

APPENDIX

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

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No. 78-1731

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HAROLD WEISBERG,  
Plaintiff-Appellant  
v.

GENERAL SERVICES ADMINISTRATION,  
Defendant-Appellee

---

On Appeal from the United States District Court for the  
District of Columbia, Hon. Aubrey E. Robinson, Jr., Judge

---

James H. Lesar  
910 16th Street, N.W., Suite 600  
Washington, D.C. 20006

Attorney for Plaintiff-Appellant



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PLAINTIFFS

DEFENDANTS

HAROLD WEISBERG

~~NATIONAL ARCHIVES AND RECORDS SERVICE - GENERAL SERVICES ADMINISTRATION~~

CAUSE

Withholding of records under Freedom of Information Act, 5 U.S.C. 552

mbd

James Hiram Lesar  
1231 Fourth Street, S.W.  
D.C. 20024  
484-6023

ATTORNEYS

Michael J. Ryan  
U.S. Courthouse, Room 3421  
426-7375

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	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	
UNITED STATES DISTRICT COURT DOCKET				DC-111 (Rev)	

DATE	NR.	PROCEEDINGS
1975		
Sept. 04	04	COMPLAINT, appearance; Exhibits A,B,C,D
Sept 04	04	SUMMONS (3) and copies (3) of complaint issued: AG serv. 9-8. Deft. served 9/24/75, DA served 9/8/75.
Oct 8	8	ANSWER by deft. to complaint; c/m 10-8. Appearance of Michael J. Ryan as attorney for deft.
Oct 18	18	CALENDARED CD/N
Oct 28	28	MOTION by plttf. for leave to substitute party; P&A; c/m 10-28-75.
Oct 28	28	INTERROGATORIES by plttf. to deft.; c/m 10-28-75.
Oct 29	29	ORDER substituting General Services Administration as deft. in place of National Archives and Records Service. (N) Robinson, J.
Dec 29	29	MOTION by pltf. to compel answers to interrogatories; memorandum of P&A's; c/m 12-26.
976		
Jan 9	9	ANSWER by deft. to interrogatories; c/m 1-9.
Feb 27	27	REQUEST by pltf. to deft. for production of documents; exhibits E-G; c/m 2-27-76.
Mar 2	2	MOTION by pltf. for an Order allowing pltf. to tape-record depositions; memorandum of P&A's; c/m 3-2.
Mar 2	2	SECOND set of interrogatories by pltf. to deft.; c/m 3-2.
Mar 1	1	MOTION by pltf. to compel answers to interrogatories; memorandum of P&A's; c/m 3-1.
Mar 16	16	MOTION by deft. for an extension of time to respond to plttf's. motion to compel answers to interrogatories; c/m 3-16.
Mar 22	22	STIPULATION by pltf. to defts. motion for an extension of time to respond to motion to compel answers to interrogatories; exhibits H and I; c/m 3-22.
Mar 25	25	ORDER filed 3-23-76 extending defts. time to respond to motion to compel answers to interrogatories to 3-29-76. (N) Robinson, J.
Mar 24	24	OPPOSITION by deft. to plttf's. motion for an Order allowing pltf. to tape-record depositions; c/m 3-24.
Mar 26	26	MOTION by deft. for summary judgment; statement; memorandum of P&A's; exhibit 1; exhibit 2; c/m 3-26.
Apr 8	8	MOTION by pltf. for an extension of time within which to oppose defts. motion for summary judgment; c/m 4-8.

(SEE NEXT PAGE)

## CIVIL DOCKET CONTINUATION SHEET

FD-111A-3-14-75 50M-3511

PLAINTIFF HAROLD WEISBERG	DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. 75-1448 PAGE 1 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1976 Apr	8	OPPOSITION by deft. to pltfs. motion to compel answers to interrogatories; exhibit 1; exhibits A,B, and C; c/m 4-7.
Apr	19	RESPONSE by deft. to pltfs. request for production of documents; c/m 4-19.
Apr	19	ANSWERS by deft. to interrogatories; attachment; c/s 4-19.
Apr	29	MOTION by pltf. for an extension of time within which to oppose defts. motion for summary judgment; c/m 4-29.
May	4	REQUEST by pltf. for production of documents of deft.; c/m 5-4.
May	11	ORDER filed 5-7-76 extending pltfs. time to respond to motion for summary judgment to 5-8-76. (N) Robinson, J.
May	12	OPPOSITION by pltf. to defts. motion for summary judgment; affidavit of Harold Weisberg; exhibit J; exhibit K; exhibit L; exhibit M; exhibit N; exhibit O; exhibit P; exhibit Q; exhibit R; exhibit S; exhibit T; exhibit U; exhibit V; exhibit W; exhibit X; exhibit Y; exhibit Z; exhibit AA; exhibit BB; exhibit CC; exhibit DD; exhibit EE; exhibit FF; exhibit GG; exhibit HH; exhibit JJ; exhibit DD; exhibit EE; exhibit FF; exhibit GG; exhibit HH; exhibit JJ; c/m 5-11. Leave to file granted. (FIAT) Robinson, J.
May	25	MOTION of pltf. to compel answers to interrogatories and request of pltf. for production of documents, heard and deft. to answer interrogatories in 10 days and counsel to furnish Court with more information regarding said request for production of documents. (Rep: G. Federation) Robinson, J.
June	9	RESPONSE by deft. to pltfs. second request for production of documents; c/m 6-9.
June	9	ANSWERS by James E. O'Neill to interrogatories; c/m 6-9.
June	9	NOTICE by deft. of submission (transcript of the May 19, 1964 executive session of the Warren Commission) for in camera submission; c/m 6-9. (submitted to Judge)
June	14	MOTION by pltf. for injunctive relief; memorandum of P&A's; attachment; c/m 6-14.
June	18	TRANSCRIPT of proceedings of May 25, 1976, pages 1-30. (Rep: E. Federation); Court copy.
July	19	OPPOSITION by deft. to pltfs. motion for injunctive relief; c/m 7-19.  (OVER)

DC-111A REV. (1/75)

## CIVIL DOCKET CONTINUATION SHEET

FD-101-3-14-75-50M-3511

PLAINTIFF		DEFENDANT	DOCKET NO.
HAROLD WEISBERG		GENERAL SERVICES ADMINISTRATION	75-144
			PAGE 2 OF PAGE
DATE	NR.	PROCEEDINGS	
1976			
July	26	ORDER filed 7-22-76 denying pltf's. motion for injunctive relief. (N) Robinson, J.	
July	28	NOTICE by pltf. of filing of affidavit; affidavit of James Hiram Lesar; attachments 1,2,3,4,5,6,7,8,9,10; c/m 7-28.	
July	28	THIRD set of interrogatories by pltf. to deft.; attachments 1,2,3,4,5; c/m 7-28.	
Oct	12	MOTION by pltf. for summary judgment with respect to January 21, 1964 Warren Commission Executive Session transcript; statement	
** Oct	15	MOTION by pltf. to compel answers to interrog.; P&A's; c/m 10-15-76; memorandum of P&A's; exhibit 1; c/m 10-12-76	
* Oct	13	MOTION by pltf. for summary judgment with respect to May 19, 1964 Warren Commission Executive Session Transcript; statement; memorandum of P&A's; exhibit 1; attachment 1; attachment 2; attachment 3; attachment 4; attachment 5; attachment 6; attachment 7; attachment 8; attachment 9; attachment 10; exhibit 2; c/m 10-13-76.	
Nov	12	ANSWERS by James B. Rhoads to pltf's interrogatories; c/s 11/12/76	
Nov	18	ORDER that after defts. counsel has had an opportunity to review and confer with the agency's representatives concerned, that supplementary answers will be filed so far as possible no later than 11-30-76, and that a further hearing will be conducted at 11:00 a.m., Dec. 2, 1976. (N) Dwyer, Mag.	
Nov	29	MEMORANDUM by pltf. on deft's objections to third set of interrogatories;	
Dec	2	ORDER granting request of deft. on behalf of the CIA for an additional 60 days to respond to third set of interrogatories until January 3, 1977; hearing on motion by pltf. to compel and objections of deft. to interrogatories on January 14, 1977. (N) Dwyer, Mag.	
1977			
Jan	3	NOTICE by deft. of filing; affidavit of Charles A. Briggs; exhibit A; objections by deft. to interrogatories; c/m 1-3-77.	
Jan	7	MOTION by pltf. to compel answers to interrogatories; memorandum of P&A's; c/s 1-7-77.	
Jan	14	ORDER sua sponte giving pltf. until 2-1-77 to file a motion to compel and giving the government until 2-16-77 to respond. Further hearing to be conducted at 2:00 p.m. on 2-18-77. (N) Dwyer, Mag.	
(SEE NEXT PAGE)			

DC-111A REV. (1/75)

## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75-1448
HAROLD WEISBERG	GENERAL SERVICES ADMINISTRATION	PAGE 3 OF 3 PAGES

DATE	NR.	PROCEEDINGS
1977		by pltf.
Jan	19	OBJECTION/to Magistrate's Order and demand for trial; exhibits 1 and 2; c/s 1-19-77.
Mar	4	MOTION of pltf. to compel answers to interrogatories and motion of deft. for summary judgment heard and taken under advisement. (Rep: G. Federation) Robinson, J.
Mar	14	ORDER filed on 3-10-77 denying pltf's. motion for summary judgment; granting defts. motion for summary judgment; action dismissed. (N) Robinson, J.
Mar	21	MOTION by pltf. for reconsideration, clarification, and in camera inspection of transcripts with aid of pltf's. security classification expert; affidavit of William G. Florence; attachment 1; affidavit of Harold Weisberg; exhibits 1,2, and 3; c/s 3-31-77.
Apr	18	OPPOSITION by deft. to pltf's. motion for reconsideration, clarification, and in camera inspection; c/m 4-18-77.
Jun	07	ORDER amending Order of 3-10-77; denying pltf's motion for reconsideration in all other respects. (N) Robinson, J.
Aug	5	NOTICE of appeal by pltf. from Order of March 10, 1977 and June 7, 1977. \$5.00 paid and credited to U.S. Copy mailed to Michael J. Ryan.
Sept	14	RECORD on appeal delivered to USCA; receipt acknowledged. (77-1831)
Sept	20	TRANSCRIPT of proceedings of March 4, 1977, pages 1-23. (Rep: E. Federation); Court copy.
Sept	23	SUPPLEMENTAL record on appeal delivered to USCA; receipt acknowledged. (77-1831)
1978		
Mar	31	COPY of ORDER USCA filed on 3-31-78 that appellant shall move in the District Court for a new trial, that the District Court shall rule on such a motion within thirty days after it is filed, and it is further ordered by the Court that the Clerk is directed to schedule oral argument during the June sitting period of the Court, and it is further ordered by the Court that the motions to file reply brief with addendum and to strike shall be held in abeyance pending the District Court's disposition of a motion for new trial.
Apr	18	MOTION of pltf. for new trial; memo of P&A's; attachment; affidavit of Harold Weisberg; exhibits 1,2,3,4,5,6,7,8,9,10,11,12,13,14, 15,16,17,18, and 19.
		OVER)

DC-111A REV. (1/75)



CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75-144
HAROLD WEISBERG		GENERAL SERVICES ADMINISTRATION	PAGE 4 OF ___ PAG
DATE	NR.	PROCEEDINGS	
1978			
Apr	24	OPPOSITION of deflt. to pltfs. motion for new trial.	
May	4	MOTION of pltf. to strike affidavits of Charles . Briggs, to hold government officials and attorneys in contempt, and for payment of reasonable costs, including attorney fees; memo of P&A's.	
May	4	NOTICE of pltf. to take depositions of Charles A. Briggs and Gene Wilson.	
May	10	MOTION by deflt. to quash and for a protective order; P&A's.	
May	16	MEMORANDUM AND ORDER filed on 5-12-78 denying pltfs. motion for new trial; denying pltfs. motion to strike affidavits and for payment of reasonable costs, including attorney fees. (N) Robinson, J	
May	16	ORDER filed on 5-12-78 quashing subpoena duces tecum directed to Messrs. Charles A. Briggs and Gene F. Wilson of CIA; denying pltfs. motion to strike affidavits of Mr. Briggs and to hold government officials and attorneys in contempt. (N) Robinson, J	
Jun	22	NOTICE of appeal by pltf. from Order of 5-16-78. (\$5.00 paid and credited to U.S.) Copy of notice mailed to Michael J. Ryan.	
Aug	1	RECORD on appeal delivered to USCA; receipt acknowledged on 8-2-78. (78-1731)	

DC-111A REV. (1278)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,  
Plaintiff,

v.

GENERAL SERVICES ADMINISTRA-  
TION,  
Defendant

Civil Action No. 75-1448

RECEIVED


APR 18 1978

JAMES F. WYBY Clerk

MOTION FOR NEW TRIAL PURSUANT TO RULE 60(b)  
OF THE FEDERAL RULES OF CIVIL PROCEDURE

Comes now the plaintiff, Harold Weisberg, and moves the Court, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to vacate its judgment and orders in this cause and to grant him a new trial on grounds of 1) newly discovered evidence, and 2) fraud and misrepresentation.

A Memorandum of Points and Authorities, the Affidavit of Harold Weisberg, and several exhibits in support of this motion are attached hereto.

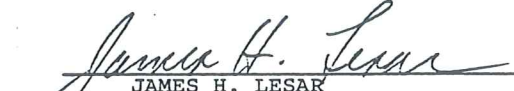
  
JAMES HIRAM LESAK  
910 16th Street, N.W., #600  
Washington, D.C. 20006

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 13<sup>th</sup> day of April, 1978, hand-delivered a copy of the foregoing Motion For New Trial Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure to

the office of Mr. Michael J. Ryan, Room 3421, United States Court-  
house, Washington, D.C. 20001.

  
JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

.....  
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINISTRA-  
TION,

Defendant  
.....

Memorandum of Points and Authorities

On March 10, 1977, this Court granted summary judgment in favor of the defendant in this action. Subsequently, by order dated June 7, 1977, this Court amended that order.

Plaintiff Harold Weisberg thereafter appealed to the United States Court of Appeals for the District of Columbia Circuit. While the case has been pending in the Court of Appeals, numerous matters have occurred which relate to the issues in this case and this Court's findings in favor of defendant General Services Administration. Appellant Weisberg sought to draw these matters to the attention of the Court of Appeals in his Reply Brief. By order dated March 31, 1978, the Court of Appeals ordered appellant to file a motion for new trial in this Court. (See Attachment 1) At the same time the Court of Appeals ordered this Court to decide the motion for new trial within thirty days and granted Weisberg's motion to expedite oral argument on the appeal.

Because of severe time pressures on plaintiff's counsel, this memorandum of points and authorities contains only an abbre-

viated discussion of the grounds for new trial. These are more fully set forth in the attached affidavit of Harold Weisberg and the exhibits thereto.

Basically, this Court's orders accepted the two affidavits of Mr. Charles I. Briggs, Chief, Information and Services Staff, Directorate of Operations, Central Intelligence Agency, at face value and ruled that as a matter of law they were sufficient to support the claim that the January 21 and June 23, 1964 Warren Commission executive session transcripts are entitled to protection under Exemption 3 by virtue of 50 U.S.C. §403(d)(3).

While this case was on appeal, however, developments occurred as Weisberg had himself warned the Court, which demonstrated that the claims made by Mr. Briggs were false. For example, Mr. Briggs' December 30, 1976 affidavit (Exhibit 2) swears that any disclosure of the identity or whereabouts of Yuri Ivanovich Nosenko, the subject of the June 23, 1964 transcript, would put him in "mortal jeopardy"; and that therefore "[e]very precaution has been and must continue to be taken to avoid revealing his new name and whereabouts." Indeed, Mr. Briggs swore in that affidavit 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 in a recent interview in New York magazine Edward Jay Epstein, author of Legend, a recently-published book which deals largely with Nosenko, stated that the CIA "sent" Nosenko to him. (Exhibit 6, p. 32) In the book KGB, John Barron also wrote about Nosenko and other defectors, giving many details about them, their activities, and their revelations about Soviet operations. These facts are totally at odds with the concern for Nosenko's security alleged by Mr. Briggs.

Epstein reveals a number of pertinent details about Nosenko. He discloses, for example, that in 1968 the CIA decided to give

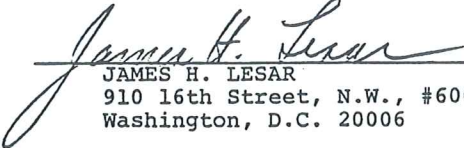
Nosenko \$30,000 a year as a consultant to the CIA, a new identity, and a new home in North Carolina. He further states that Nosenko is now in Washington handling 120 cases for the CIA (Exhibit 6, p. 35.) In short, Epstein reveals Nosenko's whereabouts and other details about him which Briggs/<sup>states</sup>cannot be revealed without placing Nosenko in "mortal jeopardy" and without damaging our national security. Yet it is the CIA itself which Epstein says "sent" Nosenko to him. This is further buttressed by Epstein's assertion that in exchange for a house in North Carolina, an allowance from the CIA of about \$30,000 a year, employment, and United States citizenship, Nosenko agreed "not to talk to any unauthorized persons about his experiences with the CIA." (Legend, p. 271) The clear implication of this is that John Barron and Edward Jay Epstein, two authors who interviewed Nosenko, are persons authorized to talk to Nosenko.

An even more devastating blow to the credibility of the Briggs' affidavit occurred on Sunday, April 16, 1978, when the Washington Post actually printed a photograph of Nosenko, notwithstanding Briggs' testimony that any such identification of Nosenko is forbidden on national security grounds.

In addition to these matters bearing on the credibility of the Briggs' affidavits, plaintiff also obtained other materials after this Court's March 10 and June 7, 1977 orders which show that he has been discriminated against by government agencies in regard to his Freedom of Information Act requests, and that government agencies, including the defendant in this case, have conspired with one another to unlawfully deny him access to non-exempt government records. Because these records bear strongly on the government's alleged justification for withholding any records in this lawsuit and demonstrate the relevance of many of

of plaintiff's unanswered interrogatories in this case, which sought to prove, and would have proved, that he has been discriminated against in his Freedom of Information Act requests, some of these records are also submitted as exhibits in this case.

Respectfully submitted,

  
JAMES H. LESAR  
910 16th Street, N.W., #600  
Washington, D.C. 20006  
Attorney for Plaintiff

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831

September Term, 19 77

Harold Weisberg,  
Appellant

Civil Action 75-1448

v.

General Services  
Administration

United States Court of Appeals  
for the District of Columbia Circuit  
FILED SEP 5 1978  
GEORGE A. FISHER  
CLERK

BEFORE: Tamm and Robinson, Circuit Judges

ORDER

On consideration of appellant's motions to expedite oral argument and for leave to file reply brief with addendum, appellee's motion to strike portions of reply brief, and the oppositions thereto, we grant the motion for expedition and hold in abeyance the other motions.

Appellant seeks to present evidence to this Court which has not been presented to the District Court. The sound course is for appellant first to present his alleged new evidence to the District Court in a motion for a new trial. See Smith v. Pollin, 194 F.2d 349, 350 (D.C. Cir. 1951). In light of 5 U.S.C. §552(a) (4) (D), we direct the District Court to act expeditiously on such a motion so that we may hear oral argument on the appeal promptly if no remand under Smith v. Pollin is recommended. Accordingly, it is

ORDERED by the Court that appellant shall move in the District Court for a new trial, and that the District Court shall rule on such a motion within thirty days after it is filed, and it is



United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831

-2-

September Term, 19 77

FURTHER ORDERED by the Court that the Clerk is directed to schedule oral argument during the June sitting period of the Court, and it is

FURTHER ORDERED by the Court that the motions to file reply brief with addendum and to strike shall be held in abeyance pending the District Court's disposition of a motion for new trial.

Per Curiam

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

..... :  
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 abstentia 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  
of  
the security/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,

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-

appropriate 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.

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.

Disclosure of this material would destroy the current and future usefulness of an extremely important foreign intelligence source and would compromise ongoing foreign intelligence analysis and collection programs.

Charles A. Briggs  
Charles A. Briggs

STATE OF VIRGINIA )  
                          ) ss.  
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 5th day of November, 1975.

Helen Conn  
Notary Public

My commission expires: March 15, 1977.



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 judgement 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

has any substantial doubt as to which security classification category is appropriate or as to whether the material should be classified at all, he should designate the less restrictive treatment."

Charles A. Briggs  
Charles A. Briggs

COMMONWEALTH OF VIRGINIA )  
                                  ) ss.  
COUNTY OF FAIRFAX         )

Subscribed and sworn to before me this 50th day of December 1976.

J. Helen Connor  
Notary Public

My commission expires March 15, 1977

76-32

DDA 76-4276

25 AUG 1976

MEMORANDUM FOR: Director of Central Intelligence  
 FROM : John F. Blake  
 Deputy Director for Administration  
 SUBJECT : Delegation of Authority to Classify Top Secret

1. Action Requested: Reaffirmation of Top Secret classifying authority.

2. Basic Data:

a. The provisions of Executive Order 11652 require that Top Secret classifying authority be delegated by the head of an Agency in writing.

b. Per HW 10-110 dated 31 May 1972 (attached), Mr. Charles A. Briggs, Director of Planning, Programming and Budgeting, was delegated Top Secret classifying authority.

c. The need has developed for the Top Secret classifying authority delegated to Mr. Charles A. Briggs, as noted in paragraph 2(b), to be reaffirmed.

<u>Name</u>	<u>Position</u>	<u>Position No.</u>
Charles A. Briggs	Chief, Services Staff	CT 36

3. Recommendation: It is recommended that Top Secret classifying authority be reaffirmed for Mr. Briggs.

/s/ John F. Blake  
 John F. Blake

Attachment: a/s

APPROVED (✓)

DISAPPROVED ( )

/s/ George Bush

29 AUG 1976

George Bush  
 Director

Date

~~CONFIDENTIAL~~

This document becomes UNCLASSIFIED when separated from attachment.

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
Plaintiff, :

v. : CIVIL ACTION 75-1448

GENERAL SERVICES :  
ADMINISTRATION, :  
Defendant. :

FILED

MAR 10 1977

ORDER

JAMES F. DAVEY, CLERK

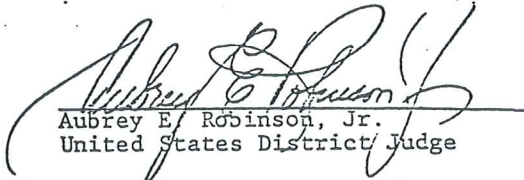
Upon consideration of the parties cross motions for summary judgment and upon consideration of the arguments advanced by counsel at oral hearing and it appearing to the Court that with respect to the May 19, 1964 transcript the in camera inspection reveals that it reflects deliberations on matters of policy with respect to the conduct of the Warren Commission's business. These discussions are not segregable from the factual information which was the subject of the discussion. To disclose this transcript would be to impinge on and compromise the deliberative process. Exemption 5 of the Freedom of Information Act (5 U.S.C. §552(b)(5)) is therefore applicable and the Defendant is entitled to Summary Judgment on this transcript.

It further appearing to the Court as regards the January 21, 1964 and June 23, 1964 transcripts the Defendant is entitled to Summary Judgment on the basis of exemption 3 of the Freedom of Information Act

(5 U.S.C. §552(b)(3)).

It is therefore this 10<sup>th</sup> day of March, 1977,  
ORDERED, that the Plaintiff's Motion for Summary  
Judgment be and it is hereby DENIED; and it is

FURTHER ORDERED, that the Defendant's Motion  
for Summary Judgment be and it is hereby GRANTED and  
that the action be and it is hereby DISMISSED.

  
Aubrey E. Robinson, Jr.  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, being first duly sworn, depose as follows:

1. I am the plaintiff in the above-entitled cause of action.
2. For the past thirteen years I have devoted myself to a study of the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. I have written six published books on the assassination of President Kennedy and its investigation and one on the assassination of Dr. Martin Luther King, Jr. and its investigation. I have nearly completed a second book on Dr. King's murder and the efforts of the man framed of that crime to obtain a trial.
3. The work I do is not done in pursuit of a detective mystery story, a whodunit. Essentially it is a study of the function, malfunction, and non-function of the basic institutions of our society in response to these crises.
4. I have reached only a few conclusions as the result of my work. The most fundamental is that our basic institutions--the law enforcement agencies, the courts, the press--have all failed.



5. Each of these crimes is unsolved. The available evidence shows that Lee Harvey Oswald did not shoot President Kennedy. The hard physical evidence also proves that more than one person fired on the President.

6. With respect to the assassination of Dr. King, the evidence shows that James Earl Ray did not shoot him and that the murder could not have been committed in the manner alleged by the prosecution.

7. Because the federal agencies resist the disclosure of vital information about these assassinations by every device known to man, including lying, confusion, subterfuge, perjury and all other manner of deceit and trickery, the use of the Freedom of Information Act has become indispensable to my work. Virtually all of the significant new evidence on these assassinations which has come to light within the past several years is the result of my work, much of it obtained or corroborated through the Freedom of Information Act requests I have made.

8. At present I am obtaining all federal records pertaining to Dr. King's assassination. I have already received more than 10,000 pages on this subject from the Department of Justice and ultimately expect to get more than 200,000 documents from this agency alone. Arrangements have been made to make these records part of an archive of my work which will be deposited with a university.

9. Howevermuch I would like to obtain the Warren Commission executive session transcripts which are the subject of this lawsuit, the viability of the Freedom of Information Act is of considerably greater importance. I do not mean this in terms of benefit to my own work, but for the good of our nation, especially as concerns the continuation and furtherance of representative society.

10. I am dismayed and angered by the Court's decision in this case. Not just because it denies me transcripts to which I think I am legally entitled, but, more importantly, because it foreshadows another judicial evisceration of the Freedom of Information Act. This time, apparently, the disemboweling is to take place under the guise of Exemption 3, whereas previously it was done under Exemptions 1 and 7.

11. This Court has ruled that I am to be denied access to the January 21 and June 23, 1964, Warren Commission executive session transcripts on grounds of an unsupported Exemption 3 claim. In order for the implications of this ruling to be fully understood, it must be put in context.

12. The context begins in 1968, when I made several written requests for transcripts of the executive sessions of the Warren Commission. Such requests were denied. On May 20, 1968, the Archivist of the United States, Dr. James B. Rhoads, denied my request for the January 27, 1964, transcript on grounds that it "is correctly withheld from research under the terms of existing law (5 U.S.C. 552)."

13. On June 21, 1971, in response to a letter I had written a month before, the National Archives listed the withheld executive session transcripts and the provisions of the Freedom of Information Act which allegedly justified their suppression. The transcripts of January 27 and June 23 and pages 63-73 of the January 21 transcript were withheld only under Exemptions 1 and 7. No claim was made that any of these transcripts was being withheld under Exemption 3. Nor did the National Archives claim that any of these transcripts was protected from disclosure by Exemption 5. (See Exhibit 1, Archives letter of June 21, 1971)

14. In his book Portrait of the Assassin, published in 1965, then Congressman and former Warren Commission member Gerald R. Ford quoted extensively from the January 27 transcript. This not-

withstanding, the National Archives withheld it from the public for the next nine years on the grounds that it was classified "Top Secret" and was also exempt as an investigatory file compiled for law enforcement purposes.

15. In November, 1973, Mr. Ford testified at his confirmation hearings for the Vice-Presidency that he had not used classified material in his book. I immediately brought suit for the still-suppressed January 27 transcript.

16. The National Archives maintained in court that the January 27 transcript was properly classified pursuant to Executive Order 10501. It submitted affidavits to that effect. It also claimed that the transcript was exempt as an investigatory file compiled for law enforcement purposes. During the entire history of this lawsuit, it never once suggested that the January 27 transcript could be withheld on Exemption 3 grounds.

17. Judge Gerhard Gesell ultimately ruled that the Government had not shown that the transcript was properly classified under any Executive order. He also ruled that it was protected from disclosure as an investigatory file. Before that ruling, ludicrous in light of the fact that the answers to interrogatories established that no law enforcement official had seen the transcript, could be appealed, the Archives "declassified" the transcript on June 12, 1974, and made it public.

18. Any person can now read the January 27 transcript. Any person who does read it can now see that there never was any legitimate basis for withholding this transcript under the Freedom of Information Act. It contains no information which ought ever to have been withheld from the American people on the grounds that it would damage national defense or foreign policy. The grounds for withholding it were entirely spurious. Or, to put it more

bluntly, the National Archives committed fraud upon me, the court, and the American people.

19. In exercising the limited discovery which I have been accorded in this suit I have obtained a letter from the CIA's former General Counsel, Mr. Houston, to the Archivist, Dr. Rhoads, dated December 22, 1972. This letter states that the January 27 transcript is among those documents being withheld by the CIA "because of the continuing need . . . to protect sources and methods." (See Exhibit 2) But the text of the January 27 transcript plainly shows that there was no CIA source or method which could be revealed to the detriment of national defense or foreign policy. (Exhibit 3)

20. Yet under the ruling handed down by this Court in this case, all the Archives would have had to do to preclude access to the January 27 transcript was to invoke Exemption 3. The result of this Court's decision is to deny me, on the basis of mere words alone, and untested words at that, what I would have been able to obtain under the Freedom of Information Act before it was amended to prevent just such abuses.

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, 1964, 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 massive publishing enterprise, involving 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 came 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. We then had a long lunch in another 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. It also provides new identities for defectors. This has been done in Nosenko's case.

30. I have read the affidavit of Mr. William G. Florence submitted in this cause. In paragraph 17 of his affidavit Mr. Florence writes that with respect to the January 27, 1964, Warren Commission executive session transcript: "It is possible that the CIA claim of a need for secrecy in December, 1972 was based on some comments on page 135 of the transcript about a former FBI

agent stationed in South America before 1943 having paid money to informers and other people, including the head of the Government of Ecuador. Obviously, these comments did not qualify for secrecy."

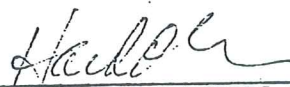
31. At the time he wrote this analysis, Mr. Florence did not know that this former FBI agent was publicly identified by the FBI as Mr. Henry Wade, the District Attorney of Dallas, Texas, when it suited Mr. Hoover's purposes to embarrass him. The FBI made all of this material available, including the bribery of foreign officials, and the Warren Commission published. Because this information was public long before the CIA determined in 1972 to withhold the January 27 transcript to protect "sources and methods," this cannot explain the decision to withhold the transcript. In short, there was no legitimate reason for suppressing the transcript. There was however, a reason not authorized by law. The January 27 transcript is acutely embarrassing to the CIA. Among other reasons, because its former Director, Allen Dulles, is recorded as stating that FBI and CIA officials lie and commit perjury.

32. The Henry Wade information referred to in paragraphs 30-31 above is an excellent example of why thorough subject knowledge is indispensable in countering the claims which an agency may make on behalf of suppressing what, for reasons of embarrassment, it doesn't want made public. It also demonstrates why full and complete discovery is necessary in this case to make it possible for me to effectively counter affidavits which I believe have been submitted in bad faith. Yet this Court has denied me this discovery, after first representing to me that this case would go to trial if an adequate factual record was not developed through discovery. I relied on the Court's word, to my prejudice.

33. Another example of withholding to prevent embarrassment to the CIA is found in the memorandum of 13 April 1964 which is at-

tached hereto as Exhibit 5. It is explicit in stating the intent to frustrate the President's directive to the Warren Commission; in regarding it necessary to "reply" to the FBI's factual and unclassified reports on Nosenko, and in avoiding any discussion of Nosenko and the embarrassment his evidence presented to the CIA. Although this document contains no information which should be classified in the interests of national defense or foreign policy, it remain classified until June, 1976.

34. In the course of my study of the assassinations of President Kennedy and Dr. King, I have examined thousands of formerly classified documents. I cannot recall a single one that was ever properly classified in the interests of national defense or foreign policy. For example, when I went to court to obtain the records introduced in evidence at the extradition proceedings of James Earl Ray in London's Bow Street Magistrate's Court, I found that these public court records had been confiscated by the American government and then classified.

  
 HAROLD WEISBERG

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 21st day of March,  
 1977.

  
 NOTARY PUBLIC IN/AND FOR  
 THE DISTRICT OF COLUMBIA

My Commission expires April 14, 1979.



## GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

Washington, D.C. 20408

June 21, 1971



Mr. Harold Weisberg  
 Coj d'Or Press  
 Route 8  
 Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of May 20, 1971.

The following transcripts of proceedings of executive sessions of the Warren Commission and parts of these transcripts are withheld from research under the provisions of the "Freedom of Information Act" (5 U.S.C. 552) which are cited for each item:

## Transcripts

- |                     |  |
|---------------------|--|
| 1. December 6, 1963 | 5 U.S.C. 552, subsection (b) (6).              |
| 2. January 27, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |
| 3. May 19, 1964     | 5 U.S.C. 552, subsections (b) (1) and (b) (6). |
| 4. June 23, 1964    | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |

## Parts of Transcripts

- |                               |   |
|-------------------------------|---|
| 1. Dec. 5, 1963, pages 43-68  | 5 U.S.C., subsection (b) (6).             |
| 2. Dec. 16, 1963, pages 23-32 | 5 U.S.C., subsection (b) (6).             |
| 3. Jan. 21, 1964, pages 63-73 | 5 U.S.C., subsection (b) (1) and (b) (7). |

As we have previously informed you, the transcripts withheld from research have not been made available to any researcher since they have been in our custody.

No additional material has been made available for research since the completion of the 1970 review, of which we informed you in our letter of February 5, 1971.

Sincerely,

HERBERT E. ANGEL  
 Acting Archivist  
 of the United States

*Keep Freedom in Your Future With U.S. Savings Bonds*

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

22 December 1972

Dr. James B. Rhoads  
Archivist of the United States  
Washington, D.C. 20408

Dear Dr. Rhoads:

Subject: Release of Documents Furnished to the  
Warren Commission by the Central  
Intelligence Agency

Reference is made to Mr. Houston's letter dated 2 August 1972. Since that time we have been in close contact with Mr. Marion Johnson of your staff who recently provided us with additional documents for review. We have completed this task and, unless stated otherwise, we have no objections to the release of the following items:

List No. 1

2, 3, 7, 14, 15, 18, 29, 31, 32, 33.

List No. 1A

1, 4, 6, 8, 9, 10, 12.

List No. 2

3, 5, 6, 7, 10, 12 (including CIA letter 8 Feb. 64),  
16, 20, 22, 23, 25, 28, 37, 38 (including our reply  
3 June 64), 40 (including our reply 1 July 64),  
44 (including our reply 22 July 64), 48 (including  
our reply 11 Sept. 64), 51, 53 (including our memo  
19 May 64 - CD-944), 54, 55, 58, 59, 62(A)  
(including our reply 13 Oct. 64).

CONTINUED COPY

28 DEC 1972

List No. 2A

3, 5, 9, 11, 15, 17, 22, 23, 24, 25, 26, 27, 28, 29.

The following documents can be released providing they are modified as follows:

List No. 1

- No. 19 Delete P. 1, Para. 1, L 6;  
P. 8, Para. 1, L 3.  
Delete P. 1, Para. 2 (relating to Nosenko).  
Delete P. 6, Para. 1  
|
- 30 Delete P. 1, Para. 1 (relating to "N").

List No. 1A

- No. 1A Next to date acq. strike field report number.  
3 Release only source description and Para. 3  
down to "peace" (L. 8). Strike reference to  
Texans and Dallas bank.
- 5 Delete words | Para. 3,  
L 1-2.
- 7 Memo. Delete reference to  
P. 2, last Para., L 1 and 3.
- 11 Delete no. 1 on list (communist control  
techniques) and withhold the attached  
publication, same name dated 2 April 56.

List No. 2

- No. 29 Delete last Para.
- 30 Delete first sentence, Para. 2 thru

List No. 2 (con't)

- No. 31 Delete first sentence, P. 7, Para. 6.  
32 Delete Para. 1, L 5, reference to |  
|

List No. 2A

- No. 6 Delete | Para. 2, L 1-2.  
8 Delete P. 3 top lines 5 thru 9 ("the way. . . exist").  
10 Delete Para. 5 ("we would. . . discussed").  
14 Delete P. 5 and 6 last Para. ("at 3:30. . . spot"), P. 8, Para. 2, strike |  
| P. 38 (delete entire page), delete P. 46, Para. 2 ("we then. . . Andersons"); withhold P. 52 top "Anderson . . . job."  
16 Delete Para. 2.

Miscellaneous

We have no objections to the release of Commission exhibits 631 and 1054. The following documents also can be released with certain modifications:

CD 692 Withhold Attachment G. Please remove CIA file numbers on the five internal CIA notes.

Com. No. Delete from Para. 2 |  
1216 Para. 3, delete |  
|

We cannot agree to the release of the remaining documents at this time because of the continuing need in their case to protect sources and methods. Accordingly, we request that Guideline No. 2 be observed in each case. Approvals apply only to the exact document(s) listed and not to related items in the Commission's files. Since some of the items listed originated with other U. S. agencies, we suggest that they be consulted, as appropriate, before the documents are released. Any CIA file markings thereon should be removed.

We will be glad to examine the remaining classified documents again when the next prescribed review period arrives.

Sincerely,



Lawrence R. Houston  
General Counsel

List No. 2A  
Internal Memoranda and Other Records of the Warren Commission

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Subject</u>	<u>Security Classification</u>	<u>Release or Withhold</u>
1. 1/21/64			Transcript of executive session of the Commission, p. 63-73	TS	
2. 1/27/64			Transcript of executive session of the Commission	TS	
3. 2/14/64	Coleman and Slawson	Jenner, Lebelier, Ball, Belin	Memo. on "Mexican Trip," p. 8, 9, 10, 13, 14		
4. 3/9/64	Slawson		Testimony of Nosenko, recent Soviet defector		
5. 3/17/64	Rankin	Dulles	Rumors that Oswald was a paid informant		
6. 3/26/64	Coleman		Mexico - CIA Dissemination of Information on Lee Harvey Oswald on March 24, 1964		
7. 3/27/64	Slawson	"Record"	Tentative Conclusions on Lee Harvey Oswald's Stay in Mexico City: Visits to Soviet and Cuban Embassies	S	
8. 4/1/64	Coleman and Slawson		Statement of Pedro Gutierrez Valencia		
9. 4/2/64	Coleman and Slawson		Statement of Gilberto Alvarado Ugarte		

MEMORANDUM

C A I  
C I A  
3/12/64  
c

TO : Records  
FROM : W. David Slawson *WDS*  
SUBJECT : Conference with the CIA on March 12, 1964

At 11:00 a.m., on March 12, 1964 the following individuals gathered in J. Lee Rankin's office to confer on how best the CIA and the Commission could work together at this juncture to facilitate the remaining work of the Commission: J. Lee Rankin, Howard P. Willens, William T. Coleman, Jr., Samuel A. Stern, Burt Griffin, W. David Slawson, Richard Helms, and Raymond Rocca, the latter three from the CIA. The meeting lasted until about 1:15 p.m.

The Commission's staff members pointed out to the CIA that we had developed materials which might be of help to the CIA in assessing the Russian situation, in particular, the testimony of Marina Oswald, Robert Oswald, Marguerite Oswald, John Martin and other witnesses scheduled to appear before the Commission. Mr. Rankin pointed out that it was established Commission policy that transcripts of testimony were not to be taken out of the offices of the Commission but that we would of course make these transcripts available in our offices to CIA representatives. It was agreed that a CIA man would come over in the near future to read these transcripts, especially Marina's, and that they would contact either

DECLASSIFIED  
by [unclear] of the United States  
on [unclear] 11/10/23

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
 Plaintiff :  
 v. : CIVIL ACTION 75-1448  
 GENERAL SERVICES ADMINISTRATION, :  
 Defendant :

FILED

JUN 7 1977

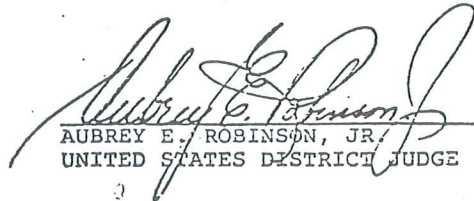
ORDER JAMES F. DAVEY, CLERK

Upon consideration of Plaintiff's Motion for Reconsideration and upon consideration of the Opposition filed thereto; it is by the Court this 7<sup>th</sup> day of June, 1977,

ORDERED, that the Order entered March 10, 1977, be amended to read as follows:

"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, No. 76-1566 (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 Plaintiff's Motion in all other respects is DENIED.

  
 AUBREY E. ROBINSON, JR.  
 UNITED STATES DISTRICT JUDGE



Addendum

1/22/64, 5:30 - 7:00 P.M.

Gentlemen:

I called this meeting of the Commission because of something that developed today that I thought every member of the Commission should have knowledge of, something that you shouldn't hear from the public before you had an opportunity to think about it. I will just have Mr. Rawkin tell you the story from the beginning.

Mr. Rawkin: Mr. Wagner Carr, the Attorney General of Texas, called me at 11:10 this morning and said that the word had come out, he wanted to get it to me at the first moment, that Oswald was acting as an FBI Undercover Agent, and that they had the information of his badge which was given as Number 179, and that he was being paid two hundred a month from September of 1962 up through the time of the assassination. I asked what the source of this was, and he said that he understood the information had been made available so that Defense Counsel for Ruby had that information, that he knew that the press had the information, and he didn't know exactly where Wade had gotten the information, but he was a former FBI Agent.

That they, that is, Wade before, had said that he had sufficient so that he was willing to make the statement.

Ford: Wade is?

A: The District Attorney.

Ford: Carr is the Attorney General.

Boggs: Right, of Texas.

Rawkin: I brought that to the attention of the Chief Justice immediately, and he said that I should try to get in touch with Carr and ask him to bring Wade up here, and he would be willing to meet with him any time today or tonight to find out what was the basis of this story. I tried to get Carr

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By                      NARS Date 3-7-75

2,

and he was out campaigning in Texarkana and so forth, and so it took us quite a while to get back to him and talk to him. I just got through talking to him and he told me the source of the information was a member of the press who had claimed he knew of such an agency, that he was an undercover agent, but he now is coming with the information as to his particular number and the amount he was getting and the detail as to the time when the payments started. Wade said he as well as him did not know the name of the informant but he could guess who it was, that it was given to his assistant, and he was sure that he knew, and he said he was trying to check it out to get more definite information. Carr said that he could bring Wade in some time the first of the week, but in light of the fact that it was this man of the press and that they did not think it would be broken by the press immediately, although there had been all kinds of stories down there but Carr said there were some 25 to 40 different stories about this being the case admonishing the press themselves, but this was the first time that he got something definite as to how they were handling it or how it could be handled by himself. But I was concerned of an undercover agent. He thought that the press would not bring the story without some further proof, and they are working on that now, he said. So he thought that if he brought Wade back on Monday or Tuesday, that that would still take care of any major problem. When he first told us, he said the press had it and he was fearful because he hadn't even gotten this from Wade. He got it from another man that the press would bring it before we could know about it and the Commission would be asked all kinds of questions without having information about it. Now he said Wade told him that the FBI never keeps any records of names.

Mr. Boggs: Wade is the District Attorney for Dallas County?

Rawkin: That is right.

21a

MORE

3.

Q: And the other man, Carr, is the Attorney General?

A: That is right.

Q: And the other people who have knowledge of this story?

A: He indicated that the press down there had knowledge of this story, and that the information came from some informant who was a press representative, and he, that is, Wade, could guess who it was but his assistant knew and he never asked him. They were trying to get more explicit information.

A: Lee, would you tell them?

Mr. Dulles: Who were you talking with when you got this information, Wade himself?

A: I was talking with Carr.

Boggs: There is a denial of this in one of these FBI records, as you know.

A: Yes.

Cooper: In this file we had yesterday, one of the lawyers for this fellow who claims to represent --

Boggs: Thornhill, I think.

Cooper: Oswald or one of them, Ruby, told about this, do you recall it, he said it was being rumored around.

Rawkin: Yes, it was being rumored that he was an undercover agent. Now it is something that would be very difficult to prove out. There are events in connection with this that are curious, in that they might make it possible to check some of it out in time. I assume that the FBI records would never show it, and if it is true, and of course we don't know, but we thought you should have the information.

A: Lee, would you tell the gentlemen the circumstances under which this story was told?

A: Yes, when it was first brought to my attention this morning --

Boggs: What time was this, Lea?

A: 11. 10.

Boggs: That is after the Ruby episode of yesterday?

A: That is right.

Q: Yes.

A: And Mr. Carr said that they had used this saying before the Court that they thought they knew why the FBI was so willing to give some of these records to the Defense Counsel, and they were ing to the Defense Counsel being able to get the records and asking the Court to rule that they couldn't get them.

Q: That is, the District Attorney was?

A: That is right, and he said a number of these records were furnished by the Texas authorities, and that they should not be given up to the Defense Counsel, and that the reason he thought that they were so eager to help Ruby was because they had the undercover, that Oswald was the undercover agent and had the number of his badge and so much, he was getting two hundred a month and so forth, and that was the way it was explained as his justification to the Court as a basis for determining the records and that that was the excuse the FBI, the reason the FBI had for being so eager to give the records up. That is the way it was developed. Now Mr. Jaworski, who is associated with the Attorney General working on this matter was reported to you before, and

, story, I don't talk to Story about it but I did talk to Jaworski and he said he didn't think Wade would say anything like this unless he had some substantial information back of it, and thought he could prove it, because he thought it would ruin many in politics, in Texas, to be making such a claim, and then have it shown that there was nothing to it.

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Boggs: No doubt about it, it would ruin many.

A: And Jaworski is an able lawyer, mature and very competent. We have complete confidence in him as a person. Now that is the evaluation of the situation.

Ford: He hasn't made any investigations himself?

A: No, he has not.

Ford: Was Wade or anyone connected with Wade?

A: No.

Dulles: Talking about Story, just a few minutes ago just telling him I wasn't going to be down in Texas, I had told him I was going to be down at the time, he didn't indicate that he had anything of any importance on his mind. Maybe he won't offer it to him obviously.

Rawkin: I don't know that it was even brought to his attention.

Dulles: I don't believe it was, now. Of course, he is not in the hierarchy.

A: Well, I think they were planning on telling the Attorney General and Jaworski.

Ford: How long ago did they get a feeling that there was some substance to the rumors that apparently had been — I just assumed, and I didn't ask them that, that Carr called me and seemed to be in a matter of great urgency at 11:10 this morning, and that he was fearful that they would bring in the papers before we would even get to know about it, and that is the way he was talking and acting about it.

Cooper: He felt there was ... He didn't know the name of the informant?

A: No, he did not.

Q: What then would lead him to think it had substance?

A: Well, he said that the reason he thought it might have substance was because Wade had heard these rumors constantly, and his assistant had gotten

this information from the informant as to a definite badge number, and the amount and the date.

Cooper: How would you test this kind of thing?

A. It is going to be very difficult for us to be able to establish the fact in it. I am confident that the FBI would never admit it, and I presume their records will never show it, or if their records do show anything, I would think their records would show some kind of a number that could be assigned to a dozen different people according to how they wanted to describe them. So that it seemed to me if it truly happened, he did use postal boxes practically every place that he went, and that would be an ideal way to get money to anyone that you wanted as an undercover agent, or anybody else that you wanted to do business that way with without having any particular transaction.

Ford: There might be people who would see what was going on with that particular box, because the postal authorities do watch, they have means of watching in many places that no one could see. They can watch the clerks as to what they are doing in these boxes, and they can watch the individuals that are going in and out. They do that only when they have an occasion to be suspicious, but they might, in watching for somebody particularly, they might also see other things that they just have to note. That is a possibility.

Dulles: What was the ostensible mission? I mean when they hire somebody they hire somebody for a purpose. It is either. . . Was it to penetrate the Fair Play for Cuba Committee? That is the only thing I can think of where they might have used this man. It would be quite ordinary for me because they are very careful about the agents they use. You wouldn't pick up a fellow like this to do an agent's job. You have got to watch out for your

agents. You have really got to know. Sometimes you make a mistake.

Ford: He was playing ball, writing letters to both the elements of the Communist parties. I mean he was playing ball with the Trotskyites and with the others. This was a strange circumstance to me.

Dulles: But the FBI get people right inside you know. They don't need a person like this on the outside. The only place where he did any at all was with the Fair Play for Cuba Committee.

Boggs: Of course it is conceivable that he may have been brought back from Russia you know.

A: If he was in the employ from 1962, September 1962, up to the time of the assassination, it had to start over in Russia, didn't it, because didn't he get back in February? When did he get back here from Russia?

A: I think it was February; February of this year.

Q: Of '62. Was it of '62?

A: Oh yes, that is right, it was '62.

Dulles: They have no facilities, they haven't any people in Russia. They may have some people in Russia but they haven't any organizations of their own in Russia.

A: Yes.

Dulles: They might have their agents there. They have some people, sometimes American Communists who go to Russia under their guidance and so forth and so on under their control.

Cooper: Of course there are rumors all around Dallas, of course the FBI is acquainted with rumors too.

A: One of the strange things that happened, and it may have no bearing on this at all, is the fact that this man who is a defector, and who was under observation at least by the FBI, they say they saw him frequently, could

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walk about the Immigration Office in Orleans one day and come out the next day with a passport that permitted him to go to Russia. From my observations of the case that have come to us, such passports are not passed out with that ease.

Dulles: Mr., I think you are wrong on that.

A: I could be.

Dulles: Because the passports are issued valid for anywhere except specified countries. There is a stamp as I recall that says not good for Communist China, North Vietnam, and so forth. For a long time they had on the stamp not good for Hungary. But any American, practically any American, can get a passport that is good for anywhere. An American can travel and Russia is one of the countries that you can now travel to.

A: Well, maybe you can.

Dulles: You can get them quick.

A: I think our General Counsel and I both have some experience in cases that have come before our Court which would indicate that that isn't exactly the fact.

Dulles: I think in the State Department.

A: They have great difficulty, some of them, in getting a passport to go to Russia.

Boggs: Particularly for someone who has any Communist . . . .

A: Oh, yes.

Dulles: Is there any evidence the State Department has that record in the files? I don't think that record has ever turned up.

Cooper: They admitted there wasn't any.

A: What record, that he was a defector?

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Dulles: Yes, I don't think the State Department or in the Passport Bureau, there was no record. It didn't get down to the Passport offices. That is one of the things we ought to look into.

A: The State Department knew he was a defector. They arranged for him to come back.

Dulles: But it don't get passport files or the passport records. They are issuing hundreds and thousands of passports. They have their own particular system.

A: Yes..

Dulles: They don't run around from time a man comes in. If they don't find any clue, and they don't according to our record here they don't find any warning clue in his file -- they should have a warning clue in his file but as I recall they don't.

Cooper: That is what they admitted, that they had not supplied the warning.

Dulles: And the Passport Office don't on its own usually go around and inquire. They wait until it is assigned there. Then they follow it up.

Cooper: This may be off the point a bit, but as I re-read the report, the chronology of the FBI checks on Oswald, they knew that he had gone to Texas. They learned from Mrs. Payne: they knew where Mrs. Oswald was living. They talked with her. They knew where he was working.

Boggs: Sure. That is all in the file.

Cooper: I know that. I say they knew where he was working.

Boggs: I am sure you went over that material that we received a few days ago. You will find the report from the FBI dated back last summer, and months before that and then months after that, why some agent would make a report on it.

Cooper: Sure.

A: I think it was in October.

Rawkin: They had a report on many, they had an agent go and see him when he was in prison.

Boggs: In New Orleans?

A: In New Orleans.

Q: Right.

A: And he lied to them before the police. He said his wife was a Texas girl, and he married her in Texas, and a whole string of stuff, and in Dallas they had a report prior to that that was definitely contrary to it.

Boggs: The fellow Butler, who works for the profit organizations that Dr. Oxnard heads to disseminate and tie Communist propaganda to Latin America, is the one who confronted him on the streets in New Orleans. I know Butler. He is a very fine young man. It was . . . Butler says that this was the first time that they established that he had been in Russia and that he had defected at one time and then returned. You have that undoubtedly in your files, that film, that tape that was made and borrowed in New Orleans?

A: Yes.

Boggs: Of course on that tape — I listened to that tape — he gives the normal Communist line, reaction to everything.

A: That is right.

Q: The same old stereotyped answer?

A: Yes.

Cooper: How do you propose to meet this situation?

Boggs: This is a serious thing.

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A: I thought first you should know about it. Secondly, there is this factor too that a consideration, that is somewhat an issue in this case, and I suppose you are all aware of it. That is that the FBI is very explicit that Oswald is the assassin or was the assassin, and they are very explicit that there was no conspiracy, and they are also saying in the same place that they are continuing their investigation. Now in my experience of almost nine years, in the first place it is hard to get them to say when you think you have got a case tight enough to convict somebody, that that is the person that committed the crime. In my experience with the FBI they don't do that. They claim that they don't evaluate, and it is uniform prior experience that they don't do that. Secondly, they have not run out all kinds of leads in Mexico or in Russia and so forth which they could probably -- It is not our business, it is the very --

Dulles: What is that?

A: They haven't run out all the leads on the information and they could probably say -- that isn't our business.

Q: Yes.

A: But they are concluding that there can't be a conspiracy without those being run out. Now that is not from my experience with the FBI.

Q: It is not. You are quite right. I have seen a great many reports.

A: Why are they so eager to make both of those conclusions, both in the original report and their experimental report, which is such a departure. Now that is just circumstantial evidence, and it don't prove anything about this, but it raises questions. We have to try to find out what they have to say that would give any support to the story, and report it to you.

Ford: Who would know if anybody would in the Bureau have such an arrangement?

A: I think that there are several. Probably Mr. Belmont would know every undercover agent.

Q: Belmont?

A: Yes.

Q: An informer also would you say?

A: Yes, I would think so. He is the special security, of the division.

Dulles: Yes, I know.

A: And he is an able man. But when the Chief Justice and I were just briefly reflecting on this we said if that was true and it ever came out and could be established, then you would have people think that there was a conspiracy to accomplish this assassination that nothing the Commission did or anybody could dissipate.

Boggs: You are so right.

Dulles: Oh, terrible.

Boggs: Its implications of this are fantastic, don't you think so?

A: Terrific.

Rawkin: To have anybody admit to it, even if it was the fact, I am sure that there wouldn't at this point be anything to prove it.

Dulles: Lee, if this were true, why would it be particularly in their interest -- I could see it would be in their interest to get rid of this man but why would it be in their interest to say he is clearly the only guilty one? I mean I don't see that argument that you raise particularly shows an interest.

Boggs: I can immediately --

A: They would like to have us fold up and quit.

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Boggs: This closes the case, you see. Don't you see?

Dulles: Yes, I see that.

Rawkin: They found the man. There is nothing more to do. The Commission supports their conclusions, and we can go on home and that is the end of it.

Dulles: But that puts the man right on them. If he was not the killer and they employed him, they are already it, you see. So your argument is correct if they are sure that this is going to close the case, but if it don't close the case, they are worse off than ever by doing this.

Boggs: Yes, I would think so. And of course, we are all even gaining in the realm of speculation. I don't even like to see this being taken down.

Dulles: Yes. I think this record ought to be destroyed. Do you think we need a record of this.

A: I don't, except that we said we would have records of meetings and so we called the reporter in the formal way. If you think what we have said here should not be upon the record, we can have it done that way. Of course it might. . . .

Dulles: I am just thinking of sending around copies and so forth. The only copies of this record should be kept right here.

Boggs: I would hope that none of these records are circulated to anybody.

A: I would hope so too.

Rawkin: We also give them to you Commissioners. Now if you don't want them, those are the only ones who get them but Sides himself: off the record.

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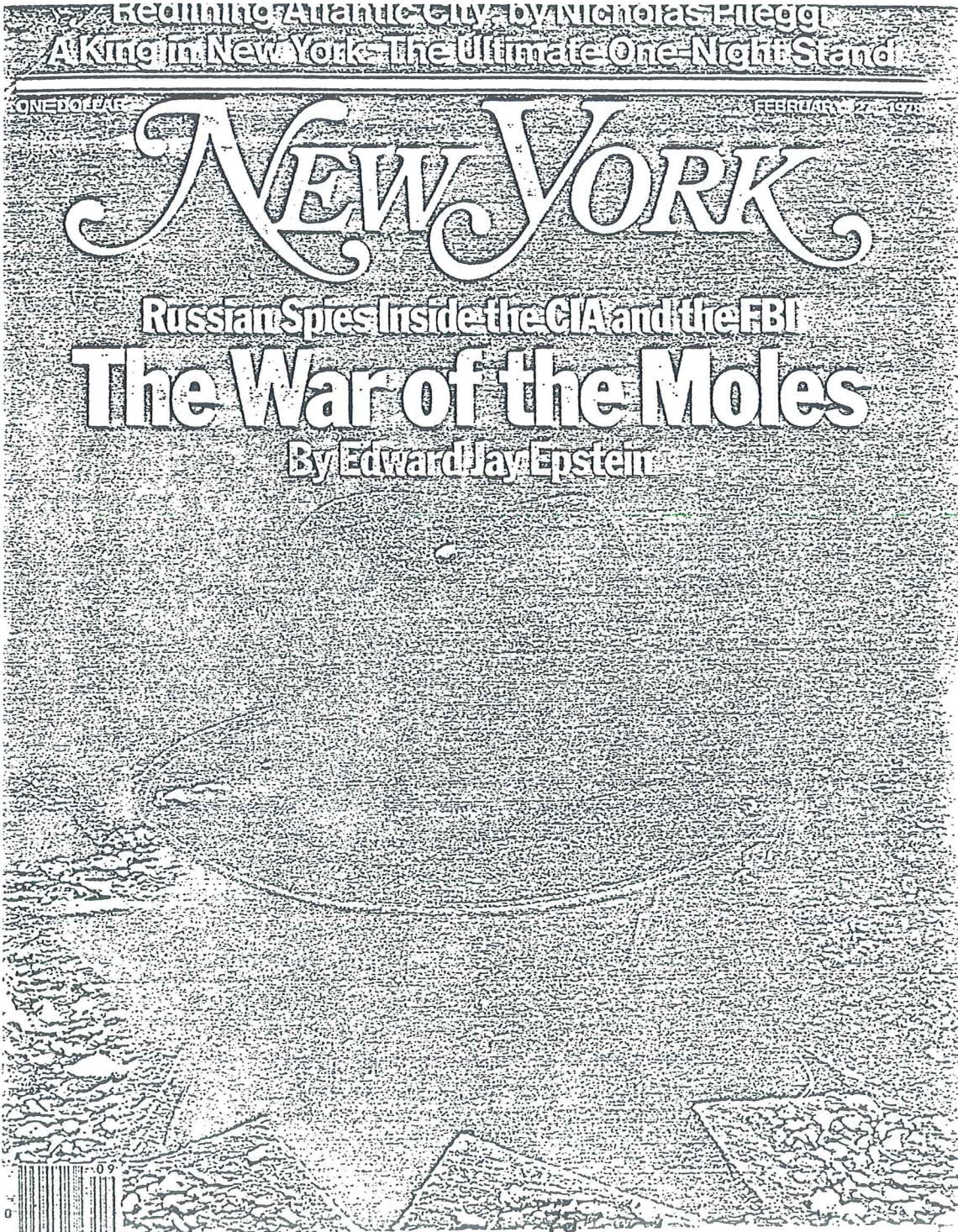
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# The War of the

# Moles



An interview with Edward Jay Epstein by Susana Duncan

“...We are left with the irksome suspicion that there is still a mole burrowing up through the ranks of the CIA and the FBI...”

In 1961, a KGB major named Anatoli Golitsin defected to the United States and informed the CIA that the Soviets had penetrated the CIA and the FBI. Thus began a frantic search for the “moles”—agents who work for one intelligence agency while secretly passing information to a hostile agency.

The Golitsin episode is the first of several interlocking spy stories that Edward Jay Epstein turned up while researching a new book on Lee Harvey Oswald.

It seems difficult to believe that anything new about the assassination of President Kennedy could be uncovered fourteen years after the event, the FBI, the Warren Commission, and a host of critics having already investigated it. Yet Epstein not only unearths numerous spies we’ve never heard about before—with intriguing code names, like “Foxtrot,” “Fedora,” “Komarov,” and “Stone”—but also introduces 74 new witnesses to Oswald’s life.

Twelve years ago, Epstein published *Inquest*, the first and most damaging critique of the Warren Report, a book

which severely reduced the commission’s credibility. His new book, which will be published by Reader’s Digest Press in the spring and serialized by *Reader’s Digest* beginning in March, is titled *Legend*, the term used in the intelligence business to denote a cover story or false biography constructed by a government for a secret agent. This new book is not about Kennedy’s assassination or bullets or ballistics. Rather, its thesis is that the Soviets recruited Lee Harvey Oswald in Japan to steal secrets about the U-2, and then, upon his return from Russia to the United States, constructed a legend for Oswald’s stay in Russia so that he could hide his intelligence activities there. The Soviets never intended for Oswald to kill President Kennedy, but when he did, they sent a fake defector, Yuri Nosenko, to the United States to tell a story that would corroborate Oswald’s legend. Nosenko’s legend, in turn, was reinforced by the story told by another Soviet disinformation agent, code-named “Fedora,” who had volunteered his services two years earlier as a double agent to J. Edgar Hoover (while

still remaining under Soviet control). The idea, apparently, was for Nosenko to go before the Warren Commission and assert that the KGB files showed that Oswald had never had any connection with Soviet intelligence.

Everything began to unravel for the Russian moles when a code-breaking team from the National Security Agency intercepted the cable traffic between Moscow and the delegation in Geneva from which Nosenko said he had defected. And under cross-examination, Nosenko admitted that he had lied on key elements of his story. Fedora was the next domino to fall. He had confirmed parts of Nosenko’s story which he now admitted were false. As far as CIA counterintelligence was concerned, both Fedora and Nosenko were “blown” as Soviet agents. Richard Helms personally warned Chief Justice Earl Warren against accepting Nosenko’s information. J. Edgar Hoover, however, having based most of his counterespionage operations on Fedora, refused to accept this assessment.

Meanwhile, back at the CIA, Nosenko was locked up in a detention center

Photographed by Don Rodan

“...J. Edgar Hoover was feeding secret information to the Soviets through a supposed double agent, ‘Fedora,’ for over a decade...”

for intensive questioning. Attention focused on an earlier Nosenko mission: to hide the tracks of a Soviet mole who was presumably burrowing his way into the heart of the CIA. At least that was the view of James Jesus Angleton, the chief of CIA counterintelligence. After all, the Soviets had planted a mole in British intelligence—Kim Philby—and a mole in West German intelligence—Heinz Felfe. Why not expect to find one in the CIA or FBI? Pretty soon, the hunt for a mole within the CIA and the attempts to solve the Nosenko-Fedora issues raised by the Oswald case led to a morass of confusion and to warfare between the FBI and the CIA.

The unnerving implications of Epstein's book go far beyond the events of 1965. The book ends with the firing of most of the CIA's counterintelligence staff in 1976, and we are left with the irksome suspicion that Fedora is still a trusted contact for the FBI's New York office and that there is still a mole burrowing his way up through the ranks of the CIA or the FBI. *New York Magazine* arranged an exclusive interview with Epstein in which he talked to senior editor Susana Duncan about his Oswald book and about the Russian moles. He also agreed to write four of the new spy stories, giving many details that he omitted from the book.

**Question:** The Warren Commission, FBI, and many other sleuths over the past fifteen years have investigated the Oswald case. How can you hope to come up with any new facts or different answers?

**Answer:** I began by rejecting the idea that there was something new to be found out about bullets, wounds, or the grassy knoll. Instead I asked: Why did Lee Harvey Oswald defect to the Soviet Union in 1959? It seemed incredible to me that a twenty-year-old marine would suddenly decide to leave his family and friends and go live in a strange country. I became interested in the question of motive.

**Q.** How did you begin your investigation?

**A.** I knew the starting point had to be finding all the witnesses to areas of Oswald's life which had been missed or neglected by previous investigations.

**Q.** Is that why you interviewed the marines who had served with him in Japan?



Edward Jay Epstein: Born in New York City in 1935, Epstein has just completed a two-year investigation into Lee Harvey Oswald's relationships with the intelligence services of three nations—Russia, America, and Cuba. Epstein has a Harvard Ph.D. and has taught political science at Harvard, MIT, and UCLA. He is the author of several books, including *New From Nowhere* and *Agency of Fear*.

**A.** Right. I was interested in knowing what happened to Oswald in the Marine Corps. The Warren Commission had questioned only one marine who served with Oswald at the Atsugi air base in Japan. With the help of four researchers, I found 104 marines who had known Oswald or had worked with him in Japan. It then became possible to reconstruct Oswald's activities in the Marine Corps before he defected to the Soviet Union.

**Q.** What did you learn from the marines?

**A.** Oswald was a radar operator who, along with the other men in his unit, frequently saw the U-2 taking off and landing and heard its high-altitude requests for weather information on the radio.

**Q.** How was this important?

**A.** I didn't know how valuable this information was at the time. But I questioned the designer of the U-2 at Lockheed, Clarence Johnson, and Richard Bissell, former special assistant to the director of the CIA, who was in charge of the U-2 program in 1958, and found out that acquiring detailed information about the altitude and flight patterns of this novel spy plane was the number-one priority of Soviet intelligence. I

also questioned Francis Gary Powers, the U-2 pilot who was shot down over Russia in 1960.

**Q.** What did Powers tell you?

**A.** Powers was shot down in May—about six months after Oswald had defected to the Soviet Union. He was interrogated by the Soviets for about six months, and he recalled being asked numerous questions about Atsugi air base, other pilots at the base, and the altitude and flight characteristics of the plane. Powers told me that he suspected that an American with some technical knowledge of the U-2 had provided a great deal of the information behind the questions he was asked in Moscow. Now, under the CIA's mail-opening program, the agency intercepted a letter written by Oswald in Moscow to his brother in which Oswald said that he had seen Powers. No one had ever explained where he would have had the opportunity to see Powers.

**Q.** Are you saying that Oswald saw Powers in Russia at the time of Powers's interrogation?

**A.** Yes, and Powers also thought that Oswald was involved in his being shot down over Russia. He explained to me in great detail how the secret of the U-2 was the plane's electronic capability to confuse Soviet radar. As long as the radar couldn't get a precise reading on the U-2's altitude, Soviet missiles couldn't be adjusted to explode on target. The Soviets had the missile power—they had already sent Sputnik into space—but they didn't have the guidance system. Oswald, working at Atsugi air base, was in a position to ascertain the altitude at which the U-2 flew. If the Soviets had this information they could have calculated the degree of the U-2's electronic countermeasures and adjusted their missiles accordingly.

**Q.** Powers died in the summer of 1977, when a helicopter he was flying ran out of gas over Los Angeles. Didn't two other witnesses you interviewed die violent deaths?

**A.** Yes, William C. Sullivan, former head of counterintelligence for the FBI, who was killed in a hunting accident in 1977, and George De Mohrenschildt, a close friend of Oswald's, who shot himself after the second day of a prearranged four-day interview. It is tempting to see a connection between these deaths, but I don't. After all,



I interviewed over 200 witnesses.

Q. De Mohrenschildt became a good friend of Oswald's after Oswald returned from Russia. What did he tell you about him?

A. He arranged a good part of Oswald's life in Dallas after Oswald returned from the Soviet Union in 1962, but said he never would have done so had he not been encouraged to by a CIA officer in Dallas named J. Walter Moore. Moore was the head of the Domestic Contact Service in Dallas, a CIA unit which interviewed individuals who had returned from Eastern Europe and the Soviet Union. De Mohrenschildt said that he had discussed Oswald with Moore and Moore had told him that Oswald was "harmless." But De Mohrenschildt strongly suggested that Moore was interested in what Oswald had to say. De Mohrenschildt didn't, however, detail any specific arrangement he had with Moore.

Q. The CIA denied in the Warren Report and in every proceeding that it had ever had any interest in Oswald. What did Moore or other members of the CIA make of De Mohrenschildt's allegation?

A. Moore refused to speak to me for the reason that he was still a CIA officer and CIA officers were not allowed to be interviewed. The CIA public-relations man—whom I reached when I tried to speak to Admiral Turner—refused comment on the allegation. Finally, I asked Melvin Laird, now a Washington editor for the *Reader's Digest*, if he would try to contact Admiral Turner and ask him about the charge. Turner apparently consulted with his P.R. people and then coined a new verb by replying, "We're no-commenting it."

Q. What did William C. Sullivan, the former FBI counterintelligence chief, tell you?

A. He was undoubtedly one of the most valuable witnesses that I found. He told me all about Fedora, the Soviet intelligence officer who volunteered his services to the FBI in 1962 and became enmeshed in the Oswald case.

Q. Your book suggests that Fedora was a Soviet agent all along, sent to misinform the U.S. government by passing along false or misleading information. Why did Hoover accept Fedora?

A. For reasons of competition between the CIA and the FBI. According to Sullivan, most of the United States' intelligence about the Soviet Union's intentions comes from Soviet intelligence agents who volunteer to be double agents for the United States. It is

virtually impossible for the United States to establish its own agent inside Russia since only Soviet intelligence agents, Soviet diplomats, or Soviet military officers have access to Soviet secrets. Therefore, since World War II the CIA has concentrated on recruiting Soviet intelligence officers as spies or double agents. The FBI, however, had no such sources and therefore it couldn't compete with the CIA in international intelligence. When Fedora, who was a Soviet intelligence officer, volunteered to work for the FBI and supply it with the same sort of se-

crets the CIA was getting, J. Edgar Hoover was able to expand the activities of the FBI.

Q. In your book, you state that Hoover was providing Fedora with classified information about United States intelligence in order to promote him and keep him alive within the KGB. Is this really so?

A. Yes. Hoover was feeding secret information to the Soviets through Fedora. Hoover couldn't let him go back to Moscow empty-handed. He was supposed to be an ace Soviet intelli-

### 'Stone': The Man Who Warned About the Moles

In December 1961, Major Anatoli Golitsin, a senior officer in the KGB, met secretly with a CIA officer in Helsinki, Finland. Golitsin had already established his *bona fides* with the CIA by providing it with top-secret Soviet documents, and now he wanted to defect. Once in Washington, he was assigned the code name "Stone" and was turned over to James Jesus Angleton, the chief of CIA counterintelligence, for debriefing.

What Stone revealed in the months ahead was staggering. He told how he had heard from the head of the northern-European section of the KGB that the Soviets had planned to kill a leader of an opposition party in his area. Since Hugh Gaitskell, Harold Wilson's rival in Britain's Labor party, was the only opposition leader to die at this time, and he died of a very rare virus infection, counterintelligence officers in the CIA suspected that the Soviets had done away with Gaitskell in order to promote Harold Wilson, but the facts never could be established. Stone also intimated that some of de Gaulle's top advisers were working for the Soviets. This led to a major rift—one which has never been healed—between American and French intelligence. Leon Uris's *Topaz* is a fictionalization of this case.

What most concerned Angleton was Stone's suggestion that the Soviets had planted one mole deep within the CIA and another within the FBI, with the objective of promoting and advancing them to positions of leadership in American intelligence. Stone said that he didn't know the mole's identity but that in late 1957 Y. M. Kovshuk, one of the key executives of the KGB, had come to Washington under the code name "Komarov," presumably to activate the mole. Since the FBI had had Komarov under surveillance, Angleton decided to find out who Komarov or Kovshuk had seen during this trip. He was unable, however, to determine whether the mole was among the numerous people Kovshuk was observed to have seen while making his social and business rounds.

A personal interview was quickly arranged between Stone and Attorney General Robert F. Kennedy during which Stone reportedly asked for \$30-million to run his own intelligence operation against the Soviets. Richard Helms, then running the clandestine part of the CIA, gave Angleton *carte blanche* to use whatever resources were necessary to "develop" Stone, and for the next thirteen years, up until the day he was peremptorily fired, Angleton had his suspicions and made every attempt to ferret out the CIA and FBI moles to whom Stone had alluded.

—EJE



James Jesus Angleton: Ex-chief of CIA's counterintelligence, he believes there is still a mole in the CIA.



Hugh Gaitskell: A rival of Harold Wilson's in Britain's Labor party, he is believed murdered by the KGB.



Charles de Gaulle: His Cabinet was said to contain a Soviet mole and so lost America's trust.



Robert F. Kennedy: Was asked by defector "Stone" for \$30-million to run an operation against Russia.

“...Powers thought that Oswald was involved in his being downed over Russia...”

gence agent and therefore Hoover had to provide him with some information. Fedora would bring in the KGB's shopping list, and the FBI would take it to the other agencies of the government to be cleared before the information went to the Soviets.

An enormous amount of classified information was handed to Fedora over a decade. Sullivan also feared that the Soviets had their own mole within the New York office of the FBI, one who had a part in clearing the information. The Soviets would then find out not only what the United States had cleared for them but also possibly what wasn't cleared.

Q. You discussed Fedora with numerous other former CIA and FBI officers, including some of the top executives in the CIA in the period when Fedora was supplying information. What did you learn from them?

A. They all believed that Fedora was nothing more than a Soviet disinformation agent.

Q. It's odd that CIA and FBI officers were willing to give you almost all the facts about his case. How did you get them to talk?

A. The CIA officers I approached were former officers, retired, or fired from the CIA. I would usually begin by writing them a letter stating either that someone else had discussed the case they were involved in, and that I needed clarification from them, or that I had received some documents under Freedom of Information which mentioned them or their case. Usually I found this piqued their curiosity. If they would agree to see me, I would usually do most of the talking, telling them what other people told me or what I had found out in documents.

Q. But why *did* they talk?

A. One device that almost always worked was showing them Freedom of Information documents mentioning their name or operational details of a case. Predictably their first reaction was fury that the CIA would ever release this information. Their second reaction was to be offended that someone in the present CIA had it in for them. They were soon eager to correct the record or fill out the context of a case. Their reasoning was that if the government could release information under Freedom of Information, why should they keep their lips sealed.

Q. Is this how you got the CIA officer who handled Nosenko to speak about his case?

A. Yes. He is now living in retirement in Europe, and when I first phoned him and wrote him he refused to see me. Finally, after I had written a draft of my book, I tried again. This time I wrote stating the facts I was about to divulge, facts which included his name and his involvement in the case. He then agreed to see me.

We met at the Waterloo battlefield in Belgium, and I showed him about a hundred pages of documents that involved him. I had acquired these documents under Freedom of Information. He then told me that I was “deeply wrong” because I was missing a crucial element of the Nosenko case, but he was not sure that he was willing to provide it. A few weeks went by and he agreed to meet me again, this time at Saint-Tropez in France. We then spent three weeks together, going mainly to the Club 55, a beach club, where he gave me what he considered to be the crucial context on the case, which was what Nosenko had done in 1962.

Q. And what was that?

A. Nosenko had been sent by the Soviets to the CIA to paint false tracks away from the trail of a Soviet mole in the CIA.

Q. Did you ever get to see Nosenko? And if so, how?

A. Yes. The CIA put me onto him.

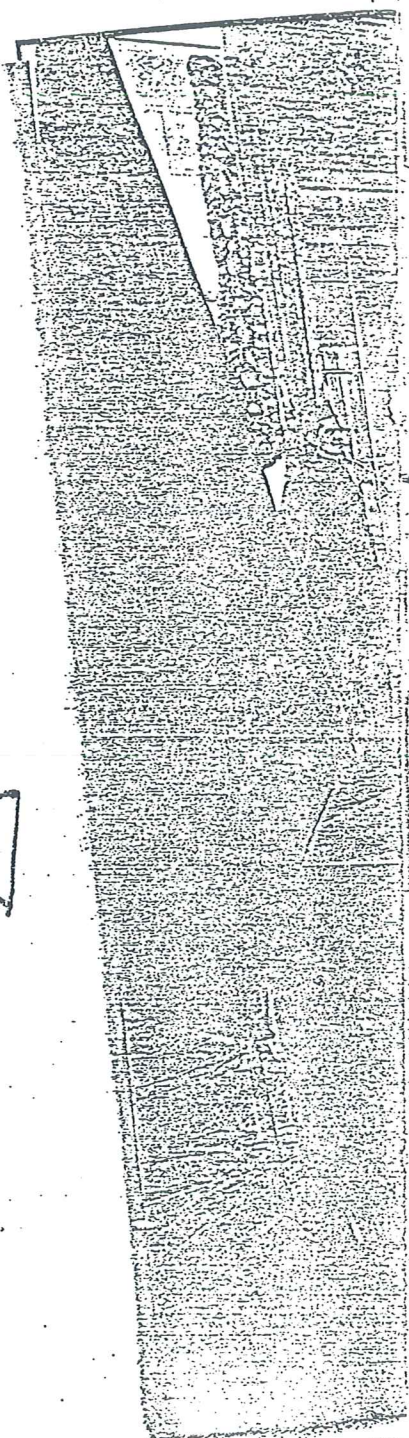
Q. How do you explain that?

A. I presume that it found out I was writing a book on Lee Harvey Oswald and it wanted me to put Nosenko's message in it. Nosenko's message was that Oswald was a complete loner in the Soviet Union and never had any connection or debriefing by the KGB. I spent about four hours interviewing Nosenko.

Q. Your book strongly suggests that Nosenko is a fake. Do you believe the CIA was trying to mislead you by sending you to him?

A. Yes. It sent me Nosenko as a legitimate witness to Oswald's activities in the Soviet Union without telling me that Nosenko had been suspected of being a Soviet disinformation agent.

Q. When did you first become suspicious (Continued on page 36)



## Nosenko: The Red Herring

In June 1962, Yuri Ivanovich Nosenko, a KGB officer attached to the Soviet delegation at the Geneva disarmament conference, met two CIA officers in a "safe house" and offered to become a double agent. He had information about two spies. One was Colonel Peter Popov, a mole working for the Americans inside the Soviet military; his capture by the Soviets in 1959 had baffled the CIA. The other was "Andrey," a Soviet mole in American intelligence. Nosenko also said that Finland's President Urho Kekkonen was the Soviets' "man in Finland." Later, however, he denied ever having said this.

During the 1960s, Nosenko gave information about four people of great interest to American intelligence: Popov, "Andrey," Lee Harvey Oswald, and a Soviet official named Cherepanov.

**Nosenko's Popov story:** After Popov was caught in 1959, the KGB sent him to meet his American contact in Moscow with a message written on six sheets of toilet paper, stating that he had been captured by the KGB through routine surveillance. Now, since most moles are betrayed by inside agents, and since Popov was known to have been under KGB control at the time he delivered the toilet-paper message, it seemed that the message was fabrication meant to conceal the real means by which Popov was betrayed—by a Soviet mole in American intelligence.

Nosenko, however, stated categorically that Popov was caught through a KGB surveillance device whereby a chemical painted onto a target's shoes made it possible for him to be followed without his knowledge. According to Nosenko, no Soviet mole had betrayed Popov.

**Nosenko's "Andrey" story:** Nosenko then added to defector Stone's story (see box, page 31) about the Soviet mole who had penetrated the CIA. Stone had suggested that Kovshuk, a high KGB official, had activated a Soviet mole during his trip to Washington. Nosenko explained that he was Kovshuk's deputy and knew that Kovshuk had gone to see the most important agent ever recruited by the Soviets, a man given the code name "Andrey." He then provided a set of clues to the identity of Andrey. Nosenko was given the code name "Foxtrot" and told to continue collecting information for United States intelligence. When James Jesus Angleton, the counterintelligence chief in Washington, heard the full context of the case, he decided that Nosenko was probably no more than a KGB disinformation agent sent over by the Russians to lead false tracks away from the mole within the CIA. The Andrey clues, once followed, led to a motor mechanic somewhere in the Washington, D.C., area.

**Nosenko's Oswald story:** For the next eighteen months, there was no word from Nosenko. Then, in January 1964, only weeks after President Kennedy was assassinated, Nosenko again appeared in Geneva with a bombshell for the CIA. He claimed that he was the KGB officer who had superintended Lee Harvey Oswald's file during his three years in Russia prior to the assassination and by coincidence had also conducted the post-assassination investigation into Oswald's activities in Russia. Nosenko stated categorically that Oswald had had no dealings with the KGB. He had never been debriefed by any organ of Soviet intelligence. He had not been recruited by the Soviets prior to his defection to Russia or ever trained or even spoken to by Soviet intelligence agents. The KGB was, according to Nosenko, completely innocent in the Oswald case. Nosenko then insisted that he be allowed to defect

because he had received a recall telegram from Moscow, which meant the KGB probably knew of his contact with the CIA and would kill him if he returned.

Given Nosenko's status as an Oswald witness, the CIA had no choice, and Nosenko came to the United States. Fedora (see box, page 36), who was presumed to be a double agent for the FBI at that time, confirmed for the FBI that Nosenko was indeed a KGB agent who had defected, that Nosenko had been a lieutenant colonel, and that Nosenko had received a recall telegram from Russia. Meanwhile, the CIA discovered that Nosenko had told three lies: (1) A special unit of the National Security Agency had intercepted telegram traffic received by the Soviet mission in Geneva and found that no recall telegram for Nosenko had been received on the day he'd said; (2) the CIA had determined that Nosenko had not held the rank of lieutenant colonel as he'd claimed; and (3) the Soviet defector code-named "Stone" had told the CIA that Nosenko could not have been in the section of the KGB he claimed to have been in, since Stone would have known him if he had been.

Under intensive cross-examination, Nosenko broke down. He admitted that he'd only been a captain, not a colonel; that the travel document he had carried with him identifying him as a colonel had been "in error"—although how an official document could misidentify his rank was never explained—and that he had fabricated the story about the recall telegram to convince the Americans to allow him to defect. This meant that Fedora, who had confirmed Nosenko's rank of colonel and his recall-telegram story, had also been giving false information.

James Angleton and the Soviet Russia Division of the CIA concluded that Nosenko's cover story or legend had been prepared by the KGB in Moscow and that Fedora had been fed the cover story in order to "confirm" it.

The CIA made one final attempt to break Nosenko.

In a suburb of Washington, D.C., Nosenko was confined in a padded basement room with a television camera in the ceiling to observe his activities and make sure that he did not attempt to injure himself. As there was no natural light in the room, the clock was set back in an attempt to confuse Nosenko's biological clock. He was given cigarettes for a period of time and then suddenly denied them in the hope of inducing a nicotine dependency. For three years, a team of interrogators worked over and over the contradictions in his story. At one point only did it seem Nosenko was about to crack, but he never did.

Finally, in 1967, the CIA's Soviet Russia Division was asked to produce a report on Nosenko. The report, which ran 900 pages in length, virtually indicted Nosenko as a Soviet agent. The CIA now faced a dilemma. If it officially denounced Nosenko as a disinformation agent, the Warren Commission's conclusions about Oswald's connections with the KGB would have to be reconsidered, and the American public would lose confidence in all documents and evidence furnished by Soviet defectors.

It was finally decided in 1968 to give Nosenko \$30,000 a year as a "consultant" to the CIA, a new identity, and a new home in North Carolina.

**Nosenko's Cherepanov story:** This is Nosenko's fourth story and is contained in a separate box (page 37).

Seven years later, after the Angleton firing, Nosenko was rehabilitated. He's now in Washington handling 120 cases for the "new" CIA. —EJE

## Fedora: The Spy Who Duped J. Edgar Hoover

In March 1962, a Soviet official attached to the U.N. told the FBI office in New York that he was actually a senior officer of the KGB, assigned to gather information from Soviet espionage networks on the East Coast about developments in American science and technology. He said that he was disaffected with the KGB and offered to provide the FBI with information about Soviet plans and agents. He was assigned the code name "Fedora."

Up to this point, the CIA more or less monopolized reporting to the president on the inner workings of the Soviet government. J. Edgar Hoover saw that with Fedora he would now be able to compete with the CIA, and although the FBI at first labeled Fedora's first few reports "According to a source of unknown reliability," Hoover personally ordered that the "un" be deleted. Moreover, under Hoover's personal orders, the reports were not to be passed to the CIA but sent directly to the president.

From 1962 until 1977, Fedora, although still a KGB officer at the U.N., provided the FBI with information on a wide range of subjects. Almost from the very beginning, however, the CIA was suspicious of Fedora. In 1964, in another case involving Lee Harvey Oswald, the CIA intercepted Soviet cable traffic which revealed that Fedora had given false information about another Soviet agent (see box, page 35). This led the CIA's counterintelligence staff to suggest that Fedora was most probably a Soviet agent feeding "disinformation" to the FBI. Indeed, over the years, Fedora misled the FBI on a number of crucial matters.

### Fedora's disinformation:

□ The Profumo scandal. Fedora said it was all a French setup. In fact, it turned out to have been a Soviet-intelligence operation.

□ The ABM. Just when the American government was engaged in a debate over whether to build an antiballistic-missile system, Fedora told the FBI that the United States was ten years ahead of the Soviets in missile technology. In fact, we were behind.

□ The "Pentagon papers." At the height of the furor over the Pentagon papers, which the *New York Times* was printing in 1971, it was Fedora who poisoned the atmosphere further by telling the FBI that the papers had been leaked to Soviet intelligence. This report, when presented by Hoover, provoked Nixon into setting up the "plumbers."

□ The American Communist party. Fedora helped Hoover carry on his lifelong crusade against the American Communist party by presenting him with the information that it was engaged in espionage activities for the Soviet Union. Hoover was able to use this data in support of his massive campaign against the party. (The information was never confirmed.)

Eventually, even senior FBI officials began to doubt the validity of Fedora. William C. Sullivan, the deputy director of the FBI under Hoover, became convinced that Fedora was acting under Soviet control and tried to persuade Hoover of this, but to no avail. Furthermore, tensions between Hoover and the CIA, exacerbated by the Fedora case, came to a head in 1971, when Hoover all but cut communications between the FBI and the CIA. The FBI was becoming increasingly dependent on Fedora. Indeed, it was estimated by one CIA official that 90 percent of all the FBI anti-Communist cases in New York came from Fedora (and two other Soviets who joined Fedora in supplying the FBI with information). If Fedora was a fake, the FBI would have to re-evaluate all the cases and information it had acted on since 1962. Hoover was not prepared to do this, and thus Fedora lingered on as an FBI "double agent," possibly to this day.

—EJE



J. Edgar Hoover: Believed "Fedora" was a true double agent and gave him secret U.S. information.



William C. Sullivan: Head of FBI counter-intelligence division suspected that "Fedora" was a Soviet spy.



Gus Hall: U.S. Communist-party leader. "Fedora" told Hoover that the American Communists were spying for Russia.



John Profumo: "Fedora" tried to place blame for the Profumo scandal on the French, not on the Soviets.

(Continued from page 32) of Nosenko?

A. A few weeks after I interviewed Nosenko, I had lunch in Washington at the Madison Hotel with the Soviet press officer, a man named Igor Agou. I had set up the meeting in the hope of persuading the Soviets to allow me to go to Russia to interview the Soviet citizens who had known Oswald during the three years he spent there. Agou, however, made it clear to me very quickly that the Soviets would not be receptive to such an idea. Mr. Agou then said in a very quiet voice, "Perhaps I shouldn't be saying this . . . but you might be interested in knowing that there is someone in America who could help you . . . a former KGB officer named Yuri Nosenko, who had handled the Oswald case and who knows as much about Oswald as anyone in the Soviet Union."

Q. You mean that this Soviet Embassy officer was actually recommending that you see Nosenko?

A. Yes. I was a bit dumbfounded. Here was an official from the Soviet Embassy recommending that I see someone who was a traitor. And I couldn't believe that Mr. Agou was just trying to be helpful to me.

Q. Your book makes frequent references to James Angleton, the former head of counterintelligence for the CIA. Why did he agree to see you?

A. Because I had already interviewed Nosenko. Angleton knew that since Nosenko was working for the CIA, he wouldn't have seen me unless the CIA had sent him. Angleton, who had been fired from the CIA by Colby, wanted to know why, after keeping Nosenko in isolation for thirteen years, the CIA would suddenly send him to see a journalist doing a story about Oswald.

Q. Well, what did Angleton tell you?

A. For the first three meetings we had in Washington, he refused to discuss anything about Nosenko, Oswald, the CIA, or anything else bearing on what I was writing. He was far more interested in finding out what I knew than in telling me anything, and so I decided to look up the members of his staff.

Q. How do you know that these former CIA officers weren't misinforming you?

A. Of course, I have to assume that they had axes to grind. A number of CIA officers whose careers rested on the Nosenko case wanted to see it resolved in one way or another. I also realized that I could never be sure

“...The Warren Commission questioned one marine who knew or worked with Oswald in Japan. Epstein found another 104...”

that crucial facts were not withheld.

Q. What did you consider the greatest failure in your investigation?

A. The failure to run down a lead concerning Pavel Voloshin. Voloshin's name turns up both in Oswald's address book and on a letter (from the Patrice Lumumba University in Moscow) found among Oswald's effects after he was dead. I got a CIA "trace" on Voloshin, and he turned out to be a KGB officer who had been in the Far East at the same time Oswald was there with the marines, and who had visited California in 1959 when Oswald was preparing to defect. He had been in Moscow when Oswald was there, and finally had been in Amsterdam when Oswald passed through on his way back to the United States in 1962. One former CIA counterintelligence officer suggested to me that Voloshin might

have been the person who recruited Oswald or arranged for his defection.

Q. What was Voloshin doing in California?

A. He was supposedly working as a press officer for a Russian dance troupe that was passing through California. I asked Oswald's fellow marines who served with him in California whether Oswald had ever talked about this dance troupe. None of them remembered. One of his friends, Nelson Delgado, remembered, however, that Oswald had talked to a man in a raincoat for an hour and a half one night when he was on guard duty. Another marine also remembered this incident. They were impressed by the man's raincoat because it was about 90 degrees that night in California.

I wanted to show these marines a photograph of Voloshin to see if he

could conceivably be the man they had seen. I knew that the FBI had Voloshin under surveillance, and that the CIA had a photograph of him in its file, but they refused to turn it over to me.

Q. You mention the CIA's misleading you over Nosenko's *bona fides*; did they try to mislead you anywhere else?

A. When we were checking the book, my researcher was told by the CIA that the CIA headquarters building was only six stories high—a small detail. Later I found out that Richard Helms's office was on the seventh floor and that it was common knowledge that the office was on the seventh floor. I still wonder why the CIA was giving me inaccurate information. Possibly it was to make it appear that my own research was slipshod.

Q. What about the FBI?

A. It provided me with very little information, but what they did give me was generally straightforward, and I think they tried to be as helpful as they could.

Q. Were there any witnesses that you were unable to find?

A. Yes. I had hoped to interview James Allen Mintkenbaugh, an American who admitted spying for the Soviets and who was subsequently tried and imprisoned. He went to Moscow in the same month that Oswald did and the Soviets tried to arrange to have him marry a Soviet agent, whom he would bring back to the United States. I was curious to know what he thought of Oswald, and if he ever met him or Marina in the Soviet Union. I wish I had also interviewed a number of other defectors who were in the Soviet Union at the same time as Oswald, including one named Robert E. Webster, whom Oswald reportedly once asked for on a visit to the Moscow American Embassy.

Q. Are there other questions you would like to see resolved.

A. Yes. For example, I found four marines who remembered being interviewed after Oswald defected to the Soviet Union and were asked about Oswald's access to classified information. One remembered giving a written statement and the others remembered being questioned orally. This implied that the Marine Corps did an investigation to see what information Oswald had brought to the Russians.

#### Cherepanov: The Would-Be Mole

In the fall of 1965, an American businessman visiting a Soviet ministry in Moscow was hurriedly handed a pack of papers by an official named Cherepanov. He was told to take these papers to the American Embassy. The embassy had never heard of Cherepanov and, suspecting it all might be a Soviet trap aimed at the American businessman, photocopied the papers and gave them to the Soviet ministry. The fact that Cherepanov's name was on the distribution ladder with the papers clearly identified him as a traitor. When the CIA heard about the papers being given back, they realized that the embassy might have signed Cherepanov's death warrant.

The Cherepanov story became more curious, however, when the papers were found to include a document on Colonel Popov, a former American agent in Russia, supporting a highly suspect version of Popov's arrest by the KGB (see box, page 35). This finding caused the CIA to suspect that the Soviets were repeatedly attempting to protect some mole in the CIA who'd betrayed Popov.

These suspicions were soon confirmed by James Soviet attempts to make the United States believe that Cherepanov was actually trying to defect, that his documents were bona fide, and that by handing them back, the American Embassy had ensured Cherepanov's death. The Soviets called upon Yuri Nosenko—a KGB agent who "defected" in January 1964 (see box)—to carry disinformation to American officials. Nosenko told the CIA that he'd been sent to Gorki in Russia to search out Cherepanov for the KGB. He had travel documents that supported this. But much of Nosenko's tale seemed too farfetched: Nosenko claimed that a "Cherepanov" who the CIA files showed had offered himself as a double agent for the British in Yugoslavia in the early 1950s was the same Cherepanov who had recently tried to defect to America. In effect, the CIA was being asked to believe that a Russian KGB agent had survived one attempt to defect and had gone on to try a second time. He would almost certainly have been executed. Nosenko's account of what happened instead was even more difficult to swallow. He said that in Yugoslavia, Cherepanov had been working for that part of the KGB responsible for foreign espionage, and that when he had gotten "into trouble" for offering to betray his country, he had simply been thrown out of his department. He maintained that Cherepanov had then been rehired by the KGB, this time by that department responsible for internal affairs. The CIA found this story unbelievable. Cherepanov hasn't been heard of since. —EJE

“... Since Angleton and his counterintelligence staff were fired, the ‘new’ CIA’s policy is to believe that moles do not exist...”

#### A Warning From the ‘Old’ CIA

*This is an excerpt from a letter to Edward J. Epstein, written by a former operations chief of the CIA’s counterintelligence.*

The 1976 exoneration or official decision that Nosenko is/was bona fide is a travesty. It is an indictment of the CIA and, if the FBI subscribes to it, of that bureau too. The ramifications for the U.S. intelligence community, and specifically the CIA, are tragic.

Acceptance of Nosenko as a reliable consultant about Soviet intelligence and general affairs will cause innumerable problems for incumbent and future intelligence collectors and any remaining counterintelligence (CI) officers. Acceptance of his information inevitably will cause the acceptance of other suspect sources whose information has dovetailed with Nosenko’s proven lies.

Acceptance of Nosenko throws the entire perspective about Soviet intelligence out of focus. His information tells us things the present détente devotees want us to hear and cumulatively degrades our knowledge (and the sources of this knowledge) of Soviet intelligence capabilities, policies, and effectiveness.

In a very unfortunate sense the United States and the CIA are fortunate because William Colby virtually destroyed CI in the CIA. In 1975 the CIA turned away from CI and—significantly—from the program which was the basis for analyzing the mass of material collected from Nosenko and comparing it with other information. Even if the CIA had the inclination to restore resources to CI, it would be difficult to resurrect the program to disseminate Nosenko’s misinformation effectively. Nevertheless, there is still a great danger that Nosenko’s misinformation will now be disseminated without review or analysis to reconcile its internal inconsistencies. To use Nosenko’s information is to build on sand. Let us hope that the CIA’s anti-CI policy doesn’t permit anyone to use Nosenko’s information until wiser heads prevail and true CI is restored to the CIA and government.

But the navy, Defense Department, Office of Naval Intelligence, Marine Corps, and everyone else denied that any such investigation had been conducted, though it would have been automatic. I was told, off the record, that even had the Marine Corps investigated Oswald in 1959, the records might have been destroyed.

Q. You suggest in your book that the FBI had an interest in covering up the KGB’s connections with Oswald. Isn’t that a little perverse?

A. The FBI failed to keep tabs on Oswald after his return from the Soviet Union, even though it had reason to suspect he was an agent.

Now, if after killing Kennedy or after the Kennedy assassination it turned out that Oswald was simply a lone crackpot, the FBI would not be revealed as irresponsible, but if it turned out that he had indeed been a Soviet agent, even on some petty mission, the FBI would be guilty of a dereliction of duty. The only way J. Edgar Hoover could be sure of avoiding this accusation was to show that Oswald had not been a Soviet agent nor had he had connections with the Soviets upon his return from the Soviet Union.

Q. Which of the spies that you mention in your book have never been discussed in print?

A. All the stories are almost totally new. Fedora has never been mentioned to my knowledge. Neither has Stone. The breaking of Nosenko’s story has never been mentioned, and it leads one to wonder how much is still left to uncover.

Q. Do you think the mole that Stone pointed to is still tunneling his way up through American intelligence?

A. He hasn’t been caught yet, and it is entirely conceivable that one was planted. We know that the Soviets placed so many moles in West German intelligence that they effectively took it over, but more important, the CIA is particularly vulnerable to penetration since so many of its agents recruited after World War II are individuals of East European origin. As Angleton pointed out to me, the odds are always in favor of recruiting one mole.

Q. Is the hunt that Angleton started for the mole still on?

A. The former CIA officers who were involved in the hunt tell me that the “new” CIA has now made a policy decision to believe moles do not exist. All speculation on this subject has been officially designated “sick think.”

Q. Was James Angleton fired because he was onto the mole Stone had talked about?

A. Not directly. According to his former aides, Angleton and his counterintelligence staff, whose job it was to be sure that sources were not planting disinformation, were too strongly challenging Colby’s sources in Russia. Accordingly, Colby got rid of Angleton and his key staffers, one of whom, Newton Miler, told me that Colby wanted to close down or drastically revise the role of counterintelligence in the CIA.

Q. Might there be a mole in the FBI?

A. Yes. Indeed, Sullivan was convinced that the Soviets had penetrated at least the FBI’s New York office. And the former deputy chief of the CIA’s Soviet Russia Division told me that there was absolutely no way the Soviets could run the Fedora operation without the aid of a mole in the New York office.

Q. Does James Angleton really know who the mole in the CIA is?

A. Angleton refuses to say, but one of his ex-staff members told me with a wry smile, “You might find out who Colby was seeing in Rome in the early 1950s.” When I pressed him about Rome, he changed the subject to Vietnam and told a long story about Colby’s having dined with a Frenchman who turned out to be a Soviet agent. Colby should have reported the contact but didn’t, and when Angleton raised the issue, Colby became enraged. I asked Angleton about this confrontation, and he mentioned some CIA inspector general’s report. He then switched to one of his favorite subjects—the cymbidium orchid.

Epstein has two more episodes to tell: the story of Lee Harvey Oswald and that of George De Mohrenschildt; what Oswald was doing after his return from the Soviet Union, and what De Mohrenschildt told Epstein during an extraordinary interview in Palm Beach, just two hours before committing suicide. These will appear in next week’s issue of *New York*.

LEGEND:  

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THE  
SECRET WORLD  
OF  
LEE HARVEY  
OSWALD  

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EDWARD JAY EPSTEIN

*Reader's Digest Press*

McGraw-Hill Book Company  
New York St. Louis San Francisco  
Mexico Toronto Düsseldorf

*INSIDE OUT / 271*

Admiral Taylor instantly agreed with this recommendation. It would cost the CIA very little and enabled the agency to avoid the possibility of a very destructive flap. All the others seated around the table nodded their assent—except for the members of the counterintelligence staff. They explained that they were still fully convinced that Nosenko was a disinformation agent. And while they agreed that there was no alternative but to release him, they insisted that all the information received from him in the past, as well as in the future, be labeled “from a source that allegedly had access but whose bona fides are not established.”

Although the inspector general appeared visibly angry over the unwillingness of Angleton's staff to award Nosenko his bona fides, he managed to get agreement on how Nosenko was to be “distanced” from the CIA in the immediate future.

Shortly thereafter the Office of Security made arrangements to buy Nosenko a house in North Carolina. He would also receive from the CIA an allowance of about \$30,000 a year, employment would be found for him and he would be granted United States citizenship. In return, he 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.

In the winter of 1969 Yuri Nosenko, under a new name, took up a new life for himself. Sometime later he was married (Solie was the best man at his wedding).

The years passed, but Angleton continued to be intrigued by one aspect of the Nosenko case. In his ongoing interviews with the FBI Nosenko brought up certain cases that he had not mentioned previously. One concerned a KGB officer who had tried to defect to the Americans in the summer of 1959 but failed. In the position that Nosenko claimed to have had in the KGB, he should have been intimately familiar with the details of this particular case, yet he had avoided mentioning it during his initial debriefings. What made this omission seem to Angleton both significant and sinister was that the blank had been filled in by Nosenko only in 1967 after the Russians had reason



SUNDAY, APRIL 16, 1978

# The Mysterious Soviet Defection At the U.N.

*Did Moscow Suspect He Had Ties to Former FBI 'Deep Plant'?*



*Arkady N. Shevchenko*

*By Tad Szulc*

**A**S HE SCURRIES under federal protection from hideaway to hideaway along the eastern seaboard of the United States, a 47-year-old Soviet diplomat of exalted rank named Arkady N. Shevchenko is writing one of the most unusual chapters in the annals of postwar political defections.

The most improbable of defectors, the scholarly and self-effacing Shevchenko served as under secretary general of the United Nations for political and Security Council affairs, the No. 2 political job in the world organization under Secretary General Kurt Waldheim, when he made up his mind sometime on Thursday, April 6, to defy a sudden order from Moscow to return home at once.

No Soviet official of Shevchenko's stature had ever defected to the West.

The initial Soviet charge that Shevchenko had been "coerced" by American intelligence into defecting and is being kept in the United States against his will is patent nonsense. Heavy hints dropped by Communist sources in New York that he had a "drinking problem" seem to fit under the heading of character assassination. The defection obviously was an acute political and propaganda embarrassment for the Kremlin.

And this embarrassment may deepen and turn into con-

siderable discomfort for the Soviets if Shevchenko agrees, as may well happen, to share his knowledge of Moscow's diplomatic and disarmament policy secrets with the U.S. government. It would be particularly important at a time when Moscow and Washington are entering the final phase of negotiations for a SALT II agreement.

Nothing would be more valuable to the United States at this difficult juncture in the talks than to acquire through Shevchenko an inside understanding of how the Russians plan and formulate their negotiating positions. In this sense, Shevchenko is potentially the richest prize in diplomatic intelligence ever handed the United States.

Contrary to Soviet charges, however, Shevchenko's willingness to submit to what are euphemistically called here "debriefings" — if this is the case — would not necessarily suggest that he was recruited by the CIA or the FBI.

This is not the way intelligence operates. CIA specialists who have handled Soviet-bloc defectors since the late 1940s say that recruitment of defectors is exceedingly rare. The vast majority — such as KGB officers Yuri I. Nosenko and Anatoli M. Golitsin — defect on their own, for whatever reasons, and intelligence co-optation comes later, often as part of a *quid pro quo* for protection and asylum in the United States and the chance to build a new life here. In situations of this type, the first concern — a concern that has never been fully resolved after 14 years in Nosenko's controversial case — is whether the defector is a KGB "deep plant" or a possible double agent.

See DEFECTOR, Page B5

Szulc is a Washington writer whose latest book, "The Illusion of Peace," a diplomatic history of the Nixon years, will be published in May.

None of these considerations would apply to Shevchenko. Traditionally, the CIA prefers to recruit "agents in place" — Col. Oleg Penkovsky and Col. Peter Popov, U.S. covert agents who were executed by the Russians, were classical examples — who may serve indefinitely as deep-penetration intelligence sources unless they are caught.

Defections are encouraged only rarely and when there are reasons to suspect that the situation is ripe for it in a given case. And when it came to Shevchenko, the political and diplomatic risks in approaching him to defect would have been unacceptable to the United States. One simply doesn't urge senior ambassadors to defect.

Now that Shevchenko has taken the plunge, however, he becomes an object of intense interest to the Inter-Agency Defector Committee, which is composed of representatives of the CIA, the FBI, military intelligence services and the State Department. And this probably explains why FBI agents have been discreetly protecting Shevchenko since he decided not to return to the Soviet Union and spent the last week hopping between motels in Pennsylvania's Pocono mountains (surprisingly registering under his own name at a White Haven, Pa., motel last Monday morning) and friends' homes in New York City.

American officials, of course, have refused comment on any aspect of the Shevchenko affair, obviously an exceedingly sensitive one, except to say that he is free to stay in the United States, go home, or choose some other place of exile in the world.

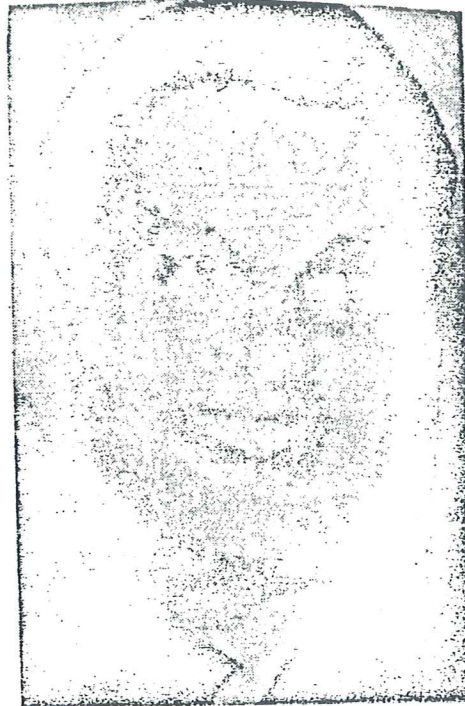
### A Rising Star

TEN DAYS after his dramatic decision, Shevchenko's motivations remain wholly mysterious. All he said through his American lawyer before vanishing from his luxurious apartment on New York's East 65th Street late last Sunday — the defection was kept secret for nearly three days — was that he had political "differences" with the Soviet government.

Whatever this meant, the gesture was as stunning as it was unprecedented. Previous defectors had included some fairly senior officers of the KGB, the Soviet secret service; a destroyer commander with a wide and useful knowledge of the inner workings of the Soviet navy; quite a few Mig pilots, and a smattering of lesser diplomats — and that was all western governments ever expected.

But Shevchenko was part of the elite of the Soviet establishment. A career diplomat and protege of Foreign Minister Andrei A. Gromyko — he was his personal adviser on disarmament in the early 1970s when the first Soviet-American agreement on limiting strategic arms (SALT) was negotiated and signed — Shevchenko received an ambassadorial title in 1971 when he was 40 years old, the youngest Soviet foreign service officer to achieve it.

Two years later, an even greater accolade was accorded him: His government recommended him for the United Nations undersecretaryship. This was tantamount to being appointed by Waldheim, since under standing practice the top professional job in New York is reserved for a Russian. Westerners never doubted that Shevchenko was Moscow's eyes and ears at the United Nations, with access to much signifi-



Yuri I. Nosenko

cant international diplomatic information — no matter what is said about the ostensible independence of international civil servants.

Shevchenko, in other words, was clearly as trusted by the Kremlin as any of its top envoys and, just as clearly, he was a comer. He had spent five years as undersecretary general (he had also lived in New York from 1963 to 1971 as the disarmament expert of the Soviet mission to the United Nations) and his \$76,000 annual contract had been renewed for two more years only last Feb. 3.

Given Shevchenko's well-rounded international experience — everything from disarmament to the Middle East, and United Nations peacekeeping forces streamed through his office — he was a likely candidate for a Soviet deputy foreign ministership the next time around. Perhaps someday he could even aspire to succeed Gromyko, his aging patron, as foreign minister.

### An Exercise in Discretion

THE GENERAL VIEW is that Moscow will not use Shevchenko as an excuse to let Soviet-American relations deteriorate even further, although Soviet Ambassador Anatoly F. Dobrynin raised the subject with Secretary of State Cyrus R. Vance last week. The defection, unpleasant as it is

to the Russians, is essentially extraneous to the basic relationship between Moscow and Washington, and there seems to be no reason to add new problems to the differences over SALT and Africa that Vance will be discussing in the Soviet capital later this week.

Nevertheless the administration is handling Shevchenko with extreme care to avoid needless frictions. The hope that the Russian diplomat will allow himself to be debriefed in secret by American officials is a factor in this exercise in utmost discretion.

Another consideration is the approaching trial of the Soviet computer expert Anatoly Shcharansky on charges of spying for the United States. Shcharansky's former roommate, Dr. Sanya L. Lipavsky, had covertly worked for the CIA at one point, and the administration here worries that the trial may be used as an attack on American intelligence operations in the Soviet Union. It thus doesn't want to have the Russians throw the Shevchenko case into the hopper of intelligence accusations.

Meanwhile, it is necessary to sort out the question of Shevchenko's legal status in the United States. He has not yet requested political asylum here and, according to his New York attorney, Ernest A. Gross, a one-time American delegate to the United Nations, he has no intention of doing so.

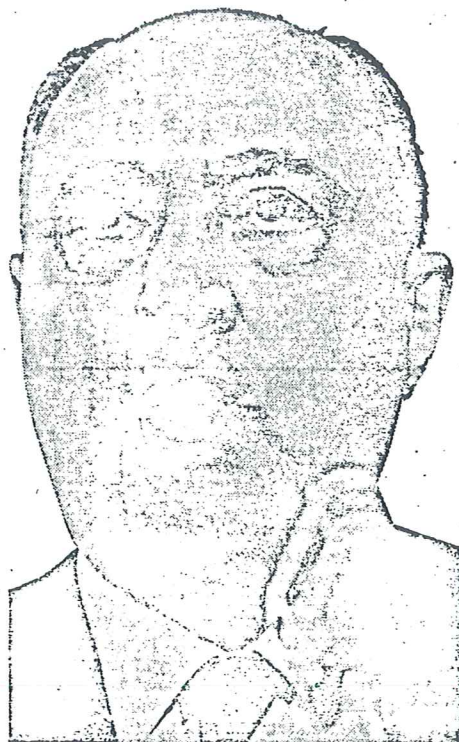
This is one of the many mysterious facets of the Shevchenko story. Gross insists that, strictly speaking, Shevchenko is not a defector because he hasn't asked for asylum. But State Department legal experts say this is a fine point and, possibly, a bargaining chip for the Soviet diplomat. In order to remain in the United States after his United Nations employment is formally ended, Shevchenko must adjust his immigration status, and obtaining refugee status may be the only solution.

The growing impression in Washington is that Shevchenko wants to resolve his employment problems with Waldheim before making an open move in terms of his legal status in the United States.

Approaching his situation with remarkable pragmatism and business acumen, Shevchenko is trying to negotiate his way out of the United Nations job although he has already been placed on leave by Waldheim.

At first, he indicated that he has no plans to resign his post, evidently a bargaining ploy. Yet Waldheim has no choice but to fire him because of the basic arrangement with Moscow governing the undersecretary post. The Russians have demanded his dismissal, and Waldheim has said that henceforth Shevchenko is a question strictly between the United States and the Soviet Union.

Last Thursday, however, a U. N. spokesman said that Shevchenko has asked for "a mixed bag of money and personal security" in order to resign and spare Waldheim a legal test as to whether an international civil servant can be



Ernest A. Gross

fired at the request of his home government. It is understood that Shevchenko wants the equivalent of severance pay covering the two years of his new contract and the return of his contributions to the retirement fund. This could add up to \$150,000. He also appears to have a contract for a book he has been writing for a New York publisher.

To protect himself further, Shevchenko claims he wishes to retain his Soviet citizenship. This, however, may be a moot point because Moscow is likely to deprive him of it, as it has done with the cellist Mstislav Rostropovich, now conductor of the National Symphony Orchestra here, and former Soviet Gen. Pyotr G. Grigorenko, a leading dissenter, currently in New York.

Given the way Shevchenko has been acting, the question arises whether he had been preparing his defection all along or acted on the spur of the moment after receiving a recall order and then engaged Gross to help him to make the most of the defection. And it is entirely possible that if the Soviet diplomat had planned to defect for some time, his decision was triggered by instructions to fly home at once.

#### A Link With "Fedora"?

ON THE SURFACE, there is no plausible explanation for Shevchenko's move. He had one of the best careers in

the Soviet diplomatic service and only last February his government had supported the extension of his U.N. contract. He always appeared to be ideologically in tune with Moscow and he was regarded as a straight, no-nonsense, party-line diplomat.

The question then arises why he had been recalled so abruptly. It isn't even clear if he was asked to go home for good or just for consultations, although the former seems more likely inasmuch as his wife and daughter departed precipitously last Saturday.

One possibility is that Moscow discovered in some fashion that Shevchenko's loyalty might be flagging. There have been unconfirmed rumors that he had an extramarital love affair in New York, and, as CIA experts note, defections are often the result of emotional involvements.

An intriguing but entirely undocumented possibility is that the Soviets might have tied Shevchenko to "Fedora," the FBI's cover name for a Soviet intelligence officer working under diplomatic cover at the United Nations in New York who was regarded by the Bureau as its most important "deep plant" agent.

The story of "Fedora" was first disclosed publicly in a book on Lee Harvey Oswald, the assassin of President Kennedy, written by Edward Jay Epstein and published shortly after Shevchenko's United Nations contract was extended in February. Oswald, according to the book, had KGB links, but "Fedora" — along with Nosenko — had convinced the FBI that it was not so. "Fedora," who had worked for the Bureau from 1962, is believed to have returned to the Soviet Union two or three years ago. While it is impossible to establish a connection between "Fedora" and Shevchenko, speculation has developed in intelligence circles whether the diplomat's sudden recall might have been related to the "deep plant."

There certainly is no other immediate explanation for the Shevchenko mystery and there may never be one. Shevchenko has yet to explain what his "differences" with the Soviet government were.

### Moving Fast

**I**N ANY EVENT, Shevchenko moved fast after he received written orders to return. Late on April 6, after writing a letter to the Soviet U.N. Mission declaring that as an international official he could not be peremptorily summoned to Moscow — an unusual act for a Soviet diplomat — he sealed his office to make sure that no "incriminating" material was planted there.

That same evening he telephoned Gross, who lives seven blocks away. He told Gross that he planned to be "temporarily absent" from New York for reasons of health, but that he anticipated legal problems in which he would need assistance. Gross asked him for a letter outlining his situation, and Shevchenko had it delivered the next day, April 7. Quickly, Gross asked the State Department for federal protection for his Soviet client.

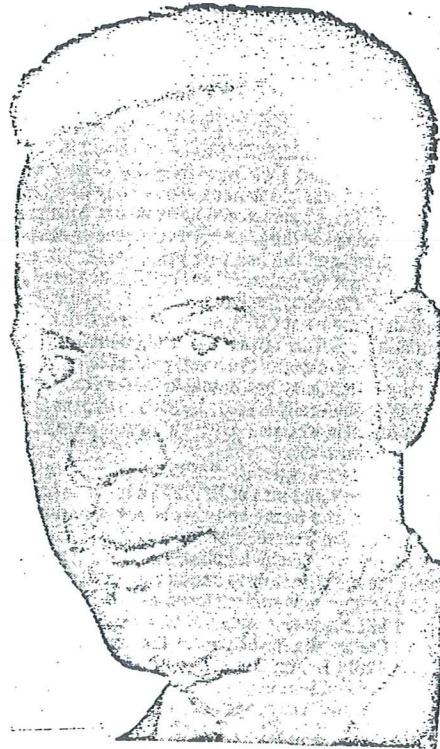
Then Shevchenko informed his office by telephone that he was going on leave. He said it in such a tone that both the

Soviet and United States delegations were immediately informed of it.

The Russians smelled a defection, for they demanded a confrontation with Shevchenko. This was granted, and last Sunday he met with two Soviet diplomats at Gross's Wall Street office, informing them that he had no intention of returning to the Soviet Union. The Russians expressed shock and dismay. Shevchenko spent Sunday night near New York under FBI protection and, on Monday, was driven to the motel in White Haven.

Last Thursday, Shevchenko was back in New York, having cocktails with Gross and a few of the lawyer's American friends. But as of the end of the week, Shevchenko's whereabouts were again unknown. He wants to meet with Waldheim, who was in Europe at the time of the defection, to discuss the conditions for his resignation, but it is not certain that Waldheim will agree.

As matters now stand, the mystery of this highest-level Soviet defection in history persists. One may have to wait for Shevchenko's book for a full explanation — if he is prepared to provide one.



Oleg Penkovsky

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA GEN. REG. NO. 27  
5010-106  
UNITED STATES GOVERNMENT

Addendum 3

Memorandum

TO : Mr. DeLoach  
FROM : A. Rosen  
SUBJECT: MURKIN

DATE: October 20, 1969

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

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

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

Weisberg is apparently identical with Harold Weisberg an individual who has been most critical of the Bureau in the past. He is the author of several books including one entitled, "Whitewash - The Report of the Warren Report" and has been critical of the FBI, Secret Service, police agencies and other branches of Government.

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

Enclosures (2) 10-21-69 44-38861-5838

EJM:jmv  
(8)

REC-62

CONTINUED - OVER

70 NOV 6 - 1969

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA GEN. REG. NO. 27

5010-106

Addendum 4

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. DeLoach

DATE: 6/24/70

FROM : T. E. Bishop

SUBJECT: ASSASSINATION OF DR. MARTIN LUTHER KING

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

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

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

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

Enc. / ENCLOSURE

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

(CONTINUED-OVER)

JUN 30 1970

JUN 29 1970

UNRECORDED COPY FILED IN 110

REC-3

6/25/70 JUN 29 1970

5888

Memorandum to Mr. DeLoach  
Re: Assassination of Dr. Martin Luther King  
Current Developments

On 6/24/70 Bill King in the Information Office, Department of Justice, advised that the Department subsequently decided that it would not be possible for the Government to successfully defend the civil action by Weisberg against the Department for the release of the documents in question. Accordingly, copies of these documents were furnished to Weisberg. King advised that in view of the fact that the Department had released the documents to Weisberg the Department did not wish Weisberg to make a profit from his possession of the documents and, accordingly, has decided to make similar copies available to the press and others who might desire them. King stated that the documents to be released consist of approximately 200 pages of copies of affidavits, autopsy reports, affidavits with regard to fingerprint examinations and ballistics tests, and copies of other documents which serve to link Ray with the assassination of Martin Luther King. At Bishop's request King furnished the attached set of the documents being released. King stated that these documents will be released to the press at 3 p. m. on 6/24/70.

The General Investigative Division has been orally advised of the above information.

RECOMMENDATION

None. For information.

*P* *R* *T-B* *W*  
Did you get a written  
instruction from Dept  
confirming conversation  
King had with you?  
*K*

Addendum "

November 15, 1968

N

Correspondence with Harold Weisberg, Coq d'Or Press, Route 8,  
Frederick, Maryland 21701

L

The transcript of the executive session of January 27, 1964, of the Warren Commission requested by Mr. Harold Weisberg in the attached letter was reviewed by GSA, the CIA, and the Department of Justice. Mr. Martin Richman of the Office of Legal Counsel of the Department recommended that the entire transcript be withheld from research, and we have withheld it.

As Mr. Weisberg says, there are certain quotations, presumably taken from a copy of the transcript in Congressman Ford's possession, that are published in Portrait of the Assassin (New York: Simon and Schuster, 1965) by Gerald R. Ford and John R. Stiles (pages 19-25). Some material is deleted from the quotations without any indication of the deletions, and there are other variances from the text of the transcript. The quoted material does not consist of a continuous passage, but of various passages chosen from different pages. Only one complete page (page 158) of the transcript is included in the quoted material. We feel that to tell Mr. Weisberg this, or to supply him with a copy of the page that has been completely published, would encourage him to increase his demands for additional material from the transcript and from other withheld records.

*James B. Rhoads*  
JAMES B. RHOADS  
Archivist of the United States

cc: Official File - NND ✓  
Reading File - NNDC  
N

MMJohnson/mc NNDC 69-89  
Ext. 23171 11/15/68

NND M.G.C. NN \_\_\_\_\_



Addendum

CG-2-34,030

November 13, 1970

Mr. James B. Rhoads  
Archivist of the United States  
National Archives and Records Service  
Washington, D. C. 20408

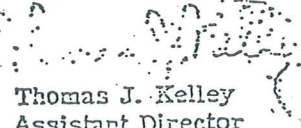
Dear Mr. Rhoads:

In connection with the civil action Weisberg vs The National Archives, Civil Action 2569-70, Mr. Weisberg called at this office recently and displayed a copy of the proceedings in the case. He stated that since the Government's answer reflected that the Archives should not have been a party to some of the requests being made by Weisberg, he was notifying us that under the Freedom of Information Act he was requesting a copy of the Memorandum of Transfer to the Archives dated April 26, 1965, covering material then in the possession of the Secret Service, which memorandum reflected that Mrs. Evelyn Lincoln had receipted for the material set out in the Memorandum of Transfer.

There may be some validity in Mr. Weisberg's contention that since this paper is in the possession of the Secret Service, we are the proper people for him to sue or to subpoena to produce the item. However, since another Government agency has declined to furnish him a copy of the item, we are seeking advice as to what action we should take if a suit is brought seeking to force us to produce the document, or if a subpoena is received to produce the document for his examination.

The position of the Secret Service is that we have no grounds upon which to refuse making the item available to Mr. Weisberg if he should invoke the provisions of the Freedom of Information Act.

Very truly yours,

  
Thomas J. Kelley  
Assistant Director

Addendum

DEC 8 1970

Mr. Harold Weisberg  
Coq d'Or Press  
Route 8  
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of November 10, 1970, appealing from prior decision of the Archivist of the United States, not to make available to you a copy of the Government's copy of the "memorandum of transfer" of the materials relating to the autopsy of President Kennedy.

On August 19, 1970, you were advised by the Acting Archivist of the United States that this copy was withheld from research under the terms of 5 U. S. C. 552, subsection (b)(6), as a part of "medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" of the family of the late President Kennedy.

A careful review of the document in question, in the light of the cited statute, its legislative history and subsequent interpretations, has failed to adduce any grounds to warrant upsetting the considered judgment of the Acting Archivist.

Under the circumstances, I have no recourse but to advise that your appeal is denied. However, in the event the Kennedy family or its authorized representative should advise me that release of the "memorandum of transfer" does not constitute an unwarranted invasion of their personal privacy, I will reconsider my decision.

Sincerely,

(Signed) W. L. Johnson, Jr.

W. L. JOHNSON, JR.  
Assistant Administrator for Administration

Burke Marshall  
Tom Kelly, Secret Service  
cc: Official File - LC  
Mr. Yock - A  
Asst. Adm. for Admin. - B  
Mr. Vawter - ALI  
General Counsel - LI  
Mr. Marion Johnson - NND  
Deputy Gen. Csl. - LL  
Asst. Gen. Csl. - LR  
Mr. Fauper - Dept. Justice  
Mr. Axelrad - Dept. Justice  
LC:RFWilliams:afh: 11-25-70  
Retyped:LL:mata 11/25/70

L \_\_\_\_\_ ALI \_\_\_\_\_

Addendum 8		GENERAL SERVICES ADMINISTRATION NATIONAL ARCHIVES AND RECORDS SERVICES	PAGE
INTRA-SERVICE MEMORANDUM AND ENDORSEMENT			OF PAGES
SUBJECT OR TRANSACTION			
Correspondence with Mr. Harold Weisberg			
FROM	TO	DATE AND MESSAGE	
NNF	NN N	3-6-73. I did have misgivings about the last phrase of the last sentence in the Garfinkel memo, particularly in light of his statement in the second paragraph that "several complex legal questions," including the question of whether working papers or drafts etc. are in fact records for the purposes of the Act, "need not be examined until such time as there is an administrative appeal from their denial." This seems to contradict the last sentence in which he goes beyond our initial draft and deliberately injects this issue by including the reference to "working papers which are not records for the purposes of the Freedom of Information Act."	
		I informed Mark Eckhoff and Marion Johnson of my misgivings when I sent the file down for their comments. Mr. Johnson, as a lawyer, then discussed the matter with Mr. Garfinkel and their conversation is summarized on the attached routing slip. Mr. Garfinkel apparently feels that it is better legal procedure to give all possible reasons for withholding documents in the beginning, even if you withdraw one or more arguments on appeal, than to be in the position of having to produce an additional reason on appeal. Perhaps it would be desirable to get a policy decision from the Justice Department through its Freedom of Information Committee as to whether such "working papers" should be released and this can be done if Mr. Weisberg appeals the denial.	
		It is my understanding that certain working papers among the Warren Commission records have been made available to Weisberg, presumably as "records." The material currently at issue appears to	

(Over)

GSA FGRW AUG 67 6702

Addendum 9

APR 2 1975

Deputy Archivist of the United States - ND

FOIA Request from James H. Lesar

Attorney Advisor - LER

Attached is a Freedom of Information Act request of March 12, 1975, from Mr. James H. Lesar an attorney for Mr. Paul Hoch and Mr. Harold Weisberg and a draft reply. He requests disclosure of certain Warren Commission transcripts.

As you suggested to Mr. Johnson, we have deleted names and identifying information relating to persons discussed in the transcripts as possibilities for employees of the Commission (particularly as General Counsel) who were not later employed by the Commission. This includes the name of Leon Jaworski at the bottom of page 48 of the transcript of December 5, 1963, but not the name of Thomas E. Dewey on page 49 because of the prominence of Dewey as a political leader. At the bottom of page 57 and the top of page 58 of that transcript there is a reference to Richard Olney, at one time Attorney General and Secretary of State. Should this entire passage be deleted on the ground that it would serve as a clue to the identity of Warren Olney III, who was discussed earlier in the transcript as Chief Justice Warren's candidate for General Counsel of the Commission, and that the passage is meaningless without the earlier references to Warren Olney, which have been deleted? Please note also the references to Jenkins and Welch on page 51.

We have requests from the CIA to withhold from research the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, that were made before the recent amendments to 5 U.S.C. 552. The CIA is now reviewing these transcripts again in connection with Mr. Lesar's request, as well as a portion of page 3 of the transcript of December 6, 1975. If Mr. Lesar appeals the denial of these transcripts, perhaps the General Counsel of the CIA should be consulted concerning the reasons for withholding the transcripts. The deadline for reply to Mr. Lesar is April 4. We will inform you if a reply is received from the CIA before then concerning its review of the transcripts.

The transcript of May 19, 1964, involves a discussion among the Commission members concerning two staff members who were accused of left-wing or Communist-front connections. It is difficult to see how a "reasonably segregable" portion of this transcript can be made public.

*James E. O'Neill*  
 JAMES E. O'NEILL

cc: Official file NNF  
 Reading file - NNF  
 - ND

MJohnson:ram

NNF *JZ*NI *JK*

Addendum 10

DATE: APR 4 1975

GENERAL SERVICES ADMINISTRATION

Office of General Counsel  
Washington, D.C. 20540



REPLY TO  
ATTN OF: General Counsel - L

SUBJECT: Warren Commission Materials and the Freedom of Information Act

Archivist of the United States - N

On March 13, Messrs. Garfinkel and Meszoly of the Records and Administration Division and Mr. Young of the Claims and Litigation Division of this office, along with Dr. Campbell and Mr. Johnson of the Office of the National Archives attended a meeting with the Committee on the Freedom of Information Act of the Department of Justice to discuss the mandates of the Act as they relate to heretofore restricted records of the Warren Commission, now in the custody of the successor agency General Services Administration. Although the topics discussed have been of continuing importance to the National Archives, the immediate stimulus to the meeting was the appeals by Dr. Hoch and Mr. Weisberg from GSA denials to their requests for access to these records. From the conclusions reached at this meeting, as well as from the extensive review of this material undertaken by this office in the past several months, the following recommendations are offered for your consideration.


1. A classification review of all of these Warren Commission materials that remain classified should be commenced as soon as possible. Our review of these records in light of Executive Order 11652 (37 F.R. 5209, March 10, 1972) has revealed that they are generally overclassified when classification is at all warranted. This office would be happy to assist the National Archives in such a review.
2. The executive sessions of the Warren Commission should remain exempt from disclosure as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency . . ." (5 U.S.C. 552(b)(5)). Moreover, those parts of the executive sessions that remain classified after a classification review should be further exempted as "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy . . ." (5 U.S.C. 552(b)(1)).
3. Commission Document 365 should remain exempt from disclosure as "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" as well as "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency . . ." (5 U.S.C. 552(b)(6) and (7) respectively).
4. Mr. Rankin's letter of March 26, 1964, to Mr. Hoover, relating to the Fair Play for Cuba Committee and other organizations, should remain exempt from disclosure as "inter-agency or intra-agency memorandums or letters . . .," supra, No. 2. Moreover, should this document remain classified after the

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Addendum 11

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—NEWSWEEK



# KGB

**THE SECRET WORK OF SOVIET SECRET AGENTS**  
**BY JOHN BARRON**

WITH PHOTOGRAPHS OF AGENTS, ASSASSINS, SEDUCTRESSES AND VICTIMS.

"How the KGB functions, how it uses its unchallenged, arbitrary power is the subject of Mr. Barron's book. He has produced a remarkable work . . . It is based on evidence supplied by several non-Communist security services and 'all post-war KGB defectors except two.' It is authenticated by Mr. Robert Conquest, one of the greatest authorities on Russian affairs. I have no doubt that it is as accurate a general study of the KGB's secret activities as we are likely to get."

—Hugh Trevor-Roper,  
The New York Times Book Review

"Authoritative exposé of the pervasive, international spy network."

—Rowland Evans and Robert Novak,  
The Washington Post

"An explosive new book . . . Discloses many hitherto unpublished espionage cases."

—The Toronto Sun



**"THE KGB IS THE WORLD'S GREATEST SPY MACHINE**

. . . Whole sections of this book read like spy fiction, with secret agents, double agents, writings in invisible ink and parcels of foreign currency left attached to bridges by powerful magnets. Yet this is no fictionalised account of the KGB activity. Every fact has been checked and substantiated . . . Few of the KGB's secrets are left untold in John Barron's remarkable book."

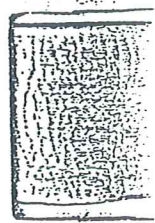
—Roel Barber, London Daily Mail

"The most authoritative account of the KGB I have ever seen."

—Ray S. Cline, Former Director,  
Bureau of Intelligence and Research,  
U.S. Department of State

**ABOUT THE AUTHOR**

JOHN BARRON is a Senior Editor of the *Reader's Digest*. He received bachelor and master degrees from the University of Missouri School of Journalism before serving in the U.S. Navy. Mr. Barron attended Naval Intelligence School, specializing in the Russian language, and was assigned to Berlin for two years as an intelligence officer. Upon release from the Navy in 1957, he went to work for the *Washington Star*, where his articles gained him national attention. Mr. Barron is the recipient of the Raymond Clapper Award; the George Polk Memorial Award for national reporting; the Washington Newspaper Guild Front Page Award for national reporting and the Newspaper Guild's grand award. He lives with his wife and two daughters in Falls Church, Virginia.





some measure, and the contributions of several have been immense.

We believe we have interviewed or had access to reports from all postwar KGB defectors except two. Fearful of provoking retaliation against relatives in the Soviet Union, several have insisted upon anonymity. Those who may be thanked publicly are identified in the Acknowledgments on page 587.

Two of the most important former KGB personnel now in the West came to us of their own initiative. One was Yuri Ivanovich Nosenko, a KGB major who escaped to the United States through Switzerland in 1964. Although Nosenko testified in secret before the Warren Commission investigating the assassination of President Kennedy, he subsequently declined to grant any press interviews, and his considerable revelations have remained unknown outside the Western intelligence community. But in May 1970 Nosenko walked unannounced into our Washington offices, stated he had read of our project in the *Reader's Digest*, and offered his assistance. (Later I was told that the KGB long has hunted Nosenko with the intention of killing him. By coming unguarded to our offices, less than four blocks from the Soviet embassy, he created consternation among American authorities responsible for his safety. Nevertheless, we were able to interview Nosenko extensively on numerous occasions.)

On February 1, 1972, I received an unsolicited letter from Vladimir Nikolaevich Sakharov, who identified himself as a former Soviet diplomat and KGB agent. He suggested that he possessed information of possible interest. His story, which is told in Chapter II, proved to be one of the most significant of all.

In most cases, we have succeeded in verifying from security services or other independent sources the essence of information acquired from former KGB personnel. In those cases where a defector is the sole source of given information, we so indicate in the Chapter Notes that explain the basis upon which each chapter is written.

At the outset of our research, we were fortunate enough to engage the services of Katharine Clark, who

and headed for the safes. The locksmiths, photographers, and specialists in opening sealed documents emerged in about an hour, their work done and undetected. The dog caused the only slight difficulty. The officer feeding him kept calling for more meat, complaining, "This dog is eating by the kilo."

Nosenko pinpointed for the State Department the location of forty-four microphones built into the walls of the American embassy when it was constructed in 1952. They were outfitted with covers that shielded them from electronic sweeps periodically made by U.S. security officers. American diplomats, of course, were instructed to be guarded in their talk because of the possibility of undetected listening devices. Nevertheless, the everyday conversations the microphones relayed for twelve years told the KGB much about what the embassy was reporting to Washington as well as about U.S. interests, concerns, and reactions to international events.

While apprehensive about alien ideas that foreigners may introduce, the leadership also fears propagation of dissident ideas by Soviet intellectuals whose access to the people is not so easily interdicted. Accordingly, the KGB infests the arts and sciences with officers and informants in an effort to police thought and creativity among the intelligentsia. The secretary of the Soviet Writers' Union from 1946 to 1956, Aleksandr Aleksandrovich Fadeyev, was a notorious collaborator who consigned at least six hundred intellectuals to concentration camps. After Khrushchev confirmed Stalin's mass murder and enslavement of innocent people, some of Fadeyev's surviving victims were rehabilitated and appeared in Moscow. Haunted by the reincarnation of men he had doomed, Fadeyev shot himself in 1956. He stated in his suicide note that he no longer could bear life in the Soviet Union. In September 1972 the Central Committee announced the appointment of Aleksei V. Romanov as editor of *Soviet Culture*, the Party publication that tells intellectuals what they are supposed to think. Romanov is the informant who caused the imprisonment of the author Aleksandr Solzhenitsyn back in 1945. Other methods by which

locks to the vault. Inside, he stuffed envelopes—some eleven by thirteen inches, others eight by eleven—into the blue flight bag. Locking the vault and then the outer door of the center, he ran to his Citroën and drove off to meet Feliks. All went precisely as rehearsed. At 3:15 A.M. Johnson recovered the envelopes by the cemetery and replaced them in the vault. By the time he reached home Sunday morning, a mass of American cryptographic and military secrets—some so sensitive they were classified higher than top secret—were already en route to Moscow.

The next Saturday night, December 22, Johnson again looted the vault without the least difficulty. This time he selected new envelopes that had arrived during the preceding two or three days. About a third contained cryptographic materials.

The day after Christmas, Feliks greeted Johnson jubilantly: "On behalf of the Council of Ministers of the U.S.S.R., I have been directed to congratulate you on the great contribution you have made to peace. I am told that some of the material we sent was so interesting that it was read by Comrade Khrushchev himself. In appreciation, you have been awarded the rank of major in the Red Army. I also have been authorized to give you a bonus of \$2,000. Take a holiday and go to Monte Carlo and live it up."

The supposed rank of major of course represented a fictitious award bestowed to stimulate Johnson's ego and motivate him further. But there is independent testimony to the effect that an excited Khrushchev did study the materials Johnson purveyed. Yuri Nosenko, who in 1963 was still stationed at the Center, states that the arrival of the first documents from the vault created such a sensation that rumors of a momentous new penetration in France spread through the upper echelons of the KGB. According to what he was told, the documents were adjudged so important that immediately after translation, copies were rushed to Khrushchev and certain Politburo members. Nosenko also heard that some of the stolen data disclosed numbers and locations of American nuclear warheads stored in Europe.

Clearly, the documents from the vault were extraordinary, not only because of their content but also because of their indisputable authenticity. Anyone studying them might as well have been admitted to the highest councils of the United States and been allowed to take notes. Some of the ultrasecret papers outlined major modifications or additions to the basic American strategic plan for the defense of Western Europe. No one document, by itself, provided an overall blueprint of the plan, but collectively they laid it bare to the KGB. The Soviet Union could now identify with certainty strengths to be countered and vulnerabilities that could be exploited. Great and decisive battles have been won with less intelligence than these first two penetrations yielded. And this was only the beginning.

Indeed, the initial yield was so spectacular that the Soviet Union adopted further precautions to safeguard the operation. Nosenko says that all subsequent entries into the vault required direct approval from the Politburo, and that with the approach of each, an air of tension and excitement pervaded the KGB command. This corresponds with instructions Johnson received in January 1963 from Feliks, who advised that henceforth the vault would be looted only at intervals of from four to six weeks, and that each entry would be scheduled a minimum of fourteen days in advance. "We must bring people in specially from Moscow," Feliks said. "The arrangements are very complicated."

A team of technicians was required to process the documents Johnson removed, but the KGB dared not station them permanently in Paris. It knew that French security would eventually recognize them as the specialists they were, and realize that their presence signified a leakage of considerable importance. The KGB also knew the technicians probably would be detected if they shuttled in and out of Paris too often. Therefore it chose to reduce the frequency of their journeys and to have them come to Paris individually and by various routes—via Germany, Algeria, Belgium, or Denmark.

Additionally, the KGB recognized that although Johnson had twice taken documents from the vault with ease, each penetration still entailed high risks. If



will hour after hour. Having cut countless trees in his youth, he now derives satisfaction from planting and nurturing them.

In his community he is known as a moderate Republican, an occasional churchgoer and the personification of respectability. The same disarming grin and manner that sustained him in Moscow, at Tiffany's, and on the New York waterfront have helped fill his new life with good friends.

In spite of the excellence of Tuomi's abilities as a spy, mysteries remain in this story that he knew and lived. How did the FBI know he was coming? How did it know who he was? Tuomi has never been able to ascertain the answers. Neither, it would appear, has the KGB.

The Russians for years evidently were uncertain about what actually happened to Tuomi. Certainly they must have suspected that he had changed allegiance. But they could not be sure that he had not died an anonymous death, the victim of a street thug or an automobile accident. Between 1964 and 1971 his name never appeared on the list of men and women whom the KGB hunts throughout the world. This list, published in a secret book bound in a blue cover, is distributed to all KGB Residencies abroad and all KGB offices in the Soviet Union. It provides brief biographical detail about the wanted man, a statement of his crime, and the sentence pronounced on him, either at a trial or in absentia. The current list, for example, shows that Yuri Nosenko has been sentenced in absentia to the "highest measure of punishment." So have most of the other KGB officers now in the West.

In 1971, after the *Reader's Digest* had published in slightly different form an excerpt from this book manuscript containing the story of Tuomi, the FBI warned him that the KGB now was hunting him. His name had been added to the official list of those upon whom the KGB seeks, by any means it can, to inflict the "highest measure of punishment."

Their sensitivity is well illustrated by the abject fear shown by the KGB leadership after Lee Harvey Oswald was arrested as the assassin of President Kennedy. The reaction has been disclosed by Yuri Nosenko, who, as deputy director of the American section of the Seventh Department, became involved with Oswald when he requested Soviet citizenship in 1959. Nosenko states that two panels of psychiatrists independently examined Oswald at KGB behest, and each concluded that though not insane, he was quite abnormal and unstable. Accordingly, the KGB ordered that Oswald be routinely watched, but not recruited or in any way utilized. Oswald returned to the United States in June 1962, then in September 1963 applied at the Soviet embassy in Mexico City for a visa to go back to Moscow. On instructions from the KGB, the embassy blocked his return by insisting that he first obtain an entry visa to Cuba, through which he proposed to travel. The Cubans, in turn, declined to issue a visa until he presented one from the Russians. Shunted back and forth between the two embassies, Oswald finally departed Mexico City in disgust and on November 22 shot the President.

With news of his arrest, the KGB was terrified that, in ignorance or disregard of the headquarters order not to deal with him, an officer in the field might have utilized Oswald for some purpose. According to Nosenko, the anxiety was so intense that the KGB dispatched a bomber to Minsk, where Oswald had lived, to fly his file to Moscow overnight. Nosenko recalls that at the Center officers crowded around the bulky dossier, dreading as they turned each page that the next might reveal some relationship between Oswald and the KGB. All knew that should such a relationship be found to have existed, American public opinion would blame the KGB for the assassination, and the consequences could be horrendous.

Concern over foreign opinion has produced some major restrictions of KGB operations. The revulsion caused by confessions of the KGB assassin Bogdan Stashinsky in 1962 influenced the Politburo to curtail the political murders which the Soviet Union had been

HAROLD WEISBERG,  
Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,  
Defendant.

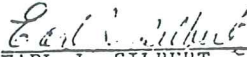
Civil Action No. 75-1448

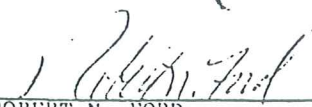
DEFENDANT'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR NEW TRIAL

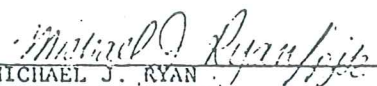
Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully opposes plaintiff's motion for new trial, and states as follows:

On March 31, 1978, the United States Court of Appeals for this Circuit indicated that material presented to that Court by plaintiff in his reply brief should have been presented in the first instance to the District Court. Plaintiff now seeks by a motion for new trial to reopen this matter on the basis of hearsay material which, in addition to irrelevancy, in no way derogates from this Court's previous orders, or the affidavits of Mr. Charles I. Briggs, Chief, Information and Services Staff, Directorate of Operations, CIA. Specifically, plaintiff relies on information in two books and the newspaper to challenge the veracity of Mr. Briggs' affidavits. Clearly, however, in addition to their unsworn, double hearsay nature, these materials do not represent CIA position or that of any other Government agency. Such "evidence" cannot create an issue of fact when placed alongside the first-hand, sworn testimony of Mr. Briggs.

Wherefore, it is respectfully requested that plaintiff's motion for new trial pursuant to Rule 60(b) of the Federal Rules of Civil Procedure be denied.

  
\_\_\_\_\_  
EARL J. SILBERT  
United States Attorney

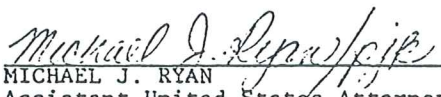
  
ROBERT N. FORD  
Assistant United States Attorney

  
MICHAEL J. RYAN  
Assistant United States Attorney

BY: PATRICIA J. KENNEY,  
Special Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing defendant's opposition to plaintiff's motion for new trial and proposed order has been made upon plaintiff by mailing a copy thereof to counsel for plaintiff, James Hiram Lesar, Esquire, 910 16th Street, N.W., Suite 600, Washington, D.C., 20006, on this 24th day of April, 1978.

  
MICHAEL J. RYAN  
Assistant United States Attorney  
U.S. Courthouse  
Room 3421  
Washington, D.C. 20001  
(202) 426-7375

BY: PATRICIA J. KENNEY,  
Special Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

.....  
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant  
.....

Civil Action No. 75-1448

RECEIVED

MAY 4 1978

UNITED STATES DISTRICT COURT

NOTICE TO TAKE DEPOSITIONS

To: Mr. Michael J. Ryan  
Assistant United States Attorney  
United States Courthouse, Rm. 3421  
Washington, D.C. 20001

Please take notice that plaintiff will take the depositions of Mr. Charles A. Briggs and Mr. Gene F. Wilson of the Central Intelligence Agency on Friday, May 12, 1978, at the hour of 10:00 a.m., at the offices of Mr. James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006, for use as evidence in the above-styled cause. Said depositions will be with reference to the issues raised by plaintiff's Motion For New Trial and defendant's Opposition thereto, and will be upon oral examination before a Notary Public for the District of Columbia, and will continue from day to day until completed.

Messrs. Briggs and Wilson are required to bring the following documents with them:

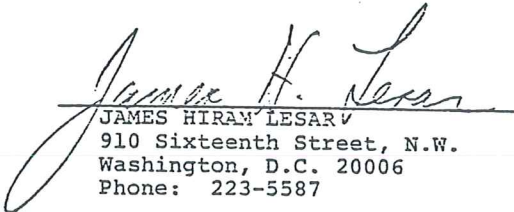
1. Any records of or pertaining to the agreement between Yuri Ivanovich Nosenko and the CIA referred to on page 271 of the book Legend by Edward-Jay Epstein;

2. All reports, <sup>re</sup>memorandums, notes, correspondence, or other records relating to the publication of the photograph of Yuri Ivanovich Nosenko in the April 16, 1978 issue of the Washington Post;

3. All requests for records pertaining to Yuri Ivanovich Nosenko by Edward Jay Epstein, Jones Harris, John Barron, the Reader's Digest, or anyone acting or purporting to act on their behalf, such as an agent, employee, or associate;

4. All letters, notes, memos, or reports which respond or relate in any way to the requests described in item No. 3 above;

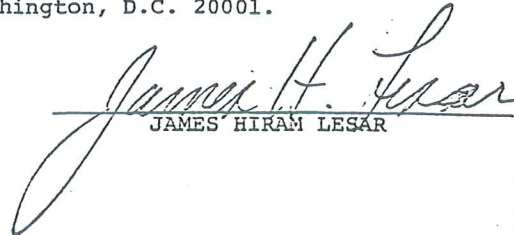
5. All requests made by plaintiff Harold Weisberg for records relating to Yuri Ivanovich Nosenko and all letters, notes, memos, or reports which respond or relate in any way to these requests by Mr. Weisberg.

  
 JAMES HIRAM LESAR  
 910 Sixteenth Street, N.W.  
 Washington, D.C. 20006  
 Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 4<sup>th</sup> day of May, 1978 hand-delivered a copy of the foregoing Notice To Take Depositions to Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D.C. 20001.

  
 JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

.....  
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant  
.....

Civil Action No. 75-1448

RECEIVED

MAY 4 1973

UNITED STATES DISTRICT COURT

MOTION PURSUANT TO RULE 56 OF THE FEDERAL RULES  
OF CIVIL PROCEDURE TO STRIKE AFFIDAVITS OF  
CHARLES A. BRIGGS, TO HOLD GOVERNMENT OFFICIALS  
AND ATTORNEYS IN CONTEMPT, AND FOR PAYMENT OF  
REASONABLE COSTS, INCLUDING ATTORNEY FEES

Comes now the plaintiff, Harold Weisberg, and moves the Court for an order striking the affidavits of Mr. Charles A. Briggs on the grounds that the affidavits of Mr. Harold Weisberg and documents submitted in support of plaintiff's motion for a new trial demonstrate that Mr. Briggs has sworn to his personal knowledge of facts which are false and grossly misleading; and that therefore Mr. Briggs' affidavits are totally lacking in any credibility and do not qualify for consideration under Rule 56 of the Federal Rules of Civil Procedure but must be stricken.

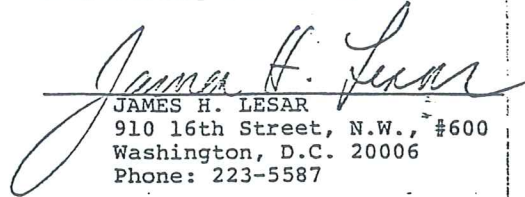
Plaintiff further moves the Court, again pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure, for an order to show cause why the government officials and attorneys who prepared the Briggs' affidavits and submitted them to this Court should not be held in contempt; and

Plaintiff further moves the Court for an order requiring the defendant to pay him the reasonable costs, including attorney's



fees, which he has incurred as a consequence of said affidavits.

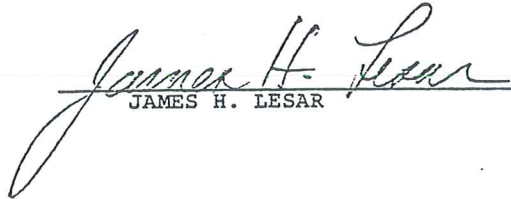
Respectfully submitted,

  
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 4th day of May, 1978, hand-delivered a copy of the foregoing Motion Pursuant to Rule 56 of the Federal Rules of Civil Procedure to the office of Mr. Michael J. Ryany, United States Courthouse, Washington, D.C. 20001.

  
JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

.....  
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINISTRATION,

Defendant  
.....

MEMORANDUM OF POINTS AND AUTHORITIES

As this Court's June 7, 1977 Order makes express, the Court's decision to award summary judgment in favor of the defendant with respect to the January 21 and June 23, 1964 Warren Commission Executive Session transcripts relies upon the affidavits of Mr. Charles A. Briggs, Chief of the Services Staff, Directorate of Operations, Central Intelligence Agency. Certain public events which have transpired since the date of the Court's June 7 Order, as well as the affidavit and exhibits submitted by plaintiff Harold Weisberg in support of his motion for a new trial, show that statements made by Mr. Briggs in his affidavits are false and grossly misleading. Because it is evident that these affidavits are totally lacking in credibility and were indeed submitted in bad faith in order to delay plaintiff's access to these transcripts, they should be stricken from the record.

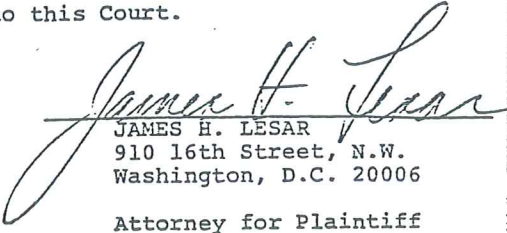
In this regard, it should be pointed out that Rule 56(g) of the Federal Rules of Civil Procedure provides:

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented

pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

The bad faith affidavits submitted by the defendant have put plaintiff, who is old, indigent and in poor health, to bear the enormous burden of appealing the decision which this Court made in reliance upon these false affidavits. Therefore, plaintiff should also be awarded the reasonable expenses which the filing of these affidavits has caused him to incur, including reasonable attorney fees.

The use of false and misleading affidavits by government officials in this plaintiff's Freedom of Information Act lawsuits is common and judicial tolerance of them is routine. It may, therefore, appear to be a further waste of time, indeed downright silly, for plaintiff to urge that the government officials and attorneys who prepared and submitted these affidavits be held in contempt. Yet the Federal Rules of Civil Procedure provide for this sanction, and no matter how often they have been honored in the breach, they should be applied to the outrageous conduct in this case. Accordingly, plaintiff also asks that the Court invoke its contempt powers against those who have prepared and submitted the affidavits of Mr. Briggs to this Court.

  
JAMES H. LESAR  
910 16th Street, N.W.  
Washington, D.C. 20006

Attorney for Plaintiff

REC'D 6:40 p.m.  
5-10-78

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	FILED: 5/10/78
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 75-1448
	)	
GENERAL SERVICES ADMINISTRATION,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S MOTION TO QUASH AND FOR  
A PROTECTIVE ORDER

Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court to quash the subpoenae duces tecum requiring the appearance of Mr. Charles I. Briggs, Chief, Information and Services Staff, Directorate of Operations, CIA, and Mr. Gene F. Wilson, Information and Privacy Coordinator, CIA, for depositions on May 12, 1978, and to enter a protective order that their depositions not be taken.

In support of this motion, defendant submits herewith a memorandum of points and authorities.

*Earl J. Silbert*  
\_\_\_\_\_  
EARL J. SILBERT  
United States Attorney

*Robert N. Ford*  
\_\_\_\_\_  
ROBERT N. FORD  
Assistant United States Attorney

*Michael J. Ryan*  
\_\_\_\_\_  
MICHAEL J. RYAN  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF DEFENDANT'S MOTION TO QUASH AND FOR  
A PROTECTIVE ORDER, AND IN OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE AFFIDAVITS, ETC.

Rules 26(c) and 45(b), Federal Rules of Civil Procedure.

On May 5, 1978, upon his return to the office after a two week absence, defendant's counsel learned that on or about May 4, 1978, plaintiff's counsel had hand-delivered a notice to take deposition of Messrs Charles A Briggs, Chief, Information and Services Staff, Directorate of Operations, and Gene F. Wilson, Information and Privacy Coordinator, CIA, on May 12, 1978. Defendant's counsel has also just been informed that subpoenae for taking these depositions have been delivered to the CIA on the instant date May 10, 1978. Both the notice to take deposition and the subpoenae direct Messrs. Briggs and Wilson to bring with them:

1. Any records of or pertaining to the agreement between Yuri Ivanovich Nosenko and the CIA referred to on page 271 of the book Legend by Edward Jay Epstein;
2. All reports, memorandums, notes, correspondence, or other records relating to the publication of the photograph of Yuri Ivanovich Nosenko in the April 16, 1978 issue of the Washington Post;
3. All requests for records pertaining to Yuri Ivanovich Nosenko by Edward Jay Epstein, Jones Harris, John Barron, The Reader's Digest, or anyone acting or purporting to act on their behalf, such as an agent, employee, or associate;
4. All letters, memos, or reports which respond or relate in any way to the requests described in item no. 3 above; and

5. All requests made by plaintiff Harold Weisberg for records relating to Yuri Ivanovich Nosenko and all letters, notes, memos, or reports which respond or relate in any way to these requests by Mr. Weisberg.

Apart from the fact that CIA is not a party to this lawsuit, defendant submits that the notice and subpoenas for taking depositions are both inappropriate and contra to the intent of the Court of Appeals in its March 31, 1978 order, and should accordingly be quashed.

First, by its order of March 31, 1978, the United States Court of Appeals for this Circuit directed plaintiff to present in a motion for new trial in this Court the alleged "new evidence" which he had attempted to present for the first time in the appendix to his reply brief in the Court of Appeals (see Attachment 1 to plaintiffs' motion for new trial). The limited nature of that order is clear on its face, and defendant submits that only in the event that this Court should determine to grant plaintiff's motion for new trial and reopen this matter would further proceedings, including discovery, be appropriate.

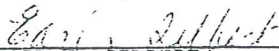
Second, as indicated in defendant's opposition to plaintiff's motion for new trial, the "new evidence" plaintiff seeks to present to the Court consists of information derived from two books and a newspaper which, in addition to its unsworn, double hearsay nature, hardly creates an issue of fact or credibility when compared with the first-hand, sworn testimony in the affidavit of Mr. Briggs. In fact, plaintiff has presented no first-hand sworn testimony rising to the level of new evidence which warrants reopening this matter. Further, in defendant's view, the Court of Appeals order creates no right in plaintiff to engage in a fishing expedition for evidence where none exists.

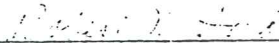
Third, counsel for defendant has been informed that the proposed deponents have out-of-town commitments on or about the time noted by plaintiff for their depositions.

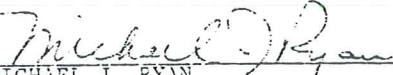
With respect to plaintiff's motion to strike the affidavits of Mr. Briggs and to hold Government officials and attorneys in

contempt for submitting the affidavits in this Court, defendant respectfully submits that for all the foregoing reasons including those set forth in defendant's opposition to plaintiff's motion for new trial, there is no merit to plaintiff's motion, or any reason to give less than full credence to Mr. Briggs' affidavits.

Wherefore, defendant respectfully requests the Court to quash the notice and subpoenas for taking the depositions of Messrs. Briggs and Wilson, and to enter a protective order that their depositions not be taken and that any other discovery device to which plaintiff may resort be stayed pending the Court's resolution of plaintiff's motion for new trial; and to deny plaintiff's motion to strike affidavits and to hold Government officials and attorneys in contempt.

  
\_\_\_\_\_  
EARL J. SILBERT  
United States Attorney

  
\_\_\_\_\_  
ROBERT N. FORD  
Assistant United States Attorney

  
\_\_\_\_\_  
MICHAEL J. RYAN  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
Plaintiff :  
v. : CIVIL ACTION 75-1448  
GENERAL SERVICES ADMINISTRATION, :  
Defendant :

FILED

MAY 12 1978

MEMORANDUM

JAMES F. DAVEY, CLERK

This is an action under the Freedom of Information Act, as amended, 5 U.S.C. §552 et seq. (the "FOIA"), in which plaintiff seeks in part or whole transcripts of certain executive sessions of the Warren Commission. On March 10, 1977, this Court granted summary judgment in favor of the defendant, holding that the documents in issue were exempt from disclosure on the basis of 5 U.S.C. §552 (b) (5) and (b) (3). Plaintiff subsequently moved for reconsideration with respect to the Court's exemption 3 ruling. On June 7, 1977, the Court denied plaintiff's motion for reconsideration, repeating that the January 21, 1964, and June 23, 1964, transcripts were properly withheld under 5 U.S.C. §552(b) (3), and clarifying that the basis for nondisclosure was pursuant to the National Security Act of 1947, as amended, 50 U.S.C. §403(d). Plaintiff thereafter appealed to the United States Court of Appeals for the District of Columbia. While plaintiff's appeal has been pending, certain alleged new evidence became available to plaintiff which had not been presented to this Court. Accordingly, the Court of Appeals directed plaintiff to file,

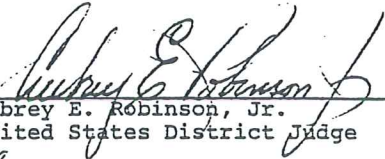


and plaintiff has filed, a motion for a new trial on the basis of this evidence. This Court has examined plaintiff's motion and the memorandum and exhibits in support of the motion, the opposition to the motion, and the entire record in this case, and concludes that no newly discovered evidence, fraud or misrepresentation warrants a new trial herein.

The transcripts in question contain information relating to Soviet defector Yuri Ivanovich Nosenko. The Government has objected to disclosing such information on the grounds that any disclosure would compromise the intelligence sources and methods' of the Central Intelligence Agency. In granting defendant summary judgment, the Court found that the agency had met its burden of demonstrating that release of the information in issue could be reasonably expected to lead to unauthorized disclosures of intelligence sources and methods. See Weissman v. Central Intelligence Agency, 565 F.2d 692 (D.C. Cir. 1977); Phillippi v. Central Intelligence Agency, 546 F.2d 1009 (D.C. Cir. 1976). Plaintiff's motion for new trial is based largely on information which has appeared in recent books and newspaper publications and which, plaintiff argues, undermines the Government claims with respect to the personal security and safety of Nosenko and the security of the data which Nosenko provided to the Central Intelligence Agency. However, the Court finds that the information concerning Nosenko which has appeared subsequent to this Court's granting of summary judgment in favor of defendant in no way vitiates the application of exemption 3 to the transcripts in issue. Whatever appeared in the Barron and Epstein books and in various news accounts, however accurate the information contained therein

is, and wherever that information came from, has no bearing on this Court's central inquiry under 5 U.S.C. §552(b)(3) and 50 U.S.C. §403(d) whether disclosure of the Warren Commission transcripts would compromise CIA sources and methods. The Court is satisfied that the Government has established a threat to intelligence sources and methods, and is not persuaded to the contrary by the "new evidence" which plaintiff has adduced.

Nor does the Court find any "disinformation campaign" or discrimination against plaintiff by government agencies relating to plaintiff's FOIA requests which would warrant disclosure of the documents contested herein. The Court is persuaded that exemption 3 has been properly invoked and the transcripts properly withheld, and concludes that plaintiff's motion for a new trial must be denied.

  
Aubrey E. Robinson, Jr.  
United States District Judge

DATE: May 12, 1978

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
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 Plaintiff :  
 :  
 v. : CIVIL ACTION 75-1448  
 :  
 GENERAL SERVICES ADMINISTRATION, :  
 :  
 Defendant :  
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FILED

MAY 12 1978

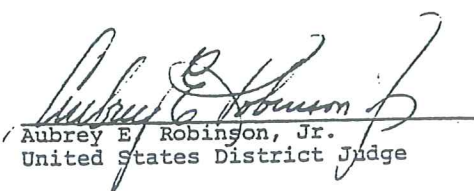
JAMES F. DAVEY, CLERK

ORDER

Upon consideration of defendant's motion to quash and for a protective order, defendant's opposition to plaintiff's motion to strike affidavits and to hold Government officials and attorneys in contempt, and the entire record herein, and the Court having denied plaintiff's motion for a new trial by Memorandum and Order of this date, it is by the Court this 12<sup>th</sup> day of May, 1978,

ORDERED, that defendant's motion to quash the subpoenae duces tecum directed to Messrs. Charles A. Briggs and Gene F. Wilson of the CIA be and it hereby is GRANTED, and said subpoenae be and they hereby are quashed; and it is

FURTHER ORDERED, that plaintiff's motion to strike the affidavits of Mr. Briggs and to hold Government officials and attorneys in contempt be and it hereby is DENIED.

  
Aubrey E. Robinson, Jr.  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

GENERAL SERVICES ADMINISTRATION,

Defendant

:

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: CIVIL ACTION 75-1448

:

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**FILED**

MAY 12 1978


ORDER

JAMES F. DAVEY, CLERK

In accordance with the Memorandum filed herewith,  
it is by the Court this 13<sup>th</sup> day of May, 1978,

ORDERED, that Plaintiff's Motion for New Trial be  
and it is hereby DENIED; and it is

FURTHER ORDERED, that Plaintiff's Motion to  
Strike Affidavits and for Payment of Reasonable Costs,  
Including Attorney Fees, be and it is hereby DENIED.

  
Aubrey E. Robinson, Jr.  
United States District Judge