

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

HAROLD WEISBERG, :
 :
 Plaintiff-Appellant :
 :
 v. : Case No. 77-1831
 : Case No. 78-1731
 :
 GENERAL SERVICES ADMINISTRATION :
 :
 Defendant-Appellee :

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U.S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

OPPOSITION TO APPELLEE'S MOTION TO DISMISS

The above two cases have been consolidated by order of this Court dated August 4, 1978. On the day that appellee's brief was due in Case No. 78-1831, appellee informed appellant's counsel that two of the Warren Commission executive session transcripts at issue in this case were being released and would be mailed to Weisberg at his home in Frederick, Maryland, a procedure which ensured that he would receive his copies after the transcripts were made available to the general public. That same day appellee filed a motion requesting partial dismissal of the appeal in Case No. 77-1831 and complete dismissal of the appeal in case No. 78-1731.

Appellee's motion for dismissal is founded upon claims that the release of the June 23, 1964 Warren Commission executive session transcript and eleven pages of the January 21, 1964 transcript has mooted all of the issues in 78-1731 and all issues in 77-1831 ex-

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cept those pertaining to the remaining undisclosed transcript of May 19, 1964.

For the reasons set forth below, appellant vigorously opposes the motion to dismiss.

I. INTRODUCTION

The two transcripts which appellee has just released have been withheld from appellant Weisberg for over a decade. Originally they were withheld from Weisberg on the grounds that they were exempt under (b)(1) because their release would endanger the national security. Subsequently, after the Freedom of Information Act was amended in 1974, appellee also claimed that they were exempt under (b)(3) pursuant to a statute, 50 U.S.C. §403(d)(3) which requires the Director of Central Intelligence to protect against the unauthorized disclosure of "intelligence sources and methods."

Now that these transcripts have been released, it is evident, as Weisberg has claimed all along, that an enormous fraud was being perpetrated by appellee. The transcripts themselves prove that appellee's claims about their national security content were not only baseless but fabricated. There never was any classifiable national security information in either of the withheld transcripts, nor did their release disclose any intelligence sources and methods not already well known. The affidavit of appellant Weisberg which is reproduced in the addendum to this Opposition removes any possible

doubts about the fraudulent nature of appellee's representations to the district court about the nature of these transcripts. Despite its length, the Weisberg affidavit is not exhaustive. Much more evidence could be adduced to show the falsity of appellee's affidavits and pleadings. (The entire June 23, 1964 Warren Commission executive session transcript is attached as Exhibit 1 to the Weisberg affidavit. Pages 63-73 of the January 21, 1964 transcript are attached as Exhibit 2)

This is not the first time that this defendant and its ally, the Central Intelligence Agency, have engaged in this pattern of deceitful and abusive conduct. In an earlier lawsuit for the January 27, 1964 Warren Commission executive session transcript, Weisberg v. General Services Administration, Civil Action No. 75-1448, the GSA lost on its claim that the transcript was properly classified but won on an equally spurious claim that it was exempt under (b) (7) as "an investigatory file compiled for law enforcement purposes" even though the answers to interrogatories showed that it had never been seen by any law enforcement official until at least three years after the Warren Commission went out of existence, and arguably not even then. Before Weisberg could appeal, the CIA "declassified" what never qualified for classification and the GSA forgot about its exemption 7 claim and released the transcript. Like the January 21 and June 23 transcripts just released, the January 27 transcript had been withheld at the behest of the CIA purportedly to protect "intelligence sources and methods." As with the present transcripts, the text of January 27 transcript proved

the government's representations of its contents false.

The concluding paragraph of Weisberg's attached affidavit relate some of the consequences of this pattern of conduct:

82. This is the second time GSA and the CIA have bled me of time and means to deny me nonexempt Warren Commission executive session transcripts. They dragged me from court to court to delay and withhold by delaying. In each case, both stonewalled until the last minute before this Court would have been involved. In each case, rather than risk permitting this Court to consider the issues and examine official conduct, I was given what had for so long and at such cost been denied me. This is an effective nullification of the Act, which requires promptness. It becomes an official means of frustrating writing that exposes official error and is embarrassing to officials. It thus becomes a substitute for First Amendment denial. They can and they do keep me overloaded with responses too long and spurious affidavits with many attachments. With the other now systematized devices for noncompliance, these effectively consume most of my time. At my age and in my condition, this means most of what time remains to me. My experience means that by use of federal power and wealth, the executive agencies can convert the Act into an instrument for suppression. With me they have done this. My experience with all these agencies makes it certain that there is no prospect of spontaneous reform. As long as the information I seek is potentially embarrassing or can bring to light official error or misconduct relating in any way to the aspects of my work that are sensitive to the investigative and intelligence agencies, in the absence of sanctions their policy will not change and the courts and I will remain reduced to the ritualized dancing of stately steps to the repetitious tunes of these official pipers.

Appellee has moved to moot most of the issues in 77-1831 and all the issues in 78-1731 because it and the CIA are afraid that these appeals will set precedents which constrain the government's

ability to manipulate court's and court procedures in Freedom of Information Act cases. Both agencies know that this case is one involving particularly egregious conduct and that appellant has taken pains, under very difficult circumstances, to build a solid factual record in his support. From their point of view it is unlikely that there will ever be a worse factual record for this Court to address the legal issues which appellant has raised. Accordingly, as one final act of manipulation they have attempted to deprive this Court of the optimum factual record on which to address those issues by claiming that the release of these two transcripts moots those issues.

There is absolutely no doubt but that the conduct of the GSA and the CIA in this case is subversive of the integrity and independence of the judiciary and makes a mockery of the law which this Court is sworn to uphold. There can be no meaningful implementation of the Freedom of Information Act if this conduct is allowed to persist. If it does persist, the respect of the citizens for the judiciary will also be lost. These are the issues which are ultimately at stake in considering the appellee's motion to dismiss.

II. THE "PUBLIC INTEREST" EXCEPTION TO THE MOOTNESS DOCTRINE APPLIES HERE

In Alton & So. Ry. Co. v. International Ass'n of Mach. & A.W., 150 U.S.App.D.C. 36, 463 F. 2d 872, this Court discussed the mootness

doctrine at some length. In doing so, it referred to the doctrine spawned by what it refers to as "the seminal opinion, in modern jurisprudence" in Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911):

The likelihood of repetition of the controversy and the public interest in assuring appellate review are the key elements of the Southern Pacific Terminal doctrine. The vitality of the Southern Pacific Terminal doctrine is undeniable. Precedents abound Indeed, if this doctrine identifies an "exception," the exception may have swallowed up the rule--at least where litigation involves actions by or against public officials, and the public interest in assuring enforcement of the legislative will and, of course, constitutional mandates. A cognate "public interest" has also led in recent years to the overhaul of doctrines on matters like standing and ripeness, and to the hearing of controversies from which the courts formerly refrained. (citations omitted) Alton, supra, at 42-43.

This case is one which contains all the elements mentioned in this passage from Alton. The issues raised by Case No. 78-1831 are certain of repetition. This is true, for example, of the issue raised in that case as to whether records allegedly withheld under 50 U.S.C. §403(d)(3) to protect the unauthorized disclosure of "intelligence sources and methods" are exempt under 5 U.S.C. §552 (b)(3) where they are not properly classified pursuant to Executive order. It is appellant's understanding that this issue has been raised in other cases which he believes are presently before this Court. In addition, this issue has been raised in cases now in district court, including in Weisberg v. Central Intelligence Agency, et al., Civil Action No. 77-1997. Other issues, such as the re-

fusal of the district court to examine the purportedly classified transcripts in camera either with or without the aid of a classification expert and the district court's curtailment of discovery are also certain to be raised again in subsequent cases.

Nor is there justification for dismissing the issue raised by Case No. 78-1731 as moot. The issue in this case is whether the district court abused its discretion in denying Weisberg's motion for a new trial on grounds of new evidence and fraud, misrepresentation, or other misconduct. This affords this Court to lay down standards appropriate to the particularly fluid situation which prevails with respect to Freedom of Information Act lawsuits and to engage in innovations which will bring rigid court procedures more in line with the mandate of the Freedom of Information Act that nonexempt information must be made available promptly.

There is a particularly strong public interest involved here. The Freedom of Information Act is a law passed to benefit the public by making all nonexempt federal information available promptly upon demand. But if agencies can delay the release of information for three years, as in this case, merely by stonewalling the case in the courts and forcing the requester to a costly and time-consuming appeal, then the Congressional mandate is defeated and the law becomes a caricature of what it is supposed to be. In addition, as mentioned above, there is an overriding constitutional and public interest in preserving the integrity and independence of the judiciary. All of these considerations strongly argue that this Court should not dismiss any part of either of the two con-

solidated cases but should seize upon the unique factual situation present in them to develop innovative responses to the agencies' attempts to undermine the Freedom of Information Act and the integrity of the courts.

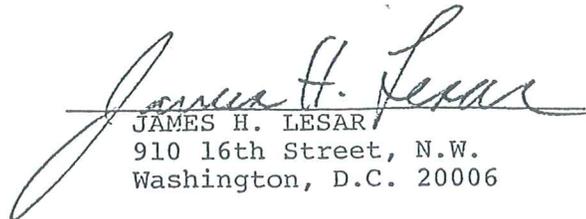
III. THE MOTION TO DISMISS FOR MOOTNESS SHOULD NOT BE GRANTED BECAUSE THE "COLLATERAL CONSEQUENCES" EXCEPTION ALSO APPLIES HERE

In Thompson v. Mazo, 137 U.S.App.D.C., 421 F. 2d 1156 (1970) and other cases this Court has also adopted the "collateral consequences" exception to the mootness doctrine. In this case one of the collateral consequences of granting appellee's motion to dismiss would be to tie-up appellant in endless litigation for the rest of his life, with the government averting decision on the legal issues at the appeal level time and again by mooting the case at the last moment. Any such prospect should be ended by this Court once and for all right now in these two appeals.

In addition, granting the government's motion to dismiss on grounds of mootness may affect such collateral matters as appellant's right under the Freedom of Information Act to attorney's fees and to invoke sanctions against agency employees.

For the reasons aforesaid, appellant asks that the government's motion to dismiss be denied.

Respectfully submitted,

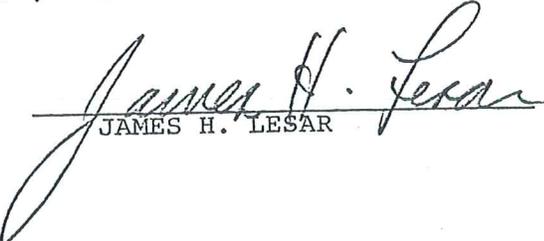

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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of October, 1978 mailed a copy of the foregoing Opposition to Appellee's Motion to Dismiss to Mr. Leonard Schaitman and Mrs. Linda M. Cole, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

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AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the appellant in the above-entitled cases. I reside at Route 12, Frederick, Maryland.
2. My prior experience includes that of investigative reporter, investigator and editor for the United States Senate, and intelligence analyst. As an intelligence analyst I was authorized to classify records at the "Secret" level.
3. I have read Appellee's motion to dismiss, as well as the attachments thereto, including the letter by CIA General Counsel Anthony A. Lapham dated October 11, 1978 and the letter by Acting Archivist of the United States James E. O'Neill dated October 13, 1978. I have also read the June 23, 1964 Warren Commission executive session transcript and 11 pages of the January 21, 1964 which appellee has just released after withholding them from me and the

American public for more than a decade under a claim that their disclosure would endanger the national security.

4. Mr. Lapham's letter states that these records were withheld "to protect intelligence sources and methods" and "because the documents were classified . . ." It does not state that the alleged "intelligence sources and methods" were secret or in any way not generally known. It does not state that the records were properly classified.

5. Having read these transcripts, I state that based on my knowledge and experience there never was any possibility that their release to the public would result in the disclosure of any intelligence source or method. The only content of these two transcripts that might be alleged to be subject to classification on this ground relates to the use of those who defect from an intelligence agency by the intelligence agency to which they defect. There is no possibility of the "disclosure" of an "intelligence source or method" in this because it has been common practice for as long as there have been intelligence agencies. (A copy of the June 23, 1964 Warren Commission executive session transcript is attached hereto as Exhibit 1. Pages 63-73 of the January 21 transcript are attached as Exhibit 2)

6. On the same basis I also state that there never was justification for classification of these records at any level. There is no intelligence-related content of either record that was unknown to the KGB or to subject experts. There is no "national security" content at all.

7. After this suit was filed in district court, the government refused to confirm that Yuri Ivanovich Nosenko was the subject of the June 23rd transcript. As one of the many available proofs of what has long been public about Nosenko, I attach a Warren Commission staff memorandum entitled "Yuri Ivanovich Nosenko." (See Exhibit 3) It was declassified on April 7, 1975, nearly six months before I instituted suit in district court for the June 23rd transcript.

8. Having read the June 23rd transcript and this and other Warren Commission staff reports, I state that there is no information in this transcript relating to Nosenko that is not in the staff reports. This is one of many available records which establish that the GSA and the CIA have known from prior to the filing of this lawsuit and all during the time that both were making false representations to the district court that both they were withholding what was already in the public domain.

9. Having read the June 23rd transcript, I further state that it contains no information relating to Nosenko that was not made available to Edward J. Epstein for his book Legend, his magazine articles and interviews and his extensive use on nationwide TV and other forums.

10. With respect to pages 63-73 of the January 21st transcript, the December 30, 1976 affidavit of Mr. Charles A. Briggs of the CIA filed in this case states:

. . . 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 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.

11. There was no statement by Mr. Briggs or any other affiant used by the government in this case that the "intelligence source or method" allegedly sought to be protected was secret or unknown. The use of defectors by intelligence agencies is not secret or unknown nor is the use of letters to governments. (See ¶24, infra) Any representation to that effect would be false. The CIA knew this. In fact, the CIA's own prior disclosures to me revealed its use of KGB defectors in precisely the manner it recommended to the Warren Commission. (For an example, see Exhibit 4, which also bears neither a classification stamp nor any indication that a classification stamp has been deleted.)

12. The House Select Committee on Assassinations heard testimony about Nosenko on September 15, 1978. If the Committee's narrative introducing that testimony is correct, there were only two KGB defectors to the CIA at the time Nosenko defected. While there is no certain that Peter Derjabin and Anatoli Golitsin are the two defectors over whom, allegedly, the CIA withheld the January 21 transcript,

the readily available public information strongly suggests they are.

13. Page 41 of Warren Commission Document 49 discloses that Peter S. Derjabin is "an admitted former Soviet intelligence officer." This was neither classified nor withheld by the FBI, nor was the fact that he was an FBI source. The release of his testimony before the Senate Internal Security Committee is reported in a Los Angeles Times story printed in the Washington Post of November 22, 1965. It dates his defection as 1955. Three days earlier the Post carried his letter under the heading "Penkovsky Papers Defended." His name is Anglicized to Peter Deriabin. The first sentence of his letter discloses his CIA connection: "As the translator of The Penkovsky Papers . . ." Naturally enough, he defended the authenticity of the manuscript. It has since been established that he and the CIA created it.

14. It is well-known that Anatoli Golitsin is a Soviet KGB defector. His name fits the spaces in Exhibit 4 from which the typing is obliterated. The space in Exhibit 4 for the place from which the defector defected fits "Finland," from which one of the two defectors the CIA wanted to provide "information" to the Warren Commission did defect. According to Legend by Edward Jay Epstein, Golitsin "defected to the CIA from Helsinki, Finland with the rank of "a major in the First Chief Directorate of the KGB." This conforms to the description of the defector whose name is withheld from page 66 of the January 21 transcript, "fairly high

up in the KGB." Legend not only identifies Golitsin by name but also gives his code name, "Stone." (See Exhibit 6)

15. Whether or not Derjabin and Golitsin are the two defectors referred to in the January 21 transcript, the fact that this information and much more is publicly available about them, including their use by the United States, means that on this basis alone the claim to be protecting "intelligence sources and methods" by withholding information pertaining to them is spurious. Then, too, the KGB is only too aware of these defectors. What the CIA has been withholding was not withheld from the KGB.

16. The Lapham letter gives as the reason for the CIA's abandonment of its "previously claimed exemptions for the two Warren Commission transcripts" in order "to protect intelligence sources and methods" the fact testimony "has been given" before the Select Committee on Assassinations.

17. This is pretextual, misleading and deceptive. In the first place, as is detailed above, there never was any basis for classifying these transcripts. Secondly, I know of no development in the past three years that in any way altered the significance or meaning of the content of these transcripts. This includes the testimony of the CIA's John Hart (which is not included in the transcript of a reading of the Committee's press kit which is attached to the motion to dismiss). Most of Hart's testimony dealt with the CIA's barbarous treatment of Nosenko. Nosenko's treatment is not mentioned in the January 21 and June 23 transcripts. The

CIA's treatment of Nosenko was not unknown before Hart testified. The possibly relevant portion of Hart's testimony also was not secret. This relates to the credibility of what Nosenko said about Lee Harvey Oswald, the only accused assassin of the President. What Nosenko told the FBI about this was not classified, although the GSA withheld it nonetheless until early 1975, when I obtained copies.

18. On page 5 of its motion to dismiss appellee states: "On September 15, 1978, the House Committee on Assassinations summarized a report . . . submitted to the agency for prior clearance. The Director of Central Intelligence reviewed the report within two days of receipt and agreed to declassify the draft. The Director also made Mr. John Hart, an expert in Soviet Intelligence and counter-intelligence, available to testify before the Committee."

19. The Committee report is based on examination of many CIA records, a number of staff interviews with Nosenko, and Nosenko's testimony at several Committee executive sessions. If the Director could review and declassify all this extensive material "within two days," he certainly could have reviewed the relative few pages of these transcripts in much less time.

20. What the motion to dismiss does not tell the Court is that for a long time, certainly more than a year, the CIA was aware of the Committee's interest in disclosing information relating to Nosenko and the content of the Warren Commission executive sessions. This is not a matter that came to the attention of the CIA on Sep-

tember 15, 1978, and not before then, which is what appellee's motion to dismiss implies. Hart had retired from the CIA after 24 years of service. Long before September 15, 1978, he was recalled by the CIA in anticipation of the September 15 testimony. In his testimony he described months of reading, rereading, and comparing contradictory reports of many hundreds of pages each. During the long period of Hart's inquiries, searching of CIA files and interviewing of CIA personnel, there never was a time, from the very first moment, when it was not known that he would be making extensive disclosure relating to defectors and Nosenko. From the outset it was also known that the content of these transcripts was at most an insignificant part of the coming Hart testimony. It was known to the CIA, even before it recalled Hart from retirement, that it would be making public disclosure of what it was withholding in these transcripts. During all this long time, the CIA was persisting in falsely sworn statements in this case in order to perpetuate withholding them from me and to deny the public the meaning which I as a subject expert could give them.

21. It is apparent that the actual reason for withholding these transcripts was to prevent embarrassment and to hide the fact that the CIA virtually intimidated and terrified the Warren Commission. Disclosure of these transcripts also reveals that the CIA misinformed and misled the Commission in order to avoid what was embarrassing to the CIA. The transcripts also reveal that the Warren Commission, a Presidential Commission charged with the responsi-

bility of conducting a full and complete investigation of the assassination, did not do so.

22. The CIA had an obligation to inform and counsel the Warren Commission wisely and fully. Warren Commission records, including the transcripts just released, show that it did not measure up to its responsibilities.

23. As Nosenko has testified to the House Select Committee on Assassinations, he did not possess all of the KGB's knowledge of Lee Harvey Oswald. Although there were seven or eight volumes relating to Oswald and various surveillances on him and their fruit, Nosenko testified that, during the brief period after the assassination when he had possession of these volumes, he had time for only a skimming of the first half of the first volume. The only secrecy with regard to Nosenko and what he knew of what the KGB knew about Oswald is what the CIA withholds from the American people. The KGB knows this and more.

24. I have read the questions the CIA proposed having the State Department address to the USSR. I recall no CIA request or recommendation that these KGB volumes be provided to the United States Government. Rather, the CIA's questions were drawn in a manner calculated to give offense, cause resentment, and discourage cooperativeness. The State Department and the Warren Commission did not approve them. In all the many thousands of pages of Commission records which I have read, I recall no single page in which the Commission was informed about these KGB volumes by the CIA.

25. Based on prior experience and knowledge from my services in the State Department, it is my judgment that under the circumstances of President Kennedy's assassination no government would risk appearing to force upon the United States what the United States did not request or indicate it desired to have. With regard to the coexistence of adversary intelligence agencies, this is also axiomatic. This became a matter of extraordinary delicacy because the Russians suspected that Oswald served American intelligence and Oswald was the alleged assassin.

26. The January 21 transcript reflects a Warren Commission paranoia that borders on the irrational. I believe this is one of the actual reasons for withholding it. The purpose of the discussion, in the words of the Chairman, was a CIA offer of assistance: "they would like to have us give them certain of our records so that they can show them to some of their people, namely a couple of persons who have defected from Soviet Russia." Commission General Counsel J. Lee Rankin added: "The material they (i.e., the CIA) have in mind is nothing that is really classified . . . material that Oswald wrote himself . . . diary, letters and things of that kind," what "could mean a good deal to a man who is" a former intelligence expert who had been "fairly high up" in it. (See Exhibit 2) Rankin noted that "[i]t is nothing that normally would be classified," and Former CIA Director Allen Dulles described the information as what the Commission would publish. In fact, it was published in facsimile by the Commission. Within a few days of this discussion, some of it was leaked in a commercial

venture involving about \$25,000 and a fixing of the national mind and attitudes toward Oswald.

27. This was the month before Nosenko defected. At that time the CIA was being helpful. It recommended that an official request be presented to the Soviet Government through the State Department. It offered to use its KGB defectors for such purposes as looking for any kind of code in Oswald's writings. Dulles personally endorsed these defectors--before Nosenko defected--in these words: ". . . they have been working very closely with us, one has been working six or seven years and one about two years."

28. Speaking of unclassified information and what the Commission was going to publish, the Commission Chairman wondered aloud about "whether we should do that," meaning let the defected KGB experts examine the unsecret and unclassified material, "without taking some very careful precautions . . ." His reason, suppose these two should redefect or "turn out to be counter-intelligence agents." So, "I myself question the advisability of showing these records to any defector." Soon thereafter "these records" were published in facsimile in Life magazine and extensively in many newspapers.

29. General Counsel Rankin, who had already described "these records" as not classified or classifiable, sought to reassure the Commission with regard to the Chairman's uneasiness: ". . . the CIA people say they couldn't hardly defect back again without being in plenty of trouble and they don't believe there is any prospect

and they also say that when they have anything like that they have had plenty of notice in advance . . . but they think they could be very helpful because they can interpret these materials and suggest inquiries that we should make to the Soviet . . ."

(January 21 transcript, pp. 64-5)

30. If by any chance the formerly high-up KGB official and his associate, after the kind of tough testing given by the CIA before it trusts defectors with its own secrets, still were in any way untrustworthy and would risk being killed by redefecting after having given away KGB secrets, it is obvious that there could be no harm from their examining in private what they would soon enough read in the press.

31. But the paranoid attitude, also fostered by the former CIA Director, Commission member Allen Dulles, continued throughout the transcript. Commissioner Gerald Ford asked (at p. 70 of the transcript, "Does it have to be a matter of record for anybody other than ourselves and the CIA that these individuals within their agency have perused these documents?" Dulles responded, "No, unless they yell." Rankin explained, "He is afraid they might give it away," "it" being the unclassified material that was to be published. Ford stated, "I see."

32. That mature and responsible men could be so terrified of a nonexistent shadow, that a Presidential Commission investigating the assassination of a President could be rendered so impotent by irrationalities and impossibilities, is an unusual glimpse

on the inside, but it is not properly subject to classification, never was, and contains no "national security" secrets.

33. In order that the Court can more fully comprehend the CIA's motivation for withholding the June 23 transcript, I need to summarize certain salient facts which have been developed by and about the investigation of President Kennedy's assassination.

34. What is never stated about Oswald, and to the best of my knowledge is included in my writing only, is that Oswald was anti-Soviet. A reference in the KGB Minsk file that worried KGB Moscow after the President was assassinated is that someone in Minsk had tried to "influence Oswald in the right direction." The KGB Moscow fear was that, despite its orders to watch Oswald and not do anything else, an effort might have been made to recruit him. In the words of Exhibit 3 (p. 4), "It turned out that all this statement referred to was that an uncle of Marina Oswald, a lieutenant colonel in the local militia in Minsk, had approached Oswald and suggested that he not be too critical of the Soviet Union when he returned to the United States." (In the many assassination mythologies, Marina Oswald's uncle's local militia job has been converted into his having a significant KGB intelligence rank.)

35. In my first book, which was completed about February 15, 1965, I concluded from the Commission's own published evidence that Oswald's career in New Orleans, after he returned from the USSR, was consistent only with what in intelligence is called establishing a cover.

36. In my first and third books I go into detail, again from what was made public by the Commission, about Oswald's anti-Soviet and anti-U.S. Communist writing. In his notes, later published by the Commission, Oswald berated the Russians as "fat stinking politicians." The American Communists, he declared, had "betrayed the working class." His favorite book was the anti-Communist class, George Orwell's The Animal Farm.

37. Whether or not it is believed that Oswald was anti-Communist, as from my own extensive work I believe he was, it remains unquestioned that Nosenko stated the KGB suspected that Oswald was an "American agent in place" or "sleeper agent;" that he told this to the FBI, which told the Commission; that on March 4, 1964, the FBI got Nosenko to agree to testify in secret before the Commission; that CIA efforts to abort this are recorded as beginning not later than a week later; that on April 4, 1964, the CIA made Nosenko totally unavailable by beginning his three years of illegal and abusive solitary confinement that day; and that none of this, which is not secret, is included in the June 23 transcript which was held secret and denied to me for a decade.

38. The June 23rd transcript is almost totally void on Nosenko's information. There is only a vague reference to Oswald's life in Russia. If any other information was discussed, it is not recorded in the transcript. The transcript does begin after session began. At the end of what is in the transcript, the Commission did not adjourn. It took a recess. But there is no further text.

39. The doubt created about Nosenko's bona fides permeates the June 23rd transcript. It accounts for the failure of the Warren Commission to question Nosenko or to use the information he provided to the FBI as investigatory leads.

40. The CIA officials who were in a liaison role with the Warren Commission were not of its intelligence component. They were from Plans, the dirty-tricks or operational part, then headed by Richard Helms. The Counterintelligence staff of James J. Angleton, under Helms, handled most of it.

41. Those who created doubts about Nosenko and are responsible for his barbarous treatment of exceptionally long duration are Angleton and Pete Bagley, Deputy Chief of the Soviet section.

42. What concerned the Angletonian wing of the CIA and caused all the commotion over Nosenko is their political concoction, not intelligence analysis, that Nosenko had been dispatched by the Soviet Union to plant "disinformation" about Oswald, an alleged KGB involvement with him, and the possibility that the KGB was responsible for the assassination through Oswald. The Soviet defector Golitsin argues, in accord with the pretext of the CIA's ultras, that Nosenko was dispatched by the KGB to "disinform" about Oswald and the assassination of President Kennedy. Without any evidence, and contrary to the available evidence, these political paranoids believed that Oswald was a KGB agent sent back to the United States to assassinate the President. Epstein, although he pretends otherwise, says the same thing in the book the CIA made possible for him, Legend.

43. Allegedly, the major doubts about Nosenko's bona fides were over his statement that his partial review of the KGB's Oswald file when flown to Moscow from Minsk disclosed no KGB interest in Oswald and that it had not attempted a formal debriefing. The predominating Angleton-Bagley interpretation is that this was impossible because Oswald possessed important military intelligence information and that therefore Nosenko was lying. Although nobody ever gets around to being specific about what real secrets Oswald knew and could have told the Russians, it is implied that Oswald's radar knowledge included what the Russians did not know. The reason there are no specifics is because this is not true. Oswald's knowledge of what was not secret was of no value to the Russians. His knowledge of radar codes was valueless because it was certain that with Oswald's supposed but never formalized "defection" these codes would be changed immediately, as they were.

44. What it is alleged the KGB did not do--evaluate Oswald potential usefulness to it--it in fact did do, covertly. One reason there was no overt KGB debriefing is because its preliminary inquiry, which was known to the CIA, disclosed that Oswald was what the Warren Commission also concluded he was, an unstable person.

45. As is shown by Exhibit 3, a June 24, 1964 Warren Commission staff memorandum, the Commission's January paranoia was partly overcome and "Nosenko was shown certain portions of our file on Oswald." (See page 2, final paragraph.)

46. Rather than having no intelligence estimate of Oswald, this staff memo states that the KGB obtained its information by a number of means without subjecting the suspected Oswald to a formal interrogation. A formal KGB questioning would have told Oswald he was suspected. It would not be an abnormal practice if he were to be watched as a suspect without being told he was under suspicion. The Commission staff report discloses how the KGB formed its appraisal of Oswald: "The KGB in Moscow, after analyzing Oswald through various interviews and confidential informants, determined that Oswald was of no use to them and that he appeared 'somewhat abnormal.'" (Emphasis added)

47. The Intourist interpreter assigned to Oswald also was KGB.

48. As early as March 12, 1964, a few days after the FBI arranged for Nosenko to testify, Helms and two CIA associates had already begun to talk the Commission out of any Nosenko interest. All reference to this was suppressed until July 11, 1973, when Exhibit 7 was made available. The excised second paragraph of this memo was withheld until its "declassification" on January 24, 1975. Its restoration disclosed, for the first time, the CIA's "recommendation . . . that the Commission await further developments" on Nosenko. (See Exhibit 8) This "recommendation" does not appear to qualify for "TOP SECRET" withholding.

49. These exhibits also establish that years after the CIA concluded that Nosenko was a legitimate defector, was employing him and had paid him a king's ransom, the CIA was making a "na-

tional security" claim for information that does no more than report the beginning of its successful effort to influence the content of the Commission's work and Report.

50. The CIA is the country's foremost expert in the fabrication of covers. The cover story which the CIA's ultras devised for Nosenko is that the KGB had to misinform the United States about the conspiracy aspect of the assassination. The inference is that, with Oswald having lived in Russia and with Oswald the only official candidate for assassin, the KGB was responsible for the assassination. (The attribution of KGB motive expressed by Gerald Ford in the June 23rd transcript, provided "by people I believe know," is "to extricate themselves from any implication in the assassination.") The cover is diaphanous. If the KGB had been connected with the assassination--and there is no rational basis for even suspecting it from the unquestionable evidence--it still had no need to run the great risk of sending a disinformation agent. The reason is known to subject experts and should have been known to the Commission and its staff, as well as to the FBI and CIA. The most obvious reason is that the official no-conspiracy conclusion had already been leaked and was never altered.

51. Throughout the entire course of the Warren Commission's life, there was systematic leaking of this lone-nut assassin, no-conspiracy predetermination. The first major leak was of the report President Johnson ordered the FBI to make before he decided on a Presidential Commission. This report, which is of five bound

volumes subsequently identified as Commission Document 1, is actually an anti-Oswald diatribe that is virtually barren on the crime itself. This remained secret until after the end of the Commission's life. This report is so devoid of factual content that it does not even mention all the President's known wounds. Nonetheless, because of secrecy and Commission complacency, it became the basis of the Commission's ultimate conclusions.

52. The basic conclusions of this five-volume FBI report were leaked about December 5, 1963. The next day, at a Commission executive session, then Deputy Attorney General Katzenbach told the Commission members that the FBI itself had leaked the no-conspiracy conclusions of its report. The text of this FBI report did not even reach the Commission until December 9, four days after the leak. The leak, as published, represented the Oswald-alone, no-conspiracy conclusion as the official FBI conclusion.

53. The CIA's contrivance, which could have incinerated the world, presupposes that the KGB did assassinate the President. If the KGB had not, it had neither motive nor need for the CIA's fabricated cover story on Nosenko, that he had come to spread KGB disinformation about the assassination.

54. But even if the KGB had been responsible for the assassination, from the time of the leak of the FBI's no-conspiracy conclusions the KGB had no reason to believe there would be any other conclusion. Thus, there was no need, in February, 1964, to send a disinformation agent, a project that was at best extremely risky,

when the official "no conspiracy" conclusion had been public knowledge since early December.

55. Nosenko did withstand three years of subhuman abuse in solitary confinement. Despite psychological tortures executed with incredible attention to detail, Nosenko was shown to be not a KGB disinformation agent but an authentic anti-Soviet defector and an extremely valuable expert on Soviet intelligence. It is not likely that any disinformation agent, anyone not genuinely anti-Soviet and truthful, could have survived this intense and continuous abuse and cross-examination. Any intelligence agency attempting to plant such a disinformation agent could expect treatment similar to that accorded Nosenko. It would be tempting almost unimaginable disaster. It would have been the ultimate in foolhardiness and pointlessness.

56. Although the CIA's Nosenko cover story is transparently thin, it succeeded with the terrified Warren Commission in 1964. As a result the Warren Commission totally ignored the unresolved question of Oswald as an American rather than a KGB agent. Although this question lingers yet and is still unresolved, the House Select Committee on Assassinations, purportedly conducting an investigation into the failings of the Warren Commission, has also ignored it.

57. The impact of the CIA's Nosenko cover story upon the Warren Commission is readily apparent in the June 23rd transcript. It opens with a speech by Gerald Ford which continues almost with-

interruption for four pages. In it Ford says he has not seen any FBI or CIA reports on Nosenko. This means that not fewer than three FBI reports were not provided to a member of the Commission.

58. Ford did not provide his sources in stating, "I have been led to believe, by people who I believe know, that there is a grave question about the reliability of Mr. Mesenko being a bona defector." (Nosenko's name is misspelled throughout the transcript.) But Ford was determined that the Commission make no use of any information provided by Nosenko even if the information were proven to be accurate:

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

59. Ford stated the Angleton/Bagley view from within the CIA, "that Mr. Mesenko could very well be a plant" for "other reasons" as well as "for the Oswald case." He conceived that this would be "a very easy thing for the Soviet Union." He stated that one reason would be "to extricate themselves from any implication in the assassination." (page 7641)

60. Covering both ways, Ford plowed his furrow in the opposite direction just before the end of the session:

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

son who was in Russia and who alleges he knows something about Oswald would be unfortunate. (page 7648)

61. The Chairman agreed, as he had earlier, rephrasing what Ford said and obtaining confirmation for his "idea": ". . . the crux of the whole matter is that the Report should be clear that we cannot vouch for the testimony (sic) of Mr. Mesenko." (Nosenko was not a witness, although the FBI arranged for him to testify in secret.) The "idea" is "clear" in the Report: There is no mention of Nosenko at all, what Ford wanted to begin with and ended up saying would be "unfortunate." Rankin then said, "The staff was very much worried about just treating it as though we never heard anything about it, and having something develop later on that would cause everybody to know there was such information and that we didn't do anything about it . . ." (pages 7648-9)

62. Ford enlarged upon this: "I think you have got to analyze this in two ways. One, if he is bona fide, then what he knows could be helpful. But in the alternative, if he is not bona fide, if he is a plant, we would have to take a much different view at what he said and why he is here."

63. Rankin then stated that this "is one of the things that I inquired into, in trying to find out from the C.I.A., as to whether or not he might have been planted for the purposes of furnishing this information . . . And they assured me that he had been what they called dangled before them, before the assassination occurred, for several months." (pages 7649-50)

64. This is factually incorrect, an error that Ford re-enforced immediately: "It is my best recollection that he was actually a defector some time in December." In fact, Nosenko was working for the CIA inside the Soviet Union beginning in 1962. He then stated firmly that he would never defect and leave his family behind. His actual defection, not "dangled" but entirely unexpected, was in February, 1964, which is after, not before the assassination.

65. Dulles expressed the view which prevailed: "I doubt whether we should let the name Mesenko get into the printed report." (page 7644)

66. This is not because the Soviet Government did not know about the Nosenko defection. It was very public, as the transcript reflects at several points.

66. Rankin said that "there will be people, in the light of the fact that this was a public defection, that has been well publicized in the press, who will wonder why he was never called before the Commission." (Emphasis added, page 7645) Ford said that "the original press releases were to the effect that he was a highly significant catch There was great mystery about this defection, because the Soviet Union made such a protest--they went to the Swiss Government, as I recall, and raised the devil about it." (page 7650) Nosenko defected to the CIA in Geneva.

Despite the fact that Nosenko's name was public, Helms did not want it used. He phoned Rankin just a few minutes prior to

this executive session to discuss Nosenko. Rankin told the Commission, "I just received a call from Mr. Helms . . . and he learned that we even had papers that the Commissioners were looking at. And Mr. Helms said that he thought that it shouldn't be circulated to the Commissioners, for fear it might get out about the name Mosenko, and what we received." (Emphasis added. Pages 7645-6)

68. The Chairman remarked, "Well, that name has been in the papers, hasn't it?"

69. Helms also had a proposal for the Commission as an alternative to performing its duty to investigate leads. In Rankin's words, "And he said would it help if Mr. McCone sent a letter to the Chief Justice as Chairman of the Commission asking that in reference to Mosenko be used. And I said, 'I think that would be helpful to the Commission,' because then the Commission would have this position of the CIA on record . . ." (Pages 7645-6)

70. Rankin had hardly finished repeating the CIA's request for suppression and offer of a letter to cover the Commission when Dulles objected strongly:

I would like to raise the question whether we would like to have a letter, though, in our files asking us not to use it. It might look to somebody as though this were an attempt by the C.I.A. to bring pressure on us not to use a certain bit of information. (page 7647)

71. Without any CIA incriminating letter in the Commission's files, this is precisely what happened. It began almost as

as the FBI arranged for Nosenko to testify before the Commission. It was accomplished in a redraft of the "Foreign Conspiracy" part of the Commission's Report that was written and retyped before July 17, 1964, as the staff memorandum which is attached as Exhibit 9 shows. The editing was by Howard Willens, a respected lawyer then on loan to the Commission from the Department of Justice. He was not assigned to the "foreign conspiracy" team. This memorandum is from the junior member of that team to its senior member. In it W. David Slawson informed William T. Coleman that "all references to the 'secret Soviet Union source' have been omitted. "Eliminated" is more accurate than "omitted" because this part of the Report had been written with Nosenko included.

72. The information which I have related above can be arranged in another manner so as to reflect motive for withholding these transcripts when they did not qualify for withholding and were required to be released to me under the Freedom of Information Act:

A. Nosenko was a productive CIA agent-in place inside the KGB, beginning in 1962. His work was within responsibilities of the Angleton and Bagley part of the CIA.

B. Oswald was accused of assassinating President Kennedy on November 22, 1963.

C. Nosenko defected to the CIA in February, 1964, meaning to the Angleton-Bagley part of the CIA.

D. Nosenko was made available to the FBI in late February and early March, 1964. He told the FBI and the FBI told the Commission that the KGB suspected that Oswald was an American agent-in-place or "sleeper" agent, which would have meant for the Angleton-Bagley part of the CIA.

E. This also meant that the alleged assassin was suspected of a CIA connection, or an Angleton-Bagley connection.

F. Immediately after Nosenko agreed to testify in secret to the Warren Commission, a CIA delegation headed by Helms, then Deputy Director for Plans and Angleton's superior, started to talk the Warren Commission into ignoring Nosenko and what he stated he knew, including that Oswald was suspected of being an American agent.

G. Immediately after this the CIA, under Angleton-Bagley pressure and persuasion, incarcerated Nosenko illegally and for three years under cruel and brutal conditions, making him unavailable to the Warren Commission throughout its life (and for several years thereafter).

H. After this abusive treatment of Nosenko, during which his life and sanity were in danger from the same CIA people, the CIA decided, officially, that Nosenko was genuine in his defection and so valuable and trustworthy an expert that he received a large sum of federal money and remains a CIA consultant.

I. By this time there was no Presidential Commission, no other official investigation of the assassination of President Kennedy, but the CIA withheld all relevant records under claim to "national security" need. What has been forced free of the CIA's false claims to "national security" discloses that there is not and never was any basis for the claim.

J. When there was no official investigation and when for a decade I tried to obtain these records, the same CIA people who are responsible for the catalogue of horrors tabulated above succeeded in withholding these records, including the January 21 and June 23rd transcripts, because these same people were the CIA's "reviewing" authority.

K. This is to say that the CIA people who may have pasts and records to hide are those who were able to misuse the Freedom of Information Act and the courts to hide their pasts and records and any possible involvement with the accused assassin Oswald; and that the CIA on a higher level permitted this

73. Whether or not Nosenko was either dependable or truthful, his allegation required investigation by the Presidential

Commission charged with the responsibility of making a full and complete investigation of the assassination. The Commission did not have to believe a word Nosenko uttered but it had the obligation of taking his testimony and then, if it believed discounting his testimony was proper, not paying any attention to it. Whether the Commission took Nosenko's testimony and whether or not it then believed anything he said, the Commission had before it--and under CIA pressure and intimidation suppressed--the allegation that the Russians suspected that the only accused assassin had been an American agent. This also required investigation. But there was no investigation. For the CIA there was the substitution of an affidavit by its Director, who stated that Oswald was not his agent. As Dulles told the Commission on January 27, 1964, when perpetual secrecy was expected, both the FBI and the CIA would lie about this. (If Oswald had been connected with the CIA, that would have been when Dulles was Director.)

74. If it had been public knowledge at the time of the investigation of the assassination of the President that the CIA had, by the devices normally employed by such agencies against enemies, arranged for the Presidential Commission not to conduct a full investigation, there would have been considerable turmoil in the country. If, in addition, it had been known publicly that there was basis for inquiring into a CIA connection with the accused assassin and that the CIA also had frustrated this, the commotion would have been even greater.

75. At the time of my initial requests for these withheld transcripts, there was great public interest in and media attention

to the subject of political assassinations. If the CIA had not succeeded in suppressing these transcripts by misuse of the Act through that period, public and media knowledge of the meaning of the contents now disclosed would have directed embarrassing attention to the CIA. There is continuing doubt about the actual motive in suppressing any investigation of any possible CIA connection with the accused assassin. If such questions had been raised at or before the time of the Watergate scandal and disclosure of the CIA's illegal and improper involvement in it, the reaction would have been strong and serious. This reaction would have been magnified because not long thereafter the CIA could no longer hide its actual involvement in planning and trying to arrange for a series of political assassinations.

76. One current purpose accomplished by withholding these transcripts from me until after the House Committee held its Nosenko hearings was to make it possible for the Committee to ignore what the Commission ignored, which is what the CIA wanted and wants ignored. With any prior public attention to the content of these transcripts, ignoring what Nosenko could have testified to, especially suspicion the accused assassin was an agent of American intelligence, would have been impossible. A public investigation would have been difficult to avoid.

77. All of this and other possible consequences and the reforms they might have brought to pass were avoided--frustrated--by the misrepresentations used to suppress these transcripts and to

negate the purposes of the Act. The purposes include letting the people know what their government is doing and has done so that the popular will may be expressed.

78. I believe that the facts in this affidavit make it apparent that fraud was perpetrated on me and on the courts. I believe that because I am in a public rather than a personal role in this matter, the people also were defrauded.

79. From my experience, which is extensive, I believe that these practices will never end, there being no end to varying degrees of official misconduct, as long as there is official immunity for misrepresenting to or defrauding the courts and requesters.

80. From my experience I also believe that when district courts do not take testimony, when they do not assure the vigorous functioning of adversary justice, and when they entertain summary judgment motions while material facts are in dispute, the Act is effectively negated. The benefits to the proper working of decent society that accrue to the Act are denied. The cost to any person seeking public information becomes prohibitive. The time required for a writer like me makes writing impossible.

81. Perfection is not a state of man but healing is essential to life. A viable, healthy Act can mean a healthier nation and a government more worthy of public faith and trust.

The wrongful purposes of the improper withholding have been accomplished. What has been done cannot be undone. But what the

courts can do can discourage similar abuses in the future.

82. This is the second time GSA and the CIA have bled me of time and means to deny me nonexempt Warren Commission executive session transcripts. They dragged me from court to court to delay and withhold by delaying. In each case, both stonewalled until the last minute before this Court would have been involved. In each case, rather than risk permitting this Court to consider the issues and examine official conduct, I was given what had for so long and at such cost been denied to me. This is an effective nullification of the Act, which requires promptness. It becomes an official means of frustrating writing that exposes official error and is embarrassing to officials. It thus becomes a substitute for First Amendment denial. They can and they do keep me overloaded with responses too long and spurious affidavits with many attachments. With the other now systematized devices for noncompliance, these effectively consume most of my time. At my age and in my condition, this means most of what time remains to me. My experience means that by use of federal power and wealth, the executive agencies can convert the Act into an instrument for suppression. With me they have done this. My experience with all these agencies makes it certain that there is no prospect of spontaneous reform. As long as the information I seek is potentially embarrassing or can bring to light official error or misconduct relating in any way to the aspects of my work that are sensitive to the investigative and intelligence agencies, in the absence of sanctions their policy will not change and the

Exhibit 1

Vol. 55
Copy 9 of 10

**PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY**

Report of Proceedings

Held at

Washington, D. C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

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A. Briggs, Chief
of the Service Staff
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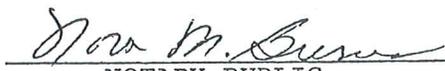
courts and I will remain reduced to the ritualized dancing of
stately steps to the repetitious tunes of these official pipers.



HAROLD WEISBERG

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 26th day of October,
1978.



NOTARY PUBLIC

My commission expires MY COMMISSION EXPIRES DEC. 14, 1981.

President's Commission

on the

Assassination of President Kennedy

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

J. LEE RANKIN, *General Counsel*

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PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

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Washington, D. C.

Tuesday, June 23, 1964

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

PRESENT:

- Chief Justice Earl Warren, Chairman
- Representative Gerald R. Ford, Member
- Allen W. Dulles, Member

- J. Lee Rankin, General Counsel
- Albert Jenner, Associate Counsel

DECLASSIFIED
Authority COG 02-7 10/11/78
By mkj, NARS Date 10/16/78

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Members present: Chief Justice Warren and Representative Ford.)

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Authority EO 12958, et al.
By mmj, NARS Date 10/16/78

The Chairman. On the record.

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

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

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

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

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

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

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Rep. Ford. Now, --

The Chairman. Or anybody else.

Rep. Ford. Or anybody else.

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

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

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

The Chairman. I agree with you.

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

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the testimony here. At least it was talked here by the C.I.A.

people. I think it was Mr. McSone who said that.

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

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

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

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

I am delighted to get your reaction.

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

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

Over the weekend I had an opportunity to discuss the Rosenko

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

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

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

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

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

We have been furnished it by the F.B.I. in a report
interview some time ago and they said that they did not
could rely on it, or at least they were not able to

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

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

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

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

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

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

The Chairman. The name Mosenko, you say?

Mr. Rankin. Yes.

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

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

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

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

So we will put that on the agenda.

Rep. Ford. Very fine.

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Mr. Dulles. I would like to raise the question whether

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

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

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

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

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

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position to pass judgment on it.

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

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

Isn't that your idea?

Rep. Ford. That is right.

But we perhaps shouldn't ignore the fact that the Commission is familiar with that information. I am not quite sure how you would phrase it in the report.

But to ignore it, I think, would be unfortunate.

The Chairman. Yes.

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

Mr. Rankin. The staff was very much worried about treating it as though we never heard anything about it. I am not having something develop later on that would cause a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(Discussion off the record.)

The Chairman. On the record.

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

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

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

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

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

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

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

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

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...
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By M. J., NARS Date 10/16/78

*Example for automatic declassification
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2.0.1.1.5.2.1.5(1)(2) or (3) (c)
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the CIA concerning any possible connections that Oswald might have had with the Soviets, and they would like to have us give to them certain of our records so they can show them to some of their people, namely a couple of persons who have defected from Soviet Russia, and I raised the question with Lee as to whether we should do that without taking some very careful precautions because if we should do that, and these people should turn out to be counter-intelligence agents, and then something would develop from Russia about this, about the thing as a result of what they saw, this Commission would look awfully bad before the world, and I myself question the advisability of showing those records to any defector.

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

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

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

Mr. Dulles. KGB.

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

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

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

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

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

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

Mr. Rankin. Yes.

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

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

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

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

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diaries or other writings other than what we have

Mr. Dulles. You have seen it all.

Sen. Russell. And the FBI?

Mr. Dulles. There is one thing I have asked that is referred to in the FBI report. We haven't all.

Sen. Russell. They are not going to tell you would have to forward the questions to the State would have to be cleared through the Ambassador the Foreign Minister and get to the equivalent of General and say what are we going to tell these

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

Rep. Boggs. There is not over and beyond shows.

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

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

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

Mr. Dulles. From his letters.

Rep. Boggs. Not from the Soviets?

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

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

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

Mr. Dulles. No.

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

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

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

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

The Chairman. Yes.

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

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

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

Mr. Rankin. They have.

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

The Chairman. Yes.

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

Mr. Dulles. No, not unless they yell.

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

Rep. Ford. I see.

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

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

The Chairman. Yes, approve it.

Rep. Ford. I think that is fine.

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

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

The Chairman. Any objection to that, gentlemen?

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

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

The Chairman. Yes.

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

The Chairman. All right.

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

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

The Chairman. Yes.

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

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

Mr. Dulles. I would just have that arrangement
don't think they ought to be given it as an FBI re-
mation in the report will be used in interrogating
these fellows.

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

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

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

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

Sen. Cooper. I see.

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

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

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

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

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

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~~Example from automatic declassification for 2.0.11.52,
Sec 1.13(2) and (3) by Charles A. Boggs, Chief, J.D.
Service of the U.S. State Dept.~~
11 if automatic declassification is possible, I would want to respect it whether it
why it shouldn't be done, I would want to respect it whether it

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

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

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

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

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

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

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

Rep. Boggs. That disposes of that.

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

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

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Exhibit 3

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MEMORANDUM

June 24, 1954

TO: The Commission

FROM: William T. Coleman, Jr.,
W. David Slawson

SUBJECT: Yuri Ivanovich Nosenko

The Commission has asked us to prepare a short memorandum outlining in what respects the information obtained from Nosenko confirms or contradicts information we have from other sources.

Nosenko's testimony to the FBI is the only information we have on what he knows about Lee Harvey Oswald. (Commission Documents No. 434 and 451.) Perhaps more useful information could be gained if we were to question Nosenko directly, but it is unlikely. Nosenko told the representative of the FBI who questioned him that he had given all the information on Oswald he possessed.

Most of what Nosenko told the FBI confirms what we already know from other sources and most of it does not involve important facts, with one extremely significant exception. This exception is Nosenko's statement that Lee Harvey Oswald was never trained or used as an agent of the Soviet Union for any purpose and that no contact with him was made, attempted or contemplated after he left the Soviet Union and returned to the United States. Nosenko's opinion on these points is especially valuable because, according to his own testimony at least, his position with the KGB was such that had there been any subversive relationship between the Soviet Union and Oswald, he would have known about it.

Nosenko's statement to the FBI confirms our information from other sources in the following respects:

1. Prior to Oswald's arrival in Russia in the fall of 1959 he had no contacts with agents of the Russian government or of the International Communist Party who were in turn in contact with the Russian government. (Our

cc: Mr. Rankin's File
Mr. Coleman
✓ Mr. Slawson
Mail Room Files

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E.O. 11652, Sec. 2(b)

By AMG NARS Date 11/25

independent sources on this are extremely weak, however. We simply do not have much information on this particular subject.)

2. When Oswald arrived in the Soviet Union he was traveling on a temporary tourist visa but very quickly made known to the Russian authorities that he desired to remain permanently in the USSR and wanted to become a Soviet citizen. He made known his intention to his Intourist guide at the Hotel Berlin in Moscow. This Intourist guide was a KGB informer.

3. Oswald was advised through the Intourist interpreter that he would not be permitted to remain in Russia permanently and that he would therefore have to leave that country when his temporary visa expired.

4. Upon learning that his request to remain in Russia permanently had been denied, Oswald slashed his wrist in his room at the Hotel Berlin in an apparent attempt to commit suicide, was found by the Intourist interpreter who he failed to appear for an appointment that evening, and immediately taken to a hospital in Moscow for treatment. The hospital was the Botkinskaya Hospital.

5. Oswald was questioned by doctors at the hospital and told them that he attempted suicide because he was not granted permission to remain in Russia.

6. Oswald was assigned to Minsk probably because it is above average for cleanliness and modern facilities, and would therefore create a good impression for him.

7. Oswald appeared at the Soviet Embassy in Mexico City and asked for a Soviet re-entry visa.

8. Nosenko was shown certain portions of our report on Oswald, including a section which stated that Oswald received a monthly subsidy from the Soviet Red Cross. On seeing this statement, Nosenko commented that it is not a practice in the Soviet Union to cause the Red Cross to make payments to emigres and defectors in order to assist them to enjoy a better standard of living than ordinary Soviet citizens engaged in similar occupations. (Nosenko also stated that the subsidy Oswald received was probably the minimum)

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given under such circumstances. This is news to us, although it is not inconsistent with other information we have.)

9. Oswald was in possession of a gun which was used to shoot rabbits while he was living in Minsk (Nosenko said he learned this upon reviewing Oswald's file after the assassination of President Kennedy when, under the circumstances, he took particular note of this fact.)

10. There is no KGB or GRU training school in the vicinity of Minsk.

11. All mail addressed to the American Embassy in Moscow, therefore, also including Lee Harvey Oswald's mail so addressed, is "reviewed" by the KGB in Moscow. Nosenko said that this is routinely done but he added that he personally had no part in the review of, or knowledge of such review, of Oswald's correspondence.

12. No publicity appeared in the Soviet press or Soviet radio regarding Oswald's arrival or departure from the Soviet Union or on his attempted suicide. (Our evidence on this is simply negative, that is, we have no evidence that there was any such publicity.)

13. Oswald was regarded as a "poor worker" by his superiors in the factory at Minsk.

The following information obtained from Nosenko is not available to us from any other source. As will be seen, it generally does not add much to our knowledge about Oswald but rather supplies background information on Soviet activities relating to his residence in Russia.

1. The KGB in Moscow, after analyzing Oswald through various interviews and confidential informants, determined that Oswald was of no use to them and that he appeared "somewhat abnormal."

2. The KGB did not know about Oswald's prior military service and even if they did, it would have been of no particular significance to them.

3. When the KGB was advised by some other Ministry of the Soviet State that the decision had been made to permit

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Oswald to stay in Russia and that he was to reside in Minsk, it brought Oswald's file up to date and transferred it to its branch office in Minsk. The cover letter forwarding the file to Minsk, prepared by one of Nosenko's subordinates, briefly summarized Oswald's case and instructed the branch office to take no action concerning him except to "passively" observe his activities to make sure he was not an American intelligence agent temporarily dormant. (Oswald did tell an American friend once that on one or two occasions in Minsk he had heard that the KVD had inquired of neighbors or fellow workers about him.)

4. According to the routine of the KGB, the only coverage of Oswald during his stay in Minsk would have consisted of periodic checks at his place of employment, inquiry of neighbors, other associates, and review of his mail.

5. When the KGB was asked about Oswald's application for a re-entry visa made in Mexico City, it recommended that the application be denied.

6. Shortly after the assassination, Nosenko was called to his office for the purpose of determining whether his Department had any information concerning Oswald. When a search of the office records disclosed that information was available, telephone contact was immediately made with the KGB branch office in Minsk. The branch office dictated a summary of the Oswald file to Moscow over the telephone. This summary included a statement that the Minsk KGB had endeavored to "influence Oswald in the right direction." This statement greatly alarmed the Moscow office, especially in view of their instructions to Minsk that no action was to be taken on Oswald except to "passively observe" his activities. Accordingly, the complete Oswald file at Minsk was ordered to be flown at once via military aircraft to Moscow for examination. It turned out that all this statement referred to was that an uncle of Marina Oswald, a lieutenant colonel in the local militia at Minsk, had approached Oswald and suggested that he not be too critical of the Soviet Union when he returned to the United States.

7. Marina Oswald was once a member of Komsomol but was dropped for nonpayment of dues. (Marina told the Commission she was a member of Komsomol, but she has been inconsistent on why she was dropped.)

8. The Minsk KGB file on Oswald contained statements from fellow hunters that he was an extremely poor shot and that it was sometimes necessary for them to provide him with game.

9. After the assassination, the Soviet government provided about 20 English-speaking men who were assigned to the immediate vicinity of the American Embassy in Moscow to insure that no disrespect was shown by the Soviet citizens during this period.

10. Some other agency, just which agency Nosenko says he does not know, subsequently decided that Oswald would be permitted to stay in Russia, on its responsibility. Nosenko speculates that this other agency was either the Soviet Red Cross or the Ministry of Foreign Affairs. (This bit of information fits in especially neatly with Oswald's own statements that the Soviet officials he met after his suicide attempt were new to him, and did not seem to have been told by his earlier interrogators anything about him.)

The following information given by Nosenko tends to contradict information which we have from other sources:

1. Nosenko says that after Oswald was released from the hospital where he was treated for an attempt to commit suicide, he was told again that he would have to leave the Soviet Union and thereupon threatened to make a second attempt to take his own life. Oswald's own diary of this time contains no mention of a threat to make a second attempt at suicide or of any post-hospitalization statement by the Soviets that he would still have to return to the United States. Of course, Oswald's own account of these activities is not entitled to a high degree of credibility.

2. Nosenko says that there are no Soviet regulations which would have prevented Oswald from traveling from Minsk to Moscow without obtaining first permission to do so. We have information from the CIA and the State Department that such regulations exist, although they are apparently rather easily -- and frequently -- violated.

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6

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

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

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

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

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

MESSAGE FROM MOSCOW 27

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of time. He knew that Soviet intelligence had the capacity for mounting highly sophisticated disinformation programs with a whole array of dispatched defectors and double agents feeding information to other intelligence services.⁷ For Angleton, unravelling such a deception was an intellectual challenge of the first order.

Ever since Nosenko had first approached the CIA in Geneva in 1962 and volunteered information about Soviet espionage operations, Angleton and his staff had pondered the significance of the offer. Only six months before Nosenko's contact, another Soviet intelligence officer, Anatoli M. Golitsin, had defected to the CIA from Helsinki, Finland. Golitsin, who identified himself as a major in the First Chief Directorate of the KGB working primarily against targets in the NATO alliance, was brought to Washington and given the code name Stone.

The information Stone provided in his debriefing had caused a sensation. According to Stone, the KGB had already planted an agent within the highest echelons of United States intelligence. This penetration agent would be assisted by "outside" men—other Soviet-controlled agents masking themselves as defectors or double agents—who would supply pieces of disinformation designed to bolster an "inside" man's credibility. The "inside" agent, in turn, would be in a position to help confirm the authenticity of the "outside" agents.

Angleton could not afford to neglect this possibility. He knew that the Soviet Union had successfully penetrated both the British and the West German intelligence services in the years since World War II.⁸ The specter of a "mole," or enemy agent, burrowing his way into the heart of an American intelligence service caused such consternation in the CIA and FBI that a personal interview was arranged for Stone to brief Attorney General Robert F. Kennedy.

During his debriefing sessions with Angleton in 1962 Stone had called particular attention to a trip made by V. M. Kovshuk to the United States in 1957 under diplomatic cover, using the alias Komarov. Stone identified Kovshuk as the then-reigning head of the all-important American Embassy Section of the

~~TOP SECRET~~
MEMORANDUM

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S

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

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By Archivist of the United States
By *h n g* Date *7/11/73*

Exhibit 8

No. 78-1731

Exhibit 13

~~CONFIDENTIAL~~
MEMORANDUM

TO : Records

FROM : W. David Slawson

SUBJECT : Conference with the CIA on March 12, 1964

3/2/64

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, [redacted], and Raymond Rocca, the latter three from the CIA. The meeting lasted until about 1:15 p.m.

The first topic of conversation was Yuri Nosenko, the recent Soviet defector. A general discussion was held on this problem, with the CIA's recommendation being that the Commission await further developments.

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 representative would be in the near future to read these transcripts, and that they would contact either [redacted]

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E.O. 11652, Sec 6.2(x)

By ADJ, NARS Date 1/24/25

Exhibit 9

MEMORANDUM

Green Copy

July 17, 1964

To Willens
for Willens
with
copy

To: William T. Coleman

From: W. David Glawson

Attached is Howard Willens' re-draft of our Foreign Conspiracy draft. I have not had time to read it in detail yet, but with a few exceptions he seems to have accepted our arguments and our plan of organization. There are three major exceptions: First, all references to the "secret Soviet Union source" have been omitted. I attended a conference with the CIA on this and now agree that we should not mention this source. Willens can fill you in on the reasons why. Second, the argument based upon Oswald's being permitted to marry Marina has been omitted because the CIA claims it has information of many cases in which spies were married to nonspies. Third, the argument based upon Oswald's general character and his way of life in the United States has been omitted here and will be reinserted at a point where it will apply to not only the foreign conspiracy but also the conspiracy and a tie-in with Ruby.

In case I do not get to talk to you on the telephone before I leave, I have read your Mexican draft. It is very good. If you get a chance, speak to Willens and see whether he wants a xerox copy now or whether he wants to wait for footnoting. I made a very few changes while I was reading it, but have not attempted as yet a real editing job. I am in full agreement with the substance and the conflicting evidence. These, so far as I am concerned, require no change.

- ① handed Soviet already put out by Russia
- ② Soviet from Oswald would be about 4-5 years to find he met Marina
- ③ No knowledge of Willens deal in factory - prison - Venice - interview in the
- ④ Red Army - Oswald - Willens letter

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MEMORANDUM

August 22, 1964

To: J. Lee Rankin

From: W. David Slawson *WDS*

Subject: Language in the Possible Foreign Conspiracy section of the Report relating to 'H'

You asked that I set forth the language which I propose to use in the Possible Foreign Conspiracy section of the Report which covers the use and non-use of information obtained from 'H'. I do not propose to use any information from 'H' which the Soviet Union would be able to trace to him rather than to Soviet defectors generally. Information supplied by 'H' which bears on the general practices and procedures of the KGB and is, therefore, not traceable to him, will be used but attributed to the CIA and its "stable" of Soviet Defectors. This is a thoroughly honest attribution; the defectors other than 'H' are in most cases fully able to supply this information. In one case, I hope to use some particular information supplied both by 'H' and Madame Fortseva, but it will be attributed solely to Madame Fortseva. The language of the sections I propose to use is quoted below:

I

(Taken from page 3 of the Introduction.)

"In approaching the question of foreign involvement, the Commission has received valuable assistance from the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of State and other federal agencies with special competence in the field of foreign investigation. The CIA has made an especially valuable contribution by supplying the Commission with information originating with defectors from the Soviet intelligence services and bearing on secret practices and procedures which would be applicable in the Soviet Union to a case like that of Oswald's during his stay there.

"Some of the information furnished by the aforementioned agencies, and many of their sources for that information, are of a highly confidential nature. Nevertheless, because it believes that the fullest possible disclosure of all the facts relating

WDSlawson/sml
cc: Mr. Rankin
Mr. Willens
Mr. Slawson

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EO. 11652, Sec. 1.4
By *h. h. g.*, NARS Date *8/4/76*

to the assassination of President Kennedy is of the highest importance, the Commission has included in this Report all the information furnished by these agencies which it considered in coming to its conclusions, and, in addition, all the information which would have contradicted those conclusions if it had been considered, even though the Commission did not regard it as sufficiently reliable to be considered. This second category of information consists mostly of rumors and speculations, some of them almost wholly frivolous. The Commission included it notwithstanding that fact, however, in order that the public could decide for itself the correctness of the conclusions in this Report, by testing them against all the evidence which tends to contradict them.

"The only relevant information which has not been included in the Report is that which is consistent with the Commission's conclusions but highly confidential and derived from sources the reliability of which is so low or so uncertain that the Commission was not able to rely upon it in coming to its conclusions. Thus, even if this information should later be wholly discredited, none of the conclusions in the Report would be affected; the relatively little advantage to be gained by including it, therefore, was not deemed sufficient to override the serious compromise of national security which disclosure would involve.

"Secret sources of information, as contrasted with the information itself, have in many instances been withheld. The continued use of such sources and, where secret informants are involved, the very lives of such informants would be placed in jeopardy if names, positions or other identifying characteristics were to be disclosed."

II

(Taken from page 41 of the section dealing with Oswald's defection in the Fall of 1959. (Footnote No. 135 is to the CIA; footnote No. 136 is to Madame Parsova; footnote No. 137, as the text states, is to the Historic Diary.)

"The Commission has information from confidential sources that the normal Soviet procedure for handling would-be defectors is to give the KGB the initial task of examination and assessment. 115/ Presumably this was done with Oswald. His rejection on October 22,

which triggered his suicide attempt, therefore, probably means that the KGB had conducted its examination between October 16 and October 22 and had concluded that Oswald was of limited value to the Soviet Union. The Commission has other information from a source of unknown reliability that when the news of Oswald's rejection and dramatic suicide attempt reached Madame Furtseva, a prominent Soviet official and a member of the Presidium, she personally intervened and asked that he be permitted to reside in the Soviet Union. 136/ If this information is correct, it explains the change in Oswald's fortunes which occurred after he was released from the Boykinskaya Hospital. The Commission can only speculate on what branch of the Soviet Government took charge of Oswald after Madame Furtseva's intervention, if it in fact occurred, or why she decided to intervene. Sympathy for what appeared to be a very appealing case certainly may have played a role. It may also have been of some significance that had a young American who had presented himself as a devout convert to the Communist cause been summarily rejected, the resulting publicity would have been unfavorable to the Soviet Union. In any event, it is interesting to note that the apparent shift of Oswald's case from the KGB to some other Ministry of the Soviet Government shortly after his release from the hospital is supported by the entries in his Diary commenting that the officials he met after his hospital treatment were different from those with whom he had dealt before. 137/

III

(The following is the first paragraph of the conclusion.)

"The Commission has thoroughly investigated the possibility that Lee Harvey Oswald was a secret Soviet agent. The specific facts and circumstances, so far as they are known, relating to Oswald's defection to the USSR, his residence there in Minsk, and his return to the United States in 1962 have been carefully evaluated. The defectors from the Soviet intelligence service who are now working with the Central Intelligence Agency, some of whom were still working with Soviet intelligence when Oswald was in Russia, have all failed to furnish any information indicating that Oswald was a Soviet agent. The Commission concludes that there is no credible evidence of Soviet involvement in the assassination, and that the facts that have been obtained strongly negate any conclusion that Oswald was an agent of the Soviet government."

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EO 11652, Dec. 1951
BY 17 mg DATE 8/6/76