

APPENDIX

VOLUME I (Pages 1-423)

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

No. 81-1009

HAROLD WEISBERG,

Plaintiff-Appellant

v.

GENERAL SERVICES ADMINISTRATION,

Defendant-Appellee

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

James H. Lesar
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Attorney for Plaintiff-Appellant

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TABLE OF CONTENTS

<u>VOLUME I</u>	<u>Page</u>
Docket Entries	1
Complaint [9/4/75]*	11
Exh. A: 3/12/75 James H. Lesar-Dr. James B. Rhoads	13
Exh. B: 4/4/75 Edward G. Campbell-Lesar	14
Exh. C: 4/15/75 Lesar-Dr. James E. O'Neill	16
Exh. D: 5/22/75 O'Neill-Lesar	17
Answer [10/8/75]	19
Plaintiff's Interrogatories [10/28/75]	21
Order [10/29/75]	26
Answers to Interrogatories 1-25 by Dr. James B. Rhoads [1/9/76]	27
Request for Production of Documents [2/27/76]	
Exh. E: 1/18/65 McGeorge Bundy Memorandum for Acting Attorney General Katzenbach re: "Public Dis- closure of Warren Commission Reports and Working Papers"	31
Exh. F: "Summary of Views of Interested Federal Agencies Concerning the Disclosure to the Public of Materials Delivered to the National Archives by the President's Commission on the assassination of President Kennedy"	32
Defendant's Motion for Summary Judgment [3/26/76]	
Exh. 1: 10/6/75 Affidavit of Dr. James B. Rhoads	
Exh. A: 4/8/74 Affidavit of J. Lee Rankin	43
Exh. B: 4/1/75 Robert S. Young-Dr. James B. Rhoads	45
Answers to Interrogatories 26-63 by Dr. James B. Rhoads [4/19/76]	47

*Dates in brackets are dates of filing in this case.

Defendant's Opposition to Plaintiff's Motion to Compel
Answers to Interrogatories [4/8/76]

Exh. 1: 3/29/76 Affidavit of Dr. James B. Rhoads . . . 55
Exh. C: 9/5/75 Jane F. Smith-Eliot Marshall . . . 60
Exh. D: 9/3/75 Marshall-Smith 62

Opposition by Plaintiff to Defendant's Motion for Summary
Judgment [5/12/76]

Affidavit of Harold Weisberg executed 5/5/76 63
Exh. DD: Memorandum and Order of Judge Gesell
in Civil Action 2052-73 78
Exh. EE: Cover sheet for Copy 6 of 9, 1/21/64
Warren Commission executive session
transcript 80
Exh. FF: Cover sheet for Copy 9 of 10, 6/23/64
Warren Commission executive session
transcript 81
Exh. GG: 6/21/71 Herbert E. Angel-Harold
Weisberg 82
Answers to Interrogatories by James E. O'Neill [6/9/76] . . . 83
Transcript of May 25, 1976 Hearing [6/18/76] 85
Answers to Interrogatories 65-213 by Dr. James B. Rhoads
[11/12/76] 98
Order [3/10/77] 126
Motion for Reconsideration, Clarification, and in camera
Inspection with Aid of Plaintiff's Security Classifi-
cation Expert [3/21/77]
Affidavit of William G. Florence execute 3/21/77 128
Att. 1: 10/27/75 Florence-Timothy H. Ingram . . . 143
Affidavit of Harold Weisberg execute 3/21/77 146
Exh. 1: 6/21/71 Angel-Weisberg 82
Exh. 2: 12/22/72 Lawrence R. Houston-Rhoads . . . 157
Exh. 3: 1/27/64 Warren Commission executive
session transcript 165
Order [6/7/77] 253

	<u>Page</u>
Notice of Appeal [8/5/77]	254
Transcript of 3/4/77 Hearing [9/20/77]	255
Motion for New Trial [4/18/78]	
Affidavit of Harold Weisberg executed 4/17/78	275
Exh. 1: 11/5/75 Affidavit of Charles A. Briggs	289
Exh. 2: 12/30/76 Affidavit of Charles A. Briggs	292
Exh. 3: 3/10/77 Order in C.A. No. 75-1448	126
Exh. 4: W. David Slawson memorandum re: "Con- ference with CIA on March 12, 1964"	303
Exh. 5: 6/7/77 Order in C.A. No. 75-1448	253
Exh. 6: 1/22/64 Warren Commission executive session transcript	304
Exh. 7: 2/27/78 <u>New York Magazine</u> "The War of the Moles" by Edward Jay Epstein	317
Exh. 8: <u>Legend</u> by Edward Jay Epstein	326
Exh. 9: 4/16/78 <u>Washington Post</u> , "The Mysterious Soviet Defection at the U.N." by Tad Szulc	328
Exh. 10: 10/20/69 A. Rosen-DeLoach	332
Exh. 11: 6/24/70 T.E. Bishop-DeLoach	333
Exh. 12: 11/15/68 memorandum by Dr. James B. Rhoads	335
Exh. 13: 11/13/70 Thomas J. Kelley-Rhoads	358
Exh. 14: 12/8/70 W.L. Johnson, Jr.-Weisberg	336
Exh. 15: 3/6/73 GSA memorandum on correspondence with Weisberg	337
Exh. 16: 4/2/75 O'Neill-Deputy Archivist	338
Exh. 17: 4/4/75 GSA memorandum re: "Warren Com- mission Materials and the Freedom of Information Act"	339
Exh. 18: <u>KGB</u> by John Barron	340
Exh. 19: <u>CIA Able to Control Minds by Hypnosis,</u> <u>Data Shows</u>	347
Memorandum [5/12/78]	348
Notice of Appeal [6/22/78]	351
Order [3/29/79]	352
Motion for Award of Attorney Fees and Other Litigation Costs [4/24/79]	
Exh. 6: 1/12/79 Order by Court of Appeals	353
Exh. 7: 3/15/79 Order by Court of Appeals	354
Exh. 8: 4/12/79 Order by Court of Appeals	355
Exh. 9: 3/31/78 Order by Court of Appeals	356
Exh. 13: 11/13/70 Thomas J. Kelley-Rhoads	358
Exh. 21: <u>Washington Star</u> , 2/20/78	358A

	<u>Page</u>
Affidavit of James H. Lesar executed 4/20/79	359
Exh. 1: "Warren Report Ignored Soviet Defector's Claim" by George Lardner, Jr., Washington Post, October 19, 1978	373
Exh. 2: Itemization of Attorney's Time	374
Exh. 3: Itemization of Costs	378
Affidavit of Harold Weisberg executed 10/26/78	379
Exh. 1: 6/23/64 Warren Commission executive session transcript	409A
Exh. 2: 1/21/64 Warren Commission executive session transcript, pp. 63-73	409P
Exh. 3: 6/24/64 Coleman/Slawson memorandum	410
Exh. 4: CIA Document 483-76A	415
Exh. 5: FBI Washington field office file 105-37111	416
Exh. 6: Message from Moscow, p. 27	417
Exh. 7: Slawson memorandum on 3/12/64 conference with CIA, with paragraph excised	418
Exh. 8: Slawson memorandum on 3/12/64 conference with CIA, unexcised version	419
Exh. 9: 7/17/64 Slawson-Coleman memorandum	420

VOLUME II

	<u>Page</u>
Opposition to Plaintiff's Motion for an Award of Attorney's Fees and Other Litigation Costs [8/10/79]	
Exh. 1: 7/26/79 Affidavit of Robert E. Owen	424
Exh. A: Transcript of 9/15/78 testimony of John Hart	428
Exh. B: 10/26/78 G. Robert Blakey-Lyle Miller	439
Exh. C: 9/26/78 Launie M. Ziebell-Robert E. Owen	440
Exh. D: 10/11/78 Anthony A. Lapham-Barbara A. Babcock	442
Exh. 2: 10/13/78 O'Neill-Babcock	444
Reply to Defendant's Opposition to Motion for Attorney's Fees and Costs [9/12/79]	
Affidavit of Harold Weisberg executed 8/20/79	445
Exh. 1: Index to "Oswald in the Soviet Union: Investigation of Yuri Nosenko"	463
Exh. 2: House Select Committee on Assassinations, Vol. II, pp. 488-491	464

	<u>Page</u>
Exh. 3: House Select Committee on Assassinations, Vol. II, pp. 502-511	466
Exh. 4: House Select Committee on Assassinations, Vol. II, pp. 522-525	471
Exh. 5: House Select Committee on Assassinations, Vol. II, pp. 532-536	473
Exh. 6: 1/30/75 Fred B. Griffith-Bassett	474
2/7/75 Brannigan-Wannall	475
Supplemental Affidavit of James H. Lesar executed 9/11/79	477
Request for Production of Documents [9/13/79]	485
Notice to Take Depositions [9/13/79]	487
Order [10/17/79]	497
Notice of Filing [12/3/79]	
Supplemental Affidavit of Robert E. Owen executed 11/26/79	498
Exh. A: transcript of 1/21/64 Warren Commission executive session	409P
Exh. B: transcript of 6/23/64 Warren Commission executive session	409A
Plaintiff's Response to Supplemental Affidavit of Robert E. Owen [1/11/80]	
Affidavit of Harold Weisberg executed 12/22/79	506
List of Exhibits	539
Exh. 1: 12/19/63 Brennan-Sullivan memorandum	540
Exh. 2: CIA Document 376-154 dated 12/11/63	542
Exh. 3: CIA Document 151-60 dated 11/27/63	546
Exh. 4: CIA Document 350-140 dated 12/7/63	547
Exh. 5: CIA Document 498, memorandum for Director, FBI re: "Yuri Ivanovich Nosenko, Espio- nage-Russia"	549
Exh. 6: 3/3/64 CIA "Questions for NOSENKO"	553
Exh. 7: CIA Document 498-196A; Helms-Rankin dated 1/21/64	560
Exh. 8: CIA Document 513-199B; Slawson-Willens re: "Letter to the Russian Government"	566
Exh. 9: CIA Document 483-76A; 12/16/63 Deputy Di- rector, Plans-Director, FBI	567

Exh. 10: 11/27/63 CIA Document re: "[Soviet Defector] Comments on President Kennedy's Assassination" 569

Exh. 11: FBI file No. 105-82555-1079 577

Exh. 12: CIA Document 647-824; 4/8/64 memorandum re: "Status Report on Work for Warren Commission" 581

Exh. 13: Transcript of CBS-TV news broadcast on May 9, 1975 584

Exh. 14: CIA Document 582-249A; 3/4/64 Rankin-Helms 586A

Exh. 15: CIA Document 657-831; 4/13/64 memo 587

Exh. 16: CIA Document 583-814; 3/9/64 memo 591

Exh. 17: 11/9/79 Weisberg-CIA 592

Exh. 18: 8/5/76 Gene F. Wilson-Weisberg 593

Att. 3: 1975 Attorney General Guidelines for Review of Access Restrictions on Warren Commission Records; Subcommittee Findings Regarding Validity of Classification Markings on Original Commission Records 596

Att. 4: 7/26/72 O'Neill-Helms 598

Att. 7: 10/1/74 CIA letter to Marion Johnson 600

Att. 10: Transcript of 6/28/77 hearing before Judge Gesell in Military Audit Project v. Bush, C.A. No. 75-2103 601

Plaintiff's Memorandum to the Court [1/29/80]

Affidavit of Harold Weisberg executed 1/23/80 619

List of Exhibits 638

Exh. 1: 1/15/76 O'Neill-Weisberg 639

Exh. 2: 5/28/76 Wilson-Weisberg 642

Exh. 3: 10/2/67 Karamessines-Bahmer 644

Exh. 4: 10/8/76 Smith-Weisberg 645

Exh. 5: Cover page of Coleman-Slawson memorandum (Exhibits 8-10) 647

Exh. 6: 11/5/76 Weisberg-Smith 648

Exh. 7: 11/21/76 Weisberg-Smith 649

Exh. 8: Coleman-Slawson memo, pp. 19-23 650

Exh. 9: Coleman-Slawson memo, p. 45 654

Exh. 10: page from Coleman-Slawson memo 655

Exh. 11: 8/22/64 Slawson-Rankin memorandum 656

Exh. 12: 3/6/64 Rankin-Helms 659

Exh. 13: 3/9/64 Slawson memo re: "Testimony of Yuri Ivanovich Nosenko, recent Soviet Defector" 660

Exh. 14: 7/15/64 Slawson-Rankin 661

Exh. 15: 3/6/64 Hoover-Rankin 665

	<u>Page</u>
Exh. 16: 2/28/64 Hoover-Rankin	666
Exh. 17: CIA Document 509-803; 1/31/64 memo re: "Information Developed by CIA on the Activity of Lee Harvey Oswald in Mexico City 28 September-3 October 1963"	668
Exh. 18: <u>Washington Post</u> , Los Angeles <u>Times</u> stories	682
Exh. 19: 11/22/63 Heitman-SAC, Dallas	687
Exh. 20: 11/23/63 Hoover-Rowley	688
Exh. 21: 8/23/76 Wilson-Weisberg	701
Exh. 22: 3 CIA documents	703
Exh. 23: Lee Harvey Oswald 201 file	709
Exh. 24: 12/1/63 FBI teletype	713
Exh. 25: 11/30/63 Sullivan-Belmont	714
Exh. 26: 1/13/64 FBI cablegram	715
Exh. 27: 12/19/64 Sullivan-Brennan	717
Exh. 28: 10/22/64 Hoover-Rankin	720
Att. 1: 1/9/79 Affidavit of Robert E. Owen filed in Civil Action 78-1743	722
Att. 2: Memorandum opinion and order in Civil Action No. 78-1743	728
Att. 3: Court of Appeals order in Case No. 79-1454	730
Att. 4: Supplemental Affidavit of Robert E. Owen executed 1/11/80 and filed in Civil Action No. 78-1743	731
Transcript of October 17, 1979 hearing [5/15/80]	740
Notice of Filing [7/10/80]	
Article in March 17, 1975 <u>Washington Post</u> , "Soviet Plan to Kill Nixon Reported," by Jack Anderson and Les Whitten	780
Order [7/14/80]	781
Motion for Reconsideration [7/24/80]	
Att. 1: Annual Report of CIA to Senate regarding administration of Freedom of Information Act	782
Affidavit of James H. Lesar executed 7/24/80	784
Affidavit of Harold Weisberg executed 7/21/80	785
Att. 1: 4/30/80 Affidavit of Gerald Liebenau filed in C.A. No. 75-1996	790
Att. 2: 3/1/78 Weisberg-Wilson	792
Order [9/3/80]	793

	<u>Page</u>
Notice of Filing [10/27/80]	794
3/23/78 letter Gene F. Wilson-Harold Weisberg	796
3/26/78 Weisberg-Wilson	797
3/23/78 Weisberg-Wilson	798
Notice of Filing [10/29/80]	
Affidavit of Harold Weisberg executed 10/28/80	799
Order [10/30/80]	803
Notice of Appeal [12/29/80]	804

0090/1	75	1448	09	04	75	2	890	1			9045		75	1448
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PLAINTIFFS

DEFENDANTS

HAROLD WEISBERG

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

CAUSE

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

mbd

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<input type="checkbox"/> CHECK HERE CASE WAS FILED IN FEDERAL COURTS REQUIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

CASE CLOSED

PROCEEDINGS

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

(SEE NEXT PAGE)

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

(OVER)

3

PLAINTIFF		DEFENDANT	DOCKET NO. <u>75-1448</u>
HAROLD WEISBERG		GENERAL SERVICES ADMINISTRATION	PAGE <u>2</u> OF <u> </u> PAGES
DATE	NR.	PROCEEDINGS	
1976			
July	26	ORDER filed 7-22-76 denying pltfs. motion for injunctive relief. (N) Robinson, J.	
July	28	NOTICE by pltf. of filing of affidavit; affidavit of James Hiram Lesar; attachments 1,2,3,4,5,6,7,8,9,10; c/m 7-28.	
July	28	THIRD set of interrogatories by pltf. to deft.; attachments 1,2,3,4, 5; c/m 7-28.	
Oct	12	MOTION by pltf. for summary judgment with respect to January 21, 1964 Warren Commission Executive Session transcript; statement; memorandum of P&A's; exhibit 1; c/m 10-12-76.	
** Oct	15	MOTION by pltf. to compel answers to interrog.; P&A's; c/m 10-15-77.	
* Oct	13	MOTION by pltf. for summary judgment with respect to May 19, 1964 Warren Commission Executive Session Transcript; statement; memorandum of P&A's; exhibit 1; attachment 1; attachment 2; attachment 3; attachment 4; attachment 5; attachment 6; attachment 7; attachment 8; attachment 9; attachment 10; exhibit 2; c/m 10-13-76.	
Nov	12	ANSWERS by James B. Rhoads to plttf's interrogatories; c/s 11/12/76.	
Nov	18	ORDER that after defts. counsel has had an opportunity to review and confer with the agency's representatives concerned, that supplementary answers will be filed so far as possible no later than 11-30-76, and that a further hearing will be conducted at 11:00 a.m., Dec. 2, 1976. (N) Dwyer, Mag.	
Nov	29	MEMORANDUM by plttf. on deft's objections to third set of interrogatories;	
Dec	2	ORDER granting request of deft. on behalf of the CIA for an additional 60 days to respond to third set of interrogatories until January 3, 1977; hearing on motion by plttf. to compel and objections of deft. to interrogatories on January 14, 1977. (N) Dwyer, Mag.	
1977			
Jan	3	NOTICE by deft. of filing; affidavit of Charles A. Briggs; exhibit A; objections by deft. to interrogatories; c/m 1-3-77.	
Jan	7	MOTION by pltf. to compel answers to interrogatories; memorandum of P&A's; c/s 1-7-77.	
Jan	14	ORDER sua sponte giving pltf. until 2-1-77 to file a motion to compel and giving the government until 2-16-77 to respond. Further hearing to be conducted at 2:00 p.m. on 2-18-77. (N) Dwyer, Mag.	

(SEE NEXT PAGE)

4

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75-1448
HAROLD WEISBERG		GENERAL SERVICES ADMINISTRATION	PAGE 3 OF 3 PAGES
DATE	NR.	PROCEEDINGS	
1977		by pltf.	
Jan	19	OBJECTION/to Magistrate's Order and demand for trial; exhibits 1 and 2; c/s 1-19-77.	
Mar	4	MOTION of pltf. to compel answers to interrogatories and motion of deft. for summary judgment heard and taken under advisement. (Rep: G. Fedoration) Robinson, J.	
Mar	14	ORDER filed on 3-10-77 denying pltf's. motion for summary judgment; granting defts. motion for summary judgment; action dismissed. (N) Robinson, J.	
Mar	21	MOTION by pltf. for reconsideration, clarification, and in camera inspection of transcripts with aid of pltf's. security classification expert; affidavit of William G. Florence; attachment 1; affidavit of Harold Weisberg; exhibits 1,2, and 3; c/s 3-31-77.	
Apr	13	OPPOSITION by deft. to pltf's. motion for reconsideration, clarification, and in camera inspection; c/m 4-18-77.	
Jun	07	ORDER amending Order of 3-10-77; denying pltf's motion for reconsideration in all other respects. (N) Robinson, J.	
Aug	5	NOTICE of appeal by pltf. from Order of March 10, 1977 and June 7, 1977. \$5.00 paid and credited to U.S. Copy mailed to Michael J. Ryan.	
Sept	14	RECORD on appeal delivered to USCA; receipt acknowledged. (77-1831)	
Sept	20	TRANSCRIPT of proceedings of March 4, 1977, pages 1-23. (Rep: E. Fedoration); Court copy.	
Sept	23	SUPPLEMENTAL record on appeal delivered to USCA; receipt acknowledged. (77-1831)	
1978			
Mar	31	COPY of ORDER USCA filed on 3-31-78 that appellant shall move in the District Court for a new trial, that the District Court shall rule on such a motion within thirty days after it is filed, and it is further ordered by the Court that the Clerk is directed to schedule oral argument during the June sitting period of the Court, and it is further ordered by the Court that the motions to file reply brief with addendum and to strike shall be held in abeyance pending the District Court's disposition of a motion for new trial.	
Apr	18	MOTION of pltf. for new trial; memo of P&A's; attachment; affidavit of Harold Weisberg; exhibits 1,2,3,4,5,6,7,8,9,10,11,12,13,14, 15,16,17,18, and 19.	

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5

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF HAROLD WEISBERG	DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. <u>75-1448</u> PAGE <u>4</u> OF <u> </u> PAGES
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DATE	NR.	PROCEEDINGS
1978		
Apr	24	OPPOSITION of deft. to pltfs. motion for new trial.
May	4	MOTION of pltf. to strike affidavits of Charles . Briggs, to hold government officials and attorneys in contempt, and for payment of reasonable costs, including attorney fees; memo of P&A's.
May	4	NOTICE of pltf. to take depositions of Charles A. Briggs and Gene F Wilson.
May	10	MOTION by deft. to quash and for a protective order; P&A's.
May	16	MEMORANDUM AND ORDER filed on 5-12-78 denying pltfs. motion for new trial; denying pltfs. motion to strike affidavits and for payment of reasonable costs, including attorney fees. (N) Robinson, J.
May	16	ORDER filed on 5-12-78 quashing subpoena duces tecum directed to Messrs. Charles A. Briggs and Gene F. Wilson of CIA; denying pltfs. motion to strike affidavits of Mr. Briggs and to hold government officials and attorneys in contempt. (N) Robinson, J.
Jun	22	NOTICE of appeal by pltff. from Order of 5-16-78. (\$5.00 paid and credited to U.S.) Copy of notice mailed to Michael J. Ryan.
Aug	1	RECORD on appeal delivered to USCA; receipt acknowledged on 8-2-78. (78-1731)
1979		
Jan	15	COPY of ORDER USCA filed 1-12-79 dismissing as moot the order of the USDC on appeal in No. 77-1831 relating to the Jan, 21, 1964 and June 23, 1964 transcripts and the entire order of the USDC on appeal in No. 78-1731 and remanding cases with directions to vacate its orders. All other issues on appeal in 77-1831 remain before this Court for consideration.
Mar	14	CERTIFIED copy of ORDER USCA filed 1-12-79 that the order of the USDC on appeal in No. 77-1831 relating to the January 21, 1964 and June 23, 1964 transcripts, and the entire order of the USDC on appeal in No. 78-1731 are dismissed as moot. As to those matters, the cases are remanded to the USDC with directions to vacate its orders. All other issues on appeal in 77-1831 before this Court remain for consideration. The USDC may still consider any post-dismissal matters, upon motion, as the USDC deems appropriate.
Mar	14	MOTION of deft. to seal depositions and answers to pltfs. interrogatories; memo of P&A's.

(SEE NEXT PAGE)

6

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF HAROLD WEISBERG		DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. 75-1448 PAGE 5 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1979 Apr	3	ORDER filed 3-29-79 vacating Orders of 3-10-78 and 6-7-78 and Memorandum and Order of 5-16-78, (N) Robinson, J.
Apr	19	CERTIFIED copy of ORDER USCA filed 3-15-79 vacating <u>sua sponte</u> Court's order of 3-7-79 granting appellee's motion for permission to lodge affidavit; further ordered that the order of the USDC on appeal herein is affirmed.
Apr	19	CERTIFIED copy of ORDER USCA filed 4-12-79 awarding costs in the total amount of \$492.54 in favor of appellant and taxed against appellee.
Apr	24	MOTION of pltf. for award of attorney fees and other litigation costs; table of contents; memo of P&A's; exhibits 1-20; affidavit of James H. Lesar; exhibits 1-3; affidavit of Harold Weisberg; attachment.
May	7	MOTION of deft. for enlargement of time to 6-1-79 to oppose or otherwise respond to motion for award of attorney's fees.
May	7	APPEARANCE of Patricia J. Kenney as atty. for deft. CD/N
May	11	ORDER filed 5-8-79 enlarging federal deft.'s time to respond to motion for attorney's fees to 6-1-79, (N) ROBINSON, J.
May	30	MOTION of deft. for enlargement of time to 6-29-79 to oppose or otherwise respond to pltfs. motion for attorney fees and costs.
June	28	ORDER filed 6-22-79 granting deft. until 6-29-79 to respond to motion for attorney fees and costs, (N) (Signed 6-20-79) Robinson, J.
June	29	MOTION of deft. for enlargement of time to and including 7-27-79 to respond to pltfs. motion for attorneys fees.
July	27	ORDER filed 7-25-79 granting deft. until 7-27-79 to oppose motion for attorney fees and costs. (N) Robinson, J.
July	27	MOTION of deft. for an enlargement of time to 8-9-79 to submit opposition to pltfs. motion for attorney's fees and cost.
Aug	10	OPPOSITION by deft. to pltf's. motion for an award of attorneys fees and other litigation costs; exhibits 1 thru 5.
Sept.	12	REPLY by pltf. to defts. opposition to motion for attorney's fees and costs; attachments A and B; Appendix C; attachments D-H; exhibit A; affidavit of Harold Weisberg; exhibits 1-6.
Sept.	13	MOTION by pltffs. to shorten time for responding to request for production of documents.

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR-3-7-73

PLAINTIFF HAROLD WEISBERG	DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. <u>75-1448</u> PAGE <u>6</u> OF <u> </u> PAGES
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DATE	NR.	PROCEEDINGS
1979		
Sept.	13	NOTICE by pltff. to take depositions of Dr. James B. Rhoads, Mr. Charles A. Briggs, Mr. Robert E. Owen and Mr. Arthur Dooley.
Sept.	13	REQUEST by pltff. to request for production of documents to Defts.'
Sept	24	MOTION by deft. for a protective order; memorandum.
Sept	28	ORIGINAL record (3 vols.), 1 transcript and supplemental record (1 vol.) returned from USCA; receipt ackn.
Oct.	9	OPPOSITION by pltf. to defts. motion for a protective order.
Oct.	9	NOTICE by pltf. to take depositions of Dr. James B. Rhoads, Charles A. Briggs, Robert E. Owen and Arthur Dooley;
Oct.	10	RENEWED motion by deft. for a protective order and to quash subpoenas issued subsequent to filing the motion for a protective order and request to set an emergency hearing on the motions on 10-16-79; memorandum.
Oct.	17	MOTION of pltf. for attorney's fees and motion of deft. for protective order, heard and taken under advisement. Deft. granted leave to file additional affidavits. (Rep: E. Sanche) Robinson, J.
Oct	19	ORDER filed 10-17-79 pending discovery requests be held in abeyance; deft. shall file supplemental affidavits in support of its oppositions to motion for attorney's fees bu 11-21-79. (N) Robinson, J.
Nov.	1	CERTIFIED copy of ORDER USCA filed 10-25-79 denying appellee's motion for reconsideration of award of costs; further ordered that appellant's motion to correct bill of costs is granted, and directing the Clerk to correct appellant's bill of costs and to note the docket accordingly, and it is further ordered that this Court's order entered on 4-12-79 be, and it is hereby amended, to reflect that costs in the total amount of \$552.06 are awarded in favor of appellant and taxed against appellee.
Nov	21	MOTION by deft. for enlargement of time.
Nov.	27	OPPOSITION by pltf. to defts. motion for an enlargement of time; attachment.
Nov.	27	ORDER granting deft. until 12-5-79 to submit additional affidavit in support of opposition to pltfs. motion for attorney's fees and costs. (N) Robinson, J

(SEE NEXT PAGE)

8

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF HAROLD WEISBERG	DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. <u>75-1448</u> PAGE <u>7</u> OF <u> </u> PAGES
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DATE	NR.	PROCEEDINGS
1979 Dec.	3	NOTICE by deft. of filing; supplemental affidavit of Robert E. Owen; exhibits A,B, and C.
Dec.	10	MOTION by pltf. for extension of time to 1-4-80 within which to file response to supplemental affidavit of Robert E. Owen.
Dec.	11	ORDER enlarging pltfs. time to respond to supplemental affidavit of Robert F. Owens to 1-4-80. (N) Robinson, J.
1980 Jan	9	ORDER extending time until 1-9-80 for pltf. to file response to the supplemental affidavit of Robert Owen. (N) Robinson, J.
Jan	11	MOTION of pltf. for further extension of time within which to respond to supplemental affidavit of Robert Owen.
Jan	11	RESPONSE by pltf to supplemental affidavit of Robert E. Owen; exhibit # 2, 1, 8, & 7.
Jan	15	NOTICE by pltf. of filing affidavit of Mr. James H. Lesar; affidavit of James H. Lesar; attachments 1 & 2.
Jan	29	MEMORANDUM by pltf. to the Court; attachments (4); attachment.
Jan	31	RESPONSE by deft. to pltfs. notice of filing on 1-15-80.
Feb	20	CHANGE of address of atty. for pltf. CD/N
Feb	20	MEMORANDUM by pltf. regarding defts. response to pltfs. notice of filing on 1-15-80; affidavit of James H. Lesar,
Apr	30	CHANGE of address of atty. for pltf. CD/N
May	15	TRANSCRIPT of proceedings of 10-17-79, pages 1-40, Vol. A. (Rep: E. Sanche); Court copy.
July	10	NOTICE by pltf. of filing; attachments (3).
July	15	ORDER filed 7-14-80 denying pltfs. motion for award of attorney's fees and other litigation costs pursuant to 5 USC 552(a)(4)(e). (N) Robinson, J.
July	24	MOTION by pltf. for reconsideration of Order of 7-14-80; memo of P&A's; attachment 1; affidavit of James H. Lesar; affidavit of Harold Weisberg,

(OVER)

9

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF HAROLD WEISBERG	DEFENDANT GENERAL SERVICES ADMINISTRATION	DOCKET NO. <u>75-1448</u> PAGE <u>8</u> OF <u> </u> PAGES
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DATE	NR.	PROCEEDINGS
1980 Sept	8	ORDER filed 9-3-80 granting pltfs. motion for reconsideration; vacating orders of 7-13-80 and 10-17-79; pltf. may commence discovery proceedings on certain issues. (N) Robinson, J.
Sep.	11	MOTION by deft. for reconsideration of the court's ruling on pltf's. motion for reconsideration.
Sept.	24	OPPOSITION by pltf. to defts. motion for reconsideration of the Court's ruling on pltfs. motion for reconsideration; attachments 1 and 2.
Oct.	16	REPLY by deft. to pltfs. opposition to defts. motion for reconsideration of the Court's ruling on pltfs. motion for reconsideration; exhibit 1.
Oct.	27	NOTICE by pltf. of filing; exhibits 12,7, and 11.
Oct.	29	NOTICE by pltf. of filing; affidavit of Harold Weisberg.
NOV.	5	ORDER filed 10-30-80 granting defts. motion for reconsideration of Court's ruling on pltfs. motion for reconsideration; vacating order of 9-3-80; reinstating orders of 7-14-80 and 10-19-79. (N) Robinson, J.
Dec	26	NOTICE by pltf. of filing; memorandum of understanding between the Director of Central Interlligence and The Select Committee on Assassinations.

10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Route 8
Frederick, Md. 21701
Phone: [301] 473-3186

Plaintiff,

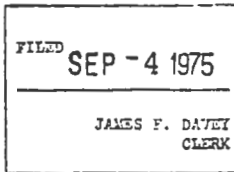
v.

NATIONAL ARCHIVES AND RECORDS
SERVICE,
8th & Pennsylvania, N. W.
Washington, D. C. 20408

Defendant

ROBINSON, J.

Civil Action No. 75 -1448



C O M P L A I N T

[Freedom of Information Act, 5 U.S.C. 552]

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561 [93 Cong., 2d Sess.].
2. Plaintiff is HAROLD WEISBERG, an author residing at Route 8, Frederick, Maryland.
3. Defendant is the NATIONAL ARCHIVES AND RECORDS SERVICE, 8th & Pennsylvania, N. W., Washington, D. C. 20408.
4. On March 12, 1975, plaintiff requested the disclosure of certain Warren Commission executive session transcripts. [See Exhibit A]
5. By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell granted plaintiff's request in part but denied disclosure of the following materials:
 - A. The Warren Commission executive session transcript of May 19, 1964;

//

B. The Warren Commission executive session transcript of June 23, 1964; and

C. Pages 63-73 of the January 21, 1964, Warren Commission executive session transcript. [See Exhibit B]

6. On April 15, 1975, plaintiff appealed the denial of these materials to the Deputy Archivist. [See Exhibit C]

7. By letter dated May 22, 1975, Deputy Archivist James E. O'Neill affirmed the decision of the Assistant Archivist denying disclosure of these transcripts. [See Exhibit D]

8. Having exhausted his administrative remedies, plaintiff now brings suit for records which he alleges must be made available to him under the terms of the Freedom of Information Act. Plaintiff notes that the Freedom of Information Act provides that the District Court shall determine the matter de novo, and that the burden is on the defendant to justify its refusal to disclose the requested documents.

WHEREFORE, plaintiff prays this honorable Court for the following relief:

1. That the defendant be compelled to disclose the records which plaintiff has requested;

2. That the Court award plaintiff reasonable attorney fees and the costs of bringing this action; and

3. That the Court issue a written finding that the circumstances surrounding the withholding of these documents raise questions as to whether agency personnel acted arbitrarily and capriciously with respect to such withholding.

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024
Phone: 484-6023

Attorney for Plaintiff

12

EXHIBIT A

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

March 12, 1975

FREEDOM OF INFORMATION REQUEST

Dr. James B. Rhoads
Archivist of the United States
The National Archives
7th & Pennsylvania Ave., N. W.
Washington, D. C. 20408

Dear Dr. Rhoads:

On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I am requesting the disclosure of the following Warren Commission documents:

1. The executive session transcripts of December 6, 1963, and May 19 and June 23, 1964;
2. Pages 43-68 of the December 6, 1963 executive session transcript;
3. Pages 23-32 of the December 16, 1963 executive session transcript;
4. Pages 63-73 of the January 21, 1964 executive session transcript; and
5. The reporter's notes for the January 22, 1964 executive session.

These requests for disclosure are made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

13

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408



EXHIBIT B

APR 04 1975

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in reply to your letter of March 12, 1975, requesting disclosure of certain Warren Commission documents on behalf of Mr. Paul Hoch and Mr. Harold Weisberg and citing the Freedom of Information Act (5 U.S.C. 552, as amended).

The following is in response to your requests:

1. Enclosed is a copy of the executive session transcript of December 6, 1963, of the Commission with deletions of names and identifying details of persons discussed in connection with the choice of the General Counsel of the Commission. The deleted information and your request for disclosure of the executive session transcript of May 19, 1964, which deals solely with a discussion of Commission personnel, are denied under 5 U.S.C. 552, subsection (b)(5) "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency"; and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Your request for disclosure of the executive session transcript of June 23, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B) matters "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order" and subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

2. Enclosed is a copy of pages 43 and 46-58 of the executive session transcript of December 5 (the correct date, instead of December 6), 1963, with deletions, including all of pages 44 and 45, of names and other identifying information concerning persons named or discussed in connection with

14

the choice of the General Counsel of the Commission. The information deleted is denied under 5 U.S.C. 552, subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

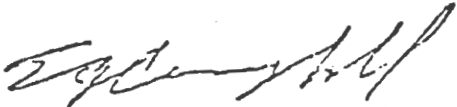
3. Enclosed is a copy of pages 23-32 of the executive session transcript of December 16, 1963. On page 29 there are deletions under the same exemptions of 5 U.S.C. 552 stated in item 2 above.

4. Your request for disclosure of pages 63-73 of the executive session transcript of January 21, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B), matters "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to each Executive order" and subsection (b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

5. Copies of a transcript of the reporter's notes of the executive session of January 22, 1964, have been sent to you, to Mr. Hoch, and to Mr. Weisberg.

You have a right to file an administrative appeal with respect to the material denied you. Such an appeal should be in writing and addressed to the Deputy Archivist of the United States, National Archives and Records Service, Washington, DC 20408. To expedite the handling of an appeal, both the face of the appeal and the envelope should be prominently marked, "Freedom of Information Appeal."

Sincerely,


EDWARD G. CAMPBELL
Assistant Archivist

Enclosure

15

EXHIBIT C

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

April 15, 1975

FREEDOM OF INFORMATION APPEAL

Dr. James O'Neill
Deputy Archivist of the United States
National Archives and Records Service
Washington, D. C. 20408

Dear Dr. O'Neill:

By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell has denied a request I made for the disclosure of the Warren Commission executive session transcripts of May 19 and June 23, 1964, and pages 63-73 of the January 21, 1964 executive session transcript. On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I hereby appeal that denial.

Sincerely yours,

Jim Lesar

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



EXHIBIT D

MAY 22 1975

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in response to your Freedom of Information appeal of April 15, 1975, on behalf of Harold Weisberg and Paul Hoch, seeking access to those portions of Warren Commission executive session transcripts denied your clients by Edward G. Campbell, Assistant Archivist for the National Archives, in his letter to you of April 4, 1975. We received your appeal in this office on April 17, 1975.

As a result of your appeal, we have reexamined the documents denied you, which included the transcript of June 23, 1964, pages 63-73 of the transcript of January 21, 1964, and the transcript of May 19, 1964. Our review of the first two of these documents, which remained at the time of the appeal security classified at the "Top Secret" level, involved consultation with the Central Intelligence Agency. We requested that the CIA review the transcripts to determine if they could be declassified. The CIA response, issued under the authority of Charles A. Briggs, Chief of the Services Staff, requested that the records remain security classified at the "Confidential" level and that they be exempted from the General Declassification Schedule pursuant to Subsections 5 (B)(2) and (3) of Executive Order No. 11652. The CIA further requested that should the authority of the Warren Commission to classify these documents be called into question, the documents were to be marked at the level of "Confidential" pursuant to the authority of the CIA to classify national security information.

Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, pursuant to the first, third and fifth exemptions to mandatory disclosure under the Freedom of Information Act, i. e., "matters that are . . . specifically authorized under criteria established by an Executive order to be kept secret in the interest of national

17

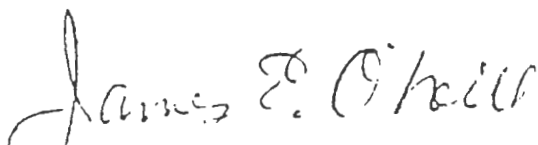
defense or foreign policy and are in fact properly classified pursuant to such Executive order . . . ; specifically exempted from disclosure by statute . . . ; inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency . . ." (5 U.S.C. 552(b)(1), (3) and (5), respectively).

The statute which specifically exempts these transcripts from disclosure provides, "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure . . ." (50 U.S.C. 403(d)(3)). Further, we have invoked the fifth exemption from mandatory disclosure on the basis that these transcripts reflect the deliberative process of the Warren Commission, and are not the written record of a Commission decision or opinion. To encourage free and full expression in the deliberative process, the Congress provided in the fifth exemption to mandatory disclosure a mechanism by which these records could be sheltered.

As stated in Dr. Campbell's letter, the transcript of May 19, 1964, is limited to a discussion of the background of Commission personnel. Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to this transcript pursuant to the fifth and sixth exemptions to mandatory disclosure under the Freedom of Information Act, i. e., "matters that are . . . inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency," and "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . ." (5 U.S.C. 552(b)(5) and (6), respectively).

This letter represents the final administrative consideration of your request for access to the withheld records. You have the right to seek judicial review of this decision by filing an action in the Federal District Court for the District of Columbia, or in the Federal District Court in which either of your clients resides or has his principal place of business.

Sincerely,


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

18

10-3-75

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action Number 75-1448

NATIONAL ARCHIVES AND
RECORDS SERVICE,

Defendant.

A N S W E R

First Defense

The Court lacks jurisdiction over the subject matter of the action inasmuch as the documents plaintiff seeks fall within exemptions to 5 U.S.C. § 552, set forth at 5 U.S.C. § 552(b).

Second Defense

The National Archives and Records Service is not a proper party to the action inasmuch as the proper defendant would be the General Services Administration.

Third Defense

Defendant answers the numbered paragraphs of the complaint as follows:

1. This paragraph contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed necessary, it is denied.

2. - 4. Admitted.

5. - 7. Admit that by letter dated April 4, 1975, an Assistant Archivist, Edward G. Campbell, acted upon plaintiff's request (Exhibit A) and that the letter dated April 4, 1975, attached to the complaint as Exhibit B, is a true copy of said letter; that plaintiff transmitted a letter dated April 15, 1975 to the Deputy Archivist, a true copy of which is attached to the complaint as Exhibit C; that the Deputy Archivist, James E. O'Neill, affirmed the decision of the Assistant Archivist by letter dated May 22, 1975, a true copy of which is attached to the complaint as Exhibit D; and respectfully refer the Court to Exhibits A-D to the complaint for the contents of said correspondence.

8. This paragraph contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed necessary, it is denied.

Defendant further avers that all allegations of the complaint not hereinabove admitted, denied or otherwise qualified are denied.

EARL J. SIEBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

MICHAEL J. RYAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer has been mailed to counsel for plaintiff, James Hiram Lazar, Esquire, 1231 Fourth Street, S.W., Washington, D.C. 20024, on this 8th day of October, 1975.

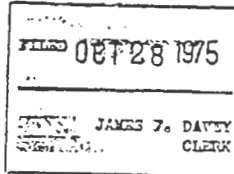
MICHAEL J. RYAN
Assistant United States Attorney
United States District Courthouse
Room 3421
Washington, D.C. 20001

Telephone: (202) 426-7375

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,
Plaintiff,
v.
GENERAL SERVICES ADMINIS-
TRATION,
Defendant
.....

Civil Action No. 75-1448



PLAINTIFF'S INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff addresses the following interrogatories to the defendant General Services Administration:

1. When was the transcript of the June 23, 1964, Warren Commission executive session originally classified Top Secret?
 - a. By whom?
 - b. Pursuant to what Executive Order or other authority?
2. When was the transcript of the January 21, 1964, Warren Commission executive session, or any portion thereof, originally classified Top Secret?
 - a. By whom?
 - b. Pursuant to what Executive Order or other authority?
3. Was the entire January 21, 1964, executive session transcript originally classified Top Secret? If not, list all pages of that transcript which were originally classified Top Secret.
4. Was the person or persons who classified the June 23rd and January 21st executive session transcripts authorized to class-

ify documents Top Secret? By what authority?

5. Was the June 23, 1964, executive session transcript ever given to any of the following federal agencies:

- a. The Central Intelligence Agency?
- b. The Federal Bureau of Investigation?
- c. The Office of Naval Intelligence?
- d. The Defense Intelligence Agency?
- e. The National Security Agency?
- f. The Department of Justice?
- g. The Department of Defense?

6. List any other agencies to which the June 23, 1964, executive session transcript was given.

7. State the date on which each agency identified in response to interrogatories 5 and 6 was given the June 23, 1964, executive session transcript.

8. Was the January 21, 1964, Warren Commission executive session transcript ever given to any of the following federal agencies:

- a. The Central Intelligence Agency?
- b. The Federal Bureau of Investigation?
- c. The Office of Naval Intelligence?
- d. The Defense Intelligence Agency?
- e. The National Security Agency?
- f. The Department of Justice?
- g. The Department of Defense?

9. List any other agencies to which the January 21, 1964, executive session transcript was given.

10. State the date on which each agency identified in response to interrogatories 8 and 9 was given the January 21, 1964, executive session transcript.

11. List the names of all persons who have been given copies of or who have had access to the June 23, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed.

12. List the names of all persons who have been give copies of or who have had access to the January 21, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed;
- c. Whether the copy or access given to each person listed included pages 63-73 of this transcript.

13. Do the January 21, 1964, and June 23, 1964, Warren Commission executive session transcripts indicate on their face whether they are subject to the General Declassification Schedule? Are they?

14. If either transcript is exempt from the General Declassification Schedule, which exemption is claimed?

15. Is Yuri Ivanovich Nosenko the subject of the June 23, 1964, executive session transcript?

16. Did any of the United States Attorneys representing the defendant examine either the January 21st or the June 23rd transcript before October 8, 1975. If the answer is yes, which ones, and on what dates?

17. Has any attorney for the Department of Justice or the Central Intelligence Agency ever read or examined either the January 21st or June 23rd transcripts? State the names of any who have and the dates on which they read or examined the transcripts.

18. Executive Order 11652 states that: "The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security." Which of the following criteria for determining "exceptionally grave damage to the national security" (listed in Section 1(A) of Executive Order 11652) were used as a basis for classifying the January 21 and June 23, 1964 transcripts Top Secret:

- a. armed hostilities against the United States or its allies?
- b. disruption of foreign relations vitally affecting the national security?
- c. the compromise of vital national defense plans or complex cryptologic and communications intelligence systems?
- d. the revelation of sensitive intelligence operations?
- e. the disclosure of scientific or technological developments vital to national security?

19. Are the January 21 and June 23 transcripts presently classified Confidential? Who classified them Confidential and on what date?

20. State all dates on which the January 21 and June 23 transcripts have had their security classification reviewed, the person or persons conducting such reviews, and the results of each such review.

21. Is Mr. Charles A. Briggs, Chief of the CIA's Services Staff, authorized to originally classify information or material Top Secret?

22. On what date(s) did Mr. Briggs first view the January 21 and June 23, 1964, executive session transcripts?

23. In his May 22, 1975, letter to Mr. Lesar (See Complaint Exhibit D), Deputy Archivist James E. O'Neill asserted that the January 21 and June 23, 1964, transcripts are "specifically exempted from disclosure by statute." What statute specifically exempts these transcripts from disclosure?

24. How many executive sessions did the Warren Commission hold? How many transcripts of those executive sessions does the GSA now claim are exempt under:

- a. 5 U.S.C. §552(b)(1)?
- b. 5 U.S.C. §552(b)(3)?
- c. 5 U.S.C. §552(b)(5)?
- d. 5 U.S.C. §552(b)(7)?

25. Executive Order 11652 states that: "The test for assigning 'Confidential' classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security." Describe the kind of damage to the national security which could reasonably be expected to result from the disclosure of the January 21 and June 23, 1964, Warren Commission executive session transcripts.

Please note that under Rule 33 of the Federal Rules of Civil Procedure you are required to serve upon the undersigned, within 30 days after service of this notice, your answers in writing and under oath to the above interrogatories.

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

Robinson, J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,
v.
NATIONAL ARCHIVES AND RECORDS
SERVICE,
Defendant

Civil Action No. 75-1448

FILED

OCT 28 1975

JAMES F. DAVEY, CLERK

ORDER

Upon consideration of plaintiff's motion for leave to substitute the GENERAL SERVICES ADMINISTRATION for the NATIONAL ARCHIVES AND RECORDS SERVICE as the defendant in this cause, it is by the Court this 27th day of October, 1975,

ORDERED, that the GENERAL SERVICES ADMINISTRATION be, and it hereby is, substituted as the defendant in this case; and it is further ORDERED, that hereafter the caption in this case shall be: "HAROLD WEISBERG, Plaintiff, v. GENERAL SERVICES ADMINISTRATION, Defendant".

Robinson, J.
UNITED STATES DISTRICT JUDGE

H-7-75

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS SERVICE,

Defendant.

Civil Action No. 75-1448

ANSWERS TO INTERROGATORIES

JAMES B. RHOADS, Archivist of the United States, having been first duly sworn, under oath, deposes and says that it is upon his personal knowledge and belief that he gives the following information in answer to interrogatories propounded by plaintiff:

1. As evidenced by correspondence among the records of the President's Commission on the Assassination of President Kennedy (Warren Commission) in the National Archives, the transcript of the executive session of June 23, 1964, was classified "Top Secret" immediately upon its transcription. It was classified by the Commission acting through its General Counsel, J. Lee Rankin, and marked as such, pursuant to Mr. Rankin's instructions, by the contractor reporting firm, Ward & Paul. The transcript was originally classified under the provisions of Executive Order 10501, as amended (3 CFR, 1949-1953 Comp., p. 979).
2. See answer to No. 1, above.
3. Yes.
4. Yes, under the authority of Executive Order 11130 (3 CFR 1959-1963 Comp., p. 795) and Executive Order 10501, as amended, cited above.
5. The National Archives has given a copy of the transcript of June 23, 1964, to the Central Intelligence Agency. The National Archives has not given the

transcript or a copy thereof to any of the other agencies listed.

6. None.

7. The National Archives gave the CIA a copy of the June 23, 1964 transcript on November 17, 1972, July 30, 1974, and March 21, 1975.

8. The National Archives has given a copy of the transcript of January 21, 1964 to the Central Intelligence Agency. The National Archives has not given the transcript or a copy thereof to any of the other agencies listed.

9. None.

10. The National Archives gave the CIA a copy of the January 21, 1964 transcript on November 17, 1972, July 30, 1974, and March 21, 1975.

11. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of the complaint.

12. Defendant objects to this interrogatory on the grounds that it is not relevant to the subject matter of the complaint.

13. Yes. ~~Yes.~~ ^{MR}
92R

14. The pertinent exemption is established in Subsection 5(B)(2) of Executive Order 11652 (37 F.R. 5209, March 10, 1972).

15. Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant maintains is security classified and which the defendant seeks to protect on this and other bases in the instant action.

16. Defendant objects to this interrogatory on the grounds that the information requested is privileged.

17. Defendant objects to this interrogatory on the grounds that the information requested is privileged.

Page 2 of 4 pages.

Deponent's initials MR

18. The Central Intelligence Agency has advised the National Archives that the following criteria are pertinent to the prior "Top Secret" classification: "Disruption of foreign relations vitally affecting the national security;" and "the revelation of sensitive intelligence operations."

19. The entire transcript of June 23, 1964, is presently classified at the "Confidential" level. Pages 63-73 of the transcript of January 21, 1964, are presently classified at the "Confidential" level, while the remainder of that transcript is unclassified. The National Archives downgraded the classification of the June 23, 1964 transcript and pages 63-73 of the January 21, 1964 transcript subsequent to the recommendation of the CIA dated May 1, 1975.

20. In 1967, Dr. Robert Bahmer, then Archivist of the United States, Marion Johnson, Staff Archivist, and I, then Deputy Archivist, reviewed the classification of the transcripts. As a result, all but pages 63-73 of the transcript of January 21, 1964, which remained classified at the "Top Secret" level, was declassified. The transcript of June 23, 1964, remained classified at the "Top Secret" level. A classification review by the CIA culminating on December 22, 1972, resulted in no change to the classification of the transcripts. Reviews by the CIA initiated on July 30, 1974, and March 21, 1975, and culminating on May 1, 1975, resulted in the downgrading of the transcripts to the "Confidential" level.

21. The CIA informed the National Archives that Mr. Charles A. Briggs is so authorized.

22. The CIA has informed the National Archives that Mr. Briggs first viewed the transcripts on April 15, 1975.

23. 50 U.S.C. 403(d)(3) (1970).

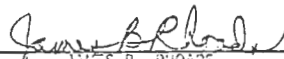
24. The National Archives has no knowledge of the total number of Warren Commission executive sessions. Among its holdings are the transcripts for twelve sessions and the minutes of a thirteenth. This agency withholds access

to certain of these transcripts or portions thereof pursuant to the following statutory exemptions under the Freedom of Information Act:

- (a) 5 U.S.C. 552(b)(1): June 23, 1964; pp. 63-73 of January 21, 1964;
- (b) 5 U.S.C. 552(b)(3): June 23, 1964; pp. 63-73 of January 21, 1964;
- (c) 5 U.S.C. 552(b)(5): June 23, 1964; May 19, 1964; pp. 63-73 of January 21, 1964; and pp. 44-45 of December 5, 1963;
- (d) 5 U.S.C. 552(b)(6): May 19, 1964; pp. 44-45 of December 5, 1963; and
- (e) 5 U.S.C. 552(b)(7): June 23, 1964; and pp. 63-73 of January 21, 1964.

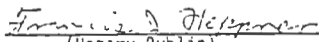
25. For the answer to this interrogatory, defendant defers to and incorporates the explanation contained in the affidavit of Charles A. Briggs, Chief of the Services Staff, Directorate of Operations, Central Intelligence Agency, dated November 5, 1975.

I have read the answers above, and they are true and complete to the best of my knowledge and belief.



JAMES B. RHOADS
Archivist of the United States

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W., Washington, D.C., on this 24th day of November 1975.



(Notary Public)

My commission expires: August 31, 1979

Page 4 of 4 pages.

EXHIBIT E

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

January 18, 1965

23: A/N
[Grid with handwritten marks]

MEMORANDUM FOR ACTING ATTORNEY GENERAL KATZENBACH

SUBJECT: Public Disclosure of Warren Commission Reports and Working Papers

1. Attached at Tab 1 is a copy of a letter which the President recently received from Mayor Robert Johnson of Cedar Rapids, Iowa, and which objects rather strongly to a report that the National Archives will not make available to the public, for 75 years, certain Warren Commission records. On receiving this letter, we asked National Archives for a background memo on the subject and for a suggested reply to Mayor Johnson.

National Archives has met our request and attached at Tab 2 is a copy of a GSA memo, with enclosures, which recommends that Warren Commission records be treated on the same basis as other investigative records and that, generally speaking, they not be made available to the public for a period of 75 years.

2. While the GSA memo seems to me to have some merit, in view of the very special nature of the Warren Commission investigation and the desirability of the fullest possible disclosure of all the findings, I believe that a further study should be made on the feasibility and advisability of making an exception, in this particular case, to the normal 75-year disclosure procedure. In this regard, and because of the legal ramifications involved, I would appreciate it very much if you would direct the Justice Department, in consultation with other appropriate agencies, to coordinate this study. The study should include, but not necessarily be limited to, answers to such questions as the following:

- (a) What alternatives are there to the 75-year procedure which would meet the aim of "fullest possible disclosure" and, at the same time, not violate the national security or the dictates of good sense? For example, can some or most of the material be released in two years? Five years? Can certain categories of the public (e. g. scholars) receive special treatment?
- (b) How does the Warren Commission view this problem (particularly the Chief Justice and Lee Rankin)?

McGeorge Bundy

cc: Acting Administrator
Knott. GSA

31

Summary of Views of Interested Federal Agencies
Concerning the Disclosure to the Public of Materials
Delivered to the National Archives by the President's
Commission on the Assassination of President Kennedy.

In response to inquiry by the Department of Justice, the federal agencies which submitted reports or other materials to the President's Commission expressed the following views regarding the disclosure of these materials to the public.

1. Federal Bureau of Investigation. The Federal Bureau of Investigation recognizes that materials furnished by it for use by the President's Commission, except those which were classified for reasons of national security, are in the public domain. Most of the material furnished by the Bureau was unclassified. Security classification was necessary in some instances to prevent the identification of confidential informants, to protect the secrecy of confidential investigative techniques, to avoid disclosure of information showing the Bureau's coverage of the Soviet Embassy in Washington, D. C., and to maintain the classification imposed by other agencies on information furnished by them to the Bureau. The Bureau believes that classified material should be disclosed only to persons having the necessary security clearance.

The Bureau believes that another problem is presented by unclassified material, some of which contains reports of rumor, gossip, and similar data involving innocent people. Some of this unclassified material contains the results of extensive investigations of Mrs. Marina Oswald and various associates of the Oswalds. Disclosure of such material, the Bureau believes, would be a source of unwarranted embarrassment to the people concerned. Some material contained in unclassified documents was furnished to the Bureau in confidence by sources such as banks and hotels. The records of these sources cannot be produced except pursuant to a court order. Public disclosure of this information might cause the Bureau to lose the cooperation of such sources in the future and might subject the sources to civil suit.

A separate problem is presented by records of the Bureau's investigation of Mr. Jack Ruby, whose conviction for the murder of Oswald is still under review in the Texas courts.

The Bureau, which has retained records of all material furnished to the President's Commission, is prepared to examine all classified documents in order to extract the classified information and make the remainder available to the public. In addition, the Bureau is prepared to review the classification of all classified documents at least once a year and at any time in response to a specific inquiry concerning the classification of a particular document.

While pointing out the problems noted above concerning undisclosed material, the Bureau makes no specific recommendation concerning such items.

2. Secret Service. The Secret Service recommends that access to its investigative reports furnished to the President's Commission remain restricted for all reports in the following categories:

- "(1) Reports affecting national security.
- "(2) Reports which reveal the extent of Presidential protection or protective techniques.
- "(3) Reports mentioning innocent persons having no connection with the subject of the investigation that would needlessly embarrass or damage the innocent parties.
- "(4) Reports containing information given to us in confidence which, when investigated, was found to:
 - (a) have no connection with the assassination;
 - (b) be untrue, yet the reports would be embarrassing, both to the supplier of the information who may have acted in good faith in view of the importance of the subject matter of the investigation, — or to the person concerning whom the information was furnished; e. g., derogatory remarks about President Kennedy attributed to persons before and after the assassination.

"(5) Reports containing information from confidential informants from which readers might draw an inference, erroneously or correctly, as to the identity of the confidential informant."

The Secret Service has indicated its willingness to examine the reports furnished by it to the President's Commission for the purpose of determining which items may be made available to the public now (including declassification, if necessary) and which may be made available at some future time less than 75 years hence. It has also recommended an annual review of the necessity for continuing restrictions on particular items.

3. Post Office Department. The Postal Inspection Service furnished documents and information to various investigative agencies including the Federal Bureau of Investigation and the Secret Service. It believes that the receiving agencies should determine whether or not such documents and information should be disclosed.

The Inspection Service submitted directly to the President's Commission a summary of its activities, which was not a classified document. The Service has no objection to the publication of this document, but believes that the approval of the Federal Bureau of Investigation and the Secret Service should be obtained. The Inspection Service furnished to the President's Commission "copies of the front and back of POD Form 2153-X, dated September 18, 1963, covering a publication 'OGONEK' addressed to Mr. Lee H. Oswald, Box 2915, Dallas, Texas." The Service believes that these copies should not be made generally available at this time.

The Service has indicated its willingness to examine any documents furnished by it to the President's Commission for the purpose of determining whether they can be released to the public.

4. Central Intelligence Agency. The Central Intelligence Agency believes that items furnished by it to the President's Commission and withheld from the public domain under security controls should not be excepted from the normal 75-year period of nondisclosure. The Agency cooperated fully with the President's Commission and made every effort to release material furnished to the Commission for the public record.

Wherever it was possible without jeopardizing the national security or this country's posture abroad, security classifications were graded down. Because of this policy, very little of the material furnished by the Agency is now withheld from the public. The criteria which were applied in determining whether or not to release information were: (1) the evidential value of the information in question; (2) the protection of sensitive sources and methods of operation; and (3) the possibility of international ramifications in view of the fact that most of the material was acquired abroad, particularly in Mexico and the U. S. S. R. None of the withheld material has a direct bearing on the assassination of President Kennedy.

The Agency believes that the national security requires the continuance of restrictions on withheld documents and that this interest outweighs all other considerations. It recommends that at the end of the 75-year period another security appraisal be made before such documents are disclosed.

5. Department of State. The Department of State made every effort to cooperate with the President's Commission in releasing to the public all significant information concerning the assassination of the President. In a small number of cases, the publication of documents was restricted in order to protect coding systems, in the interest of national security, to avoid personal embarrassment, or because a later revision of a draft document containing the substance of the draft had been released for publication. (Where coding was involved, the full substance of the document in question was made available for publication.) A few documents were classified and have been restricted accordingly.

Some of the material which has not yet been made available could probably be released if necessary. It will probably be possible to release other material within the next ten years. In cases where a document was furnished by the Department but originated with another agency, the approval of the originating agency should be obtained. The Department is prepared to examine material furnished by it to the President's Commission now and on an annual basis hereafter to reevaluate the necessity for nondisclosure.

6. Department of Defense. The Department of Defense has examined material at the National Archives which has been identified as furnished to the President's Commission by the Department. Some of the material, consisting of investigative reports and other material relating to individuals, is of a kind normally not disclosed to the public. In view of the exceptional nature of the work of the President's Commission, however, the Department does not object to the disclosure of this material, all of which is unclassified. If further material is later identified as originating with the Department of Defense, the Department requests an opportunity to review such material before it is disclosed.

7. Internal Revenue Service. The Internal Revenue Service has no objection to unrestricted public examination of documents concerning matters included in the public record by the Report of the President's Commission.

Tax returns which have not been made a matter of public record are protected from disclosure by Sections 6103 and 7213 of the Internal Revenue Code and by 5 U.S.C. Section 22. The President has statutory authority to disclose such protected information, but the Service recommends that in accordance with the spirit of the statute, tax returns not made matters of public record not be made available for general inspection.

A determination concerning other items furnished to the President's Commission should be made on an individual basis. Many documents reflect protected tax return information. Others contain information which would indicate the identity of a confidential informant, which is scandalous and not relevant to the subject of the Commission's inquiry, which consists of unconfirmed allegations by third parties, or which discloses the Service's policies respecting collection, auditing, settling, or prosecution. The Service has traditionally maintained a policy of nondisclosure of information of this sort and believes that the public recognizes the necessity for this policy. The Service believes that disclosure of material of the kind indicated would not add significantly to the comprehensive report of the President's Commission or to public information concerning the assassination of President Kennedy. Accordingly, the Service believes that no public interest would be served by disclosure. The Service believes that except in exceptional circumstances, documents of which portions must remain undisclosed

be restricted in their entirety. If documents containing deletions are released they are likely to prompt curiosity about the deletions and may produce charges that significant information is being withheld.

As a means of assuring the public of the thoroughness of the Commission's investigation, the Service suggests that letters received by it from the President's Commission requesting documents, along with transmittal replies, be made available for inspection. Clearance to disclose such letters would have to be obtained from the President's Commission, the originating agency.

The Service has indicated its willingness to inspect material furnished by it to the President's Commission now and at periodic intervals to determine whether such material may be made available to the public. It suggests that material be withheld only if: (1) disclosure is prohibited by law or agency regulations; (2) disclosure would be detrimental to the administration of the laws administered by the agency concerned; (3) the material relates to scandalous information unrelated to the assassination; (4) the material consists of unsubstantiated information or allegations; or (5) the material could embarrass or damage innocent persons without serving the public interest in full disclosure of information pertaining to the assassination of President Kennedy.

8. Immigration and Naturalization Service. The Immigration and Naturalization Service has previously authorized the President's Commission to publish all documents furnished to it by the Service. Accordingly, the Service has no objection to the immediate disclosure of all such documents to the public.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS SERVICE,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA) ss.:
CITY OF WASHINGTON)

I, JAMES B. RHOADS, Archivist of the United States, National Archives and Records Service, General Services Administration, Eighth and Pennsylvania Avenue, N. W., living at 6502 Cipriano Road, Lanham, Maryland, do hereby solemnly swear:

1. I have read and am familiar with the allegations contained in the plaintiff's complaint in the case of Weisberg v. National Archives and Records Service, Civil Action No. 75-1448, United States District Court for the District of Columbia.
2. At all times relevant to the circumstances of the complaint, I have served in the position of Archivist of the United States.
3. The General Services Administration [GSA], acting through the National Archives and Records Service [NARS], serves as the successor agency to the President's Commission on the Assassination of President Kennedy, popularly known as the Warren Commission (hereinafter, the "Commission").
4. Over the years that the National Archives has maintained custody and control over the records of the Commission and other documents and materials relevant to the assassination of President Kennedy, it has striven to make increasing numbers of these materials available for public access. In some instances, NARS has opened these materials subsequent to Freedom of Information Act requests for access, many of which were instituted by the plaintiff. To date, well over 90% of these materials are available for public inspection, and, in the case of documentary materials, copies are provided upon request.

Page 1 of 5 pages.

Affiant's initials JBR

GOVT EX-1

38

5. Among the Commission records in the custody and control of the National Archives are the transcripts of those meetings in which the members of the Commission met in executive session. Although the Commission may have met in executive session on more occasions, the National Archives has in its possession the transcripts of twelve meetings and the minutes of a thirteenth.

6. At the time of their accessioning into the National Archives, the Commission had classified and marked each of the transcripts "Top Secret" (see Exhibit A, a copy of an affidavit with attachments, dated April 8, 1974, of J. Lee Rankin, General Counsel of the Commission). At regular intervals over the years in which the National Archives has had custody and control of these transcripts, it has conducted classification reviews of these documents to determine if any of them should be downgraded or declassified. In accordance with applicable provisions of law, these reviews have been conducted with the assistance of those agencies of the Federal Government which have subject matter interest in the particular transcripts. The most recent review of those transcripts which remained security classified was conducted in conjunction with the implementation of the recent amendments to the Freedom of Information Act and coincided with plaintiff's administrative request for access to those transcripts that remained closed at the time of the amendments.

7. As a result of these reviews, only the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, remain classified, and they have been downgraded to the "Confidential" level. These transcripts remain classified at the request of the Central Intelligence Agency, which agency has subject matter interest in the information contained within these transcripts. Further, the CIA has informed us that, should there be any question concerning the authority of the Warren Commission to classify documents, these transcripts shall be classified pursuant to the authority of the CIA to do so (see Exhibit B, a copy of a letter to me from Robert S. Young, CIA Freedom of Information Coordinator, dated May 1, 1975).

8. With the exception of names and other identifying details deleted from the transcript of a meeting in which the members discussed the qualifications of potential staff members, all of the transcripts and minutes except those at issue in this litigation, i. e., the transcript of May 19, 1964, the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, are available for public inspection and copying.

9. In accordance with the instructions and recommendations of the Central Intelligence Agency, the National Archives maintains the security classification of the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964, at the "Confidential" level, and withholds these records from public access. In denying public access, NARS relies on those statutory exceptions to mandatory disclosure under the Freedom of Information Act which are pertinent to these materials. These include:

(a) The first exemption, 5 U.S.C. 552(b)(1), which permits the withholding of materials "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order" These transcripts are properly classified pursuant to the criteria established in Executive Order 11652 (37 F.R. 5209 (March 10, 1972); 3 CFR 1974 Ed., p. 339).

(b) The third exemption, 5 U.S.C. 552(b)(3), which permits the withholding of materials "specifically exempted from disclosure by statute" The specific statute which is pertinent provides, "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C. 403(d)(3)). In withholding access pursuant to this statute, the Archivist of the United States or his delegates within the National Archives and Records Service act as agents for the Director of Central Intelligence or his delegates (see Exhibit B).

(c) The fifth exemption, 5 U.S.C. 552(b)(5), which permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency"

These transcripts are the written record of the times when the Commission members met to express their individual ideas, opinions, conclusions and recommendations to the other members. The subject matter of the meetings included the Commission's methods of gathering evidence, the personnel of the Commission staff, the Commission's goals and public image, as well as a discussion of the evidence before the Commission. On several occasions individual commissioners expressed the opinion that their views and those of the other commissioners were given and should be maintained in confidence. As these transcripts clearly reflect the deliberative process of the Commission, NARS has determined that they may properly be withheld from public disclosure under the cited exemption.

(d) Paragraphs (D) and (E) of the seventh exemption, 5 U.S.C. 552(b)(7)(D) and (E), which permit the withholding of

investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would . . . (D) disclose the identity of a confidential source and, in the case of a record compiled . . . by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source [or] (E) disclose investigative techniques or procedures

The pertinent transcripts reveal the identity of a source of national security intelligence information as well as information obtained from that source. They further reflect a discussion of intelligence methods and techniques that had been employed in gathering the existing information or could be employed in gathering additional information. Because the United States District Court has previously ruled that the executive session transcripts of the Warren Commission were "investigatory files compiled for law enforcement purposes"

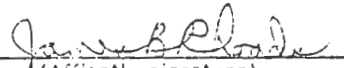
(Weisberg v. General Services Administration, Civil Action No. 2052-73 (D. D. C., May 3, 1974)), the National Archives and Records Service maintains that the

seventh exemption, as amended, remains a valid basis for withholding access to the transcript of June 23, 1964, and pp. 63-73 of the transcript of January 21, 1964.

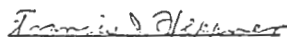
10. The transcript of May 19, 1964, is no longer security classified. Moreover, the subject matter of the transcript has nothing to do with the Commission's investigation of the assassination of President Kennedy or the murder of Lee Harvey Oswald.

Rather, the Commission met in executive session on May 19, 1964, solely to discuss the continued employment of two of its staff members. The reasons which gave rise to the Commission's concern over their continued employment had nothing to do with their performance as employees, but with certain alleged aspects of their personal histories. To release this transcript would "constitute a clearly unwarranted invasion of [the] personal privacy" of these individuals. Moreover, because of contemporaneous news accounts rumormongering complaints about these employees, the deletion of their names and other identifying details would not succeed in protecting their identities. Therefore, we have withheld access to the entire transcript on the basis of the sixth exception to mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(6). As explained in subparagraph 9(c), above, we have also withheld this transcript pursuant to the fifth statutory exemption, 5 U.S.C. 552(b)(5).

I have read the above statement, consisting of 5 pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties to this action.


(Affiant's signature)

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W.,
Washington, D.C., on this sixth day of October 1975.


(Notary Public)

My commission expires: Aug. 31, 1979

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- x
HAROLD WEISBERG, :
 :
 Plaintiff, :
 : Civil Action No. 2052-73
 v. :
 :
 GENERAL SERVICES ADMINISTRATION, :
 :
 Defendant. :
----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
CITY OF NEW YORK)

I, J. LEE RANKIN, living at 35 Sutton Place, New York,
New York, do hereby solemnly swear:

1. From December 8, 1963, I served as General Counsel of
the President's Commission on the Assassination of President
Kennedy (Warren Commission).

2. Shortly after I had assumed the duties of General
Counsel of the Commission, I was instructed by the Commission
that among my duties was the responsibility to security classify
at appropriate levels of classification those records created by
the Commission in its investigation and report that should be
security classified under existing Executive order. The
Commission's authority to classify its records and its decision
to delegate that responsibility to me existed pursuant to
Executive Order 10501, as amended.

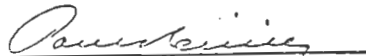
3. As agreed to by the Commission, I ordered that the transcripts of certain of the Commission executive sessions, including that of January 27, 1964, be classified "Top Secret," and I communicated the fact of said classification to Ward & Paul, transcribers of the executive sessions (see attached copies of correspondence between Ward & Paul and me).

I have read the above statement, consisting of two pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.


J. LEE RANKIN

Subscribed and sworn to before me

at *New York, New York*
on this *8th* day of April, 1974.



PAUL F. CIRILLO
Notary Public, State of New York
No. 23 452730
Qualified in Westchester County
Cert. Filed with the New York Co. Clerk
Commission Expires March 30, 1976

EXHIBIT B
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Received HR-N
MAY 5 1975

1 MAY 1975

Dr. James B. Rhoads
Archivist of the United States
National Archives and Records Service
Room 111, Archives Building
Seventh Street and Pennsylvania Avenue, NW
Washington, D.C. 20408

Dear Dr. Rhoads:

On 21 March 1975, Marion M. Johnson of the Civil Archives Division transmitted to this Agency for review certain Warren Commission documents requested under the Freedom of Information Act by James H. Lesar, on behalf of his clients, Harold Weisberg and Paul Hoch. The documents were the transcript of the executive session of 23 June 1964 and pp. 63-73 of the transcript of the executive session of 21 January 1964. I regret the delay in responding, which was due in part to missing pages. It is my understanding that these documents are currently the subject of an appeal from Mr. Lesar.

Mr. Johnson also asked the Agency to review p. 3 of the transcript of the executive session of 6 December 1963. He was informed by telephone that the CIA had no objection to the release of this page to Mr. Lesar. This letter confirms that position.

With regard to the documents cited in the first paragraph, it is our judgment that both transcripts must be denied under subsection (b)(1) of the Freedom of Information Act in order to protect sources and methods and other information related to our operational equities. The documents, under the criteria of Executive Order 11652, warrant classification at the Confidential level and exemption from the General Declassification Schedule pursuant to Sec. (b)(2) and (3) of the Order. It is impossible at this time to determine



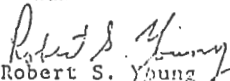
45

a date or event for automatic declassification. If there is any question concerning the authority of the Warren Commission to classify national security information, the Archivist should mark the documents appropriately, citing this letter as authority.

We have investigated the possibility of releasing segregable portions of the transcripts, but have concluded that the extensive deletions required would result in an incoherent text.

The official who made the decision to deny the two transcripts is Charles A. Briggs, Chief of the Services Staff.

Sincerely,


Robert S. Young
Freedom of Information Coordinator

49-76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

ANSWERS TO INTERROGATORIES

JAMES B. RHOADS, Archivist of the United States, having been first duly sworn, under oath, deposes and says that it is upon his personal knowledge and belief that he gives the following information in answer to interrogatories propounded by plaintiff:

26. Would disclosure of pages 63-73 of the January 21, 1964, Warren Commission executive session transcript constitute a violation of 18 U.S.C. §798?

Answer: Defendant objects to this interrogatory on the grounds that it calls for a conclusion of law.

27. Would disclosure of the June 23, 1964, Warren Commission executive session transcript constitute a violation of 18 U.S.C. §798?

Answer: Defendant objects to this interrogatory on the grounds that it calls for a conclusion of law.

28. Did the Warren Commission have authority to classify documents Top Secret pursuant to Executive Order 10501?

Answer: The authority of the Warren Commission to classify documents originally is clouded by an apparent oversight of the Johnson Administration. At the time the transcripts at issue were classified "Top Secret", security classifications were governed by Executive Order 10501, as amended (3 CFR 1949-1953 Comp., p. 979, November 5, 1953). While the original order contained no provision listing the agencies having classification authority, a subsequent amendment to E. O. 10501

47

listed these agencies and further stated that future additions or modifications must be specifically spelled out by Executive order (E. O. 10901, 3 CFR 1959-1963 Comp., p. 432, January 9, 1961). While this provision was complied with for the remainder of the Eisenhower Administration and the Kennedy Administration, a search of materials within the National Archives of the United States and the Lyndon Johnson Presidential Library has uncovered no evidence that it was ever complied with during the Johnson Administration, or that the President or his aides were familiar with this provision. As a result, there was never a specific authorization from President Johnson to the Warren Commission by means of an Executive order granting it the authority to security classify documents originally.

Nevertheless, there is significant documentary evidence that the President, his top aides and the Warren Commission itself assumed that the Commission had the authority to classify materials. Just before the report of the Commission was to be distributed, it was realized that many of the exhibits to the report still retained national security markings, although those particular documents had been declassified by the Commission or the originating agency. These markings on declassified documents and the lack of markings denoting their declassification were not in accord with Section 5(1) of E. O. 10501. Commission General Counsel J. Lee Rankin called this matter to the attention of Acting Attorney General Nicholas de B. Katzenbach by letter of November 7, 1964. On November 23, 1964, Mr. Katzenbach wrote White House Special Assistant McGeorge Bundy, and recommended that the President write Chief Justice Warren and waive the Commission from the requirements of Section 5(1). The President did so on that same day, and that letter was published in the Federal Register on November 28, 1964 (29 F.R. 15893).

President Johnson's waiver of the requirement of Section 5(1) of E. O. 10501 would make no sense at all if the President did not assume that the Commission had the authority to classify documents in the first place. Because of the President's assumption, and because the overlooked requirements of the amendment to E. O. 10501 existed by Presidential fiat, the National Archives maintains that the Commission, in classifying documents as a derivative of the President's powers under Article II of the Constitution, was acting in accordance with the President's wishes. When this fact is taken into account with the purpose and functions of the Commission, which required its continuous examination of highly sensitive classified information,

the National Archives is satisfied that the Commission acted in all propriety in security classifying some of the materials which it created.

29. If the answer to the above interrogatory is yes, please cite any such authority and attach copies.

Answer: Copies of the documentary materials referenced in my response to No. 28 are attached as an Exhibit to these answers.

30. How many pages long is the June 23, 1964, executive session transcript?

Answer: Eleven pages.

31. Who determined that the June 23, 1964, executive session transcript is exempt from the General Declassification Schedule and on what date?

Answer: Charles A. Briggs, Chief of the Services Staff, Central Intelligence Agency, made that determination. The National Archives was informed of Mr. Briggs' determination by letter dated May 1, 1975, from Robert S. Young, Freedom of Information Coordinator, CIA.

32. Who determined that the January 21, 1964, executive session transcript is exempt from the General Declassification Schedule and on what date? Did this determination apply to the entire transcript or just pages 63-73?

Answer: See answer to No. 31, above. The determination applied only to pages 63-73.

33. Do pages 63-73 of the January 21, 1964, executive session transcript deal in any way with the autopsy of President Kennedy or related matters such as the medical and ballistics evidence?

Answer: No.

34. Do pages 63-73 of the January 21, 1964, executive session transcript deal in any way with the medical or ballistics evidence pertaining to the wounds suffered by Governor Connally?

Answer: No.

35. Has every person who has had access to the June 23rd transcript had a security clearance?

Page 3 of 8 pages.

Deponent's initials GER

49

Answer: To the extent this transcript has been reviewed by persons within the National Archives and its parent agency, the General Services Administration, all persons who have had access have been acting in the scope of their duties and have the necessary security clearances. For all external accesses for purposes of classification review or legal preparations for defending actions such as the case at hand, the National Archives has complied with all regulatory requirements in transferring the transcripts.

36. Has every person who has had access to the June 23rd transcript been required to show his security clearance?

Answer: A person with a security clearance does not have a document reflecting that clearance which he is required to have on his person or to show other persons when handling classified materials. For employees of the National Archives, copies of the records of their security clearances are on file in the office of the Executive Director and the official records of their security clearances and the clearances of all other GSA employees are on file in the Security Division, Office of Investigations, GSA. If there is any question concerning an employee's level of clearance, it may be checked by making inquiry of these offices.

37. Has every person who has had access to pages 63-73 of the January 21st transcript had a security clearance?

Answer: See answer to No. 35, above.

38. Has every person who has had access to pages 63-73 of the January 21st transcript been required to show his security clearance?

Answer: See answer to No. 36, above.

39. List all persons who have had access to the May 19, 1964, Warren Commission executive session transcript and the date(s) on which each of them has had access.

Answer: Within the National Archives and GSA, only employees in the scope of their official duties have had access to this transcript. These include employees within the Legislative, Judicial and Fiscal Records Branch who have continuous custody.

of the Warren Commission records, the Director of the Civil Archives Division, the Deputy Archivist of the United States, the Archivist of the United States, and the Chief Counsel, National Archives and Records Service, Office of General Counsel, GSA. I am unable to specify the dates on which each of these persons had access to this transcript.

40. Does the National Archives or the General Services Administration have authority to downgrade or declassify the June 23, 1964, executive session transcript or pages 63-73 of the January 21, 1964, executive session transcript?

Answer: Executive Order 11652 (37 F.R. 5209, March 10, 1972) provides the authority for the National Archives to downgrade and/or declassify records of the Warren Commission. Specifically, Sec. 11 of E. O. 11652 provides that:

The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultation with Departments having a primary subject matter interest, and (iii) provisions of Sec. 5.

41. Has the General Services Administration or the National Archives made any determination(s) as to whether the June 23rd transcript and pages 63-73 of the January 21st [transcript] are properly [classified] under either Executive Order 10501 or Executive Order 11652?

Answer: As provided in Sec. 11 of E. O. 11652, the Archivist of the United States has consulted with the agency of primary subject matter interest (CIA) to determine whether the information contained in the executive session transcripts of June 23 and January 21st continues to require security protection. The CIA's determination for the entire transcript of June 23rd and pages 63-73 of the January 21st transcript was that they could be downgraded to Confidential but were exempt from automatic declassification. The Archivist has, therefore, assured that the transcripts are properly classified pursuant to E. O. 11652.

Defendant notes that at this point plaintiff's interrogatories skip from No. 41 to No. 52.

52. If the answer to the above interrogatory is yes, give the date and the result of each such determination and the name of the person making it.

51

Answer: Based on the advice I received from the CIA in Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), I made that determination on May 5, 1975, the day I received his letter.

53. Has the Interagency Review Board ever been asked to review the classification of any of the Warren Commission Executive session transcripts?

Answer: The Interagency Classification Review Committee has never been asked to make a determination regarding the classification of a Warren Commission executive session transcript.

54. If the answer to the above interrogatory is yes, who made each such request and on what date(s)?

Answer: N/A

55. Are copies of any still-classified Warren Commission executive session transcripts maintained anywhere outside the control of the General Services Administration? Where?

Answer: Not to our knowledge.

56. Do the Allen Dulles papers at Princeton University contain any Warren Commission executive session transcripts? If so, please list.

Answer: Not to our knowledge.

57. How many copies of the January 21st and June 23rd transcripts does the National Archives have? Is every copy marked "Confidential" as of the date this interrogatory was received?

Answer: The National Archives has seven copies of the June 23, 1964, transcript and three copies of the January 21, 1964, transcript. The file copies of each were marked "Confidential" at the time the National Archives received Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), but all the extra copies were not marked "Confidential" until the date of receipt of these interrogatories. All copies are presently marked "Confidential".

58. In determining that the January 21st and June 23rd transcripts are to be classified "Confidential" under Executive Order 11652, did Mr. Charles Briggs take

into account the guidelines drawn up by the Department of Justice pursuant to the White House Directive of April 19, 1965? Was Mr. Briggs instructed to take the Justice Department guidelines into account in making his determinations?

Answer: I am not in a position to speculate on the bases for Mr. Briggs' determinations. While the National Archives provided the CIA with a copy of the Justice Department's guidelines at the time of a previous review of Warren Commission materials, we did not do so during the most recent review. It is our opinion that the Justice Department guidelines have largely been superseded in the review of Commission materials by the Freedom of Information Act and E. O. 11652.

59. As amended by Executive Order 10964, Executive Order 10501 §5(a) provided:

At the time of origination, all classified information or material shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with paragraph (a) of section 4 of this order.

At the time of origination were the January 21st and June 23rd transcripts marked to indicate the downgrading-declassification schedule to be followed?

Answer: No.

60. If the answer to the above interrogatory is yes, to which of the four groups specified by §4(a) of Executive Order 10501 were the January 21st and 23rd transcripts assigned?

Answer: N/A

61. Section 5(i) of Executive Order 10501 provides that when classified information affecting the national defense is furnished authorized persons not in the executive branch of government, the following written notation shall be placed on the classified material:

This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Did either the January 21, or June 23, 1964, executive session transcripts contain this notation at the time they were transmitted to the National Archives and Records Service?

Answer: Yes. The transcript of January 21, 1964, was so marked.


62. What date has been set for the automatic declassification of pages 63-73 of the January 21, 1964, transcript?

Answer: In Mr. Young's letter of May 1, 1975 (see answer to No. 31, above), he stated: "It is impossible at this time to determine a date or event for automatic declassification." Accordingly, no such date has been set at the present time.

63. What date has been set for the automatic declassification of the June 23, 1964, executive session transcript?

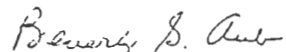
Answer: See answer to No. 62, above.

I have read the answers above, and they are true and complete to the best of my knowledge and belief.



JAMES B. RHOADS
Archivist of the United States

Subscribed and sworn to before me at Eighteenth and F Streets, N.W., Washington, D.C., on this sixteenth day of April 1976.



(Notary Public)

My commission expires:

My Commission Expires August 14, 1979

54

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA) ss.:
CITY OF WASHINGTON)

I, JAMES B. RHOADS, Archivist of the United States, National Archives and Records Service, General Services Administration, Eighth and Pennsylvania Avenue, N. W., Washington, D. C., in support of Defendant's Opposition to Plaintiff's Motion to Compel Answers to Interrogatories, do hereby solemnly swear:

1. Of the 13 interrogatories served upon the Defendant by the Plaintiff in the above-captioned complaint on October 28, 1975, I, having consulted with counsel, refused to answer Nos. 11, 12, 15, 16 and 17. All but No. 15 concern the identification of persons within the Federal Government, other than employees of the National Archives in their routine custodianship, who have had access to the Warren Commission executive session transcripts which remain security classified and to which the Plaintiff is seeking access in the present litigation. These are the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964. Plaintiff has stated that he wishes to establish that the transcripts are improperly classified inasmuch as he may be able to establish that they may have been reviewed by persons who do not have security clearances at all or clearances equivalent to the level of security classification pertinent to the transcripts.

Page 1 of 5 pages.

Affiant's initials JBR

Gov't EX.1

55

2. To the extent these transcripts have been reviewed by persons within the National Archives and its parent agency, the General Services Administration, all persons who have had access in the scope of their duties have the necessary security clearances.

3. The National Archives has provided access to Federal officials outside this agency for two purposes: (a) officials of agencies having subject-matter interest in the documents have examined them in the course of regularly scheduled classification reviews or classification reviews precipitated by Freedom of Information requests; or (b) counsel have examined the documents in the course of preparing the Federal Government's defense to actions such as the case at hand. It should be noted that in some instances Government attorneys have participated in classification reviews unrelated to litigation because of their expertise in the law relevant to security classification.

4. For all external accesses described in paragraph 3, above, the National Archives has complied with all regulatory requirements to assure that the classified material is delivered to an official having an appropriate security clearance. We have required that each person to whom these transcripts have been transferred provide the National Archives with an appropriate receipt documenting the transfer of classified material. However, once the transfer has been transacted, the Defendant is not in the position to police access to these materials in other Federal agencies. We accept on good faith and in the knowledge that these other agencies are equally familiar with the legal requirements pertinent to classified documents that all persons having access to classified documents have appropriate security clearances.

5. In Attacking Defendant's contention that the two classified transcripts at issue are improperly classified, and, therefore, should be made available to him, Plaintiff also calls into question the authority of the Warren Commission to classify materials, inasmuch as the transcripts were originally classified at the behest of the Commission. Admittedly, the authority of the Commission to classify documents originally is clouded by an apparent oversight of the Johnson Administration. At the time the transcripts at issue were classified, security classifications were governed by the provisions of Executive Order 10501, as amended (3 CFR 1949-1953 Comp., p. 979, November 5, 1953). While the original order contained no provision listing the agencies having classification authority, a subsequent amendment to E. O. 10501 listed these agencies and further added that future additions or modifications must be specifically spelled out by Executive order (E.O. 10901, 3 CFR 1959-1963 Comp., p. 432, January 9, 1961). While this provision was complied with for the remainder of the Eisenhower Administration and the Kennedy Administration, a search of materials within the National Archives Building and the Johnson Presidential Library has uncovered no evidence that it was ever complied with during the Johnson Administration, or that the President or his aides were familiar with this provision. As a result, there was never a specific authorization from President Johnson to the Warren Commission granting it the authority to security classify documents originally.

6. Nevertheless, there is significant documentary evidence that both the Commission and the President assumed that the former had the authority to classify materials. We maintain that the President's assumption, in view of the Commission's purposes and activities, and the fact that the overlooked provision existed by Presidential fiat, remedies any doubts created by the initial oversight. Attached to this affidavit as Exhibit A is a copy of an affidavit, with attachments, of J. Lee Rankin, General Counsel of the Commission, dated April 8, 1974, in which he states that the Commission had the authority to classify documents, that the Commission delegated that authority to him, and that he instructed the reporting company which transcribed

the Commission executive sessions to mark them in accordance with his direction. Attached as Exhibit B are a series of documents, including a copy of a letter from President Johnson to Chief Justice Warren dated November 23, 1964, in which the President waives the Commission of certain marking requirements of Executive Order 10501. This waiver would make no sense at all if the President did not assume that the Commission had the authority to classify documents in the first place.

7. Notwithstanding the authority of the Warren Commission to classify documents originally, there are other reasons to support the present classification of the transcripts. First, in the course of classification reviews, an agency clearly having the authority to classify documents has instructed the National Archives to maintain the transcripts as classified, and, if there is some question about the Commission's authority to classify them, to classify them pursuant to its authority. Second, much of the information from which the transcripts are derivatives was obtained from agencies having the authority to classify documents originally. When this information was received by the Commission in documentary form, it was usually marked security classified. Finally, it is important to note that it is information, and not records per se, that is properly classified or unclassified. Whether or not an agency may mark a particular document with a classification stamp is irrelevant if the informational content of that document could harm the Nation's security if disclosed to an unauthorized person. An agency having custody of such a document, no matter what its markings, would be bound to assure its continued protection as long as its informational content is pertinent to national security.

8. In light of the disclosure to The New Republic that the transcript of June 23, 1964, relates to Yuri Ivanovich Nosenko (see Exhibit C), I hereby answer Plaintiff's Interrogatory No. 15 of October 28, 1975, affirmatively.

I have read the above statement, consisting of 4 pages, and it is true and complete to the best of my knowledge and belief.



James B. Rhoads
(Affiant's Signature)

Subscribed and sworn to before me on this twenty-ninth day of March, 1976, at Eighth and Pennsylvania Avenue, N. W., Washington, D. C.

Francis J. Heppner
(Notary Public)

My commission expires: August 31, 1979

Page 5 of 5 pages.

59

EXHIBIT C

September 5, 1975

Mr. Eliot Marshall
Associate Editor
The New Republic
1244 Nineteenth Street, NW.
Washington, DC 20036

Dear Mr. Marshall:

This is in response to your inquiries about certain transcripts of executive sessions of the President's Commission on the Assassination of President Kennedy.

No transcript for the executive session of September 13, 1964, has been found among the records of the Commission. The transcript of the executive session of June 23, 1964, is withheld from research under 5 U.S.C. 552 (b) (1) as amended, "matters that are...specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order." In response to a previous request for access, the transcript was reviewed by the Central Intelligence Agency because it relates to Yuri Nosenko, the Soviet defector. In response to our request for a review of the transcript the CIA asked that the request for access be denied "in order to protect sources and methods and other information related to our operational equities." The CIA further stated that the transcript warranted classification at the "Confidential" level under the criteria of Executive Order 11652 and exemption from the General Declassification Schedule pursuant to Sec. 5 (B) (2) and (3) of the Order. A copy of the relevant page of the Order is enclosed for your convenience.

The transcript of the executive session of May 19, 1964 (vol. 45), about which you also inquired, is withheld from research under 5 U.S.C. 552 (b) (6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

2

The transcript is limited to a discussion of the background of Commission personnel.

Sincerely,

(MISS) JANE F. SMITH
Director
Civil Archives Division
CC: Official file - NNFL
Reading file - NNF

MJohnson/pp
NNFL76-108

61

Wing



THE NEW REPUBLIC



September 3, 1975

Mr. Miriam Johnson
The National Archives
Washington, D.C.

RECEIVED IN NY	9/3/75
DATE	9/10
NUMBER	76-108
BY	Johnson

Dear Mr. Johnson,

I wish to make a formal request to see the Ward and Paul typescript record of the executive session of the Warren Commission held on September 18, 1964. I understand that summarized minutes of this session are available to the public, but I would like to see the original record. If you cannot satisfy this request, I would appreciate getting an explanation in writing for your decision to withhold the document.

I also request to see a copy of Volume 55 of the Commission transcript.

Possibly you could also give some help with the transcript of an executive session held on January 22, 1964. Frankly, this document is puzzling to me. I have read a typed transcription of this session and seen it verified as an authentic Archives document, but it isn't listed in the official inventory of Archives documents published by the US Government. Indeed, this session of the proceedings seems to have dropped entirely out of view. This raises a couple of questions I hope you can help answer. I would like to know why the January 22 session wasn't listed in the index to proceedings, and I'd like to know what is the source, and who typed the record that now appears in the files. Secondly, it occurs to me that if one executive session could fall between the cracks, it's possible that others have. Could you give me a list, by date, of all executive or emergency sessions that have not yet been published, aside from those I've already learned about. At present, I know of transcripts for sessions held on December 5, 6, and 16, 1963; January 21, 22 and 27, 1964; February 24; March 16; April 30; May 19; June 4 and 23; and September 18. If there are no other unpublished transcripts of commission meetings, I would appreciate having a statement from you to that effect. Thanks for taking time to help me with these questions.

Sincerely,
Eliot Marshall
Eliot Marshall
Associate Editor

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the plaintiff in the above-entitled action. I live at Route 12, Frederick, Maryland.

2. For the past twelve years I have devoted myself to an intensive study of political assassinations. I am author of six published books on the investigation into President Kennedy's assassination: Whitewash: The Report on the Warren Report; Whitewash II: The FBI-Secret Service Coverup; Photographic Whitewash: Suppressed Kennedy Assassination Pictures; Whitewash IV: Top Secret JFK Transcript; Oswald in New Orleans: Case for Conspiracy with the CIA; and Post-Mortem: JFK Cover-up Smashed!

3. I am also author of one book on the assassination of Dr. Martin Luther King, Jr.: Frame-Up: The James Earl Ray/Martin King Case.

4. In the 1930's I was an investigator for and editor of the record of a subcommittee of the Senate Labor Committee. After Pearl Harbor I served in the OSS, where my primary responsibilities were as an intelligence analyst. I have also worked with the FBI and several divisions of the Department of Justice in connection with my work for the Senate Education and Labor Committee or through my writing.

5. As an intelligence analyst for the OSS and Senate editor and investigator, I am familiar with the handling of the transcripts of official proceedings. I have handled such transcripts myself and had them printed. I have served as a Department of Justice expert on such transcripts and testified on them in court.

6. I am familiar with government classification procedures. During my government service I was supplied with an assortment of stamps for stamping classifications on documents, but I was never given any meaningful standards or guidelines to use in determining which classification label to apply. There was no review of any classifications I affixed to documents.

7. Having spent thousands of hours examining the records of the Warren Commission, I am familiar with the Commission's work, including its record-keeping and filing systems.

8. I was the plaintiff in *Weisberg v. United States General Services Administration*, Civil Action No. 2052-73, United States District Court for the District of Columbia, a suit which I brought to force disclosure of the January 27, 1964, Warren Commission executive session transcript. I read all papers filed in connection with that lawsuit, including the affidavit and answers to interrogatories sworn to by Dr. James B. Rhoads, the Archivist of the United States. Similarly, I have read all papers filed in connection with my present suit for disclosure of the Warren Commis-

sion executive session transcripts of January 21, May 19, and June 23, 1964, including the affidavit and answers to interrogatories sworn to by Dr. James B. Rhoads.

9. In the affidavit which he submitted in opposition to my suit for disclosure of the January 27 transcript, Dr. Rhoads swore that: "In accordance with Executive Order, at all times since . . . the transcript of the January 27, 1964, executive session of the Warren Commission . . . has been in the custody of the National Archives . . . , it has been and continues to be classified 'Top Secret.'" In answer to my second interrogatory in that suit, Dr. Rhoads swore that the January 27 transcript "was originally classified under the provisions of Executive Order 10501" and "is presently classified under the provisions of Executive Order 11652."

10. The inference to be drawn from Dr. Rhoads' sworn statements is that the January 27 transcript was originally and lawfully classified Top Secret pursuant to Executive Order 10501. In a counteraffidavit I stated: "This is false." I stated that the January 27 transcript had originally been classified Top Secret by an employee of Ward & Paul, the privately-employed court reporter for the Warren Commission. I charged that Dr. Rhoads' affidavit and answers to interrogatories had been deliberately framed so as to deceive the court on this point. Although Dr. Rhoads swore that his answers to interrogatories were based upon his own personal knowledge, he later testified before a congressional committee that he had just "assumed" that the January 27 transcript had been classified under the authority of Executive Order 10501. [See Plaintiff's Exhibit I, p. 71]

11. In his answer to interrogatory No. 1 in the present suit, Dr. Rhoads concedes that Warren Commission executive session transcripts were marked Top Secret by Ward & Paul. As I will show, this practice had nothing whatsoever to do with national security considerations.

4

12. Before the Warren Commission hired the commercial reporting services of Ward & Paul, a private firm, the Department of Justice itself provided these services. The Department of Justice did not classify these transcripts. Nor did the National Archives classify them thereafter. Attached hereto as Exhibit J are the first two pages of the first Warren Commission executive session, held in the National Archives on December 5, 1963. The December 5, 1963, session was reported and transcribed by Oakie Dyer of the office of the United States Attorney for the District of Columbia. Although the December 5 executive session discussed some questions of utmost sensitivity, no classification stamp was ever affixed to the transcript, either at the time it was transcribed or later.

13. Attached hereto as Exhibit K is a Ward & Paul worksheet itemizing the work which the firm did for the Warren Commission. The upper right-hand corner of this worksheet bears the designation "File No. PC-2", which is one of the Warren Commission's "house-keeping files". This worksheet was prepared by Ward & Paul. As the face of Exhibit K shows, Ward & Paul stamped even its house-keeping records Top Secret.

14. This worksheet also shows that all entries on it are classified Top Secret. Thus, each transcript of all executive sessions on and after January 21, 1964, was classified Top Secret by Ward & Paul. As the entries on this and other worksheets reflect, this includes the executives session transcripts for January 21, May 19, and June 23, 1964, which I now seek, as well as the January 27, 1964, transcript which I sought in Civil Action 2052-73.

15. Further evidence that the Warren Commission's executive session transcripts were classified Top Secret by Ward & Paul as a matter of routine and without regard to content is shown by Ward & Paul receipts No. 3001, No. 3013, and No. 3313, attached hereto as

Exhibit L. For example, receipt No. 3013 reflects that the January 27, 1964, transcript was delivered to the Secretary to the General Counsel for the Warren Commission, who signed for it at 9:10 a.m. on January 28, prior to a reading of it by any member or employee of the Commission and after it had been classified Top Secret by Ward and Paul. Receipts No. 3001 and 3313 reflect that the same is true of the transcripts of the January 21 and May 19, 1964, executive sessions.

16. The Warren Commission disregarded the Top Secret labels which Ward & Paul routinely affixed to all the transcripts listed on this worksheet. In fact, nearly all of the Top Secret transcripts recorded on this worksheet were published by the Warren Commission itself.

17. The Ward & Paul practice of routinely classifying all transcripts Top Secret was not followed by Department of Justice employees who prepared and handled these transcripts. Attached hereto as Exhibit M is a letter of April 20, 1964, from Louis LaCour, then United States Attorney for the Eastern District of Louisiana, to Ward & Paul. Although the transcripts of the testimony of five of the witnesses deposed in New Orleans were forwarded with this letter, the letter bears no classification stamp. One of the transcripts which the United States Attorney forwarded to Ward & Paul contained the testimony of Julian Evans, who had been an elderly neighbor of the Oswalds when Lee Harvey Oswald was a boy. When this previously unclassified transcript of Mr. Evans' recollections of Oswald as a young kid reached Washington, Ward & Paul promptly classified it Top Secret, as shown by Exhibit N. But Exhibits O and P, the Preface and Table of Contents to Volume VIII of the Warren Commission Hearings, show that the Commission ignored Ward & Paul's Top Secret label and published Julian Evans' testimony anyway.

18. The Ward & Paul practice of classifying all transcripts Top Secret had nothing to do with national defense or foreign policy. In fact, at a later date Ward & Paul downgraded its classification of non-executive session transcripts from Top Secret to Confidential. The result of this downgrading was internal chaos: without the Top Secret stamp the Ward & Paul bureaucracy was unable to keep track of the various copies of the transcripts it prepared.

19. In support of its motion for summary judgment the defendant has submitted the April 8, 1974, affidavit of Mr. J. Lee Rankin. [See Exhibit A to Government Exhibit 1] This affidavit was originally filed in opposition to my previous suit for the January 27 transcript. In his affidavit Mr. Rankin states: "Shortly after I had assumed the duties of General Counsel of the Commission, I was instructed by the Commission that among my duties was the responsibility to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be security classified under existing Executive Order. The Commission's authority to classify its records and its decision to delegate that responsibility to me existed pursuant to Executive Order 10501."

20. Read together with the correspondence attached to it, Mr. Rankin's affidavit implies that before Ward & Paul was chosen as the Commission's reporter, the Commission instructed Rankin to direct Ward & Paul to classify all work done by it for the Commission.

21. I am familiar with the transcripts of all Warren Commission executive sessions except the two which are withheld in toto and the excised portions of those transcripts which are withheld in part. I have also carefully examined the files of the Warren Commission relating to the Commission's executive sessions.

I know of no document in the Commission's files directing Mr. Rankin to classify the executive session transcripts pursuant to Executive Order 10501. In response to a request for the production of any such instruction, the defendant has stated: "The National Archives has not found any instruction from the Warren Commission to its General Counsel, Mr. J. Lee Rankin, ordering him to classify the January 21 or June 23, 1964, or any other Warren Commission executive session transcript."

22. Under date of July 20, 1971, I asked Dr. James B. Rhoads, the Archivist of the United States, for a copy of any Executive Order which he regarded as relevant to the withholding of the Warren Commission's executive session transcripts. Dr. Rhoads never provided me with a copy of any such Executive Order.

23. Mr. Rankin states that he began work as General Counsel for the Commission on December 8, 1963. No transcript of an executive session held before that date was ever classified. In fact, those executive session transcripts made by the Department of Justice both before and after that date were never classified, neither at the time by the Department of Justice, nor subsequently by the National Archives.

24. The first executive session reported by Ward & Paul was that of January 21, 1964. No transcript of an executive session held between December 8, 1963, and January 21, 1964, was ever classified. The first transcript of an executive session to be classified was that of January 21, 1964, the date on which Ward & Paul became the Commission's reporter.

25. I have read all of the executive session transcripts not still withheld. At no point is there a directive from the Commission to Mr. Rankin ordering him to classify the executive session transcripts pursuant to Executive Order 10501. Nor was there even

any discussion of classifying executive session transcripts pursuant to Executive Order 10501.

26. The only executive session at which the Commission could have ordered Mr. Rankin to classify its executive session transcripts is that of December 16, 1963. That transcript is unclassified and a casual reading of its beginning pages discloses that the Commission was not concerned with and did not address any of the concerns of Executive Order 10501. [See Exhibit Q]

27. In addition to the actual physical safety and integrity of its files, the Commission's specific and articulated concern throughout its existence was over news leaks.

28. Neither Executive Order 11130, which created the Commission, nor Senate Joint Resolution 137, which gave it the power to subpoena witnesses and compel the production of evidence, authorized the Commission to classify documents pursuant to Executive Order 10501. [See Exhibits R and S]

29. Although the testimony of all witnesses transcribed by Ward & Paul was routinely classified, the Commission's own procedures for the taking of testimony did not provide for this. The Commission's procedures, adopted at its executive session of March 16, 1964, were themselves classified Top Secret by Ward & Paul. Although the Commission's procedures were reprinted in the Warren Report, the National Archives did not declassify them until more than three years later. [The Commission's resolution adopting these procedures is attached hereto as Exhibit T]

30. Notwithstanding the fact that Ward & Paul classified all witness testimony, Commission Rule "I-C" permitted witnesses to purchase transcripts of their testimony. [See Exhibit T] When discussing this provision at its January 21, 1964, executive session,

Mr. Rankin pointed out that copies of witness transcripts might be sold to the press. Representative Hale Boggs stated: "A witness has the right to look at his own testimony. If the press wants to buy it, they can buy. [See Exhibit U] Mr. Rankin personally authorized the sale of classified witness transcripts. Attached hereto as Exhibit V are Ward & Paul invoices reflecting the sale of classified transcripts to Mrs. Marina Oswald and news reporter Ike Pappas.

31. After the Warren Commission went out of existence with the filing of its Report on September 27, 1964, the National Archives attempted to throw a 75-year cloak of secrecy over the Commission's records. An eloquent letter of protest from the Mayor of Cedar Rapids, Iowa to the President [Exhibit W] served as the instrument by which the Executive Branch initiated action intended to override the Archives' suppression of Warren Commission documents. The White House directed the Attorney General to make a study with a view towards changing the policy announced by the General Services Administration. [See White House "Memorandum for Acting Attorney General Katzenbach", attached as Exhibit E to Plaintiff's request for production of documents]

32. As Directed by the White House, the Department of Justice solicited the views of Chief Justice Earl Warren on the public availability of the Commission's records. The Attorney General's Memorandum of April 13, 1965, states: "The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission has concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies of the Government. According to the Chief Justice, the Commission assumed that these

determinations would be made in light of the 'overriding consideration of the fullest possible disclosure.' Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies." [Emphasis added. The Attorney General's Memorandum is attached hereto as Exhibit X. Chief Justice Earl Warren's April 5, 1965, letter is attached hereto as Exhibit Y.]

33. The Attorney General's April 13 Memorandum outlined certain procedures to be followed in making Warren Commission records publicly available. The White House approved these guidelines and procedures on April 19, 1965, and directed the Department of Justice and the National Archives to implement them. [See Exhibit Z] In 1968 the National Archives wrote a student of the Warren Commission: "We are not aware of any documents from the office of President Johnson on which the withholding of Warren Commission documents from research is based, except the memorandum of Mr. McGeorge Bundy of April 19, 1965, approving the procedures proposed by the Attorney General for making records of the Commission available for research."

34. In his April 8, 1974, affidavit, Mr. Rankin also states:

As agreed to by the Commission, I ordered that the transcripts of certain of the Commission executive sessions, including that of January 27, 1964, be classified 'Top Secret,' and I communicated the fact of said classification to Ward & Paul, transcribers of the executive sessions (see attached copies of correspondence between Ward & Paul and me)."

As I have pointed out above, there is no record of any such agreement by the Commission and the defendant has produced none. All evidence is directly to the contrary. In addition, rather than "certain" of the executive session transcripts being classified, the fact is that all executive session transcripts made by Ward &

Paul were classified Top Secret. This is shown by the Ward & Paul worksheets. [See Exhibit K] These worksheets also show that all executive session transcripts were classified Top Secret by Ward & Paul as a matter of routine and utterly without regard to content.

35. In support of its motion for summary judgment, the defendant has submitted a May 1, 1964, letter from Mr. Rankin to Ward & Paul as evidence purporting to show that Mr. Rankin instructed Ward & Paul to classify executive session transcripts Top Secret. This letter was filed by the defendant in connection with my suit for the January 27 transcript, even though it postdates the date on which the January 27 transcript was classified by more than three months. It also postdates by more than three months the date on which the January 21 transcript I seek in this suit was classified Top Secret.

36. Mr. Rankin's affidavit and his May 1, 1964, letter to Ward & Paul leave the impression that in that letter he reissued a previous order to Ward & Paul to classify all executive session transcripts for reasons relating to national security. This impression is totally misleading. Mr. Rankin's letter relates to the executive session of the previous day, April 30, 1964, which had discussed the printing of the Commission's Report. The printing of the testimony of witnesses who had appeared before the Commission did not present a threat to the national defense but, for internal bureaucratic reasons, it was necessary to downgrade the witness testimony. As Mr. Rankin explained in making the motion to down grade: "I think at this time we ought to take action on declassifying our transcript so the printers can handle it, from Top Secret to Confidential." [Emphasis added. See Exhibit AA]

37. Dr. Rhoads and Mr. Rankin are both familiar with the provisions of Executive Order 10501. Dr. Rhoads has testified be-

fore Congress as Chairman of the Interagency Classification Review Committee. From 1953 to 1956 Mr. Rankin was an Assistant Attorney General in charge of the Justice Department's Office of Legal Counsel where he reportedly held "the key assignment of advising the President on the preparation of proclamations and executive orders." [See Exhibit BB] Executive Order 10501 was issued by President Eisenhower on November 4, 1953.

38. In addition to being familiar with the requirements of Executive Order 10501, Dr. Rhoads and Mr. Rankin also knew the contents of the January 27, 1964, executive session transcript at the time I brought suit for it. Mr. Rankin had participated at that executive session and Dr. Rhoads reviewed the transcript of it in 1967. Yet the sworn statements of both men have sought to give the impression that the January 27 transcript was properly classified pursuant to Executive Order 10501. Both men have to have known this was false. The January 27 transcript is now publicly available and its content is totally devoid of any material which is, or could have been, classifiable on grounds of national security. That transcript did contain matter embarrassing to the CIA and the FBI, but it did not reveal any information which jeopardized the national security.

39. Although Mr. Rankin's affidavit asserts that the January 27 transcript was classified on national security grounds, Mr. Rankin states exactly the opposite in his March 11, 1964, letter to Senator Jacob Javits:

"At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration." [Exhibit CC]

In view of this statement it is obvious that the January 21 transcript was classified for other than national security reasons.

40. In his March 29, 1976, affidavit, a copy of which is attached to the defendant's opposition to my motion to compel answers to interrogatories, Dr. Rhoads argues that the November 23, 1964, letter from President Lyndon Johnson to Commission Chairman Earl Warren is evidence of the Commission's authority to classify documents. However, is nothing more than post facto authority for the Warren Commission to disregard the procedures normally followed in declassifying documents. It does not authorize or imply the power to classify documents. It does imply that the Warren Commission had no authority to classify or declassify documents before that date, which is long after the dates of the executive session transcripts which I seek.

41. The Warren Report was delivered to the President of the United States on September 24, 1964. Page proofs were made available to the press on September 24th. Printing of the Report began the night before it was delivered to the President and copies were made available for commercial distribution on September 27, 1964. As the November 7, 1964, letter from J. Lee Rankin to Acting Attorney General Nicholas Katzenbach shows, the exhibit volumes had already been printed and bound as of the date of that letter, some two weeks before the President authorized the declassification of the classified materials appearing in them.

42. All transcripts of Warren Commission executive sessions held on or after January 21, 1964, were classified Top Secret. I have read all such transcripts not still withheld. There was never any basis for classifying any of the now declassified executive sessions transcripts.

43. After first declining to identify the subject of the June 23, 1964, executive session on grounds of national security, Dr. Rhoads has now admitted that Yuri Nosenko is the subject of the

transcript and that the National Archives had so informed The New Republic before refusing to answer my interrogatory seeking to establish that fact.

44. I have read the November 5, 1975, affidavit of Mr. Charles A. Briggs, Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency. On the basis of my experience as intelligence analyst for the OSS and as a scholar who has spent twelve years studying the assassination of President Kennedy, I do not believe Mr. Briggs' assertion that disclosure of pages 63-73 of the January 21, 1964, executive session transcript would "not only compromise currently active intelligence sources and methods, but could additionally result in a perceived offense by the foreign nation involved with consequent damage to United States relations with that country." Nor do I believe his assertion that disclosure of the June 23rd transcript "would destroy the current and future usefulness of an extremely important foreign intelligence source and would compromise ongoing foreign intelligence analysis and collection programs.

45. In this connection I note that more than twelve years have passed since the assassination of President Kennedy. On this basis alone it is unlikely that disclosure would jeopardize any present or future intelligence source. More importantly, any intelligence source or method described in these transcripts is almost certainly known to the foreign nation which was the subject of it.

46. The June 23rd transcript relates to a Soviet defector, Mr. Yuri Nosenko. Only one of the FBI reports on Mr. Nosenko was ever classified. It has now been declassified and a reading of it shows that there never was any basis for classifying it.

47. Those documents relating to Nosenko which have been made public reveal that the CIA does have a motive for suppressing re-

ports on Nosenko. The reason for this is that Nosenko, a former KGB official stationed in Moscow, told government authorities that the KGB never trusted or had any interest in Lee Harvey Oswald, suspected that he was a "sleeper agent" of U.S. intelligence, and kept him and his mail under surveillance. What this means is that the KGB suspected that Oswald was a CIA agent. This, of course, provides motive for the CIA to withhold this transcript.

44. FBI Director J. Edgar Hoover, on the other hand, did not believe that Nosenko's information should be suppressed. In fact, he believed so strongly that Nosenko should be a Warren Commission witness that he made arrangements for Nosenko to testify without asking the Commission if it wanted him to be a witness. The Commission, however, did not take testimony from Nosenko, nor did it mention Nosenko or his information in its Report.

Harold Weisberg

Washington, D.C.
~~FREDERICK COUNTY, MARYLAND~~

Before me this 5th day of May, 1976, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 31, 1979

Justith A. Vestell
NOTARY PUBLIC IN AND FOR
~~FREDERICK COUNTY, MARYLAND~~
Washington, D.C.

EXHIBIT DD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,
v.
UNITED STATES GENERAL
SERVICES ADMINISTRATION,
Defendant.

Civil Action No. 2052-73

FILED
MAY - 5 1974

MEMORANDUM AND ORDER

JAMES F. DAVEY, CLERK

Plaintiff invokes the Freedom of Information Act, 5 U.S.C. § 552, in an effort to gain access to a transcript of the Warren Commission's January 27, 1964, executive session, presently in the custody of the National Archives. The defendant General Services Administration, which operates the Archives, has moved for summary judgment on the ground that the transcript at issue is shielded by the Act's first, fifth and seventh exemptions. 5 U.S.C. § 552(b)(1, 5, 7). The issues have been thoroughly briefed by all parties and are ripe for adjudication.

Initially, the Court probed defendant's claim that the transcript had been classified "Top Secret" under Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), since such classification would bar further judicial inquiry and justify total confidentiality. 5 U.S.C. § 552(b)(1); E.P.A. v. Mink, 410 U.S. 73 (1973). However, defendant's papers and affidavits, supplemented at the Court's request, still fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), as amended by Executive Order 10901, 3 C.F.R. 432 (Comp. 1959-63).

Defendant's reliance on the seventh exemption, on the other hand, appears to be fully justified by the record. The Warren Commission was an investigatory body assigned to look

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

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

It is therefore

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

Garland A. Hayes
UNITED STATES DISTRICT JUDGE

May 3, 1974.

EXHIBIT EE

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

Vol. 4
Copy 6 of 9

~~CONFIDENTIAL~~

Authority: CIA Reg. 1 May 1975

DECLASSIFIED from automatic declassification per E.O. 11652, Sec. 5(b)(2)

Classified by: A. Briggs, CIA Date: 1 May 1975

Declassify on: *DATE*

PRESIDENT'S COMMISSION

ON THE

ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D. C.

Tuesday, January 21, 1964

PAGES 1 - 126

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

~~CONFIDENTIAL~~

Authority: CIA Reg. 1 May 1975

DECLASSIFIED from automatic declassification per E.O. 11652, Sec. 5(b)(2)

Classified by: A. Briggs, CIA Date: 1 May 1975

Declassify on: *DATE*

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EXHIBIT FF

Vol. 55
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by *Maria M. Jones* HARS
9/29/75

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

*Exempt from automatic
downgrading
per E.O. 11652, sec.
5(e)(2), under E.O.
11652, sec. 5(b)(2)
and (3) by Charles
A. Briggs, Acting
Director, Dept. of
Justice
downgrading
incomplete
11/14/75*

Report of Proceedings

Held at

Washington, D. C.

Tuesday, June 23, 1964

PAGES 7640 - 7651

Regraded
per CIA Ltr. 1173y 1975
by *Maria M. Jones* HARS
9/29/75

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WASHINGTON, D. C. 20001

EXHIBIT GG

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, D.C. 20408.

June 21, 1971



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

Dear Mr. Weisberg:

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

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

Transcripts

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

Parts of Transcripts

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

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

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

Sincerely,

HERBERT E. ANGEL
Acting Archivist
of the United States

8/9/75

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
Plaintiff,)
)
v.)
)
GENERAL SERVICES ADMINISTRATION,)
)
Defendant.)

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

ANSWERS TO INTERROGATORIES

JAMES E. O'NEILL, Acting Archivist of the United States, having been first duly sworn, under oath, deposes and says that it is upon his personal knowledge and belief that he gives the following information in answer to interrogatories propounded by plaintiff:

11. List the names of all persons who have been given copies of or who have had access to the June 23, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed.

Answer: The following persons are known to have examined or have been requested to examine a copy or copies of the transcript of June 23, 1964:

- Marion M. Johnson, National Archives, 1965-1976;
- James B. Rhoads, National Archives, 1967;
- Robert H. Bahner, National Archives, 1967;
- James M. Lealy, National Archives, 1974-1976;
- James E. O'Neill, National Archives, 1975;
- Steven Garfinkel, Office of General Counsel, GSA, 1972 and September 18, 1975;
- Arthur Dooley, CIA, July 30, 1972;
- Charles P. Dexter, CIA, July 30, 1974 and March 21, 1975; and
- Charles A. Briggs, CIA, April 15, 1975.

The following persons, retired or deceased employees of the National Archives, are not known to have examined the transcript of June 23, 1964, but in the course of their archival work on Warren Commission materials would have been in a position to have had access to it:

Deponent's initials JEOH

John P. [unclear], 1964-1974;
Ray Shurtieff, 1964-1965;
Toussaint Prince, 1965; and
R. L. Jacoby, 1965.

The following persons, present employees of the National Archives, are not known to have examined the transcript of June 23, 1964, but in the course of their archival work on Warren Commission materials would have been in a position to have had access to it:

Marilla Gupta, 1975-1976;
Donald S. Post, 1975-1976; and
William Grover, 1975-1976.

12. List the names of all persons who have been give (sic) copies of or who have had access to the January 21, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed;
- c. Whether the copy or access given to each person listed included pages 63-73 of this transcript.

Answer: See answer to No. 11, above. In all instances pages 63-73 of the transcript were included.

I have read the answers above, and they are true and complete to the best of my knowledge and belief.

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

Subscribed and sworn to before me at Eighth and Pennsylvania Avenue, N.W., on this ninth day of June, 1976.

Francis J. Heppner
(Notary Public)

My Commission expires: Aug. 31, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 4
U.S. Courthouse
Washington, D.C.
Tuesday, May 25, 1976

The above-entitled matter came on for Hearing on Pending Motions in open court at 10:02 o'clock a.m., before THE HONORABLE AUBREY E. ROBINSON, JR., United States District Judge.

APPEARANCES:

JAMES HIRAM LESAR, ESQ.,
appearing on behalf of plaintiff.

MICHAEL J. RYAN, ESQ.,
appearing on behalf of defendant.

EUGENE T. FEDORATION
OFFICIAL COURT REPORTER
6822 UNITED STATES COURT HOUSE
WASHINGTON, D. C. 20001

1 available to plaintiff, namely, interrogatories and document
2 requests, should be sufficient for his purpose. We do not
3 believe that this should be made into an open-ended discovery
4 proceeding, which it has been nearly to this point.

5 THE COURT: Let me have the plaintiff state his
6 position.

7 MR. RYAN: Fine, Your Honor.

8 MR. LESAR: Jim Lesar for Mr. Weisberg.

9 Your Honor, I will address first the defendant's
10 motion for summary judgment which we contend is inappropriate
11 at the present time for the reason that discovery has not
12 been completed and that there are genuine issues of material
13 fact in dispute.

14 In addition, the government has not met its burden
15 with respect to any of the claimed exemptions. Some of the
16 discovery already obtained, I think, indicates that the claimed
17 exemptions are in fact rather ludicrous. The basic contention
18 is that these transcripts are classified "Top Secret."

19 Now, the fact of the matter is that all of these
20 transcripts, which originated in 1964 when the Warren Commis-
21 sion was meeting and holding its executive session, transcripts
22 were stamped "Top Secret" by Ward and Paul, the court reporter
23 for the Warren Commission. This was done totally without
24 regard to the content of the documents and as a matter of
25 routine.

1 Most of the transcripts have subsequently been made
2 public. Those, and all of those that have been made public,
3 show that there was no basis whatsoever for their classifica-
4 tion for reasons of national security.

5 The defendants are now trying after the fact, long
6 after the fact, to classify these documents under Executive
7 Order 11652. They have submitted an affidavit by Mr. Charles
8 Briggs of the Central Intelligence Agency. That affidavit
9 fails to recite that he has any experience in this field or
10 that he has authority to classify documents, and under the
11 terms of Executive Order 11652, that authority is required to
12 be stated in writing.

13 The language that he uses does not comply with the
14 terms of Executive Order 11652. It has very novel reference
15 to such things as -- he states that the disclosure of the ten
16 withheld pages of the January 21st transcript could, could, I
17 emphasize, result in a perceived offense to the foreign nation
18 involved. He has not specified what foreign nation is involved.
19 He refers to sensitive diplomatic techniques, which is a phrase
20 that we are unfamiliar with, which has no certain meaning, and
21 this is --

22 I will digress here for a second to say that we have
23 asked specifically to be able to take Mr. Briggs' deposition
24 by tape recording. I think it is very essential because since
25 the CIA is not a party to this action, the interrogatories that

1 we have addressed so far have only gone to the defendant, and
2 we need to get Mr. Briggs under oath where we can cross-
3 examine him about some of the statements that are contained in
4 his affidavit.

5 With respect to the June 23rd transcript, he states,
6 for example, that this would reveal a confidential source or
7 method. Mr. Weisberg denies that this is even possible.

8 And the answers to the interrogatories that the
9 defendant National Archives has given us show that they
10 originally, when we asked, "Is Mr. Nosenko," who is a Soviet
11 defector, "the source or subject of that transcript?" they
12 refused to answer that interrogatory and invoked Exemption 1
13 for doing it, and stated they could not answer that inter-
14 rogatory because it would reveal the information they were
15 trying to keep secret.

16 We pointed out that they had in fact in correspon-
17 dence with The New Republic Magazine identified Mr. Nosenko as
18 the subject of that transcript, and then they came back and
19 answered the interrogatory and admitted that he was in fact
20 the subject of that transcript.

21 Now, if that is what Mr. Briggs is trying to protect,
22 there is no point in it at all because it is already known.

23 Excuse me. I need a drink of water.

24 I think that the Court can probably get some indica-
25 tion of the suspect nature of the claims that these transcripts

1 are properly classified by the fact that the answers to
2 interrogatories establish that, and the materials produced in
3 response to our request for production of documents demon-
4 strate that with respect to the January 21st transcript, seven
5 of the ten copies which are known to exist are missing. The
6 Archives do not have them, and the Archives do not seem the
7 least bit concerned about it.

8 With respect to the June 23rd transcript, three of
9 the copies that are known to exist are missing. And again
10 there is no indication that they are in the least bit worried
11 about it.

12 But if this material really contained information
13 classified in the interest of national defense, I submit that,
14 one, they would never be lost in the first place and, secondly,
15 there would be a great deal of concern about their whereabouts
16 at the present time.

17 The answers to interrogatories further indicate that
18 the entire question of the classification of these documents
19 is being done not by virtue of the contents of the documents
20 but solely in an effort to defeat Mr. Weisberg's request for
21 them.

22 Their classification under Executive Order 11652
23 does not occur in 1972 when they were first sent to the CIA
24 with an inquiry as to whether or not they should be classified
25 under 11652. They are classified a long time after Mr. Weisberg

1 request for them. And then not all copies are classified but
2 only the file copies.

3 And when we asked in interrogatories, well, when were
4 the extra copies that the Archives has of these documents
5 classified under 11652, they come back and they state that the
6 non-file copies were stamped "Confidential" immediately upon
7 receipt of these interrogatories, all of which indicates that
8 the proper procedures are not being followed and that these
9 documents are not classified at all under the proper criterion
10 of Executive Order 11652.

11 The government has also invoked certain other
12 exemptions. They have invoked Exemption (b)(3) which exempts
13 from disclosure materials which are specifically exempted by
14 statute.

15 The government's motion for summary judgment refers
16 to a provision in 50 U.S. Code 403(d). That provision, first
17 of all, does not apply to the type of information sought here.
18 But more importantly, the motion for summary judgment cites in
19 support of this claim, paragraphs two and four of the Briggs
20 affidavit. Yet paragraphs two and four of the Briggs affidavit
21 do not refer to that statute at all. They refer instead to an
22 entirely different provision of Executive Order 11652.

23 So, then they have also invoked Exemptions 5 and 6.
24 I have outlined in the opposition some of the reasons why we
25 think that those are not justifiably invoked here.

1 around on it, and I don't intend to conduct this litigation in
2 that fashion.

3 What we are going to do is to get a record that I
4 think is sufficient upon which the Court can base its judgment.
5 And if you disagree, then you can take it to the appellate
6 court.

7 But I don't think that this record as it is now
8 constructed will sustain my hearing the motion for summary
9 judgment. I don't intend to decide the motion for summary
10 judgment because I don't think the plaintiff has had full
11 opportunity to probe, for example, this classification question.
12 It's a weird set of circumstances that have been disclosed in
13 the record to date.

14 Who had the authority to classify?

15 MR. RYAN: Your Honor, we --

16 THE COURT: And I don't think that your affidavits
17 in that regard nor your statutory authority is clear.

18 MR. RYAN: We contend that on the face of the record
19 -- and, Your Honor, we would submit that this could not be
20 improved upon in a deposition. The Warren Commission was not
21 given specific original authority to classify documents. But
22 the President, President Johnson, and the members of the
23 Commission acted as though it did have the authority to classify
24 documents. And there was a letter from the President of the
25 United States, Mr. Johnson at that time, to the Chairman of

1 the Commission informing him that the declassification schedule
2 set forth in Executive Order 11652 did not apply to documents
3 generated by the Warren Commission; that is, they did not have
4 to undergo declassification review at the regularly scheduled
5 intervals set forth in the executive order.

6 So, there was a clear assumption by the members of
7 the Warren Commission and the President of the United States
8 that there was that authority.

9 In subsequent administrations, the provisions of the
10 Executive Order requiring that original authority be specifi-
11 cally given to an agency -- that provision was complied with.

12 But our review has not disclosed any document -- we
13 admit that in our answers to interrogatories and in our affi-
14 davits -- that that specific authority was not given to the
15 Warren Commission.

16 So that it becomes a matter of judicial interpreta-
17 tion, we would submit, Your Honor, whether or not for purposes
18 of this proceeding those documents were properly classified
19 pursuant to the Executive Order. We feel that the matter is
20 ripe on that particular question for the Court's thumbs up or
21 thumbs down, whether the documents were properly classified.

22 As I said, they are classified "Confidential" at this
23 time. They have been downgraded. It may be that the docu-
24 ments will be declassified completely within the near future.
25 I don't know what the schedule is on another classification

1 review. I know that the last one was conducted at the time of
2 the amendment of the Freedom of Information Act a year ago.

3 I might also add, Your Honor, that plaintiff has
4 noted in his motion to tape record deposition that he wishes
5 to depose nine individuals. At least he has proposed a list
6 of nine individuals whom he may wish to depose.

7 We would submit that that is an extraordinarily high
8 number of persons to be involved in discovery of the limited
9 issues which are involved in this proceeding, namely: whether
10 two documents were properly classified and whether a third
11 document relates to matters which would involve personal
12 privacy of individuals.

13 On that ground, Your Honor, we have opposed his
14 motion and suggested that he can clearly obtain the information
15 he seeks through the answers to interrogatories. We have
16 answered two sets of interrogatories and two document requests.
17 We will have answered two document requests by the beginning
18 of June, plus the affidavits which we have supplied in an
19 attachment to our motion for summary judgment and in our
20 motion in opposition to compel interrogatories.

21 THE COURT: Well, what is the objection that you
22 have to answering Interrogatory No. 5? I fail to see why the
23 specific information in that interrogatory, which deals with
24 classification, was not provided. Who classified? When?
25 Under what authority?

1 It certainly is not irrelevant. And you contend
2 that it has something to do with the violation of the attorney/
3 client privilege. But I don't see that at all. I think he is
4 entitled to an answer to that interrogatory.

5 MR. RYAN: Your Honor, if that is the judgment of
6 the Court, I will convey that to the agency and request that
7 they answer the interrogatory --

8 THE COURT: Well, that's going to be an order.

9 MR. RYAN: -- as expeditiously as possible.

10 THE COURT: It won't be a request. It will be an
11 order.

12 MR. RYAN: Fine, Your Honor.

13 THE COURT: Because that's the only way that Congress
14 fashioned this in terms of litigation, for there to be court
15 decisions, and the agency has no alternative except to take it
16 to a higher court.

17 It's not a matter that once we get a Freedom of
18 Information Act case that we sit and try to persuade the
19 agency to do something. There's no persuasion here at all.
20 It's the interpretation of the statute.

21 And with respect to the question of tape recording
22 depositions, Mr. Lesar, I don't understand why you can't get
23 the information that I think you are entitled to with a properly
24 fashioned set of interrogatories.

25 MR. LESAR: Well --

94

1 THE COURT: I don't see why you have to drag eight,
2 nine, ten people in for depositions, whether taken by tape
3 recording -- I understand that tape recording is much less
4 expensive than court reporters, and we are not trying to impose
5 additional expense.

6 But focusing on this area of our concern, about the
7 propriety of the classification, getting sufficient details
8 of that classification to see whether or not there was any
9 statute or any properly extant executive order under which
10 the classification could have been done, I think we can get
11 that data, get that information by interrogatories.

12 Then if the government has to get it from eight or
13 nine people, they can make telephone calls and whatnot, and it
14 will be under oath.

15 MR. LESAR: Well, Your Honor, the government has
16 previously taken the position in other Freedom of Information
17 cases that I have handled for Mr. Weisberg that I cannot
18 address interrogatories to persons other than the defendant,
19 and the Central Intelligence Agency is not a defendant in this
20 case.

21 In addition to that --

22 THE COURT: Well, they can take that position if
23 they want. But if the defendant has the ability to get the
24 information that is responsive to the interrogatories and that
25 information is in someone who is not a named party, I take the

1 position that the government still has the obligation to
2 answer the interrogatory. Otherwise we would have to name
3 every employee of the government in every one of these cases,
4 not just Freedom of Information Act cases.

5 MR. LESAR: Well, Your Honor --

6 THE COURT: Now, don't interrupt me, Mr. Lesar. When
7 you are winning, you keep your mouth shut.

8 No, it makes no sense at all. We know that the
9 CIA is not a named defendant here. There's no need to name
10 them. You are not seeking that kind of publicity to name them
11 as a defendant.

12 I don't think we will have any problem. Mr. Ryan is
13 not going to have any difficulty, if the interrogatories are
14 properly framed, from whatever source within the government
15 that he needs to get the information to properly answer the
16 interrogatory, that answer will be put forward.

17 MR. LESAR: I suppose I have one difficulty in that
18 I have encountered problems before where the information is
19 not obtained on personal knowledge of the person who is swear-
20 ing to the interrogatory. Now, if they are going to have Mr.
21 Briggs swear out answers to interrogatories, I certainly would
22 agree to that.

23 If they are going to have Dr. Rhoads say that Mr.
24 Briggs told me thus and such, that puts us in a very difficult
25 position.

1 THE COURT: Let me suggest, Mr. Lesar, that Mr.
2 Ryan has enough work to do not to play games in this case.

3 MR. LESAR: I hope so.

4 THE COURT: All the government lawyers. And I don't
5 have any time to play games, nor do you representing Mr.
6 Weisberg.

7 We have a piece of litigation here that we should
8 get ready for final disposition. We anticipate that there
9 will only be questions of law.

10 Now, if there are more than that, then these eight,
11 nine, ten people are going to be sitting in the anteroom out
12 there waiting to testify in this court.

13 The government has its choice. This litigation will
14 not go away. It will not evaporate. And I don't think that
15 we are going to have any difficulty in this court.

16 Now, I don't know what your experience has been in
17 any other court, but I intend to get the record developed in
18 this case and dispose of it as expeditiously and as fairly as
19 we can to both your client and the government.

20 MR. LESAR: Fine. Then we will prepare --

21 THE COURT: So, you get your interrogatories ready,
22 and I don't think Mr. Ryan will have any difficulty in putting
23 that information in proper form so we can make our determina-
24 tions. And if we can't get it that way, as I indicated, then
25 we will issue subpoenas and --

11-12 76

11/12/76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISEBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

ANSWERS TO INTERROGATORIES

JAMES B. RHOADS, Archivist of the United States, having been first duly sworn, under oath, deposes and says that it is upon his personal knowledge and belief that he gives the following information in answer to interrogatories propounded by plaintiff:

64. Did the CIA review the classification of the January 27, 1964, Warren Commission executive session transcript prior to December 1972?

Answer: Defendant objects to this interrogatory. The transcript which is the subject of the interrogatory is not at issue in the present litigation and was made available to plaintiff in toto over 2 1/2 years ago. Therefore, the interrogatory is irrelevant, and is not the proper subject of the jurisdictional requisites of section 552 of title 5, United States Code, upon which plaintiff relies for jurisdiction.

65. If the answer to the preceding interrogatory is yes, state:

- a. the date(s) on which any such review was initiated;
- b. by whom the review was initiated;
- c. the date(s) on which any such review was concluded;
- d. the name(s) and position(s) of the person(s) making the review;
- e. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive orders 10501 or 11652 at the time of the review. (Please attach copies of any such authorization.)

- f. the name(s) of anyone consulted in making such review and his title or position;
- g. the result of any such review;
- h. the provisions of Executive orders 10501 or 11652 relied upon in classifying the January 27 transcript Top Secret;
- i. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability; and
- j. whether the person making the review took into account the fact that Congressman Gerald Ford had published large parts of this Top Secret transcript in his book Portrait of the Assassin.

Answer: See answer to No. 64, above.

66. Did the CIA review the classification of the January 27, 1964, Warren Commission executive session transcript on or about December 1972?

Answer: See answer to No. 64, above.

67. If the answer to the preceding interrogatory is yes, state:
- a. the date on which this review was concluded;
 - b. the name and position of the person making the review;
 - c. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive order 11652. (Please attach a copy of any such authorization.)
 - d. the name(s) of anyone consulted in making such review and his title or position;
 - e. the result of this review;
 - f. the provision(s) of Executive order 11652 relied upon in classifying the January 27 transcript Top Secret;
 - g. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability; and
 - h. whether the person making the review took into account the fact that Congressman Gerald Ford published large parts of this Top Secret transcript in his book Portrait of the Assassin.

Page 2 of 28 pages.

Deponent's initials GR

Answer: See answer to No. 64, above.

68. Attached hereto are pages 139-149 of the January 27, 1964, Warren Commission executive session transcript. Please have Mr. Charles A. Briggs, Chief of the Services Staff for the Directorate of Operations of the Central Intelligence Agency, list or mark:

- a. any of these pages or parts thereof which could have been validly classified under any provision of Executive order 10501, citing any provision relied upon for each classifiable segment;
- b. any of these pages or parts thereof which could have been validly classified under any provision of Executive order 11652, citing any provision relied upon for each classifiable segment.

Answer: In addition to the objections raised in its answer to No. 64, above, defendant further objects to this interrogatory on the basis that neither Mr. Charles A. Briggs nor the Central Intelligence Agency is a party in the present litigation. Under Rule 33 of the Federal Rules of Civil Procedure plaintiff may not require a non-party to respond to its interrogatories.

69. On April 15, 1974, Mr. John S. Warner, General Counsel of the CIA, responded to the March 27, 1974 request of the National Archives that the CIA review the January 27 transcript by assuring Dr. James B. Rhoads, the Archivist, that the CIA had no objection to releasing this transcript to the public. Please state:

- a. the name, title, and position of the person who reviewed the January 27 transcript for the CIA as a result of the Archives' March 27, 1974 request;
- b. the qualifications of the reviewer and whether he was authorized to classify documents Top Secret under Executive order 11652. (Please attach a copy of any such authorization.)
- c. whether the person making the review applied the "Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy" in determining the transcript's releasability;
- d. whether the person making the review took into account the fact that Congressman Gerald Ford had published large parts of this Top Secret transcript in his book Portrait of the Assassin;
- e. the last date prior to March 27, 1974, on which the CIA had recommended or advised that the Top Secret classification of the January 27 transcript be continued; and

f. what occurred between the date stated in answer to the preceding interrogatory, No. 69e, and April 15, 1974, which caused the status of the January 27 transcript to plummet from Top Secret to unclassified?

Answer: See answer to No. 68, above.

70. Attached hereto is a copy of the October 1, 1974, letter from Mr. John D. Morrison, Jr., Acting General Counsel for the CIA, which informed Mr. Marion Johnson of the National Archives that the CIA wished to continue the Top Secret classification of the June 23 executive session transcript and pages 63-73 of the January 21 transcript.

- a. who made the determination to continue the classification of the June 23 transcript and pages 63-73 of the January 21 transcript?
- b. what position and title did he hold at the time?
- c. was he authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

Answer: Defendant transmitted copies of the June 23, 1964 transcript and pages 63-73 of the January 21, 1964 transcript for a classification review in accordance with Executive Order 11652. Defendant can only assume that an agency like the CIA will handle classified documents and review them in accordance with established legal procedures. Defendant has no authority nor mechanism for monitoring the handling of classified documents within the CIA. Therefore, defendant assumes the individuals who reviewed the subject transcripts and requested their continued classification had the authority to do so. Defendant has no further knowledge responsive to this interrogatory. See answer to No. 68, above.

71. Page two of Mr. Morrison's October 1, 1974, letter contains two handwritten notes in the margins next to statements that the CIA wished to continue the Top Secret classification of the June 23 transcript and pages 63-73 of the January 21 transcript. The note in the left-hand margin, dated "1/23/75" and initialed by Mr. Marion Johnson, states: "The CIA told me that classification of these documents is to be continued under Executive Order 11652, Section 5(B)(2)."

a. who at the CIA told Mr. Johnson that the classification of these transcripts was to be continued?

b. was this person authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

c. if the person who told Mr. Johnson that the classification of these transcripts was to be continued did not himself make that determination, who did?

d. was the person who did make the determination authorized to classify documents Top Secret under Executive order 11652? When, and by what authority? (Please attach copies of any such authorization.)

e. did the person who made the determination to continue the classification of these transcripts have access to them when he made that determination? Did he review the transcripts?

f. did the person who made the determination to continue the Top Secret classification of these transcripts compare their content with what was publicly known?

g. which of the three copies of the January 21 transcript maintained by the National Archives was reviewed by the person who made the determination to continue the Top Secret classification of the January 21 transcript?

h. was the CIA ever provided a copy of "copy 3 of 9" of the January 21 transcript? If so, when?

i. was the person who made the 1/23/75 determination to "continue" the Top Secret classification of the January 21 transcript aware that Mr. Marion Johnson had cancelled the Top Secret classification of this transcript on February 21, 1968?

Answer:

a. On January 23, 1975, Mr. Marion Johnson of the National Archives telephoned Mr. Charles P. Dexter of the CIA to ask that Dexter provide the specific exemption category of Executive Order 11652 to be cited as the reason for exempting from declassification the June 23 transcript and pages 63-73 of the January 21 transcript. Mr. Dexter responded with the information that the proper exemption category was Sec. 5(B)(2). Mr. Johnson noted this information

in the left hand margin of the October 1, 1974, letter from Mr. Morrison of the CIA. A new review did not take place at this time. The determination to continue classification was made in 1974. Mr. Johnson was attempting to correct the CIA's oversight of not citing the appropriate exemption category justifying continued classification in their letter to the Archives dated October 1, 1974.

b. through f. See answer to No. 70, above.

g. Pages 63-73 of the transcript marked "copy 3 of 9."

h. The National Archives provided copies of pages 63-73 of the "copy 3 of 9" of the January 21 transcript to the CIA for the review which took place in 1974. The CIA was not provided with a copy of the entire January 21 transcript since only pages 63-73 remained classified. The CIA's instruction to "continue" the Top Secret classification of the January 21 transcript applied only to the 10 classified pages of that transcript that the CIA had reviewed for purposes of declassification.

i. The National Archives is unaware whether or not the CIA knew that the remainder of the January 21 transcript had been declassified in 1968. The copy of the transcript that was marked declassified did not contain pages 63-73.

72. The June 23 transcript and pages 63-73 of the January 21 transcript were purportedly downgraded to Confidential as the result of a letter from Mr. Robert S. Young of the CIA dated May 1, 1975. What happened between January 23, 1975, and May 1, 1975, eleven years after the Warren Commission ceased to exist, which caused the classification of these transcripts to plummet from Top Secret to Confidential?

Answer: The CIA did not review the June 23 transcript and pages 63-73 of the January 21 transcript on January 23, 1975. As we have stated in our answer to No. 71, above, Mr. Marion Johnson sought clarification by telephone from the CIA concerning the proper exemption category of Executive Order 11652 which was used by the CIA in its determination made in 1974, that the classification of the transcripts should be continued.

Another review of the transcripts was conducted by the CIA sometime between March 19 and May 1, 1975. In May 1975 the National Archives was informed by Mr. Robert S. Young of the CIA that it had determined that the June 23 transcript

and pages 63-73 of the January 21 transcript could be downgraded to Confidential. The defendant has no knowledge of the reason the CIA authorized downgrading of the transcripts. See answer to No. 70, above.

73. The note in the right hand margin of Mr. Morrison's October 1, 1974, letter is dated "3/19/75". It reads: "Mr. Charles P. Dexter of CIA again stated these are to be withheld. Asked for Lesar letter and transcripts for review."

- a. what was Mr. Dexter's title and position as of March 19, 1975?
- b. is Mr. Dexter authorized to classify documents Top Secret under Executive order 11652? As of when, and by what authority? (Please attach copies of any such authorization.)
- c. did Mr. Dexter himself make the determination stated in the note dated "3/19/75"? If he did not, who did?
- d. was the person who made the determination stated in the note dated "3/19/75" authorized to classify documents Top Secret under Executive order 11652 as of the date of that note? By what authority? (Please attach copies of any such authorization.)
- e. did the person who made the determination to continue the Top Secret classification of these transcripts have access to them when he made that determination? Did he review the transcripts?
- f. did the person who made the determination to continue the Top Secret classification of these transcripts compare their content with what was already publicly available?
- g. which of the three copies of the January 21 transcript maintained by the National Archives was reviewed by the person who made the determination to continue the Top Secret classification of the January 21 transcript?
- h. was the person who made the 3/19/75 determination to "continue" the Top Secret classification of the January 21 transcript aware that Mr. Marion Johnson had cancelled the Top Secret classification of this transcript on February 21, 1968?

Answer: Defendant objects to this interrogatory on the grounds cited in our answers to Nos. 70 and 68, above.

74. What happened between March 19, 1975, and May 1, 1975, eleven years after the Warren Commission had ceased to exist, which caused the purported classifications of the June 23 transcript and pages 63-73 of the January 21 transcript to plummet from Top Secret to Confidential?

Answer: Defendant has no knowledge of the reason the CIA authorized downgrading of the transcripts. See answer to No. 70, above.

75. Is Mr. Charles A. Briggs authorized to classify documents Top Secret under Executive order 11652? As of when, and by what authority? (Please attach a copy of any authorization for Mr. Briggs to classify documents under Executive orders 10501 and 11652.)

Answer: Defendant objects to this interrogatory on the grounds cited in our answers to Nos. 70 and 68, above.

76. Attached hereto is a copy of a June 21, 1971, letter from Acting Archivist Herbert E. Angel to Mr. Harold Weisberg which states that the Warren Commission executive session transcripts for January 27, May 19, and June 23, 1964, and pages 63-73 of the transcript for January 21, 1964, were being withheld from research under Exemption (b)(1) of the Freedom of Information Act.

Please state:

- a. all dates prior to June 21, 1971, on which the CIA reviewed, or was asked to review, the classification of the January 27 and May 19 transcripts;
- b. the person making each such review of the security classification of the January 27 and May 19 transcripts;
- c. whether the person making each such review of the January 27 and May 19 transcripts was authorized to classify documents under Executive order 10501. (Please attach copies of any such authorization.)

Answer: Defendant objects to the portion of this interrogatory pertinent to the transcript of January 27, 1964, on the grounds stated in our answer to No. 64, above.

The defendant has never sought review of the May 19, 1964 transcript by the CIA.

77. In the opinion of Mr. Charles A. Briggs, could the January 27 and May 19 transcripts have been validly classified Top Secret under any provision of

Executive order 10501 as of June 21, 1971? If the answer to this is yes,

- a. list each page or part thereof of each transcript which could have been validly classified under Executive order 10501; and
- b. cite the provision of that order under which it could have been properly classified.

Answer: Defendant objects. See answers to Nos. 76, 70 and 68, above.

78. Section 5(B) of Executive order 11652 provides:

An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed; and, unless impossible, a date or even for automatic declassification.

- a. who originated the classified information or material contained in the June 23 transcript and pages 63-73 of the January 21 transcript?
- b. did this person "specify in writing on the material the exemption category being claimed"? And if so, on what date? (Please attach a copy of any such specification or other relevant records.)
- c. why is it impossible to specify a date or event for the automatic declassification of the June 23 transcript and pages 63-73 of the January 21 transcript?

Answer:

The June 23 transcript and pages 63-73 of the January 21 transcript were created by the Warren Commission in 1964. Executive order 10501 which was in effect at the time these transcripts were created did not require that the classifying official "specify in writing on the material the exemption category being claimed." This provision, which is included in Sec. 5(B) of Executive order 11652, did not become effective until June 1, 1972. Sec. 5(D) of Executive order 11652 further states that "all other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order 10501, as amended, shall be excluded from the General Declassification Schedule." Subsequent reviews of these transcripts have been conducted pursuant to Sec. 11 of Executive Order 11652 which states:

The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultation with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

The National Archives does not usually send original records to other Federal agencies for declassification review. Copies of the records are provided for review purposes. Declassification or regrading markings are placed on the original records by the archivist in charge after authorization has been received from the reviewing agency.

Specification of a date or event for the automatic declassification of the June 23 transcript and pages 63-73 of the January 21 transcript is the responsibility of the reviewing agency, i.e., the CIA. The National Archives is unable to provide the reason that the CIA has been unable to specify such a date or event for automatic declassification. See answer to No. 70, above.

79. Is Mr. Marion Johnson of the National Archives authorized to classify documents Top Secret under Executive orders 10501 or 11652? As of when, and by what authority? (Please attach copies of any such authorization.)

Answer: Mr. Marion Johnson of the National Archives is not authorized to classify information or material at any level under Executive Order 11652, nor was he authorized to do so under Executive Order 10501.

80. The May 1, 1975, letter from Mr. Robert S. Young of the CIA to Dr. Rhoads in response to Mr. Marion Johnson's March 21, 1975, request for a review of the June 23 and January 21 transcripts states: "I regret the delay in responding, which was due in part to missing pages."

- a. what pages of the transcripts were missing?
- b. how were these pages transmitted?
- c. were they lost during or after transmission?
- d. what else besides missing pages occasioned the delay in responding?
- e. if the CIA received the transcripts on March 21, 1975, why did Mr. Briggs not see them until April 15, 1975?
- f. were the Top Secret "missing pages" ever located? If so, when?

g. what steps did the CIA take to locate the missing pages?

h. when was the National Archives first notified of the missing pages?

Answer: The National Archives does not have a record of which pages were not enclosed in the package which was sent to the CIA containing the copies of the June 23 transcript and pages 63-73 of the January 21 transcript. The package was transmitted by authorized CIA courier. Since the package arrived at the CIA still sealed there was never any suspicion of tampering or loss of pages. It was concluded that there had been an error in copying at the National Archives and that the missing pages had never been included in the package sent to the CIA. A representative of the CIA telephoned Mr. Marion Johnson at the National Archives to inform him that some of the pages had not been sent shortly after the CIA received the package. Mr. Johnson transmitted to the CIA copies of the pages which had not been sent in the previous shipment.

With respect to paragraphs (d) and (e) of this interrogatory, defendant has no knowledge about what other reason there may have been for the delay in responding to the review request. We have no knowledge about when Mr. Briggs first saw the transcripts. See answer to No. 70, above.

81. Apparently six copies of the January 21 transcript and three of the June 23 transcript are missing.

a. does this constitute a breach of national security? If not, why not?

b. what efforts has the CIA made to locate the missing copies of these transcripts?

c. if the CIA has made no effort to locate the missing copies, why not?

d. what efforts has the National Archives made to locate the missing copies of these transcripts?

e. if the National Archives had made no effort to locate the missing copies, why not?

f. in view of the fact that several copies of each of these transcripts is missing, can the CIA state for certain that no person not authorized to have access to classified information has seen them?

Answer: All of the copies of the June 23 transcript and the January 21 transcript which were transmitted to the National Archives as part of the records of the Warren Commission are accounted for. The fact that there may have originally been several other copies of the same transcripts does not

necessarily mean that they are "missing." Multiple copies of documents are often destroyed as non-record copies once there is no longer a need for the original number of copies. The fact that there are not nine copies of both transcripts located among the records of the Warren Commission does not necessarily mean that a breach of national security has occurred. The CIA has never had knowledge of the number of copies of the June 23 transcript and the January 21 transcript which are located among the records of the Warren Commission. Since the National Archives has had no reason to believe that copies of these transcripts have been alienated from the Warren Commission records, no "search" for missing copies has ever been initiated.

With respect to these portions of this interrogatory pertinent to the activities of the CIA, the defendant objects on the grounds stated in our answers to Nos. 70 and 68, above.

82. The National Archives received Mr. Robert S. Young's letter of May 1, 1975 on May 5. Why did Mr. Marion Johnson wait until September 25, 1975, to regrade the June 23 transcript Confidential? Does this comply with the requirements of Executive order 11652?

Answer: Mr. Robert S. Young's letter authorized regrading of the June 23 transcript. The transcript was, therefore, officially classified Confidential when Mr. Young's letter was transmitted to the National Archives. Physical marking of the transcript is an administrative action which can take place at any time after authorization for the regrading has been received, given the fact that no one was misinformed in the interim of the level of classification.

83. What is the date on which Mr. Weisberg first requested the Warren Commission executive session transcripts of January 21, January 22, January 27, May 19, and June 23, 1964?

Answer: Mr. Weisberg first requested access to the January 21, 1964, transcript (pages 63-73) on August 29, 1968. He requested access to the June 23, 1964, transcript on September 5, 1968. Mr. Weisberg first requested access to the May 19, 1964, transcript on May 20, 1971. Defendant objects to information sought concerning the transcripts of January 22 and January 27 on the grounds stated in our answer to No. 64, above.

84. Were any of the five transcripts listed in the preceding interrogatory validly classified under either the procedural or substantive criteria of Executive order 10501 at the time Mr. Weisberg first requested each transcript?

Answer: As expressed in my affidavit of March 29, 1976, previously introduced by defendant, the authority of the Warren Commission to classify documents originally is clouded by an apparent oversight of the Johnson Administration. At the time the transcripts at issue were classified "Top Secret," security classifications were governed by Executive order 10501, as amended (3 CFR 1949-1953 Comp., p. 979, November 5, 1953). While the original order contained no provision listing the agencies having classification authority, a subsequent amendment to Executive Order 10501 listed these agencies and further stated that future additions or modifications must be specifically spelled out by Executive order (Executive order 10901, 3 CFR 1959-1963 Comp., p. 432, January 9, 1961). While this provision was complied with for the remainder of the Eisenhower Administration and the Kennedy Administration, a search of materials within the National Archives of the United States and the Lyndon Johnson Library has uncovered no evidence that it was ever complied with during the Johnson Administration, or that the President or his aides were familiar with this provision. As a result, there was never a specific authorization from President Johnson to the Warren Commission by means of an Executive order granting it the authority to security classify documents originally.

Nevertheless, there is significant documentary evidence that the President, his top aides and the Warren Commission itself assumed that the Commission had the authority to classify materials. Just before the report of the Commission was to be distributed, it was realized that many of the exhibits to the report still retained national security markings, although those particular documents had been declassified by the Commission or the originating agency. These markings on declassified documents and the lack of markings denoting their declassification were not in accord with Section 5(1) of Executive Order 10501. Commission General Counsel J. Lee Rankin called this matter to the attention of Acting Attorney General Nicholas de B. Katzenbach by letter of November 7, 1964. On November 23, 1964, Mr. Katzenbach wrote White House Special Assistant McGeorge Bundy, and recommended that the President write Chief Justice Warren and waive the Commission from the requirements of Section 5(1). The President did so on that same day, and that letter was published in the Federal Register on November 28, 1964 (29 F.R.

15893). Defendant has previously introduced copies of these documents as exhibits to my affidavit of March 29, 1976.

President Johnson's waiver of the requirement of Section 5(1) of Executive order 10501 would make no sense at all if the President did not assume that the Commission had the authority to classify documents in the first place. Because of the President's assumption, and because the overlooked requirements of the amendment to Executive Order 10501 existed by Presidential fiat, the National Archives maintains that the Commission, in classifying documents as a derivative of the President's powers under Article II of the Constitution, was acting in accordance with the President's wishes. When this fact is taken into account with the purpose and functions of the Commission, which required its continuous examination of highly sensitive classified information, the National Archives is satisfied that the Commission acted in all propriety in security classifying some of the materials which it created.

Names of individuals placing classification markings on documents were not required by Executive Order 10501. Therefore, the transcripts at issue give no indication of the individual who applied the classification markings. However, from documents previously introduced by defendant (e.g., affidavit of J. Lee Rankin), it is evident that Commission General Counsel Rankin ordered their classification.

The National Archives accepts the view that the transcripts at issue were validly classified in their entirety. Subsequent review by the agency of primary subject-matter interest has confirmed this opinion.

25. The attached June 21, 1971, letter from Acting Archivist Herbert E. Angel to Mr. Harold Weisberg states that the June 23 transcript and pages 63-73 of the January 21 transcript are withheld under Exemptions (b)(1) and (b)(7) and that the May 19 transcript is withheld under Exemptions (b)(1) and (b)(6). Why were these transcripts not withheld under Exemption (b)(5)?

Answer: The exemptions cited in Mr. Angel's letter were the primary exemptions justifying non-disclosure of the transcripts and were thus judged to be more than sufficient. Exemption (b)(5) is applicable and could have been cited. Exemption (b)(3) could also have been cited, with respect to the June 23 transcript and pages 63-73 of the January 21 transcript.

///

86. Were any Warren Commission executive session transcripts reviewed as part of the 1965 Warren Commission documents?

a. If the answer is yes, list all transcripts of Warren Commission executive sessions which were reviewed as part of the 1965 review and identify the person who reviewed each and state his title and position as of that time;

b. If the answer is no, why not?

Answer: In 1965, the review of Warren Commission documents was primarily limited to numbered Commission documents and did not include the executive session transcripts. The Justice Department Guidelines for review of Warren Commission records specifically stated that the guidelines pertained to records provided to the Commission by other agencies, i.e., numbered Commission documents.

87. The December 22, 1972, letter from Mr. Lawrence Houston, General Counsel for the CIA, to Dr. James B. Rhoads requests that the National Archives continue withholding the January 27, 1964, Warren Commission executive session transcript and other documents reviewed by it in order "to protect sources and methods." Does the January 27 transcript reveal any "sources and methods" of the CIA? (Please attach any pages of the January 27 transcript which do reveal "sources and methods" and state what source or method is disclosed.)

Answer: Defendant objects on the grounds stated in our answer to No. 64, above.

88. The Senate Select Committee on Intelligence Activities has issued a report entitled: "The Investigation of the Assassination of President Kennedy: Performance of the Intelligence Agencies." This report is commonly known as the Schweiker Report. Has Senator Schweiker or any member of the Senate Select Committee or its staff been given access to the June 23 transcript or pages 63-73 of the January 21 transcript?

Answer: Neither Senator Schweiker nor any member of the Senate Select Committee on Intelligence Activities nor its staff has sought access to the June 23 transcript or to pages 63-73 of the January 21 transcript.

89. Where are the original copies of the January 21 and June 23 transcripts?

Answer: The original typescripts of the January 21 and June 23 transcripts were not transmitted to the National Archives as part of the records of the Warren Commission. Defendant has no knowledge about the original typescripts.

90. Has the CIA, the National Archives, or anyone else made additional xerox copies of the seven copies of the June 23 transcript which the National Archives originally received from the Warren Commission? Of the withheld pages of the three copies of the January 21 transcript originally received from the Warren Commission?

Answer: Electrostatic copies of the June 23 transcript and pages 63-73 of the January 21 transcript have been reproduced by the National Archives to be used for review purposes in response to Freedom of Information Act requests or regularly scheduled classification reviews. The National Archives has no knowledge as to whether additional copies were reproduced by the CIA. See our answer to No. 70, above.

91. Have the January 21, May 19, or June 23 transcripts ever been referred to the Department of Justice for review? On what date?

Answer: The transcripts of January 21, May 19, and June 23 have not been referred to the Department of Justice for review.

92. Plaintiff's interrogatory No. 15 asked: "Is Yuri Ivanovich Nosenko the subject of the June 23, 1964, executive session transcript"? Defendant's opposition to plaintiff's motion to compel answers to interrogatories stated:

ANSWER: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant maintains is security classified and which the defendant seeks to protect on this and other bases in the instant action.

a. did this interrogatory in fact seek the disclosure of information which was security classified?

b. who informed the Assistant United States Attorney representing the government in this suit that this information was security classified?

c. did anyone at the CIA inform any officer or employee of the defendant that the information sought by this interrogatory was security classified?

(Please attach a copy of any record pertaining to this.)

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant. In my affidavit of March 29, 1976, previously introduced by defendant, defendant admitted that Yuri Ivanovich Nosenko is the subject of the June 23 transcript and that this information is not classified.

93. The March 29, 1976, affidavit of Dr. Rhoads states that after having consulted with counsel, he refused to answer interrogatories 11, 12, 15, 16, and 17.

a. which counsel advised Dr. Rhoads to refuse to answer interrogatory No. 15?

b. who informed the counsel identified above that the identity of Nosenko was security classified information?

Answer: Defendant objects to this interrogatory on the grounds cited in our answer to No. 92, above. Defendant further objects on the grounds that the information sought involves privileged attorney-client communications.

94. Exemption 5 is designed to protect the confidentiality of advice on policy matters.

a. what policies were discussed in the June 23 transcript and pages 63-73 of the January 21 transcript?

b. did the Warren Commission advise anyone with respect to any such policies?

Answer: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant seeks to protect pursuant to exemption (b)(5) and other exemptions of the Freedom of Information Act in the instant action.

95. Pages 63-73 of the January 21 transcript are also being withheld on the authority of Exemption 5. Why are the other pages of this transcript not also withheld under Exemption 5?

Answer: Pages 63-73 of the January 21 transcript include information which has been determined must remain confidential under exemption (b)(5) as well as other exemptions. It has also been determined restriction of the remainder of the transcript is not appropriate. It has, therefore, been made publicly available in order that as much information as possible be released to the public.

96. Are Mr. Norman Redlich and Mr. Joseph Ball the subjects of the May 19 transcript?

Answer: Yes.

97. Plaintiff has recently obtained from the National Archives some 354 pages of Warren Commission records dealing with the campaign waged by certain right-wing political groups and congressmen against Warren Commission staff members Norman Redlich and Joseph Ball. Do these publicly available materials reflect in essence the subject of the May 19 transcript?

Answer: Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant seeks to protect pursuant to Exemptions (b)(5) and (6) of the Freedom of Information Act. Defendant states for the record, however, that the materials previously released to plaintiff do not encompass, reflect or restate the essence of the May 19 transcript. Otherwise, defendant would have released this transcript to plaintiff.

98. Why are the 354 pages of Warren Commission records referred to in the preceding interrogatory not withheld under the authority of Exemption 6?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

99. Please define what is meant by "our operational equities" as that term is used in Robert S. Young's letter of May 1, 1975.

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

100. Paragraph 9(b) of the October 6, 1975, affidavit of Dr. James B. Rhoads states: "in withholding access pursuant to this statute [50 U.S.C. 403(d)(3)], the Archivist of the United States or his delegates within the National Archives and Records Service act as agents for the Director of Central Intelligence or his delegates." Has the Director of the CIA or any of his delegates ever informed the Archivist or any of his delegates that the June 23 transcript and pages 63-73 of the January 21 transcript are withheld pursuant to 50 U.S.C. 403(d)(3)? If so, please attach any correspondence or other record reflecting this.

Answer: In discussions between counsel for the CIA and defendant pertinent to Freedom of Information requests for these transcripts, the CIA counsel has stated that the continuing security classification, as exempted from mandatory declassification under Executive Order 11652, necessarily invoked the provisions of 50 U.S.C. 403(d)(3). Presumably, upon the declassification of these transcripts at a future date, this statute would not be invoked to prevent public access. Defendant is aware of no written communications between CIA and defendant on this matter.

101. Did Mr. Briggs review the June 23 transcript or pages 63-73 of the January 21 transcript before he was notified that plaintiff had appealed the denial of his Freedom of Information request for them?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 68, above.

102. Why does Exemption 5 apply to the January 21, May 19, and June 23 transcripts but not to any other Warren Commission executive session transcripts? Why, for example does Exemption 5 not apply to the January 22 and January 27 transcripts which have been publicly released?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above.

103. Please list all persons at the CIA who have had access to the January 21, January 27, May 19, and June 23 transcripts, giving the title and position of each such person, whether he was authorized to have access to Top Secret documents, and the date(s) on which he had access.

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

104. Has any agent or employee of the CIA made any information from the June 23 transcript and pages 63-73 of the January 21 transcript available to any person who is not a CIA employee?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

105. If the answer to the preceding interrogatory is yes,

- a. to whom?
- b. by whom?
- c. by what authority?
- d. for what purpose?

Answer: See our answer to No. 105, above.

106. The Archives has stated that Mr. Charles P. Dexter of the CIA examined the June 23 transcript and pages 63-73 of the January 21 transcript on July 30, 1974, and again on March 21, 1975.

- a. did Mr. Dexter make a determination on either occasion that either of these transcripts was properly classified Top Secret?
- b. why didn't Mr. Dexter make the determinations that these transcripts are properly classified under Executive Order 11652 rather than have Mr. Briggs do it?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

107. Were the copies of the June 23 and January 21 transcripts Mr. Arthur Dooley of the CIA had on July 30, 1972, ever returned to the National Archives? If so, when?

Answer: Mr. Arthur Dooley had access to copies of the June 23 transcript and pages 63-73 of the January 21 transcript in November 1972 rather than July 1972. The July 1972 date was incorrectly stated in response to a previous interrogatory (No. 7) submitted in this complaint.

Copies of these transcripts were sent to the CIA on indefinite loan to facilitate future review requests. The copies have not been returned to the National Archives at this time.

108. If the copies of the transcripts which Mr. Dooley had on July 30, 1972, were not returned to the National Archives, where are they now, and who has them? Why weren't they returned?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

109. Defendant's answer to interrogatory No. 7 says that the CIA gave a copy of the June 23 transcript to the CIA only on November 11, 1972; July 30, 1974;

and March 21, 1975. How, then, did Mr. Dooley get access to a copy on July 30, 1972, and for what purpose?

Answer: As stated in the answer to interrogatory No. 107, the July 30, 1972 date which was previously cited is incorrect. The correct date is November 11, 1972. To defendant's knowledge, Mr. Dooley did not have access to the June 23 transcript until November 11, 1972.

110. Executive order 11652 states: "The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security." Which of the following criteria for determining "exceptionally grave damage to the national security was used as a basis for informing the Archives on January 23 and March 19, 1975, or on any earlier review, that the June 23 transcript and pages 63-73 of the January 21 transcript should remain classified Top Secret?

- a. armed hostilities against the United States or its allies?
- b. disruption of foreign relations vitally affecting the national security?
- c. the compromise of vital national defense plans for complex cryptologic and communications systems?
- d. the revelation of sensitive intelligence operations?
- e. the disclosure of scientific or technological developments vital to national security?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above. Defendant further objects on the grounds that the interrogatory is irrelevant inasmuch as the subject transcripts are no longer classified "Top Secret."

Plaintiff expressly addresses interrogatories Nos. 111 through 186 inclusive to Mr. Charles Briggs of the CIA. For the grounds expressed in our answer to No. 68, above, defendant objects to each of these interrogatories and reserves judgment on the existence of other grounds for objection that may be applicable to particular interrogatories.

187. When Dr. Rhoads reviewed the January 27 transcript in 1967, did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: Defendant objects on the grounds stated in our answer to No. 64, above.

188. When Dr. Rhoads reviewed the June 23 transcript in 1967 did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: I did not personally conduct a classification review of the June 23 transcript in 1967. I instructed Mr. Marion Johnson to conduct a further review of the transcript. The transcript was reviewed and withheld because the subject of the transcript was Yuri Nosenko. At that time, both the FBI and the CIA had requested the National Archives to withhold all records relating to Nosenko.

189. When Mr. Marion Johnson reviewed the January 21 transcript in 1967, did he consider that it contained any material which qualified for Top Secret classification under Executive order 10501?

Answer: Mr. Marion Johnson withheld from research pages 63-73 of the January 21 transcript because the FBI and the CIA had requested that all records reflecting the same subject matter be withheld for reasons of national security.

190. Did Mr. Briggs consult with anyone else in determining that the June 23 transcript and pages 63-73 of the January 21 transcript should be classified Confidential? Who?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

191. In determining that the June 23 and January 21 transcripts should be classified Confidential, did Mr. Briggs resolve all doubts in favor of declassification? Did he take into account the "overriding policy of the Executive Branch favoring the fullest possible disclosure"?

Answer: Defendant objects to this interrogatory on the grounds stated in our answers to Nos. 70 and 68, above.

192. Did Congressman Gerald Ford donate copies of classified Warren Commission executive session transcripts to the University of Michigan?

Answer: Congressman Gerald Ford deposited his Congressional papers which included classified executive session transcripts of the Warren Commission with the Bentley Historical Library, Michigan Historical Collections, University of Michigan. The National Archives now has indefinite custody of the subject transcripts which remain security classified.

193. If the answer to the preceding interrogatory is yes, were the copies of classified Warren Commission executive session transcripts disseminated to the University of Michigan in compliance with the provisions of Sections 7 and 8 of Executive order 10501?

Answer: Defendant has no knowledge of the manner in which copies of the Warren Commission executive session transcripts were transmitted by Congressman Ford to the Bentley Historical Library.

194. Does the January 21 transcript discuss whether Lee Harvey Oswald had worked for the CIA?

Answer: No.

195. Does the June 23 transcript discuss whether Lee Harvey Oswald worked for the CIA?

Answer: No.

196. When Mr. Weisberg sued for disclosure of the January 27, 1964, Warren Commission executive session, the National Archives invoked Exemptions 1, 5, and 7. After the District Court ruled that it was exempt under (b)(7), but not under (b)(1), the Archives suddenly "declassified" it and released it to the public. Why didn't the Archives continue to withhold it under Exemption 7?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above.

197. Does the Lyndon Baines Johnson Library or any other library under the National Archives contain classified Warren Commission documents?

- a. which ones?
- b. do these include executive session transcripts?
- c. which executive session transcripts?

Answer: Neither the Lyndon Baines Johnson Library nor any other Presidential Library under the control of the National Archives has in its custody any classified Warren Commission records.

198. If the answer to interrogatory 197(b) is yes, were the copies of these classified executive session transcripts disseminated in compliance with the provisions of Sections 7 and 8 of Executive order 10501?

Answer: Not applicable.

199. Has the National Archives ever discriminated against Mr. Weisberg in what was made available to him and denied to him as the result of his requests?

Answer: No.

200. At the time a few of the executive session transcripts were made available to David Wise, did Dr. Rhoads and Mr. Weisberg disagree on whether one of his requests covered some of these records?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

201. Did Mr. Weisberg thereafter engage in correspondence that constituted a request for every record relating in any way to the medical or autopsy evidence and what is relevant to them?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

202. Did the National Archives on any subsequent occasion make records of this description available to others without making them available to Mr. Weisberg?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

203. Did Mr. Weisberg request a copy of what is known as the GSA-Kennedy Family Letter Agreement?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

204. Did Dr. Rhoads refuse to give Mr. Weisberg a copy of the Kennedy Family Letter Agreement? If the answer to this is yes,

- a. when?
- b. why?
- c. are these conditions ever subject to change abruptly?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

205. After personally refusing to make the GSA-Kennedy Family Letter Agreement available to Mr. Weisberg, did Dr. Rhoads then personally solicit a request for it from another person who had not asked for a copy?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

206. Did Dr. Rhoads assure this other person that if he requested the Kennedy Family Letter Agreement under the Freedom of Information Act, the Archives would have no alternative but to give it to him?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

207. Did the National Archives then give the Kennedy Family Letter Agreement to this person on what amounted to an exclusive basis?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

208. How long after making the Kennedy Family Letter Agreement available to this other person did the National Archives wait before mailing a copy to Mr. Weisberg?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

209. Did Mr. Weisberg request what is known as the "Memorandum of Transfer"?

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

210. Did the National Archives refuse Mr. Weisberg's request or the "Memorandum of Transfer"?

- a. how long did this decision take?
- b. on what was this decision based?
- c. did Dr. Rhoads thereafter claim that he had no control over the copy in the National Archives?
- d. is it not a fact that the custodian of that record was a Presidential library that is under the direction and control of the National Archives?
- e. did the Secret Service thereafter make a copy available to Mr. Weisberg, electing to do so through the National Archives?
- f. did the National Archives intercept this copy and then refuse to give it to Mr. Weisberg?
- g. was the Secret Service the agency of "paramount interest"?
- h. when Mr. Weisberg later renewed his request for the Memorandum of Transfer under the Freedom of Information Act, was his request again denied?
- i. how much time elapsed from the time Mr. Weisberg first requested the Memorandum of Transfer until the time the National Archives provided him a copy?

123

Answer: Defendant objects to this interrogatory on the grounds stated in our answer to No. 64, above, as applied to other materials previously released to plaintiff.

211. Did Mr. Weisberg request that the National Archives provide him with copies of all records relating to the assassination of President John F. Kennedy as they were made available?

Answer: Mr. Weisberg has requested that the National Archives provide him with copies of every document or portion of a document which is made publicly available as a result of on-going reviews of the Warren Commission records.

212. Has the National Archives subsequently made records relating to the assassination of President Kennedy publicly available without notifying Mr. Weisberg?

Answer: The National Archives has attempted to comply with Mr. Weisberg's requests within the limits of our resources. However, we are unable to accept an open-ended, standing request for all documents or portions of documents relating to a given subject released over a period of years from one researcher and not provide this service to all researchers. It is impossible to provide this service for each of the thousands of researchers who come to the National Archives. We have tried to explain to Mr. Weisberg our policy of providing equal assistance and service to each researcher at the National Archives.

213. In his letter to Mr. Weisberg of July 31, 1975, Acting Assistant Archivist Albert H. Leisinger listed eleven records pertaining to Yuri Ivanovich Nosenko which were withheld, including the June 23, 1964, Warren Commission executive session transcript. Mr. Leisinger stated: "These records relating to Nosenko are denied to you under 5 U.S.C. 552(b)(5)." Why did Mr. Leisinger not claim that the June 23 transcript was denied to Mr. Weisberg under Exemption (b)(1)?

Answer: Mr. Leisinger inadvertently did not cite other exemptions pertinent to withholding the June 23 transcript.

I have read the answers above, and they are true and complete to the best of my knowledge and belief.

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

Subscribed and sworn to before me at Eighteenth and F Streets, N.W., Washington, D.C., on this 11th day of November 1976.

Francis J. Heppner
(Notary Public)

My commission expires: August 31, 1979

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

FILED

MAR 10 1977

ORDER

JAMES F. DAVEY, CLERK

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

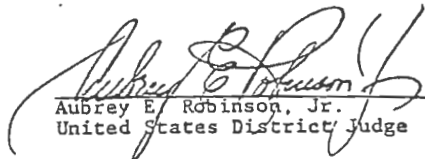
It further appearing to the Court as regards the January 21, 1964 and June 23, 1964 transcripts the Defendant is entitled to Summary Judgment on the basis of exemption 3 of the Freedom of Information Act

126

- 2 -

(5 U.S.C. §552(b)(3)).

It is therefore this 10th day of March, 1977,
ORDERED, that the Plaintiff's Motion for Summary
Judgment be and it is hereby DENIED; and it is
FURTHER ORDERED, that the Defendant's Motion
for Summary Judgment be and it is hereby GRANTED and
that the action be and it is hereby DISMISSED.


Aubrey E. Robinson, Jr.
United States District Judge

127

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF WILLIAM G. FLORENCE

I, William G. Florence, being first duly sworn, depose and say as follows:

1. I reside at 708 Sixth Street, S. W., Washington, D. C. I am self-employed as a security policy consultant.

2. My 43 years of military and civilian service began in 1928, when I enlisted in the United States Army as a private. I was on active Army, and later Air Force, duty in combat and non-combat assignment until 1950, when I was separated with the rank of Major, United States Air Force. Beginning in 1950--on the first working day after I left the military--I was employed by the Government as a civilian in the same position I had held in the military: Security Policy Officer. From 1945 until my retirement on May 31, 1971, I worked continuously in a number of Government positions directly involving the development and implementation of policies for safeguarding official information in the interests of the defense of the United States. Following my retirement from Government ser-

vice, and continuously to date, I have been engaged in studying the development and implementation of United States security classification policies.

3. Prior to September, 1951, Executive branch agencies developed their own policies for classifying and safeguarding information. On that date the various voluntary classification systems were superseded by the promulgation of a single Executive branch system set forth in Executive Order 10290. That Order was superseded by Executive Order 10501 in November, 1953, which was in turn superseded in March, 1972, by the current Executive Order 11652. Although the systems prescribed by the various Executive Orders vary in their details, there has been no basic change in the security classification system in at least the past 32 years.

4. From November, 1945 to May, 1960, I was assigned to Headquarters, U.S. Air Force, Washington, D. C. During that period I had several titles: first, Intelligence Staff Officer, Information Security Branch, Office of Assistant Chief of Staff, Intelligence; then, Chief, Information Security Branch; then, Assistant for Security Policy to the Deputy Inspector General. My functions and duties during that period included developing and publishing Air Force policies and procedures for evaluating, classifying, safeguarding, and declassifying defense related information, including information involving intelligence sources and methods. My duties involved representing the Air Force on Department of Defense committees and on interdepartmental committees of the Federal Government concerned with development of Executive branch policy for classifying information. On this basis, I worked with representatives of the Executive Office of the President in preparing the final draft of Executive Order 10290 for signature by the President.

5. My responsibilities during that period for interpreting and implementing security classification policy promulgated by Executive order are also reflected by the fact that I drafted DoD Directive 5200.9, September 27, 1958, Subject: "Declassification and Downgrading of Certain Information Originated Before January 1, 1946." That unprecedented Directive mandated the automatic declassification of certain information at least 12 years old. In 1958, the proposal that the Secretary of Defense should exercise command responsibility over information of his Department was such a marked departure from the prevailing secrecy philosophy that it was deemed necessary to obtain Presidential approval before the Directive was promulgated. I briefed the Assistant to the President on the meaning of the proposed declassification Directive and on the authority of the Secretary of Defense to accomplish the action under Executive Order 10501.

6. From May, 1960, to July, 1967, I served in security specialist positions with the Air Force Missile Test Center, Patrick Air Force Base, Florida, and with Headquarters Air Force Systems Command, Andrews Air Force Base, Maryland. My titles during that period included: Industrial Security Specialist, Headquarters Air Force Missile Test Center; and, Chief, Industrial Security Branch, Security Division, Headquarters Air Force Systems Command. My functions during that period involved working closely with military units and civilian contracting firms throughout the United States which were engaged in research, development, testing, and evaluating weapon systems and in other scientific and technical projects essential to the defense of this nation.

7. From August, 1967 until retirement from Government service on May 31, 1971, I served as Deputy Assistant for Security and Trade Affairs, Headquarters, U.S. Air Force, Washington, D. C. The

Assistant reported to both the Deputy Chief of Staff, Research and Development, and the Deputy Chief of Staff, Systems and Logistics. Under his supervision, I was responsible for the performance of functions involving all matters relating to technical program security policy.

8. During 1967-1971 my day-to-day functions included exercising responsibility for classifying and declassifying information relating to major Air Force developments. My efforts were devoted to: (a) assigning security classifications, endorsing the assignment of security classifications proposed by other officials, and precluding the assignment of security classification for information maintained under the jurisdiction of the Department of Defense, including weapon systems information, operations of weapon systems in Southeast Asia, international programs, and testimony of Air Force officials given to Congressional Committees; and (b) endorsing and cancelling security classifications previously assigned by other officials to information under the jurisdiction of the Deputy Chief of Staff, Research and Development, and the Deputy Chief of Staff, Systems and Logistics. Intelligence factors were considered on a continuing basis in performing these functions.

9. This work included making determinations that classifications had been assigned to information in violation of criteria stated in Executive Order 10501 and applicable implementing regulations. Most of the improper classifications which I reviewed were readily discernible to me as either a failure by the classifier to inform himself of basic classification principles and rules, or as an intentional misuse or violation of security classification rules for personal reasons of the classifier. I had occasion to review thousands of security classifications involving virtually every

facet of Air Force weapons-related activity. In my experience, excessive and improper original classification was rampant.

10. After retiring from Government in May, 1971, I began work as a self-employed consultant to government contractors, Congressional committees, and others who are concerned with matters involving Executive branch security classification policies and practices. My major accomplishments are:

a. From October, 1971 until May, 1973, I served as the consultant on government secrecy policies and practices to counsel for the defendants in the Ellsberg-Russo ("Pentagon Papers") case, and was accepted by the Court as an expert witness during the trial of that case.

b. In April and May, 1972, I served as consultant on government secrecy policies to defense counsel in the case of United States v. Victor L. Marchetti, U.S. District Court, Alexandria, Virginia (Civil Action No. 179-72-A). In that case the Central Intelligence Agency sought an injunction against publication of a book Marchetti had written. Under a court order, five different items of information that the C.I.A. wanted to protect were disclosed to me for review under the rules for classification set forth in Executive Order 10501.

c. From June through November, 1974, I made a survey of the practical application of the security classification system in Executive Order 11652 to contract procedures of industry and academic institutions. I visited research and development and manufacturing organizations with more than 1200 Secret and Top Secret Department of Defense contracts totalling more than \$550,000,000. I also made inquiries of numerous other companies working on approximately 1300 classified contracts worth more than \$600,000,000. A

132

report of this survey was published in the Congressional Record for December 20, 1974, p. E7304, in the form of a letter from me to Congressman William S. Moorhead, Chairman, Subcommittee on Government Operations, U.S. House of Representatives. Among the conclusions stated in my Report was the following: "Dissemination of technological knowledge that is need^{ed}/for national defense projects as well as civilian technological advancement is hampered by unnecessary security classifications."

d. From October 1, 1975, to May 31, 1976, I was employed by the U.S. House of Representatives Committee on Government Operations on a temporary basis as the staff expert on Executive branch security classification for the Subcommittee on Government Information and Individual Rights. In that capacity I studied and prepared reports on the security classification practices of Government agencies. I also helped draft legislation to eliminate security classification abuses. I had clearance for access to Top Secret information and access to classified information in the performance of my duties.

e. I served as an expert consultant to the defense in United States v. Sahag K. Dedeyan, both prior to and during the trial of that case, which was held July 19-29, 1976, in the United States District Court in Baltimore, Maryland. This case involved questions as to whether a document bearing a classification marking was properly classified pursuant to Executive Order 11652.

f. From September 14 to October 31, 1976, I served as an expert consultant to the Commission on Federal Paperwork regarding the security classification policies and practices of the Executive branch.

11. During my service in the Department of Defense and since retirement, the most serious security classification problems I have observed have stemmed from officials wanting to assign or retain a classification marking on a document or item of material

even though the purpose of its creation or the requirements for its use did not permit adherence to prescribed secrecy rules. In such cases the rules of security classification have simply been relaxed or disregarded to accommodate assignment of a classification or retention of an assigned classification marking. A few examples will serve to illustrate the innumerable instances of improper and excessive classification which I personally have observed:

a. In the trial of Sahag K. Dedeyan, the Government introduced into evidence 72 pages of a document marked "Secret". Under the Judge's ruling they became a public record immediately upon introduction in evidence. Nevertheless, the government maintained during and after the trial that the "Secret" marking on the 72-page document was a valid security classification. Based on facts developed during the trial, the purpose was to protect intelligence sources and methods. However, the government did not explain how any intelligence source or method could have been compromised. The testimony of the expert witness called by the defendant, which was not successfully challenged, showed that there was no reasonable basis for the government to allege that the information in the indictment document could disclose intelligence sources or methods. After Mr. Dedeyan's trial ended in his conviction, I obtained a copy of this document from the U.S. Navy by making a Freedom of Information Act request for it. It was furnished me on February 2, 1977. The cover sheet of this document, which became a public record when it was introduced into evidence on July 20, 1976, had the following notation: "Declassified by CNO Op-009D 26 Jan 1977".

b. Eleven of the documents introduced into evidence in the Ellsberg-Russo ("Pentagon Papers") trial in January, 1973 had a

current "Top Secret" classification, according to the government. The judge ruled the documents to be public records. They were used by the court and by the public as public records. This notwithstanding, the Defense and State Departments refused to declassify the documents. Long after the trial some of the documents were declassified as a result of Freedom of Information Act requests for them. Four have not yet been declassified.

c. The external configuration of missiles which were standing on launch pads at Cape Canaveral where the public could plainly see them was classified "Confidential".

d. A note written by one of the Chiefs of Staff in the Joint Chiefs of Staff stated that too many papers were being classified "Top Secret". The note itself was classified "Top Secret".

12. Another misuse of security classification which I have observed is the practice of assigning a so-called overall classification marking on a document containing no classified information. For example, two or more non-classifications are added together to make a "Confidential" or "Secret" classification. This practice was the subject of Freedom of Information Act litigation in William G. Florence v. United States Department of Justice, et al., in the United States District Court for the District of Columbia (Civil Action No. 75-1869). The district court ordered disclosure of all information in a document that had a so-called overall "Confidential" classification. The Government is so devoted to the practice of assigning overall classifications to non-classified information that a motion to stay the order for disclosure was made in order to prepare an appeal of the ruling. Eventually, on June 14, 1976, the Supreme Court denied the Government's motion.

135

13. To assist in evaluating the credibility of the affidavits submitted by Mr. Charles Briggs and Dr. James B. Rhoads in the instant case, Weisberg v. General Services Administration, Civil Action No. 75-1448, I have reviewed the transcript of the Warren Commission executive session held on January 27, 1964.

14. A December 22, 1972 letter from the Central Intelligence Agency advises the Archivist of the United States that the January 27 transcript, marked "Top Secret", could not be released "because of the continuing need . . . to protect intelligence sources and methods." According to a notation on the copy of the transcript I examined, it was declassified on June 12, 1974.

15. The truth is that there was no logical basis for the January 27 transcript ever to have been marked "Top Secret" or otherwise designated for protection against disclosure. The Warren Commission was never granted authority to assign a security classification to information under Executive Order 10501, which was the applicable order in effect in January, 1964. On October 27, 1975, I prepared a memorandum on this for the Staff Director, House of Representatives Subcommittee on Government Information and Individual Rights. My memorandum on "Classification Markings on Warren Commission Records" was published on page 61 of the Report of the hearings held by the Subcommittee on November 11, 1975. A copy of my memorandum was forwarded to the Archivist of the United States on December 9, 1975. [A copy of my memorandum is attached hereto as Attachment 1]

16. Furthermore, none of the information in the January 27 transcript could have qualified for classification under Executive Order 10501, since disclosure could not have resulted in damage to the national defense. Nor could disclosure of the transcript have compromised intelligence sources or methods in January, 1964 or at any later time.

136

17. It is possible that the CIA claim of a need for secrecy in December, 1972 was based on some comments on page 135 of the transcript about a former FBI agent stationed in South America before 1943 having paid money to informers and other people, including the head of the Government of Ecuador. Obviously, these comments did not qualify for secrecy. But people throughout the Executive branch frequently invoke secrecy on information having no greater importance to the defense of this nation or the successful functioning of the CIA than those comments about the former FBI agent.

18. I have reviewed the affidavits of Mr. Charles Briggs of the Central Intelligence Agency dated November 5, 1975, and December 30, 1976, which have been submitted on behalf of the defendant in this case. My review was made in the light of the relevant facts regarding the preparation of the transcripts of Warren Commission executive sessions held on January 21 and June 23, 1964, as well as Executive Order 11652.

19. The substance of the first Briggs affidavit is repeated and included in the second Briggs affidavit. Therefore, my evaluation of the first affidavit applies also to the second.

20. It is my opinion, in summary, that the November 5, 1975, Briggs affidavit:

a. Is overburdened with statements regarding his recollection and understanding of policies, procedures, and philosophy concerning the classification of information under Executive Order 11652 and the safeguarding of what is referred to in that Executive order and 50 U.S.C. 403(d)(3), without any definition, as intelligence sources and methods;

b. Does not show that information in either of the two transcripts qualifies for protection under the procedural and policy

provisions of Executive Order 11652 or the authorization for protection that is in 50 U.S.C. 403(d)(3); and

c. Does not show that the disclosure, in itself, of either transcript could reasonably be expected to damage the national security within the meaning of Executive Order 11652 or compromise an intelligence source or method which requires protection.

21. It has been my experience that the generalities of policy and the varying applications of it to different sets of circumstances are commonly used by individuals in intelligence agencies as a basis for attempting to protect whatever they want to keep secret. The claim of a need for the protection of information in the January 27, 1964, Warren Commission executive session transcript in order to preclude disclosure of non-existent intelligence sources and methods is typical of the view of intelligence personnel that any item of information qualifies for secrecy protection if they say that it does.

22. In response to inquiries as to what criteria the CIA uses in determining whether an item of official information revealing an intelligence source or method requires protection under 50 U.S.C. 403(d)(3) and Executive Order 11652, the Director of Central Intelligence wrote in his March 1, 1976, letter to the House Subcommittee on Government Information and Individual Rights:

Official information bearing on intelligence sources and methods which require protection inherently involves a mosaic of isolated and often seemingly unrelated bits and pieces of information which if improperly disclosed could endanger or reveal such sources and methods. The main criterion involves the application of experienced judgment to all aspects of the intelligence process in order to insure that any disclosure will not lead to counteraction which would jeopardize the continued existence and productivity of an intelligence source or method. In short, the criteria used to determine whether an item of information reveals an in-

138

telligence source or a method are not easily defined nor are they static.

23. In the same letter to the Subcommittee, the Director of the CIA advised that there were 537 persons in the agency authorized to classify information "Top Secret"; 1,344 persons with "Secret" classification authority; and 62 persons with "Confidential" classification authority. Thus, a total of 1,943 individuals at the Central Intelligence Agency were authorized to impose secrecy restrictions on information belonging to the American people by personally applying the "mosaic" classification theory expressed in the Director's March 1, 1976, letter to the Subcommittee.

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

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

139

tive Order 11652, which apply specifically to intelligence operations and to intelligence sources and methods, clearly include all information regarding intelligence sources and methods which qualify for protection against unauthorized disclosure.

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

27. Thus, the issue with respect to the January 21 and June 23, 1964, Warren Commission executive session transcripts is whether they are: (a) specifically authorized under criteria established by Executive Order 11652 to be kept secret in the interest of national defense or foreign policy; and (b) in fact properly classified pursuant to such order.

28. In making a determination as to whether these transcripts are validly classified, the facts stated in my memorandum (Attachment 1) must be considered. This includes the fact that:

a. The classification marking of "Top Secret" that was originally put on these transcripts was not a valid classification under Executive Order 10501, which was the President's order on classifying information in 1964. Neither the Warren Commission, as an entity, nor any member or official serving with it had any authority to assign a classification to information or to determine that

an item of information was required or authorized to be kept secret in the interest of national defense or foreign policy under the provisions of Executive Order 10501.

b. With regard to the after-the-fact decisions which CIA personnel, including Mr. Briggs, made to classify these transcripts, there is no evidence that a determination was made as to whether information sought to be protected has already been disclosed.

29. I have reviewed the records of this case made available to me by counsel for the plaintiff, including the affidavits of Mr. Charles Briggs, Dr. James B. Rhoads, and Mr. J. Lee Rankin and the defendant's answers to interrogatories. On the basis of my study of these records I conclude: 1) That these records contain no evidence that the Warren Commission executive session transcripts of January 21 and June 23, 1964, were properly classified under any Executive order at the time they were originated; 2) there is no specific evidence to show that they are in fact currently properly classified "Confidential" under Executive Order 11652 as claimed by the C.I.A.; 3) if the disclosure, in itself, of information in these transcripts at this time actually could reasonably be expected to cause damage to the national security by (a) compromising intelligence sources or methods, or (b) disrupting relations with a foreign country; or (c) leading to the assassination of a defector from the Soviet Union, as suggested in the second Briggs affidavit; then the Director of the Central Intelligence Agency unquestionably would have already arranged for the transcripts to be removed from the custody of the librarians at the National Archives and provided a degree of protection far more effective than that accorded information bearing a "Confidential" classification marking.

141

15

William G. Florence
WILLIAM G. FLORENCE

DISTRICT OF COLUMBIA

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

B. A. Ly
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires April 14, 1979.

142

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NINETY-FOURTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20518

October 27, 1975

MEMORANDUM

TO: Mr. Timothy H. Ingram
Staff Director, Subcommittee on Government Information
and Individual Rights

FROM: Mr. William G. Florence
Professional Staff Member

SUBJECT: Classification Markings on Warren Commission Records

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

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

The President's policy for classifying official information during the period that the Warren Commission existed was stated in Executive Order 10501, as amended by Executive Orders No. 10816, 10901, 10964 and 10985. Subsections 2(a) and (b) of the Executive Order 10501 listed the departments, agencies and commissions which exercised the authority of the President to originally classify information. The list did not include the Warren Commission.

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

(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original

143

Memorandum to Mr. Timothy H. Ingram
October 27, 1975

Page 2

classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter.

There is sound reason for concluding that authority for original classification was never conferred upon the Warren Commission. It was not included in Executive Order 11130, which established the Commission to Investigate the Assassination of President Kennedy. Representatives of National Archives have advised that the Commission files contain no record of any delegation to the Commission of classification authority subsequent to the Commission being established.

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

In his affidavit, Mr. Rankin stated that:

- 1) He was instructed by the Commission "to security classify at appropriate levels of classification those records created by the Commission in its investigation and report that should be classified under existing Executive order."
- 2) The Commission's authority to classify its records and its decision to delegate that responsibility to him existed pursuant to Executive Order 10501, as amended.
- 3) He ordered that the transcripts of certain executive sessions of the Commission, including that of January 27, 1964, be classified "TOP SECRET."

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

144

Memorandum to Mr. Timothy H. Ingram
October 27, 1975

Page 3

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

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

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

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

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

145

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-
TRATION,

Defendant
.....

AFFIDAVIT OF HAROLD WEISBERG

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. The FBI saw no reason not to inform the Warren Commission about what Nosenko had told it relevant to the assassination of President Kennedy. It did so in a series of unclassified memos. FBI Director J. Edgar Hoover even undertook to arrange for Nosenko to testify. This frightened the CIA. Evidence of this is in the staff memo attached as Exhibit 4. It is classified "Top Secret".

151

Yet to my knowledge the obliterated second paragraph deals with Nosenko and Richard Helms' request of the Warren Commission that it hold off on Nosenko. Helms and the CIA were so successful in this that despite FBI Director Hoover's initiative there is no mention of Nosenko in the Warren Report.

23. The reason for this is apparent: Nosenko said that the Russians considered Oswald an American agent. This gets back to the January 27, 1964, transcript, which was originally withheld from me on grounds now proven to be totally spurious. In that transcript former CIA Director Allen Dulles said quite candidly that the FBI would not be likely to have agents in Russia. The CIA would, of course.

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

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

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

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

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

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

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

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

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

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

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

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

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


 HAROLD WEISBERG

DISTRICT OF COLUMBIA

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


 NOTARY PUBLIC IN/AND FOR
 THE DISTRICT OF COLUMBIA

My Commission expires April 14, 1979.

155

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

22 December 1972

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

Dear Dr. Rhoads:

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

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

List No. 1

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

List No. 1A

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

List No. 2

3, 5, 6, 7, 10, 12 (including CIA letter 8 Feb. 64),
16, 20, 22, 23, 25, 28, 37, 38 (including our reply
3 June 64), 40 (including our reply 1 July 64),
44 (including our reply 22 July 64), 48 (including
our reply 11 Sept. 64), 51, 53 (including our memo
19 May 64 - CD-944), 54, 55, 58, 59, 60(A)
(including our reply 13 Oct. 64).

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23 DEC 1972

157

List No. 2A

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

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

List No. 1

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

List No. 1A

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

List No. 2

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

List No. 2 (con't)

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

List No. 2A

- No. 6 Delete | Para. 2, L 1-2.
8 Delete P. 3 top lines 5 thru 7 ("the way. . . exist").
10 Delete Para. 5 ("we would. . . discussed").
14 Delete P. 5 and 6 last Para. ("at 3:30. . . spol"), P. 8, Para. 2, strike |
| P. 38 (delete entire page), delete P. 46, Para. 2 ("we then. . . Andersons"); withhold P. 52 top "Anderson . . . job."
16 Delete Para. 2.

Miscellaneous

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

- CD 672 Withhold Attachment G. Please remove CIA file numbers on the five internal CIA notes.
Comm. No. 1216 Delete from Para. 2 |
Para. 3, delete |

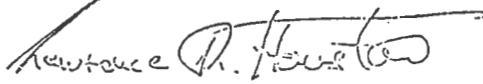
159

- 4 -

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

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

Sincerely,



Lawrence R. Houston
General Counsel

160

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

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

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~~national defense of the United States within the meaning of the Espionage Laws, Title 18, U.S.C. Sections 793 and 794, the transmission or revelation of its contents in any manner to an unauthorized person is prohibited by law.~~

Vol. 5

Copy 3 of 9

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Report of Proceedings

Held at

Washington, D.C.

Monday, January 27, 1964

PAGES 127 - 212

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

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165

President's Commission
on the
Assassination of President Kennedy

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

J. LEE RANKIN, *General Counsel*

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PRESIDENT'S COMMISSION

ON THE
ASSASSINATION OF PRESIDENT KENNEDY

Washington, D. C.

Monday, January 27, 1964.

The President's Commission met, pursuant to call, at 2:30 p.m., in the Hearing Room, Fourth Floor, 200 Maryland Avenue, Northeast, Washington, D. C., Chief Justice Earl Warren presiding.

PRESENT:

Chief Justice Earl Warren, Chairman

Senator Richard B. Russell, Member

Senator John Sherman Cooper, Member

Representative Hale Boggs, Member

John J. McCloy, Member

Allen W. Dulles, Member

J. Lee Rankin, General Counsel

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The Chairman. Well, gentlemen, the meeting will come to order.

I am sorry that I was a little late but the Senator knows I wasn't out playing golf or anything.

Well, gentlemen, since we met last week, Mr. Rankin and I have explored this situation we discussed considerably. We talked to the Texas people, and we have given considerable thought to it since, and I am going to ask Mr. Rankin to start at the beginning and just tell you the story as we have got it.

Mr. Rankin. I received a call from Waggoner Carr, the Attorney General of Texas, and in that call he was quite excited. He was on his way to Texarkana from Austin.

Mr. Dulles. This is after our meeting the other night?

Mr. Rankin. This was before.

Mr. Dulles. Going back?

Mr. Rankin. Yes.

He said he thought he had some information that he thought should get to me immediately and it was to the effect that the F.B.I. had an undercover agent who was Oswald, and he said it came up this way, that the matter was developed at a meeting in chambers with the judge, Brown, of the court, and it was in relation to the production of evidence where Ruby's attorney asked that part of the evidence that the F.B.I. developed be furnished to them, and during that time the District Attorney had responded or opposed the motion for the evidence by saying

~~TOP SECRET~~

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129

that the various usual grounds and that the F.I.B. never did this before, and in addition to that he thought he knew the reason why they were willing to do it this time, and it was that Oswald was an undercover agent for the F.B.I.

Sen. Russell. Was this in open court, Mr. Rankin?

Mr. Rankin. That is what I understood.

Mr. Dulles. In chambers?

Mr. Rankin. In chambers.

That he also knew the number that was assigned by the F.B.I. to Oswald which was No. 179, and he knew that he was on the payroll or employed, I think that is the way he put it, employed by the F.B.I. at \$200 per month from September of 1962 up to the time of the assassination.

That was all that he knew about it. He didn't get the information from District Attorney Wade, but he had gotten it from someone else and he didn't tell me who that was, but he said it was a person in whom he had complete faith and could rely upon.

I called the Chief Justice immediately and went over and saw him and told him the story, and he thought it was material of such importance to the Commission that the entire Commission should be called and advised with regard to it.

We had a meeting, then, and told the information, and it was the consensus of the meeting that we should try to get those people up here, including the District Attorney, Wade, the

~~TOP SECRET~~

169

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Attorney General, Special Counsel with the Attorney General, Leon Jaworski, and Bob Stoney, and Mr. Alexander, the Assistant District Attorney at Dallas.

We asked them to all come up, and they did on Friday. At that time they were -- they said that the rumors were constant there, that Oswald was an undercover agent, but they extended it also to the C.I.A., saying that they had a number for him assigned to him in connection with the C.I.A. and gave that to him, and none of them had any original information of their own.

They said that the source of their information was a man by the name of Hudkins who was a reporter for the Houston Post, and that it had been circulated by a greater portion of all the reporters in the Dallas area who had been working on this matter in various forms.

Sen. Russell. Did he explain why it hadn't been published? This would have gone across the country like wild fire.

Mr. Rankin. Well, they said part of it had been published.

The fact that it was claimed that Oswald was an undercover agent, and I noticed The Nation, although I hadn't seen it before, refers to an article in January, the first of January by Hudkins from which he referred to the undercover agent's story.

But he does not give the number or the \$200 a month at that time.

We then asked if they asked Hudkins of where he had got his story and they said they had not. We asked if there was

~~TOP SECRET~~

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131

any other place, and they don't know of any other place that they could assign.

In fact, when we asked them at first, they did not reveal the name of Hudkins to us. They said the reporters generally were giving the story or discussing the story, and it was only after we urged them that they gave us Hudkins' name.

We did discover, amongst the papers that we received from the Secret Service, a report which the Chief Justice obtained from Mr. Moore, I believe it was Mr. Moore which referred to a Mr. Sweatt who was the Deputy Sheriff in Dallas County in which he said that Oswald was an undercover agent and was being paid so much a month for some time back to September, and that it had a number which he gave and that report as No. 172. This report by the Secret Service agent was of a conference or inquiry that he made in the area to Sweatt back on December 17th. The report was dated January 3, and we didn't get it until January 23.

We wondered at the time when this matter first came to our attention, the Chief Justice asked Mr. Moore, Secret Service agent who was working here, if there was anything about this in their files that he would get it if there was and bring it to him directly personally, and this was the result.

We didn't know what to expect from this, because that was 20 days after the date of that report, and we wondered whether the Secret Service was withholding something from us, since they had this in their hands clear back on January 3, the date

~~TOP SECRET~~

171

~~TOP SECRET~~

132

of the report.

The explanation since has been that they were trying to check it out, that there was no purpose to withhold it from us even though it seemed like kind of a long period since they hadn't gotten any further report from Mr. Sweatt at all.

Mr. Dulles. What was the origin, who was Sweatt?

Mr. Rankin. He was the Deputy Sheriff of Dallas County.

Mr. Dulles. He was the one who gave it to the Secret Service?

Mr. Rankin. Yes.

Mr. Dulles. He didn't say where he got it?

Mr. Rankin. No.

They have since then, the Secret Service, has investigated, we asked them to, and they have gone to Sweatt and Sweatt has said he got it from Hudkins. Back to the same source.

Mr. Dulles. Back to the same source?

Mr. Rankin. And there is nothing that we have received from any investigative agency checking out Hudkins in regard to this report.

You probably saw the New York Times story, saying that the F.B.I., Sunday, that the F.B.I. denied that he was acting as an undercover --

Sen. Russell. That is from Mr. Hoover somewhere in this material I read in which he denied this report. It apparently was current at some earlier date, that he wrote a letter

~~TOP SECRET~~

172

~~TOP SECRET~~

133

specifically stating that Oswald was never connected with the F.B.I. in any capacity, secret or otherwise.

Mr. Rankin. We asked them whether they had ever checked with any official or anybody who was connected with the county government or -- we didn't reveal Sweatt's name to Wade, and the other Texas people, but we asked them in that form, whether they had ever checked out anything with anybody like Sweatt, and they said they hadn't.

We asked them if they had any jurisdiction over the county sheriff or deputy sheriff or anybody who is in office, in his office, and they said, no, they didn't. That they were all elected officials and were quite independent.

But they had never made any effort to go to Sweatt and see what his story was, although apparently it was common talk there, too, because there are some references to a public official saying that Oswald was acting as an undercover agent, and there is also some statements in the press that some police officers made such statements after the assassination.

But there is nothing to show that there was any effort to try to check that out.

Those stories we generally discount as possibly an effort to blame the F.B.I. for some of the matters involved.

Sen. Russell. Has Hudkins claimed his journalistic immunity, have they gone back to him?

Mr. Rankin. They haven't even asked him, or at least

~~TOP SECRET~~

173

~~TOP SECRET~~

134

indicated they had ever taken his statement or anything like that.

Now, Mr. Wade, the District Attorney, was a former F.B.I. agent, and we thought possibly there was -- he might have left under a cloud and there might be something of that kind and so we inquired into that.

He was an agent between 1939 and 1943, I think it was, and was claimed that he had no difficulties with them, that when he was ready to leave the F.I.B. they gave him three weeks and told him to go to New York and have a good vacation, and they would like to have him come back to see if he wouldn't be willing to continue, and he did come back and he said he wanted to go into the law practice and didn't want to stay with the F.B.I. But there was no ill feeling between them. He said he was stationed in South America for a year, and the other part of the time within the Continent of the United States.

He said he got a commission from the Navy, and when he was called up for that commission the F.B.I. indicated that they thought he was qualified for their work and he should take the commission and that he should come back to the F.B.I.

I think probably that would be some automatic -- it would come up that way anyway.

He said they did make that request and he was able to get around it and told them he didn't want to go to the F.B.I., and wanted to go to the Navy, but he told about that to indicate there

~~TOP SECRET~~

174

~~TOP SECRET~~

135

was no ill feeling, no reason why they should be unhappy with him or he with them, if they even wanted him again at that time.

He did say he has had considerable experience with the F.B.I., and knew their practices, that he handled as much as \$2,000 a month during the war period in which he paid off informers, and undercover agents in South America, and he knew that it wasn't revealed on any records he ever handled who he was paying it to and he never got any receipts, and it wasn't the practice to get receipts; that he would have a list of numbers in his office, that was one of the most closely guarded records that he had, and he would put down the amount he paid off, including such people as the head of the government in Ecuador, or the police in Ecuador, and he said that he was paying him more than his salary each month, so that they got better service than the local government did. And so he indicated that he knew how these things were handled at that time.

He was frank, however, about stating that he didn't know whether that practice continued, he didn't know how they were doing it, that was a long time ago and how the F.B.I. would handle any such transaction now.

He didn't know. He thought that the postal box was an ideal way to handle such transactions, and was a way that he had used at various times in the past, too.

He didn't indicate that he was sure that this was the case at

~~TOP SECRET~~

175

~~TOP SECRET~~

136

all. He just indicated that it was a possibility, and some of the things that had happened he thought were curious.

My impression of Wade was that he was a very canny, able prosecutor, that he would do a good job on this Ruby case, and that defense counsel had a man to deal with that knew his business.

Sen. Russell. He has that reputation out there as being a very effective prosecutor.

Mr. Rankin. I was well impressed with him that way.

Sen. Russell. What steps, if any, have we taken to clear up this matter, Mr. Rankin, if it can be cleared up, to determine whether there is anything to this or not?

Mr. Rankin. Well, we have discussed various possibilities, that is the Chief Justice and myself have, and I want to tell you about them, and I think you will have to instruct us what you want us to do.

We thought, first, about approaching the Department with a request that the Attorney General inform us as to the situation, not only as to what he would say about whether Oswald was or was not an undercover agent, but also with the supporting data that the commission could rely upon, and there is some difficulty about doing that. As the head of the department, the F.B.I., of course, is under the Attorney General, but I think we must frankly recognize amongst ourselves that there is a daily relationship there involved in the handling of the problems of the

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176

Department and the work of the F.B.I. for the Department, and that we wouldn't want to make that more difficult.

We were informed by Mr. Willens, the liaison with the Department, who has worked with us and has done very fine work here, that it is the feeling of the Department, not the Attorney General because he is not here, but Mr. Katzenbach, and Mr. Miller, Assistant Attorney General in charge of the Criminal Division, that such a request might be embarrassing, and at least would be difficult for the Attorney General, and might, if urged, while we would get the information we desired, make very much more difficult for him to carry on the work of the Department for the balance of his term.

Sen. Russell. If he would transmit to us what they told him, the F.B.I. has a very large measure of autonomy in their operations.

Mr. Rankin. In light of that, I suggested the possibility for the Commission to consider that I should go over and see Edgar Hoover myself, and tell him this problem and that he should have as much interest as the Commission in trying to put an end to any such speculations, not only by his statement, which I would be frank to tell him I would think would not be sufficient, but also if it was possible to demonstrate by whatever records and materials they have that it just couldn't be true, and see if we couldn't get his cooperation to present that with the understanding that the Commission, and stated understanding, at the

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138

time, the Commission would have to feel free to make such other investigation and take testimony if it found it necessary, in order to satisfy the American people that this question of an undercover agent was out of the picture.

Rep. Boggs. What other alternatives are there?

Mr. Rankin. Well, the other alternative would be to examine Hudkins, the reporter, to examine Sweatt, who says now that he --

Mr. Dulles. Where is Hudkins now, do you know, down in Dallas?

Mr. Rankin. In Houston, yes, I assume.

Mr. Dulles. What paper is he with?

Mr. Rankin. The Houston Post.

Mr. Dulles. That would be the Hobby paper, isn't it?

Rep. Boggs. No, I think that is Scripps-Howard.

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178

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139

Mr. Rankin. To examine Hosty, the FBI Agent who was working in that area, and to examine the Special Agent in Charge of the area, and to examine Mr. Hoover, under oath, right up the line.

I felt, however, as I told the Chief Justice, that I thought this Commission was entitled to have the full cooperation of another Government Agency, and that we don't have what I would consider any substantial proof of this rumor.

We do have a dirty rumor that is very bad for the Commission, the problem and it is very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission.

So it seemed to me in light of that the way I would treat it if I were in their position would be to have someone approach me, tell me the problem and see what I frankly could do to clear my skirts if there was a way to do it and as long as the Commission didn't agree not to go further, if they felt that would not satisfy them, I don't see how the Commission would be prejudiced.

Rep. Boggs. Mr. Wade, what significance did Wade attach to this?

Mr. Rankin. I don't think he -- you could say he believed. I don't think you could say he disbelieved it. He had just thought there was too much there to disregard but he just thought, he seemed to indicate, in his statements, that he couldn't believe that it would be possible.

But he didn't indicate by any statement that he didn't

~~TOP SECRET~~

179

~~TOP SECRET~~

140

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believe it couldn't happen. He just couldn't believe that the FBI would ever let that happen to get to that position.

The Chairman. Well, Lee and I both agreed that we shouldn't leave this thing in this present posture, that we should go ahead and try to clear the matter up as best we can. We did argue a little about the approach, whether we should go first to the FBI and ask them for an explanation or whether we should first go and try to see if there is any substance to the claim by interrogating the newspaperman who claims that he has the knowledge of the situation, or whether we should first go to the Bureau.

Now, my own suggestion was to Lee that we find out first from these people as far as we can if there is any substance to it or whether it is just plain rumor.

We were told that Sweatt says he got his information from one fellow, Alexander claims he got it from Sweatt, and somebody else claims he got it from the newspaper man.

Now I thought that if it were necessary we could get those three people in one room at the same time, and find out if anybody claims or has claimed in the past to have had actual knowledge of it, and if they don't claim to have it, we will find out why they spread the rumor.

It may be that Houston will, or whatever his name is, Hutchins would claim privilege. If he did, I thought that after we tried to get him to see that it was in the interest of his country to state the facts that we might go to the publisher of his paper

~~TOP SECRET~~

180

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141

3 and see if we couldn't get — enlist him to have this man tell us where he got his information.

I think it is one thing for a newspaper man to claim a privilege after he has written a story and published it, and it is another thing for him to claim a privilege when he is peddling gossip around the community.

Sen. Russell. I think you are right about that as a matter of law. If he hadn't published the story, I doubt if he can claim it.

The Chairman. I think so, too. In these circumstances, if he wants to deal fairly with the Government, he would tell, and if he didn't, I think his publisher ought to feel the responsibility of telling him.

I said to Lee that if I were in the position of the FBI, and I was asked to respond to a rumor, just a plain rumor of this kind, that I would be inclined to ask for what facts, what the facts were and what they were based on before I was obliged to make a statement.

I think that would — you don't like to talk into an empty barrel. You want to attach your writing to something substantial.

Lee, on the other hand, felt it would be the better part of cooperation to go over and see Mr. Hoover and tell him frankly what the rumor was, state that it is pure rumor, we haven't evaluated the facts, but ask him, first, if it is true, and secondly if he can supply us with information to establish that

~~TOP SECRET~~

181

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142

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these facts are not true, and they are inconsistent with what would be the way of operation of their Bureau.

Now I don't know, whatever you agree to would be all right with me. Lee thought that if he went down and asked those people to come up here and testify that they might use the fact that we had asked them to testify as the springboard for an article which would blow this thing out into the public domain, and that we might do a disservice in that way.

But I am not so sure of that. I rather dislike going to the FBI and just ask them to establish to us that a rumor can't be true until we have at least looked into it.

Sen. Russell. There are two reasons for that, Mr. Chairman. One would be if you went down there in the first instance to the FBI and got a statement and when you start pursuing it you would look like you are impeaching.

The Chairman. That is my point.

Rep. Boggs. Exactly.

Sen. Russell. I think the best way to handle it would be to try to exhaust it at the other hand before you go to the FBI. That would be my judgment.

Rep. Boggs. Well, the point you make is the thing that has been running through my mind all through this discussion. If you get a statement from responsible officials in that agency and then you say, "Well, we are not going to take this statement on face value, we are going to go behind it", this could become a

~~TOP SECRET~~

182

5 matter of grave embarrassment to everybody.

Mr. Dulles. Hasn't it gone maybe a little further in the press. Here is the New York Times of Sunday, January 26, that is yesterday. Here are 12 questions, this is an article from Dallas by Jack Langguth of the Times. Here are 12 questions sometimes asked and the most authoritative answers now available.

The first question, "Did Oswald serve at some period as a paid informer for the Federal Bureau of Investigation?"

"A spokesman for that agency denied today that Oswald was at any time employed by the Bureau in any capacity.

"Newspapers and magazine articles have speculated that Oswald was in the service of the FBI infiltrating leftist organizations at its request.

"The Bureau's denial is categorical."

So we have —

Mr. McCloy. We don't know who the spokesman is.

Sen. Russell. If Oswald never had assassinated the President or at least been charged with assassinating the President and had been in the employ of the FBI and somebody had gone to the FBI they would have denied he was an agent.

Mr. Dulles. Oh, yes.

Sen. Russell. They would be the first to deny it. Your agents would have done exactly the same thing.

Mr. Dulles. Exactly.

Sen. Russell. Say I never heard about the man who may have

~~TOP SECRET~~

been on the payroll for five years.

Sen. Cooper. Yes.

Mr. Dulles. But it is out in the domain, it is in the public domain.

Sen. Cooper. If you know, if you have these people up and examine them, of course the FBI will know that.

Mr. Rankin. They already know about this apparently.

Sen. Cooper. That these people came up?

Mr. Rankin. Yes.

Rep. Beggs. You mean the other people?

Mr. Rankin. Yes, that is right. I had thought that the probabilities are that when we get these people under oath that they will say that they have heard this rumor, that someone told them but they can't remember now, and that is about as far as we go with it.

I just don't think that they are going to come out and say they fabricated this, if it is a fabrication. It is too serious for that.

Rep. Beggs. Of course, we get ourselves into a real box. You have got to do everything on earth to establish the facts one way or the other. And without doing that, why everything concerned, including everyone of us is doing a very grave disservice.

Sen. Cooper. There is a point I want to raise. If it is possible the FBI knows now, we should have these people up here

~~TOP SECRET~~

184

~~TOP SECRET~~

before.

Mr. Rankin. Yes.

Sen. Cooper. Of course, if we bring a reporter, they will know that, and they will know we are looking into matters that concern them.

I was thinking about another alternative and that is that you advise them about these rumors and that you have to look into them before you ask them, to prevent any evidence to the contrary.

But I think I would maintain a kind of relationship with them where they would not feel you were around investigating the FBI. Is that possible?

Mr. Rankin. Well, I think that is possible. I would think that if it is definitely untrue, if it were my agency, I would be all over saying "let me prove it. Let me show you anything you can to satisfy you that it isn't true."

Sen. Cooper. We have a duty which is outside the FBI's position, which is if you believe there is something which should be looked into it, and we wouldn't believe that if we weren't talking about it.

My only point is whether or not it would be reasonable to inform the FBI that you have had these statements, therefore you have to ask these people where they got their information.

Before you asked Mr. Hoover you present us with all the proof to the contrary, because as you say, if he presents all

~~TOP SECRET~~

~~TOP SECRET~~

this proof to the contrary, then the situation changes a little bit. It would appear to him that you are trying to impeach his testimony.

In the other way, it seems to me we are just telling him that it was brought to us and we ought to inquire into it.

Mr. McCloy. Do we have a statement from Mr. Hoover that this man was not an agent? Was that communicated in the record?

Mr. Rankin. Yes.

The Chairman. It was? A letter.

Sen. Russell. I know there was a letter, I don't know who it was written to, a very short letter.

The Chairman. It was in one of those letters we responded to last week, it was in that letter --

Rep. Boggs. I think that was a letter that had to do with a request directed to us on what degree of cooperation we should give the defense counsel in the Ruby trial, isn't that right?

Mr. Rankin. Yes.

The Chairman. That is right. It was one of those letters, there were three of them. It was in one of those letters, and I remember in the letter of counsel for Ruby, it was also stated that that accusation had been made but that in their opinion it was preposterous, and I wondered why at the time that the defense counsel for Ruby would put such a statement in the letter to us. It seemed as though it were dragged in by the hairs.

Rep. Boggs. Deliberately.

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Sen. Cooper. That was in the letter from Trenchill.

The Chairman. Trenchill, yes.

Mr. McCloy. I would like to examine again this relationship between the Department of Justice and the FBI. Just why would it be embarrassing for the Attorney General of the United States to inquire of one of his agencies whether or not this man who was alleged to have killed the President of the United States, was an agent.

Does the embarrassment supersede the importance of getting the best evidence in such a situation as this?

Mr. Rankin. Well, I think it is a question of whether we have to put him into that position in order to get the job done, because there is, in my opinion, not any question but what there will be more friction, more difficulty with his carrying out his responsibilities, and I think we have a very real problem in this Commission in that if we have meetings all the time and they know what it is about that they know these people are up here, and they know this has come out in the paper now, it is in The Nation article, and we are meeting rather rapidly here in the last few days, and they can guess probably what it is about, certainly after the meeting with the Texas people.

Rep. Boggs. Who was The Nation, do you have it?

Mr. Rankin. The Nation article deals with it and tries to show all the various other materials that would contribute to this kind of conclusion that there is something to the rumor.

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Rep. Eggs. That is exactly the kind of thing that you can anticipate being written.

Sen. Cooper. I would like to suggest something else. In view of all the rumors and statements that have been made not only here but abroad, I think to ask the President's brother, the dead President, to do this, it wouldn't have any backing in it. It would have no substance in his purpose but some crazy people would translate it from his official position to a personal position. It may sound far fetched but he would be implying as a person that something was wrong. You can't overlook any implications.

Mr. McCloy. I think that would perhaps be an element in the thing, but it still wouldn't divert me from asking this man who happens to be the Attorney General whose sworn duty it is to enforce justice, to ask him just what is within his knowledge in regard to such a serious thing as this. It is awkward affair. But as you said the other day, truth is our only client.

Rep. Eggs. Yes.

Mr. McCloy. I think we may have to make this first step, that the Senator speaks about, but I don't think that we could recognize that any door is closed to us, unless the President closes it to us, and in the search for the truth.

Mr. Rankin. I was asking the question and talking with the Chief Justice, and say we ran this out with Eudkins and these other people, and found that they said they would not give us the source

~~TOP SECRET~~

of their information, they wouldn't say it was a fabrication, but they wouldn't -- so it isn't washed out, and then are we going to be able to leave it there or don't we always have to go back to our own Federal agency and try to establish the truth.

The Chairman. We do.

Mr. Rankin. I don't see how the country is ever going to be willing to accept it if we don't satisfy them on this particular issue, not only with them but the CIA and every other agency.

Rep. Boggs. Apparently this fellow Hudkins, according to this piece, has already published the information in the Houston Post.

Mr. Rankin. January 1st.

Rep. Boggs. January 1st. Hudkins of the Houston Post published a story under the headline, "Oswald rumored as informant for U. S.", and it goes on in detail what he said.

Mr. McCloy. I haven't read it yet.

Rep. Boggs. It is just an article.

Mr. Dulles. It is quoted there. I haven't read that either.

Mr. McCloy. Mr. Chief Justice is there a privilege between the reporter and his source, isn't this something which is just alleged. But there is not a common law privilege. I just read rather recently there was a contempt case in Great Britain.

Mr. Dulles. They sent two people to jail.

Mr. McCloy. Sent them to jail because there was no privilege.

~~TOP SECRET~~

And I don't know. I know that doctor-patient.

Mr. Dulles. They have an Official Secrets Act which we haven't.

Mr. McCloy. It is not recognized in law generally this privilege.

Mr. Dulles. You remember this one reporter for the Herald Tribune who went to jail rather than disclose her source up in New York. The court didn't recognize any privilege.

Mr. McCloy. This is a matter of tradition, perhaps of --

Mr. Dulles. But they don't generally prosecute.

Mr. McCloy. They don't generally prosecute but I don't think we can draw back from a non-legal privilege in the course of our inquiry, if it leads us to this relationship. I don't believe in any State that I know of that there is a statute which permits it.

Do you, Senator?

Sen. Russell. I am frank to say, I haven't studied it very closely. I was going by Congressional Committees. They generally recognize it.

Mr. McCloy. It is a sort of law, it is a sort of custom but I don't think it is a legal privilege.

Sen. Russell. I never had a case in this area when I was practicing law and I never had occasion to brief it but over in the Congress, I have never seen it pursued any further, if a reporter claimed that it was a matter of privilege not to disclose

~~TOP SECRET~~

~~TOP SECRET~~

it.

Mr. McCloy. I think we will have to cross it.

The Chairman. I think there are some States that by statute.

Mr. McCloy. It is not in New York State, at least not to my knowledge.

Mr. Dulles. I don't know of any.

Mr. McCloy. I don't know in New York State. This law may have been changed since I was more familiar with it.

The Chairman. Whether he has privilege or not, I think he should be made to claim it.

Sen. Russell. We can't afford not to ask him, whatever the law in Texas is we can't afford not to ask him a question.

The Chairman. That is right.

Mr. McCloy. You know in reading over this testimony again, this morass of testimony or evidence we have got here, I notice that Mrs. Oswald, the mother, said perhaps he was an agent, perhaps he might have been an agent, in trying to explain why he went to the Soviet Union.

The Chairman. She has made statements on that.

Mr. Rankin. I think the assertion is in that article in The Nation.

Mr. McCloy. To that effect.

Mr. Rankin. Yes.

Mr. Dulles. Since this has been so much out in the public,

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~~TOP SECRET~~

what harm would there be in talking to Hoover without waiving any right to make any investigation in the public?

Mr. McCloy. This is going to build up. In New York I am already beginning to hear about it. I got a call from Time-Life about it. Maybe it is prompted by this letter with these 12 perplexing questions -- no, it wasn't because it came before that. "What is there to this story?"

Mr. Dulles. There is a terribly hard thing to disprove, you know. How do you disprove a fellow was not your agent. How do you disprove it.

Rep. Boggs. You could disprove it, couldn't you?

Mr. Dulles. No.

Rep. Boggs. I know, ask questions about something --

Mr. Dulles. I never know how to disprove it.

Rep. Boggs. So I will ask you. Did you have agents about whom you had no record whatsoever?

Mr. Dulles. The record might not be on paper. But on paper would have hieroglyphics that only two people know what they meant, and nobody outside of the agency would know and you could say this meant the agent and somebody else could say it meant another agent.

Rep. Boggs. Let's take a specific case, that fellow Powers was one of your men.

Mr. Dulles. Oh, yes, he was not an agent. He was an employee.

~~TOP SECRET~~

~~TOP SECRET~~

15

Rep. Boggs. There was no problem in proving he was employed by the CIA.

Mr. Dulles. No. We had a signed contract.

Rep. Boggs. Let's say Powers did not have a signed contract but he was recruited by someone in CIA. The man who recruited him would know, wouldn't he?

Mr. Dulles. Yes, but he wouldn't tell.

The Chairman. Wouldn't tell it under oath?

Mr. Dulles. I wouldn't think he would tell it under oath, no.

The Chairman. Why?

Mr. Dulles. He ought not tell it under oath. Maybe not tell it to his own government but wouldn't tell it any other way.

Mr. McCloy. Wouldn't he tell it to his own chief?

Mr. Dulles. He might or might not. If he was a bad one then he wouldn't.

Rep. Boggs. What you do is you make out a problem if this be true, make our problem utterly impossible because you say this rumor can't be dissipated under any circumstances.

Mr. Dulles. I don't think it can unless you believe Mr. Hoover, and so forth and so on, which probably most of the people will.

Mr. McClou. Allen, suppose somebody when you were head of the CIA came to you, another government agency and said specifically, "If you will tell us", suppose the President of the United

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States comes to you and says, "Will you tell me, Mr. Dulles?"

Mr. Dulles. I would tell the President of the United States anything, yes, I am under his control. He is my boss. I wouldn't necessarily tell anybody else, unless the President authorized me to do it. We had that come up at times.

Mr. McCloy. You wouldn't tell the Secretary of Defense?

Mr. Dulles. Well, it depends a little bit on the circumstances. If it was within the jurisdiction of the Secretary of Defense, but otherwise I would go to the President, and I do on some cases.

Mr. Rankin. If that is all that is necessary, I think we could get the President to direct anybody working for the government to answer this question. If we have to we would get that direction.

Mr. Dulles. What I was getting at, I think under any circumstances, I think Mr. Hoover would say certainly he didn't have anything to do with this fellow.

Mr. McCloy. Mr. Hoover didn't have anything to do with him but his agent. Did you directly or indirectly employ him.

Mr. Dulles. But if he says no, I didn't have anything to do with it. You can't prove what the facts are. There are no external evidences. I would believe Mr. Hoover. Some people might not. I don't think there is any external evidence other than the person's word that he did or did not employ a particular man as a secret agent. No matter what.

~~TOP SECRET~~

194

17

~~TOP SECRET~~

Mr. McCloy. If we get a statement from the Department that the Attorney General and perhaps from Mr. Hoover or from Mr. Hoover which said, "I am telling you that this man was not in any way employed by the FBI", or in the case of John McCloy or the CIA, I think that probably stops us, unless we run into something —

Mr. Dulles. That would be all right with me. Whether it meets with the others —

Mr. McCloy. Now there is put in our hand a document that shows he was paid a certain amount of money. Maybe we would have to go further than that but I think it would be almost incumbent upon us to ask the head of the agencies whether or not this man was an employee.

Rep. Boggs. Just to examine a little further your statement, I would believe that could establish whether or not this fellow got \$200 a month, almost certainly establish it.

Mr. Dulles. How could you? He is dead and you haven't got his bank account or anything of that kind.

Sen. Russell. The only trouble is these undercover agents, they don't keep one line of writing, not one word anywhere.

Mr. Dulles. Sometimes you very often, in the Soviet, they did it all the time, they wanted to compromise a person and they would deliberately see that there was a record, they would keep it, and they would force money on people, and force money, people to give receipts, sometimes they would want to do that. But that

~~TOP SECRET~~

is when you are, I don't know whether too much of this should be on the record as far as the Soviet is concerned. If you want to incriminate someone and tie them to you, you would give them money and give them a receipt. But that doesn't by any means over- lap. But on occasion.

Sen. Russell. Is that when you would want to blackmail him?

Mr. Dulles. That is correct. Klaus Fuchs, take Hiss with the rug, they wanted to have some evidence, he couldn't run away then, he was caught, he was trapped.

Sen. Cooper. I was reading some place that it has been said in the Soviet papers that this man was in the employ of the FBI.

Mr. Rankin. Yes, the Information Service has given us that.

Sen. Cooper. The fact that these officials have come here give us something official in the way that we did not have before, I would think.

Mr. Rankin. Allen, how would you feel about it, if you were head of the CIA now, and the same claim was made and this Commission was worried about the claim being believed by the public, and they would ask you, would you want the Commission to come to you directly?

Mr. Dulles. Oh, yes, certainly I would.

Mr. Rankin. Or would you want us to go out and examine witnesses first?

Mr. Dulles. I think I would want you to come so I could

~~TOP SECRET~~

19 give you leads as to how you could examine witnesses if you wanted to.

Mr. Rankin. If you had us out examining witnesses about whether you had the man in your employ, would you feel that we were not very fair to you?

Mr. Dulles. No, I don't think I would.

Mr. Rankin. That wouldn't bother you.

Mr. Dulles. No.

Mr. McCloy. Do you think it might be quite appropriate for us?

Mr. Dulles. It would depend whether there were international complications or foreign government involved, then I might say we would do it in this way or that way to keep from being in trouble with the foreign country.

But as far as the U. S. —

Mr. McCloy. But wouldn't we be putting your agency in great trouble if we went out finding out who your agents were and put out the report and make it public knowledge, wouldn't you think it strange if we didn't come to you with our problem?

Mr. Dulles. Yes, I think it would be.

Mr. McCloy. That is what I think.

Mr. Rankin. Then you would leave doubt you were out investigating around before you had any real leads.

Mr. McCloy. We might get a lead and then we have it and then we have to publish.

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Sen. Russell. There is no man in the employ of the Federal Government who stands higher in the opinion of the American people than J. Edgar Hoover.

Mr. Dulles. That is right.

Sen. Russell. Of course, we can get an affidavit from Mr. Hoover and put it in this record and go on and act on that but if we didn't go any further than that, and we don't pursue it down to Endkins or whoever it is, there still would be thousands of doubting Thomases who would believe this man was an FBI agent and you just didn't try to clear it up and you just took Hoover's word.

Personally, I would believe J. Edgar Hoover, I have a great deal of confidence in him.

Mr. Dulles. I do, too.

Sen. Russell. But the other people -- I would believe, a simple statement as Holy Writ, this one statement without being under oath, but you can't try cases that way, and you can't base the conclusions of this Commission on that kind of material.

Sen. Cooper. I would like to have your idea about what I suggested.

Mr. McCloy. State it again.

Sen. Cooper. We know these people have been here, so this speculation or rumor is just some official, we will not say approval, but they don't disapprove it.

Mr. McCloy. They have cognizance of it.

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21

~~TOP SECRET~~

Sen. Cooper. That being true, since we are under a duty to see what Hudkins and Sweatt say about it, where you get that information, my suggestion was we do that, but apprise Mr. Hoover about the facts, where this information comes, we have to inquire into it, we will inquire into it, and then talk to him further about it and see if there are any facts which he ought to know about, and it would be a matter of justice to him instead of having him disprove it from the beginning.

Mr. McCloy. What is your objection, John, to going to it, I don't know whether it is Hoover or the Department of Justice, and the CIA, John McCone, or under-Secretary of Defense, he has an intelligence unit too, this man, it has come up, we would like to know, can you give us any information which would prove or disprove this rumor.

Sen. Cooper. I haven't got objection to it but even if, if we are dealing with the FBI now, if Mr. Hoover makes his statement, I think still by reason of the fact you have heard these people and they have said that Hudkins does have some information about the truth of it, whether it is or not, you still are under a duty to examine them.

Mr. McCloy. I think it would be wrong focus, this is off the top of my head, listening to this thing, I think it would be wrong for us to start an independent examination of what the agents of this, of the various law enforcement agencies of the country were without notifying the head of that agency that we

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were doing it and why we were doing it.

Sen. Cooper. That is what I think.

Mr. McCloy. In other words, you would communicate with the head of the agency, whether it be the Attorney General or Mr. Hoover or John McGene, whichever it might be, at the same time you would be taking a look at Hudkins.

Sen. Cooper. Yes.

Mr. McCloy. The sources.

Sen. Cooper. I think if there was suspicion we ought to clear it up.

Mr. Dulles. They are on notice on it and they have not denied it. These are not official denials here but the other letter was.

Mr. McCloy. They are not on notice of these last developments in the Commission, the last information.

Sen. Cooper. They probably have notice that these people have been here, and therefore suspect already that we are looking into it because knowing exactly what we are doing.

Mr. McCloy. Have you talked to Katzenbach, Lee?

Mr. Rankin. No.

Mr. McCloy. Willens has indicated that Katzenbach says they will be embarrassed.

Mr. Rankin. Greatly embarrassed.

Mr. McCloy. Greatly embarrassed.

Sen. Russell. If what?

~~TOP SECRET~~

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Mr. Rankin. If the Attorney General were asked to check this out and then report to us.

The Chairman. But they seemed to think there would be no embarrassment for us to check it out ourselves. They think that is all right, they think it is all right for us to do that.

Now, my own thought is this: I am not going to be thin-skinned about what Mr. Hoover might think, but I am sure if we indicated to Mr. Hoover that we were investigating him he would be just as angry at us as he was, or would be at the Attorney General for investigating him.

Now, I thought that the better way to do it would be to try to establish in our own minds whether or not there is any truth to this thing or whether it is -- as to whether it is based on any one who assumes to have positive knowledge or whether it is just a rumor that has developed through a lot of gossip from the press rooms, or not, and if we decide that there is nothing to it except rumor, as far as we can find, I would still ask Mr. Hoover to report to us on it, tell him that this rumor has persisted, that Oswald was on the payroll of the FBI, and that the date of his employment was stated, his number was stated, his wages were stated, and that we would like anything he has in his records or through his investigation to disprove that thing.

Now, I don't see how a man in a public position whose own reputation is at stake in the thing, could object to such procedure. I don't think that is unfriendly in any way, shape or form. But

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I do believe, I am inclined to believe, if we just go and indicate to Mr. Hoover that we are now investigating his probity without having tried to determine whether it is fact or fiction, that he might have reason to believe that we were doing it.

Sen. Russell. Back to the way I felt about it.

Mr. Dulles. We ought to go to him.

The Chairman. That is the difference between my approach and his approach. We must go into this thing from both ends, from the end of the rumormongers and from the end of the FBI, and if we come into a cul de sac why we are there but we can report on it.

Now that is the way it would appeal to me. These are things where people can reasonably disagree. Whatever you want to do I am willing to approach it in that manner.

Mr. Dulles. I agree with that, Mr. Chairman. May I point out, I don't think there is necessarily a question of probity. It might look so to the country. It is Mr. Hoover's job to watch the Fair Play for Cuba Committee and to try to penetrate it in any way he could. The reason I don't believe it is this fellow was so incompetent that he was not the kind of fellow that Hoover would hire. If this fellow was hired, I wouldn't discredit this might be a normal thing to do but he was so stupid. Hoover didn't hire this kind of a stupid fellow but for him to want to penetrate the Fair Play for Cuba Committee and find out what it is doing in this country is just as much of his duty as it is to penetrate

the Communist Party in this country and he has been doing that right along.

So I don't think really you have a question of probity.

Mr. McCloy. I wouldn't put much confidence in the intelligence of all the agents I have run into. I have run into some awfully stupid agents.

Mr. Dulles. Not this irresponsible.

Mr. McCloy. Well, I can't say that I have run into a fellow comparable to Oswald but I have run into some very limited mentalities both in the CIA and the FBI.

(Laughter)

The Chairman. Under agents, the regular agents, I think that would be right, but they and all other agencies do employ undercover men who are of terrible character.

Mr. Dulles. Terribly bad characters.

Sen. Russell. Limited intelligence, even the city police departments do it.

The Chairman. It takes almost that kind of a man to do a lot of this undercover work.

Mr. Dulles. They ought to be fairly smart. They may not be of high moral character but they ought to be fairly smart.

Mr. McCloy. Most of them certainly are. But you couldn't base an argument on the fact that the man, because he is not intelligence hasn't been retained.

Mr. Rusk. Would it be acceptable to go to Mr. Hoover and

~~TOP SECRET~~

26

164

tell him about the situation and that we would like to go ahead and find out what we could do about these --

Mr. McCloy. Hudkins' sources.

Mr. Rankin. Then if he reacts and says, "I want to show you that it couldn't be", or something like that, beforehand, what about that kind of an approach?

The Chairman. Well, Lee, I wouldn't be in favor of going to any agency and saying, "We would like to do this". I think we ought to know what we are going to do, and do it, and take our chances one way or the other.

I don't believe we should apologize or make it look that we are in any way reticent about making any investigation that comes to the Commission.

But on the other hand, I don't want to be unfriendly or unfair to him.

My own judgment was that the most fair thing to do would be to try to find out if this is fact or fiction.

Mr. Rankin. What I was fearful of was the mere process will cause him to think, in light of these people being here and all, and the meetings of the Commission, that we are really investigating him.

The Chairman. If you tell him we are going down there to do it, we are investigating him, aren't we?

Mr. Rankin. I think it is inherent.

The Chairman. If we are investigating him, we are investigating

~~TOP SECRET~~

204

~~TOP SECRET~~

27 the rumor against him, we are investigating him, that is true.

I don't want to belabor the thing at all.

Rep. Boggs. Does anyone have -- I mean, Mr. Dulles, when you headed up the CIA, the notion that you would know the countless informers and people employed by the agencies was fantastic. You couldn't know about all of that.

Mr. Dulles. No, but after a thing like this happens and it is in the paper two or three times I would get hold of the proper person and say, "Have we hired anybody in that particular area?" By this time I would have known whether we did hire him or not because otherwise certainly not. I had to authorize it. I had to trust that to the other agents.

Mr. McCloy. You would know in this case who, if there was anybody, who would have hired Oswald, who it would be.

Mr. Dulles. Certainly within an area, certainly no one had authority to do it. Now someone might have done it without authority. The CIA has no charter to hire anybody for this kind of work in the United States. It has abroad, that is the distinction.

But in the war time, in the early days when Wade was working for the CIA during the war, the CIA had jurisdiction over Latin America, so they did run agents in Latin America in his day.

Mr. McCloy. You mean FBI?

Mr. Dulles. FBI ran agents in Latin America during the war.

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Mr. McCloy. I remember that.

Mr. Dulles. That jurisdiction was transferred to the CIA after CIA was organized in '47. But the CIA has no charter. I don't say it couldn't possibly have done it but it has no charter of authority to run this kind of agent in the United States; that would be other departments of government, particularly the FBI. We wouldn't investigate the Fair Play for Cuba Committee in the United States, in the CIA. But there is no reason why an inquiry shouldn't go. I think it should, if the charge has been made, in my opinion.

Mr. McCloy. This is going to loom up in all probability to be one of the major issues in our investigation, I think. That and whether there is a relationship between Ruby and Oswald. It explains a good bit, this starts off, The Nation article, starts off, "Well, why wasn't the Secret Service notified that there was this defector in this building?"

If he was on the payroll of the FBI they would think he was all right, they would not think of his being a defector.

There are other things that you can put two and two together and make five out of but it is going to, I think, ferment a good bit of comment, and we are going to have to have a very solid record on it.

The Chairman. Lee, what was that we were told today about, what was it today, about this FBI agent in Dallas who had gone to the police station shortly after the assassination and had

~~TOP SECRET~~

~~TOP SECRET~~

29

said he knew Oswald because, and then he made some statement about having, he having been connected up with two known subversives a short time before, do you remember that conversation? Will you tell us, please.

Mr. Rankin. At the police station, just after the assassination, Hosty, the agent for the FBI in the Dallas area, said that he knew that Oswald had been — had visited two known subversives.

Mr. Dulles. Said to whom?

Mr. Rankin. To the police, the Dallas police, two known subversives within two weeks of the day of assassination.

Sen. Russell. He didn't relate who they were?

Mr. Rankin. No.

Sen. Cooper. Do they know the name of the FBI people?

Mr. Rankin. This was Hosty.

Mr. Dulles. Has Hosty been talked to later to get the names?

Mr. Rankin. Nobody has asked him.

The Chairman. They never talked to Hosty, he is an FBI agent, and we asked, Hosty had been around there for, a year or two, something like that, and we asked — and was there on the day of the assassination — we asked the District Attorney, and his assistant if he had seen him around there since and he said no he had never seen him since.

Mr. Rankin. I checked on that and that is inaccurate. He is still in that area, although I don't know whether he is around

~~TOP SECRET~~

207

~~TOP SECRET~~

30

168

visiting the police.

The Chairman. They did tell us that.

Mr. Rankin. Yes.

Sen. Cooper. May I ask a question?

Mr. Dulles. Do we know who these two people are? It might be important.

Sen. Cooper. Now this man Eudkins published an article in January. But if he were brought before us and put under oath and testified then he could publish whatever he wanted to, about his testimony.

Mr. Rankin. That is correct.

Sen. Cooper. And he relieved in some way from the possibility of libel.

Mr. Rankin. Well, he would certainly be free to tell what he had testified to himself. If he lied about it here, I don't think his testimony before this Commission would protect him against his own lie.

Sen. Cooper. No, that would be perjury.

The Chairman. He can write the same thing now with whatever privilege he would have after testifying, I would think.

Mr. McCloy. I wonder whether -- this brings up to my mind again, the desirability of our talking to the chief investigator of the FBI. We here, we don't know whether somebody checked up on Hosty again or whether he didn't. Why don't we get him in and just talk with him. I don't know whether we want to examine

~~TOP SECRET~~

208

him under oath but talk to him about the extent of the FBI investigation. We hear they are continuing to investigate. What have they done. There is this loophole about it, "What have you done about this? What have you done about that? What do you have in mind for future investigations", and he will say "We have in mind this". Have you thought about that avenue. I would think the time is almost overdue for us being as dependant as we are on FBI investigations, the time is almost overdue for us to have a better perspective of the FBI investigation than we now have.

Mr. Rankin. Well, the difficulty with doing that, we had hoped to do that about two and a half weeks ago and we were going to come back to them with a great many obvious questions, and holes in what we have been given. But then we got a supplemental report, and it filled in some of the holes but not all of them, two-thirds of them or more, that were not, and we didn't want to ask them questions that they would say, well haven't you read our supplemental report, it is all there. Our relations would breakdown very rapidly if we did business that way, so we had to go and analyze all this new material and, not only the supplemental report but all their additional raw materials they gave us at that time, and now we are in the process of trying to give them the demands.

There may be a thousand different requests for additional investigation that we will come up with in all this area.

~~TOP SECRET~~

~~TOP SECRET~~

32

170

Now the difficulty with trying to get the man in charge and asking him these questions is how much do you know about what he is giving. If we get him here before the Commission, I think you could ask him a good many things but he would probably say two-thirds or more of the time, "I told you this and I told you this and my reports", and so forth.

So I don't think we have equipped you as Commissioners so that you could do that.

He would soon find you didn't know anything like what he did about the matter.

As far as we are concerned, the men are getting advised of the areas as rapidly as possible, and they are coming back with these further inquiries, but there are vast areas that are unanswered at the present time.

We have some differences between the Secret Service and the FBI, we have location of their cars and where the shots were and things where they differed as much as 17 feet, and we are trying to find out how they could have that much difference between them, and there is an explanation. It isn't as bad as that, because some of it is part of calculations.

Mr. McCloy. Calculating their speed, I suppose.

Mr. Rankin. That is right. And whether or not the first shot occurred behind the sign or just as he came out from behind the sign and matters of that kind.

Mr. McCloy. I can see the difficulty with that. But on the

~~TOP SECRET~~
210

~~TOP SECRET~~

other hand, I have a feeling we are so dependent upon them for our facts that it might be a useful thing to have him before us, or maybe just you talk to him, to give us the scope of his investigation, and as of that date, some of the things that are still troubling us, and we will be able to ask him, for example, to follow up on Marty.

Mr. Rankin. Part of our difficulty in regard to it is that they have no problem. They have decided that it is Oswald who committed the assassination, they have decided that no one else was involved, they have decided --

Sen. Russell. They have tried the case and reached a verdict on every aspect.

Rep. Beggs. You have put your finger on it.

Mr. McCloy.. They are a little less certain in the supplementals than they were in the first.

Mr. Rankin. Yes, but they are still there. They have decided the case, and we are going to have maybe a thousand further inquiries that we say the Commission has to know all these things before it can pass on this.

And I think their reaction probably would be, "Why do you want all that. It is clear."

Sen. Russell. "You have our statement; what else do you need?"

Mr. McCloy. Yes, "We know who killed cock robin". That is the point. It isn't only who killed cock robin. Under the terms

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of reference we have to go beyond that.

Rep. Boggs. The most difficult aspect of this is the Ruby aspect.

Mr. Rankin. That is one very difficult area. Then you have some clear proof of some kind of a Cuban connection there, and there is a difference in regard to the testimony of what it is. You run into clear proof that his brother had some kind of a Cuban connection.

Mr. McCloy. Ruby's brother?

Mr. Rankin. Yes, in Detroit but that sort of dries up when we try to get at the detail of what it is. But I don't see how you can pass on these questions without really knowing about these things as far as it is possible to know, because it might just blossom out and give you the answer to a good many things here.

The Chairman. Well, Lee, as I understand your approach would be this: You would go to Mr. Hoover and say, "Now, Mr. Hoover, as you know, there are rumors that persist in and around Dallas and it is getting into the national press, to the effect that Oswald was an undercover FBI agent. The rumor has gone to the extent of stating the date on which he was employed, the number under which he was employed, and the amount of money that he received for his services, and that continued up until the time of the assassination.

"Now we are going to have to try to run that rumor down to

~~TOP SECRET~~

212

~~TOP SECRET~~

35

see if anyone claims positive knowledge or whether it is plain
rumor.

Can you, and will you, give us all the information that you
have which will enable us to ferret that thing out, to the very
limit?"

Mr. Rankin. That is what I would like to do. Reserving at
the same time the right to go to these other people and take their
testimony.

The Chairman. That would be implicit in it.

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213

~~TOP SECRET~~

174

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Rep. Boggs. What about the point that Senator Russell makes. Assuming that you had these people who are involved here, that you had not talked to them, and you get a statement from the Justice Department, or from Mr. Hoover, or from whoever it may be which is categoric in its denial. Where does that place us where you decide to go talk to these other people?

Mr. Rankin. Well, I had in mind going to Mr. Hoover and asking him as the Chief Justice said, for more than his expression of the truth or falsity of it. Asking him for what he knows his organization presumably, what can he do to help us in regard to the proof of the facts in regard to this particular matter.

Now, it is like the questions you asked, Congressman, of Mr. Dulles, and if you would ask, I am sure Mr. Hoover knows many of those, he may not know about particular individuals, just like Mr. Dulles wouldn't, but he knows who to ask, and ring a button and say, for the record how could we establish this? I never had that kind of a problem when I was with the Department of Justice. But I am sure within the F.B.I. Mr. Hoover knows where to find out who was hired on any particular date and the basis of it, and I thought if it was my situation, and I was being reflected on that I had had somebody like this under my employ I would like to be approached, first, and I wouldn't feel that it was a reflection on me, or at least I would feel the reflection was already involved in these kinds of articles and claims, and I would rather you would come to me than to go to someone else and

~~TOP SECRET~~

214

~~TOP SECRET~~

175

2 ask him about the rumors, and let me see if I couldn't establish it. I don't think the country is going to be satisfied with the mere statement from, not to use Mr. Hoover's name, but just examine about any intelligence agency that Oswald wasn't hired in light of this kind of an accusation, a rumor.

I think that the country is going to expect this Commission to try to find out the facts, as to how those things are handled to such an extent that this Commission can fairly say, "In our opinion, he was or was not an employee of any intelligence agency of the United States."

Sen. Russell. Did you ask Wade if he had taken any statements of these people?

Mr. Rankin. Yes, I did, and he had not.

Sen. Russell. He had not. Did he propose to?

Mr. Rankin. He didn't indicate he was going to.

The Chairman. He said it didn't make any difference in his Ruby case.

Mr. Dulles. Could I add one thing, on the suggestion that I would make, I would suggest that you ask Mr. Hoover for the right to see any reports that agents made who'd had contact -- we know he was contacted by the F.B. I. at various times.

I think they say the last date was August, was it, but we know he was contacted at various times for various reasons.

Now, normally, an agent makes a report to headquarters when he has a contact of that kind. There ought to be some reports.

~~TOP SECRET~~

215

~~TOP SECRET~~

3

Mr. Rankin. And we have those.

Mr. Dulles. You have those reports?

Mr. Rankin. But we don't have any assurance that those are the only reports, you see.

Mr. Dulles. I see.

Mr. Rankin. There could be a report for this purpose and there could be more reports and all that kind of thing.

Mr. Dulles. You should ask him that, if there are reports.

Mr. Rankin. He had a report from, in October, from Mrs. Payne and from Marina Oswald, if you remember, but he didn't go directly to Oswald himself. That is a curious factor in itself, that he made no approach --

Sen. Russell. That has always been a queer thing to me before this rumor came up. I couldn't understand why they went to Mrs. Payne and Mrs. Oswald, but didn't go to him.

Mr. Rankin. That is correct. We have the August conversation when he returned to this country and the first time they approached him, Marina Oswald, the wife, said that the two F.B.I. agents talked to him for two hours, and when he returned to the house from talking to him out in the car or out in the yard he was very much disturbed -- that is her expression of it.

We don't have any report that would cover anything like a two hour conversation.

It is a relatively short report.

Now, what occupied the rest of the time -- well, it could have

~~TOP SECRET~~

216

~~TOP SECRET~~

177

4
been something not related to his at all, but it seems to me if someone else is going to take this material after we get through and make a report they are going to say, how can you spend two hours on a thing like that? What happened to the rest of the time, and they will try to draw the inference.

Sen. Russell. It seems to me we have two alternatives. One is we can just accept the F.B.I.'s report and go on and write the report based on their findings and supported by the raw materials they have given us, or else we can go and try to run down some of these collateral rumors that have just not been dealt with directly in this raw material that we have.

Rep. Boggs. I think we must do the latter.

Sen. Russell. So do I.

The Chairman. I think there is no question about it.

Sen. Russell. Of course the other is much easier.

Mr. McCloy. We certainly wouldn't be doing the F.B.I. a service and doing the Commission a service.

Sen. Russell. The F.B.I. would like to see us very much do it.

Mr. Dulles. I think it is the question of the procedure, I don't think there is any difference among us as to what is to be done.

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Mr. McCloy. You see, here is this sheet, this is designed to be an attack on the F.B.I.

Rep. Boggs. Sure.

Mr. McCloy. And there are a lot of people who would like to

~~TOP SECRET~~

217

5 attack the F.B.I., and we don't want to be in the position of attacking the F.B.I.

Rep. Boggs. Of course not.

Sen. Russell. I don't propose to attack the F.B.I. unless there is some startling revelation that they have evaded their responsibility.

Mr. McCloy. I think the F.B.I. is an agency which has the security of this country, and a very important agency, as has this Commission.

Rep. Boggs. What we have to do is tell our counsel what to do.

The Chairman. Yes.

What do the rest of you think of the approach of Mr. Rankin, the way we have just laid it out here in the last few minutes?

Mr. Dulles. Doesn't that combine your idea, too, Mr. Chairman? It seems to me it is a marriage of the two.

The Chairman. It is just a question of whether you have the cart or the horse first. We disagreed a little on which approach to take, but if you think his approach is reasonable, is a reasonable approach to it, it is perfectly all right with me. I would be glad to go along with it.

Mr. McCloy. I think it is fundamentally the same as yours. It may be a little -- it is almost a collateral approach.

The Chairman. Yes, there isn't any great difference.

Sen. Russell. Do you propose to let Mr. Hoover send out some

~~TOP SECRET~~

6 F.B.I. agents to interview this fellow Hudkins to kind of find out where he got this information?

Mr. Rankin. No.

Sen. Russell. What are you going to do after telling him all this?

The Chairman. That is a good question.

Mr. Rankin. I thought from what I know about him that he would say, "We will do anything we can to help you. We will make anything available from our records", and then I would say to him, "You know your records and I don't. What will prove that this rumor is false?"

And there may be some --

The Chairman. From his standpoint, he couldn't possibly have any proof other than his statement.

Mr. Rankin. Well, he may have a lot of proof.

The Chairman. You mean that he was not an F.B.I. agent, undercover man?

Mr. Rankin. Well, he may be able to prove who were, that is that there were certain ways of checking that out.

Mr. Dulles. If you could get all the conversations of the agents with him and they were correct, then you might get some bearing on the situation. Because if they had five meetings and talked to him five times or the number of times this was, and this was never mentioned, it didn't come up at all, he didn't volunteer, or they didn't ask him anything, that depends, of course,

~~TOP SECRET~~

~~TOP SECRET~~

7

upon getting the conversations as they took place.

Sen. Russell. Do you have any contacts with any United States district attorneys in Texas in whom you have confidence? Is any one of them that you think you could get to interview this man?

Mr. Rankin. Well, I had in mind that the Commission should go directly with some member of its staff to interview him and interview each of these people, but as we proceed with that I thought we would have Mr. Hoover understand we were doing that and that he recognized that we had to do it and that was --

Sen. Russell. I have no objection to that.

Of course I think he is going to offer to interview them, if he hasn't already done it.

Mr. Rankin. I think the Commission needs to have its own record on that, and I think it might be very desirable to have them here under oath for the Commission to see them and be present when they give their story.

This is, in my opinion, one of the major points that is constantly raised to try to explain this situation. If we can put it to rest in any way, it is of major importance.

Sen. Cooper. That is the point I have felt, we have to interview these people. But I thought, also, that you have to let the F.B.I. know that you are interviewing them because all the other, the great bulk of the testimony we have got we have received from them.

~~TOP SECRET~~

~~TOP SECRET~~

131

8

I think we would have to -- they are apprising us of what they say they are doing, I think we have a duty of apprising them of what we are doing, and in truth, in investigating the credibility of what they are doing, because if this should turn out that they knew it, and never reported it, it would be -- a blow.

Mr. Dulles. Did these people point out that this all stems back to Hudkins?

Mr. Rankin. Yes, that is the only explanation, except I think where you have a statement of a secret service man by a deputy sheriff that you can't disregard it even though he tells someone again.

Mr. Dulles. Right.

Mr. Rankin. It seems to me you probably would want all of these people who participated in that and get it out on the paper.

Rep. Boggs. What role did this man Alexander play in this?

Mr. Rankin. Well, it appeared to have started earlier than -- he was as active, but it is possible, I don't know --

The Chairman. I think he is the fellow who blew the whistle so far as this Commission is concerned. I think that is where Carr got his information, don't you think?

Rep. Boggs. From Alexander?

The Chairman. From Alexander, yes. And Alexander was up here and sat in that chair, and said that it wasn't exactly the way Carr had presented it, that there were two different things.

One, that was involved in Carr's story to Lee. One of them had

~~TOP SECRET~~

~~TOP SECRET~~

9 to do with hearing in chambers on some papers they wanted from the defense, and then after that was over he went out into the corridor and then down to the pressroom and he said they were all talking about it then, he said all the press were, it is a matter of common knowledge among the press, this rumor, and he just shrugged the whole thing off, and Carr was sitting here where the Senator is and he didn't object to anything that Alexander said, although it varied radically from what he told you a day or so before.

Sen. Russell. Well, Mr. Chairman, I was not primarily responsible for Mr. Rankin's employment by this Commission but he is our counsel and if that is the way he wants to do it, I will make a motion that he proceed as he thinks is best in respect to this matter.

The Chairman. Is there a second?

Mr. McCloy. I think that is all right.

Mr. Dulles. Along the lines he discussed here.

The Chairman. Those in favor say aye.

(Chorus of aye)

The Chairman. Contrary, no.

(No response)

The Chairman. Unanimously adopted.

Mr. Rankin. We were going to outline our approach to the ideas about the whole procedure of the staff in trying to develop this material for you. But in light of the time, I do not know

~~TOP SECRET~~

183

10

how much time you yet have and whether you want to see the members of the staff, and it takes some time for me to try to tell you about each of these areas, our approach.

What is your pleasure?

Rep. Eggs. I think we had better do it as quickly as we can.

The Chairman. All right, go ahead.

Mr. McCloy. The appointment I have at the White House has been cancelled.

The Chairman. Go right ahead.

Mr. Ransdln. The first area is the day of the assassination, and all of the various elements that are involved in that, and that includes the plans for the trip, the program at the Trade Mart, the checking out of that area to be sure that it was secure, all of the steps that were made by the Secret Service in that regard, the collaboration between the police, and the Secret Service, and any other agencies such as the county sheriff in connection with the parade and the route that was designated or planned.

The decision as to when that material would be released to the public, and the date of the release. The fact that the intention of the President to go to Dallas was not indicated in the press until in October, but the fact that he was going to Texas as distinguished from Dallas was indicated September 26. September 26 is the date that Oswald went down to Mexico City, and

~~TOP SECRET~~

~~TOP SECRET~~

134

11

the article about the President coming to Texas was in the paper on that day before he went to Mexico City as far as we can determine.

Now, we have difficulty determining the exact time that he went to Mexico City, because the exit record on the border is such that it extends from the period 8 in the morning until 7 at night, and he was shown to have passed through but the exact time is not shown by the materials we have yet.

However, we do have a record that he was supposed to have gone one way by car and one way by bus, and they haven't gotten the exact time on the bus for us, and they haven't got the story of what -- who he went with in the car.

So that it is important to keep in mind in connection with that the fact that he could have known that the President was probably coming to Dallas, because we think that, and we have checked this out somewhat, that if the President was going to Dallas on what was a political trip, and this was a political as distinct from a governmental.

Mr. McCloy. You said Texas, not Dallas.

Mr. Rankin. Presumably, he would not go to Houston or San Antonio without going to the Dallas area. That it has been in the nature of politics that Presidents in going to Texas make it a point to try to get to the middle area as well as the Houston area if they are going to go there on political trips.

So we believe that it is reasonable to assume that the moment

~~TOP SECRET~~

224

~~TOP SECRET~~

12

it appeared in the papers on September 26th that the President decided to go to Texas, even though he didn't specify Dallas or Fort Worth, that it was probable that he was going to go there.

We also checked with the Secret Service people, and there was, as you may recall, another building that would have served well as the purpose of the meeting despite the Trade Mart and that was the Woman's building. It was located in a different area of the city. But the Secret Service people say that a President would be expected to go down the Main Street and having his parade, and so forth, and if either way it would be expected that he would go down Houston Street, which enters into Elm, one way if he was from the Woman's Building he could come down from the other section of the city and come to Houston which would be right by the window on the sixth floor of the Depository Building where, as you recall the pictures, he would have an excellent shot right down Houston Street in order to go over to Main or if you go the other way around, in order to go the Trade Mart, Building he would come down Main, go down Houston and Elm like he did.

So that to anticipate that this particular location would be a prime location for anything like this depending upon either of the probable places where he would have such a banquet or a dinner is reasonable in light of our conversations with the Secret Service, and how they would expect a parade route to be laid out.

~~TOP SECRET~~

~~TOP SECRET~~

186

13

Mr. Dulles. If he was making a speech in the evening would he have gone there, I rather thought not from something I read, probably would go to a big banquet room in a hotel. That might be worth looking into.

Mr. Rankin. That might be difficult, we didn't canvass it except for the luncheon, as I recall he was going on down as soon as the plans were announced to another locality.

Mr. Dulles. As soon as the plans were announced, the plans were fixed. But at this stage I don't think they could tell whether it would be luncheon or dinner, whatever it would be, midday.

Mr. Rankin. That is right.

So it is possible he could have made as part of his plans from the time he left to go to Mexico City to try to locate in this building and go ahead with the assassination.

Now, that would assume that it is possible that he talked to people about such plans, and had collaborators concerning them in Mexico City. We do not have enough information about that to know what happened there except we do have information that he tried to get a visa at the Cuban Embassy, and he tried to get a visa at the Soviet Embassy, and we know the hotel he stayed at, and we have a very limited report from the hotel keeper about most of it to the effect that they knew nothing about him, didn't even know that he came or went, although there were seven days between the time he went down on the 26th, and the third when he came back.

~~TOP SECRET~~

226

14

It also indicated that he had a limited visa from the United States, and, therefore, could not expect to get another one in connection with his travels down in Mexico.

Mr. Dulles. We don't give visas to Mexico.

Mr. Rankin. It was a border crossing.

Mr. Dulles. I thought these travel things in Mexico were limited.

The Chairman. A travel permit for two weeks.

Mr. Rankin. Fifteen days.

Mr. Dulles. I think that is Mexico and not the United States.

Sen. Cooper. Trying to get them to speed up their actions.

Mr. Rankin. Yes.

So that we have a wide range of inquiry yet in Mexico City as to the seven days and his activities there.

Sen. Russell. Who has been doing the investigating in Mexico?

Mr. Rankin. The C.I.A. has been working with us in regard to that area, and the F.B.I. has an attache there who has done some work but most of it has been by the C.I.A., and we have a question there of how much of our information we have gotten from the F.B.I. in an exhibit to the C.I.A. and prior to that, and we need some instruction with regard to that.

Now, we are going to have a meeting with the agencies and see if it is acceptable to them in such a meeting to supply the

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~~TOP SECRET~~

15 information themselves rather than having the Commission supply the information it has received from any of the agencies to these -- the C.I.A. and other people that we will need help from.

Sen. Russell. Mr. Rankin, have you given any thoughts to the fact that Oswald was not familiar with Dallas. He had this road map to go around to inquire for jobs and yet you are assuming that he knew all about these routes and everything else, then he posted himself up there to shoot the President, if he did in fact shoot him, and of course the evidence seems to be overwhelming that he did. That has caused me to believe that he had to have someone somewhere to advise him about that.

Mr. Rankin. Well, that Nation article is very interesting, Senator, in regard to your question, because --

Sen. Russell. I haven't read that article, but that occurred to me at the outset. Everybody said he posted himself there and got this employment and all, but he was not familiar with Dallas. Apparently he hadn't lived there --

Mr. McCloy. It was published in the Dallas paper with an arrow showing what the direct line was to be two days before the President came, I mean the Dallas paper had a diagram showing him coming down the street and going --

Sen. Russell. But he had already been in Mexico City before that, some time before that.

Mr. McCloy. Yes, that is true.

Mr. Rankin. This article sets out in some detail there a

~~TOP SECRET~~

~~TOP SECRET~~

189

16

quotation of some of his letters when he was in Russia.

Rep. Boggs. Yes.

Mr. Rankin. And it is very difficult to understand how anyone could write the letters he did from Russia and then write the other letters that he wrote in regard to the Fair Play for Cuba.

Rep. Boggs. Right. The spelling has changed.

Mr. Rankin. It is a world of difference. It is hardly believable that anyone could have acquired such information during that period of time.

Rep. Boggs. One of the big gaps in the reports that I have read involves this shot, it was one shot, wasn't it, that he took at General Walker, with both motive and all sorts of things.

Mr. Rankin. Yes.

Well, his story about that, of course, as you recall, he left this memorandum which was found in the cookbook, and Marina Oswald, the wife, didn't ever give any explanation of that or mention until they found that and then she finally said that that was her cookbook and she remembered it, and he went there to the Walker affair around 9 o'clock, was the time it was reported that the shooting occurred, and he said to her afterwards that he buried his rifle and then he dug it up at some vacant lot near there and he fired and he didn't know whether he had been successful or not.

Then he doesn't come home until midnight, according to the

~~TOP SECRET~~

229

~~TOP SECRET~~

17

story, her story, and that is three hours difference, and there isn't anything to explain that long period of time, and when he got home he was very much disturbed and excited, and at that point he turned on the radio later to find out what happened, and he told her that he had shot at General Walker. He didn't know yet whether he had been killed or not. In fact, he seemed to be thinking that he might have, and he later told her that a lot of people thought that in order to do anything like that they had to have a getaway car, an automobile or something like that, and he just used a bus, that was the most effective way, and apparently he had taken his gun on the bus, and then buried it, dug it up, and had it shot, buried the gun again, and from the reports that we have and the news accounts it looks like if Walker had not backed away from the desk at the time he did he might have gotten him.

Sen. Russell. The article I read Walker fortuitously moved just as the shot, otherwise it would have hit him in the head.

Mr. Rankin. He apparently turned out the light then so there was not an opportunity for another one.

She, on the other hand, threatened him if he ever did -- she asked him why he would do that, and he said he was such a terrible person because he was the head of the Fascists in this country and she said if he ever did that again she was going to report it to the police, and that was her explanation for the reason she kept this memorandum that she put away in the cookbook.

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18

Now, that could have been an accurate story. It is possible, it is believable, because it may explain some of his efforts to conceal some of his additional actions and later he proceeded to try to separate her and to keep her over at Mrs. Payne's although that was a rather fortuitous arrangement anyway because he didn't pay her anything to keep her there, it didn't cost him anything, and then he lived in town at one time, as you recall, he lived under the assumed name, and she found a telephone number that he had not given her, but some of his papers and she called up and she tries to locate him, and they say he isn't there but it is somebody else, and he does come to the telephone and he is very angry with her for trying to track him down, and so it may be in explanation for some of the action that he took in the assassination of the President, and her failure to know about some of those things because of this threat that she made to him she was going to report anything that he did of this kind, if he ever did it again.

On the other hand, she claims in her testimony, all the way through that she doesn't know that he went to Mexico at all. She doesn't know anything about the fact that he was going to the Cuban Embassy about a visa, she doesn't know that he planned to go to Cuba. That whole episode is entirely unknown to her, and yet he has some note in this little notebook that he had in which he has a silver bracelet that has a name Marina on it that apparently is Mexican, characteristically Mexican bracelet, and he

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~~TOP SECRET~~

192

19 went to, apparently, a bull fight and Jai alai and other things down there, according to his little notebook, and it is difficult to believe that he could be gone that long from her and come back and she would never ask him where he had been, and if he gave her this bracelet which she never says that she ever received, but we are going to have to ask her about all of that, how she could have not known something that was going on about that.

In addition to that, there is this Spanish dictionary, and the books about Spanish where he was trying to learn Spanish, although he had known some Spanish before he went to Russia, and we are trying to run that down to find out what he studied at the Monterey School of the Army in the way of languages because she used to make fun of him, according to some of their Russian friends, about his pronunciation of Spanish words, and he was very clumsy at it, and was embarrassed by her making jokes about that.

The Chairman. How would she know that, that he was mispronouncing Spanish words? She couldn't speak Spanish. She couldn't even speak English, she spoke Russian. How would she know that, I wonder.

Mr. Rancin. There is no explanation of her friends saying, and it is possible she got that from her other Russian friends, but there is no indication that they were Spanish-speaking so far as anything we have.

~~TOP SECRET~~

232

~~TOP SECRET~~

193

20

The Chairman. Of course there are so many Spanish-speaking people down in Texas.

Mr. Rankin. In the area.

The Chairman. That she might have gotten it from someone else.

Mr. Rankin. Then there is a great range of material in regard to the wounds, and the autopsy and this point of exit or entrance of the bullet in the front of the neck, and that all has to be developed much more than we have at the present time.

We have an explanation there in the autopsy that probably a fragment came out the front of the neck, but with the elevation the shot must have come from, and the angle, it seems quite apparent now, since we have the picture of where the bullet entered in the back, that the bullet entered below the shoulder blade to the right of the backbone, which is below the place where the picture shows the bullet came out in the neckband of the shirt in front, and the bullet, according to the autopsy didn't strike any bone at all, that particular bullet, and go through.

So that how it could turn and --

Rep. Boggs. I thought I read that bullet just went in a finger's length.

Mr. Rankin. That is what they first said. They reached in and they could feel where it came, it didn't go any further than that, about part of the finger or something, part of the autopsy, and then they proceeded to reconstruct where they thought

~~TOP SECRET~~
233

~~TOP SECRET~~

21

the bullet went, the path of it, and, which is, we have to go into considerable items and try to find out how they could reconstruct that when they first said that they couldn't even feel the path beyond the part of a finger.

And then how it could become elevated; even so it raised rather than coming out at a sharp angle that it entered, all of that, we have to go into, too, and we are asking for help from the ballistic experts on that.

We will have to probably get help from the doctors about it, and find out, we have asked for the original notes of the autopsy on that question, too.

Now, the bullet fragments are now, part of them are now, with the Atomic Energy Commission, who are trying to determine by a new method, a process that they have, or whether they can relate them to various guns and the different parts, the fragments, whether they are a part of one of the bullets that was broken and came out in part through the neck, and just what particular assembly of bullet they were part of.

They have had it for the better part of two and a-half weeks and we ought to get an answer.

So the basic problem, what kind of a wound it is in the front of the neck is of great importance to the investigation.

We believe it must be related in some way to the three sheets from the rear.

Sen. Cooper. You mean in the back?

~~TOP SECRET~~

234

~~TOP SECRET~~

22

Mr. Rankin. One, or something from a shot at the top of the head.

Mr. McCloy. It is possible that the third shot could have had a fragmentation.

Sen. Cooper. One doctor, as I remember, projected manual massage, to resuscitate him, that would cause the bullet to come back out of the back. Do you remember that?

Sen. Russell. Have you collected these charges against the raw material in here?

Mr. Rankin. I haven't, we may.

Mr. McCloy. Are we going to have at the examination of Marina the exhibits, for example, the bracelet and the rifle itself because she has testified first that the rifle was not the rifle. Later she changed her testimony in that respect,

Mr. Rankin. Yes.

Mr. McCloy. Will we get the rifle and the bracelets so she will be confronted with them?

Mr. Rankin. Yes.

Her testimony about the rifle, you know she only admitted to that after pictures were found and she had destroyed the pictures that were in the photo album after the mother had suggested that to her, and they found this in one of his sacks that they found other material, other clothing.

They have better than 400 different objects of physical evidence. Some of them are not related at all. They just happened

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23

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to find them.

We think that the wound in the neck has to be related to one of these others, but the problem is difficult to determine because we have a statement from the hospital that the bullet that was more whole than the other was found on the stretcher which they brought the President in to the hospital on, and then we have other testimony later that goes back over the same ground in which the person in charge of the stretcher and the attendant said that this bullet was found under the blanket on the stretcher Governor Connally was on, and it is a complete --

Sen. Russell. I thought it was found on the stretcher of the President.

Mr. Rankin. That was the first story. And that is what we have to deal with, a story of that kind to try to reconcile it with people who actually handled the stretcher that Governor Connally was on and picked the bullet from under the blanket.

Now, that evidence is quite superior to the other man's, but we have to check it out some more to determine that.

Sen. Russell. This isn't going to be something that would run you stark mad.

Mr. Rankin. I don't know what we will run into, but --

Let me ask you about it because I have never seen anything about it. Whatever happened with that fellow who bought the front page ad and called the President a Communist?

~~TOP SECRET~~

197

24

Mr. Rankin. We haven't anything on that at all.

The Chairman. We ought to find that out.

Rep. Boggs. We ought to find it out. A most mysterious thing.

The Chairman. And I will tell you, we also ought to find out who published and circulated that little, not pamphlet but the little handbill that they put out about the President that morning. "Wanted for Treason".

Rep. Boggs. That is right.

The Chairman. That has got to be run down. There is no question about that.

Rep. Boggs. That is right.

Sen. Russell. You know the F.B.I. must have looked into that.

Mr. McCloy. Yes.

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237

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198

Mr. Rankin. We have considerable material and we are going to go into some extent and I wanted to get the Commission's instructions about this, into the atmosphere, this hate material that was very common in that area in many regards. It was in the newspapers, it was in circulars of various kinds, it was in letters to the editor in the newspaper. It was also involved in sermons from the pulpit in some of those, in at least one of the leading churches of the city was involved in financing various forms of hate literature in very large amounts from that particular area, and it may well be that it was a contributing factor in not just as was suggested by some as far as the extreme right is concerned but also in stirring up various elements of the community who were expressing themselves in very extreme forms against anybody in power from the President on down from time to time.

And it may very well be --

Sen. Russell. Who printed this now?

Mr. Rankin. Well, the newspapers had some of it, the pamphlets were commonly circulated there, and I presume you are familiar with some of the E. L. Burt's financing of various--

Sen. Russell. Yes, we got that about every two weeks, I don't read it but I get it.

Mr. Rankin. And all kinds of things coming from out there in substantial amounts and it apparently was not only exacerbating the community in a number of ways, not only of the extreme right and the extreme left but also the elements of the people more

~~TOP SECRET~~

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199

moderately inclined who didn't assert themselves in regard to that, and from some of the information we have, it is really the commun-
ities can be like people, and if you let those forces work long
enough it will have an effect upon their approach to many problems,
and it may be something that the country should well be aware of.

Sen. Russell. Do you think there is evidence of any connec-
tion between Oswald and any of those groups? The FBI is supposed
to check that out pretty closely.

Mr. Rankin. We have no evidence that is clear that Oswald
was connected with anybody but we also have very great problems --

Sen. Russell. We know he was connected with the Fair Play
for Cuba Committee.

Mr. Rankin. Yes.

Rep. Boggs. They denied he was a member, didn't they?

Mr. Rankin. They denied he was a member, and also he wrote
to them and tried to establish as one of his letter indicates, a
new branch there in New Orleans, the Fair Play for Cuba.

Rep. Boggs. That letter has caused me a lot of trouble.
It is a much more literate and polished communication than any of
his other writings.

Mr. Rankin. That is right. And he also proceeded to set it
up by himself without anybody else as a member or anything, and I
don't know as he ever got a member.

Rep. Boggs. They tried to get a list, you know, of his member-
ship. He never produced a single person.

~~TOP SECRET~~

239

~~TOP SECRET~~

3

Sen. Russell. He produced a card saying -- he had one or two cards with his name.

Sen. Cooper. He had it printed and set up an office.

Rep. Boggs. That was a fictitious name that he used.

Sen. Cooper. I have one suggestion about what we have been talking about, I would think if we find out who put these advertisements in the paper and all that is very important. The other can come in as it is developed, but I think we might talk about this hate element too much because, I will tell you why, because people will begin to get the idea as some have already expressed of going away from evidence and trying to build up some situation which is apart from the evidence.

Mr. Rankin. Yes.

Rep. Boggs. I think these factors such as that add, and these circulars should certainly be looked into.

Mr. Rankin. Then in the period that they lived in Russia, there are manifold problems about the fact that the way he lived, the additional income he received under the name of the Red Cross, you will remember, the question of when that income terminated. She said he had never been to Leningrad. He said he had, she went to Kharkov, and there is no explanation of any communications between the two of them during that period of time. There is a period when they were there that she indicated she was fearful of her marriage, and whether it was -- it may not be maintained, there is no explanation of that in anything she has given in any of her

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4 interviews.

The fact that he was paid proportionately so much more than she was when he was a workman in the factory and she was at least a semi-skilled person with her pharmacy knowledge, and all, is another problem that isn't covered by any of her testimony.

The fact that they moved to another apartment during the period that they were trying to arrange to come to the United States, which according to what their testimony — what she testified to, was going to be of relatively short time, that she would get an answer and it doesn't seem like there was any good reason for them to move to another apartment.

That is unexplained, and the members of her family are a curious thing. She was apparently a child with a father unknown at the time she was born, and yet she acquired a name of a father in some of the registrations under the Soviet system. Well, according to information we have it is very rare that they would insert anything like that or would allow it, because their controls are so carefully made to try to identify people all their life and particularly where they were born so they can trace down through for the rest of the period, and that is an unexplained feature.

Then the fact of her uncle and what his status was apparently a part of the Interior government and not a part of the Intelligence, but nevertheless he had a telephone, and the style in which they lived, and the apartment and all were very unusual comparatively.

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5

Sen. Russell. You mean while they were in Russia?

Mr. Rankin. Yes, I mean not only Oswald but this uncle, too, and it would appear that he was much more than just a person of the Interior government like she had said, from what we have been able to get from the CIA and others about it.

Then the fact she was allowed to leave the country the way she was is not adequately explained by her testimony, her statements or anything.

Why they did it so relatively promptly when that is a very difficult operation with most people, and what he did in Moscow when he went there, and was there for better than a month, and was there, and there's no explanation of what he did there.

Mr. Dulles. The beginning of his trip, you mean?

Mr. Rankin. Yes.

Mr. Dulles. When he tried to commit suicide?

Mr. Rankin. Yes. And then this period that he belonged to the gun club, and there is no explanation by her of that or what he did in that. He might have had all kinds of training during that period, that is entirely unexplained.

The fact that they went to, when they came back, they went to Amsterdam and were there for, I think, it was two days before they went to Rotterdam to take a boat, and it is unexplained why they happened to go there and stay, and got a place to live, some little apartment, and what they were doing in the interim, that entire period is just full of possibilities for training, for

242

~~TOP SECRET~~

6

working with the Soviet, and its agents, and unusual compared with the experience of most Americans.

Now, you recognize it is going to be very difficult to get all of that out of her no matter how well informed we are about her, what she has testified to, what she has given statements about and she has given a good many of them, and what her written statement in Russian is, all of those things will be --we have, and we examined them in great detail and are prepared on them, but whenever she gets to these areas that might be enlightening for us she is unable --

Sen. Russell. "Don't understand what you are talking about"?

Mr. Rankin. That is correct. Give us anything on it and just seems to come up to a blank.

We are trying to get sufficient material to try to get to persuade her to try to explain how those things were possible, and it is difficult to anticipate what she will do except she may just say she can't understand or she doesn't know, and that will be all we can get out of her.

Mr. Dulles. Has the letter gone forward to the State Department for the Russians?

Mr. Rankin. It hasn't, it isn't going forward yet because we have to ask them about that, and the CIA is going to help us develop the questions, and they have been working.

Mr. Dulles. I think we ought to get that off as soon as we can.

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7

Mr. Rankin. Yes.

Mr. Dulles. If she has any chance to tell the Russian embassy I don't know whether she will do it or not, she might after this interview, she might ask, get in touch in some way with the Russian embassy, they would be very anxious to get in touch with her. I guess the guard is such that they couldn't do that.

Mr. Rankin. Well, the Secret Service has been with her constantly and all. I don't know how much longer after we would take her testimony you would want that to continue.

Sen. Russell. What interpreter have you arranged to have?

Mr. Rankin. We have asked the State Department to furnish one and they have said they would do so. And we also are going to have a man from the Secret Service here who has been talking to her and translated everything so we could be sure about anything she said we wouldn't have to rely on just one person.

Sen. Russell. There is a fellow here named Reuben Efron who is one of the best that I ever saw.

Mr. Rankin. Is he with the State Department?

Sen. Russell. Do you know him, Mr. Dulles?

Mr. Dulles. I don't think I do.

The Chairman. Senator, is he with the State Department?

Sen. Russell. No, sir.

Mr. McCloy. There is another fellow named Akalovsky who is a star. He may be over in Geneva. It is awfully important that you get a bilingual man.

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Mr. Rankin. We have a vast area about Ruby.

Mr. Dulles. This completes the other, the Oswald one?

Mr. Rankin. Just in a general way.

Sen. Russell. Has it every been determined whether he could drive an automobile or not? There has been a conflict in that in nearly everything I have read.

Mr. Rankin. They claim he never could drive an automobile. He didn't know how. That he took a lesson, I think about Mr. Paine's car and he got along all right but it was just a very preliminary.

Sen. Russell. Who drive him down to Mexico?

Mr. Rankin. That we haven't gotten.

Rep. Boggs. He went on a bus, didn't he?

Mr. Rankin. He went one way on a bus.

The Chairman. One way on a bus.

Sen. Russell. I thought he went down on bus and came back in a car.

Mr. Rankin. That is right.

Sen. Cooper. That would be very important, with whom he stayed down there. That is one of the curious things about it.

Rep. Boggs. I read that in some report.

Sen. Russell. That is right, I remember I did, too.

Sen. Cooper. What about the Paine's, is anything developing about them?

Mr. Rankin. Well, we asked for a full background report on the

~~TOP SECRET~~

9 Paine's, and it is a very curious situation. She is a member of the Friends Society, and they are separated, and he is a member of an old New England family, and apparently quite well educated. She was teaching Russian in a school there where she lived, and she said that she was very much interested in having Marina stay with her so she could become more proficient in speaking Russian.

Mr. Dulles. Paine's father was a member of the Trotskyite Society of, I think, 11 members.

Mr. Rankin. Yes, sir, and there was no indication --

Sen. Russell. Whose father?

Mr. Dulles. Paine's father, the man's father. And the grandmother is around and she is quite an extraordinary character. I understand, Mrs. Young, she might have a good idea on this family.

Mr. Rankin. She has said that she didn't ever receive anything from them for food or lodging or anything, and apparently that is true from Mrs. Oswald, from what she says, and she has had just to learn what she could about Russian.

Sen. Russell. Oswald said the same thing along that line. I read something along the line.

Mr. Rankin. She seemed to be fond of Oswald's little girl June, they wrote a number of letters in which she wrote back and wanted to send her love to the little girl. She went down to New Orleans and brought Marina back.

Sen. Russell. Is she living alone in this place?

~~TOP SECRET~~

246

10

~~TOP SECRET~~

Mr. Rankin. Yes.

Sen. Russell. That accounts for a good deal of the explanation.

Mr. Rankin. And she seemed to remember some of the things about the Oswalds and their difficulties and quarrels they had about him. She thought he was quite a disagreeable person, she said. But on the detail, when he went to Dallas, and whether he took the gun or whether the gun was in the garage, on that part, not much help there, and yet it is difficult to believe that two women would have this gun in a blanket in the corner of a garage and especially after that Walker affair and never even peak in there to see if that gun was there or what kind of a gun it was or whether he took it out sometimes and brought it back, and, of course, there are a good many stories about his practicing with a gun, you know, around various rifle ranges and so forth.

We have checked those out, and none of them stand up at all. We have gone over all of that to try to find out where he could ever gain the proficiency that he apparently had in this shooting that was done.

The Chairman. He was a sharpshooter in the Marines.

Mr. McCloy. In the Marine Corps?

Mr. Rankin. Yes.

Mr. McCloy. That is above the ordinary.

Mr. Rankin. But that is quite away below expert.

The Chairman. Marksman is average, but sharpshooter is above.

~~TOP SECRET~~

247

11

~~TOP SECRET~~

Sen. Russell. Pretty near all of them are sharpshooter if they work at it.

The Chairman. Thank you, Senator, for coming.

Lee, you probably couldn't get into the Ruby affair anyway tonight, could you?

Mr. Rankin. There is a tremendous bulk of material on it.

Rep. Boggs. Could you give us just a quick synopsis of it?

Mr. Rankin. Apparently Ruby was born in Chicago, and after some years he went to the West Coast, Los Angeles, and then he came back to Chicago, and he changed his name, and then he went to Dallas, and then he came back from Dallas to Chicago, and then he goes back to Dallas, that is a brief history about what he did.

He has apparently all kinds of connections with the underworld, and he had a number of petty arrests, but the convictions were very unimportant. There weren't any -- I can't even remember one that amounted to anything.

Mr. Dulles. He never got to jail, did he?

Mr. Rankin. No, he paid a small fine on one or two. There are stories about his being a homosexual, and those don't pan out as far as any real proof, but it seems to be very current. There are also all kinds of stories about his girls and strip-tease girls and that they -- he spent time with them all the time, and there are some stories that he is a bisexual.

There isn't any question but what he planned to go down to Cuba, and he did, and the story was that it was in regard to arma-

~~TOP SECRET~~

248

~~TOP SECRET~~

209

12

ments --

Mr. Dulles. Cuba?

Mr. Rankin. Yes.

Rep. Boggs. This was after Castro?

Mr. Rankin. Yes.

Rep. Boggs. You are sure about that?

Mr. Rankin. No, I am not. I had better check on that. But my recollection is that it was one of the stories was that he was to try to sell guns and ammunition to Castro, that is the way --

The Chairman. And jeeps.

Mr. McCloy. Yes, and jeeps.

Mr. Rankin. That is all denied, and that he was going down there to make the money on other kinds of sales but not anything that was munitions or armaments. There is no explanation of where he was there, what he did, or who his connections were. He had all kinds of connections with the minor underworld, I think you would call it, in Dallas and Chicago, but I don't -- it isn't apparent that any of the important people in the underworld would have given him any consideration at all as far as being a part of it.

Now, it would seem that he might have -- he might be the kind of person they might try to use. He was a habitue apparently of the Police Department, and was able to go to any part of it at any time, and they know him. I was surprised at the conference we had with the District Attorney, that they said that when they had the lineup, he was in the same room. That is the first time I had

~~TOP SECRET~~

249

~~TOP SECRET~~

13

ever run across that, and he was in the back of the room, and then they had the screen where they lined up Oswald and several others for the lineups, to see if they could be recognized and the reporter said they couldn't take a decent picture through the screen, wouldn't they take Oswald to the side away from the screen so they could take some good pictures and so they did that, and they got him over to the side and they took the pictures and then Ruby came up, and he said, "Hello, Henry," and seemed to know Wade about as well as he knew all the police people, too, and he said, "Hello" to him.

And then they took Oswald out, and took him down the corridor, and then Ruby went out, and Wade talked to the press for two or three minutes, and then as he was going out, went out, started down the corridor, Ruby called to him from one of the inner offices of the police, and said that the TV station wanted to talk to him on the telephone.

Apparently he had called the TV station and told them that Wade was there, and they said call him to the telephone and we will get an interview with him.

So, apparently that is another thing that Wade thought was particularly important, you will be interested in it from the standpoint of premeditated action on his part, because this was -- this is a day and a half beforehand, and he was there, and showed no animosity at all at that time, but around -- but Wade doesn't know whether he had his gun that day or not, but he had a consider-

~~TOP SECRET~~

~~TOP SECRET~~

211

14

able opportunity, even if you consider the various possibilities, at that time.

Mr. Dulles. That will be brought out at the trial, won't it?

Mr. Rankin. Yes.

Sen. Cooper. There hasn't anything been developed to show that they knew each other.

Mr. Rankin. There is no showing of connection, there is no showing that Oswald was the kind of person that would hang around the joints that Ruby had, either. It is possible that he could have in earlier days before he ever went to Russia, and that he might have just with some young people stopped in but that would have been a long time before.

Rep. Boggs. Oswald apparently didn't go to night clubs.

Mr. Rankin. He didn't have the income to do it very often.

Mr. McCloy. He seemed to have gathered up a considerable amount of income from that article from time to time. He had \$435. We know he had \$150, plus \$435. We know he had carfare to Mexico, which is not --

Rep. Boggs. I must go, too, Mr. Chief Justice.

Mr. Dulles. When do you want another meeting, Mr. Chairman. Do you have any idea?

The Chairman. We haven't at the present time, Allen. This is all we have to present to you today. We will keep at it and we will let you know as soon as we pick up something that should challenge our attention.

~~TOP SECRET~~

251

15

Rep. Boggs. It is a very fine presentation.

Mr. McCloy. February 5th I go out of the country for a week.

The plot thickens, doesn't it?

Mr. Rankin. Would you have time tomorrow?

Mr. Dulles. yes.

Mr. Rankin. About the meeting with the CIA and the FBI and the State Department, would you have time tomorrow if I can set that meeting up?

The Chairman. Yes, I will do it.

All right, gentlemen, thank you.

The meeting is adjourned.

(Whereupon, at 5:50 o'clock p.m., the President's Commission adjourned subject to call of the Chair.)

~~TOP SECRET~~

252

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

FILED

JUN 7 1977

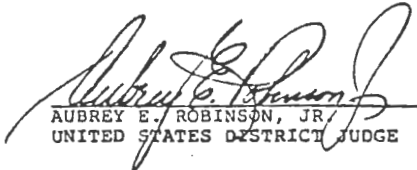
ORDER JAMES F. DAVEY, CLERK

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

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

"The statute relied on by Defendant as respects Exemption 3 is 50 U.S.C. §403(d). That this is a proper exemption statute is clear from a reading of Weissman v. CIA, No. 76-1566 (D.C. Cir. Jan. 6, 1977). The agency must demonstrate that the release of the information can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods. Upon such a showing the agency is entitled to invoke the statutory protection accorded by the statute and Exemption 3. Phillippi v. CIA, No. 76-1004 (D.C. Cir. Nov. 16, 1976). On the basis of the affidavits filed by the Defendant it is clear that the agency has met its burden and summary judgment is appropriate."

The Plaintiff's Motion in all other respects is DENIED.


AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

253

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

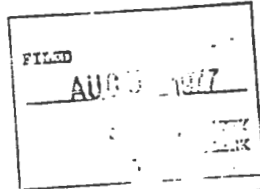
Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant

Civil Action No. 75-1448



NOTICE OF APPEAL

Notice is hereby given that Harold Weisberg, plaintiff above-named, hereby appeals to the United States Court of Appeals for the District of Columbia from the March 10, 1977 order of this Court granting defendant's motion for summary judgment and dismissing this action, as amended by the Court's order of June 7, 1977.

James H. Lesar

JAMES HIRAM LESAR
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Attorney for Harold Weisberg

DATED: August 5, 1977

752

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Courtroom No. 4
U.S. Courthouse
Washington, D.C.
Friday, March 4, 1977

The above-entitled matter came on for hearing in open court on Motion to Compel at 10:10 o'clock a.m., before THE HONORABLE AUBREY E. ROBINSON, JR., United States District Judge.

APPEARANCES:

JAMES HIRAM LESAR, ESQ.,
appearing on behalf of plaintiff.

MICHAEL J. RYAN, ESQ.,
STEVEN GARFINKEL, ESQ.,
ADRIAN THOMAS, ESQ.,
LAUNIE ZIEBELL, ESQ.,
appearing on behalf of defendant.

EUGENE T. FEDORATION
OFFICIAL COURT REPORTER
6822 UNITED STATES COURT HOUSE
WASHINGTON, D. C. 20001

P R O C E E D I N G S

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THE DEPUTY CLERK: Harold Weisberg versus General Services Administration, Civil Action 75-1448.

MR. RYAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Ryan.

All right, are you ready to proceed?

MR. RYAN: Yes.

May it please the Court, Your Honor, my name is Michael J. Ryan, Assistant United States Attorney. I represent the defendant General Services Administration in this Freedom of Information Act matter.

With me this morning, Your Honor, are three associate counsel in this case, Mr. Steven Garfinkel from the General Counsel's Office, General Services Administration; Adrian Thomas from the National Archives, and Launie Ziebell from the General Counsel's Office at the Central Intelligence Agency.

Your Honor, pending before Your Honor are a motion for summary judgment filed by defendant General Services Administration supported by affidavits of Mr. Briggs of the CIA and Dr. Rhoads of the Archives. Also pending are plaintiff's partial summary judgment motion on two of the three transcripts which are at issue in this proceeding.

Your Honor, just to recap in a few seconds --

THE COURT: Don't recap because I have read every-

256

1 thing all over again. I know exactly where we are.

2 MR. RYAN: Fine, Your Honor.

3 We have also a motion to compel answers to
4 interrogatories which, I might say, are the third set of
5 interrogatories which we have answered. We have also
6 responded to two document production requests by plaintiff.

7 If Your Honor wishes, I could address the motion to
8 compel or I could go right on the summary judgment motion,
9 whichever Your Honor prefers.

10 THE COURT: Well, let's put the horse in front of
11 the cart. Let's go to the summary judgment motion.

12 MR. RYAN: Very well, Your Honor.

13 As Your Honor knows, there are three transcripts
14 involved in this FOIA request, and I will deal with each one
15 separately.

16 Your Honor, first of all, there is a transcript --

17 THE COURT: Well, two of the transcripts, the same
18 things apply to two of the transcripts.

19 MR. RYAN: That's correct.

20 THE COURT: The same exemptions you claim.

21 MR. RYAN: That's correct, Your Honor.

22 THE COURT: One and three.

23 MR. RYAN: The January 21, 1964, transcript, pages
24 63 to 73, and also the June 23rd, 1974 transcripts of the
25 executive sessions of the Warren Commission. As to those

1 transcripts, we have claimed Exemption b(1), which exempts
2 national security material; Exemption b(3), which, as Your
3 Honor knows, exempts material otherwise exempted by statute;
4 and Exemption (5), which exempts intra-agency memoranda.

5 Your Honor, those two transcripts, the one transcript
6 and the portion of the other transcript, continue to remain
7 classified Confidential, and at this point I think it's very
8 important --

9 THE COURT: Well, I don't think that we are going to
10 get very far arguing about the Confidential classification
11 because you have some problems about that; don't you?

12 MR. RYAN: Your Honor, I am not sure. Plaintiff has
13 made a motion for partial summary judgment as to one of those
14 transcripts, claiming that it has been declassified, and I
15 would like to clear that up right now.

16 Plaintiff has submitted the cover page of the
17 January 21, 1964 transcript, which shows that that particular
18 edition of the transcript has been declassified and no
19 classification applies. We are talking about ten pages of that
20 transcript which remain Confidential, Your Honor, and in that
21 particular edition of the transcript, those ten pages have
22 been removed.

23 So, obviously, for purposes of researchers and
24 historians and others who wish to look at that transcript,
25 that particular transcript minus those ten pages is declassified

258

1 Then I think there may be a misunderstanding on plaintiff's
2 part.

3 So, we have submitted affidavits and we also have
4 submitted answers to interrogatories which we feel, Your
5 Honor, justify those transcripts continuing to be classified
6 Confidential; at least that they were properly classified at
7 the time that they were classified and that the agency has
8 followed the proper procedures in downgrading them from the
9 Top Secret classification to their present classification of
10 Confidential.

11 Your Honor, we have also claimed that b(3) exempts
12 disclosure of these particular transcripts as well as
13 Exemption b(5).

14 Your Honor, perhaps it would be easier to deal with
15 Exemption b(5) first.

16 As Your Honor knows, the transcripts of the
17 executive sessions of the Warren Commission reflect the free
18 exchange of opinions, recommendations as to what the final
19 report of the Warren Commission would be. It was on that
20 basis that the agency decided to invoke b(5), which in our
21 opinion, Your Honor, is a permissive exemption; in other words,
22 an exemption which we can invoke but which, absent other
23 exemptions, we could in our discretion choose to release that
24 particular transcript.

25 A great number of the executive session transcripts

259

1 have been released. I believe these three transcripts are the
2 last ones which have not been released. And there were a
3 great many, thousands of pages in those Warren Commission
4 transcripts.

5 Your Honor, were it not for the continuing applica-
6 tion of the b(1) exemption, I think that it might be the case
7 that we would exercise the permissive discretion to release
8 those transcripts. So, we are really talking about the
9 continued application of the b(1) exemption to those two
10 transcripts. That's primarily what we are discussing.

11 As to the b(3) exemption which we have invoked,
12 Your Honor, that is on account of the application of -- I
13 believe it's Section 403(d) of the CIA statute which requires
14 a director to continue to withhold or try to protect
15 confidential sources and methods.

16 Your Honor, the subject matter of those transcripts
17 does deal with methods employed by the Central Intelligence
18 Agency in a confidential way to protect those particular
19 methods.

20 Your Honor, the May 19th transcript has been sub-
21 mitted to Your Honor for in camera inspection. We are not
22 claiming classification with respect to that transcript; merely
23 that it is exempted under b(5) as an intra-agency memorandum
24 b(6) because its disclosure would constitute a material
25 invasion of privacy of the individuals discussed in that

260

1 transcript.

2 Your Honor, we have submitted the affidavits. We
3 feel that the affidavits of the government would be entitled
4 to great weight at this point inasmuch as we have pursued the
5 discovery route which Your Honor required back on May 25,
6 1976. We have gone through quite lengthy discovery. We have
7 had three sets of interrogatories, two document production
8 requests.

9 We have not answered every single interrogatory.
10 We filed objections to certain of those interrogatories.

11 Plaintiff has contested our objections with a
12 motion to compel. We have responded to the motion to compel.

13 The most recent motion to compel we argued before
14 Magistrate Dwyer. The Magistrate requested that the motion be
15 re-cast and re-filed. Plaintiff chose not to do that but
16 instead to request a trial in this case. As a result, we did
17 not respond to that motion to compel.

18 But we feel that in view of the fact that we have
19 responded to the interrogatories which are the subject of
20 the motion to compel and have noted our objections, that our
21 position stands on the record.

22 Your Honor, if there are any questions with respect
23 to our position in this matter, I would be happy to try to
24 answer them. I think the matter has been before Your Honor
25 one other time and Your Honor is familiar with our position.

261

1 THE COURT: Your memorandum clearly states it.

2 MR. RYAN: I have representatives here from the
3 agency. If Your Honor wishes to pose any particular questions,
4 I think we can attempt to answer them.

5 Thank you, Your Honor.

6 MR. LESAR: James Lesar, attorney for plaintiff
7 Harold Weisberg.

8 Your Honor, I will make things very brief since you
9 have stated that you are familiar with what is at issue.

10 The first question at issue with respect to the
11 motion to compel answers to interrogatories is that this
12 Court indicated very clearly nearly a year ago that we were
13 entitled to discovery and that we would be allowed to proceed
14 with it, and if we did not get it, this case would go to
15 trial.

16 It has been one frustration after another for nearly
17 a year trying to get the relevant information, and we don't
18 have it.

19 The defendant has objected to basic questions
20 relating to --

21 THE COURT: Stand up, counselor.

22 MR. LESAR: Yes.

23 -- has objected to basic questions which relate to
24 the credibility of its claims that the transcripts are
25 properly classified.

262

1 We face in this situation the customary situation of
2 a litigant who must try to counter the authoritative affidavits
3 of persons who have seen documents that we have not. That
4 makes the discovery all the more essential.

5 But in this case they claim, with respect to two
6 transcripts, that they were classified as of a certain date
7 by the CIA at a Top Secret level, and then in a period of
8 less than three months they suddenly plummet to Confidential.
9 They refused to provide any answer as to what event or
10 circumstance caused that plummet in the level of classification.

11 Obviously, that's important for us to know.
12 Obviously, it gives us the basis of attacking the credibility
13 of that classifier.

14 With respect to the two classified transcripts, the
15 most important question is whether or not they were properly
16 classified originally. The uncontradicted evidence is that
17 they were not.

18 The defendant has admitted that the provisions of
19 the executive orders were not followed, that the Warren
20 Commission did not have authority to classify these documents.

21 The affidavit of Mr. Weisberg has been uncontradicted.
22 It states that the transcripts, in violation of the executive
23 classification procedures, were classified routinely without
24 regard to content, and that there were other irregularities in
25 the classification proceedings.

263

1 They now claim that they have been classified
2 properly by the CIA at a level of Confidential. But they also
3 state in the same breath that there are copies of documents
4 missing -- of classified transcripts missing, and that no
5 search has been made to try and recover these.

6 THE COURT: Well, what's that got to do with it?
7 The ones that we are talking about are not missing.

8 MR. LESAR: There are several copies of each of
9 these transcripts and there are copies missing. They do not
10 know where the original type scripts of these transcripts are.
11 They never made any attempt to search for any of these copies.

12 THE COURT: Well, what has that got to do with this
13 litigation?

14 MR. LESAR: Well, I think --

15 THE COURT: All you want is one copy. It doesn't
16 make any difference if they lost or burned up or threw away
17 ten others.

18 MR. LESAR: What it bears on is the credibility of
19 their claim that the content of this is classified in the
20 interest of national defense. If it were classified in the
21 interest of national defense and were that essential to our
22 national security, I am sure that they would have tried to have
23 recoeved any copies or find out where there might be copies
24 missing that someone could make available to someone else in
25 violation of the classification.

264

1 The other obvious fact is that the basis for with-
2 holding these under Exemption (1) is to protect the confi-
3 dential source or confidential source and methods.

4 At one point in this proceeding, very early on,
5 we addressed a question with respect to the June 23rd
6 transcript as to whether or not Mr. Nosenko was not the subject
7 of that transcript. They refused to answer that on the
8 grounds that it was getting at the information that they were
9 trying to protect under Exemption b(1).

10 We then pointed out that it was public knowledge
11 that Mr. Nosenko was the subject of this transcript, and they
12 admitted it. This bears on the spurious nature of the claims
13 that they are making.

14 Now, there is a transcript, the January 27, 1964
15 transcript, which was the subject of a previous lawsuit. They
16 claimed that it was classified.

17 We now have, as a result of some of the discovery
18 in this case, documents indicating that the CIA instructed
19 that that be withheld to protect sources and methods.

20 That document is now public. There never was any
21 basis for its classification. Mr. Weisberg has so stated in
22 his affidavit, without contradiction.

23 Not only has he stated without contradiction that
24 it was never classified, properly classified, but it reveals
25 no source or method. Yet that was the basis on which the CIA

1 was withholding it.

2 THE COURT: You don't know what it reveals.

3 MR. LESAR: Yes. We have it.

4 THE COURT: Yes. But you don't know really what it
5 reveals. That's the problem that we are faced with in these
6 classifications.

7 MR. LESAR: No. I think you misunderstand me. We
8 have a transcript.

9 THE COURT: I understand what you are saying very
10 clearly. You have the whole transcript. You have read it
11 word for word. You know exactly what it says.

12 MR. LESAR: Yes.

13 THE COURT: And to you it reveals nothing either
14 with respect to source or method.

15 MR. LESAR: Well, we have asked, in one of our
16 interrogatories, the CIA to state what it reveals.

17 THE COURT: Well, that's getting the information;
18 isn't it?

19 MR. LESAR: Well, it seems obvious to me that if
20 it revealed anything, they wouldn't have released it, or if
21 it could have revealed anything.

22 Now, what these transcripts involve are defectors
23 to the Soviet Union.

24 Now, just on the basis of common sense alone, you are
25 not going to get --

266

1 Who is being protected from the revelation of this
2 information? The Soviet Union is not. They know. So, who
3 is being protected? What national security purpose can
4 possibly be served by withholding this information? And if
5 there is one, why is the agency fighting so hard to answer
6 simple interrogatories?

7 Now, with respect to the May 19th transcript, they
8 have claimed primarily two exemptions, Exemption (5) and
9 Exemption (6). Exemption (5) deals with the protection of
10 policy advice.

11 It is evident that the Warren Commission had as its
12 purpose the evaluation of evidence and not the formulation of
13 policy.

14 Interrogatories have been addressed to the
15 defendants to state what policy was discussed or whether it
16 was made available to anyone, and they have refused to answer
17 that.

18 The obvious reason is because there was no policy
19 that was properly within the purview of the Warren Commission.
20 Their job was to evaluate evidence, and that is disclosable
21 under Exemption (5).

22 In addition, the agency invokes Exemption (5)
23 capriciously because it has released other transcripts to
24 which the same objection would apply. I suggest that is a
25 waiver of their right to claim Exemption (5) in this case.

1 declassification of another transcript, we submit, are totally
2 irrelevant to these two transcripts.

3 The subject matter of those other transcripts in
4 this Warren Commission investigation, which have been de-
5 classified, is different from the subject matter of the two
6 transcripts which continue to remain classified Confidential.

7 Your Honor, we submit that under the standards
8 appropriate for consideration at the time these transcripts
9 were classified, they were properly classified. The agency
10 is simply following its procedures in the declassification of
11 these transcripts. At some time, more than likely, it is
12 inevitable that these transcripts will be completely declassi-
13 fied.

14 THE COURT: Yes. You don't think ten years is
15 long enough?

16 MR. RYAN: Your Honor, there is a schedule for
17 declassification.

18 THE COURT: No. But, you see, that schedule for
19 declassification just is not something that you can rely upon
20 in the face of litigation.

21 MR. RYAN: Your Honor --

22 THE COURT: They will get around to it when they
23 feel like it. Yet, in the meantime, we have got four or five
24 suits pending.

25 MR. RYAN: Your Honor, I might --

1 THE COURT: I think there needs to be, obviously,
2 some real judgment exercised with respect to that. I am
3 talking about the Nosenko business.

4 MR. RYAN: Your Honor --

5 THE COURT: It's all out in the open; isn't it?

6 MR. RYAN: Your Honor, the fact of Mr. Nosenko's
7 name is out in the open. But the subject matter of those
8 transcripts is not out in the open.

9 And we contend that the subject matter goes beyond
10 the discussion of that particular name, Your Honor. It
11 involves other matters which we continue to request that they
12 be kept classified Confidential.

13 Your Honor, I might point out --

14 THE COURT: But it would only be to protect the
15 national security; is that correct?

16 MR. RYAN: That's right, Your Honor. Under b(1),
17 that is the purpose of our continuing to request that it be
18 classified Confidential, and it has been so classified.

19 THE COURT: Well, how do you propose that we test
20 this? You see, this is the problem that's proposed to the
21 Court.

22 MR. RYAN: Your Honor --

23 THE COURT: There is nothing that I can see to
24 prevent an affidavit being constructed by the head of an
25 agency that very carefully -- as it was done here -- that makes

269

1 it impossible for the Court to exercise any rational judgment.

2 That's the difficulty we have in this thing.

3 I have no desire to second guess anybody in the

4 CIA as to what is or is not in the public interest.

5 But by the same token, we have no assurance in any

6 particular matter that it's any more than just a general desire

7 not to let us have information that should be available.

8 MR. RYAN: Your Honor --

9 THE COURT: I can understand very clearly. I don't

10 think I would have any difficulty if this case were being

11 tried in 1967. But this is 1977, and the affidavit would lead

12 us to believe that the same exact circumstances that existed

13 for the classification in 1964 exist in 1977.

14 MR. RYAN: Your Honor --

15 THE COURT: Now, that's the purport of the affidavit.

16 That's the purport of your argument; is it not?

17 MR. RYAN: Your Honor, we would --

18 THE COURT: Of course, to some extent.

19 MR. RYAN: -- submit that it has been declassified

20 from Top Secret to Confidential.

21 THE COURT: Surely. And in 1987 you might get it

22 down to some other classification. In 1997 you will say,

23 "Here it all is. Nosenko is dead. They have got a new

24 regime in Russia. We have got a new administration here --

25 will have had three or four.

1 MR. RYAN: Your Honor, we would submit that our
2 Court of Appeals has addressed this problem, this problem that
3 the Court is faced with in the case of Weissman v. CIA, and
4 has, in addressing that problem, stated only in the extreme
5 cases would the Court look behind what it considers to be an
6 inadequate affidavit.

7 If the affidavit is not adequate, Your Honor, it
8 seems that the burden would be upon the government to redo the
9 affidavit, to submit a more adequate affidavit for the Court's
10 satisfaction.

11 But I would submit that it's important to keep in
12 mind that the agency does review these documents when a
13 Freedom of Information Act request comes in. It just doesn't
14 rely upon the schedule.

15 As a matter of fact, the case which the plaintiff
16 referred to where a transcript was declassified a short time
17 after a decision in favor of the government was rendered by
18 Judge Gesell, that particular transcript was reviewed as a
19 result of plaintiff's Freedom of Information Act request when
20 it was made. It just so happened that the declassification
21 review took slightly longer than the litigation took to
22 process.

23 So that after Judge Gesell had ruled that the
24 transcript was exempt as an investigatory file under b(7), a
25 short while thereafter the declassification review was

1 completed and the transcript was released.

2 So, these transcripts are looked at a second time
3 again and again, not only according to the schedule, but when
4 a Freedom of Information Act request comes in, Your Honor.

5 So, we submit that there is nothing in the record
6 to derogate from the good faith of the agency in conducting
7 an ongoing review of this transcript.

8 We submit that the decisions will be made at the
9 appropriate time, and we hope that that is a time in the nearer
10 as opposed to the distant future, to continue this de-
11 classification process, and at some time in the future these
12 two transcripts will be declassified.

13 If Your Honor is not satisfied with the affidavits
14 which we have submitted, Your Honor, we can consider that and
15 attempt to provide additional material. I don't know that
16 that is necessary, but we submit that we have made the showing
17 required under the cases for the sustaining of the invocation
18 of the b(1) exemption.

19 So, Your Honor, we would rest on that presentation.

20 If Your Honor has any further questions --

21 THE COURT: No, I don't have any further questions.
22 I understand your position. I understand the plaintiff's
23 position.

24 MR. RYAN: Thank you very much, Your Honor.

25 THE COURT: All right.

272

1 MR. LESAR: Your Honor, may I just correct a couple
2 of things?

3 First of all, it is not true that the plaintiff's
4 request for the January 27th transcript was reviewed when he
5 requested it. He made that request in 1968. It was not
6 reviewed until 1974.

7 THE COURT: I know. I have had other Freedom of
8 Information Act cases. They don't do anything until they go
9 to court. That's the pattern throughout the government.

10 MR. LESAR: It is also --

11 THE COURT: The presumption is that you are not
12 entitled to it. That's the way they operate. You have got to
13 fight for it.

14 I haven't had a single case yet where they said yes,
15 under the statute you are entitled to it. Not when it gets
16 down to close decisions of any kind. The presumption is very
17 much to the contrary.

18 Now, I cannot take any more time in this matter. I
19 told you, I have read everything that you have submitted. I
20 will take it under advisement. I will issue the appropriate
21 order.

22 Thank you.

23 MR. RYAN: Your Honor, I am advised by counsel that
24 under the terms of Executive Order 11652, the classification
25 order, plaintiff also has a right to seek classification review

1 by the Intra-agency Classification Review Committee. So, that
2 is an alternate route the plaintiff can go. I don't know
3 whether he has exercised that prerogative.

4 THE COURT: Well, he is not required to. I know
5 it's an alternate.

6 MR. RYAN: He is not required to, but it is available.

7 THE COURT: Yes. But if he gets the same thing that
8 he has had over the years --

9 MR. LESAR: As a matter of fact --

10 THE COURT: I am not going to hear any more. I told
11 you. This could go on for the rest of the day.

12 I understand your problem. I will wrap it up and
13 you can get it to the Court of Appeals as fast as you can,
14 because that's where it's ultimately going to be decided.

15 All right.

16 (Whereupon, at 10:40 o'clock a.m., proceedings
17 in the above-entitled matter were taken under
18 advisement.)

19 -oOo-

20 REPORTER'S CERTIFICATE


21 Certified to be the official transcript of proceedings.

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EUGENE T. FEDORATION, R.P.R.
Official Court Reporter

274

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :
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Plaintiff, :
: :
v. : Civil Action No. 75-1448
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GENERAL SERVICES ADMINISTRATION, :
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Defendant :
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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 plaintiff in the above-entitled cause of action.
2. In this Freedom of Information Act lawsuit, I seek the entire transcripts of two executive sessions of the Warren Commission and eleven pages of a third. According to affidavits filed in this cause by Charles A. Briggs, Chief, Information and Services Staff, Directorate of Operations, Central Intelligence Agency, the June 23 1964 transcript and pages 63-73 of the January 21, 1964 transcript are currently classified "Confidential" to protect intelligence sources and methods pursuant to 50 U.S.C. 5403(d)(3). (Copies of Mr. Briggs' affidavits are attached hereto as Exhibits 1 and 2)
3. One of the interrogatories which I initially directed to defendant General Services Administration inquired whether Yuri Ivanovich Nosenko is the subject of the June 23, 1964 Warren Commission executive session transcript. The GSA initially refused to answer this interrogatory, claiming that it sought the disclo-

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

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

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

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

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

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

precaution must continue to be taken to protect the personal security of Mr. Nosenko." Finally, "[t]he manner in which Mr. Nosenko's security is being protected is serving as a model to potential future defectors." (Exhibit 2, 19)

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

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

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

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

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

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

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

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

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

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

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

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

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

4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

284

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

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

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

ment, and United States citizenship:

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

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

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

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

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


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

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

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

287

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


 HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

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


 NOTARY PUBLIC IN AND FOR
 FREDERICK COUNTY, MARYLAND

My commission expires 7-1-78.

288

Exhibit 1

C.A. No. 75-1448

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v. Civil Action No. 75-1448

NATIONAL ARCHIVES AND RECORDS
SERVICE,

Defendant

AFFIDAVIT

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

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

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

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

GOVT EX. 2

289

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

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

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

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

Charles A. Briggs
Charles A. Briggs

STATE OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

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

Helen Connor
Notary Public

My commission expires: March 15, 1977.

291

Exhibit 2

C.A. No. 75-1448

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

AFFIDAVIT

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

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

292

2. Through my official duties I have become acquainted with the Freedom of Information Act (FOIA) request submitted to the National Archives by the plaintiff in the above-captioned litigation and I have read the two documents at issue; pages 63-73 of the transcript record of an executive session of the President's Commission on the assassination of President Kennedy of 21 January 1964 and the transcript of a similar session of 23 June 1964.

I have concluded that the documents are properly withheld from the plaintiff pursuant to exemptions (b)(1) and (b)(3) of the FOIA, as amended. These exemptions have been asserted in that the documents are currently properly classified pursuant to Executive Order 11652 and contain information which, if released, would jeopardize foreign intelligence sources and methods which the Director of Central Intelligence Agency is responsible for protecting from unauthorized disclosure pursuant to the National Security Act of 1947, as amended (50 U.S.C.A. 403(d)(3)).

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

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

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

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

294

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

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

295

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

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

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

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

297

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

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

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

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

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

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

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

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

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

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

76-32

DDA 76-4276

25 AUG 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Delegation of Authority to Classify Top Secret

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

2. Basic Data:

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

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

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

Name	Position	Position No.
Charles A. Briggs	Chief, Services Staff	CT 36

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

/s/ John F. Blake
John F. Blake

Attachment: a/s

APPROVED (✓)

DISAPPROVED ()

29 AUG 1976

Tel George Bush

George Bush
Director

Date

This document becomes UNCLASSIFIED when separated from attachment.

CONFIDENTIAL

EXHIBIT A

302

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MEMORANDUM

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3/12/64
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TO : Records
FROM : W. David Slavson *WDS*
SUBJECT : Conference with the CIA on March 12, 1954

At 11:00 a.m., on March 12, 1954 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 Slavson, 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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303

Addendum

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

Gentlemen:

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

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

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

Ford: Wade is?

A: The District Attorney.

Ford: Carr is the Attorney General.

Boggs: Right, of Texas.

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

DECLASSIFIED
EO 11652, Sec 1.4
BY SP-6 DATE 3/27/83

304

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

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

Rawkin: That is right.

305

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

A: That is right.

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

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

A: Lee, would you tell them?

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

A: I was talking with Carr.

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

A: Yes.

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

Boggs: Thornhill, I think.

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

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

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

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

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Boggs: What time was this, Lee?

A: 11. 10.

Boggs: That is after the Ruby episode of yesterday?

A: That is right.

Q: Yes.

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

Q: That is, the District Attorney was?

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

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

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

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

Ford: He hasn't made any investigations himself?

A: No, he has not.

Ford: Was Wade or anyone connected with Wade?

A: No.

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

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

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

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

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

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

A: No, he did not.

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

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

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

Cooper: How would you test this kind of thing?

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

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

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

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

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

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

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

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

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

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

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

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

A: Yes.

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

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

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

NOTE

310

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

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

A: I could be.

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

A: Well, maybe you can.

Dulles: You can get them quick.

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

Dulles: I think in the State Department. . . .

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

Boggs: Particularly for someone who has any Communist

A: Oh, yes.

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

Cooper: They admitted there wasn't any.

A: What record, that he was a defector?

311

~~TOP SECRET~~

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

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

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

A: Yes..

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

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

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

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

Boggs: Sure. That is all in the file.

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

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

312

Cooper: Sure.

A: I think it was in October.

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

Boggs: In New Orleans?

A: In New Orleans.

Q: Right.

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

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

A: Yes.

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

A: That is right.

Q: The same old stereotyped answer?

A: Yes.

Cooper: How do you propose to meet this situation?

Boggs: This is a serious thing.

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

Dulles: What is that?

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

Q: Yes.

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

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

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

314

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

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

Q: Belmont?

A: Yes.

Q: An informer also would you say?

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

Dulles: Yes, I know.

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

Boggs: You are so right.

Dulles: Oh, terrible.

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

A: Terrific.

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

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

Boggs: I can immediately --

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

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315

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

Dulles: Yes, I see that.

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

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

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

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

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

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

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

A: I would hope so too.

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

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F.O. 11672, Sec 11

By: (Signature) Date: 7/2/45

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316

Exhibit 7

C.A. No. 75-1448

ATTACHMENT 1: February 27, 1978 issue of New York Case No. 77-1831

Feeling Tired? Get a Night of Sleep
A King in New York: The Ultimate One-Night Stand

ONE DOLLAR

FEBRUARY 27, 1978

NEW YORK

Russian Spies Inside the CIA and the FBI

The War of the Moles


By Edward Jay Epstein



317

NEW YORK

The War of the Moles



An interview with Edward Jay Epstein by Susana Duncan

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

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

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

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

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

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

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

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

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

318

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

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

The unnerving implications of Epstein's book go far beyond the events of 1953. The book ends with the firing of most of the CIA's counterintelligence staff in 1976, and we are left with the irksome suspicion that Fedora is still a trusted contact for the FBI's New York office and that there is still a mole burrowing his way up through the ranks of the CIA or the FBI. *New York Magazine* arranged an exclusive interview with Epstein in which he talked to senior editor Susana Duncan about his Oswald book and about the Russian moles. He also agreed to write four of the new spy stories, giving many details that he omitted from the book.

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

Answer: I began by rejecting the idea that there was something new to be found out about bullets, wounds, or the grassy knoll. Instead I asked: Why did Lee Harvey Oswald defect to the Soviet Union in 1939? It seemed incredible to me that a twenty-year-old marine would suddenly decide to leave his family and friends and go live in a strange country. I became interested in the question of motive.

Q. How did you begin your investigation?

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

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



Edward Jay Epstein: Born in New York City in 1933, Epstein has just completed a two-year investigation into Lee Harvey Oswald's relationships with the intelligence services of three nations—Russia, America, and Cuba. Epstein has a Harvard Ph.D. and has taught political science at Harvard, MIT, and UCLA. He is the author of several books, including *New From Nowhere* and *Agency of Fear*.

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

Q. What did you learn from the marines?

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

Q. How was this important?

A. I didn't know how valuable this information was at the time. But I questioned the designer of the U-2 at Lockheed, Clarence Johnson, and Richard Bissell, former special assistant to the director of the CIA, who was in charge of the U-2 program in 1953, and found out that acquiring detailed information about the altitude and flight patterns of this novel spy plane was the number-one priority of Soviet intelligence. I

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

Q. What did Powers tell you?

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

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

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

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

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

319

I interviewed over 200 witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

"Stone": The Man Who Warned About the Moles

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

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

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

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

—EJE



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

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

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

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

320

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

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

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

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

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

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

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

Q. But why did they talk?

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

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

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

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

Q. And what was that?

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

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

A. Yes. The CIA put me onto him.

Q. How do you explain that?

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

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

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

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



Nosenko: The Red Herring

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

—EJE

Fedora: The Spy Who Duped J. Edgar Hoover

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

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

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

Fedora's disinformations

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

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

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

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

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



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



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



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



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

(Continued from page 32) of Nosenko?

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

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

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

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

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

Q. Well, what did Angleton tell you?

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

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

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

323

"...The Warren Commission questioned one marine who knew or worked with Oswald in Japan. Epstein found another IO4..."

that crucial facts were not withheld.

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

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

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

Q. What was Voloshin doing in California?

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

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

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

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

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

Q. What about the FBI?

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

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

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

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

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

Cherepanov: The Would-Be Mole

In the fall of 1963, an American businessman visiting a Soviet ministry in Moscow was hurriedly handed a pack of papers by an official named Cherepanov. He was told to take these papers to the American Embassy. The embassy had never heard of Cherepanov and, suspecting it all might be a Soviet trap aimed at the American businessman, photocopied the papers and gave them to the Soviet ministry. The fact that Cherepanov's name was on the distribution ladder with the papers clearly identified him as a traitor. When the CIA heard about the papers being given back, they realized that the embassy might have signed Cherepanov's death warrant.

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

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

324

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

A Warning From the ‘Old’ CIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Might there be a mole in the FBI?

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

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

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

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

325

LEGEND:
—
THE
SECRET WORLD
OF
LEE HARVEY
OSWALD
—

EDWARD JAY EPSTEIN

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326

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

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

Shortly thereafter the Office of Security made arrangements to buy Nosenko a house in North Carolina. He would also receive from the CIA an allowance of about \$30,000 a year, employment would be found for him and he would be granted United States citizenship. In return, he would agree not to talk to any unauthorized persons about his experiences with the CIA. His three years of confinement, his indictment for being a messenger from Moscow and the subsequent reversal all were to be a closely held secret.

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

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

SUNDAY, APRIL 16, 1978

The Mysterious Soviet Defection At the U.N.

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



Arkady N. Shevchenko

By Tad Szulc

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

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

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

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

And this embarrassment may deepen and turn into con-

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

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

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

This is not the way intelligence operates. CIA and FBI men who have handled Soviet-bloc defectors since the 1950s would say that recruitment of defectors is exceedingly rare. The vast majority — such as KGB officers Yuri I. Nosenko and Anatoli M. Golitsin — defect on their own, for political reasons, and intelligence co-optation comes later, often in return for a quid pro quo for protection and asylum in the United States and the chance to build a new life here. In the majority of this type, the first concern — a concern that has not yet been fully resolved after 14 years in Nosenko's controversial case — is whether the defector is a KGB "deep plant" or a possible double agent.

See DEFECTION, p. 10

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

328

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

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

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

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

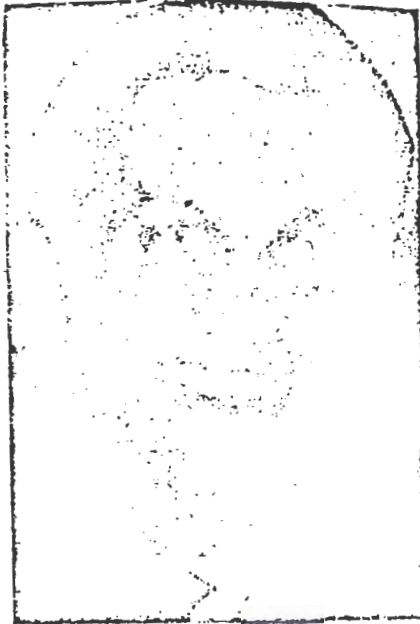
A Rising Star

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

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

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

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



Yuri I. Nosenko

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

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

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

An Exercise in Discretion

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

329

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

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

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

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

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

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

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

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

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



Ernest A. Gross

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

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

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

A Link With "Fedora"?

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

330

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

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

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

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

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

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

Moving Fast

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

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

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

Soviet and United States delegations were immediately informed of it.

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

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

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



Oleg Penkovsky

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-108

UNITED STATES GOVERNMENT

Addendum 3

Memorandum

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

DATE: October 20, 1969

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

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

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

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

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

Enclosures (2)

EJM:jmv
(8)

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REC-62

CONTINUED - OVER

3a

332

UNITED STATES GOVERNMENT

Memorandum

Addendum 4

TO : Mr. DeLoach

DATE: 6/24/70

FROM : T. E. Bishop

SUBJECT: ASSASSINATION OF DR. MARTIN LUTHER KING

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

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

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

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

Enc. / ENCLOSURE

- 1 - Mr. DeLoach
- 1 - Mr. Bishop (CONTINUED-OVER)
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Jones

sky release 3/12/70

JUN 30 1970

JUN 29 1970

UNRECORDED COPY FILED IN 110-5888

REC-3

6/25/70 JUN 29 1970

333

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

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

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

RECOMMENDATION

None. For information.

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

334

Addendum

November 15, 1968

K

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

L

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

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

JAMES B. RHOADS
Archivist of the United States

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

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

NND 1198 NN

335

Addendum

DEC 8 1970

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

Dear Mr. Weisberg:

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

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

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

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

Sincerely,

(Signed) W. L. Johnson, Jr.

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

Burke Marshall
Tom Kelly, Secret Service
cc: Official File - LC
Mr. Yoock - A
Asst. Adm. for Admin. - B
Mr. Vawter - ALI
General Counsel - L1
Mr. Marion Johnson - NND
Deputy Gen. Csl. - LL
Asst. Gen. Csl. - LR
Mr. Falper - Dept. Justice
Mr. Axelrad - Dept. Justice
LC:RFWilliams:afn: 11-25-70
Retyped:LL:mta 11/25/70

L _____ ALI _____

336

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

(Over)

GSA FORM 6702

337

Addendum 9

APR 2 1975

Deputy Archivist of the United States - MD

FOIA Request from James H. Lesar

Attorney Advisor - LRE

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

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

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

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

James E. O'Neill

JAMES E. O'NEILL

cc: Official file NCF
Reading file - NCF
- MD

MJohnson:ram

NCF *[initials]* NCF *[initials]*

338

Addendum 10

DATE: APR 4 E

GENERAL SERVICES ADMINISTRATION

Office of General Counsel
Washington, D.C. 20



REPLY TO: General Counsel - L

SUBJECT: Warren Commission Materials and the Freedom of Information Act

Archivist of the United States - N

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

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

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339

Addendum 11

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—NEWSWEEK



KGB

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The New York Times Book Review

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—Rowland Evans and Robert Novak,
The Washington Post

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

—The Toronto Sun



340

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—Noel Barber, *London Daily Mail*

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

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

341

ABOUT THE AUTHOR

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

342

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

344

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

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

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

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

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

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

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

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

345

- Norway, 24, 160; expelled "diplomat" V. N. Yerofeyev, 258
- Nosenko, Yuri Ivanovich, defector's revelations of KGB operations, 16, 17; recommended detention of F. C. Barghoorn, 85-87; tourist-entrapment operations in Moscow, 164, 188, 229; on V. Louis' KGB career, 241; on importance of stolen Courier Center documents, 299, 300; death sentence in absentia, 412; on change in KGB's assassination policy, 431; on KGB's reaction to L. H. Oswald's assassination of President Kennedy, 452
- Novodvorskaya, Valeria, dissident student confined to asylum, 149; leaflet quoted, 152-53
- Novosti, propaganda agency's KGB links, 15, 27, 204
- Nozaka, Saneo, Japanese C. P. chairman, 254
- NTS (Narodny-Trudovoy Soyuz), Russian émigré group, 418, 420, 421
clear Weapons, 26, 32, 243, 255, 366. See also Missiles
- Nyerere, Julius K. See Tanzania
- Oberlander, Theodor, West German Refugee Minister smeared, 425-26
- O'Connell, David, bought Czech arms for IRA, 347
- Odabashov, Enver, teacher imprisoned for enlarging vegetable plot, 150
- Odantara, Maba, Indonesian stole Japanese trade secrets, 257
- OGPU, forerunner of KGB, 88, 171n, 227, 345, 415, 416
- Oil, Soviet control strategy in Middle East, 62; attempted sabotage of Saudi Arabian fields, 76
- Okolovich, Georgi Sergeevich, NTS official and wife escaped assassination, 418, 420-21
- "Olavi," anticommunist Finn encountered by Tuomi, 376
- Olympic Games, Mexico City, 1968, KGB sabotage plans, 320-22
- Olympio, Sylvanus, President of Togo murdered, 344
- Omnipol, STB subsidiary, 347
- O'Riordan, Michael, Irish C.P. official's contacts with Y. Ustimenko, 346
- Orlov, Gen. Alexander, early Soviet defector, 255; on Soviet reliance on secret rather than overt intelligence sources, 260-62
- Orlov, Arseni Fedorovich, trade representative and KGB agent in Brazil, 34
- Orlov, Misha, actor-singer assigned to seduce G. Guibaud, 173-77
- Orthodox Church. See Russian Orthodox Church
- Orzhurmov, Vitali Sergeevich ("Viktor"), KGB contact with R. L. Johnson, 289-308 passim
- Oswald, Lee Harvey. See Kennedy, President John F.
- Owen, William, M. P. arrested for espionage, 196
- Pachón Chocanta, Feliciano, Colombian guerrilla captured, 347
- Paese Sera, KGB-inspired articles on U.S. contingency war plans in Europe, 309
- Pakistan, 226
- Palestinian guerrillas, Soviet aid to, 34-35, 77-78, 96, 451; IRA arms forwarded through Al Fatah, 347
- Palladina, Natalia. See Sakharova, N.
- Pankratov, Lev Ivanovich, deputy KGB chairman, 98
- Panov, Valeri, Jewish ballet dancer persecuted for desire to emigrate to Israel, 5-6
- Panyushkin, Aleksandr, diplomat and former KGB general, 15
- Paques, Georges, NATO official betrayed Berlin defense plan to KGB, 31

- Yevtushenko, Yevgenni, 144; failed to intercede for fellow poet Y. Galanskov, 18-19
- Yugoslavia, 23, 111
- Yunost, Soviet youth magazine on training of Border Guards, 120
- Zaire (Congo Kinshasa), 344; expulsions of Soviet embassy staff, 347
- Zanegin, Boris, Soviet China specialist in U.S., 259
- Zaniye (Knowledge) Society, conducted Soviet antireligious campaigns, 139
- Zborowski, Mark, spied on L. Sedov, 416n
- Zdebskis, Juozas, Lithuanian Catholic priest arrested, 3-4, 148
- Zhukov, Vladislav Petrovich, KGB agent bullied Lebanese Foreign Office, 252
- Zimin, Valentin Yakovlevich, GRU Resident in Kuwait, 75, 78

Addendum 2

B 48 Sunday, Feb. 19, 1978 THE WASHINGTON POST

CIA Able to Control Minds By Hypnosis, Data Shows

United Press International

The Central Intelligence Agency shook the theory that "nice" people cannot be made immoral under hypnosis by getting one woman to act out a cold-blooded murder in 1951, according to declassified intelligence documents.

The Cold War-era mind control experiment climaxed when the hypnotized woman, described as peaceable and terrified of guns, fired a pistol point blank at a sleeping colleague—not knowing the gun had been unloaded.

The documents also described other experiments in hypnosis—always involving female subjects for reasons not stated—in which women were persuaded to simulate immoral, abnormal or disloyal behavior.

One report concluded: "If it can be shown in a series of tests that our subjects will do things that they normally would not do in their everyday activities, it seems logical that individuals elsewhere can be also controlled thusly."

The once-secret documents were obtained by the weekly Washington newsletter Science Trends under the Freedom of Information Act, and made available to United Press International.

They described CIA-sponsored hypnosis experiments carried out from 1951 to 1954, when the agency was starting up its ultra-secret "Project MK-Ultra" research into mind and behavior control using witting and unwitting humans.

MK-Ultra ran into the 1960s, spurred initially by Korean War-era fears that the Soviets and Chinese had a big lead in "brainwashing" techniques that might enable them to induce confessions from any captured enemy and turn Western spies into helpless, obedient double-agents.

Names of subjects were blanked out in the released documents, but all were described as young, well-educated, highly motivated women who worked for the CIA and apparently volunteered for the experiments.

The simulated murder was described in a report dated Feb. 10, 1954, concerning a male hypnotist and a woman "who had expressed a fear of firearms in any fashion."

It said she was put in a trance and told to awaken another woman who had been put into a deep sleep.

When she could not awaken her colleague, the report said, she was ordered to "pick up a pistol nearby and fire it at Miss (blank)" and assured that "her rage would be so great that she would not hesitate to 'kill.'"

It said the woman "carried out these suggestions to the letter, including firing the (unloaded) gun at Miss (blank), then proceeding to fall into a deep sleep" as ordered.

When awakened, neither the "murderer" nor her "victim" had any recollection of what had happened, the document said. It added: "The 'murderer' refused to pick up or accept the same gun and absolutely denied that she had ever fired it."

347

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

FILED

MAY 12 1978

MEMORANDUM

JAMES F. DAVEY, CLERK

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

348

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

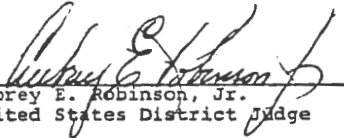
The transcripts in question contain information relating to Soviet defector Yuri Ivanovich Nosenko. The Government has objected to disclosing such information on the grounds that any disclosure would compromise the intelligence sources and methods of the Central Intelligence Agency. In granting defendant summary judgment, the Court found that the agency had met its burden of demonstrating that release of the information in issue could be reasonably expected to lead to unauthorized disclosures of intelligence sources and methods. See Weissman v. Central Intelligence Agency, 565 F.2d 692 (D.C. Cir. 1977); Phillippi v. Central Intelligence Agency, 546 F.2d 1009 (D.C. Cir. 1976).

Plaintiff's motion for new trial is based largely on information which has appeared in recent books and newspaper publications and which, plaintiff argues, undermines the Government claims with respect to the personal security and safety of Nosenko and the security of the data which Nosenko provided to the Central Intelligence Agency. However, the Court finds that the information concerning Nosenko which has appeared subsequent to this Court's granting of summary judgment in favor of defendant in no way vitiates the application of exemption 3 to the transcripts in issue. Whatever appeared in the Barron and Epstein books and in various news accounts, however accurate the information contained therein

349

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

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


Aubrey E. Robinson, Jr.
United States District Judge

DATE:

May 12, 1978

350

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

FILED

JUN 22 1978

HAROLD WEISBERG,

Plaintiff,

v.

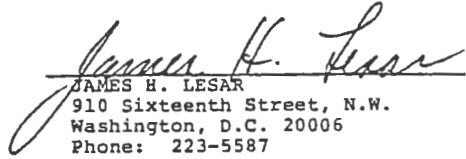
Civil Action No. 75-1448

GENERAL SERVICES ADMINISTRA-
TION,

Defendant

NOTICE OF APPEAL

Notice is hereby given that Harold Weisberg, plaintiff above-
named, hereby appeals to the United States Court of Appeals for the
District of Columbia from the Order of this Court denying plain-
tiff's motion for a new trial entered in this action on the 16th
day of May, 1978.


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

Attorney for Plaintiff

DATED: June 22, 1978

351

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831
Harold Weisberg,
Appellant

United States Court of Appeals
for the District of Columbia Circuit
September Term, 1978
FILED JAN 12 1979

v.

General Services
Administration

GEORGE A. FISHER
CLERK

Civil Action No. 75-1448

And Consolidated Case No. 78-1731

BEFORE: Bazelon*, Circuit Judge; Fahy, Senior Circuit Judge and
Leventhal, Circuit Judge

O R D E R

On consideration of appellee's motion for partial dismissal of appeal in No. 77-1831 and for complete dismissal of the appeal in No. 78-1731 on grounds of mootness, and responses thereto, and the record on appeal, it is

ORDERED by the Court that the order of the District Court on appeal in No. 77-1831 relating to the January 21, 1964 and June 23, 1964 transcripts, and the entire order of the District Court on appeal in No. 78-1731 are dismissed as moot. As to those matters, the cases are remanded to the District Court with directions to vacate its orders. See United States v. Munsingwear, Inc., 340 U.S. 36 (1950). All other issues on appeal in 77-1831 before this Court remain for consideration. The District Court may still consider any post-dismissal matters, upon motion, as the District Court deems appropriate.

Per Curiam

*Circuit Judge Bazelon did not participate in the foregoing order.

353

Rec'd 4-5-19

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

FILED

MAR 29 1979


ORDER

JAMES E. DAVEY, CLERK

Upon consideration of the Order of the Court of Appeals for the District of Columbia Circuit, Nos. 77-1831 and 78-1731 (consolidated) dated January 12, 1979, it is by the Court this 27th day of March, 1979,

ORDERED, that the Order issued March 10, 1978 and the Order issued June 7, 1978 (amending the March 10th Order), relating to the January 21, 1964 and June 23, 1964 transcripts, be and hereby are VACATED, pursuant to United States of America v. Munsingwear, Inc., 340 U.S. 36 (1950); and it is

FURTHER ORDERED, that the Memorandum and Order issued by this Court on May 16, 1978, be and hereby is VACATED, pursuant to United States of America v. Munsingwear, Inc., 340 U.S. 36 (1950).


 Aubrey E. Robinson, Jr.
 United States District Judge

352

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831
Harold Weisberg,
Appellant

September Term, 19 78
Civil Action No. 75-1448
United States Court of Appeals
for the District of Columbia Circuit

v.
General Services Administration

FILED MAR 16 1979

GEORGE A. FISHER

CLERK
BEFORE: Bazelon, Tamm and Robinson: Circuit Judges

ORDER

Upon consideration of the briefs and the entire record on appeal herein, and of appellee's motion for permission to lodge affidavit, and of appellant's response to appellee's motion for permission to lodge affidavit, it is

ORDERED by the Court, sua sponte, that this Court's order of March 7, 1979 granting appellee's motion for permission to lodge affidavit is vacated. The Clerk is directed to return appellee's affidavit and also the affidavit of appellant, and other material attached to appellant's response. It is

FURTHER ORDERED by the Court that the order of the District Court on appeal herein, with respect to the May 19, 1964 Warren Commission transcript, is affirmed for the reasons stated by the District Court.

Per Curiam

For the Court:

George A. Fisher
GEORGE A. FISHER
Clerk

Bills of lading to be filed with the court after entry of judgment in favor of the party in favor upon motion of the party in favor of the time.

354

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831

September Term, 19 78

Harold Weisberg,
Appellant

United States Court of Appeals
for the District of Columbia Circuit

v.

General Services Administration

FILED APR 12 1979

And Consolidated Case No. 78-1731

GEORGE A. FISHER
CLERK

BEFORE: Bazelon, Tamm, and Robinson; Circuit Judges

ORDER

Upon consideration of appellant's motion for award of costs, of appellant's affidavit of costs, of appellee's bill of costs, and of appellant's opposition to award of costs to appellee, it is

ORDERED, by the Court, that costs in the total amount of \$492.54 are awarded in favor of appellant and taxed against appellee.

Per Curiam

FOR THE COURT:

George A. Fisher

GEORGE A. FISHER
Clerk

355

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831

September Term, 19 77

Harold Weisberg,
Appellant

Civil Action 75-1448

v.

General Services
Administration

FILED
1977 SEP 5 1 1977
United States Court of Appeals
for the District of Columbia Circuit
GEORGE A. FISHER
CLERK

BEFORE: Tamm and Robinson, Circuit Judges

ORDER

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

Appellant seeks to present evidence to this Court which has not been presented to the District Court. The sound course is for appellant first to present his alleged new evidence to the District Court in a motion for a new trial. See Smith v. Pollin, 194 F.2d 349, 350 (D.C. Cir. 1951). In light of 5 U.S.C. 3352(a) (4) (D), we direct the District Court to act expeditiously on such a motion so that we may hear oral argument on the appeal promptly if no remand under Smith v. Pollin is recommended. Accordingly, it is

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

356

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1831

-2-

September Term, 19 77

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

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

Per Curiam

Addendum 6

CO-2-34,030

November 13, 1970

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

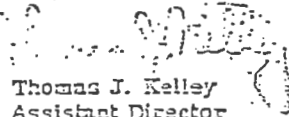
Dear Mr. Rhoads:

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

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

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

Very truly yours,


Thomas J. Kelley
Assistant Director

358

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1442

GENERAL SERVICES ADMINISTRA-
TION,

Defendant
.....

AFFIDAVIT OF JAMES H. LESAR

I, James Hiram Lesar, first having been duly sworn, depose and say as follows:

1. I am the attorney for plaintiff in the above-entitled cause of action.

2. I received my juris doctor degree from the University of Wisconsin Law School in 1969. I was first admitted to the practice of law in Wisconsin in 1969.

3. I am a member of the bars of the District of Columbia Court of Appeals, the United States Court of Appeals for the District of Columbia, the United States Court of Appeals for the Fifth Circuit, the United States Court of Appeals for the Sixth Circuit, and the Supreme Court of the United States.

4. I have had extensive experience litigating cases under the Freedom of Information Act ("FOIA"). To date I have represented litigants in twelve FOIA cases filed in district court. I was the sole attorney representing the plaintiff in each of these cases. In addition, I have handled eight FOIA cases in the United States Court of Appeals for the District of Columbia and drafted one petition for a writ of certiorari to the United States Supreme Court.

359

5. My first experience under the Freedom of Information Act came in 1970 when Mr. Harold Weisberg filed suit for the results of the spectrographic analyses made on items of evidence in the assassination of President John F. Kennedy. In this lawsuit, Weisberg v. United States Department of Justice, Civil Action No. 2301-70, Weisberg was represented by Mr. Bernard Fensterwald, Jr. At that time I was associated with Mr. Fensterwald's Committee to Investigate Assassinations. Just prior to oral argument of the case before Judge John Sirica on November 16, 1970, I did some research on the investigatory files exemption for Mr. Fensterwald.

6. When Judge Sirica granted the government's motion to dismiss, Weisberg appealed. (Weisberg v. United States Department of Justice, D.C. Circuit, Case No. 71-1026) On appeal I did all the research and wrote the appeal briefs and memoranda; Mr. Fensterwald presented the oral argument.

7. Because this case involved the then novel and politically sensitive question of whether the Freedom of Information Act applied to the FBI's investigatory files, it required a considerable amount of research and thought. I made a very careful study of the legislative history of the Act as it pertained to the investigatory files exemption, as well as a careful analysis of the holdings in this and other circuits in cases involving the investigatory files exemption. I concluded that Congress had intended that investigatory records would be made public except in those instances where the government could demonstrate that a specific harm to law enforcement procedures would result from disclosure of the materials requested.

8. On appeal, a three-judge panel initially reversed the decision of the district court and remanded the case for further proceedings. Subsequently, however, the Court of Appeals vacated the panel decision and issued an en banc opinion declaring that the FBI

records sought by Weisberg were protected from disclosure by Exemption 7. Weisberg v. Department of Justice, 160 U.S.App.D.C. 71, 489 F. 2d 1195 (1973) (en banc), cert. denied, 416 U.S. 993, 94 S. Ct. 1405, 40 L.Ed. 2d 772 (1974). (This decision is referred to hereafter as "Weisberg I")

9. The precedent set by the en banc decision of the Court of Appeals in Weisberg I had a drastic effect on the implementation of the Freedom of Information Act. The Court of Appeals' decisions in a number of cases cited Weisberg I as the precedent requiring that access to investigatory files be denied. (See, for example, Aspin v. Department of Defense, 160 U.S.App.D.C. 231, 491 F. 2d 24 (1973); Ditlow v. Brinegar, 161 U.S.App.D.C. 154, 494 F. 2d 1073, cert. denied, 419 U.S. 974 (1974); and Center for National Policy Review on Race and Urban Issues v. Weinberger, 163 U.S.App.D.C. 368 (1974).)

10. As a consequence of the sweeping effect that Weisberg I had on access to investigatory records, Congress felt compelled to amend Exemption 7. In so doing, Congress was forced to confront squarely the two primary legal issues raised by the Weisberg I precedent: 1) whether the Freedom of Information Act extended to FBI files; and 2) whether an agency should be required to show that certain specified kinds of harm would result from the release of its records before such records could be withheld under the authority of Exemption 7.

11. In enacting the 1974 Amendments to FOIA into law, Congress expressly overrode Weisberg I. (See 120 Cong. Rec. S 9336, daily ed., May 30, 1974) Congress explicitly stated that the 1974 Amendments reaffirmed the original congressional intent behind the investigatory files exemption. With respect to Exemption 7, the 1974 Amendments set forth criteria for the disclosure of investigatory records similar if not identical to those which Weisberg had urged upon the Court of Appeals when Weisberg I was before it.

12. The Weisberg I case raised and helped resolve an important public issue, and it did so in what was perhaps a more dramatic and effective way than any other case could have. The result was a greatly strengthened and clarified Freedom of Information Act. This has had wide-ranging public benefits, including disclosures about the FBI's illegal and improper activities, such as its various Cointelpro programs. It has also forced disclosures which have greatly enhanced public knowledge of the FBI's performance in investigating the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr.

13. On February 19, 1975, the day the amended Freedom of Information Act went into effect, I filed Weisberg v. United States Department of Justice, Civil Action No. 75-0226. In this case Mr. Weisberg was seeking spectrographic analyses, neutron activation analyses, and other scientific tests performed on items of evidence in the assassination of President Kennedy. After some records of such tests were produced, the district court dismissed the case as moot. However, the Court of Appeals reversed the district court and remanded the case so that Weisberg could take depositions of FBI agents with personal knowledge of the relevant facts. Weisberg v. Department of Justice, 177 U.S.App.D.C. 161, 543 F. 2d 308 (1976). (Hereafter referred to as "Weisberg II").

14. Weisberg II set a precedent useful to other FOIA litigants and therefore of general public benefit by securing a ruling that an FOIA litigant seeking to establish the existence or non-existence of government records may employ traditional discovery devices, including the taking of depositions of present and former government officials with first-hand knowledge of such matters. The decision in Weisberg II is now frequently cited in briefs in FOIA cases. Its value as precedent is also recognized in a widely-used handbook edited by Christine M. Marwick and published by the

Project on National Security and Civil Liberties of the American Civil Liberties Foundation: Litigation Under the Amended Freedom of Information Act (Fourth edition, August, 1978), pp. 87-88.

14. On remand in Weisberg II, Weisberg took the depositions of four FBI agents who had participated in the scientific testing of items of evidence in the assassination of President Kennedy. These depositions and other discovery information established:

- 1) that FBI Agent John W. Kilty had submitted an affidavit which falsely stated that certain scientific tests had not been performed on specific items of evidence when in fact they had; and
- 2) that the FBI had concealed from Weisberg and the Court the fact that crucial records on the testing of a vital evidentiary specimen had not been located and were allegedly destroyed or discarded during "routine housecleaning."

15. Another significant legal victory was achieved in Weisberg v. General Services Administration, Civil Action No. 2052-73. In that case Weisberg sought the 86 page transcript of the Warren Commission executive session held on January 27, 1964. At the time this suit was filed, the January 27 transcript had been withheld from the public for nearly a decade on grounds that it was classified Top Secret pursuant to Executive order 10501. During the course of the lawsuit the government submitted two affidavits, one by former Warren Commission General Counsel J. Lee Rankin, the other by the head of the National Archives, Dr. James B. Rhoads, both swearing that the transcript had in fact been classified pursuant to Executive order 10501. Relying upon exhibits from the Warren Commission's own files, Weisberg was able to demonstrate that this was not so. Ultimately, Judge Gerhard Gesell ruled that the government had not shown that the transcript was properly classified pursuant to Executive order and that thus it was not entitled to protection under the Exemption 1 claim.

363

16. Judge Gesell's decision in Civil Action 2052-73 ensued that of the United States Supreme Court in EPA v. Mink, 410 U.S. 73 (1973). The Mink decision was generally thought to have all but ended the possibility of successfully using FOIA to obtain records purportedly classified pursuant to Executive order. In enacting the 1974 Amendments to Exemption 1, Congress expressly overrode the Supreme Court's decision in Mink. Because Judge Gesell's decision came after Mink but before the 1974 Amendments to Exemption 1, some law review articles have noted the significance of Judge Gesell's unpublished memorandum opinion. Thus, Professor Elias Clark wrote that Judge Gesell's decision and a subsequent opinion by the District of Columbia Court of Appeals in Schaffer v. Kissinger, 505 F. 2d 389 (1974), had "pecked away at the seemingly absolute bar of Mink" Elias Clark, "Holding Government Accountable: The Amended Freedom of Information Act," 84 Yale Law Review 741 (1975) at 753, fn. 57. (See also, Comment, "Freedom of Information: Judicial Review of Executive Security Classifications," 28 University of Florida Law Review 552 (1975) at 564, fn. 103.

17. Although Judge Gesell ruled that the government had not shown that the January 27 transcript was entitled to protection under Exemption 1, he went on to rule that it was exempt from disclosure as an investigatory file compiled for law enforcement purposes, citing the decision of the Court of Appeals in Weisberg I. Because the answers to Weisberg's interrogatories showed that the transcript had not been made available to law enforcement authorities until at least three years after the Warren Commission had ceased to exist, and arguably not even then, Weisberg planned to appeal this decision. But before he could do so, the General Services Administration elected to "declassify" the January 27 transcript, ignore its previously asserted exempt status as an in-

364

investigatory file compiled for law enforcement purposes, and release the transcript to Weisberg and the public.

18. Once the January 27 transcript was made public, its contents showed that there never was any basis for classifying it in the interests of national security. However, the contents were embarrassing to the government, particularly the Central Intelligence Agency.

19. After releasing the January 27 transcript, the National Archives next made public another Warren Commission transcript requested by Mr. Weisberg, that of the executive session held on January 22, 1964. The January 22 and January 27 transcripts resolved a controversy which had raged throughout this country (and much of the world) for a decade after the Warren Report was issued. That controversy concerned whether the Warren Commission had engaged in a coverup or whitewash. The January 22 transcript deals with a report that Lee Harvey Oswald had been working as a paid undercover agent for the FBI. It reveals that members of the Commission themselves feared that if this report "was true and if it ever came out and could be established, then you would have people think there was a conspiracy to accomplish this assassination that nothing the Commission did or anybody could dissipate." (January 22, 1964 transcript, p. 12) It also reveals that the members of the Commission and its General Counsel were critical of the FBI for reaching its conclusion that Oswald alone killed President Kennedy without running out the leads. Perhaps most important of all, the transcript shows that the Commission was intimidated by the FBI and its Director, Mr. J. Edgar Hoover. The Commission felt that the FBI had boxed the Commission into a position where it had to endorse the FBI's presumption that Lee Harvey Oswald, and Oswald alone, was responsible for the President's murder. As one member of the Commission expressed it: "They [the FBI] would like

to have us fold up and quit." As the Commission's General Counsel put it: "They found the man. There is nothing more to do. The Commission supports their conclusions, and we can go on home and that is the end of it." (January 22, 1964 transcript, pp. 12-13)

20. The revelations of the January 22 and January 27 transcripts had profound and deeply disturbing implications for the integrity of basic American institutions. Their disclosures necessarily undermined the credibility of the Warren Report by showing that the Commission had not conducted a thorough and unobstructed investigation into the President's murder. Indeed, the members of the Commission recognized that the FBI, its principal investigative arm, had not conducted an adequate investigation, and they expressed the deepest misgivings about the FBI's motives. More important yet, the Commission felt intimidated by the FBI.

21. In my judgment the release of these two transcripts undoubtedly contributed in a major way to the changed climate of opinion which made it possible for the House of Representatives to vote, in 1976, to establish a Select Committee to investigate the assassination of President Kennedy, as well as that of Dr. Martin Luther King, Jr. Had these transcripts been released several years earlier, when Weisberg first requested them and when public debate over the validity of the Warren Report was extremely intense, their revelations would have forced a reinvestigation of the President's assassination at a time when the events surrounding it were still relatively fresh and the trail had not grown nearly so cold as it now has.

22. The historical importance of these transcripts and of the lawsuit which resulted in their release has been recognized in a recently published book: The Freedom of Information Act and Polit-Assassinations: The Legal Proceedings of Harold Weisberg v. General Services Administration, Civil Action No. 2052-73 (David R. Wrone, editor, University of Wisconsin-Stevens Point Foundation

Press, Inc., 1978)

23. Something of a legal first was also achieved in Weisberg v. Griffin Bell, et al., Civil Action No. 77-2155, in which Weisberg sought a waiver of copying costs for approximately 100,000 pages of records on the assassination of President Kennedy which the FBI released to the public from its Headquarters' files. On January 16, 1978, Judge Gerhard Gesell ruled that the equities were "substantially and overwhelmingly" in Weisberg's favor and he ordered the FBI to provide Weisberg with a free copy of the 40,000 pages of Kennedy assassination records which the FBI was to release to the public on January 19, 1978.

24. At the time Judge Gesell issued this order in Civil Action No. 77-2155, the same issue was pending in Weisberg v. U.S. Department of Justice, Civil Action No. 75-1996, a suit for records on the assassination of Dr. Martin Luther King, Jr. Shortly after Judge Gesell ruled that the Department of Justice had acted arbitrarily and capriciously in denying Weisberg's request for a complete waiver of copying costs with respect to the FBI's release of the 40,000 pages of JFK assassination records, Judge June L. Green issued an order instructing the Department of Justice to explain the basis for its award of a partial reduction of copying costs which Weisberg had incurred in obtaining records pertaining to the assassination of Dr. King. Ultimately, the Department of Justice determined that Weisberg should receive free copies of all its records on the assassinations of President Kennedy and Dr. King. Because this ruling applied both retrospectively and prospectively, Weisberg to date has obtained more than 175,000 pages of King and Kennedy assassination records without charge. I know of no other FOIA litigant who has achieved a victory of comparable magnitude.

25. Nor do I know of any other FOIA litigant whose efforts have resulted in comparable benefits to the public. The legal

benefits noted above are but one measure of the contribution which Mr. Weisberg's work has made to the public. The full significance of the substantive information made public as a result of Mr. Weisberg's FOIA lawsuits has not yet been apprehended. However, a good example of the importance of the substantive content of these records concerns the "Bronson film" of the assassination of President Kennedy. The records which led to the discovery of this film were released as a result of Weisberg v. Webster, et al., Civil Action No. 78-0322, Mr. Weisberg's suit for the Dallas Field Office files on the assassination of President Kennedy. Although it spent millions of dollars investigating the assassination of President Kennedy, the House Select Committee on Assassinations was unaware of the significance of this film until it was brought to their attention by private citizens who became aware of it as a result of the records released by Mr. Weisberg's suit. The significance of the film is that photographic experts say it shows two images in motion in two adjoining windows on the 6th floor of the Texas School Book Depository at the exact spot and exact time when Lee Harvey Oswald is alleged to have been there alone.

26. The voluminous records received by Weisberg as a result of his FOIA requests are very carefully preserved by him in the original condition in which he receives them. Each volume is labeled and kept in one of the scores of file cabinets which he has bought to store them in his basement. He has installed lighting in the basement so that journalists and scholars can do their own research into these records there. Copies of such records are often provided to members of the press. Ultimately, all of Mr. Weisberg's files are to be deposited in a special archive at the University of Wisconsin-Stevens Point.

27. Mr. Weisberg provides accurate information to the public on the King and Kennedy assassinations in many ways. The most ob-

vious of these is through his books. Mr. Weisberg's books are known for their critical analysis of government documents. Many documents are reprinted in his books in facsimile. This affords his readers a chance to see the actual evidence, not just his representation of it. The Freedom of Information Act has increased public access to government documents. My Weisberg has published many documents that he has obtained under FOIA. Indeed, one of his books, Whitewash IV: Top Secret JFK Assassination Transcript, reprints the entire January 27, 1964 Warren Commission executive session transcript. Another, Post Mortem: JFK Assassination Cover Up reprints the entire January 27, 1964 Warren Commission executive session transcript and many documents relating to the autopsy and medical evidence.

28. Mr. Weisberg also devotes an enormous amount of time to assisting members of the news media throughout the nation and abroad. His encyclopedic knowledge, superb memory and quick recall make him a uniquely valuable source of information on these events. More importantly, publishers and persons in the news media frequently consult him not just for the information he provides, but for his evaluation of information, potential news stories, or even books. Sometimes this consultation is done on a paid basis, but usually it is not. Such consultations have resulted in the non-publication of much false information which otherwise would have been disseminated to a public that is very susceptible to misinformation and disinformation on these subjects.

29. I believe the foregoing account I have had extensive experience handling Freedom of Information Act lawsuits, that I have achieved several significant accomplishments in litigating these lawsuits, and that the information released to the public as a result has greatly benefited public knowledge about the way in which the American government works.

30. I have received attorney fees in one previous Freedom of Information Act case. In that case, Weisberg v. Griffin Bell, et al., Civil Action No. 77-0692, I requested payment at the rate of \$85.00 per hour. However, because I needed to settle the matter as expeditiously as possible, I compromised and agreed to compensation at the rate of \$75.00 per hour.

31. On the basis of my experience and expertise in handling FOIA cases, I believe payment at the rate of \$85.00 per hour would be proper in this case.

32. The Warren Commission executive session transcripts sought by Mr. Weisberg have long been the subject of great public interest. Demands have frequently been made for the release of these and other Warren Commission records. In this instance, as in many others, it was Mr. Weisberg who spend the time and the money to take the government to court and force their release.

33. As soon as he obtained the January 21 and June 23 transcripts, Mr. Weisberg held a press conference at which he made copies of them available to the media at his own cost. By so doing, he served the journalistic interests which the Freedom of Information Act is intended to further. As a result, the public became aware for the first time that the Warren Commission had ignored the claims of a Soviet defector, Yuri Ivanovich Nosenko, even though its members had secretly decided at the June 23, 1964 executive session that his information must be taken into account. (See Exhibit 1, Washington Post article dated October 19, 1978)

34. The release of the January 21 and June 23 transcripts also serves scholarly interests. Mr. Weisberg has made arrangements to donate his archives to the University of Wisconsin-Stevens Point. These transcripts are an important addition to the archival materials on the Warren Commission which Weisberg had previously obtained. As the October 26, 1978 affidavit which Weisberg filed

in the Court of Appeals demonstrates, the June 23rd transcript reveals not only that the Warren Commission failed to investigate what it had the duty to investigate, but when read in the context of information previously made public it shows that the Central Intelligence Agency sought to manipulate the Warren Commission so it would not conduct a thorough investigation of Nosenko's story.

35. The release of the January 21 and June 23, 1974 Warren Commission executive session transcripts leaves but a single such transcript still secret. That transcript, which is of the Commission's May 19, 1964 session, is said to deal solely with a discussion of the continued employment of two Warren Commission staff members, and not with the substance of the Commission's investigation. As a result, it is now possible for scholars to study, analyze, and evaluate the entirety of the Warren Commission's substantive deliberations during its secret conferences. Such work is already underway in American universities.

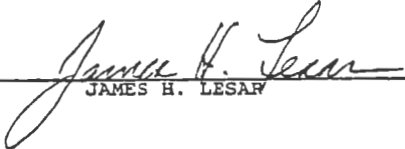
36. The public benefit from the release of these transcripts is significant. The assassination of President Kennedy has been a matter of paramount interest to the American public for the past fifteen years. During the past several years it has become evident that the federal intelligence agencies which were ordered to assist the Warren Commission in its investigation actually intimidated the Commission and subverted its work by various means, including the withholding of vital information. This, of course, has serious and deeply disturbing implications for the integrity of basic American institutions. That a presidential commission appointed to investigate the murder of the Chief Executive of the United States could be undermined by the very federal agencies entrusted with the duty of assisting that investigation is a matter of serious concern to the American public, and any information which aids in understanding what occurred and how it occurred is

371

of benefit to the public.

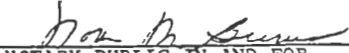
37. Attached to this affidavit as Exhibit 2 is an itemization of the time I have spent on this case. Because I did not keep time records during the early stages of this case, I have been forced to estimate the amount of time I spent on the various pleadings and papers which were filed prior to June, 1976. In addition, I occasionally forgot to record my time on later occasions as well. Where work was expended on a particular brief, affidavit, or motion, I have reviewed the documents themselves so as to make as accurate an estimate as possible. While some error is inevitable in this process, I believe I have erred on the side of underestimating the time I actually spent on these occasions. Where the number of hours spent working on the case has been estimated rather than taken from time records, I have placed an asterisk next to the number of hours listed.

38. Attached hereto as Exhibit 3 is an itemization of certain costs of this case other than those costs which have been awarded plaintiff by the U.S. Court of Appeals. While other costs were incurred by Mr. Weisberg, notably a considerable volume of xeroxing done at his residence in Frederick, Maryland, since no records of these costs were kept and it is not possible to estimate them accurately, they have not been included on this itemization.


 JAMES H. LESAR

WASHINGTON, D.C.

Subscribed and sworn to before me this 20th day of April, 1979.


 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

My commission expires Dec. 14, 1981.

Warren Report Ignored Soviet Defector's Claims

By George Lardner Jr.

The Warren Commission ignored the claims of Russian defector Yuri Nosenko in its report on President Kennedy's assassination despite an explicit decision several months earlier to take Nosenko's story into account. According to a top-secret transcript made public Tuesday by the Justice Department, the commission decided in executive session June 21, 1964, that it could not properly suppress Nosenko's reports about Lee Harvey Oswald's activities in the Soviet Union even if it distrusted Nosenko.

"[For us to ignore the fact that an agency of our government (the Central Intelligence Agency) has a man who says he knows something about Oswald's life in the Soviet Union . . . for us to just ignore the fact . . . would be unfortunate," commission member Gerald R. Ford, then House minority leader, observed at the time.

The commission chairman, Chief Justice Earl Warren, agreed. He said the report should simply make clear "that we cannot vouch for the testimony of Mr. Nosenko."

The day after that meeting, according to published reports, the CIA's then deputy director for plans, Richard M. Helms, requested and obtained a private audience with Warren concerning Nosenko. The subject never came up again at a commission meeting, and the Warren report in September 1964 made no mention of Nosenko's story.

Helms has said he merely told Warren that the CIA could not vouch for Nosenko's credibility. But the transcript shows that the commission was fully aware of this the day before, at its June 23 executive session.

Warren, for instance, said he was "allergic to defectors." Of Nosenko he

said that "we cannot corroborate this man at all." Ford said he had been told "by people who I believe know" that there is a grave question about the reliability of Mr. Nosenko being a bona fide defector.

It thus appears doubtful that Helms would have sought a private session with the chief justice the next day simply to tell the commission what it already knew.

A high-ranking KGB official, Nosenko defected to the United States in January 1964, two months after Kennedy's assassination. He told the FBI that he had supervised Oswald's KGB files and he insisted that the Soviet intelligence agency had no interest in Oswald and had not even bothered to debrief him. Nosenko also told the FBI that the Soviets suspected Oswald might have been "an American sleeper agent" when Oswald defected to the Soviet Union in 1959. (The Warren Commission found that Oswald acted alone in killing Kennedy.)

FBI Director J. Edgar Hoover told the commission in the spring of 1964 that he had arranged for Nosenko to testify before the panel if it wanted to hear what he had to say. Before Nosenko could be called, however, the CIA put him in solitary confinement and subjected him to "hostile interrogation" that lasted for more than three years. The FBI never questioned him again.

The transcript of the June 23, 1964, meeting was declassified in response to a freedom-of-information lawsuit filed three years ago by commission critic Harold Weisberg. The litigation is now before the U.S. Circuit Court of Appeals here.

Of the documents made available, Weisberg said: "The Warren Commission was supposed to investigate. The one thing this proves is a determination not to investigate."

ITEMIZATION OF ATTORNEY'S TIME

<u>Date</u>	<u>Description</u>	<u>Hours</u>
9/4/75	Preparation of complaint	2*
10/26/75	Motion to substitute party	½*
10/28/75	First set of interrogatories	4*
12/29/75	Motion to compel answers to interrogatories	2*
2/19/76	Letter to Judge Robinson	½*
2/27/76	Request for production of documents	3*
3/1/76	Motion to compel answers to interrogatories	4*
3/2/76	Motion to take tape-recorded depositions	2*
3/2/76	Second set of interrogatories	6*
3/22/76	Stipulation	2*
5/4/76	Request for production of documents	2*
5/4/76	Opposition to defendant's motion for summary judgment	40*
5/25/76	Status call	2*
7/8/76	Preparation of interrogatories	3½
7/9/76	Preparation of interrogatories	6
7/14/76	Preparation of interrogatories	3
7/15/76	Preparation of interrogatories	4½
7/16/76	Preparation of interrogatories	3½
7/18/76	Preparation of interrogatories	2½
7/19/76	Preparation of interrogatories	7½
7/20/76	Preparation of interrogatories	3
7/24/76	Preparation of interrogatories	4½
7/25/76	Preparation of interrogatories	4
7/26/76	Preparation of interrogatories	4
10/8/76	Motion for summary judgment	2
10/10/76	Motion for summary judgment	2
11/4/76	Conference with client	½

374

<u>Date</u>	<u>Description</u>	<u>Hours</u>
11/18/76	Hearing in front of Magistrate	2*
11/29/76	Memorandum to the Court	2
12/2/76	Hearing before Magistrate	1*
1/6/77	Motion to compel answers to interrogatories	3
1/7/77	Motion to compel answers to interrogatories	3
1/14/77	Hearing before Magistrate	2*
1/19/77	Objection to Magistrate's order and demand for immediate trial	3*
3/3/77	Preparation for hearing on motion to compel answers to interrogatories and on motions for summary judgment	3*
3/4/77	Hearing on motion to compel answers to interrogatories and motions for summary judgment	2*
3/21/77	Motion for reconsideration	15*
10/14/77	Work on appeal appendix	4
10/18/77	Work on appeal appendix	5
10/19/77	Work on appeal appendix	2
10/20/77	Work on appeal appendix	4
10/21/77	Work on appeal appendix	7½
10/22/77	Work on appeal appendix and review of file	2
10/23/77	Work on appeal appendix and review of file	3
10/24/77	Work on appeal brief (writing)	4
10/26/77	Work on appeal brief (writing)	6½
12/31/77	Notes on brief in Weissman case	½
2/15/78	Work on reply brief (research)	3
2/18/78	Work on reply brief	5½
2/19/78	Work on reply brief	4
2/20/78	Work on reply brief	2
2/21/78	Work on reply brief	13½
2/23/78	Motion for leave to file reply brief with addendum	2½
2/24/78	Motion to expedite oral argument	1½
3/6/78	Research on judicial notice	2
3/7/78	Research on judicial notice	2

375

<u>Date</u>	<u>Description</u>	<u>Hours</u>
3/8/78	Work on opposition to motion to strike reply brief addendum	2½
3/9/78	Work on opposition to motion to strike reply brief addendum	6
4/16/78	Work on Weisberg affidavit for new trial motion	2
4/17/78	Work on Weisberg affidavit for new trial motion	6½
4/18/78	Motion for new trial	2
5/4/78	Notice to take depositions	½
9/1/78	Research for appellant's brief in Case No. 78-1731	3 2/3
9/2/78	Research for appellant's brief in Case No. 78-1731	1 1/6
9/3/78	Research for appellant's brief in Case No. 78-1731	2 2/3
9/4/78	Research for appellant's brief in Case No. 78-1731	1½
9/5/78	Research for appellant's brief in Case No. 78-1731	3½
9/9/78	Research for appellant's brief in Case No. 78-1731	1½
9/10/78	Work on brief in Case No. 78-1731	3
9/11/78	Work on brief in Case No. 78-1731	9½
10/20/78	Research on mootness issue in Case No. 78-1731 and Case No. 77-1831	1
10/21/78	Research on mootness issue	1
10/24/78	Work on opposition to motion to dismiss on grounds of mootness	1½
10/25/78	Work on opposition to motion to dismiss on grounds of mootness	11½
10/26/78	Work on opposition to motion to dismiss on grounds of mootness	8
2/12/79	Preparation for oral argument	3
2/12/79	Preparation for oral argument	4
2/13/79	Oral argument	2
2/13/79	Research on attorney fees	2
2/15/79	Work on affidavit for attorney fees motion	2
2/16/79	work on affidavit for attorney fees motion	2½

376

<u>Date</u>	<u>Description</u>	<u>Hours</u>
2/17/79	Work on affidavit for attorney fees motion	2
2/29/79	Drafting Weisberg affidavit in 77-1831	1½
3/2/79	Drafting Weisberg affidavit in 77-1831	4
3/3/79	Drafting Weisberg affidavit in 77-1831	1 3/4
3/4/79	Drafting Weisberg affidavit in 77-1831	4½
3/5/79	Work on appellant's response to appellee's motion for permission to lodge affidavit with Court of Appeals	3 1/6
4/7/79	Work on memorandum of points & authorities on motion for attorney fees	2 1/12
4/9/79	Work on affidavit for attorney fees motion	1 ½
4/15/79	Work on memorandum of points & authorities on attorney fees motion	3½
4/16/79	Work on memorandum of points & authorities on attorney fees motion	1 5/6
4/17/79	Work on memorandum of points & authorities for attorney fees motion	5½
4/18/79	Work on memorandum of points & authorities on motion for attorney fees	3

*An asterisk is used where the amount of hours expended is based not upon work records but rather upon counsel's estimate as to the time spent. In the early stages of the case counsel did not keep time records. When he did begin to keep such records, he occasionally forgot to record his time; thus it has been necessary for him to estimate the amount of time required to perform certain items of work he did.

ITEMIZATION OF COSTS*

1. Office xeroxing	\$ 173.56
2. Other xeroxing (Panic Press and Rogers Office Supply)	245.07
3. Transcripts	95.60
4. Consultant on national security classification (Mr. William G. Florence)	700.00
5. Postage	15.33
6. Telephone (long distance)	200.00
7. Subpoena service	<u>8.82</u>
TOTAL:	\$ 1438.41

*This itemization of costs does not include the costs included in the bill of costs which was submitted to the U.S. Court of Appeals. The Court of Appeals has awarded plaintiff costs in the amount of \$492.54.

378

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 :

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.

21-61. 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.

1 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 nor is the use of letters to governments. (See ¶24, infra) secret or unknown/ 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's 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-

395

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 even 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 no reference to Mesenko 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 soon

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.

403

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

404

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

405

to the subject of political assassinations. If the CIA had not succeeded in suppressing these transcripts by misuse of the Act throughout 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

406

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

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

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

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per CIA Let. 1 May 1964
by [unclear] MA
9/21~~
~~per E.O. 11652, 2
5/11/62, and E.O.
11652, 5/11/62
and (b) by Charles
DeLoach, Acting
Director, CIA, Date of
[unclear]~~

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BY: [unclear] 10/11/11

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per CIA Let. 1 May 1964
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~~Regraded
per CIA Let 1 May 1975
by MMS NARS 9/21/75~~
~~Example of information
disclosure under E.O.
12852, Sec. 5E(2), under
E.O. 11652, Sec. 5(b)(1) and (3)~~
~~By
Chief of the Division of Information
& Security, Dept. of Information
& Security, Department of Defense
in accordance with the
MMS.~~

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BY MAA, NARS Date 10/16/75

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per CIA Let 1 May 1975
by MMS NARS 4/21/75~~

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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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Revised
per C/N Ltr. 1 May 1977
by NARS 9/2/77

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 CGO Dec. 9/11/79
By 12147 NARS Dec. 10/14/78

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Revised
per C/N Ltr. 1 May 1975
by NARS 9/2/77

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by WARS 9/1/77

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Members present: Chief Justice Warren and Representative

Ford.)

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by M.D. 12/14/78

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. Menenko's views.

First, to my knowledge, we have never had Mr. Menenko 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 whom I believe know, that there is a grave question about the reliability of Mr. Menenko 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. Malone who said that.

Mr. Ransin. 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 Mosenko

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

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

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

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

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

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

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

The Chairman. The name Mosenko, you say?

Mr. Rankin. Yes.

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

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

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

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

So we will put that on the agenda.

Rep. Ford. Very fine.

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

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

Isn't that your idea?

Rep. Ford. That is right.

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

But to ignore it, I think would be unfortunate.

The Chairman. Yes.

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

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

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know that there was such information all that he didn't know
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 us 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 I can
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 clear 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. Masenko, 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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(Discour on 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.

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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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CIA, Lee, 11/1/79

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per CIA Let 1 May 1975
by NARS 9/24/75

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

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

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diaries or other writings other than what we have seen?

Mr. Dulles. You have seen it all.

Sen. Russell. And the FBI?

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

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

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

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

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

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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 question 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. In 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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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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by CIA Dec. 1947/70
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Rep. Ford. May I ask you this, in reference to your ques-
tion, 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 de-
feator, 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 represen-
tative 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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by CIA Dec. 14/1970
by MARS 4/21/75

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tion, Mr. Chairman?

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per CIA Ltr. 1 May 1975
by [redacted] NARS 4/24/75

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

The Chairman. Yes.

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

The Chairman. All right.

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

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

The Chairman. Yes.

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

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

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

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

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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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~~From a memo to the President dated 10/10/52, per I.O. 1002, re: (a) and (b) of the Committee on Assassinations, Chicago, Ill. 10/10/52. The memo was signed by Allen Dulles.~~
11 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 looking for. We are looking for a measure of protection after this thing is all over so there won't be any come back on them 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 E 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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By: [unclear] 10/10/52

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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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BY RMG NARS Date 4/7/25

410

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 when he failed to appear for an appointment that evening, and was immediately taken to a hospital in Moscow for treatment. This 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 file 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 normal 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 said 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 Komsozol but was dropped for nonpayment of dues. (Marina told the Commission she was a member of Komsozol, 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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414

courts and I will remain reduced to the ritualized dancing of
stately steps to the repetitious tunes of these official pipers.

Harold Weisberg

HAROLD WEISBERG

DISTRICT OF COLUMBIA

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

John M. Burns

NOTARY PUBLIC

My commission expires _____ ~~My~~ COMMISSION EXPIRES DEC. 14, 1982.

409

116 Dec 63

TO : Director
Federal Bureau of Investigation
Attention: |

FROM : Deputy Director (Plans)

SUBJECT : | Comments on the Kennedy Assassination

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

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

Enclosures: For paragraph 1.

12 December 1963

Distribution:

BASIC:
None

Orig. & 1 - Addressee

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Document Number **413-76A**

for FOIA Review on **MAY 1976**

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On some TV program on November 23, 1963, or November 24, 1963, it was reported that the Latin Police Department had questioned a JOSE RODRIGUEZ, a fellow employee of OSWALD, at the book war house 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, 1960, 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, PAVEL 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

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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. 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

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MEMORANDUM

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

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date 7/11/72

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MEMORANDUM

TO : Records

FROM : W. David Slawson

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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.

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419

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E.O. 11652, Sec 6.2

By AAJ - RA

MEMORANDUM

Green Copy

July 17, 1964

10. Wills
f.w.c.
Wills
Amf

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 Howard's source is already put out of Russia
- ② Soviet lines Oswald held in Mexico City given to him by his mother
- ③ Not a member of party he died in factory in 1962
- ④ Red Army - Oswald's mother's name is in the will's letter

420

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MEMORANDUM

August 22, 1964

To: J. Lee Rankin
From: W. David Slavson

WDS

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

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 'N'. I do not propose to use any information from 'N' which the Soviet Union would be able to trace to him rather than to Soviet defectors generally. Information supplied by 'N' 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 'N' are in most cases fully able to supply this information. In one case, I hope to use some particular information supplied both by 'N' and Madama Furtsova, but it will be attributed solely to Madama Furtsova. 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 covert practices and procedures which would be applicable in the Soviet Union in 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

WDS/amb
cc: Mr. Rankin
Mr. Willens
Mr. Slavson

421

DECLASSIFIED
EO 11652 Doc 45
BY *Boh* 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 Furtsova; 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 evaluation and assessment. 135/ Presumably this was done with Oswald. His rejection on October 21,

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 Puztsova, 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 Puztsova'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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423