

from release pursuant to provisions of the Freedom of Information Act (FOIA). The document at issue was originally numbered as a consequence of being involved in an earlier FOIA litigation, the Civil Action No. 75-1897 mentioned above. It was one of 1,363 CIA documents reviewed for release in response to an FOIA request for documents related to the investigation of the assassination of President John F. Kennedy. The actual FOIA review of Document No. 509-803 was made in June 1976 and the determination regarding FOIA releasability of the document was recorded on page 127 of a 310-page index which was part of the affidavit of my predecessor, Mr. Charles A. Briggs, filed in Civil Action No. 75-189 on 14 April 1977 (see Attachment C). In my affidavit of 9 January 1979 in the above-styled litigation, I adopted the FOIA determination of my predecessor, Mr. Charles A. Briggs as valid. I have now been asked to provide a more detailed account of the nature of the information withheld and its relationship to the specific FOIA exemptions. Recent guidelines set forth by the Appellate Court in this Circuit suggest some modification of the explanations for withholding records requested under the FOIA to provide more detailed statements. I have reviewed Document No. 509-803 again in light of the concerns expressed above and will attempt to supplement the comments to overcome any current shortcomings to the extent possible.

3. In reviewing the status of Document No. 509-803 it became clear that a number of substantively related, official disclosures had been made in recent years. Several congressional investigations have concerned themselves with the assassination of President John F. Kennedy. The investigations included detailed reviews of the records of CIA, and each investigation

culminated its efforts with published reports which made extensive use of CIA records. The most recent and the most comprehensive of such reports was one by the Select Committee on Assassinations of the U.S. House of Representatives of the 95th Congress. Coordination between the CIA and the Committee regarding the portions of the Committee's report which contained CIA information was not finally completed until 30 June 1979. Each of the various congressional reports on the assassination from 1975 through 1979 contained new disclosures of CIA records which had previously been withheld from public release. The cumulative effect of these various disclosures has, not unexpectedly, decreased the volume of materials still withheld from release. The passage of time has also had an effect on those records which have been classified in the interest of national security. The passage of time gradually reduced the level of damage likely from unauthorized disclosure of classified information. As a result of the combination of such circumstances, the FOIA disposition of Document No. 509-803 can now be modified somewhat.

4. In reviewing Document No. 509-803 I have determined that portions may now be released, but that some portions must continue to be withheld. The material which must continue to be withheld is exempt from release,

- a. because it is currently and properly classified pursuant to Executive Order 12065, effective 1 December 1978, as information requiring continued protection against unauthorized disclosure and, thus, exempt from release pursuant to FOIA exemption (b)(1).

My authority to originally classify official documents up through Top Secret in accordance with Executive Order 12065, Sections 1-201 and 1-204 is currently in effect, and in reviewing Document No. 509-803 I have determined the document is classifiable and is currently and properly classified. I have likewise determined that my statements in paragraph 15 of my affidavit of 9 January 1979 remain valid;

b. because the information is related solely to internal practices, in this case related solely to Agency internal filing instructions, and thus exempt from disclosure pursuant to FOIA exemption (b) (2);

c. because the information reveals facts about intelligence sources and methods which the Director of Central Intelligence is responsible for protecting against unauthorized disclosure as set forth in 50 U.S.C. 403(d)(3), and which is thus exempt from release pursuant to FOIA exemption (b) (3); and

d. because the information reveals facts about CIA organization, functions, names, official titles or numbers of personnel employed, all of which are exempt from disclosure pursuant to 50 U.S.C. 403g and thus FOIA exemption (b) (3).

5. A copy of the newly released version of Document No. 509-803 is attached as Attachment D. It has been marked with letters which correspond to those letters used in the list of categories of withheld information below. The categories each characterize, (A) the kind of withheld information encompassed by the category, (B) make reference by paragraph numbers

to the paragraphs (except for C and F categories) in the affidavit of Charles A. Briggs (Attachment B) which explain the rationale for withholding that category of information, and (C) cite the FOIA exemption which identifies that category of information as exempt from release. Additional narrative comments follow the list of categories about various portions withheld which warrant explanation beyond the brief categorization.

6. The categories of information deleted from the various letter-designated portions are:

A. Circumstantial information which, in combination with other information could lead to the identification of an intelligence source, paragraphs 7-13 and 17-19, withheld pursuant to FOIA exemptions (b)(1) and (b)(3);

B. Circumstantial information which, in combination with other information could lead to the identification and compromise of an intelligence method used in the collection of intelligence information abroad, paragraphs 14-17 and 20, withheld pursuant to FOIA exemptions (b)(1) and (b)(3);

C. Information which is currently and properly classified in the interest of national security, paragraph 4 and 5 of Owen Affidavit of 9 January 1979, withheld pursuant to FOIA exemption (b)(1);

D. Information identifying CIA staff employees and organizational components, paragraph 21, withheld pursuant to FOIA exemption (b)(3);

E. Filing instructions, paragraph 24, withheld pursuant to FOIA exemption (b)(2); and

F. Classification and information control markings, deleted in the process of producing a declassified version of the document for release under provisions of the FOIA. No FOIA exemptions claimed.

7. Deletions designated with the letter "F" are marked on the top and bottom of all pages of Document No. 509-803. The portions deleted were markings put on the document to show its classified status. The document was originally marked "SECRET" and the complete, official copy remains so classified. Other markings on the document were warning notices intended to alert the reader that the document contained certain specific kinds of sensitive intelligence information. Since the document has been modified to remove the classified information and the information requiring the warning notice, those markings have also been removed as part of the process of creating a declassified version of the document.

8. Deletions designated by the letter "E" are marked on the first unnumbered page (the covering memorandum) and pages numbered 1, 5, 10 and 14. The portions deleted consist of handwritten entries which are intended to facilitate the administrative handling of the document; principally the filing of the document and distribution of copies. Such information is unlikely to have any meaning to individuals not directly and currently involved in the administrative handling of the documents. Such material being among the internal practices of the CIA was deleted pursuant to FOIA exemption (b)(2).

9. Deletions designated with the letter "D" are marked on the bottom of the first page of the document, which is an unnumbered page. The material deleted was information identifying some CIA staff employees and organizational components which are exempt from release pursuant to FOIA exemption (b)(3) which is activated by 50 U.S.C. 403g.

10. Deletions designated with the letter "C" are marked on pages 10 and 11, in paragraphs 16, 17, 19 and 20. The information deleted revealed CIA knowledge of specific intelligence organization affiliations by several foreign individuals.

Such knowledge comes almost exclusively from counterintelligence operations designated to produce information on the inner-workings of foreign intelligence services. Demonstrating this kind of awareness concerning an intelligence service will usually result in the organization implementing concrete changes to its security systems to eliminate such unwanted access. Since CIA's ability to carry out its own intelligence activities requires, among other things, the ability to know how to counter opposition intelligence services, evidence of our ability in collecting such information must be protected from disclosure to prevent damage to our intelligence activities. The information is thus properly classifiable in accordance with Section 1-301(c) of Executive Order 12065. The information is properly classified since it is clear that unauthorized disclosure could reasonably be expected to produce identifiable damage to the national security.

11. Deletions designated with the letter "B," marked in paragraphs 1 and 4, show where material was deleted to protect against the disclosure of several intelligence methods. The deleted remarks tended to characterize certain factual data in a way in which the nature of the method used to collect the information is made obvious. The intelligence methods used are unique to intelligence activities and in fact are used in current intelligence operations. The disclosure of the nature of the methods and their use in identifiable circumstances would damage their continuing viability and utility. The protection of such intelligence methods against unauthorized disclosure is mandated by 50 U.S.C. 403(d)(3), and is thus exempt from release pursuant to FOIA exemption (b)(3). The disclosure of the portions marked "B" could also reasonably be expected to cause identifiable damage to intelligence activities

and methods and is thus information which is classifiable pursuant to Executive Order 12065 Section 1-301(c) and is properly classified pursuant to Section 1-302; and is thus properly exempt from release pursuant to FOIA exemption (b)(1).

12. Deletions designated with the letters "A & B" on pages 4 through 9, in paragraphs 5 through 12, show where portions were deleted to protect against the disclosure of intelligence sources and methods. The substance in these paragraphs concern one sequence of events, which has been the subject of a number of other documents which have been released for public access. The material is presented in such a manner, in this document, that to name the principal figures would result in the eventual identification of the intelligence sources who produced the information and the intelligence methods used in the process. Such a disclosure would compromise the intelligence sources and methods involved, which are currently viable and functioning. The information is thus exempt from release pursuant to FOIA exemptions (b)(1) and (b)(3), with the same statutory support cited in paragraph 11 above.

13. Deletions designated with the letter "A" on pages 12 and 13, in paragraphs 21 through 25, were deletions made to avoid the disclosure of an intelligence source. The text of these paragraphs relate to one sequence of events, which has been well reported in other documents which have been publicly released. The deleted portions in this document contain phrases and substance which identify the intelligence source of certain portions of the record. The CIA has a continuing responsibility to protect against the disclosure of intelligence sources and such information, in furtherance of that responsibility, is classified. The information is withheld pursuant to FOIA exemptions (b)(1) and (b)(3) with the same statutory support cited in paragraph 11 above.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,)
)
Plaintiff,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY,)
et al.,)
)
Defendants.)

Civil Action No. 78-1743

AFFIDAVIT

FILED

JAN 3 1979

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

1. I am the Information Review Officer for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). My responsibilities include the review of the DO documents which are the object of Freedom of Information Act (FOIA) and/or Privacy Act requests to and litigation against the CIA, to insure that determinations made regarding the disposition of such documents are proper. I am authorized in accordance with sections 1-201 and 1-204 of Executive Order 12065 to make original classification determinations up through TOP SECRET. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and counsel from the CIA Office of General Counsel and upon conclusions reached in accordance therewith.

2. Through my official duties, I have become acquainted with the FOIA request originated by plaintiff for CIA Document No. 509-803 which is at issue in the above-captioned litigation. Plaintiff's identification of the document was possible as a result of the document having been involved in an earlier

instance of FOIA litigation, in Fensterwald v. CIA, USDC, D.C., Civil Action No. 75-0897. In that instance the document was withheld in its entirety as indicated on page 127 of the Document Disposition Index prepared in that litigation. Page 127 is attached hereto designated Attachment A. The document was withheld pursuant to FOIA exemptions (b)(1), (b)(2) and (b)(3). A copy of the Court's findings regarding CIA invocation of the FOIA exemptions is attached as Attachment C. Plaintiff's letter dated 24 July 1978 initiating his FOIA request is attached as Attachment D. Plaintiff was advised by CIA in a letter dated 8 August 1978 that the document requested was denied pursuant to FOIA exemptions. A copy of the letter is attached and identified as Attachment E. By letter dated 9 August 1978, plaintiff appealed the CIA determination regarding Document No. 509-803. A copy of plaintiff's appeal letter is attached as Attachment F. Plaintiff filed his Complaint in this suit on 18 September 1978.

3. The affidavit of my predecessor as Information Review Officer for the Directorate of Operations of the Central Intelligence Agency, Mr. Charles A. Briggs, is attached identified as Attachment B and is hereby incorporated and made a part hereof by reference. Mr. Briggs' affidavit sets forth the CIA rationale for withholding documents or portions thereof pursuant to various FOIA exemptions. Document No. 509-803 was one of the documents dealt with in the earlier litigation. The circumstances which warranted the FOIA exemption determination have not changed since the time of the original determinations with one exception. The executive order in effect at the time of the Fensterwald litigation, Executive Order 11652, was replaced, effective 1 December 1978, by Executive Order 12065. I have reviewed

Document No. 509-803 and the classification determinations made with regard to it. I conclude that the withheld material remains classified at the SECRET level under Executive Order 12065. The release of this document could reasonably be expected to cause serious damage to the national security in terms of disrupting foreign relations of the United States and in disclosing information concerning United States intelligence activities, sources and methods. Thus, the document remains exempt from release pursuant to FOIA exemption (b)(1).


4. Executive Order 12065 provides more stringent standards for classifying information than the Order it replaced. At a minimum, under the new Order, information may not be classified unless its unauthorized disclosure could reasonably be expected to cause identifiable damage to the national security. In addition, only certain categories of information may be considered for classification. These categories include information pertaining to intelligence activities, sources or methods and information concerning foreign relations or foreign activities of the United States. With respect to withheld information for which FOIA exemption (b)(1) has been asserted, I have reviewed the determinations in light of the criteria of the new Order and have determined that the information meets the more stringent standards for classification set forth in Executive Order 12065 and falls within the requisite categories of information set forth in that Order.

5. I have reviewed the document in issue pursuant to section 3-303 of the new Executive Order which provides:

It is presumed that information which continues to meet the classification requirements in section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head, a senior agency official with responsibility for processing Freedom of Information Act requests or Mandatory Review requests under this Order, an official with TOP SECRET classification authority, or the Archivist of the United States in the case of materials covered in section 3-503. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

The CIA has issued an Agency regulation implementing this section (see Attachment G) which was based upon the advisory letter of Mr. Zbigniew Brzezinski, Assistant to the President for National Security Affairs (see Attachment H). I have reviewed the document withheld in this case to determine if there are any circumstances which would require that a balance be made to test whether public interest in continued protection of this properly classified information is outweighed by the public interest in disclosure. I have determined that the requisite circumstances do not exist.

6. As indicated above, the document at issue remains properly classified and the circumstances warranting the FOIA exemptions justifying withholding the document in its entirety pursuant to FOIA exemptions (b)(1), (b)(2) and (b)(3), remain applicable and the document has therefore been withheld.


Robert E. Owen

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 9th day of
January 1979.

Debbie M. Weyant
Notary Public

My commission expires: 17 April 1982

Document No.

Date

No. of Pages

505 - 212

30 January 1964

1

Disposition - This document was released with portions deleted.

The deleted portions include information identifying a number of Agency stations in specific cities abroad, the identity of a number of Agency components and several Agency staff employees. Also deleted were operational cryptonyms and mention of a sensitive foreign intelligence operational method. Agency internal filing instructions were also deleted. The deletions were made under the authority of exemptions (b)(1), (b)(2) and (b)(3).

506 - 213

9 January 1964

100-31379

Disposition - This document was released with portions deleted. The deleted portions include information identifying Agency components and staff employees, as well as Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(2) and (b)(3).

507 - 802

31 January 1964

2

Disposition - This document was denied. The document is a brief review of information provided by the FBI. The information has been referred to that agency and will be dealt with directly by the bureau.

508 - 214

30 January 1964

2

Disposition - This document was released with portions deleted. The deleted portions include information from which it would be possible to identify a foreign intelligence source, as well as information identifying Agency components and Agency staff employees. Also deleted was the identity of a special agent of the FBI and Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(1), (b)(2), (b)(3) and (b)(7)(F).

509 - 803

31 January 1964

14

Disposition - This document was denied. The document contains a discussion of a collection of information available from very sensitive intelligence sources and in one instance the results of a sensitive foreign intelligence operational method of collection. Most of the substantive information in this document is available in other unclassified documents. In this particular document, it is inextricably mixed with operational details which, if exposed, would compromise several sensitive foreign intelligence sources, as well as a sensitive foreign intelligence operational method. In addition, the document contains information identifying a number of Agency components and Agency internal filing instructions. This denial was made under the authority of exemptions (b)(1), (b)(2) and (b)(3).

8

31 January 1964

Information Developed by CIA on the Activity of
Lee Harvey OSWALD in Mexico City
28 September - 3 October 1963

I. OSWALD's Activity in Mexico City

1. On 9 October the CIA Station in Mexico B received the following information from a reliable and proven source:

An American named Lee OSWALD had contacted the Soviet Embassy in Mexico City on Tuesday, 1 October 1963. He had spoken B to the Soviet Embassy guard, Ivan Ivanovich OBYEDKOV, to whom he said he had visited the Embassy two days earlier, Saturday, 28 September. He asked whether there had been a reply to a telegram that the Consul with whom he had spoken, but whose name he could not recall, had promised to send to Washington.

B whom OSWALD had talked: B

B had probably been KOSIJKOV, OBYEDKOV.

ATT. 11

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assured

OSWALD the telegram had been sent to Washington but

no answer had been received.

The information was forwarded by cable to CIA Headquarters the same day it was received.

2. A file check in Washington which is routine in these matters revealed the possibility of an identity between the Lee

OSWALD who had spoken with OBYEDKOV, and presumably with KOSTIKOV, and the defector returns, Lee Harvey OSWALD.*

3. On 10 October 1963 CIA Headquarters disseminated by cable the report in substantially the form and in the detail indicated above, in paragraph 1, to the Federal agencies whose jurisdictional interests had been established by a review of

OSWALD's file: the Federal Bureau of Investigation, the Depart-

* The CIA file on Lee Harvey OSWALD was opened on 9 December 1960 to accommodate biographic information developed by CIA in response to an inquiry from the Department of State on a list of American defectors in Soviet Bloc countries. OSWALD's was among the names in the list. The Department of State inquiry was dated 25 October 1960. An interim reply was given by CIA on 3 November 1960; a final reply, on 21 November 1960. Until early October 1963 the contents of the OSWALD file held by CIA consisted entirely of press materials and disseminations received from the Department of State, the Federal Bureau of Investigation, and the Navy Department.

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ment of State, the Navy Department, and the Immigration and Naturalization Service. A comment was included in the report noting the likelihood that the subject, Lee OSWALD, was probably identical with the former Marine who had defected to the Soviet Union in 1959. (The report disseminated by CIA in Washington on 10 October also included a physical description of an individual who was believed to have been the OSWALD who had contacted the Soviets in Mexico City. It was subsequently established by investigation that the description did not pertain to OSWALD.)

4. On the same day, 10 October 1963, CIA Headquarters sent a lengthy cable summary to the Mexico - B - of the background information held in the Headquarters' files on OSWALD. An instruction was included for the Mexico - B - Station to pass the substance of its 9 October report to the local representatives of the same Federal departments and agencies that had been given the information in Washington. This instruction was immediately carried out. In this manner the information on OSWALD's contact with the Soviets on 1 October was passed in Mexico City to the Embassy, the FBI representative, the Naval Attache, and to the office of the Immigration and Naturalization Service. There were no requests from recipients of the report for further information or for follow-up investigation.

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5. After the assassination of President Kennedy and the arrest of Lee Harvey OSWALD, an intensive review of all available sources was undertaken in Mexico — B — determine the purpose of OSWALD's visit.

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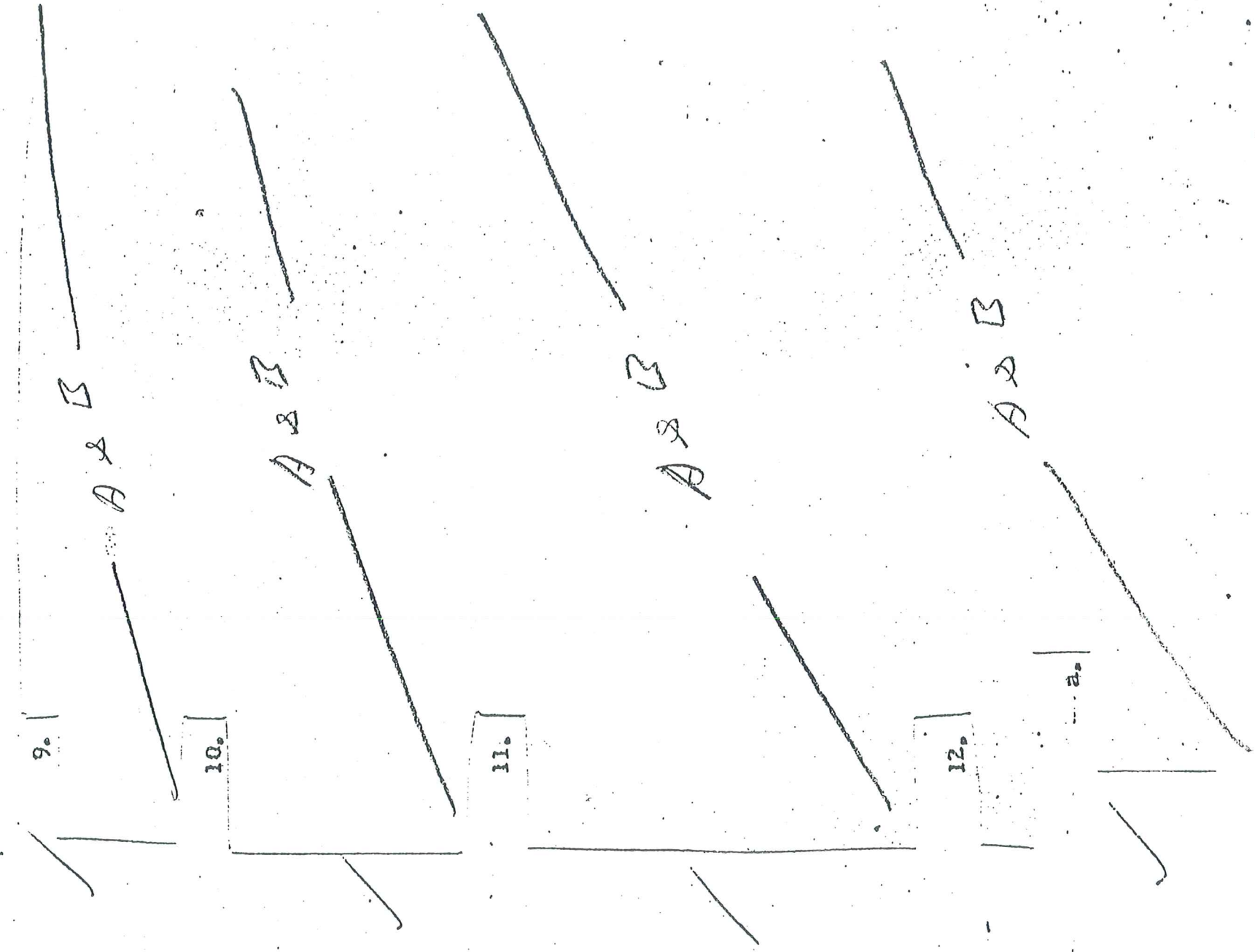
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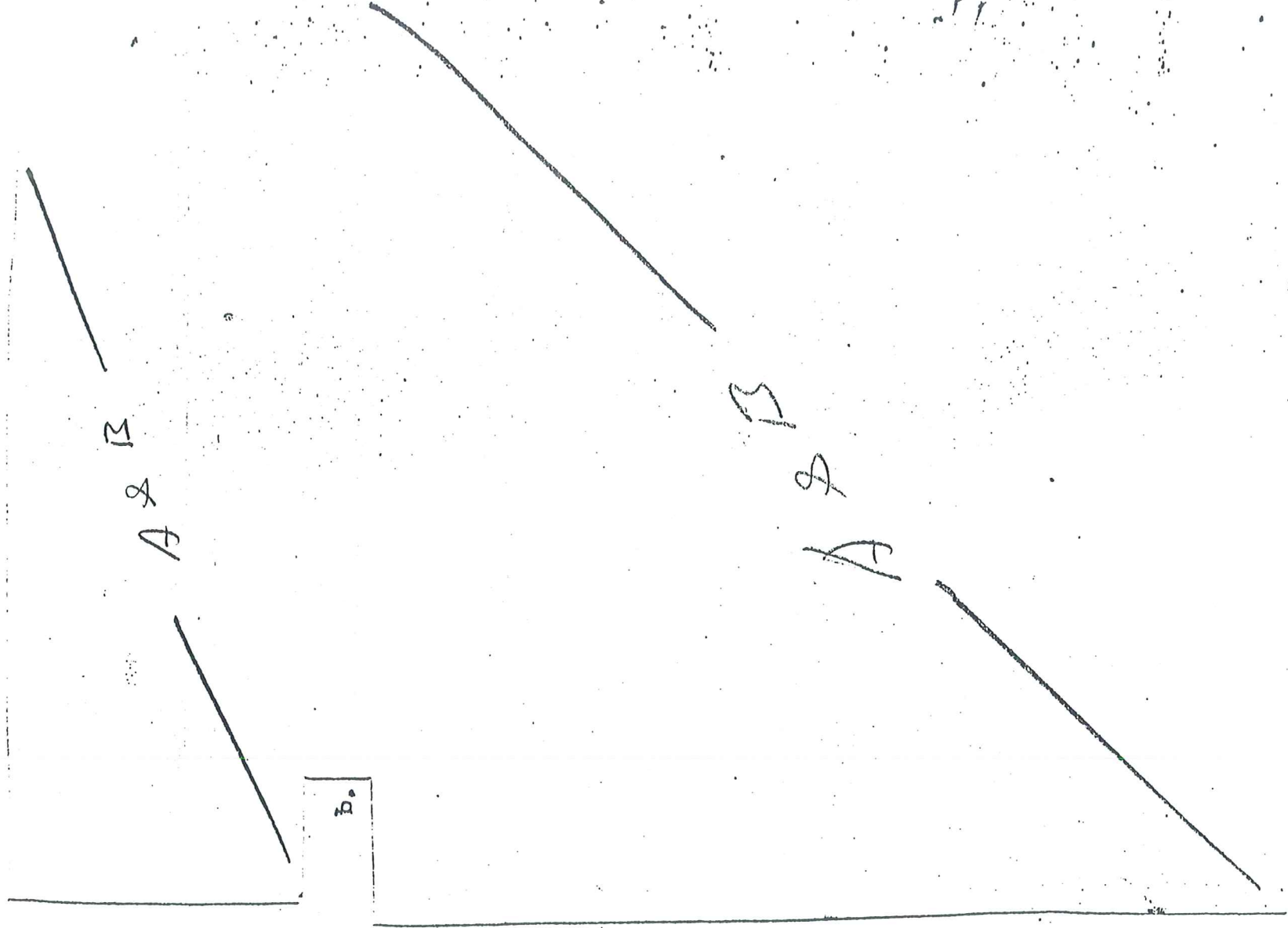


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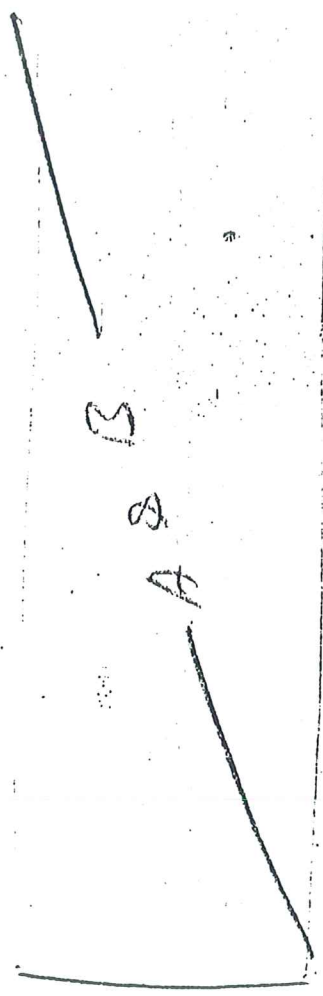
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These additional materials were promptly disseminated in Washington by the CIA to the White House, the Department of State, and the Federal Bureau of Investigation.

e. 1 October. See paragraph 1 above for Lee

OSWALD's contact with the Soviet Consulate.

II. Valeriy Vladimirovich KOSTIKOV

13. It is believed that the Soviet official with whom OSWALD dealt in Mexico City was Consular Attache Valeriy Vladimirovich KOSTIKOV, born in Moscow, 17 March 1933. A photograph of KOSTIKOV is attached. In his letter of 9 November to the Soviet Consulate in Washington, OSWALD wrote about his "meetings with Comrade KOSTIN (sic) of the Soviet Union in Mexico City, Mexico." There is no official of the Soviet Embassy in Mexico City with a name resembling "KOSTIN", other than Consul KOSTIKOV.

14. KOSTIKOV is the senior officer of five Soviet Consular representatives who deal with visas and related

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matters. There is firm evidence for the conclusion that KOSTIKOV is a Soviet State Security (KGB) officer, and the other four Consular officers are also known or strongly suspected to be Soviet State Security personnel serving under official cover. The State Security Service is the major of the Soviet intelligence services and it is charged with espionage, counterintelligence and related matters inside the Soviet Union and overseas.

15. It must be clearly stated that Soviet intelligence and security officers placed abroad under official cover normally are required to perform the routine and legitimate business demanded by the cover job in an embassy or consulate.

16. |

17. |

18. An intensive review of the files of our Mexico

Station was undertaken immediately after the assassination to comb out any previously unreported information about KOSTIKOV's activity. No useful new information bearing on the assassination resulted from this effort.

19.

20.

III. Monetary Payment to CSWALD - Investigation of Allegation

21. On 26 November 1963 a young Nicaraguan named Gilbete ALVARADO Ugarte walked into the U. S. Embassy in

Mexico City and claimed he had been in the Cuban Embassy in Mexico City on 18 September 1963 when a man he later recognized to be Lee OSWALD had been given \$6,500 in cash to kill someone.

City _____ A _____
He said that he was in Mexico trying to get himself accepted by the Cubans as a communist so they would take him to Cuba for guerrilla training.

_____ A _____
He had apparently visited the Cuban Embassy and its Consular offices on a number of occasions and he correctly identified some twenty Cuban Embassy and Consular employees.

22. While intensive investigation in the United States showed that OSWALD could not possibly have been in Mexico City on 18 September (he was known to have been in New Orleans on both 17 and 19 September), intensive interrogation failed to shake ALVARADO's story.

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But because of the importance of

resolving the problem CIA personnel continued the interrogation

in close coordination with the FBI. ALVARADO voluntarily

agreed to a lie detector examination. A B polygraph expert,

assisted by an FBI special agent, requested ALVARADO and

secured admissions that he must have been mistaken. The B

polygraph expert concluded from the results of his tests that

ALVARADO had fabricated his story about OSWALD in toto,

26. It should be noted that when he first told his story

on 26 November, ALVARADO could have known from the

Mexican press that OSWALD had visited the Cuban Consulate

in Mexico City. Also, he could have heard the rumors current there that OSWALD had \$5,000 with him when he returned from Mexico to the United States. ALVARADO has since been deported by the Mexican authorities to his native Nicaragua.

Attachment - photograph

31 Jan 64

-14-