there the same day.

20. How Oswald could have reached Helsinki on the day he actually left England when it was not possible by means of any commercial airplane has been left unexplained. The possibility that he travelled by other than commercial airplane is obvious, although such passage is not commonplace. It is also well-known

that intelligence agencies such as the CIA provide such services. Whether or not this happened with Oswald, the suspicion that it did cannot be avoided. Yet by changing the date of Oswald's departure from England, Epstein avoids an issue which is at odds with the predetermined thesis of his book.

21. Among the Freedom of Information Act requests that I have made of the CIA that are without response are those relating to Nosenko and the information he provided. These requests should have been responded to several years ago. Yet my appeals have not been responded to after all this time. This contrasts graphically with the treatment accorded Epstein, who variously claims to have obtained 10,000 or 50,000 pages of formerly secret records on this subject. There are other indications that Epstein has benefited from special assistance. For example, in his writing Epstein states that the CIA gave him services, like running checks for him. Epstein also states the CIA "sent" Nosenko to him. I attribute the disparity in our treatment to the fact that Epstein's writing and the enormous attention to it serve the ousted Angletonians. It is this wing of the CIA which succeeded in preventing consideration of the report that Oswald might have been working for the CIA when it was clearly the responsibility of the Warren Commission to investigate that possibility. Now they have succeeded in a major disinformation operation by enabling misuse of the information which they have withheld from me. I believe that the actual reason for withholding the January 21 and June 23 transcripts from me was to prevent proper use and interpretation of them and to enable the kind of disinformation operation that has just been launched to succeed.

22. The decision of this Court to uphold the Government's claim of exemption with respect to the January 21 and June 23 transcripts rests entirely upon the two affidavits submitted by the CIA's Mr. Charles Briggs. Mr. Epstein's recent disclosures have, however, decimated Mr. Briggs' credibility. It should now be apparent to the Court, as it was to me at the time, that Mr. Briggs' December 30, 1976 affidavit was a fraud on the Court. Indeed, it is obvious that Mr. Briggs' claims were known to be false at the time they were sworn to.

23. For example, Briggs' December 30, 1976 affidavit swears that any disclosure of Nosenko's identity or whereabouts would put him in "mortal jeopardy"; therefore, "[e]very precaution has been and must continue to be taken to avoid revealing his new name and his whereabouts." (Exhibit 2, ¶7) In fact, Mr. Briggs went so far as to swear that "[t]he manner in which Mr. Nosenko's security is being protected is serving as a model to potential future defectors." (Exhibit 2, ¶9) Yet when interviewed by New York magazine, Epstein stated that the CIA "sent" Nosenko to him. (Exhibit 7, p. 32) Notwithstanding Mr. Briggs' sworn statements, Epstein interviewed Nosenko and wrote a book which is largely about Nosenko. Epstein reveals a number of pertinent details about Nosenko. He discloses, for example, that in 1968 the CIA decided to give Nosenko \$30,000 a year as a consultant to the CIA, a new identity, and a new home in North Carolina. He further states that Nosenko is now in Washington handling 120 cases for the CIA. (Exhibit 7, p. 35) In short, Epstein reveals Nosenko's whereabouts and other details about him which Briggs swears cannot be revealed without placing Nosenko in "mortal jeopardy" and without damaging our national security.

24. In Legend, Epstein writes that in exchange for the house in North Carolina, an allowance of \$30,000 a year, employ-

ment, and United States citizenship:

[Nosenko] would agree not to talk to any unauthorized persons about his experiences with the CIA. His three years of confinement, his indictment for being a messenger from Moscow and the subsequent reversal all were to be a closely held secret. (Emphasis added. See Exhibit 8, p. 271 of Legend)

In light of this it is even more obvious that the Barron and Epstein interviews of Nosenko were authorized by the CIA. It is equally obvious that the Briggs' claim that the January 21 and June 24 transcripts must be kept secret because Nosenko's security protection is serving as a "model" for potential defectors is absolutely false.

25. As this affidavit was being drafted, another news development demonstrated the falsity of the Briggs' affidavit. The April 16, 1978 issue of The Washington Post ran a photograph of Yuri Nosenko. (See Exhibit 9) Yet Mr. Briggs has sworn that Nosenko's identity must be protected at all costs.

26. The CIA continues to suppress and to disclose information on the basis of its political interests, rather than on the basis of what the law requires. In fact, the Department of Justice has now filed suit against a former CIA employee, Frank Snapp, even though the government admits Snapp has disclosed no secrets at all. Yet no charges have been filed against Angleton and others who served under him, although they did disclose secrets to Epstein, who has published them. These secrets extend to the disclosures of the identity and an identifiable description of an agent identified by the code name "Fedora." What Epstein published in Legend enables the USSR to identify, recall, and punish the Russian official at the United Nations who Epstein states is an American intelligence agent. All of this is directly opposed to the claims which Mr. Briggs makes in his affidavits.

27. Over the course of many years I have obtained records which were initially withheld from me on a variety of alleged grounds, including "national security". Where I have obtained the records which were originally withheld from me on grounds of national security, there has not been a single instance where the claim to the exemption was justified. In all cases the information withheld was embarrassing to government officials.

28. For example, both the January 22 and January 27 Warren Commission executive session transcripts were withheld from me for years on the grounds that they were security classified. When I obtained them, this proved totally untrue. The January 27 transcript, which I obtained only after I lost the initial lawsuit for it in district court, is perhaps the best example of the spuriousness of national security claims. One of the many causes of embarrassment in that transcript was the statement of the former Director of the Central Intelligence Agency, Allen Dulles, that intelligence agents would not tell the truth, even under oath, and that he himself might not tell the Secretary of Defense the truth. He also stated that the only person he would always tell the truth was the President.

29. There are two well-known and extraordinarily dangerous CIA adventures about which Mr. Dulles did not tell presidents the entire truth. Each could have caused World War III. One is the Francis Gary Powers U-2 flight; the other is the Bay of Pigs.

30. When courts allow government officials to lie and misrepresent with impunity, our laws are subverted and the independence and integrity of our judicial system is eroded. Nowhere is the danger of this greater than in cases where intelligence agencies seek to suppress information from the American people. It is past time for the courts to recognize the danger and take ap-

propriate steps. Based on my experience, unless this is done the Freedom of Information Act will be largely nullified where intelligence agencies are concerned. For example, the Central Intelligence Agency originally instructed that the January 27, 1964 transcript be withheld in order to protect intelligence sources and methods. I obtained it several years after I had requested it, and only because I was able to destroy the credibility of the affidavits of Dr. James B. Rhoads and former Warren Commission General Counsel J. Lee Rankin stating that it was properly classified. Under this Court's ruling in this case, the CIA could have succeeded in withholding the January 27 transcript simply by invoking Exemption 3, since the same affidavits would then be held unassailable. In amending Exemption 1 of the Freedom of Information Act, Congress made it quite clear that it did not intend this result.


 HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Subscribed and sworn to before me this 17 day of April, 1978.


 NOTARY PUBLIC IN AND FOR
 FREDERICK COUNTY, MARYLAND

My commission expires 7-1-78.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MILITARY AUDIT PROJECT, et al.,
Plaintiffs

v.

GEORGE H. BUSH, Director of
Central Intelligence, et al.,

Defendants

Civil Action No. 75-2103

FILED

JUL 11 1977

JAMES F. DAWY, Clerk

Washington, D. C.
June 28, 1977

The above-entitled cause came on for Hearing before
the HONORABLE GERHARD A. GEISEL, United States District Judge,
at 2:30 p.m.

APPEARANCES:

WILLIAM A. DOBROVIR, Esq.,
Counsel for Plaintiffs

JEFFREY AXELRAD, Esq.,
PAUL F. FIGLEY, Esq.,
Department of Justice,
Counsel for Defendants

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P R O C E E D I N G S

THE CLERK: Civil Action No. 75-2103, Military Audit Project, et al., v. Bush, et al. Mr. William Dobrovir for the Plaintiffs. Mr. Jeffrey Axelrad and Mr. Paul Figley for the Defendants.

THE COURT: When I learned that the mandate had come down from the Court of Appeals, I thought I had better have you gentlemen in to see what lies ahead in connection with this case.

Is it still a viable case or is it all over?

MR. AXELRAD: May it please the Court, the current status of the matter is that a re-review of the material is being conducted.

In all candor, I think I should represent to Your Honor that I am virtually certain that as a result of the re-review substantial portions if not all of the material at issue will remain at issue.

THE COURT: Well, if that is the case, I have got some very serious problems, Mr. Axelrad that I want to talk about.

I took your representations to me in good faith and I have made, after ex parte hearings, decisive findings on many issues that I guess are still going to be litigated. I am in a position where I doubt very much that I should continue in the case.

I heard witnesses. I reviewed documents, at your

insistence. I made findings of fact. Then as soon as you face the realities of an appellate court, you change your position entirely and take a direct opposite position from what you have been constantly taking in front of me.

You refused to supply a Vaughn v. Rosen index repeatedly in our proceedings; and as soon as you got upstairs and under the gun, you said you would give one.

I think I am compromised in this case, as far as I can see. I don't see really that I should go forward with it. You have got 128,000 documents you are going to have to index; and I think you had better get at it, because that is what the Court of Appeals has ordered.

I feel very disturbed about my status in this whole matter. I certainly can't accept your representations any longer and I wouldn't be able to accept the representations of those witnesses who appeared before me, who cut their heart out about the secrecy here, and led to findings by the Court which now are -- obviously, I was just made fun of by the agency. I just have a doubt that I ought to go ahead.

MR. AXELRAD: May I be heard briefly in the interest of completeness on what Your Honor has just said?

THE COURT: Yes, surely.

MR. AXELRAD: If I may have Your Honor's indulgence, I would like to present at this time a copy of what we did file in the Court of Appeals and which led to the remand which caused

Your Honor to set the hearing today.

May I hand up a copy of what we did file in the Court of Appeals?

THE COURT: I have seen it but I would be glad to have it for the record.

MR. AXELRAD: Your Honor, I would like the record to reflect what I have on the face of the motion which we filed in the Court of Appeals. It indicates that I mailed it to several Government agencies. Mr. Dobrovir has the entire document, absent the notation that I mailed it to agencies. I would not object to his examining that copy, if he wishes to determine which agencies I mailed copies to.

I am handing that to Your Honor particularly for an examination of the first two pages.

I would like to discuss exactly what Your Honor raised a moment ago; but I suggest, if I may, that Your Honor examine the first two pages first.

THE COURT: I have seen this motion before. I couldn't understand why the case came back. I couldn't understand how you could get an order such as I got. I went and looked at the file upstairs to find out what was going on, which is what I often do at time of remand.

MR. AXELRAD: Your Honor, I suggest, first of all, that Your Honor has raised questions as to the good faith, if you will, of the Government.

I don't believe that there is anything at all to warrant any suggestion that the Government hasn't acted in good faith or that Your Honor hasn't acted in the judicial capacity that Your Honor must.

THE COURT: I made findings. I made ex parte findings after hearing witnesses ex parte. Now we have a contested case on those very issues. How can I sit?

MR. AXELRAD: Let me --

THE COURT: How can I sit?

MR. AXELRAD: Let me answer it in this way, if I may.

Your Honor, we asked for the ex parte proceeding --

THE COURT: You certainly did.

MR. AXELRAD: -- only as a last resort and because of the view taken, which was to my satisfaction made by the persons responsible within the Government that it was necessary to proceed in this fashion in order to protect the national security interests at stake. For that reason we sought an in camera proceeding. To be sure, not the precise in camera proceeding which resulted but an in camera proceeding. We did so with great reluctance, as we stressed.

Your Honor thereupon heard the evidence submitted in camera. There can be no doubt that Your Honor did so. Mr. Dobrovir did not see the material submitted in camera. That is so.

Whether or not in this unique situation Your Honor

feels obliged to recuse himself, I do suggest as a matter of my understanding of the law that it would not require Your Honor to disqualify himself from further proceedings.

THE COURT: Let me read you from my opinion.

MR. AXELRAD: Your Honor, I --

THE COURT: For instance, I say:

"The capabilities of our Government in the area, the methods used to finance and conceal the project and the amounts which the United States was willing to commit to the venture are all matters vital to the security of the country."

So now you are going to continue to urge those very points before me and I have made a finding already in your favor, based upon ex parte presentation by witnesses who apparently were ill advised, to say the least.

MR. AXELRAD: Your Honor, the determination was made recently by the National Security Council of the fact that the Central Intelligence --

THE COURT: They made it differently before I heard the case.

MR. AXELRAD: They made a contrary determination before you heard the case, that is so.

THE COURT: I think it would be appropriate to put this matter in the hands of some judge who can approach it fresh

* and who is not involved in the situation which I am involved in, which is to me a matter of great personal embarrassment. I don't feel I could accept representations coming from these people again. So what is the point of my hearing it?

MR. AXELRAD: Your Honor, if Your Honor feels you cannot accept representations which are based on the record and which Your Honor can have in open Court, then I agree with you.

X // THE COURT: How can I? It turns out that it was all just a game that was played over a period of a year in front of me.

MR. AXELRAD: Your Honor, I know of nothing to support that view and I must take issue with it. You don't know what Your Honor is suggesting.

THE COURT: You can take issue with it but I heard reams of testimony; and as soon as you got up in the Court of Appeals, you gave it all up.

MR. AXELRAD: Your Honor --

THE COURT: May I raise some other questions with you, too.

Should I return to you all these documents now?

MR. AXELRAD: That is what I would suggest is the proper procedure. The case will be litigated in open Court on remand, as far as I can tell at this time.

THE COURT: I have no way of knowing whether it will

or not. That depends on how you interpret Weisman.

What about the transcript of the testimony?

MR. AXELRAD: Your Honor, I think that the best way of handling that is that, since we believe that there are and continue to be -- the extent which will be determined is being determined at this time -- important national security interests still at stake in this litigation, the remand does not suggest to the contrary, we do not believe that the in camera submissions can be opened.

THE COURT: I am talking about returning the transcript to you.

MR. AXELRAD: The transcript -- I don't know that a transcript of the matter was actually made.

THE COURT: Well, it must have been.

MR. AXELRAD: I certainly didn't receive it.

THE COURT: It must have been if you had an appeal for the purpose of testing my findings.

MR. AXELRAD: I stipulated, as I recall it, a transcript could be made but I do not know that a transcript was made. I have not received any bill for such a transcript.

THE COURT: I assumed it was.

MR. DOBROVIR: At some point, I would like to be heard on all these matters.

THE COURT: I assume the transcript was made. If the transcript was made, you want it back, don't you?

MR. AXELRAD: I would seek to have it kept confidential, except such portions --

THE COURT: It can't be kept confidential from Mr. Dobrovir. If you call any of those people to the stand, their prior statements will be made subject to cross-examination.

MR. AXELRAD: I must point out that I don't read the remand order as broadly as requiring an index -- I am not quite sure what the scope is. I know that what was before Your Honor is the subject matter of the litigation.

THE COURT: They vacate my order and direct that a Vaughn v. Rosen index be presented as to the 128,000 documents. That is what they direct.

MR. AXELRAD: Maybe I don't recollect the order correctly, Your Honor, but as I recollect it, it is remanded for further proceedings pursuant to Vaughn v. Rosen. Am I erroneous?

THE COURT: That is what it says. That means an index.

MR. AXELRAD: I don't believe that Vaughn v. Rosen held that an index of every document in every case must be made.

THE COURT: That is another reason why I guess I shouldn't be in the case, then, Mr. Axelrad.

MR. DOBROVIR: Your Honor, I have been listening to Mr. Axelrad with increasing impatience. I think, as I have

always requested in this litigation, I would like to participate in it.

THE COURT: I want you to and I want you to participate before a judge who is open-minded.

MR. DOBROVIR: May I be heard on these matters?

THE COURT: I heard elaborate testimony in these areas. Therefore, I couldn't conduct a Vaughn v. Rosen type of review of the adequacy of the index when I have all this other information in the back of my mind.

MR. DOBROVIR: There is a solution and I am about to make a motion.

THE COURT: Perhaps there is.

MR. DOBROVIR: I am about to make a motion. I don't think this really needs elaborate papers. I don't think it needs any papers at all. The matter is well within the Court's knowledge.

I move at this time that, a, the Court's written findings or opinion, or whatever the document was which was filed in camera and kept in the Court's safe, b, the Government's evidentiary submission that was written in the form of affidavits -- if deletions be necessary to protect the identity of secret witnesses, that would be another matter that we would have to consider -- and, finally, the proceedings that were held in camera all be unsealed forthwith and spread on the public record of this Court.

With respect to the in camera hearing, Mr. Axelrad and I had an understanding and then we had a misunderstanding. The understanding was that the Government would pay for a transcript of those proceedings to be prepared. The misunderstanding was as to whether the Government would in fact order the transcript.

Mr. Axelrad said: No, we only agreed to pay for it if it was prepared. We did not agree to order it.

THE COURT: So there was no transcript.

MR. DOBROVIR: There is no transcript. However, I think it is time. If necessary, the Court may order the transcript prepared forthwith; and the Government's agreement to pay for it would then become triggered. We would then have the matter in a posture where both sides know everything that happened in the litigation up to now.

I think that this result is within the spirit and the letter and within the mandate of the Court of Appeals order.

The Court of Appeals cites not Vaughn v. Rosen I, which is the case in which the Court of Appeals said that the proper procedure in Freedom of Information Act cases is for the defendant to prepare an index and detailed justification. It cites Vaughn v. Rosen II, at 523 F. 2d 1136.

In Vaughn v. Rosen II, the procedure followed was that a sample of the documents was submitted in open court with certain deletions to protect the privacy of individuals; and

the entire matter was litigated before Judge Pratt on an open record with the actual documents known to both sides.

THE COURT: But with an index also.

MR. DOBROVIR: With an index also.

I think what the Court of Appeals was saying here was: We are fed up with secrecy. We think that whatever representations were made with respect to the need for secrecy here have now been repudiated by those who made them; and we are not going to stand for this proceeding to be carried on any further in the dark.

That is why they cited Vaughn v. Rosen II, which is a proceeding which took place entirely in the light.

Accordingly, unless there are certain matters in those proceedings which are presently in the dark and in secret, which the Government wishes specifically to seek to have kept secret and deleted from the public record -- as to which I think we would have to litigate those on a deletion-by-deletion basis, since I am not willing to accept representations either on that matter -- I request and I so move that these matters immediately be unsealed and made part of the public record.

THE COURT: Well, the difficulty that I have is that I have been advised this afternoon that the Government is going to insist on the secrecy of certain aspects of those papers.

Now, there is a mass of papers.

MR. DOBROVIR: I am not asking that the original documents, except in so far as Your Honor may order a sample, as in the Vaughn case, be made public. The 128,000 documents were given to Your Honor in chambers.

THE COURT: No, they were not. A smattering of documents were given to me. I found them insufficient on their face; required the production of more informative documents; and ruled on the basis of the documents I had, which were just a small smattering. Documents were held back. It took some effort on my part even to get a sample that was sufficient for me to act on.

MR. DOBROVIR: What we have here, Your Honor, is a very dangerous precedent, what is in many ways a blotch on the judicial process in this Court. A unique situation, an in camera ex parte, close to a star-chamber proceeding. I think that the Court of Appeals, in its order, made it clear that that is an anathema.

I suggest and I request that the way in which that matter should be --

THE COURT: I agree with you. Of course, I have written on that and talked about it a great deal.

MR. DOBROVIR: Yes, sir.

THE COURT: I think, since I was euchred into it by what I can only feel now were irresponsible representations, that I ought to get out, as one way to cleanse the proceeding.

MR. DOBROVIR: I don't think that will solve the problem, Your Honor.

* THE COURT: That is the point I am making to you. Let somebody else look at it. It is an outrageous chapter in this courtroom.

MR. DOBROVIR: If these documents and these proceedings are withdrawn from the Court file and returned to the Defendants and then Your Honor recuses himself, this what I consider to be a very bad precedent remains.

THE COURT: I wouldn't think of returning them, in view of your motion, which is to have them made public. I wouldn't think of returning them.

MR. DOBROVIR: Yes, sir.

THE COURT: And I won't, if that is your motion. Then that motion ought to be heard by the trier of facts.

MR. AXELRAD: Your Honor, may I respond to Mr. Dobrovir?

First, I suggest, in view of what Your Honor just said, that the proper procedure would be for Mr. Dobrovir to reduce his motion to writing and we would have an opportunity to respond.

THE COURT: I think so. I think that is right.

MR. AXELRAD: Perhaps more fundamentally, Your Honor, just for this case, Your Honor has referred to the fact that Your Honor thinks that you were euchred into the proceedings --

THE COURT: Yes.

MR. AXELRAD: -- that the Government's position was irresponsible. While I don't believe in litigating matters that are over, in a sense, I do think, Your Honor, that I would like for a moment now to remind the Court, if I may, and with all respect, that we submitted in support of our position, first, as Your Honor requested, specifically, public affidavits reflecting that the responsible persons in the Executive Branch, based upon their concern for national security, made the determinations not because they were concerned with the criteria of the Executive Order but because of their conscientious judgment that they were doing their duty.

Your Honor, I don't think it appropriate to go into the in camera proceeding at all. Mr. Dobrovir will file his motions.

I do believe that I would have, Your Honor, to take issue with your suggestion that the documents supplied initially were not the documents covered by this suit. I simply must respect Your Honor's statements but I also respectfully disagree with them in this instance.

THE COURT: Well, the transcript will show.

MR. AXELRAD: Very well.

I finally would like to point out a technical problem which we would probably insist upon because of our ongoing concerns with national security.

When the Court of Appeals denied our mandamus petition, it issued an order protecting the security of the matters which were subsequently submitted in camera. Because we are still concerned with the matters and we agree, in view of Mr. Dobrovir's representations, the Court must hold the materials, we believe they ought to be held in accordance with that Court of Appeals order and continued to be.

That raises an ongoing problem because we are still concerned with national security matters. It may well be that portions of the affidavits can be released. I don't think all of them can be.

I will ask the responsible officials to review the affidavits and I will contact Mr. Dobrovir if portions may be released. But the fact remains that the Court of Appeals order is still outstanding and covers those materials.

I bring that to Your Honor's attention. I do not believe --

THE COURT: What was I doing that was contrary to that order?

MR. AXELRAD: No, no, you haven't done anything.

THE COURT: Why are you bringing it up then?

MR. AXELRAD: Because of Mr. Dobrovir's suggestion. I felt I should respond to Mr. Dobrovir's suggestion.

THE COURT: You mean to his motion?

MR. AXELRAD: His oral motion. Your Honor has already

indicated --

THE COURT: I think he should put it in writing because it will be going to somebody else.

MR. DOBROVIR: Your Honor, one thing.

After the Court of Appeals order came down, I represented to the Court that my interpretation of that order was not to permit ex parte filings or an ex parte opinion. Your Honor disagreed with me. I moved in the Court of Appeals that those proceedings be unsealed for the purposes of the appeal. The Court of Appeals denied my motion without prejudice to its renewal on presentation of the appeal on the briefs. In my brief I renewed the motion.

So I think the matter is again in a position where the Court could change its mind; and I think my interpretation was correct. I think that the Court erred in interpreting the Court of Appeals order in the draconian way that it did.

I don't think Mr. Axelrad's statement should be accepted in terms of an authoritative interpretation of what the Court of Appeals said. We have differed about that. The Court ruled for him; but I think that I was right.

MR. AXELRAD: I need only add on that point, Mr. Dobrovir raised that point in the Court of Appeals, as well; and on January 14, 1977, the Court of Appeals agreed with Your Honor's construction of its prior order.

THE COURT: I am aware of that.

All right, I will refer this matter to the Calendar Committee for assignment to some judge who has not been tainted by these proceedings. I will keep the materials under seal and that judge, whoever it is, will have to hear the motion. I will keep all the materials sealed pending the action of the other judge.

I don't know what the schedule will be. I think under our system, it ought to be set by the new judge.

All right, gentlemen, thank you.

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on June 23, 1977 and that the foregoing Pages 1 to 18, inclusive, constitute the official transcript.

Ida Z. Watson

4. Although misleading and dissembling are prized and well-developed skills in all intelligence agencies, in the CIA these are most highly prized - and practiced - in the component of which Owen is part. In less polite language, it is known as "dirty tricks."

5. To my knowledge there is nothing in the Owen affidavit that could not have been alleged in his and other prior government affidavits in this instant cause.

6. Based on my knowledge and experience, I believe that the reason the statements in this affidavit were not made earlier is because of the risk, known to the defendant, defendant's counsel and the CIA, that I would prove them to be deceptive, misleading and untruthful.

HCV
7. Because the Court ^{indicated} [redacted] at the October 17, 1979, calendar call that the Court does not read all the affidavits and because of the length required for a paragraph-by-paragraph rebuttal of the Owen affidavit, I state at the outset that it is the purpose of this affidavit to show that the Owen affidavit is deceptive, misleading, inaccurate and untruthful in ways that are not accidental and that part of the proof is the attachments, most of which are of CIA documents that were disclosed by it long before the two Commission executive session transcripts in question (the transcripts) were disclosed.

8. In Paragraphs 2 and 3 Owen presents a version of what he refers to as the "rationale" and "circumstances" of the classification of the transcripts in question. He does not state that the transcripts were properly classified, and they were not. The Commission had no power or authorization to classify. These records were "classified" by the court reporter, as a means of avoiding carelessness in his office. This was established in court in my C.A. 2052-73.

9. The "circumstances" set forth in Paragraph 3 are not relevant. They also are a careful rewriting of "cold war" history from which essentials are eliminated. This Owen account of the state of the world at the time of the assassination concludes with, "One of the most disturbing questions at the time was whether Lee Harvey Oswald was a Soviet agent." From this, in Paragraph 3, he inferred Soviet involvement.

10. Except among a few entrenched political paranoids, the CIA knew and stated in contemporaneous records I have obtained that Oswald was not a Soviet agent and that the Soviets had no connection with the crime. A few samples of these records, disclosed by the CIA itself, follow below. At the time of Watergate, the CIA got rid of these officials of paranoid view and preconception, those responsible for the fictions Owen now resuscitates. (Because there is overlapping of subject matter in the Owen paragraphs and in the records, there is overlapping in the paragraphs of this affidavit and its exhibits have relevance to other portions of the Owen affidavit than the parts to which they are initially addressed.)

11. Owen's revisions of history ignore the fact that the Soviets preferred President Kennedy over his unsuccessful opponent at the time he was elected and over his successor. It is not reasonable to suspect that the Soviet Union would assassinate the American President of its preference only to have him succeeded by one it did not prefer. There is no factual basis for the suspicion now and there was none at the time. As the CIA itself stated, the assassination was opposed to Soviet theory and practice.

12. Owen does refer to the Bay of Pigs, one of a still unended series of great disasters engineered by the CIA (one he does not mention is Iran), and to the "Cuban Missile Crisis," but he fails to state their conclusion. The "Crisis" ended with assurances that there would be no war over or in Cuba and with the beginning of what is now called "detente." The first step in this after the end of the crisis was the limited test ban agreement initiated by President Kennedy.

13. President Kennedy took other steps toward reducing tensions with the USSR, such as canceling an agreement to provide Great Britain with "Blue Streak" missiles and withdrawing American missiles near the USSR, beginning with those in Turkey. These changes in American policy for which President Kennedy was responsible, wanted by the Soviet Union, were clearly enunciated in his speech at American University the summer before he was assassinated. So while there were tensions in the world, to a large degree brought to pass by the excesses of agencies like the CIA, under President Kennedy's leadership and to the liking and agreement of the USSR, they were being reduced.

14. At the time President Kennedy was assassinated, he had ordered the liquidation of United States involvement in Viet Nam. This was to be accomplished by monthly withdrawals of "advisers" and to be completed by the next election. The process was begun. It ended a few days after he was killed. Earlier he had ordered the end of our intrusions elsewhere in Southeast Asia. This was circumvented by the CIA, which continued those subordinate undeclared wars with proxy armies of its creation and financing. This is thoroughly documented in The Invisible Government, by David Wise and Thomas B. Ross, first published in June 1964.

15. The baseless question of "whether Oswald was an agent of the USSR" was created by a few CIA political paranoids and others of the same mindset. The CIA pressed this at best dubious theory on President Johnson with such vigor it is a wonder World War III was not launched as a result. The CIA rushed to the White House known fabrications alleging Oswald was a "red" agent. The CIA's Mexico City station pushed this hard. When the CIA continued this campaign with the Warren Commission, the FBI castigated Director John McCone for his irresponsibility in this regard. The fabrication the CIA pressed upon the new President, who was immersed in the tragedy, in preserving tranquillity and in the problems of succession and transition, had the known purpose of using the assassination of the President as the justification for an attack on Cuba, which really meant launching World War III.

16. After the CIA disclosed the documents in which the foregoing is explicit, it suspended its FOIA disclosure of records relating to the assassination. I still await compliance with my 1975 requests and repeated appeals.

17. This fear of World War III and the holocaust it would have meant is the argument by which President Johnson persuaded Chief Justice Warren to head the Presidential Commission as Warren informed his staff at its first meeting with him on January 20, 1964. One of several Commission records relating to this that I published in 1973 states: "When the position had first been offered to him he declined it, on the principle that Supreme Court Justices should not take this kind of role." After referring to widespread rumors the President said that some,

"if not quenched, could conceivably lead the country into a war which would cost 40,000,000 lives. No one could refuse to do something which might help prevent such a possibility. The President convinced him that this was an occasion on which the actual conditions had to overrule general principles."

18. One of the fabricated reports of Oswald as a paid "red" assassin, referred to in Paragraph 15 above, was concocted by a Nicaraguan, Gilberto Alvarado Ugarte, then in Mexico City. It was immediately identifiable as a fabrication. Nonetheless, the CIA hawked it immediately to the White House and then to the Commission, notwithstanding the fact that it had been disproven. An FBI internal memorandum denouncing this, of December 19, 1963, from its headquarters "Oswald" file is attached as Exhibit 1. (The unnamed source referred to in the concluding sentence is Gerald Ford, who was an FBI informant on secret Commission matters, according to FBI records I obtained in C.A. 77-2155.)

19. Twelve days earlier, according to FBI cable No. 214 from its Mexico City Office (file 105-82555-242), Alvarado, who made up this story to get the United States to attack Cuba, was to be deported the next morning. The cable concludes, "CIA HERE ADVISED..."

20. About Owen's "most disturbing" question (Paragraph 3), "whether Lee Harvey Oswald was a Soviet agent," the CIA knew better and its records say otherwise. One, of the time prior to Nosenko's defection and reporting of the Russian belief that Oswald was an American agent, is CIA Document Number 376-154 (Exhibit 2). The CIA released this before shutting down all compliance. It debunks any Soviet involvement in the assassination.

21. Parenthetically, I note that this CIA disclosure also holds the kind of information Owen now claims, in Paragraph 5 and elsewhere, must be withheld in the interest of national security, what the CIA knew about Soviet intelligence.

22. Each of the six numbered sections of this record dated December 11, 1963, states the opposite of what Owen now states. The first section says that the definitive FBI reports ordered by the President "~~conclude that~~" that "Oswald was the agent of any foreign government." The second states that what is known of Oswald is contrary to what is known of the KGB's practice, that

"Long standing KGB practice generally forbids" what Oswald is known to have done, including when he made contact with the American Communist Party and Soviet embassies. The third begins, "Certain facets of Oswald's activities in the USSR also argue strongly that the KGB would never have recruited him for a mission of any kind... As a re-defector from the USSR he would immediately be suspect ...". The fourth rules out Oswald as the kind of person the USSR would have used in any "executive action" or assassination. (Interestingly, the concluding sentence confirms in advance what Yuri Nosenko later said the KGB concluded about Oswald: "Even if the KGB had not earlier noted signs of mental aberration, the suicide try presumably furnished convincing evidence that Oswald was not agent material.") The fifth cites Oswald's activities in Dallas prior to the assassination "as one more negative indication of KGB involvement." It also states of this that "It is, of course, most unlikely that a KGB agent on an executive action mission would be permitted (or would permit himself) to" behave publicly as Oswald was reported to have behaved - attracting considerable attention to himself by bad conduct on a shooting range. Six begins, "The evidence presently available to us seems fairly conclusively to rule out any Soviet involvement in the President's assassination." None of this information was ever refuted. Most of it is axiomatic in the craft of intelligence. (Another axiom is that the intelligence agencies do not assassinate agents of hostile agencies or the heads of other states for to do so is to start an endless, self-defeating bloodbath. One of the few exceptions is the CIA, which plotted to kill Castro and other heads of state.)

23. Subsection 6.c is another of the many troubling indications cited below that suggest Oswald was not alone and may have had unknown domestic connections. It notes accurately that sometimes Oswald misspelled and was ungrammatical while at other times he was "rather surprisingly literate." Where he was so "surprisingly literate" is in letters later used to pin a red label on him, his efforts that are consistent with what is known in intelligence as establishing a cover.

24. Throughout, the Owen affidavit is skilled in its Orwellian practice. In Paragraph 4 it takes doctrine from "Through the Looking Glass," in Alice In Wonderland. It begins misleadingly: "In February of 1964 Yuriy Nosenko ... defected to American intelligence." Actually, Nosenko went to the CIA, not

"American intelligence," earlier. Records disclosed by the CIA establish this was the preceding month. (For example, see CIA Document 498, Exhibit 5.) Then Owen states, "Among other things, he indicated he possessed information about Lee Harvey Oswald's contacts with the KGB while Oswald was in the Soviet Union." This is essential to Owen's and the CIA's present purposes and therefore is stated. But it is contrary to fact, to what the FBI reports say and to what the CIA itself gave as a basis for its long abuse and illegal captivity of Nosenko, Nosenko's statement that the KGB made no contact with Oswald, considering him unstable. John L. Hart's testimony for the CIA to the House Select Committee on Assassinations (the committee) is quite explicit on this. Hart, too, found it hard to believe that the KGB made no contact with Oswald.

25. These formulations also serve to obscure the CIA's real problem with what Nosenko said. This is stated in my prior affidavits and is undenied - the Russians suspected that Oswald was an American "agent in place." This pointed at the CIA, although not it alone, but it did not point at the FBI.

26. The Nosenko or June 23 Commission transcript holds no indication that the Commission Members were informed of this by the CIA.

27. "As Nosenko was debriefed," the Owen revision of actuality continues, "it became clear that Oswald was not an agent of the KGB." Owen is careful not to say when "it became clear." This is because it "became clear" enough prior to the CIA's writing of Exhibit 2, which is dated ^{December 11} [REDACTED], 1963, or some weeks before Nosenko defected.

28. Ignoring Exhibit 2 and an abundance of other records and proofs, Owen's newest and long-delayed explanation of alleged need to withhold continues with "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" what had already been concluded, "that Oswald had no connection with the Soviet KGB and that the Soviet Union had nothing to do with President Kennedy's death." Otherwise, Owen states, it would mean that Nosenko was "programmed by the KGB to provide false information to establish the 'innocent' nature of Oswald's" nonexistent "contacts with the KGB." And horror of horrors, thus "it would have been possible to conclude that Oswald may have been an agent of the KGB when he shot President Kennedy."

29. All of these fictions, all of these "possible" conclusions that

disregard and are contrary to the official conclusions already reached and published on exactly those points, are essential to the newest of these constantly changing CIA excuses for the unjustifiable withholding: "Establishing Nosenko's bona fides was a critical element in making any judgment on the possibility of Soviet involvement in President Kennedy's death."

30. Owen's conjectures are neither logical nor reasonable. If Nosenko were not being "honest," there could be other explanations. Those provided by Hart include the physical and emotional consequences of the severe punishment and the exceptional strain of three years of isolation in a vault, broken only by interrogations and efforts to break Nosenko down. Moreover, there was no need for the Soviet Union to "program" Nosenko with "false information" and dispatch him "to establish the 'innocent' nature of Oswald's contacts with the KGB" or to lead this country to believe that the KGB had no connection with the assassination once the official conclusions stating this were published. This was on and after December 5, 1963.

31. Even if relevant to the continued withholding of the transcripts, as it is not, "establishing Nosenko's bona fides," Owen's formulation, was no great problem. If he provided valuable information that was hurtful to the KGB and helpful to the United States, he was bona fide.

32. He exposed a number of KGB agents and operators, which is hurtful to the USSR and helpful to the CIA. He also "pinpointed the location of forty-four microphones built into the walls of the American Embassy (in Moscow) when it was constructed in 1952. They were outfitted with covers that shielded them from electronic sweeps..." (quoted from John Barron's book, KGB, for which both the CIA and the FBI provided information.) Hart's testimony on behalf of the CIA confirmed this. The importance and value of such information cannot be exaggerated, nor can the harm it did to the KGB's anti-American intelligence gathering. Even if it had been assumed for 12 years that the building was bugged, until Nosenko "pinpointed the location" of these 44 bugs, nobody knew what parts of the embassy were bugged and what were not. Knowing rather than merely suspecting the bugging also was important information.

33. Nosenko's subsequent career as a well-paid CIA consultant, lecturer and text writer on intelligence leaves no doubt about his bona fides. Only those who had motive for destroying him - and literally planned to do it - could believe the irrational and unbelievable, what Owen conjectures and Hart testified was without foundation.

34. The method by which the CIA undertook to establish Nosenko's "bona fides" - torture and unprecedented abuse according to Hart but "model" treatment according to the CIA's affidavits in this instant cause - is the one way guaranteed not to accomplish that end. On its part the FBI had no doubts about Nosenko's bona fides. Otherwise, as my uncontested prior affidavits state, it would not have arranged for him to testify before the Commission without consulting either the Commission or the CIA.

35. Owen's dissertation on "establishing the bona fides of a defector," his Paragraph 5, acknowledges that this can be accomplished by "independent verification of a substantial portion of the intelligence information received from the defector." Instead of stating whether or not the CIA was able to do this, as it was and did, Owen goes into but a single means, CIA agents inside the hostile service. He implies there are no other means. He describes verification capability as "normally a well-guarded secret, since public acknowledgment usually prompts hostile action to negate such sources." His big point is that "the public acknowledgment of a lack of such capabilities can be very effectively used against an intelligence service by hostile foreign intelligence services." Carried away by his mixture of irrelevant truth and untruth, Owen reaches the newest excuse for withholding the transcripts: "... 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." Owen leaves no doubt that he really means only CIA agents inside the KGB with "acknowledgment 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." And such a CIA agent inside the KGB, without whom no verification of Nosenko would be possible, had to be of high rank, able to "influence KGB intelligence activities."

36. All of this typifies CIA efforts to intimidate the courts. Without doubt, the CIA is expert in intelligence matters. The courts, like all concerned Americans, do care about preserving essential intelligence functions and do tend to accept CIA representations. Few people outside of agencies like the CIA understand the actualities of intelligence or have specific knowledge of the matters in question. In this particular case the CIA representations are untrue. It can be and in the Nosenko matter it was simple to establish his bona fides by "independent verification" and this did not require any CIA agents inside the KGB. If Nosenko did provide valuable information not previously known, what is regarded as other than "throw away" information, his bona fides were established. The two matters cited above, identification of active KGB agents and operations and of the 44 bugs in the Moscow embassy, where "independent verification" required American, not KGB, probing of the embassy walls, are more than enough to establish Nosenko's bona fides.

37. With regard to the alleged question of Nosenko's bona fides, it should be remembered that the conjectured purpose of dispatching Nosenko as a KGB disinformation operator in the investigation of the President's assassination did not exist. It is a CIA-manufactured fiction.

38. Owen then seeks to terrify the Court again with still another horror that, even if it were true, has no applicability in this case, that "if it became clear to the KGB that the CIA lacked the means of independently verifying certain information about the KGB," whatever "certain" may mean, "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 ..."

39. Taking the last part first, there was, after this case was in court and prior to the Owen affidavit, intense public discussion of just this, whether the KGB had penetrated the CIA. CIA people were on both sides. The debate centered around former Director William Colby and his efforts to cleanse the CIA. There was the suspicion that James Jesus Angleton, long-time head of counter-intelligence, was such a KGB "mole" because his activities were construed as wrecking. There is also the information provided by the CIA and the FBI to Edward J. Epstein,

detailed in my prior affidavits and not refuted. Epstein then identified such a KGB "mole" by the code-name "Fedora," with enough description to make his identification by the KGB automatic. (Angleton is one of those who raised phony questions about Nosenko's bona fides. The alleged doubts resulted in the long abuse and illegal captivity of Nosenko and denied the CIA the dependable use of some of his information and his services which the CIA has since found so valuable. Angleton was an Epstein source. Whether or not related, immediately after Epstein's "Fedora" disclosure, Arkady N. Shevchenko, highest ranking Russian on the United Nations staff, was first ordered home and then defected to the United States. The lurid details of the CIA's financing of his extravagant life thereafter, including an expensive call girl, have been on the front pages and are in a book by that woman.

40. Moreover, it does not require a "source inside the KGB" to know of "KGB agents working inside of the CIA." There are other means of making the determination. In the recent case of the convicted former CIA man, William P. Kampiles, there was no "source inside the KGB" to identify him. Internationally, there are many similar illustrations.

41. Because "independent verification" of Nosenko did not require a "source inside the KGB," the KGB would not assume either of Owen's alternative postulates, that acknowledged confirmation of Nosenko meant the CIA had penetrated the KGB or that acknowledged failure to make independent confirmation meant that the CIA had not penetrated the KGB. The most obvious additional disproof of the first postulate is that it was done without aid from any CIA agent inside the KGB, according to the CIA's own testimony, given by Hart. The most obvious of the disproofs of the alternative postulate is that it was contemporaneously admitted that the CIA did not immediately make verification. With the CIA's approval, the 1964 Warren Report says this.

42. Along with his claim that to establish Nosenko's bona fides the CIA required sources within the KGB, Owen also alleges in Paragraph 6 and thereafter a CIA inability to conduct investigations inside the Soviet Union. He qualifies this in Paragraph 7, where he cites Hart as authority for saying the CIA "did

not have any assets capable of making an investigation within the Soviet Union." This is not the same as saying that the CIA had no "assets" or "capabilities" within the USSR.

43. The most obvious additional proof of Owen's wrongful intent in all of this, his allegations beginning in Paragraph 5, is the fact that the CIA and the FBI disclosed records holding the identical information Owen now swears to this Court had to be withheld. Owen's new allegations supposedly account for the withholding of the transcripts until the day the government's brief was due at the appeals court. The exhibits I provide in disproof of these Owen allegations were provided to me by the FBI and by CIA before it suspended all compliance with my FOIA requests more than two years ago, which was prior to Hart's testimony.

44. In addition, much such information was provided to the Warren Commission and was disclosed by the defendant with the CIA's approval. One of these records, of 111 pages, is titled "Oswald's Foreign Activities." This is precisely what Owen and the CIA now claim it could not investigate. It is the kind of information Owen now claims had to be withheld lest the nation's security be endangered. These records, long readily available to the public, abound in citations of the CIA and in confirmation of what Nosenko said.

45. Although Owen represents that the CIA had no "assets" inside the Soviet Union, the consular official to whom Oswald pretended to renounce his citizenship - while being careful to preserve it - was Richard Snyder. Snyder is acknowledged to have been a CIA man. The Embassy doctor, who met with Oswald and gave Oswald his mother's name and United States address, also was an intelligence operative. He was involved in the Penkovsky case and trial. He serviced Colonel Oleg Penkovsky's "drops." The executed Penkovsky was an extraordinarily valuable CIA asset.

46. Exhibit 3, CIA Document 151-60, discloses the CIA's ability to check "landing cards and hotel registers." Unnecessary withholdings make it impossible to pinpoint the country of origin, but if it was Finland then the fact of CIA operations and investigations there was published by the Warren Commission. Publication includes the CIA's check of landing cards and hotel registers there.

The CIA also conducted USSR investigations relating to Oswald from there. Exhibit 3 also indicates the opposite of reason for the CIA to suspect Soviet involvement in the assassination.

47. Another Soviet source is used in Exhibit 4, CIA Document 350-140. The CIA's source, identification withheld, met with "SOVIET EMB. REP.," which is substituted for identification. The information confirms Nosenko, "SOVIET SAID ACT INCOMPREHENSIBLE BECAUSE COULD NOT EFFECT CHANGE IN U.S., ESPECIALLY FOREIGN POLICY..." It states that "OSWALD'S STAY RUSSIA HAD NO BEARING ON CRIME BECAUSE OF CP DIRECTIVE SINCE TIME OF LENIN CONSIDERED OPPRESSION OPPONENTS ONLY DAMAGING COMMUNIST MOVEMENT." Meager as is this information, it could enable the KGB to identify the CIA's source. This disclosed record, which confirms some of what Nosenko said, that foreigners could work inside the USSR, illustrates that the CIA did not require agents inside the KGB for independent verification.

48. Exhibit 5, CIA Document 498, is one of the earliest records relating to the assassination disclosed by the CIA. The subject includes Nosenko's name. The record itself discloses that he was "queried on the OSWALD affair on 23 January 1974." This is earlier than Owen acknowledges in his Paragraph 4. Exhibit 5 is the CIA's response to an FBI "memorandum ... in which you requested information which would tend to corroborate or disprove NOSENKO's information concerning Lee Harvey OSWALD." This is precisely what Owen swears to this Court could not be disclosed. However, the CIA did not try to con the FBI. In fact, it did not even bother to classify the record. Contrary to the Owen affirmation, that national security required secrecy for 15 years, until the CIA had domestic political need to dispense with some of its false pretenses, its 1964 answer at the bottom of page 3 states explicitly what Owen swears could not be disclosed: "This agency has no information that would specifically corroborate or disprove NOSENKO's statements regarding Lee Harvey OSWALD."

49. There is much information about which Nosenko was asked other than "regarding" Oswald. This had to do with what Oswald could and could not do within the USSR, applicable Soviet law, regulations, custom and practice and the manner of their observance, treatment of people like Oswald and much else. That the CIA

did confirm Nosenko in these areas is reflected in readily available Warren Commission records. However, most of the information Nosenko provided, many hundreds of pages of it in the CIA's files, had nothing to do with Oswald or the assassination.

50. There is similar revelation of what Owen states could not be disclosed in the CIA's partial but nonetheless fairly extensive releases of its questioning of Nosenko and the responses he made. Any informed intelligence agency could easily interpret these many pages, like those attached as Exhibit 6 titled "QUESTIONS FOR NOSENKO." This discloses to a subject expert less than it would have disclosed to the KGB, but it leaves little doubt that the CIA had a mindset and bad information. It also reflects the CIA preconception that Nosenko lied or a determination to lead him to say that he lied to the FBI, whose released records I have and have studied. An intelligence analyst's study of this released record, particularly along with those of the FBI, would disclose precisely what Owen pretends the CIA was trying not to disclose by withholding the transcripts in question.

51. If the KGB had the interest, as Owen pretends, and if it did not obtain the CIA's releases, it could have gotten the CIA's questions from Edward Jay Epstein's book, Legend, pages 357 ff.

52. The CIA's draft of questions to be addressed to the Soviet Government (CIA Document 489-196A, Exhibit 7) contains the same kind of disclosures. Even more, these questions were guaranteed to be counter-productive. This may not be apparent to nonexperts, but the State Department and the Commission staff perceived this immediately.

53. In June of 1978 the CIA disclosed a copy of the Commission's February 1964 internal memo on this as CIA Document 513-199B. (Page 1 only attached as Exhibit 8)

54. Contrary to the Owen representation that the Soviet Government was suspected of complicity in the assassination, the Commission recommendation was that it be told that Oswald was a neurotic loner and he and the assassination were "not connected with the Russian Government."

55. Of the CIA's draft the memorandum begins with:

The State Department feels that the CIA draft carries an inference that we suspect that Oswald might have been an agent for the Soviet Government and that we are asking the Russian Government to document our suspicions. The State Department feels that the Russian Government will not answer a letter of this kind, at least not truthfully, and that it will also do positive harm in that they will take offense at our sending it to them.

56. Why the sophisticated CIA would undertake to turn off any cooperation from the Soviet Government is one of many perplexing aspects of all of this, particularly of the CIA's continuing withholdings and its continuing refusal to comply with my information requests after many years. Despite the Owen representations, of alleged disclosures because of review and declassification for the House committee, my Nosenko requests, which date to 1975, remain without compliance. The appeals are not acted on, not even responded to. There has been no satisfactory explanation for the name of the embassy officer who serviced Penkovsky's intelligence information "drops" appearing in Oswald's address book. Another troubling fact is the CIA's inability to show that Oswald could have reached Helsinki on his way to Moscow by the time he did if he had used any known commercial carrier, as my previous affidavits show. I cite these among a number of such troubling considerations because they can bear on motive for this latest in a series of palpably unfaithful CIA representations to this Court.

57. Owen totally ignored the 10 pages of the January 21 transcript and all the information relating to it provided in my prior affidavits until compelled to justify that withholding. He still ignores all I stated about it. He does not attempt to refute it because he cannot. From what Owen says of this transcript, it cannot be recognized. He says that it "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." Such information was disclosed, long before the transcript was denied, in the agendas of the executive sessions, which the defendant made available to me and to others. Owen says that "It is clear that CIA representatives had briefed the Commission staff on the Agency's capabilities." This is a large exaggeration. There is reference only to consultation with the two defectors and then only to consulting them "in drafting questions to be put to the Soviet government and in reviewing the

documents (sic) written by Oswald." It is obvious that the CIA had many other capabilities.

58. Owen does not state that nothing is reasonably segregable. This is because, even if all he suggests were true, which it is not, then most of the transcript would still be reasonably segregable.

59. The Oswald "documents," his writings, were all in the public domain long before this transcript was withheld. The Commission published them in facsimile. That they were examined by the various executive agencies, including for codes, also was disclosed by the Commission. That they were unclassified is in the transcript itself.

60. Because he cannot, even at this late date, contrive any other explanation for the unjustifiable withholding, Owen claims the transcript discloses a secret about these defectors, "the status of their relationship with the CIA and the manner in which they were proposed for use in support of the Warren Commission." This, he states, "suggested a great deal about the level of confidence the CIA had in those defectors."

61. This, obviously, is not true. The CIA, the State Department and/or the Commission could have ignored any and all suggestions made by the defectors in their "support," recommending questions to be asked of the Soviet Government.

62. Likewise it is not true that "Conversely, the fact that no other intelligence capabilities were discussed to support the same" unspecified "objectives of the Commission suggested strongly that other assets (sic) were either not available or not considered appropriate or reliable." This is an invention that has no basis. The Commission's agenda was disclosed and this part of the transcript is limited to whether the Commission wanted the CIA to consult these two defectors for suggestions on the questions to be asked, no more. The absence of Commission, not CIA, reference to other "capabilities" or "assets" is entirely immaterial to whether or not the CIA had others, as it did in any event.

63. However, still without naming them, as I have from what is in the public domain, Owen now does admit that "The fact that two officers had defected from the KGB was obviously not a secret to the Soviet KGB." In this he admits that the withholding served no national security end.

64. Owen does not show how anything would have been disclosed by not withholding the transcript. He seeks to suggest it with the characteristic overblown generalities of the intelligence agencies, which would stamp a recipe for chicken soup "secret." There would not have been any disclosure of "the status of their relationship with the CIA."

65. Consulting these two did not disclose the "level of confidence" imparted because their suggestions could have been ignored and because it is an obvious assumption that, once they defected to the CIA, it would ask them questions based on their knowledge and prior experiences.

66. However, because Owen raises these false questions, I address them with what had been disclosed, particularly by the CIA, while it withheld the transcript. This is to show that Owen's representations are spurious and that the CIA knew them to be spurious.

67. The nitty-gritty, the questions to be asked of the USSR, in part is addressed in preceding paragraphs of this affidavit. Long ago the CIA itself disclosed two different copies of proposed questions from one of these defectors. The CIA typed and then retyped this memorandum, practicing different withholdings on the two versions and by this inconsistency demonstrating that it practices unjustifiable withholdings. CIA Document 413-76A consists of a copy of a carbon copy of one version, with a covering memo from which the date was first removed and then added by hand, "16 Dec 63." At the top of the first page of the defector's memo, after "Subject," all identification of the one who provided the "Comments on President Kennedy's Assassination" is withheld. (These two pages are attached as Exhibit 9.) Nothing else remains in the heading. But in the other and clearer copy released by the CIA, from which in xeroxing the document number was eliminated, the date of November 27, 1963, not 16 Dec 63, remains and "Soviet Defector" is written in near the obliteration of the name. The CIA's stamp reflects its FOIA disclosure in May 1976. (This copy is attached as Exhibit 10.)

68. Because of the time gap between the two defections, although the CIA withholds the name from what it released, it nonetheless identifies this particular defector by giving the time of his defection. The KCB, obviously, knew when each

defected. This one is Petr S. Derjabin (the FBI's spelling).

69. It cannot be claimed in late 1979 that there had to be withholding to keep secret the "level of confidence" or lack of it that was reposed in Derjabin when the CIA had already disclosed this by having him translate the published Penkovsky Papers, about which, over his name, Derjabin boasted in a letter to the editor of the Washington Post of November 19, 1965. (Derjabin also published two books, The Secret World in 1959 and Watchdogs of Terror in 1972.) Other ways in which his identification and career were public, including by Congressional testimony, are set forth in my earlier affidavits in this instant cause. That the CIA used Derjabin to translate the Penkovsky papers and permitted him to testify to a Congressional committee reflects the CIA's "level of confidence" in him.

70. The covering memo in Exhibit 9 includes the disclosure of what Owen claims had to be kept secret, "We have decided to pass on his views without editing, and this Agency does not specifically endorse his conclusions or recommendations."

71. That the CIA retyped and also distributed the memo does not suggest any lack of confidence or any belief that Derjabin's comments are worthless. It also does not suggest any lack of confidence in Derjabin when the CIA proposed to the Commission that questions be asked of the Soviet Government after it received Derjabin's November 27, 1963, recommendation that "the Soviet Government ... should be requested to furnish information" about Oswald in the Soviet Union, followed by indication of the information to be sought. (Interestingly enough, Derjabin postulated precisely what Nosenko later said, that Oswald "was considered unstable" by the KGB and that he was "allowed to leave the Soviet Union as an undesirable.")

72. For the most part Derjabin's memo is paranoid and inaccurate. It reflects a strong bias and personal prejudices. Giving credence to Derjabin discloses much about "the level of confidence" that can be vested in the CIA itself.

73. Beginning long before my first request for the withheld records, Derjabin's identification and past were public domain. Long before this instant cause was filed, the FBI disclosed records in the Warren Commission files relating to him without withholding his identification. Some disclose that the FBI ~~imposed~~ ^{imposed} a zero level of confidence in him. One FBI record, compared with Exhibits 9 and ⁷⁰

10, adds justification of the FBI's opinion.

74. In the FBI headquarters "Oswald" file, 105-82555, there is a long report by the Washington Field Office, Serial 1079. I attach as Exhibit 11 the cover page, which discloses that the record was never classified, and page 41, which refers to an interview with Derjabin on November 26, 1963. This is the day before the date on his CIA memo.

75. The FBI reported that "DERJABIN does not believe the Soviet Government had any knowledge of OSWALD's plan to assassinate President KENNEDY." However, his next day's memo to the CIA states the opposite, that Oswald "was specifically dispatched to murder our President."

76. This discloses more than "the level of confidence" that could be vested in Derjabin. That the CIA did not convey this to the Commission also discloses much about the "level of confidence" that can be placed in the CIA and in any representation it makes regarding the withholding of the transcript. The transcript does not disclose this serious question about "the level of confidence" the Commission could safely have had in Derjabin or in the CIA that proposed consulting him about questions to be asked of the Soviet Government.

77. In my prior affidavits, from what was within the public domain, I identified the other KGB defector as Anatoly M. Golitsin. Owen still does not provide identification to the Court. However, what Owen withholds from this Court in late 1979 the CIA did not withhold in May 1976, for on the second page of the Derjabin memo he refers to "COLITSIN's defection." This also discloses "the level of confidence" that can be placed in the Owen affidavit and any other CIA representations having to do with withholding attributed to "national security."

78. In Paragraph 6 Owen also seeks to convey the false notion that these two defectors were the only means available "to verify information concerning activities in the Soviet Union related to Lee Harvey Oswald's personal experiences as a defector." He states that the CIA "briefed the Commission staff on the Agency's capabilities" and proposed only to use these two defectors as consultants on the questions and in reviewing Oswald's largely anti-Soviet writings. He states also that "the fact that no other intelligence capabilities were discussed"

by the Commission, not the CIA, "suggested strongly that other assets were either not available or not considered appropriate or reliable." This is a deception. Despite Owen's generalities and vagueness, it is not true.

79. Anyone who has examined the disclosed records of the Warren Commission at the Archives knows very well that the CIA had and used many other means of verification and of obtaining and providing information relating to Oswald and the USSR. To reflect this I attach as Exhibit 12 an early CIA record of the extent to which, contrary to Owen's representations, the CIA was able to render services and provide information to the Warren Commission. This record, CIA Document 647-824, is dated April 8, 1964. It states that as of that early date the CIA had "prepared and forwarded" to the Commission a large number of papers and other intelligence materials. This is one of many records showing the CIA was able to do more than talk to two defectors.

80. This record also indicates that the CIA had many means of establishing Nosenko's bona fides other than by access to KGB records and particularly as it related to Oswald's life and treatment in the USSR.

81. In Paragraph 7 Owen forgets that in his earlier affidavit, in which he could have alleged what he does in this one, he was content to attach merely the beginning of an unofficial transcript of Hart's testimony before the House committee. Now he cites books and pages. But at no point does he state that Hart's testimony related in any way to the Commission's Nosenko or June 23 transcript. It does not, as without contradiction my prior affidavit states. Owen's references to classified materials and their alleged declassification are entirely irrelevant. He makes no effort to show any relevance.

82. Similarly, he here refers to the January 21 transcript by quoting Hart on the intimidating but irrelevant, that the CIA "did not have any assets capable of making an investigation within the Soviet Union." (emphasis added) No such question exists. It is not germane to the transcript or any of its content, which deals with whether or not the two defectors would be consulted in the preparation of questions to be sent to the Soviet Government, not investigating in the Soviet Union. There thus also is no relevance, except as another CIA

attempt to frighten this Court, in "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."

83. Magically, this hazard has since vaporized, ostensibly because of "the political necessity posed by the Congressional investigation." Within my experience "political necessity" is a new protection against hazard to national security.

84. Obviously, this is another false pretense. If the committee's inspection did not reveal that the transcripts were improperly classified, they would still be classified, as is much else made available to the committee.

85. At the time in question the CIA's "limitations" were not nearly as great in the Soviet Union as Owen would have believed. When the CIA had other "political necessity," it was disclosed that the top Soviet leaders had been bugged in Moscow, even when they were driving around, and their conversations were recorded. It also obtained a copy of Khrushchev's secret denunciation of Stalin, the entire lengthy text.

86. Among defectors, the CIA was not limited to these two former KGB officers, as Owen represents. Another is the former Soviet naval officer who took the name Nicholas Shadrin when he defected in 1959. Shadrin disappeared in Europe while serving as an American agent. (Contrary to the CIA's representations relating to its treatment of defectors, Nosenko in particular, retired CIA Deputy Director, Dr. Ray Cline, is quoted in the Washington Post of December 9, 1975, as saying that "After ... what happened to Nosenko and Shadrin we may have trouble encouraging other defectors." Shadrin's wife - or widow - is quoted in the same article as saying, "The Swedes warned us not to come to the U.S. They use you and dump you.")

87. On his initiative and after several phone calls to me, one claiming a KGB background and CIA connection met with me in a public place in February 1975. He had a pathological hatred of Nosenko and resented very much that Nosenko was trusted by the CIA. He also disclosed that other defectors were employed in the

Washington area. He identified one as working as a translator for the National Institutes of Health. I know of no way in which this man could have known of my interest in Nosenko except from some official source and of no way any official source could have known other than by eavesdropping because this was prior to my first request of any agency for any Nosenko information. This man, who used the name "Mr. Martin" (Golitsin's middle initial is "M"), undertook to destroy any confidence I could have placed in anything Nosenko said. This incident, along with the CIA's making Nosenko available to John Barron and Edward J. Epstein, as detailed in my prior affidavits and referred to again below, is quite inconsistent with Owen's and the CIA's representations relating to defectors and alleged dangers to them.

88. At the beginning of Paragraph 8 Owen interprets the June 23 transcript as meaning the Commission's primary concerns were an alleged inability "to establish the bona fides of Nosenko" and "the negative consequences of this uncertainty for the Commission's hope to use Nosenko's information." Others reading the transcript and knowing the subject matter may draw other conclusions, as I do. It reflects the CIA's successful befuddlement of the Commission. With regard to establishing Nosenko's "bona fides," as my prior Paragraphs show, the information Nosenko provided was not throw-away information, was important, and did establish that he was an authentic defector. Hart testified that the question was not even one of bona fides; that with regard to what Nosenko said about Oswald and the KGB the question rather was one of his memory, which Hart testified was severely impaired by the CIA's abuse and isolation of him; and that despite his high intelligence, scientific testing showed that Nosenko did not have a good memory.

89. Owen states that while some information was disclosed earlier, "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." This is a careful phrasing intended to deceive by misstating what is at issue in the June 23 transcript and what was disclosed prior to its release. In fact, the transcripts themselves were disclosed prior to the publication of Volume II. The June 23 transcript is not concerned with "the problems involved

in establishing Nosenko's bona fides." By this means Owen seeks to deceive and mislead by suggesting that Nosenko's bona fides had not been established or disclosed and that there was no disclosure of this prior to the release of the transcript. This is false.

90. Owen represents a Commission concern over the "negative consequences" of uncertainty about Nosenko for its "hope to use Nosenko's information." He shows no such negative consequences and there were none for the Commission. It expressed no such hope. It concluded otherwise, as the transcript reflects. The Commission's records show that virtually all Nosenko said was available to it from other sources except for what the CIA wants ignored, his report that the KGB suspected Oswald served American intelligence.

91. Because of the CIA, the Commission did not use Nosenko's name in its Report. The Report was altered prior to publication, again in response to the CIA's request. The original draft of the pertinent passage was released by the defendant in this instant cause on June 22, 1973. It states of Nosenko exactly what Owen would have believed was not known prior to the disclosures to the House committee, "his reliability cannot be assessed at this time." This means that what Owen swears had to be kept secret from the KGB was available to it in this formulation for more than five years before the transcript was disclosed and for two years before this lawsuit was filed.

92. There is a less specific formulation but one that would have been correctly understood by the KGB in a Commission staff memo on a March 12, 1964, conference with the CIA. The first paragraph reads, "The first topic of conversation was Yuri Nosenko, the recent Soviet defector ... the CIA's recommendation being that the Commission await further developments." Ambiguous as this is, it would have told the KGB that the CIA was discouraging the Commission's interest in Nosenko and that it questioned the dependability of what he said. This also is what Owen claims had to be and was kept secret. It also was not withheld until 1979. It was disclosed by the defendant on January 24, 1975, which is prior to the filing of this instant cause.

93. Although it is true that the CIA misled the Commission about Nosenko's bona fides, it is not true that its alleged doubts were kept secret until the House report appeared. The KGB would not have had to consult public

records. All it had to do is read the papers. The CIA's own disclosure was dispatched around the world by an Associated Press story. I quote from a San Francisco newspaper's publication of a Washington story of March 25, 1976, to reflect the widespread publication within this country:

A recently released CIA memo shows that James Angleton, then head of CIA counterintelligence, told the (Warren) Commission that the CIA had no information that would either prove or disprove Nosenko's story.

This was more than three years before the time Owen swears the information was first made public.

94. On May 9, 1975, on the coast-to-coast CBS-TV Evening News, John McCone, who was Director of Central Intelligence at the time of the Commission, was interviewed by Daniel Schorr. I attach as Exhibit 13 the transcript I obtained from CBS. McCone stated:

It is traditional in the intelligence business that we do not accept a defector's statements until we have proven beyond any doubt that the man is legitimate and the information is correct. It took some time to prove the bona fides of the man, which were subsequently proven.

95. This disclosure of even Owen's formulation, of establishing and acknowledging Nosenko's bona fides, also was more than three years prior to the time until which Owen alleges it was kept secret.

96. In Paragraph 9 Owen states that the House committee's staff report in its Volume II is "based, in part, on classified material made available by the CIA and the FBI." If there was any classified FBI material included, this means that the FBI withheld from the Commission because the Commission's staff report of June 24, 1964, the day after the Nosenko executive session, represents that the Commission received only two reports from the FBI, those cited in my prior affidavits. They were made available by the defendant on April 7, 1975. This, too, is more than three years earlier than Owen represents as the first disclosure. This Commission record is the one cited above, as stating that "Most of what Nosenko told the FBI confirms what we already know from other sources."

97. In Paragraph 10 Owen refers to portions of the Hart testimony he represents as describing the CIA's effort to establish Nosenko's bona fides and as what the CIA told the Commission about this. However, his quotations relate

not to the CIA's effort to establish Nosenko's bona fides but to its attempt to destroy him, thus confirming my prior affidavits: "The question of how to deal with Nosenko has been carefully examined, ..." and "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." The Hart statement that the Commission was told that Nosenko "was not a bona fide defector" is not reflected in any Commission records I have seen and Owen cites none.

98. "Mr. X" is Hart's reference to the paranoid CIA official who toyed between the choices of driving Nosenko permanently insane and killing him without leaving a trace. He is one of the CIA officials who would have had an interest in Oswald if Oswald had had any American intelligence connections and who would have been involved with KGB defectors.

99. In Paragraph 10 Owen swears to the opposite of the CIA's earlier deceptions and misrepresentations in this instant cause, that its treatment of Nosenko was of a nature to attract other defections because he was used as a "model" to make defection attractive to potential defectors. "Breaking" a man is hardly "model" treatment. Both affirmations cannot be true. The other of the pair responsible for creating baseless doubts about Nosenko is Angleton. (Prior to being forced out of the CIA, Angleton himself was suspected of being a KGB "mole" within the CIA. He also accused Director William Colby of being a KGB "mole" within the CIA.) The CIA's attitude and belief prior to the beginning of its campaign against Nosenko is reflected in Exhibit 12. This was released in June 1976 by the CIA. This CIA memo says of "certain aspects of the Soviet phase of the OSWALDs' careers" that "NOSENKO's testimony has probably eliminated the need for some" of the outlined work the CIA was to do for the Commission. This, therefore, discloses that as of April 8, 1964, the CIA credited what Nosenko said, regardless of what it told the Commission in March, quoted above in Paragraph 92. The superior official's evaluation of this reference to Nosenko's dependability is that it has "merit."

100. Owen's longest quotation of Hart's testimony in Paragraph 10 is not

supported by my reading of the available records of the Warren Commission. This begins, "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 ..." In fact, "the Nosenko information" was not made available to the Commission by the CIA until after the Commission informed the CIA that it had received this information from the FBI. The FBI did not attach any "was not valid" stipulation. I have seen no record indicating that the CIA told the Commission that Nosenko's information "was not valid."

101. The generalities with which Owen begins his eleventh and concluding Paragraph are not careless phrasing. They are necessary to avoid overt false swearing and as a prelude to his tag line, that the "transcripts were declassified because of the declassification of material necessary for the release of Volume II, not because of plaintiff's litigation." Owen shows no relevance of the content of the transcripts to "... 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 KCB ..." Nor does he say what events or activities. This is because there were none. Moreover, the CIA had no difficulties in establishing the details of some events in the Soviet Union, such as the firings, global circumnavigations and landings of Soviet satellites. Long before the time in question, we had the capabilities of photographing from space "events in the Soviet" Union with such "detail" that, as President Eisenhower informed the nation, the painted stripes on parking areas were clearly visible and, as stated above, bugging the most intimate conferences of top Soviet officials. If by "activities of the Soviet KCB" Owen means but for some reason fails to state "dispatching" Nosenko to provide disinformation relating to the assassination of the President, then he fails to state this because he cannot. He does not contest my prior affidavits which state that no such need existed because the conjectured need was eliminated weeks earlier by the disclosure of the conclusion of the investigation the President directed the FBI to make, that there had been no conspiracy.

102. Owen is not vague about these unspecified "events" because of any

intelligence need requiring secrecy. He is vague because he cannot state what does not exist at this point in this litigation without too great a risk. If he does not continue the CIA's long record of misleading, deceiving and stating untruths in this matter, he makes public acknowledgment of them, and that the CIA is not about to do or permit.

103. Even Owen's representation of what transpired at the June 23 executive session is not faithful. The transcript does reveal that the Commissioners were intimidated by the mystique of secrecy and the CIA's threat that it might disclose intelligence secrets and thus harm the nation. But neither is new. They abound in the Commission's and other records that have been publicly available and for years have been admitted by the Commission members and its staff. This, however, is not what Owen represents. His allegation that, even after more than a decade, releasing the transcripts would provide secret information to the KGB about the CIA and its capabilities hinges on the alleged disclosure of uncertainty about Nosenko's bona fides. This, as foregoing Paragraphs of this affidavit show, is not an existing or a real question but is a contrivance that is at variance with the facts and with the CIA's own prior disclosures. Neither the transcripts nor the Commission's report provides any comfort for the CIA contrivance.

104. What Nosenko knew and could have told the CIA was well known to the KGB. None of this appears in the Warren Report, which the KGB could have bought anywhere for a dollar. There is no possibility that the KGB did not know from this omission that there existed at least a question relating to Oswald and Nosenko. The most likely conclusion within the KGB, from this alone, is precisely what Owen claims had to be hidden from it - that there was some doubt about what Nosenko said relating to Oswald. Doubt could not relate to other matters, like his disclosure of those 44 KGB microphones hidden in the walls of the United States Embassy, for the KGB knew when they were immobilized, even touched. Thus, what the CIA persuaded the Commission to omit from its Report did inform the KGB of precisely what Owen now claims had to be "withheld" from it all these years, thanks to the spurious and fabricated questions raised by a few influential political paranoids in the CIA.

105. What the transcript actually says is that the Commission would not use Nosenko's information under any conditions, not even "if he is subsequently proven to be a bona fide defector." (Page 7641) The Chief Justice himself said, "I am allergic to defectors, and I just think we shouldn't put our trust in any defectors." (Page 7643)

106. While this does reflect that someone had raised a question about Nosenko's bona fides by June 1964, the CIA decided Nosenko was bona fide more than a decade ago and this fact was within the public domain.

107. In this regard I reiterate that the CIA has not made any effort to dispute my prior affidavits which state this or my allegations with regard to its having provided Nosenko in person and Nosenko information to writers John Barron and Edward J. Epstein, both long before the alleged declassification for the House committee or the release of these transcripts to me.

108. The degree of attempted CIA intimidation of the Commission is also disclosed by the June 23 transcript, as is its successful deception of the Commission. General Counsel J. Lee Rankin informed the Members that "I just received a call from Mr. Helms this morning about it." (Richard Helms was then head of CIA dirty works, the component of which Owen is now part.) Helms' alleged fear was of letting the Members of the Presidential Commission read the Nosenko information provided to it by the FBI: "He'd learned that we even had papers that the Commissioners were looking at." (Page 7645) Helms did not trust any American with what the KGB knew, not even a Member of a Presidential Commission: "And Mr. Helms said that he thought it even shouldn't be circulated to the Commissioners, for fear it might get out, about the name Mesenko," the way the court reporter misspelled Nosenko. (Page 7645) According to Commissioner Gerald Ford, Helms worried for naught about this because Ford said at the outset (Page 7641) that his first knowledge came from some staff drafts he had just received but he had not "seen any F.B.I. or C.I.A. reports on him." This was more than three months after the Commission received those FBI reports. In turn, this means that the Commissioners did not know that the KGB suspected Oswald had been an American "sleeper agent," which would have fingered the CIA.

109. The only "insight into the CIA that the transcripts could provide," Owen's words, is not the baseless and often unfactual conjectures he swears to but that it could and did mislead a Presidential Commission and did hide from it and from the country the KGB's suspicion that the officially designated Presidential assassin served American intelligence. Nothing else was of consequence or not known to the KGB at the time these transcripts were withheld from me and thereafter and Owen shows nothing else that was of consequence.

110. In this and in misleading and misrepresenting to a Court and in making untruthful representations, Owen and the CIA are consistent with what former Director Allen Dulles told his fellow Commissioners on January 27, 1964. At pages 153 and 154 of the transcript of that executive session, Dulles described perjury as the highest manifestation of intelligence agent patriotism, along with not telling the truth to his own government. Dulles said that he himself would tell only the President - and even that is not borne out by his record; and that he might even withhold information from the Secretary of Defense. If Oswald had been a CIA agent, the subject of the January 27 session, Dulles said (Page 152), "The record might not be on paper," but if it were there would be only "hieroglyphics that only two people knew what they meant" and they would not tell the truth. (I have previously provided the entire transcript of this session.)

111. What the staff withheld from the Commissioners, as the CIA wanted, the FBI's Nosenko information, it let Helms know immediately. (CIA Document 582-249A, attached as Exhibit 14) This CIA record also makes it clear that the CIA had not informed the Commission about Nosenko or any of the information it had received from him. By then Dulles, personally, knew about Nosenko. This is established in Exhibit 15, CIA Document E57-831. Exhibit 15 shows how Dulles connived with the CIA to tell it how not to inform the Commission of which he was a member; how not to volunteer information it should have had; and how to hold off on responding to its inquiries, which the CIA did. Of all things the CIA refers to a "reply," and that on a "priority basis," to the FBI's two Nosenko reports. When it expected perpetual secrecy, the CIA did not refer to a commentary or an analysis but to a "reply," as to charges, and this when, according to Owen, it had no means of "independent verification" of anything at all.

112. Dulles did not tell the CIA that his fellow Commissioners knew of reports that Oswald had been a CIA agent from Nosenko's statements to the FBI. He limited this, on page 1 of the second memo, to what Marguerite Oswald and her then attorney, Mark Lane, had said in public.

113. This record, disclosed in June 1976, is still another CIA disclosure of exactly that which Owen swears required withholding of the transcripts, "the practical circumstances which made it impossible for the CIA to undertake such an investigation inside the USSR." (Page 2, paragraph 5)

114. The last paragraph reads, in full, "At no time during these discussions (that is, with Dulles, at his home on April 11, a Saturday) did Mr. Dulles make any inquiries about Nosenko and I volunteered no information on this score."

115. There was disagreement within the CIA over its policy of having as little as possible to do with the Presidential Commission's investigation of the assassination of the President. CIA Document 583-814, Exhibit 16, is an excised copy of a brief dissenting memo. It protests that questions "would not be asked" and that "it had been decided 'that the FBI would handle the matter and our questions would not be asked.'" The author had "no confidence in the FBI's ability to cover the Soviet phase," whatever this may have meant or included. He states, "it would not be possible to complete our job on the Oswald case if we could not get the pertinent information." (Emphasis in original.) While this also is ambiguous, the KGB could have interpreted it as saying exactly what Owen swears the CIA had to withhold from it. The CIA disclosed this document in June 1976.

116. In earlier affidavits and in preceding Paragraphs of this affidavit I refer to the providing of information held secret from me and others to John Barron and Edward J. Epstein and to Nosenko's being made available to both by the CIA. Barron and Epstein both credit the CIA and the FBI in their books. Barron also reports that the sources and resources of other intelligence services were available, something Owen does not mention. On page xiv of Barron's KGB, first published in January 1974, which is after I made the information request involved in this lawsuit and more than a year before it was filed, Barron states, "There are two primary sources of original data about the KGB: (1) former Soviet citizens who had been KGB officers or agents; (2) security services who know most

about the KGB ... We felt that we could not rely upon evidence proffered by any one KGB officer or security service in the absence of independent corroboration from other officers or services ..." Two of these services are the CIA and the Federal Bureau of Investigation (FBI). Of the FBI Barron states at this point, "The late J. Edgar Hoover allowed the Federal Bureau of Investigation to answer many of our questions. Cartha DeLoach, then Assistant to the Director of the FBI, briefed us about significant KGB operations ..." Of the CIA Barron states at this point that it "fulfilled most of our requests for addresses through which we were able to write former KGB personnel and negotiate arrangements for interviews. We further profited from the expert counsel of two retired CIA officers, William King Harvey and Peer de Silva."

117. Nosenko was a CIA consultant. He, Harvey and de Silva were required by the CIA to sign secrecy oaths. This means they cannot speak without CIA approval. CIA approval was necessary for the Barron interviews of Nosenko (page xv) and later those of Epstein, referred to in my prior affidavits. With regard to these matters and to my allegations that the CIA made the kind of information it withheld from me available to Barron and Epstein, there is not even pro forma CIA denial. From the Barron and Epstein boastings, no denial is possible.

118. I do allege bad faith and deliberate deception, misrepresentation and false swearing. I do this in part because honesty, decency and justice require it and in part because, until the courts face the reality of this official misconduct, which taints all of the many FOIA lawsuits of which I have personal knowledge, the aborting of the Act and the burdening of the courts and requesters will not end. There is no time when I have stated and proven these charges under oath that there has been even pro forma denial under oath and there has never been direct confrontation or rebuttal. In this case also that is not dared. In this case also, from the time of the first representation to the appeals court that the transcripts were being disclosed because so great an amount of Nosenko information was disclosed to and by the committee, repeated in the Owen affidavit, these offenses are blatant. That inevitably these offenses would be obvious to me may account for the CIA's failure earlier to risk what it dares in this Owen affidavit.

119. In my earlier responses under oath to this misrepresentation, I stated that, if it were other than bad faith and if this bad faith were other than deliberate, there would have been compliance with my Nosenko and other related information requests going back to 1975. There has not been. I have received neither a single piece of information nor any communication promising it at even the most remote date in the future.

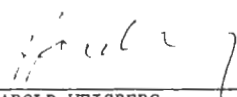
120. When I wrote the CIA on November 9, 1979, about its eight years of noncompliance (attached as Exhibit 17), I had no way of knowing what would be in the affidavit the CIA was to provide. The concluding sentence of Exhibit 17 is, "In particular I would like to know when to expect the Nosenko information your affidavits in one of my cases claim was declassified for the House Select Committee on Assassinations." I have had no response, not even an acknowledgment.

121. On August 5, 1976, the CIA acknowledged my first Nosenko request, among others. (Attached as Exhibit 18) The attachment to this letter shows how the CIA first stalled, by renumbering my 1975 Nosenko request (75-4765) as a 1976 request. In the last paragraph of the first page, it then refused to comply, instead including this separate request in my request for other materials relating to the investigation of the assassination of President Kennedy. Its Catch 22 claim is that it would comply when it provided other JFK assassination records, which it then did not do. (It even renumbered my 1971 request for information relating to me to list it as a 1975 request. It has not complied and it has not acted on the appeals.) It is public knowledge that the CIA did declassify and disclose information relating to the assassination of the President for the use of the House committee, as Owen states. The committee's report credits and thanks the CIA. This information is within my request, but the CIA has not provided it, despite the fact that my request is of almost five years ago and the fact of the committee's publication. Some of it was telecast from coast to coast.

122. The CIA continues to deny me information it disclosed to Epstein, who was regarded, with ample justification, as a sycophant. This is particularly true of Nosenko information. When I learned of what had been disclosed to Epstein, I again appealed the CIA's denials and requested separately that which

had been made available to him and to Barron. Providing me with copies required no more than xeroxing file copies already processed. From the February 20, 1978, date of that letter to now, the CIA has not provided me with a single page of what it disclosed exclusively to Epstein, despite my unmet prior request.

123. Bad faith could not be more obvious or more deliberate. The information made available to the committee for its use and to Epstein for his use is disclosed and has been processed. Despite the Owen affidavit, none has been provided to me. This also underscores the fact that the CIA/Owen representation that the release of what was disclosed and only this required giving me the transcripts is spurious, a contrivance with which to deceive and mislead this Court and to continue to deny me my rights under the Act.

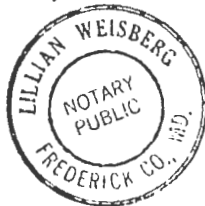


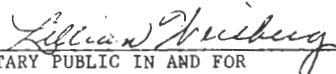
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 27th day of December 1979 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.





NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

EXHIBITS

Exhibit No.	Paragraph No.	Page No.	
1	18	5	12-19-63 FBI memo
2	20	5	CIA Document No. 376-154
3	46	12	CIA Document No. 151-60
4	47	13	CIA Document No. 350-140
5	48	13	CIA Document No. 498
6	50	14	3-3-64 CIA "QUESTIONS FOR NOSENKO"
7	52	14	CIA Document No. 489-196A
8	53	14	CIA Document No. 513-199B
9	67	16	CIA Document No. 413-76A
10	67	16	11-27-63 CIA Document
11	74	18	FBI File 105-82555-1079
12	79	19	CIA Document No. 647-824
13	94	23	CBS-TV transcript, 5-9-75
14	111	28	CIA Document No. 582-249A
15	111	28	CIA Document 657-831
16	115	29	CIA Document No. 583-814
17	120	31	11-9-79 letter to CIA
18	121	31	8-5-76 CIA letter

UNITED STATES GOVERNMENT

CA 75-1448
EXHIBIT 1

Memorandum

TO : Mr. W. C. Sullivan *WCS 11/17* DATE: 12/19/63

FROM : Mr. D. J. Brennan, Jr. *DJB*

SUBJECT: RELATIONS WITH CENTRAL INTELLIGENCE AGENCY (CIA)

Mr. Tolson
 Mr. DeLoach
 Mr. Mohr
 Mr. Bishop
 Mr. Casper
 Mr. Callahan
 Mr. Conrad
 Mr. Felt
 Mr. Gale
 Mr. Rosen
 Mr. Sullivan
 Mr. Tavel
 Mr. Trotter
 Tele. Room
 Mr. Holmes
 Miss Gandy

Information developed by Mr. DeLoach has indicated that John McCone, Director, CIA, has attacked the Bureau in a vicious and underhanded manner characterized with sheer dishonesty. If the facts are true, we can safely assume that McCone will continue such tactics to the point of seriously jeopardizing Bureau prestige and reputation. We can sit by and take no action or bring this matter to a head. Over the years, we have had numerous conflicts with all CIA Directors. Many of these problems have arisen from statements attributed to these men. Experience in dealing with CIA has shown that a firm and forthright confrontation of these officials has protected Bureau interests in a most effective manner. If McCone is involved in such nefarious activity, there is a way of putting a stop to this.

The charges against McCone can be described as follows:

- (1) He allegedly informed Congressman Jerry Ford that CIA had uncovered a plot in Mexico City indicating that Lee Harvey Oswald had received \$6,500 to assassinate President Kennedy.
- (2) McCone allegedly made this same statement to Drew Pearson.
- (3) In both instances, the statements were false and McCone should have known that they were false since his agency was fully informed that the story concerning the receipt of money in Mexico was completely discredited.

ACTION:

If approved, the Liaison Agent will confront McCone with the allegations. Congressman Ford will not be identified but will be referred to as a high-ranking Government official. Bureau

- 1 - Mr. Belmont
- 1 - Mr. DeLoach
- 1 - Mr. Sullivan
- 1 - Mr. Branigan
- 1 - Liaison
- 1 - Mr. Papich
- SJD:chs
- (7)

memo Brennan to Sullivan, passed to him 12/23/63. SJP:chs

1105-22555
NOT RECORDED

22 DEC 81 1963

LIAISON

Sent via 47

Memorandum Mr. Brennan to Mr. Sullivan
Re: RELATIONS WITH CENTRAL INTELLIGENCE
AGENCY (CIA)

Names will not be identified. McCone will be told that information received by the Bureau indicates that he has made false statements and it will be pointed out to him that his own agency was informed that the story regarding Oswald's receipt of money in Mexico City was completely discredited. He will further be told that we can only characterize his actions as a vicious and unwarranted attack against the Bureau.

If McCone did make the referred statements, we can expect him to make a denial. However, it is believed that we will have made our point and he certainly will know where he stands, will undoubtedly have a profound respect for our capabilities to be informed, and he certainly will bear all of this in mind in the event he gets any ideas of making similar statements in the future.

AB *John* *Wes* *V. [unclear]* *[unclear]*
A *GM.*
H

C.A 75-1448
EXHIBIT 2

11 December 1964

MEMORANDUM FOR:

TZACOGH :

FROM :

SUBJECT : Additional Notes and Comments on the Oswald Case - Summary of Reasons for not concluding Soviet involvement with OSWALD

1. According to the New York Times for 10 December, the FBI report on the assassination of President Kennedy categorically states that Lee Harvey Oswald was the assassin, that he acted alone, and that there is no evidence to indicate that he was the agent of any foreign government. These disclosures presumably eliminate the possibility of further confrontations with Mr. Robert Slusser. In the event that Mr. Slusser continues to insist that the President was murdered by the Soviet secret police, the following additional negative indications and observations may be of some value.

2. Long standing KGB practice generally forbids agents serving outside the USSR to have any contact with domestic communist parties or with Soviet embassies or consulates.

Yet Oswald blazed a trail to the Soviets which was a mile wide. He corresponded with the national headquarters of the Communist Party USA—apparently with some regularity—and visited the Soviet Consulate in Mexico City. In addition to his well-known leftist political activities,

Document Number 376-154
 for FOIA Review on MAY 1976

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11 Dec 64

he also subscribed to the Daily Worker and a Trotskyite publication, allegedly received newspapers from the Soviet Union, and asked last June that his passport be re-validated for travel to the USSR.

3. Certain facets of Oswald's activities in the USSR also argue strongly that the KGB would never have recruited him for a mission of any kind. First, there is no doubt that Oswald was debriefed by the secret police shortly after his arrival in Moscow. They were interested in him not only because he was a political defector, but also because he boasted publicly—in the Embassy on 31 October 1959—that he intended to tell the Soviets "everything he knew" about Marine Corps radar installations on the West Coast. / According to Oswald's former commanding officer, this included the locations of all radar units and their secret call signs, authentication codes and radio frequencies—all of which knowledge was grist for the Soviet intelligence mill.

/it is extremely unlikely that Oswald—with his Russian wife—was even seriously considered for subsequent repatriation to the United States as a KGB asset. As a re-defector from the USSR he would immediately be suspect and thus under surveillance by the FBI. Furthermore, any indication that he had made good on his boast about the radars could easily lead to arrest and indictment on a charge of treason.

4. Secondly, Soviet "executive action" agents (assassins, saboteurs and terrorists) are carefully selected by the KGB and specifically trained for their missions. Oswald very probably ruled himself out of any consideration for this kind of operation. On 14 November 1959, Moscow refused his request for Soviet citizenship.; Shortly thereafter, he became despondent and reportedly attempted to kill himself by slashing his wrists. Even if the KGB had not earlier noted signs of mental aberrations, the suicide try presumably furnished convincing evidence that Oswald was not agent material.

5. Oswald's activities on a Dallas rifle range on 17 November are of some interest both as circumstantial evidence of prior planning to assassinate the President and as one more negative indication of KGB involvement.

Oswald was firing at a range of 100 yards. He was assigned to target number 3, but according to witnesses, was actually firing at targets 7, 8, and 9. He was thus firing through an arc of approximately 15 degrees and obviously seems to have been simulating fire at a moving target. It is, of course, most unlikely that a KGB agent on an executive action mission would be permitted (or would permit himself) to practice firing under such obvious and public circumstances.

6. The evidence presently available to us seems fairly conclusively to rule out any Soviet involvement in the President's assassination. There are, however, several rather fascinating inconsistencies, loose ends and unanswered questions about Oswald. Some, if not all, may be treated in the FBI report. Pending its publication, they are listed below for whatever they may be worth.

a) In an interview last August, Oswald stated that his father-in-law was a Soviet army colonel who taught him to drink vodka when he came to court Marina. After the assassination, however, Mrs. Ruth Paine (some-time Oswald friend and landlady) stated that Marina's father, a colonel, had died when Marina was an infant.

b) To the tune of some \$437, the US picked up the tab for Oswald's return to this country. This loan was repaid between October 1962 and January 1963. During this period, Oswald was earning \$50 per week. Thus, over half of his total earnings went to the government and he supported himself, his wife and child on somewhat less than \$25 weekly. His rent at that time was \$39 per month. The possibility that he received outside help in repaying the government apparently has not been raised in the press.

c) In contrast to the letters Oswald wrote to his mother, Governor Connally and Senator Tower, his letters to the Fair Play for Cuba Committee are rather surprisingly literate. They do not appear to contain his frequent misspellings and ungrammatical language. There have been no suggestions that he received help in framing the letters, and he told the FPCC that he was financing his activities on its behalf out of his own pocket.

d) There is increasing evidence that Oswald and his wife were not happily married. She was well-liked and he was unpopular. She seemed genuinely fond of the United States, did not share his anti-American views and sometimes spoke of the hard life in the Soviet Union. Oswald resented her friends and beat her up on at least one occasion. Since he could not have planned the assassination of the President prior to 26 September—when the Dallas trip was announced—could it be that his application for a passport (without one for Marina) on 24 June, his application for a Mexican visa on 17 September and his trip to Mexico City on 28 September simply indicate that he planned to desert his wife and seek refuge in the Soviet Union?

e) Despite Mrs. Faine's testimony that Oswald could not drive, witnesses said he drove himself to the Dallas rifle range on one of his visits. He was driven there by an unidentified man on his other trip. One witness also claims that two men were involved in the attempt—evidently by Oswald—to shoot General Walker last April.

Distribution:

Orig. & 1 - Addressee
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CLASSIFIED MESSAGE

C. A 75-1448
EXHIBIT 3

TO : DIRECTOR

FROM :

ACTION:

INFO :

271400Z

27 NOV 63 IN 69291

PRIORITY DIR

REF DIR 35133 ~~XXX~~

1. NO TRACES OSWALD. CHECKED ALL AVAILABLE SOURCES INCLUDING LANDING CARD AND HOTEL REGISTERS WITHOUT RESULT.
2. SOURCE REPORTED SOVIETS GREATLY SHOCKED BY NEWS AND IMMEDIATELY BLAMED ASSASSINATION ON EXTREME RIGHT WING ELEMENTS. NO SIGNIFICANT INFO ANY OTHER OPS.
- 3.

COMMENT: /

**REQUESTED TRACES HARVEY LEE OSWALD.

Document Number 151-60

for FOIA Review on APR 1976

27 NOV 63



C.A 75-1448
EXHIBIT 4

CLASSIFIED MESSAGE

FIGURES	
1	4
4	6
3	8

TO : DIRECTOR

FROM :

ACTION:

INFO :

27095 6Z

DIR INFO

7 DEC 63 IN 75594

REF/

(IN 64294)

1. FULL RESULTS OF SOURCE'S MEET WITH SOVIET EMB. REP. 4 DECEMBER

A. RE ASSASSINATION PRESIDENT KENNEDY, SOVIET SAID ACT INCOMPREHENSIBLE BECAUSE COULD NOT EFFECT CHANGES IN U.S., ESPECIALLY FOREIGN POLICY OR BENEFIT RACISTS, OSWALD COMMUNIST TENDENCIES, IF TRUE, OR STAY RUSSIA HAD NO BEARING CRIME BECAUSE CP DIRECTIVE SINCE TIME OF LENIN CONSIDERED OPPRESSION OPPONENTS ONLY DAMAGED COMMUNIST MOVEMENT.

B. CONTRADICTIONS ABOUT CRIME: USE 3 DIFFERENT TYPES OF ARMS, INABILITY ACCOUNT FOR OSWALD APPREHENSION FAR FROM SITE OF ASSASSINATION, SOME BULLETS EXPLOSIVE OTHERS NOT. SOVIET INCREDIBLY DISCONCERTED BY SOURCE'S QUESTIONS RE OSWALD ENTRY EXIT WORK MARRIAGE SOVIET UNION EXPLAINED THAT ALTHOUGH NOT COMMON,

CS COPY

Document Number 350-140

MAY 1976

for FOIA Review on

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CLASSIFIED MESSAGE

IN 7534 PAGE 2

FOREIGNERS CAN WORK SOVIET UNION. I MEN STATED AND REPEATED HE
DID NOT KNOW DETAILS BUT DOUBTLESS THERE WERE SPECIAL CIRCUMSTANCES
OSWALD'S CASE. RE EMIGRATION RUSSIAN WIFE, NO RESTRICTIONS BUT FEW
LEFT SOVIET UNION BECAUSE PSYCHOLOGICALLY ATTACHED SOVIET SOIL.

2.

3.

4.

MEMORANDUM FOR: Director
Federal Bureau of Investigation

SUBJECT : Yuri Ivanovich NOSENKO, Espionage - Russia

1. Reference is made to your memorandum dated 6 March 1964, subject as above, file (S) 65-48510, in which you requested information which would tend to corroborate or disprove NOSENKO's information concerning Lee Harvey OSWALD. Our files contain the following information from NOSENKO as OSWALD which may amplify or contradict the information forwarded in reference:

a. (1) Source was queried on the OSWALD affair on 23 January 1964. Source reported that his own Department was involved directly with OSWALD because OSWALD came to the USSR as a tourist in 1959. He had not come to special Soviet attention in any way until Source's Department received a report that OSWALD had asked to become a Soviet citizen. It was implied that Source himself examined OSWALD's request. The KGB decided to look into OSWALD's case to see if there was any operational interest, which part of the KGB might have use for him and what was behind the request. It was decided that OSWALD was of no interest whatsoever so the KGB recommended that he merely go home to the U.S. as a returning tourist and there go through the formalities with the Soviet Embassy of requesting to become a Soviet citizen. OSWALD then made the dramatic gesture of suicide when he received this response. He had been supposed to go on a trip with other tourists but failed to show up for the group. At his hotel it was found that his key had not been turned in at the desk, so it was presumed that he was still in his room. The Soviets went to

(the room.

the room, knocked and got no answer so finally they broke the door down and found OSWALD lying there bleeding to death. Source himself was not present at this phase of the operation but merely read a report of it.

(2) Now worried about the possibility that OSWALD would do this again if refused asylum, the Soviets decided to give him a temporary residence permit although they had no intention of giving him Soviet citizenship. We asked why he had been sent to Minsk and Source replied that this was merely by chance. They had not wanted OSWALD to stay in Moscow and Minsk was chosen arbitrarily.

(3) Asked about Marina OSWALD, Source said that she was not a confirmed Communist and had been thrown out of the Komsomol for not paying her dues. She had no higher thoughts than to live a good life, have better clothes and such things. She was a stupid woman and had no interest in improving herself. "From the Soviet point of view she already had anti-Soviet characteristics. She was not too smart anyway and not an educated person."

(4) Finally OSWALD got tired of living in Minsk and wanted to go back to the U.S. He had married Marina and wanted to take her with him. The Soviets decided to let them go and used Marina's uncle to talk to them and persuade OSWALD not to spread anti-Soviet propaganda after his departure. The uncle pointed out that the Soviet Government had allowed OSWALD to live here, that he had married here and the Government was going to let his wife leave with him, etc.

(5) Asked why the Government had allowed Marina to leave, Source replied that this was perfectly natural. She was legally married and expressed the desire to leave with her husband. Under Soviet law there is no question but what she would be allowed to leave.

(6) The thrust of Source's account was that neither OSWALD nor his wife had at any time been of any interest whatsoever to

/ Soviet authorities,

Soviet authorities, that there had not ever been thought given to recruiting either of them as agents and that, in fact, the Soviets were glad to get rid of them both.

b. (1) During an interview on 30 January 1964, Source commented that "doctors examined [OSWALD], and there were no indications that he was completely a psychotic." During an ensuing discussion of the possible involvement of the Soviet government in the assassination of President Kennedy, Source stated, "No matter how I may hate anyone, but I cannot speak against my convictions and since I know this case I could unhesitatingly sign off to the fact that the Soviet Union cannot be tied into this [assassination] in any way." He continued that the KGB was frightened of OSWALD, and would not have discussed such a matter with him. When the possibility of recruiting OSWALD was brought up, the decision was "absolutely not." The only involvement permitted was to arrange for Marina PRUSAKOV's uncle in the MVD [Col. Ilya PRUSAKOV] to ask OSWALD not to spread anti-Soviet propaganda in the US in view of the fact that he had been allowed to stay in the USSR and was being allowed to leave. Source commented that he was aware that the KGB had no subsequent interest in OSWALD because after the assassination of the President, Source had to make a complete investigation and even sent several KGB staff personnel to Mexico to investigate on the spot, "not trusting official papers."

(2) When speaking of OSWALD's request to return to the USSR, Source remarked that OSWALD "went to Mexico to apply for permission to go to the USSR. Our people asked Moscow and we said absolutely not because he is completely undesirable -- there was no interest in him whatsoever."

(3) Asked his opinion on Cuban involvement in the assassination, Source stated that he had no information on this subject, but he did not believe that the Cuban government was involved. He gave as a reason that if any word of such involvement had leaked out, Cuba would have been crushed by the US.

2. This agency has no information which would specifically corroborate or disprove MOSERKO's statements regarding Lee Harvey OSWALD.

13. The information in

3. The information in paragraph 1.2. above is based on notes taken during the first half of the first meeting with NOSENKO on 13 January 1964. The early portion of the tapes of this meeting could not be recovered because of the level of external noise. The information in paragraph 1.3. is taken from transcripts of subsequent meetings. In addition, just after his defection NOSENKO discussed the OSWALD case on several occasions without adding anything to the information contained in your Bureau's 4 March 1964 report.

JAMES ANGLETON

CSI - 3/750,996

QUESTIONS FOR NOSENKO

3 March 64

Knowledgeability

1. Did you handle the OSWALD case yourself? If not, to what extent were you involved in it? Did you ever see or talk to OSWALD? During what period were you in close touch with the case? How did you keep up with it after it was no longer in your field of responsibility?

Initial KGB involvement

2. When and how did OSWALD first come to KGB attention? Was his visa application in Helsinki processed by the KGB in Helsinki? In Moscow? Describe routine handling procedure of US tourists to the Soviet Union. Was OSWALD's trip handled any differently?

OSWALD's citizenship request

3. When and how did the KGB hear of OSWALD's request for Soviet citizenship? Did OSWALD make a written request? Did you examine this written request? Can you describe its contents in full? (To whom addressed, how dated, text as closely to verbatim as possible - what asked, what offered, what reasons given). How long had OSWALD been in Moscow before he made his request? Was it sent immediately to the KGB? Was it ever sent to the Supreme Soviet?

Preliminary KGB assessment

4. What steps did the KGB take to investigate the request? At whose direction? How was OSWALD's bona fides established? How was the sincerity of his request tested? How was his operational potential investigated and evaluated? Did the KGB ever think that OSWALD might be an agent of American intelligence? If so, how did it go about investigating this possibility? Describe as fully as possible the KGB elements involved, the KGB personnel involved, the progressive steps taken, the time required.

5. When and by whom was it decided that the KGB had no interest in OSWALD? Was this the decision of the Second Chief Directorate alone, or was the First Chief Directorate consulted. Which element of the Second Chief Directorate was responsible for OSWALD after the decision had been made to grant him a residence permit?

- Discussed to

- Handwritten

3 March 64

Citizenship denied

6. When, how, and by whom was OSWALD apprised of the decision that he must go home and request citizenship from there? At what level of the government or Party was this decision reached? How much influence did the KGB have in this decision?

Suicide attempt

7. Who found OSWALD bleeding to death in his room? Police, hotel employees, Inturist personnel?

8. To what hospital was OSWALD taken? Approximately what was the date of the attempted suicide? How long did he remain in the hospital? Was he visited by KGB personnel while there? What kind of treatment was he given there? Why was the American Embassy not informed?

9. What action did the KGB take on discovering that OSWALD had tried to commit suicide? What recommendations did it make, if any? Did the KGB consider it wise for the Soviet Union to allow OSWALD to stay after this? Why was OSWALD not turned over to the American Embassy? Did OSWALD's attempt tend to confirm the KGB's opinion that asking OSWALD to leave had been a wise move, or did it raise the possibility of reconsideration of his case?

Controls

10. Was OSWALD's room at the Berlin Hotel bugged? At the Metropole Hotel? If so, was it a routine bug, or was it installed especially for OSWALD? What "take" was there, if any? Did you personally review it?

11. Was OSWALD's American passport held at the Metropole Hotel? If so, when and how did he get it back in order to take it to the American Embassy and turn it in?

Psychological assessment

12. Did the KGB make a psychological assessment of OSWALD - describe the methods used in as much detail as possible. What were the professional qualifications of those making this assessment? Were they professional

/psychologists, psychiatrists

psychologists, psychiatrists, intelligence officers, or what? Were non-professional observers employed to report on the activities of OSWALD and the results evaluated by psychologists, for example?

13. What was the Soviets' opinion of OSWALD's personality?

Exploitation

14. Was the KGB interested in OSWALD's positive intelligence potential, and was he interrogated or debriefed on his knowledgeability or on substantive military or other matters? Did OSWALD ever offer to give information on the US Marine Corps or other matters to the Soviets? If the KGB did not try to get such information from him, why not?

15. Was any attempt made to exploit OSWALD for propaganda purposes (Radio Moscow broadcasts, or material for them; TV interviews; lectures; public appearances)?

Residence permit

16. How long was it before OSWALD was given permission to reside in the USSR? When and by whom was he notified that permission had been granted? What did he do while awaiting the decision?

17. What level of the government decided that OSWALD should be sent to Minsk?

KGB control in Minsk

18. Did OSWALD receive any money from the Soviet government at any time, other than his salary at the factory where he worked in Minsk? How much? Why? By whose decision? Is this a standard practice? From the budget of what organization would these funds be allotted?

19. Did the KGB actually have no further interest in OSWALD after he moved to Minsk, or did it continue to monitor his activities and to assess his potential from time to time?

20. Describe controls the KGB exercised over OSWALD. Was he physically surveilled? His apartment bugged? His mail monitored, etc.? Other? Compare this with controls exercised over other defectors.

/Initial efforts

Initial efforts to return to US

21. When and how did the Soviets first learn that OSWALD was interested in returning to the US? Was the KGB aware of OSWALD's letter to the American Embassy in February 1961 in which he indicated this wish?

22. In a letter written in February 1961, OSWALD referred to a previous letter which he claimed he had sent in December 1960. Was such a letter ever observed by the KGB? Would such letters to a foreign embassy, in particular the American Embassy, be withdrawn from mail channels?

Marina PRUSAKOVA

23. How did OSWALD meet Marina PRUSAKOVA? Was the KGB involved in any way?

24. Your statement indicated that the KGB was familiar with Marina's background and character. Was this information available before she met OSWALD? If not, when was she investigated? How extensively? What were the sources of information on Marina, in particular the information that she was "stupid and not educated." She was, after all, a graduate pharmacist.

25. Did the KGB consider recruiting Marina as an informer on OSWALD? As an agent after her arrival in the US? If she was not recruited, what was the basis of this decision? Would you have been aware of a recruitment of Marina?

26. Can you provide any biographic information on Marina and her relatives? As much detail as possible.

27. Can you explain the fact that Marina claims not to know who her father was and bears her mother's surname, thus indicating that she was born out of wedlock, yet she also bears the patronymic "Nikolayevna," indicating that her father was known?

/ 28. To what

28. To what extent was Marina surveilled, or otherwise observed before and after her marriage to OSWALD?

29. On what grounds did the KGB consider Marina "anti-Soviet" at the time she wished to leave the USSR with OSWALD? She appears to have been promoted in her job after her marriage. Why was this allowed?

30. What was the name of Marina's uncle whom you mentioned? What was his relationship to the KGB? What details can you provide on his background, employment, etc. When, by whom, and under what circumstance was he briefed on what he should say to OSWALD regarding OSWALD's comments on the USSR after his return to the US? What was the substance of the briefing given to the uncle?

31. How did it happen that there were so few difficulties in the way of Marina's marriage to a foreigner and departure from the country with him? Have not similar situations in the past usually resulted in prolonged and often unsuccessful negotiations with the Soviet government? What level of the government or Party would make the final decision regarding Marina's marriage to OSWALD and their departure from the country? What official briefings would Marina have received prior to her departure? OSWALD?

32. If the Soviets were glad to be rid of OSWALD and Marina, why did it take so long for action on their exit visas (July - December 1961)?

KGB presence and activities

33. Was there any direct contact between OSWALD and KGB officials at any time while OSWALD was in the Soviet Union? Give specifics where possible, including names, reasons. Was OSWALD witting that any individuals he talked to were KGB representatives? Would any KGB officials have identified themselves to OSWALD as representatives of some other org such as TASS, MVD, etc.? Can you supply the names of any KGB officials who worked on any aspect of the OSWALD case?

34. Did the KGB consider that OSWALD had retained his American citizenship while he was in the USSR? During the period in which the KGB was assessing OSWALD would the KGB have considered it important that he

/retain US

retain US citizenship until such time as the KGB had decided whether to use him? Would the KGB have taken any steps to ensure this, such as intercepting and confiscating OSWALD's mail from the Embassy? Did the KGB intercept the US Embassy letter of 6 November 1959 to OSWALD inviting him in to formalize the renunciation of his US citizenship?

OSWALD's contacts

35. Can you give any information on OSWALD's personal contacts in the Soviet Union? Were any of these people "planted" on OSWALD, i.e., were they KGB employees, informants or agents?

36. Were all of the Inburist personnel with whom OSWALD came in contact KGB agents (or employees)?

KGB procedure

37. In what ways, if any, was the OSWALD case handled differently from other American defector cases?

38. Was the First Chief Directorate given any information regarding OSWALD? If so, through what channel and at what stage? Was any interest shown in OSWALD or Marina by the First Chief Directorate? Would such interest have been known to the Second Chief Directorate?

OSWALD in the US

39. Were you aware of any efforts by OSWALD or his wife to return to the USSR in 1962 or 1963?

40. If so, what did the KGB do with regard to these requests?

41. Do you have any information on OSWALD's trip to Mexico in September 1963? Whom he saw and what he said at the Soviet Embassy?

42. Did the KGB have any information on OSWALD's contacts with Cubans in the Soviet Union? Any information regarding his contacts with Cubans or the Cuban government after his return to the US?

/43. What was

43. What was the reaction in the KGB when it was learned that OSWALD had killed President Kennedy? Did the KGB undertake any further investigation of OSWALD's activities in the Soviet Union after the assassination? Was there a review of his file, was there an additional field investigation? Was any additional information developed?

44. The Soviet Embassy in Washington turned over to the U.S. government certain documents which it said were its consular file on OSWALD. What other files did the Soviet government have on OSWALD - especially KGB files? Describe them. What was the KGB's role in this release of files?

21 January 1964

MEMORANDUM FOR: Mr. J. Lee Rankin

SUBJECT: Draft Questions for Submission to the Government of the Soviet Union

1. You will recall that during our meeting on 14 January we agreed that a draft would be compiled of questions which might be put to the Soviet Government in an effort to acquire additional information on Lee Harvey Oswald's period of residence in the U. S. S. R. Attached hereto are an original and one copy of such a draft.

2. We hope that this effort will be of assistance to the President's Commission.

Richard Helms
Deputy Director for Plans

Attachments

Document Number

489-196A

for FOIA Review on

MAY

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21 Jan 64

20 January 1964

The Commission of Investigation into the facts and circumstances of the assassination of President John F. Kennedy, 22 November 1963, has:

taken note of the Consular materials kindly made available by the Government of the USSR on November 30, 1963, pertaining to the activity of Lee Harvey Oswald and his wife in the United States during the period June 1962 to November 1963.

The Commission is keenly desirous to attempt to secure as much detail as possible regarding Mr. Oswald's stay and activity in the USSR itself. That would cover, roughly, the period October 1959 to May 1962. The Commission, therefore, requests the assistance of the USSR Government in making available to it documentation and details regarding Mr. Oswald's residence in the Soviet Union.

From the study of the currently available record of this period - which is fragmentary - we indicate below broad topics on which the USSR Government's favorable response to this request would be of particular utility to the Commission:

1. To assist in the assessment of Oswald's mental and physical condition during his sojourn in the USSR, the following information is desired:

a. Documentary records of all hospitalizations and medical examinations or treatment in the USSR, including:

(1) details of his treatment in October 1959 in Moscow (when he was allegedly found unconscious in his hotel room by Intourist guide, Rima Shirokova, and was taken to a hospital);

Draft prepared by _____ (based in part on _____ draft). Forwarded to Commission (Mr. Rankin) with covering note from DDP, 21 January 1964. (To be submitted to Govt of USSR)

(2) any other hospitalization records for illness or injuries;

(3) results of any physical examinations.

b. Outcome of psychological assessment or tests, made either at the time of his request for political asylum or later.

c. Any comments about, or evaluation of, his psychological make-up by his work colleagues or others who dealt with him officially or socially in Moscow and elsewhere.

2. To assist the assessment of his use of and skill with weapons, it would be useful to know the following:

a. Did Oswald have any weapon in his possession in the USSR other than the single-barrelled IZH-59, 16-gauge shotgun, #N64621?

b. Was the hunting permit #28231 issued to Oswald in Minsk on 18 June 1960 and valid for one year, ever renewed? If not, can any light be shed on the question, why not?

c. Correspondence connected with Oswald's possession of the weapon.

d. Registration or other documentation pertaining to his possession of any other weapon.

3. To complete our own documentation of Oswald's background and career, the Commission would welcome:

a. Correspondence pertinent to Oswald's request for and the grant of permission to reside in the USSR, including:

(1) Oswald's own letters;

(2) records, or records abstracts, of any commissions or other organs which deliberated the question of asylum and permission to reside in the USSR;

(3) documents or reports of appropriate authorities on the question: why and how Minsk was chosen for his place of sojourn.

b. Documents and records pertinent to Oswald's stay in the USSR, including:

(1) city registrations for his stay in Moscow, Minsk or other places;

(2) hotel registrations or any other records pertaining to travels or movements outside the places where he was registered as a resident;

(3) employment records, including:

(a) his personal file at his place(s) of work;

(b) any union membership booklets other than booklet #01311655 issued by the Electrical Industry Workers Union;

(c) any work books;

(d) his participation in the social and other activities of his union and at his place of work.

(4) records of other central or local authorities, including OVIR and Militia;

(5) other basic personal documents, passes, etc., issued to Oswald;

(6) records of the marriage of Oswald and Marina Prusakova;

(7) statement, preferably month-by-month, of Oswald's salary, his additional income, if any, and any other sums he may have received in the USSR.

c. Description of Oswald's official citizenship and residence status in the USSR, with any pertinent documents.

d. Correspondence and documents pertaining to Oswald's departure from the USSR, including:

(1) Oswald's own written requests or statements of intention to depart;

(2) records of any organs or commissions which deliberated on the question of his departure;

(3) a chronological narrative account of his departure.

e. Any other correspondence of Oswald with Soviet authorities in the USSR.

f. A description of Oswald's personal, social and employment situation and activities in the USSR, including any information which might assist this Commission better to understand his motivation for entering and later leaving the USSR.

4. Did Oswald have any record of activity in the USSR such as drunkenness, disturbing the peace, theft, black-
OR PERSONAL VIOLENCE
marketeting, etc.? If so, information and documents pertinent to such activity would be appreciated.

5. Copies of any statements, before or since the assassination of President Kennedy, volunteered by Soviet citizens who knew or

may have been associated with Oswald during his residence in the USSR that would have a bearing on the questions above stipulated or might be of use to the Commission.

CA 75-1448
EXHIBIT 8

MEMORANDUM

Feb-64
OFFICIAL FILE COPY

TO: Mr. Howard P. Willens
FROM: Mr. W. David Slawson
SUBJECT: Letter to the Russian Government

Jan 1966

Background

Lee Oswald spent almost three years in Russia. Almost our sole sources of information on these years are his own writings and correspondence and Marina's testimony. We are therefore preparing a letter to be sent to the Russian Government asking for additional information.

On 21 January 1964 the CIA sent us a draft of such a letter. The State Department has commented that in its opinion the CIA draft would probably have serious adverse diplomatic effects. The State Department feels that the CIA draft carries an inference that we suspect that Oswald might have been an agent for the Soviet Government and that we are asking the Russian Government to document our suspicions. The State Department feels that the Russians will not answer a letter of this kind, at least not truthfully, and that it will also do positive harm in that they will take offense at our sending it to them. The State Department proposes instead that we send a very short and simple request for whatever information the Russian

Document Number 513-1998
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RECORD COPY

CA 75-1448
EXHIBIT 9

16 Dec 63

TO : Director
Federal Bureau of Investigation
Attention: |

FROM : Deputy Director (Plans)

SUBJECT : | Comments on the Kennedy Assassination

1. Attached for your perusal are the written comments of a Soviet defector on some aspects of the assassination of President John F. Kennedy. As you know, | defected from | about ten years ago, and his personal knowledge is not up to date, but he has stayed in touch with Soviet intelligence developments to the best of his ability. His comments on how Lee OSWALD and his wife must have been handled by Soviet intelligence authorities while they were inside the Soviet Union are particularly interesting and his suggestions for the questioning of Mrs. Marina OSWALD are equally provocative.

2. He has decided to pass on his views without editing, and this Agency does not specifically endorse his conclusions or recommendations.

Enclosures: Per paragraph 1

12 December 1963

Distribution:

BASIC:
None

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Document Number

443-76A

for FOIA Review on

MAY 1976

16 DEC 63

SUBJECT : Contents on President Kennedy's
Assassination

1. Do not call attention to any comments which follow are not based solely on the thesis that OSWALD was specifically dispatched to murder our President. The very real possibility also exists that OSWALD was sent here on another mission by the KGB and subsequently accomplished the deed on his own initiative. However, such a possibility does not make the KGB less culpable as the seeds for OSWALD's act must have been planted while he was being trained in the USSR for his other mission. We might first examine the reaction amongst the millions of American-Americans, that all the USSR has to gain by killing the President. I believe we can make a good case as to the possible gains accruing to the USSR and most specifically accruing to KHRUSHCHEV. The assassination of President Kennedy would accomplish the following for KHRUSHCHEV personally:

a. Remove pressure behind the leadership of the USA would artfully ease up. Witness President Johnson's immediate conciliatory telegram to KHRUSHCHEV, after the murder. We might mention that the USA was the chief proponent for not extending long range credits to the USSR. Extension of long range credits is vital to the USSR at this juncture.

b. This leads us into the most pressing problem within the USSR. The best immediately underlines the extent of the Soviet internal situation. It was my prediction that as a result of the mismanagement of the 1963 harvest and the CHURCH arguments that KHRUSHCHEV would resign during the upcoming December plenum of the Communist Party of the USSR. Our President's death thus effectively diverts the Soviets' attention from their internal problems. It directly affects KHRUSHCHEV's longevity.

c. In the Cuban situation any USA or Cuban capitalistic actions against Cuba will not be tainted by the fact that these are vengeance acts against Cuba because of OSWALD's "Fair Play for Cuba" associations. Obviously the Soviets properly interpret our situation in that President JOHNSON will restrain any planned interventions in Cuba for a long time.

d. A more amiable America will strengthen KHRUSHCHEV's hand in his running battle with the CHURCH. He will thus have another reason to say his form of peaceful resistance is superior to that of the CHURCH's.

CA 75-1448
EXHIBIT 10

27 November 1963

MEMORANDUM FOR: Chief,

SUBJECT:

Assassination of

Soviet Defector
Comments on President Kennedy's

1. We should understand that my comments which follow are not based solely on the thesis that OSWALD was specifically dispatched to murder our President. The very real possibility also exists that OSWALD was sent here on another mission by the KGB and subsequently accomplished the deed on his own initiative. However, such a possibility does not make the KGB less culpable as the seeds for OSWALD's act must have been planted while he was being trained in the USSR for his other mission. We might first examine the question uppermost in the minds of most Americans, "What did the USSR have to gain by killing the President?" I believe we can make a good case as to the precise gains accruing to the USSR and more specifically accruing to KHRUSHCHEV. In preface let me admonish my readers not to play down the political aspects of Soviet intelligence operations. The American intelligence services' apolitical approach to interpreting and countering Soviet intelligence operations frankly frightens me at times. But more specifically the assassination of President Kennedy would accomplish the following for KHRUSHCHEV personally:

a. Western pressure behind the leadership of the USA would automatically ease up. Witness President Johnson's immediate conciliatory telegram to KHRUSHCHEV, after the murder. We might mention that the USA was the chief proponent for not extending long range credits to the USSR. Extension of long range credits is vital to the USSR at this juncture.

b. This leads us into the most pressing problem within the USSR. The West persistently underrates the extent of the Soviet internal situation. It was my prediction that as a result of the mismanagement of the 1963 harvest and the CHICOM arguments that KHRUSHCHEV would resign during the upcoming December plenum of the Communist Party of the USSR. Our President's death thus effectively diverts the Soviets' attention from their internal problems. It directly affects KHRUSHCHEV's longevity.

c. In the Cuban situation any USA or Cuban expatriate actions against Cuba will now be tainted by the fact that these are vengeful acts against Cuba because of OSWALD's "Fair Play for Cuba" associations. Obviously the Soviets properly interpret our situation in that President JOHNSON will restrain any planned interventions in Cuba for a long time.

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d. A more amenable America will strengthen KHRUSHCHEV's hand in his running battle with the CHICOMS. He will thus have another reason to say his form of peaceful coexistence is superior to that of the CHICOMS'.

e. Conceivably any of President KENNEDY's planned actions to get even more firm with the Soviets during the pre-election year are thus sabotaged by the President's murder.

f. The Soviets obviously understood that the death of President KENNEDY would result in the emergence of DeGAULLE as a strong Western leader. DeGAULLE of course says "what's good for France is not necessarily bad for the USSR."

g. The death of President KENNEDY removes a popular rallying point for our allies. Furthermore, and more pertinent, his death removes a symbol for Soviet intellectuals who have inevitably made invidious comparisons between their own intellectual desert and the flowering of the arts under the KENNEDYS. The problem of the intellectuals in the USSR should not be interpreted as the least of KHRUSHCHEV's internal problems. We must recall that beginning with Lenin, intellectuals have provided the impetus for revolution in the USSR and they comprise one of the three balls KHRUSHCHEV must constantly juggle--the intellectuals, the Party and the Military.

h. If the USSR has any ambitious aims in manipulating U.S. public opinion their murder of President KENNEDY would serve to exacerbate the present differences between the radical left and right in America. In fact the USSR propaganda machine began to say the murder was committed by the radical right as soon as the deed was done and before OSWALD was captured.

i. Finally, the death of President KENNEDY, whether a planned operation or not, will serve the most obvious purpose of providing proof of the power and omniscience of the KGB. This application of sheer terror could be interpreted as a warning to Russia's own citizens, as the Soviet intelligence services have suffered some very real reverses recently with PENKOVSKY, GOLITSIN's defection, their ignominious expulsion from the Congo, etc. I have long predicted that the USSR would take some drastic action to halt the rapid erosion of their security.

2. Can we briefly view the OSWALD operation as a mounted KGB operation to kill the President? What are the essential ingredients?

a. The KGB had some three years to assess OSWALD in the USSR. Laymen will deprecate the value that the KGB attaches to such on the

spot assessment. They may also say that OSWALD was a nut and properly would not be entrusted with such an operation by the KGB. However the KGB properly knows that historically most assassins have been unbalanced maladjusted types.

b. In such an operation the KGB could not use a Soviet citizen though the very real possibility exists that OSWALD was assisted by a Soviet illegal of the KGB 13th Department. Sticking to essentials-- It was a good plan that did succeed.

c. OSWALD did escape from the book building.

d. He did get to a theater which could have been his point of contact with his illegal case officer. Certainly we know the KGB's penchant for using theaters for meeting places.

e. After his arrest, which was only due to his unfortunate encounter with Policemen TIPPEE, OSWALD did remain silent. How like the behavior of Col. ABEL was his behavior in this regard.

3. Also the very real possibility exists that the KGB intended to liquidate OSWALD after he did the job. His meeting in the theater was probably for just such a liquidation or removal from the scene. In RUBY's part in the operation we must recognize the possibility that RUBY was also a KGB hatchet man. Looking at the bare essentials of his part in the operation we see the following:

a. RUBY had access to the police station. Reports say he personally knew most policemen.

b. He successfully silenced OSWALD.

c. RUBY remains silent and his cover is holding up.

d. He has a good legend of temporary insanity.

e. He has a reasonable chance to escape the death sentence.

4. The undersigned might be better qualified to comment on the OSWALD aspects of this case if we knew the following about his activities prior to his departure to the USSR: (a., b., and c. below offer three possible answers to the question, "Why did he go to Moscow?")

a. First, OSWALD was a self-made Marxist or Communist who decided to go on his own; that is, he made this decision by himself and prompted by no one. He possibly was looking for a better life without knowing what the Soviet Union really is.

b. Second, after OSWALD's discharge as an "undesirable" from the Marines, he found himself in a difficult and unpleasant situation; is it possible that in this situation he was noticed by a spotter or recruiter for the Illegals or some other department and was considered as a possible candidate for use or recruitment? The full information about OSWALD was sent to Moscow, and on Moscow's order an investigation of OSWALD was made and there followed a decision to "invite" him to Moscow. Using the word "invite", the undersigned has in mind that some agents or recruiters through conversations with OSWALD, but without actually suggesting the trip itself, inspired OSWALD to travel to the USSR. And, in this case, it is possible that someone gave him some financial assistance and some advice on how to do this.

c. Third, OSWALD went to Moscow, or was sent to Moscow, by some pro-Soviet, pro-Communist, pro-Cuban organization(s), having in mind that he would stay in the Soviet Union for a few years, learning more about the Soviet Union and receiving instructions for future operations, activities, etc.

5. Knowing for sure that the Soviets never give a visa without making an investigation of the person making the application, we have to make our own investigation of the following questions:

a. When did OSWALD first begin to express his wish to go to the Soviet Union?

b. To whom did he talk, whom did he contact at this early time, and how much time elapsed between these talks and contacts and his application?

c. How, when and through whom did OSWALD get his Soviet visa?

d. How long did it take for him to get the visa?

e. Who personally gave the visa to OSWALD? We must know if the person at the Embassy who talked to OSWALD was a KGB employee.

f. When and how did OSWALD travel to the USSR (air, sea; through which countries; in which countries, if any, did he make stops; how long were such stops)?

6. Together with the above, it is very important to know of OSWALD's circumstances before his trip to the USSR. Who knew in advance that he was going and who knew that he had gone: Mother, brother, relatives, friends, neighbors, girl friends, boy friends, old buddies, etc.?

To whom did OSWALD say goodbye before he left for the USSR: personally or by telephone, by mail? Did he ever ask anyone any questions on traveling to the USSR? Whom?

6b OSWALD in Moscow. When OSWALD arrived in Moscow, he was under observation, investigation and complete control by the KGB. In this particular case, under the Second Chief Directorate (CI). Being under the control of the KGB, at the same time he was under heavy investigation directed at answering the question of why this stupid American had come to the USSR (it doesn't make any difference whether they knew in advance about OSWALD or not; anyway, they would conduct such an investigation). Every possible bit of information was taken from OSWALD about the USA, especially about his service in the Marine Corps, etc. At the same time, OSWALD was under constant observation and study for possible future use by the Soviet Intelligence and CI services.

7. It should be noted here that any foreigner, especially an American, who arrives in the USSR for permanent or prolonged stay always is examined by the Soviet State Security as a possible candidate for future use (special training and recruitment) within the USA or other countries (but against the USA). After a good study and investigation which continues about six months in Moscow, under normal financial support and minimum comfort from the KGB, the KGB makes its conclusions: that OSWALD is clear and is who he claims to be and that he might possibly be used or useful for Soviet Intelligence or CI Service. NOTE: the undersigned believes that during his (OSWALD's) first few months in Moscow, additional inquiry and investigation of OSWALD was going on through the Soviet Embassy in Washington and through Soviet agent networks in the USA and possibly through pro-Soviet and pro-Communist organizations within the USA.

8. After being a few weeks or months in Moscow, OSWALD expressed a wish to stay forever in the Soviet Union and to be a Soviet citizen. Then the KGB said to him: "If you really want to be a Soviet citizen and serve the Communist cause, you must denounce American Imperialism and American citizenship." Therefore, somewhere in this period, OSWALD went to the US Embassy and renounced his US citizenship. After this act State Security decided to give OSWALD some kind of job in accordance with his knowledge and capabilities, at the same time continuing to study him as a potential agent.

9. Because to make a good agent takes a long time and because OSWALD was impatient—and because he had not yet been given Soviet citizenship—the KGB decided not to make of him a good agent, but did not break relations with him and decided to use him in a more or less open way.

10. When OSWALD showed some dissatisfaction about the Soviet way of life (it is usual for Americans)—and by this time OSWALD had already met his girl friend (the KGB probably helped him to find her—to make him happy and to make sure that he would not leave the Soviet Union)—the KGB at the same time continued to train him, probably in the way of an old-fashioned Marxist, telling him that he would be a good fighter against imperialists and against American millionaires, such as ROCKEFELLER, KENNEDY and others. And somewhere here, while in this kind of training, a low level case officer of State Security told him that to have a better life in the US you have to fight very hard to bury capitalism, as our Nikita Sergeevich says; together with capitalism, you have to bury all the millionaires, including your first beast and blood-sucker, KENNEDY (NOTE: this is not a tall story; it is the way in which State Security operates with the stupid Marxists and with naive followers of the Communist movement). If on a high level within the KGB it was decided that there is nothing good in OSWALD and that he is just a naive American and that he could not be relied upon fully, but that nonetheless he could be used because he is for our cause and is against capitalism in general, then the following would have been suggested—after OSWALD already had asked permission to return to the USA: OSWALD was told to be a good fighter against capitalism and to secure your Soviet citizenship, you must show yourself as a good fighter for the Communist cause inside the USA; then, we give you permission because we believe you are a strong Marxist to return to the USA and to do something for our common cause, such as to help any American pro-Soviet organizations or, for instance, become a member of a Free Cuba Committee or in case of crisis to do something outstanding—that will be noticeable everywhere—that will prove that you are a real Communist. Then, somewhere here, if he was already a Soviet agent or not, the girl showed up, or she was there before, but by this time she was pregnant and OSWALD decided to go to the USA. Then he was told. After this talk, OSWALD shouted—where is your freedom? She is my wife, we have a child, and I would like to go. If he did make a big noise, they decided to let him and her go; or if he already was a trained agent, then without any kind of noise on his part, but with some difficulties, permission was granted for her to go with him.

11. Looking at the wife of OSWALD, we should have in mind that she was and still is an agent or at least a low-level informant of the KGB. If she was not before she met OSWALD, she became so after the second day she met him. This is the regulation in State Security on how to handle foreigners—it makes no difference whether they are Communists or not.

12. Investigation of OSWALD's wife should be undertaken as soon as possible, with special attention being paid the questions to follow:

a. First, who is she? Her education, profession, age, family background, Party affiliation (Komsomol membership). If she was a member of the Komsomol, then the Komsomol organization will take any steps possible against her traveling to the US. Also, she must be expelled from the Komsomol, and then she automatically would be considered a member of the Imperialist Camp. Then, if she was a member of the Komsomol and this action did not take place, it was because of KGB interference against such action. The same action would relate to any of her relatives—father, mother, brothers....if they were members of the CPSU or Komsomol.

b. To which offices was she invited before and after their marriage? If she was invited to some official Soviet offices, and if these offices asked her not to marry a foreigner and not to go with him, then probably she was not a member of the Komsomol and she did it on her own will; but if she answers that no one invited her to such offices, then the whole job was done by the KGB—smoothly and quietly, with no talk going around about it.

c. Who helped her and how many times to write papers for the Soviet Ministry of Foreign Affairs to say that she had married an American citizen and would like to go with him to the USA? If it was done a few times and with great difficulties, then probably it was done only with a little help from the KGB. If, however, the papers were prepared only once and permission was granted after only a few months' wait, then everything was done by the KGB. (According to the American newspapers, her application for permission to come to the US was processed very easily and quickly.)

d. When and where did they register their marriage? Who were the witnesses to that marriage? How many relatives and friends (of wife) were present at the wedding and celebration. What kind of gifts did they receive at the time of marriage and from whom? Where did they take up residence after marriage? Were they given an apartment, or a room? And in what neighborhood?

e. Where did her husband, OSWALD, work? In what factory? What were his hours of work? How long did he spend in Moscow before he went to Minsk? Who chose Minsk—did he or did someone else?

f. Who were her husband's friends? From what circles? Workers? Intellectuals?

g. How many times were she and her husband—while they lived together — invited to the police stations or any other Soviet government offices, together or separately? (NOTE: There is no other office than the KGB which would make such an invitation. It makes no difference if they were agents or not.)

h. How smart (intelligent) is she? Does she really speak no English? Is her English better than she shows or better than it should be after being here only two years? Or worse?

i. What does she say about life in the Soviet Union?

j. Did her husband have a gun while he was in the Soviet Union? If so, how does she know about it? When did he get it? Did he have special permission to carry a gun? Did he bring this gun with him across the border? For your information, nobody carries a gun in the USSR without the KGB eventually learning of it. Least of all an American.

k. Who gave financial help to them before they left the Soviet Union? (NOTE: For a regular worker in the Soviet Union, it is impossible to save enough money to buy a ticket and make any kind of preparations to go abroad.)

l. Who gave instructions to OSWALD to ask for financial assistance at the American Embassy upon his return to the USA?

m. Was their first child born in Russia--baptized in the USSR? If so, in what church? Whose idea was it? Did they baptize their second child, born in the US?

n. If OSWALD never had a permanent job here in the USA, then who was going to finance his next trip to the USSR? How much did his wife know about his plan to return to the USSR via Cuba?

13. The investigation of the wife should be made step by step, keeping in mind and never forgetting that OSWALD as well as she herself were under constant observation and with constant contacts with organs of the KGB. Without such observation and contacts with organs of the KGB, no foreigner can live within the Soviet Union.

14. In any investigation of this case we should not lose the initiative. In view of the extraordinary circumstances surrounding this case the FBI, through the Department of State, could logically enough request that the USSR provide all available info on OSWALD's story in the USSR and the purpose of his visit to the Soviet Embassy in Mexico City. A friendly nation can be expected to ~~grant~~ such a request. We might learn a great deal from the Soviet reply. HONOR

CA 75-1448
EXHIBIT 11

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE WASHINGTON FIELD	OFFICE OF ORIGIN DALLAS	DATE 12/2/63	INVESTIGATIVE PERIOD 11/18 - 30/63
TITLE OF CASE LEE HARVEY OSWALD		REPORT MADE BY CARL E. GRAHAM	TYPED BY elw
		CHARACTER OF CASE IS - R	

REFERENCES: Bureau teletype 11/30/63.
Bureau teletype 12/1/63.

- P -

ADMINISTRATIVE DATA:

Investigation conducted by WFO that was known to be of evidentiary significance was previously submitted to the Dallas Office in appropriate FD 302s. This material forwarded by airtel to Bureau dated 11/26/63 under caption "Assassination of President JOHN F. KENNEDY, 11/22/63, Dallas, Texas." This information is not being repeated in this report. It is noted this information pertained to the transportation of evidence, collection of handwriting specimens of OSWALD, delivery of bullet obtained from U.S. Secret Service, and the obtaining of a U.S. Postal Money Order used to purchase rifle used in the assassination. Also included in this material was an insert reflecting the results of review of USMC personnel record for LEE HARVEY OSWALD.

DEC 2 1963

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE <i>[Signature]</i>	DO NOT WRITE IN SPACES BELOW
COPIES MADE: 10 - Bureau (105-82555) <i>6 cc bulky, see list</i> 3 - Dallas (100-10461) 3 - Washington Field (105-37111) (1 - 89-75)		105-22505 440 1079 1079 REC-34 30 DEC 31 1963
COPIES DESTROYED 30 FEB 16 1973		
Dissemination Record of Attached Report		Notations <i>copies noted as destroyed 12/16/68</i> <i>classified 4/11/65</i> <i>6/1/68</i>
Agency	<i>[Handwritten]</i>	
Trans Recd.	<i>2-4-64</i>	
Re Fwd.	<i>2-5-64</i>	
How Fwd.	<i>by airtel</i>	

cc: Women Comm.
12-18-63
12-23-63

JAN 20 1964

WFO 105-37111

6

On some TV program on November 23, 1963, or *Texas* November 24, 1963, it was reported that the Dallas Police Department had questioned a JOSE RODRIGUEZ, a fellow employee of OSWALD, at the book warehouse from which assassination of President KENNEDY occurred. Office of Security had check made of visa files of Department of State regarding this name and located following information regarding one JOSE MIGUEL RODRIGUEZ MOLINA, possibly identical.

On March 6, 1959, latter individual was issued B-2 visa at Embassy, Havana, Cuba, valid through March 5, 1961, for one month's visit to a cousin in New York City, not identified and no address given. He was warned not to accept work or overstay period of admission. Visa Number 1490477 was issued. Following description was given:

Date of birth:	1/27/36
Place of birth:	Havana, Cuba
Height:	5'6"
Weight:	180 pounds
Hair:	Brown
Eyes:	Brown
Complexion:	Fair
Marital status:	Married
Home address:	Calle 15 #201 Lawton, Havana, Cuba

On November 26, 1963, PETR S. DERJABIN, an admitted former Soviet intelligence officer, furnished the following information concerning LEE HARVEY OSWALD and his wife: *Russia*

DERJABIN does not believe the Soviet Government had any knowledge of OSWALD's plans to assassinate President KENNEDY; however, he does believe that OSWALD and his wife had some connection with the Russian intelligence service. He said the Soviet Government undoubtedly has a file on OSWALD and feels that it should be requested to furnish information regarding OSWALD's activities while in the Soviet Union. Normally, when an individual leaves the Soviet Union and has been working for the government, he would be furnished some clothes and transportation expenses to his destination. Since this was not done, DERJABIN

feels that OSWALD's departure from the Soviet Union was planned by the intelligence service. OSWALD must have been investigated upon his arrival in the Soviet Union and probably lived in Moscow while he was undergoing investigation prior to his going to Minsk. Also, DERJABIN feels that OSWALD must have been indoctrinated into the Soviet system prior to his being permitted to return to the United States, or he was considered unstable and allowed to leave as an undesirable. He said OSWALD's wife must have been an uneducated peasant type and considered safe to leave the Soviet Union or had connections with the Soviet intelligence service.

DERJABIN believes that the wife of OSWALD should be observed closely and thoroughly interrogated. DERJABIN suggested that among others, the following questions should be asked:

1. When was it that she first met OSWALD and the details concerning such circumstances. DERJABIN said that if she was not working for intelligence service at the time of the meeting, she would have been contacted within two days.
2. Where they lived in Minsk and details regarding the type of apartment.
3. Details regarding OSWALD's activities while in Minsk during non-working hours.
4. Where did he go and how long was he gone during the evenings.
5. How well did he learn the Russian language.
6. Was she a member of the Komsomol, and were any of her family members of the Communist Party.
7. What station in life did they occupy and were any of them officials of the Soviet Government.

WFO 105-37111

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8. Details regarding their securing permission to leave the Soviet Union.
9. Details concerning events leading to their marriage.

By communication dated November 26, 1963, information was received from the Savannah FBI Office that one "HOB0" SMITH had telephonically advised an employee of a television station in Columbia, South Carolina, on November 9, 1963, he knew President JOHN F. KENNEDY was going to be killed. This same individual again contacted the employee on November 26, 1963, and said he had tried his best to keep the President from being shot but was too busy. This caller also claimed he had "protected WILSON with his life as far as he could go" and indicated he was a good friend of DWIGHT D. EISENHOWER and had written many letters to him. The caller indicated he goes by the name of "HOB0" SMITH but this is not his real name.

The above information was furnished to SAC ROBERT I. BOUCK, Protective Research Section, U. S. Secret Service, on November 27, 1963. SAC BOUCK advised his files reflect no record of "HOB0" SMITH.

A review of information in WFO files reflects one "HOB0" SMITH, also known as JAMES LEWIS SMITH, 253 Oakland Avenue, Spartanburg, South Carolina, was known as a chronic complainant in 1946.

By communication dated November 26, 1963, Los Angeles FBI Office, advised Lieutenant MICHAEL DEPADRO, who was formerly assigned to U. S. Marine Corps, Air Control Squadron Number 5, Marine Corps Air Facility, Santa Ana, California, in 1958, had been upset by literature received by LEE HARVEY OSWALD, who was a member of this unit in early 1958. OSWALD reportedly told DEPADRO such literature was being received so he could practice Russian.

On November 27, 1963, IC MICHAEL VERNON DEVOL determined from U. S. Marine Corps files the service record for DEPADRO, which would contain his home address, presently stored at the Military Personnel Records Center, St. Louis, Missouri.

CA 75-1448
EXHIBIT 12

8 April 1964

MEMORANDUM FOR: Deputy Director for Plans
SUBJECT: Status Report on Work for
the Warren Commission

1. Paras 1 and 2 of the attached memorandum reflect work already done and forwarded to the Warren Commission. Para 3 indicates material now in process. Items a and c will be completed by 15 April. Item b is dependent upon an answer from the FBI which as late as this morning is not forthcoming.

2. Regarding the other suggestions made by [redacted], I do not believe he should discuss any aspect of this case alone on any basis with members of the Commission staff. If this is done, he should be accompanied either by [redacted] or [redacted] who is working on the case. As for the questioning of Marina, I would be reluctant to have [redacted] or anyone else from Clandestine Services figure directly in this.

3. The suggestions made in para 6 have merit and if you agree, we will tell him to proceed with these.

Attachment

Document Number

647-824

for FOIA Review on JUN 1976

CS COPY

8 April 1964

MEMORANDUM FOR:

SUBJECT : Status Report on Work for the
Warren Commission.

1. To date, has prepared and forwarded through appropriate channels to the Warren Commission the following papers:

a. Chronology of OSWALD in the USSR, October 1959 - June 1962

b. Questionnaire for Mrs. Marina OSWALD

c. Biographic Information on Mrs. OSWALD and Her Relatives

d. Name List with Traces

- a revised list of approximately 160 persons known to the OSWALDs, with traces, was submitted in March.

e. Soviet Use of Assassination and Kidnapping
(a background paper)

f. Soviet Press Reaction to the Assassination of President Kennedy, 23 November - 31 December 1963

2. In addition, we have prepared and forwarded several other items including the following:

a. A letter to the Commission providing information on OSWALD's Soviet weapon (February).

b. Answers to the Commission's questions concerning information in State Department files (April).

/c. Pictures and biographic

23
2
5
10
12

c. Pictures and biographic summaries concerning two Soviet officials stationed in Mexico. (Provided for forwarding to the Commission).

3. At the present time we have the following items in progress:

a. Additions to the chronology based on material recently made available by the FBI.

b. A picture of OSWALD in Minsk which was found in CIA Graphics Register. (This is not to go to the Commission until the results of an FBI check with the source of the picture becomes available).

c. A brief summary of the OSWALDs' contacts with Soviet officials and other citizens after their arrival in the United States.

4. I have reviewed Marina OSWALD's testimony before the Commission and plan to return to the Commission's offices for a further examination of pertinent transcripts and exhibits next week. Mr. David Slawson of the Commission's staff has indicated a desire to discuss the Soviet aspects of the case informally with me after his return from a field trip. With your approval, I shall do so.

5. Mr. Slawson also stated that Marina is to return to the Commission for further questioning and that he would advise us of the date that this would occur so that we might submit more questions for her if we wished. He voiced his desire to have someone from CIA (he implied that it might be me) present when Marina is again testifying.

6. I believe that we should not conclude our work for the Warren Commission without preparing a brief analysis of certain aspects of the Soviet phase of the OSWALDs' careers. NOSENKO's testimony has probably eliminated the need for some of this, but I think that we should do a brief essay on Marina and on OSWALD too, drawing together what we believe to be the significant features of their life and activities in the USSR. This should include a comparison of OSWALD's experiences with those of other defectors to the USSR, going beyond the information already provided the Commission on this subject.

Good idea if workable

CS COPY

CA 75-1448
EXHIBIT 13

Program Transcripts
SPECIAL PROJECTS DEPARTMENT
CBS News

CBS TELEVISION NETWORK

CBS EVENING NEWS WITH WALTER CRONKITE

Friday, May 9, 1975
6:30 - 7:00 PM, EDT
7:00 - 7:30 PM, EDT

ANNOUNCER: From CBS News headquarters in New York, this is the
CBS EVENING NEWS WITH WALTER CRONKITE; and Peter Collins in
Vientiane, Laos; Randy Daniels in Detroit; Robert Schakne in
New York; David Culhane in New York; Sharron Lovejoy in Lansing,
Michigan; Daniel Schorr in Washington; and Barry Serafin in
Washington.

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CRONKITE: How questions are being asked about the assassination of President Kennedy and about Lee Harvey Oswald, the man who killed him. Daniel Schorr has learned some significant details about the Russian phase of Oswald's life.

DANIEL SCHORR: In February, '64, ten weeks after the Kennedy assassination, Lieutenant Colonel Yuri Nosenko of the KGB - the Soviet secret police - defected to the U.S. with details of the KGB file on Lee Harvey Oswald. Now his existence and his FBI interrogation report have been disclosed, after eleven years. Nosenko told the FBI the KGB considered Oswald mentally abnormal, possibly an American agent, decided not to try to recruit him. The report wasn't cited when CIA Director John McCone and his deputy, William Helms, testified before the Warren Commission. Today, McCone explained...

JOHN MCCONE [former CIA Director]: It is traditional in the intelligence business that we do not accept a defector's statements until we have proven beyond any doubt that the man is legitimate and the information is correct. It took some time to prove the bona fides of the man, which subsequently were proven, however, but were not known at the time of the testimony.

SCHORR: Nosenko said the KGB had decided to refuse Oswald Soviet citizenship, tried to get rid of him, and only after he slashed his wrists in a Moscow hotel, permitted him to go to Minsk, with instructions that he be watched but not recruited. Russians who hunted rabbits with Oswald reported he was a very poor shot.

When Oswald turned up at the Soviet embassy in Mexico in September, '63, said Nosenko, the KGB vetoed a visa for him.

After the assassination, in November, the KGB found in Oswald's file an entry that the KGB in Minsk had tried to influence Oswald in the right direction, suggesting a possible assignment. But a crash report to Nikita Khrushchev concluded that was a bureaucratic, self-serving statement and wrong.

--Daniel Schorr, CBS News, Washington.

CA 75-1448
EXHIBIT 14

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY
200 Maryland Ave. NE.
WASHINGTON, D.C. 20002

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

6 Mar 64
J. LEE RANKIN,
General Counsel

MAR 6 1964

Request from Warren Commission for conference
on defection of Yuri NOSENKO.

Mr. Richard Helms
Deputy Director for Plans
Central Intelligence Agency
Washington, 25, D. C.

Dear Mr. Helms:

The Commission has recently received a report from the Federal Bureau of Investigation covering an interview that took place between representatives of the Bureau and the recent Soviet defector, Yuri Ivanovich Nosenko.

It appears to us that Nosenko's defection, whether or not it is authentic, is of very great interest to the Commission. I would like to set up a conference early in the week of March 9 between members of the Commission staff and members of the CIA to discuss this matter further and to explore generally the work your Agency has in progress of interest to this Commission.

Will you please contact me at your earliest convenience to set a time for this conference.

Sincerely,

J. Lee Rankin

J. Lee Rankin
General Counsel

Document Number

582-249A

for FOIA Review on JUN 1973

CS COPY

6 Mar 64

6 Mar

CA 75-1448
EXHIBIT 15

13 April 1964

MEMORANDUM FOR THE RECORD

1. | called me in at 0900 and showed me in draft a memorandum recording his conversation with Allen Dulles on Saturday 11 April re CIA assistance to the Warren Commission. In essence, the conversation dealt with questions which the Warren Commission will direct to CIA. Copy follows?

*approved
14 April 64*

2. | has suggested that nothing further be done re preparation of an analysis of the OSWALD affair pending receipt of the questions from the Commission. Answering these questions might make it unnecessary to prepare an analysis.

3. | asked that we prepare, on a priority basis, a reply to the FBI communication containing two reports on the OSWALD case from Nosenko. | is handling. | and | are to see it in draft.

P.S. | also returned to me the several items of Oswald production borrowed on 11 April.

Document Number 657-831
for FOIA Review of JUN 1976

13 April 1964

MEMORANDUM FOR: Deputy Director for Plans

SUBJECT: ^{MEMO} Discussions with Mr. Allan W. Dulles
on the Oswald Case on 11 April.

1. At the instructions of the DDP, I visited Mr. Dulles on 11 April to discuss with him certain questions which Mr. Dulles feels the Warren Commission may pose to CIA. Mr. Dulles explained that while the Commission wished to clarify certain aspects of the Oswald case in which a response from CIA seemed necessary it was not sure how the questions should be posed nor how CIA should respond. Mr. Dulles hoped that our discussions would enable him to advise the Commission on this matter. He first raised the allegation that Oswald was a CIA agent. He mentioned two sources for this accusation. One was Mrs. Marguerite Oswald, Lee Harvey Oswald's mother, and the other was Mr. Mark Lane, Mrs. Oswald's attorney. He suggested that the Commission, in asking us this question, might well forward a summary or pertinent excerpts of the testimony concerning this matter. He noted, however, that Mrs. Oswald's testimony was so incoherent that it would be difficult to find pertinent excerpts, thus it would be better for the Commission to summarize the testimony.

2. Mr. Dulles then suggested that the response to this question could be in the form of sworn testimony before the Commission by a senior CIA official or a letter or affidavit. He recalled that the Director of the FBI had replied by letter to a similar question. In any event, Mr. Dulles felt the reply should be straightforward and to the point. He thought language which made it clear that Lee Harvey Oswald was never an employee or agent of CIA would suffice. We should also state that neither CIA nor anyone acting on CIA's behalf was ever in contact or communication with Oswald. Mr. Dulles did not think it would be a good idea to cite CIA procedures for agent assessment and handling to show that it would have been unlikely for Oswald to have been chosen as a CIA agent to enter Russia. There are always exceptions to every rule and this might be misunderstood by members of the Commission with little background in activity of this sort. I agreed with him that a carefully phrased denial of the charges of involvement with Oswald seemed most appropriate.

Document Number

657-831

SECRET

for FOIA Review of

JUN 1975

3. The next question concerned the possibility of Oswald's having been a Soviet agent. Mr. Dulles suggested that the Commission's question on this matter be phrased somewhat as follows: "In the knowledge or judgment of CIA was Lee Harvey Oswald an agent of the Soviet intelligence services or the intelligence services of other communist states at any time prior to 22 November 1963, or was Oswald solicited by these intelligence services to become such an agent?" After considering this question, it became apparent that the problem of making a "judgment" as to whether Oswald might have become an agent of a communist power was subject to the same difficulties we would have encountered if we had tried to answer the allegation of CIA affiliation by citing CIA's own procedures. If CIA, in responding to the "judgment" portion of the question, were to say that in light of its knowledge of Soviet Bloc procedures it was unlikely that Oswald would have become their agent, we would have to admit that exceptions are always possible. Mr. Dulles and I felt that it would be better to avoid this and confine our response to a precise statement of fact. This statement, in Mr. Dulles' view, could note that CIA possessed no knowledge either gained independently or from its study of the materials supplied by the Commission tending to show that Lee Harvey Oswald was an agent of the Soviet intelligence services, or the services of any other Communist country, or for that matter of any other country.

4. Both questions were discussed individually but later Mr. Dulles suggested that because they were interconnected it would be better if the Commission posed them in one letter to CIA. I agreed that this might be simpler.

5. After covering these questions of direct interest to CIA, Mr. Dulles mentioned other issues which concerned the Commission. He remarked that members of the Commission could not understand why CIA had not begun an investigation of Oswald as soon as it received word that he had defected. I noted that this question had been discussed with Mr. Rankin and his staff and there seemed to be considerable understanding of the practical circumstances which made it impossible for CIA to undertake such investigation inside the USSR. I expressed the hope that it would not be necessary for CIA to place matters of this sort in the public record. Mr. Dulles agreed.

6. Mr. Dulles then asked if it were normal for the Soviet Government to permit a Soviet woman to marry a foreigner and then allow her to leave with her husband shortly after the marriage. This question perturbed the Commission and they would like to have an answer. I said that whereas the response could have some bearing on whether Oswald was an agent, the problem seemed to lie more in the consular field and I suggested that the best way to obtain an opinion on what constituted "normal practice" in marriage cases in the USSR would be to question the Department of State. Mr. Dulles agreed with this.

7. Mr. Dulles expressed his appreciation for the assistance accorded him and said that he would discuss the framing of the questions for CIA with Mr. Rankin on Monday, 13 April. At this point I did offer a personal opinion in regard to the way in which CIA should respond. Noting that testimony on questions such as these would be difficult to insert in the public record, I suggested that it would be best if the CIA response were in written form. However, much will depend on the form in which the questions are eventually put to us and I imagine that a final decision can be made at that time.

8. At no time during these discussions did Mr. Dulles make any inquiries about Nosenko and I volunteered no information on this score.

C. A 75-1448
EXHIBIT 16

9 March 1964

MEMO FOR THE RECORD: *concerning discussion over who would ask questions of [redacted] including proposed questions.*

1. On Friday, 6 March, in response to a question from [redacted] Paul Dillon stated that the questions for [redacted] re the Oswald case "would not be asked". [redacted] stated that the FBI was covering the whole Oswald case, spending a good deal of time on it. /

2. On Monday, 9 March, I saw [redacted] briefly on this matter and protested the decision not to ask our questions. He reiterated that it had been decided "that the FBI should handle the matter and our questions would not be asked". He thought, however, that they would be covered eventually. I indicated that I had no confidence in the FBI's ability to cover the Soviet phase. I indicated that it would not be possible to complete our job on the Oswald case if we could not get the pertinent information. Later that same day I mentioned all this to [redacted]. He agreed to raise question anew with [redacted].

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for FOIA Review on JUN 1976

9 Mar 64

RECORD COPY

CA 75-1448
EXHIBIT 17

Office of the Surgeon General
Central Intelligence Agency
Washington, D.C.

11/9/79

Dear Sir,

You have not asked for an appeal for a waiver of charges. I have provided proof that my interests are public rather than for personal gain. The courts and the Department of Justice have so found and the Department has waived fees and returned what I have paid. You have ruled that a court has ruled that under those conditions I should also not be on charges. I therefore write to remind you of this and other appeals on which you have not acted, some relating to requests now almost of 10 years old.

If you require more information that I have provided please ask for it.

I would like to know when you expect to act on these quite old appeals.

I also would like to know when to expect the balance of the JFK assassination material.

In particular I would like to know when to expect the Rosenz information your affidavits in one of my cases claim was declassified for the House Select Committee on Assassinations.

Sincerely,

Harold Weisberg

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

CA 75-1448
EXHIBIT 18

5 AUG 1976

Mr. Harold Weisberg
Route 12
Frederick, MD 21701

Dear Mr. Weisberg:

This responds to your letter of 21 July.

Enclosed you will find the list of numbers given to your requests, with the shorthand descriptions used by us. Note that we have, indeed, included the name Yuri Nosenko, currently under F-76-143.

In regard to your request for an organizational chart of this Agency, we quote in part from the CIA Act of 1949, Section 6:

"...the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...."

As you can see from this language, a formal request from you would have to be denied under (b)(3) of the Freedom of Information Act as being specifically exempted by statute.

Request number F-75-6669 is broadly comprehensive on the Kennedy assassination and the investigation thereof, and obviously overlaps and duplicates some of your more specific requests. You have described a "new request" which duplicates in part what has recently been requested by Mark Allen. However, any documents responsive to this "new request" are already covered by the broad and comprehensive wording of your request under F-75-6669 and are part of the re-review currently in process and of which you are aware. Therefore, we have not assigned a new number to this request but shall continue to treat it under F-75-6669.



You again refer to the "the Borsages request." If you mean Borosage, we do not have a request from him on the Kennedy assassination topic. We reiterate our belief that you were possibly confusing the name Borsage with Belin who did make a similar request and who did receive exactly the same documents released to you, nothing more.

Regarding the name Hugh McDonald, first raised in your letter of 2 March 1976, we were given insufficient biographical information with which to make any positive identification. In light of your language, "If you can confirm or deny that McDonald was ever an Agency employee of any kind...So, if there is any information you can let me have I would appreciate it. I will not contest a negative decision...", we did not record this as a formal request warranting a separate number. However, you should understand that under the same provision of the CIA Act of 1949 quoted above, we would have to provide a formal denial under FOIA (b)(3) of any document responsive to such a request.

Finally, although not raised by your letter of 21 July, we must advise you that certain of the documents found responsive to your F-76-382 on Martin Luther King, Jr., have necessarily been referred to another component for review. We shall not be able to get our response to you on this request by the end of this month as earlier projected, but shall do our best to expedite it when the materials reach our hands.

Sincerely,



Gene F. Wilson
Information and Privacy Coordinator

Enclosure

Requests of Harold Weisberg

F-75-004 Personal (subsumed under F-75-4927)
F-75-4765 Yuri Nosenko, etc. (subsumed under F-76-143)
F-75-4927 Personal
F-75-6669 Kennedy assassination
F-75-6838 Materials given to FDR
F-76-105 Heine affidavits
F-76-143 Yuri Nosenko, etc.
F-76-149 Olson papers
F-76-219 Rocca source material
F-76-382 Martin Luther King, Jr.
F-76-405 1967 CIA review of Kennedy assassination info
F-76-437 CIA's use of Rocca
F-76-438 Behavior modification