

APPENDIX

VOLUME II (Pages 424-804)

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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Washington, D.C. 20037

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EXHIBIT #1

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

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

1. I am the Information Review Officer for the Directorate of Operations of the Central Intelligence Agency (CIA). I replaced Mr. Charles A. Briggs in this position in September 1977. My responsibilities include the review of Directorate of Operations documents which are the object of Freedom of Information Act (FOIA) requests to and litigation against the CIA to insure that determinations made regarding the disposition of such documents are proper. I am authorized in accordance with Sections 1-201 and 1-204 of Executive Order 12065 to make original classification determinations up through TOP SECRET. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and counsel from the CIA Office of General Counsel and upon conclusions reached in accordance therewith.

2. In September 1978, I became aware of the fact that a variety of classified CIA information was being made available to the Select Committee on Assassinations of the U.S. House of Representatives. The Soviet defector, Yuriy Nosenko, was of particular interest to the Committee. Nosenko was formerly an Intelligence Officer in the Soviet KGB who was aware of some facts concerning Lee Harvey Oswald's experiences as an American defector to the Soviet Union. As a result of the Committee's

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EXHIBIT #1

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interest in information provided by Nosenko and information concerning Nosenko's credibility, the Committee requested that CIA declassify information in these areas for the purpose of placing the facts on the public record. The Director of Central Intelligence determined that certain responsive information would be declassified because the congressionally-assured benefit to the general public outweighed the damage which could reasonably be expected to national security interests as a result of such disclosures. The CIA information is summarized in the testimony of Professor G. Robert Blakey, Chief Counsel and Director of the House Committee Staff, in the first ten pages of the transcript of testimony taken before the Committee in open session on 15 September 1978 (CIA Exhibit A). Professor Blakey describes the circumstances surrounding CIA's declassification of the required information in his concluding remarks immediately following the close of his summation, on page ten of the transcript (CIA Exhibit A). The testimony which followed that of Professor Blakey was that of Mr. John L. Hart, an official CIA spokesman who provided the detailed factual information from which Mr. Blakey prepared his aforementioned summary. The complete transcript ran a total of 72 pages. Professor Blakey on 26 October 1978 confirmed the circumstances surrounding the Committee's request for declassification of information concerning Yuriy Nosenko (CIA Exhibit B).

3. On 22 September 1978, I was asked by the Office of General Counsel of CIA to review the above-styled litigation to determine whether the transcripts remained exempt from release under Freedom of Information Act exemptions (b)(1) and (b)(3). After comparing the details of the declassified CIA information, which appeared in the aforementioned testimony before the House Committee on 15 September 1978, with the information withheld from release in the Warren Commission testimony, I determined that the continued assertion of the

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Freedom of Information Act exemptions was no longer tenable. I so advised the CIA Office of General Counsel (CIA Exhibit C). On 11 October 1978 the General Counsel of CIA advised the Justice Department and the Archivist of the United States that as a consequence of the declassified CIA information regarding Yuriy Nosenko being placed on the public record before the House Committee, the two aforementioned Warren Commission transcripts would no longer warrant being withheld from Freedom of Information Act requesters (CIA Exhibit D). I am advised that the Federal Court then considering the plaintiff's previously-filed appeal in the matter of the Warren Commission transcripts was advised and the documents were released to the plaintiff.

4. My determination that the two aforementioned Warren Commission transcripts would no longer be withheld from Freedom of Information Act requesters was the direct result of the decision of the Director of Central Intelligence to declassify CIA information requested by the House Committee on Assassinations and my decision with regard to the two aforementioned Warren Commission transcripts was solely attributable to that declassification determination. The status of the above-styled litigation played no role in my determination regarding the releasability of the two aforementioned Warren Commission transcripts.

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) ss.

Subscribed and sworn to before me this 26th day of
July 1979.

Debbon M. Weyant
Notary Public

My commission expires:

17 April 1982

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PROGRAM House Assassinations Hearings STATION WETA-FM Radio
NPR Network
DATE September 15, 1978 9:00 AM CITY Washington, D.C.
SUBJECT Testimony by Mr. John Hart

REP. LOUIS STOKES: The Chair recognizes Professor
Blakey (?).

PROFESSOR BLAKEY: Thank you, Mr. Chairman.

Within hours of the arrest of Lee Harvey Oswald for the
assassination of President Kennedy, officials in the United States
began to speculate about the significance of Oswald's defection to
the Soviet Union in 1959 and his activities in that country until
returning to the United States in June of 1962. Specifically, the
troubling question was asked, whether Oswald had been enlisted by
the Soviet secret police, the dreaded KGB.

U.S.-Soviet relations had been turbulent during the
Kennedy presidency. There had been major confrontations over
Berlin, where the wall had come to symbolize the barrier between
two superpowers, and over Cuba, where the emplacement of Soviet
missiles had nearly triggered World War II.

A nuclear test ban treaty in August of 1963 had seemed
to signal detente. But in November, tension was building again,
as the Communists harassed American troop movements to and from
West Berlin.

Cuba, too, was as much an issue as ever. In Miami,
on November 18, Kennedy vowed the U.S. would not countenance the
establishment of another Cuba in the Western Hemisphere.

The Warren Commission, of course, considered the pos-
sibility of Soviet complicity in the assassination, but concluded
that there was no evidence of it. In its report, the Commission
noted that the same conclusion had been reached by Secretary of

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CIA EXHIBIT A

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State Dean Rusk and Secretary of Defense Robert McNamara, among others. Rusk testified before the commission on June 10th, 1964, quote, "I have seen no evidence that would indicate to me that the Soviet Union considered that it had any interest in the removal of President Kennedy. I can't see how it could be to the interest of the Soviet Union to make any such effort."

Then, in February 1964, a Russian, saying that he was a KGB agent, sought asylum in the United States, and he seemed to answer the question categorically by denying Oswald had been connected with the KGB. According to Yuri Nosenko, a self-proclaimed former KGB officer, he had been assigned in 1959 and 1963 to the KGB's American Tourist Section. This assignment, he said, had afforded him an opportunity to review Oswald's KGB file in those years.

Nevertheless, Nosenko's assertion did not end the mystery. In fact, it only tended to complicate it, because some officials of the Central Intelligence Agency doubted Nosenko was a bona fide defector. Some went so far as to suggest his defection was a KGB disinformation mission, an effort to mislead the American Government.

Beginning in April 1964, hostile interrogations of Nosenko were approved and initiated. He was cut off from the world and confined to a single room. Every movement he made was monitored. The hostile interrogations continued for over three years. Eventually, Nosenko was released from confinement, and a senior official in the agency was assigned to interview him anew. This time, the interviews were conducted in a more friendly atmosphere. Ultimately, the official wrote a report detailing his conclusions. At the termination of this yearlong process, it was decided that Nosenko was indeed a bona fide defector. He was given a substantial sum of money and hired as a CIA consultant, a position he holds to this day.

In its investigation of the Kennedy assassination, the Warren Commission was aware of the Nosenko issue, but it was able to make little of it, and opted not to refer to it in its reports.

News accounts of the Nosenko matter have not been particularly informative, owing to the limited nature of the generally classified information that they were reporting. A book by Edward J. Epstein, "Legend: The Secret World of Lee Harvey Oswald," published in early 1978, did raise some question about Nosenko's information on Oswald, though Epstein did not have complete access to all of the FBI and CIA files on Nosenko. Apparently, he depended on secondhand accounts.

Mr. Chairman, the evidence to be received today is directed toward the public resolution of a twofold issue with

regard to Nosenko. First, are his statements about Oswald credible? If so, the issue of Soviet involvement in the assassination is, of course, moot. But if not, the converse does not necessarily follow. Nosenko can be a bona fide defector and still not be a valid source of information about Lee Harvey Oswald. Deciding not to believe what Nosenko told about Oswald does not, therefore, necessarily lead, absent other information, to any conclusion about Nosenko's general bona fides or Soviet involvement in the assassination. Nosenko is only one possible source of evidence on this point. If he turns out to be good, he may be decisive. If he turns out to be bad, it may simply mean that there is no good source of information on this point available to the American Government, and nothing definite can be said about this question by the American Government.

Consequently, because the mandate of the Select Committee, as the committee has indicated to the staff, was limited to determining the facts and circumstances surrounding the President's death, no examination of the general question of the bona fides of Mr. Nosenko has been made. That question properly lies within the jurisdiction of other bodies.

Second, what was the quality of U.S. Government agencies in the Nosenko affair? The agencies whose performance is at issue are the CIA, the FBI, and, of course, the Warren Commission itself.

Mr. Chairman, Nosenko has been given a new identity by the CIA; and the agency, as well as the FBI, believes that to compromise it could put him in great personal danger. Consequently, he cannot testify before the committee in this public session, either in person, by film, or by tape recording, although each of these alternative methods was explored with him and with those in charge of his security. He did, of course, testify in person before two closed sessions of this committee on May 19 and May 20th. In addition, he was deposed, and extensive files were read, both at the CIA and the FBI. Interviews and depositions of other principals were conducted by the committee or the staff. While virtually all of the material reviewed, either by the committee or by the staff is classified, it is possible to tell the essential aspects of the Nosenko story without compromising national interest. And the CIA, as well as the FBI, has cooperated with the committee by facilitating the declassification of the basic outlines of the story.

A staff report on the committee's investigation has been prepared by the staff. Before summarizing the staff report, which will be made public, Mr. Chairman, I would like again to emphasize for those who follow the committee's work that the question of Nosenko's bona fides lies outside of the jurisdiction of the committee. Its mandate is limited. It is to weigh Nosenko's credibility as it bears on the career of Lee Harvey Oswald and to evaluate the performance of federal agencies in the matter. Other ques-

tions are for other bodies.

Finally, I note that the staff report does not contain any conclusions on either of these issues. Conclusions remain in the province of the committee to formulate and decide in December.

Mr. Chairman, I would ask at this time that the staff report on Mr. Nosenko be entered in the record as JFK Exhibit Number F-425.

I'd like, Mr. Chairman, with your permission, at this time to summarize the highlights of that report.

Nosenko has testified to the committee that he was born Yuri Ivanovich Nosenko in the town of Nikolayev in the Ukraine on October 30th, 1927. On leave in Moscow in 1953, he joined the NVD, later KGB. In 1955 Nosenko was transferred to the Seventh Department of the Second Chief Directorate, a department newly formed in the KGB to monitor tourists in the Soviet Union. In July 1962, he was promoted to Deputy Chief of the Seventh Department, second chief director.

Nosenko first came to the attention of U.S. intelligence agencies in June 1962. He identified himself to the CIA and offered to sell information for 900 Swiss francs. He explained he needed the money to replace KGB funds he had spent on a drinking spree. He has since said he did not really need the money, but felt an offer simply to give away the information would be rejected, as it had been with similar offers by other Soviet agents.

On January the 23rd, 1964, Nosenko was heard from again. The CIA was surprised by his sudden decision to defect, but Nosenko was adamant. On February the 4th, Nosenko revealed he had received a telegram ordering him to return to Moscow directly from Geneva. Nosenko later admitted, however, that the recall telegram was a fake. He had made up the story to get the CIA to agree to his defection without further delay.

By April 1964, Nosenko had been in the U.S. for nearly two months. Already, top officials of the Soviet Russia and counterintelligence sections of the CIA had nagging doubts as to whether he was a bona fide defector. Information Nosenko had given about Oswald, for one thing, aroused suspicions. The chief of the Soviet Russia section had difficulty accepting the statements about Oswald, characterizing them as seemingly, quote, almost to have been tacked on to or have been added, as though it didn't seem to be part of the real body of the other things he had to say, many of which were true, close quote.

Statements by Nosenko at the time of his contact with the CIA in 1964 revealing he had information about Lee Harvey

Oswald led to his being questioned by the FBI upon arrival in the United States. Nosenko told the FBI about his knowledge of Oswald and the fact that the KGB had no contact with him. The conclusion of the March report by the FBI reads as follows:

"On March 4, 1964, Nosenko stated that he did not want any publicity in connection with this information, but stated that he would be willing to testify to this information before the presidential commission, provided such testimony is given in secret and absolutely no publicity is given, either to his appearance before the commission or to the information itself."

The report noted that on March 6th Nosenko inquired if the information he furnished on March 4 regarding Oswald had been given to the appropriate authorities. He was advised that this had been done.

On April 4, 1964, CIA officials decided to place Nosenko in isolation and to commence hostile interrogations.

First he was subjected to a polygraph, one designed to insure a proper atmosphere for the hostile interrogations. The CIA polygrapher was instructed to inform Nosenko that he had lied, regardless of the actual outcome of the test. In his report, the polygrapher wrote his true conclusion, which was that Nosenko had indeed lied. The official position now stated by the CIA is that the test was invalid or inconclusive.

The condition of Nosenko's isolation has been described by the Rockefeller Commission as, quote, Spartan, unquote.

Both Nosenko and the CIA were asked by the committee to describe them. Nosenko says the room to which he was confined had a, quote, metal bed attached to the floor, close quote, and, quote, the only furniture in the room was a single bed and a light bulb, close quote. The CIA states, quote, Nosenko received a regular diet of three meals a day. Periodically during his time, his diet was modified to the extent that his portions of food were modest and restricted, close quote.

Nosenko states he, quote, was not given a toothbrush and toothpaste, and food given to me was very poor. I did not have enough to eat, and was hungry all the time, close quote.

The CIA: Quote, Nosenko did not have access to TV, radio, or newspapers. He was provided with a limited number of books to read from, April 1964 to November 1965, and from May 1964 to October 1967. His reading privileges were suspended from November 1965 to May 1967, close quote.

Nosenko: Quote, I had no contact with anybody to talk. I could not read. I could not smoke, close quote.

The CIA states that Nosenko was, quote, under constant surveillance, constant visual observation from April 1964 to October 1967, close quote, the period of his isolation.

Nosenko states, quote, I was watched day and night through TV camera. I was desperate, wanting to read. And once when I was given toothpaste, I found in the toothpaste box a piece of paper with a description of the compound on this toothpaste. I was trying to read it under my blanket, but guards noticed it, and again it was taken from me, close quote.

Both Nosenko and the CIA agree that conditions improved markedly beginning in the fall of 1967, the end of the period of isolation.

Nosenko was questioned about Lee Harvey Oswald on five occasions in 1964. Nosenko said that as soon as President Kennedy's assassin was identified as a man who had lived in the Soviet Union, the KGB ordered that Oswald's file be flown to Moscow and reviewed to determine whether there had been any contact between him and Soviet intelligence. Nosenko said, further, he was assigned to review Oswald's file.

Based on that review, as well as his earlier contacts with the case, he was able to report positively that Oswald had neither been recruited nor contacted by the KGB.

At the time of his second polygraph examination, in October 1966, Nosenko was again asked about Oswald. The CIA examiner, the same one who administered the first test, concluded, again, that Nosenko was lying, although the official agency position now is that the test was, quote, invalid or inconclusive because the conditions and the circumstances under which it was administered are considered to have precluded an accurate appraisal of the results, close quote.

The Soviet Russia section of the CIA wrote a 900-page report based on its interrogations of Nosenko, though it was trimmed to 447 pages by the time it was submitted in February 1968. It came to the following conclusions:

Nosenko did not serve in the Naval Reserve, as he had claimed. He did not join the KGB at the time nor in the manner he described. He did not serve in the American Embassy section of the KGB at the time he claimed. He was not a senior case officer or deputy chief of the Seventh Department, as he stated he had been. He was neither deputy chief of the American Embassy section nor a supervisor in that section. He was not chief of the American/British Commonwealth section. He was not a deputy chief of the Seventh Department in 1962, as he had claimed.

High officials of the CIA, including Richard Helms, were

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aware of the Nosenko dilemma by the time the Soviet Russia section report had been drafted. In May of 1967, a career officer in the Office of Security was assigned to write a critique of the handling of Nosenko. The security officer gradually came to the conclusion that Nosenko was supplying valid intelligence and that he was who he claimed to be, leading to the eventual conclusion that Nosenko was bona fide. The investigation ended in the summer of 1968.

On August 8th, 1968, Nosenko was given a third polygraph test. Two of the questions related to information he had supplied about Oswald. This time, Nosenko passed.

The CIA, when asked by the committee to comment on the third polygraph, now states, quote, This test is considered to be a valid test, close quote.

This committee obtained an independent analysis of the three polygraph tests given Nosenko from Richard Arthur, president of the Scientific Lie Detection, Incorporated and a member of the American Polygraph Association. In his report, Mr. Arthur expresses the judgment that the second test, the one in which the examiner determined Nosenko was lying, was the most valid and reliable of the three examinations administered to Nosenko.

As for the two questions about Oswald in the third test, Mr. Arthur characterized the first as, quote, atrocious, unquote, and the second as, quote, very poor, close quote, for use in assessing the validity of Nosenko's responses.

In a report issued in October 1968, the security officer disputed each and every conclusion of the report of the Soviet Russia section written only eight months earlier.

The security officer's report, like the Soviet Russia section report, paid little attention to the Oswald aspect of the Nosenko case. Neither attempted to analyze the statements made about Oswald. Out of a combined total of 730 pages of the report, only 15 deal with the alleged assassin of President Kennedy. The security officer did reach a conclusion, however, that Nosenko was not dispatched by the Soviet Government to give false information to the U.S. officials about Oswald.

The Warren Commission received FBI and CIA reports on Nosenko and his statements about Oswald, but chose, in its final report, not to refer to them. And while Nosenko expressed a willingness to testify before the Commission, as I previously noted, he was not called as a witness.

The CIA has informed the House Select Committee of Nosenko's status subsequent to the 1968 report as follows: Quote, Following the acceptance of Nosenko's bona fides in late 1968, an arrangement was worked out whereby Nosenko was employed as an

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independent contractor for the CIA effective March 1st, 1969. His first contract called for him to be compensated at the rate of 16,500 a year. As of 1978, he is receiving \$35,325 a year. In addition to the regular yearly compensation, in 1972 Nosenko was paid for the years 1964 through 1969 in the amount of \$25,000 a year, less income tax. The total amount paid was \$87,052. He also received, in varying increments, in March 1964 through July 1973, amounts totaling \$50,000 to aid in his resettlement in the private economy.

To this day, Nosenko is a consultant to the CIA and the FBI on Soviet intelligence, and he lectures regularly on counter-intelligence.

In 1978 the Select Committee began its investigation of the Nosenko case. It was granted permission by the FBI and the CIA to read all documents, to interview principals in the case, and to question Nosenko himself about his knowledge of Oswald. Nosenko spoke to the House committee on five occasions. During two of these sessions, staff members took notes. In the third, Nosenko gave a sworn deposition. And on July 19 and 20, 1978, Nosenko testified before the committee in executive session. There was no substantive variation in Nosenko's recounting of the facts. There have been, however, significant inconsistencies over the years in Nosenko's story. Let me here note one, although others appear in the full summary:

Nosenko has always insisted that the KGB never had any contact with Oswald. He stated in both 1964 and 1968 that the KGB determined that Oswald was of no interest to them and did not even bother to interview him.

Question: And exactly why did no KGB officer ever speak to Oswald before they made the decision about whether to let him defect? Answer: We didn't consider him an interesting target.

When asked if he knew of any other defector who was turned away because he was uninteresting, Nosenko answered: No. Nosenko said the KGB not only did not question Oswald when he asked to defect, it also did not interview him later when it was decided he would be permitted to remain in Russia. At no time, Nosenko told the committee, did the KGB talk to Oswald.

Question: Now, when it was determined that Oswald was going to be allowed to stay in the Soviet Union and live in Minsk, did any KGB officers speak to him at that time? Answer: No. As far as my knowledge, nobody was speaking with him.

Question: Why didn't the KGB speak to him, then? Answer: KGB once said, "We don't have interest." The same was reported to the government [technical difficulties] that

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the KGB doesn't have interest. The KGB didn't want to be involved.

According to Nosenko, the KGB would have been very interested in the fact that Oswald worked at the air base in Japan from which the super-secret U-2 spy planes took off and landed.

Question: And in 1959, would the Soviet Union have been interested in someone who served as a radar operator on an air base where U-2s took off and landed? Answer: Yes, sir. It would be very interested.

But Nosenko maintains that the KGB never spoke with Oswald, so it didn't know that he had any connection with the U-2 flights.

The head of the CIA Soviet Russia section from 1963 to 1968 was asked by the committee if he knew of comparable situations in which someone was not questioned, was just left alone, as Nosenko says Oswald was. He replied that he did not know of any former Soviet intelligence officers or other knowledgeable sources to whom he had spoken who felt that this would have been possible.

Quote, if someone did, close quote, he said, quote, I never heard of it, close quote.

In short, Nosenko's Oswald story is as follows: The KGB, although very interested in the U-2, never learned anything about it from Oswald because it didn't know he had any knowledge of the aircraft. Why? Because Oswald was never questioned by the KGB, because the decision was made that Oswald was of no interest to Soviet intelligence.

After questioning Nosenko on a number of other statements and their possible contradictions with prior statements which he made to the FBI and the CIA in 1964, and receiving similar response to the one I've just outlined, the committee, in its May hearing, returned to earlier topics.

Nosenko on numerous occasions had complained that the transcripts he was being shown were inaccurate, that he had been drugged by the CIA during interrogation, and that he was not fairly questioned, etcetera, etcetera, etcetera.

Therefore, the committee decided to play for Mr. Nosenko the actual tapes of the interrogation in which Nosenko made these statements, and to allow him to comment on them. At the time, a tape recorder was brought out and the following was stated by the questioner: "I would like to ask that this tape, which is marked 3 July '64, Reel Number 66, be marked for identification." A recess was requested to put the tape in the

machine. At the conclusion of the recess, Nosenko returned to the room and then refused to answer any questions dealing with interviews done by the CIA prior to 1967. He stated that all statements prior to that time by the CIA were the result of hostile interrogations, and that he was questioned illegally, in violation of his constitutional rights.

The committee considered how to respond to Mr. Nosenko's objection. And after deliberation, it decided that all questions dealing with prior statements to the FBI and the CIA would be suspended by the committee.

Mr. Chairman, that concludes my summary of the report.

It's appropriate to note that a draft of the staff report, a summary of which was just read, was submitted to the CIA for declassification. Within two days, the CIA declassified the entire draft, requiring that only a few minor changes and the deletion of the names of agency personnel and sources. The committee provided both the FBI and the CIA with copies of the report and asked the agencies if they wished to respond to the report at the public hearing to be held today. The FBI informed the committee that no response would be submitted. The CIA has made available to the committee John Lemon (?) Hart as its official representative to state the agency's position on the committee's Nosenko report.

Mr. Hart is a career agent with the CIA, having served approximately 24 years. He has held the position of chief of station in Korea, Thailand, Morocco, Vietnam, as well as several senior posts at CIA Headquarters in Virginia. Mr. Hart has considerable experience with Soviet intelligence and counterintelligence activities while serving in various capacities in the United States and abroad. He has written two extensive studies on Soviet defectors; one of which, dated 1976, dealt with the handling of Yuri Nosenko by the CIA.

Mr. Chairman, it would be appropriate at this time to call Mr. Hart.

KENNETH KLEIN (?): Mr. Chairman, at this time, I believe, Mr. Hart would like to make a statement to the committee.

REP. STOKES: You're recognized, sir.

JOHN HART: Thank you, Mr. Chairman, gentlemen.

Before I begin my statement, I would like to make a prefatory remark on a technical aspect of what was said about me by the chief counsel, Mr. Blakey. I was not and never have been

what is called a career agent with the CIA. I bring that up only because that term happens to have a technical meaning in the agency. I was what you would call an employee or an officer of the agency. And I would like to have that made part of the record.

REP. STOKES: The record may so show.

HART: Mr. Chairman, it has never been my custom to speak from a prepared text. I've tried and I never succeed. Therefore, what I have before me are a series of notes which were finished about eight o'clock last night, based on guidance which I got at that time from Admiral Stansfield Turner, Director of Central Intelligence. It is my purpose to tell you as much as possible about the background of the Nosenko case, with the idea not of addressing what have been called his bona fides, but what has been described as his credibility.

Now, I must say that I have difficulty in distinguishing between credibility and bona fides; but, in any case, the testimony and the evidence which has been presented regarding Nosenko simply cannot be evaluated properly unless I give you the background which I am about to present.

REP. DODD: Mr. Chairman, I would like to make a request at this point, if I could. As I understood it last week, the agreement and understanding was that we would prepare a report of our investigation, submit it to the agency, to which the agency would then respond in a like report. We were notified earlier this week that a detailed outline of the agency's response would be forthcoming.

And am I to assume that this detailed outline consists of this single page and the summary of Mr. Hart's presentation, listing four subtitles. And that, as far as I can determine, is the full extent to which we have any response at this juncture of Mr. Hart's testimony.

What I would like to request at this point is if this committee could take a five- or ten-minute recess and we could have the benefit of examining your notes from which you're about to give your testimony, so that we could prepare ourselves for proper questioning of you, Mr. Hart.

Mr. Chairman, I'd make that request.

REP. STOKES: Does the witness care to respond?

HART: Mr. Chairman, I will do anything which will be of help to the committee. I want to state that I am not personally certain what was promised the committee. I was brought back on duty to be the spokesman for the agency. I've spent my

JOHN W. BROWN, JR., JR.
WALTER E. FARMER, JR.
VERNE G. GUNTER, JR., CALIF.
LAWRENCE J. HARRIS, CONN.
HAROLD H. HARRIS, TEXAS
FLORIAN J. HARRIS, ILL.
DELEAT M. LEBLANC, PA.

SEN. JAMES E. EASTLAND, MISS.
SEN. JAMES H. HARRIS, CONN.
SEN. CHARLES W. HARRIS, ILL.
SEN. HAROLD H. HARRIS, TEXAS

Select Committee on Assassinations

U.S. House of Representatives
310 HOUSE OFFICE BUILDING, ANNEX 3
WASHINGTON, D.C. 20515

October 26, 1978

OLC #18-1583/2

Mr. Lyle Miller
Deputy Legislative Counsel
Office of Legislative Counsel
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Miller:

This letter is to confirm that this Committee requested that the Central Intelligence Agency provide it with full disclosure of all information and materials relating to the following:

1. The credibility of all statements made by Yuri Nosenko concerning Lee Harvey Oswald
2. The treatment of Yuri Nosenko by the Central Intelligence Agency during the years he was in its custody and control.

The information received as a result of these requests was put into a Committee Report. That report was thereafter submitted by the Committee to the CIA with the request that it be declassified for presentation at the Committee's public hearing on September 15, 1978. This request was complied with by the CIA, and the presentation was made on that date. In addition, the information elicited from the above materials was used by the Committee during public hearings on September 15 and 22, 1978 in questioning Mr. John Hart, who represented the CIA, and Mr. Richard Helms, onetime director of the CIA. Mr. Hart was provided by the CIA for testimony in response to a request for an Agency spokesman to testify on those issues, and Mr. Helms appeared, and the subject matters of his testimony were declassified by the Agency, at the request of the Committee.

Sincerely,

G. Robert Blakey

G. Robert Blakey
Chief Counsel and Director

GRB:cr

CIA EXHIBIT B

26 September 1978

MEMORANDUM FOR: Launie M. Ziebell
Assistant General Counsel

FROM: Robert E. Owen
DO Information Review Officer

SUBJECT: Warren Commission Transcripts Regarding
Yuriy Nosenko in FOIA Litigation

REFERENCE: Your Memorandum dated 22 September 1978;
Same Subject (OGC 78-6295)

1. The Warren Commission transcripts which accompany your memorandum of 22 September (OGC 78-6296) may be released to FOIA requesters, including the litigant in the civil action cited in your memorandum. Based on advice received from the Counterintelligence Staff, I have determined that they can be declassified by the National Archives.

2. Recently, testimony by an Agency witness before the House Assassinations Committee included the substance of the information treated in the two transcripts which had previously been denied to FOIA requesters under exemptions (b)(1) and (b)(3) of the Act. While some damage may still ensue as a consequence of the revelation of other details in the transcripts that relate to foreign relations, the continued assertion of FOIA exemptions by this Directorate seems no longer tenable. As noted in the Charles A. Briggs affidavit of 30 December 1976, "a classification judgment is not valid indefinitely. The circumstances which justify classification may change ..." Although the need to protect sources is a constant, whether or not information is technically classified, this particular instance of executive disclosure eliminates the possibility of providing continued protection under FOIA to specific source details in the transcripts.

CIA EXHIBIT C

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3. I am prepared to work with you on an explanatory affidavit for the court's consideration in CA #77-1831.

Robert E. Owen
Robert E. Owen

cc: DDA/IPS

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Washington, D.C. 20540

OGC 78-6738

11 October 1978

Honorable Barbara A. Babcock
Assistant Attorney General
Civil Division
Department of Justice
Tenth & Constitution Ave., NW
Washington, D.C. 20530

Dear Ms. Babcock:

Re: Weisberg v. GSA/National Archives and
Records Services, U.S.D.C. (CA #77-1831,
formerly CA #75-1448)

In the referent litigation, two executive session transcripts of the Warren Commission involving CIA equities are at issue. They are the transcript for 21 January 1964, pages 63 through 73, and for 23 June 1964, pages 7640 through 7651. The transcripts are among those requested by Mr. Harold Weisberg under provisions of the Freedom of Information Act (FOIA). The two transcripts have been withheld from release pursuant to FOIA exemptions (b)(1) and (b)(3). The basic reason in withholding these documents from release under the FOIA had been to protect intelligence sources and methods against unauthorized disclosure and because the documents were classified confidential.

In connection with the investigations of the House Committee on Assassinations, the Director of Central Intelligence determined that previously classified information regarding Yuriy I. Nosenko, a Soviet defector, would be declassified and put on the public record as part of the testimony before the committee. The testimony has been given and consequently the Central Intelligence Agency will no longer assert previously claimed FOIA exemptions for the two Warren Commission transcripts identified above.

CIA EXHIBIT D

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Your assistance is requested in advising the court of these circumstances. Arrangements will be made to provide declassified versions of the two transcripts to the plaintiff in the above-captioned litigation.

Sincerely,

Anthony A. Lapham
Anthony A. Lapham
General Counsel

cc: Honorable James B. Rhodes
Archivist of the United States
National Archives and Records Service
General Services Administration
Washington, D.C. 20408

OGC:LMZ:slg

Distribution:

Orig	✓	Addressee
	✓	- FOI Subj; LITIGATION CIVIL:
		Weisberg v. GSA (CA#77-1831)
1	✓	- Robert Owen, DDO/IRO
1	-	C/Information & Privacy Staff
1	-	LZ Signer
1	-	OGC Chrono

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408



OCT 13 1978

Honorable Barbara Allen Babcock
Assistant Attorney General
Civil Division
Department of Justice
Washington, DC 20530

EXHIBIT #2
C.A. No. 75-1448

Dear Ms. Babcock:

Subject: Weisberg v. General Services Administration,
USDC DC, Civil Action No. 77-1831 (formerly
75-1448)

We are in receipt of a copy of a letter of October 11, 1978, from Anthony A. Lapham, General Counsel of the Central Intelligence Agency, to you. In the letter, Mr. Lapham advises that the CIA no longer (1) requests the continued security classification, or (2) the application of any other Freedom of Information exemption to prevent the disclosure by the National Archives and Records Service (NARS) of a portion of a Warren Commission executive session transcript dated January 21, 1964, and the entirety of another transcript dated June 23, 1964.

Because NARS has based its prior decisions to withhold these materials entirely on the recommendations of the CIA, I have directed the immediate declassification of the subject documents in accordance with the Lapham letter. I also have directed the archivist in charge of these documents to transmit copies of them as quickly as possible to plaintiff in the above-captioned litigation, and to have them available as requested by other researchers and members of the public.

NARS continues to withhold the other transcript at issue in this litigation, dated May 19, 1964, which is not security classified, pursuant to the fifth and sixth exemptions under the Freedom of Information Act (5 U.S.C. § 552(b)(5) and (6), respectively).

Sincerely,

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

cc:
Anthony A. Lapham
General Counsel, CIA

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

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant
.....

C.A. 75-1448

AFFIDAVIT

1. My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland.
I am the plaintiff in this case.

2. My prior experiences include those of investigative reporter, Senate
investigator and intelligence analyst.

3. My prior experiences with FOIA/PA matters are extensive. I know of no
private person who has made as much use of FOIA and of no private person who has
spent as much time litigating under FOIA. This includes suits against the
Department of Justice, which provides defendant's counsel in this case, against
the defendant and against the CIA, which is directly responsible for the with-
holding of the two Warren Commission executive session transcripts that remained
withheld until this case was before the appeals court.

4. In this affidavit I address the defendant's Opposition of August 10,
1979, and its attachments first as they ostensibly address the manner in which the
two transcripts in question were allegedly declassified and disclosed and then as
they seek to make improper use of process in both respects as an effort to mislead
the Court.

5. Neither the Opposition nor its attachments contains a single word
descriptive of the content of the two transcripts. There are only deceptive
generalities and conclusory references like "certain information" and "the
information." The thrust of these false representations is to mislead the Court
into believing that the information in the transcripts was disclosed by the House
Select Committee on Assassinations. To deceive and mislead the Court the

Opposition states what is not true, "Plaintiff ignores the fact that the information released," meaning these two transcripts or their content, "was already within the public domain when he received the documents." (page 10) The Owen affidavit and its attachments are designed to give this impression but in fact they do not so state and Owen dares not so state because it is false. Owen never states what "information" he talks about.

6. Moreover, there is no reference at all to the January 21 1964, transcript, the second transcript now in question. The Opposition and Owen ignore it entirely, apparently in the hope that the Court will be misled into believing that what they allege about the other transcript also relates to it, as it does not and cannot. (There is passing mention of the January 21 transcript on page 2 of the Opposition, but merely as involved in the suit.)

7. Also entirely missing is even a pro forma claim that either transcript was ever properly classified. In the face of the information I have provided, that false representation also is not dared. Yet Owen states that he is authorized to make classification determinations "up through TOP SECRET."

8. Instead, Owen undertakes to misrepresent to this Court in other ways. He states that some CIA information was declassified for the House committee - but he does not state what information or that it includes these transcripts or their content. He also states that the CIA provided committee testimony, again without stating that the testimony included these transcripts or their content. His CIA operational and disinformational device is:

After comparing the details of the declassified CIA information, which appeared in the aforementioned testimony before the House Committee on 15 September 1978, with the information withheld from release in the Warren Commission testimony (sic), I determined that the continued assertion of the Freedom of Information Act exemptions was no longer tenable. (Paragraph 3)

9. One wonders if Owen read anything when he refers to a meeting of Members of the Presidential Commission as "testimony."

10. As part of this CIA spooking, in the Owen account, the CIA advised the Justice Department and the Archivist of the United States that as a consequence of the declassified CIA information regarding Yuriy Nosenko being placed on the public record before the House Committee, the two aforementioned Warren Commission transcripts would no longer warrant being withheld... (Paragraph 3)

11. Here again he does not specifically state what he dares not state,

that it was one and the same information, in these transcripts and testified to before the House committee.

12. In a further effort to deceive and mislead the Court, Owen attaches as Exhibit A what he describes as "the first ten pages of the transcript of testimony taken before the Committee in open session on September 15, 1978." At the same point he also states that "the CIA information," still entirely undescribed, "is summarized in the testimony of Professor Robert G. Blakey, Chief Counsel and Staff Director of the House Committee Staff." (Paragraph 2)

13. Blakey did not testify. He narrated a background for the CIA's witness. John L. Hart.

14. What Owen describes as "the transcript" is not that at all. although the typescript as well as the printed official transcripts were available. Rather is his a transcription of the radio broadcast made for the CIA by a commercial service. Owen's choice is not accidental. It is part and parcel of the CIA's intent to deceive and mislead the Court. It also includes less than a printed page of the CIA's testimony on which the Opposition's and Owen's present allegations and representations are based.

15. Had Owen done otherwise, he would have given the Court absolute proof that the CIA had knowingly and deliberately sworn falsely to this Court in its representation that Nosenko's was a "model" case, designed by the CIA to make defections to it from foreign intelligence services more attractive. What Hart actually testified is exactly the opposite of what the CIA swore to this Court. Hart described Nosenko's treatment as illegal, barbarous, inhuman, an atrocity and the worst thing he knew about the CIA. He also testified that he and the CIA are so ashamed of it that the CIA has him giving internal lectures on it as the horror of horrors and that delivering these lectures sickens him.

16. In fact, virtually all of Hart's testimony was on Nosenko's treatment, which is not and could not have been referred to in the Commission transcript. (Before the Commission could listen to Nosenko, the CIA hid him away for three years of subhuman, virtually solitary, confinement. This was neither known to the Warren Commission nor within its mandate.)

17. Why the CIA spent public tax funds for an unofficial version of the

committee's proceedings when there was an official transcript - why it avoided the official transcript in what it presented to this Court - is apparent from examination of the committee's official transcript. It holds what Owen withheld - a description of the actual information used by the committee and not used by the committee.

18. The committee made no use of the content of the two Commission transcripts in question.

19. If Owen had used the committee's official press handout, for the Blakey introduction was prepared in advance and distributed at the hearing, that would have cost nothing. But that also would have disclosed what Owen and the Opposition withhold from the Court - proof that there is no relationship at all between what the CIA declassified for the committee and the content of the transcripts.

20. What Owen swears is "the first ten pages of transcript" is the Blakey narration of 41 printed pages. Aside from the fact that more words appear on the printed page, the Blakey narration and the committee's press handout include the committee's staff report on Nosenko, which Owen omits. It was not broadcast by radio. This accounts for Owen's use of an unofficial transcript of the radio broadcast instead of the official transcript.

21. Hart's testimony, of which Owen attaches less than a printed page and that of the introduction only, runs to 59 printed pages.

22. I attach as Exhibit 1 the table of contents of the committee's Nosenko report and its two pages headed "The Warren Commission and Nosenko."

23. The only way in which the House committee could have paid less attention to "the Warren Commission and Nosenko" would have been to ignore the matter entirely. What little is included - and it has nothing at all to do with any of the records Owen states were declassified for the committee, leading to his decision to disclose the transcripts to me - is restricted to the testimony of Richard Helms. It then is further restricted to what has been within the public domain for years, as part of the Commission's records available at the Archives.

24. This has nothing to do with the two transcripts in question, and neither here nor elsewhere is there any mention of these two transcripts or their content.

25. Originally, the CIA conned the Archives into withholding the fact that

it claimed to have doubts about Nosenko's credibility and to classify that TOP SECRET. However, that also was declassified years ago. Because it was not classified, Owen could not have declassified it after Hart's testimony.

26. Aside from what Hart referred to as Nosenko's credibility and the barbarities inflicted on him although he was a prize intelligence catch - he is now a CIA consultant - there is nothing else to which Hart testified. He refused to testify to anything else of substance and stated that this was his agreement with the CIA prior to agreeing to provide its testimony. Hart testified, to the committee's shock and chagrin, from a single page of notes with only four subtitles on it. (Pages 488-91, attached as Exhibit 2) At the outset Hart made it clear that he was going to testify to "the handling of Nosenko by the CIA," which he described initially as "counterproductive" rather than "model."

27. Pages 502-11 (attached as Exhibit 3) give more of the character and limitations of the Hart testimony, which has no relationship to the transcripts in question and is almost in its entirety limited to what the CIA did to Nosenko subsequent to the Warren Commission's executive session.

28. One of the points at which consideration of assassinating Nosenko is mentioned is on page 504. The same official also considered driving Nosenko mad and, as an alternative, institutionalizing him for life on the pretense that he was mad. (See also Exhibits 4 and 5 below.)

29. That Hart had "ruled out going into the Lee Harvey Oswald matter" is on page 506. This is the matter of interest to the Warren Commission, not what it knew nothing about, how Nosenko was abused by the CIA.

30. Hart testified that "the Agency failed miserably" in the handling of the case as it relates to Oswald. (Page 507)

31. What is opposite to the information the CIA gave the Commission staff is Hart's testimony that, with regard to Oswald, Nosenko's statements should be regarded as "made in good faith." (Page 508)

32. A more explicit ruling out of this testimony as justification for the decision to disclose these transcripts to me is on page 509: Hart told the CIA "that I will be the spokesman on the subject of the Nosenko case but I will not be the spokesman on the subject of Nosenko's involvement with Lee Harvey Oswald." This is all that was within the purview of the Warren Commission and it is entirely

outside Hart's testimony.

33. That the CIA was doing a job on the committee on this same question is the belief of one committee member, who stated that "what the Agency wanted to do was to send someone up here who wouldn't talk about Lee Harvey Oswald." (Page 509)

34. That the natural situation in the CIA is for its officials to be denied knowledge and thus led to lie is Hart's testimony from personal experience. (Page 511). When he was in charge of the "Cuban Task Force" he denied "in all good faith" that there had been CIA attempts to assassinate Castro because knowledge of it "had been kept from me."

35. Actually, the CIA made "no investigation" of "the activities of Oswald through Nosenko." (Page 522. Pages 522-5 are Exhibit 4) He would give this the lowest possible rating. Hart, in all his professional experience, had never seen a "worse handled operation."

36. Hart's testimony relating to the schemes an official considered for Nosenko's "disposal" (Pages 524-5) is that the only reason for considering assassinating him was to make it impossible to prove that the CIA had had him confined illegally for three years. (Page 525) Without this there would have been an imagined "devastating effect."

37. In short, someone inside the CIA considered murder in cold blood to hide CIA improprieties and illegalities. Alongside this, misleading a Court is a minor matter, as is false swearing to a Court.

38. The Hart testimony concludes (Exhibit 5, pages 532-6) with what dominated it, more on the treatment of Nosenko. Rather than the "model" to attract other defectors, he described it and lecturing on it for the CIA as "an abomination" and by far the worst experience of his professional life. (Pages 533-6)

39. In all of this, in all this committee's work and in all the more than ten million words of the Warren Commission's published materials, there is no reference to what Nosenko said that terrified the CIA and impelled it to what it did and did not do, including its virtually unprecedented abuse of Nosenko and its false swearing about this and related matters: The KGB suspected that Oswald was an American "agent in place" or a "sleeping agent;" and Oswald was anti-Soviet, not pro-Soviet, as reflected by Marina Oswald's uncle's plea to Oswald not to be

anti-Soviet when he got back to the United States.

40. As Allen Dulles stated, if Oswald was an American operative in the USSR, he could have been for the CIA but not the FBI. (This was at the January 27, 1964, executive session. It also was withheld by the CIA and it also was given to me when that case was about to go to the appeals court.)

41. I listened with care to the Hart testimony and I have read it, as I have also read the two transcripts in question. The Hart testimony does not address the content of the two transcripts at issue.

42. Hart's testimony is, for the most part, totally irrelevant to the two transcripts. Where it is not totally irrelevant, where it might be claimed that there is some slight relationship, it contains nothing that was not within the public domain before this special House committee existed.

43. It thus is not possible that the reason the transcripts were disclosed to me at the very moment the Government's brief was due at the appeals court can be because of declassification of the content for this committee.

44. I emphasize that Owen and the Opposition fail to make even the pro forma claim that there is anything classifiable in the two transcripts - the only one mentioned, that of June 23, 1964, and the unmentioned pages of January 21, 1964.

45. The uncontested information I have already provided in affidavits relating to defectors and the January 21 transcript makes any representations relating to it, even further false representations, too hazardous.

46. The following section of this affidavit addresses what I believe is an effort to prejudice the Court with regard to the matter before it and is an effort to misuse process for ulterior purposes. In this it is consistent with my long experience with the agencies involved in many other FOIA cases.

Abuses of the Act and of my counsel and me characterize all my FOIA cases, including this instant case. Similar abuses, in my C.A. 2301-70, led to the 1974 amending of the investigatory files exemption of the Act.

48. Without exception, all these agencies stall my requests and, when forced to defend them in court, continue to stonewall and to mislead the courts. My counsel and my prior affidavits explained why this is the official practice.

49. Beginning more than a decade ago, the National Archives, which is part

of General Services Administration, refused to honor my requests and then solicited another, who lacked my subject-matter expertise, to make the identical request, to which it responded promptly. By this means it was able to engage in news management, in influencing what would be known and believed. The Archives has conspired with other agencies to withhold public information it wanted withheld after the agency of which I made the request decided that it could not withhold the requested information under the Act. Internal Archives and GSA records disclose that these agencies denied information to me despite the requirements of the Act because they feared that once I had that withheld information I would request other information these agencies desired to withhold for political purposes - including the two transcripts in question.

50. The CIA has yet to comply with my information requests going back to 1971. To effect noncompliance, CIA components lied to the CIA's general counsel. They denied that I had made the requests and then denied having the information that in fact they did have. This was disclosed to me by inadvertence. The disclosure identified records and where they are filed. Yet the CIA denied having any such records. Repeated appeals from denials go without being acted on for years. When I ask the CIA when I may expect action on these appeals, I receive no response. In common with the agencies identified above and still other agencies, the CIA releases to later requesters what it refused and continues to refuse to provide to me.

51. My unmet information requests of the Department of Justice and its components go back much more than a decade. In 1976, in C.A. 75-1996, I testified to more than two dozen such unmet information requests. My testimony remains undenied and the appeals remain without action on them.

52. While the Opposition makes deprecating reference to my use of public domain information relating to the later Nosenko requests of Edward Epstein, it is the uncontested fact that the Archives, the CIA and the Department continue to withhold from me what they provided him. Moreover, when I filed requests for the information provided to Epstein, all three agencies refused to provide me with the information they had provided to him.

53. The reason for this discrimination is as my counsel stated in his Motion, I am neither a sycophant nor one of the legion of conspiracy theorists who exploit the great tragedies of the political assassinations.

54. I made Privacy Act requests of all the agencies involved. The records provided hold no substantial criticism of any of my writing. My writing is by far the most extensive in the field in which I work.

55. Moreover, going back to 1966 I have defended these agencies from the unfair criticisms of the irresponsibles who dominate the field in which I work.

56. My work is not the pursuit of a real-life whodunit. It is a serious study of the functioning of our basic institutions in times of great crisis and in their aftermaths. It is because my work cannot be faulted on the basis of fact that other means are resorted to by the agencies whose failings I expose to deter my exposure of them.

57. The CIA, despite the prohibition of domestic operations by it, has me in its domestic investigations. It also has monitored what I say. It has verbatim transcripts made of what I say, First Amendment or no First Amendment. With regard to the investigative reports, it provided me with records from which everything but my name was obliterated. I obtained unexcised copies by other means. It has not provided any of the above-mentioned transcripts. I also obtained copies of them by other means.

58. The Department of Justice went further. Its FBI actually plotted to file a spurious libel action against me to "stop" my writing. These are the actual words used in the records I have obtained.

59. One means of "stopping" me and my writing is to tie me up in litigation, to stonewall FOIA cases indefinitely. To this end all agencies have provided false affidavits. All are immune in this because the prosecutor does not prosecute himself.

60. Litigation is the only alternative when FOIA requests are rejected or ignored, the practice of all the aforementioned agencies.

61. My initial requests in this instant cause were more than a decade ago. Once I filed suit, Government counsel stalled by various means. These include taking months for partial response to interrogatories. Now I am accused of delaying in the Opposition.

62. To "stop" me, Rule 11 or not, there is no motion or pleading Government counsel eschews, no matter how unfaithful or unfair or plain false it may be, and all are common within my extensive experience. Nor is any means too petty.

63. I suffered the first of a series of serious illnesses in 1975. I was hospitalized after this case was filed. Thereafter I made arrangements with Government counsel in all cases for copies of all pleadings to be sent to me. I offered to pay the costs. The reason is that I live at a distance from my counsel and the time taken for mailings to reach him, for him to make copies, for them to reach me and for me then to provide anything to him can consume more time than is allowed. All Government counsel agreed to do this and did do it until they became aware of a further deterioration in my health, which prevents my driving to Washington. Since then not one has sent me a copy of any pleading, despite repeated requests. As a result, I did not receive the present Opposition until Thursday, August 16, a day I was not well. I read it the next day and was able to discuss it by phone with my counsel that evening. He then told me that he needed this affidavit over the weekend. There now is no time for me to provide a draft for his approval or suggestions. I am not a lawyer. The practical effect of this uniform refusal by all Government counsel to mail copies of pleadings directly to me is that my counsel never has the opportunity to review my affidavits and I am denied meaningful consultation with counsel in preparing them and in their content.

64. Because of my age (66) and the state of my health, which is well known to the Government, this amounts to an exploitation of my illnesses to effectuate noncompliance with the Act.

65. Commercial insurers will not provide me with medical insurance because I have more than three conditions that can require surgery. The most serious of these are circulatory. By the time I was hospitalized in 1975, thrombophlebitis had damaged the main veins in both legs and both thighs. This in itself required drastic changes in my life and imposed limitations on what I am permitted to do. In 1977 arterial illness also was discovered. The arteries near the heart and the supply of blood to the head are among the involvements of which I know. I must sit with my feet elevated, which presents problems in drafting and reading and correcting the drafts of affidavits. This work is interrupted regularly because I must get up and walk about periodically. I also am under doctor's orders to engage in those physical exercises of which I am capable, at intervals throughout the day. This is part of the medical treatment. I live on an anticoagulant that is a dangerous poison and can cause internal hemorrhaging, as it did this past April. I now live

on less than the optimum dosage, which is monitored carefully by weekly blood tests. When my doctor examined me on August 15 after a sharp alteration in the blood chemistry, he told me it is almost impossible to detect any pulse in my feet.

66. The state of my health and my age provide motive for Government stalling to "stop" me and my writing. It is my experience in all my FOIA cases that Government counsel do stall. They delay filing motions for months on end on the claimed need for supporting affidavits. When the motions are filed, it turns out that the affidavits had actually been executed and were on file. Government counsel rejected interrogatories as a means of discovery in one of my FOIA cases; the Government was supported by the appeals court, which ordered live testimony; then, after this ruling, other Government counsel, to stall another of my FOIA cases, argued that interrogatories, not live testimony, are the proper and preferred form of FOIA discovery.

67. Because it is not possible to fault my work on the basis of fact and because my information requests are never frivolous and all seek significant information that is embarrassing to officialdom, all Government counsel, in varying degrees, some blatantly, some subtly, attempt to try their cases on me and my counsel and on the prejudice that wipes off on all from the excesses and irresponsibilities of those who have attracted most attention in my field of work. In the instant Opposition this is subtle but it is present, regardless of Rule 11 and the Attorney General's statement that all Government counsel are to abide by this Rule.

68. This kind of approach also creates the kind of quotable record that within my experience is misused throughout the Government, including in FOIA litigation. I have obtained many records of this nature. They are false and defamatory and they have been misused with telling effectiveness. In one it was held that because I was not liked the Act did not require response to my requests. No responses were made, then or since. In a widely-distributed record, which went to the White House and Attorneys General and their Deputies, among others, my wife and I were charged with celebrating the Russian Revolution. The apparent basis for this libel was an annual religious outing - in September, not November - at a small farm we then owned.

69. An ostensibly proper request of the Opposition is to depose me. Allegedly, this is to determine whether I have commercialized the transcripts in question and/or other information I have obtained through FOIA and whether my counsel is attempting to defraud the Government by requesting counsel fees after I have already paid him for his services. These are not seriously intended, as the Government, particularly the Department of Justice, is well aware. When my counsel informed me of this after he read the Opposition, I asked him to arrange for the Department to depose me at the earliest possible date rather than argue the merits, to get that stalling device dispensed with as soon as possible. I will then provide in detail the information I assure the Court the Government has and does not need - if the Government does go ahead with this deposition, as I do not expect it will, because it knows full well what the result will be.

70. The Government, particularly the Department, knows that I have had no regular employment since the assassination of President Kennedy and that without any regular source of income (until I reached Social Security age) I devoted myself to an unpaid study of the investigation of that crime and the later assassination of Dr. King and their consequences.

71. Here and elsewhere in the Opposition, particularly with regard to the transcripts in question and the real reasons for their disclosure, the intent that is typical within my experience is to mislead the Court, as I set forth herein. Consistent with this there are subtly prejudicial suggestions guised as proper questions. In context, and particularly when considered with the nature and extent of other misrepresentations and their possible consequences if accepted by the Court, there is what I believe is abuse of processes. This amounts to the making of charges the Government does not dare make.

72. While it is not unusual for a defendant to refer to the other side as "plaintiff," I do not believe it is right and proper for this to be the form of reference when plaintiff's counsel only is intended, particularly not when in the Opposition the distinction is made where no ulterior purpose is served by not making it.

73. The issue is whether there will be an award of attorney's fees. Whether or not the check is made out to a plaintiff, these go to the attorney, not the plaintiff, absent a claim for the recovery of attorney's fees already

expanded, which is not true in this case. In this case there is no possibility that any award would be to me personally.

74. Where the Opposition draws the distinction between plaintiff and his counsel is at the end (page 12), in "Should this Court decide to award fees, it is essential for plaintiff's attorney to establish that fees awarded are not being paid twice -- once by the government and once by plaintiff." (Emphasis added)

75. This allegation of an attempt to defraud the Government, laid to my counsel and to me without any basis and contrary to much and uncontroverted information the Department has, is presented as a question requiring an answer. While superficially this may appear to be a reasonable question, in fact it is not because there are Departmental administrative actions and there was a lawsuit, both providing definitive answers.

76. However, in making this allegation disguised as a question, the Opposition is explicit in distinguishing between me personally and my attorney.

77. Consistent with intent to suggest that in other ways I seek to defraud the Government, the Opposition opens with the representation that the award would be "a windfall for plaintiff," not for plaintiff's attorney. (Page 2)

78. Also consistent with intent to malign me and mislead the Court is another seemingly reasonable matter allegedly to be determined, "the use to which plaintiff put the released information and the extent to which he had benefitted financially from it. It is unclear from the record whether plaintiff's interest is merely scholarly or whether he is part of the 'legion.'" (Page 11)

79. "Legion" is a quotation from my counsel's Motion in which he distinguishes me and my work, as the courts and the Department have, from that of sensationalists and commercializers.

80. While I have no way of knowing what the defendant informed defendant's counsel or defendant's counsel asked the defendant, that the Archives knew in advance the use I planned and did make is without any question.

81. Because of many official leaks in the past, which were used to manipulate the media and what could and would be known and believed, I was explicit in informing the Archives I would pick up the copies of the transcript as soon as they were available and that I would hold a press conference promptly and would give copies to the press. I also said I wanted no leaking in advance of this.

82. I did precisely what I told the Archives I would do. I made a special trip to Washington by Greyhound. My counsel met me at the bus station and drove me to the Archives. I obtained the transcripts, had xerox copies made of them and of other pertinent records and that afternoon gave copies to the press at the press conference and by messenger. To be certain that the press was informed, I personally notified the wire services, which by their ticker services informed the press corps. I also phoned the Washington Post, the TV and radio networks and others I do not now recall. All of this was at my expense.

83. I gave and mailed free copies to others working in the field and made arrangements for still others who live in distant parts of the country to be provided with copies.

84. This is in accord with my practice since early 1975. To the degree possible I have made available to the press and to others what I obtain by FOIA. The Department is aware of this as it is aware that I have set aside a separate working area in my home for others to have private access to my records.

85. When the defendant knew in advance that I would be giving away this information before I could use it myself and made the arrangements for giving it away prior to even reading it, it is neither reasonable nor honest for the defendant, through counsel, to pretend a need "to determine the use to which plaintiff put the released information..." This is intended to prejudice the Court and as a slur.

86. Consistent with this is what follows (without omission), "and the extent to which he has benefitted financially from it." If intended as no more than a reasonable question, a proper formulation would have been "the extent, if any, to which he has profited." The intent is to imply what is not true, that I did profit financially. It is obvious that, even if I intended personal gain, that became impossible the moment I gave away many copies and draw the attention of the press to the information.

87. To the Government's knowledge there can be no seriousness in the pretended question, "whether plaintiff's interest is merely scholarly..." The Government knows other and better than this. The Department has made administrative determinations that leave no room for any doubt about it.

88. In C.A. 77-2155, which was decided last year, that Court was severely

critical of the Department and its treatment and mistreatment of me and of the Act. It ordered that the records in question, about 100,000 pages of records relating to the investigation of the assassination of President Kennedy, be given to me without charge. The uncontested evidence I produced in that case is that I am not of means; had no regular income for the preceding 15 years; devoted myself entirely to this work without foundation or other subsidy; that it and I are a service to the press and the country; and that I had already given away for a permanent public archive all my records of all sources and origins. There is and was no quid pro quo. (The request was made of me by the Wisconsin Historical Society. The deposit is at the Stevens Point branch of the University of Wisconsin. I have already transferred about 10 file drawers of materials. The remainder of my files, which now require about 60 file cabinets, have been willed to this university archive, along with any and all other materials I obtain. I mail records intermittently, as I am able to.)

89. As a result of its own reconsideration after the decision in C.A. 77-2155, the Department made the administrative determination that it would make no charges for any records relating to the assassinations of President Kennedy and Dr. King and to refund the charges that I had already paid.

90. The Department itself has eliminated any basis for any question having to do with profit, which is an obvious impossibility, or my scholarship.

91. With regard to my scholarship, the Department has represented to two different courts that I know more about the investigations of these two assassinations than anyone now in the employ of the FBI. It persuaded one Court to have me act as its consultant in my suit against it because of my scholarship.

92. When the Department is aware that I have given away everything I have and will have to a free public archive, for it now to pretend a need to know whether I am "public interest oriented" (on page 11) is dignified by calling it frivolous. It is another incitation to prejudice.

93. One of the ostensible reasons for these dark suspicions and allegations disguised as questions is that "Plaintiff has in the past published books based on information obtained through FOIA." (Emphasis added)

94. In fact, I have published but a single book "based on" FOIA information. I added to another book, published the end of 1975, what I had earlier given away

after I obtained it. Neither book has returned a profit or can. Both have facsimile reproductions of Warren Commission transcripts that had been withheld under the CIA's false pretenses and spurious claims to exemptions. Disclosure of them, as in this instant cause remains undenied even in the present Opposition, revealed that the information was not properly subject to classification. Then as now the real reason for the withholding was the avoidance of embarrassment to the Government.

95. The actual commercialization was by the defendant in this case, the National Archives. It was charging 25 cents a page when xeroxing was being done commercially for as little as a tenth of that charge. The single transcript I published in the book based on that transcript cost \$25 if purchased from the Archives. As published in facsimile in my book, it cost a fourth of this and the book held a large number of other formerly secret records also reproduced in facsimile.

96. That particular transcript reflects that the former Director of Central Intelligence, Allen Dulles, described false swearing as the highest dedication of the intelligence agent. My experience in this and other FOIA cases provides no basis for disputing him.

97. In the other of these two earlier transcripts, the Commissioners joined in expressing their terror of J. Edgar Hoover and his desire that they fold up and go home without making any investigation. That transcript concludes with the decision to destroy it. However, the stenotypist's tape escaped the memory hole and I did obtain a transcript under FOIA.

98. These illustrations, not what is falsely represented in the Opposition and its attachments, reflect the actual content of the two transcripts in question in this instant cause.

99. That the CIA's classification of the Warren Commission executive session transcripts was never justified is indicated by Exhibit 6. Exhibit 6 is two FBI records from the FBI's Warren Commission file. They are among the approximately 100,000 pages I received because of C.A. 77-2155, referred to in preceding paragraphs. I saw these particular records for the first time earlier this month.

100. While these records do not so indicate, the review of the transcript of the January 22, 1964, executive session of the Warren Commission was in response

to my efforts to obtain it. That effort was at the point where my next step was to file suit.

101. This particular one of the four interrelated transcripts is the one the terrified Commissioners decided to destroy, as mentioned above. It is the only transcript the content of which caused so much consternation and apprehension.

102. While the content of this transcript reflects seriously on the FBI, the review of the FBI's Intelligence Division concluded that none "of the information reported in this transcript merits classification."

103. By that time the defendant General Services Administration had withheld it for a decade, claiming TOP SECRET classification.

104. The FBI did not claim that the erosions of time justified downgrading and disclosure, the pretense of the Opposition. There is no content that justified classification and there is no content in the transcripts at issue that was ever properly classified, despite the fact that all the transcripts were classified TOP SECRET.

105. There is no content of the two transcripts in question requiring them to be withheld under any statute. The transparently apparent reason the CIA classified and withheld the two transcripts at issue is to shield itself from embarrassment because it had misled and deceived a Presidential Commission.

106. The false representations attributing disclosure to declassification for the House committee are a contrivance intended to protect the CIA and GSA from prior false representations and their consequences because by the time defendant's brief was due before the appeals court it had given abundant indication of what to expect from it. Without some such concoction to cloak them, these false representations would be naked to the Court, as they are to subject experts.

107. After all these years of official stalling and of shifting and improper claims to exemptions, I am now accused of causing the delays because I undertook to provide the courts with relevant information the Government had withheld from them.

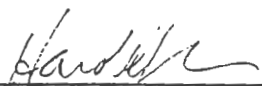
108. When any reading of the transcripts in issue discloses that all claims for any need to withhold them are fraudulent and that the Court and I were defrauded, the Opposition also seeks to turn this around and to pretend that my counsel and I are attempting to defraud the Government.

109. I believe this is outrageous. If I had more of my life ahead of me and enjoyed perfect health, it would still be outrageous to attempt to mislead the Court into believing I seek and am motivated by profit when I have undertaken a public responsibility without pay or possibility of personal profit.

110. I believe this entire matter violates Rule 11 and that I am entitled to whatever protection from such abuses the Court can provide.

111. The lack of any specificity with regard to the June 23 transcript and of any reference at all to the January 21 transcript should have let Government counsel know that at best the Owen affidavit is questionable. If any of the content of these transcripts had been disclosed for the first time before the committee, Owen could and would have cited the transcript and the committee's disclosure and established this. In its absence Government counsel should have known that the obligations imposed by Rule 11 were not met, more so from the total absence of any rebuttal to any of the information included in my detailed affidavits.

112. From long experience in FOIA matters, including litigation, I believe that the Courts will be needlessly burdened, the Act will be negated and the people will be denied their rights under the Act as long as such abuses are tolerated.

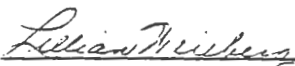

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 20th day of August 1979 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.




NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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OSWALD IN THE SOVIET UNION:
INVESTIGATION OF YURI NOSENKO

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would call an employee or an officer of the Agency. And I would like to have that made part of the record.

Chairman STOKES. The record may so show.

Mr. HART. Mr. Chairman, it has never been my custom to speak from a prepared text. I have tried, and I never succeeded. Therefore, what I have before me are a series of notes which were finished about 8 o'clock last night, based on guidance which I got at that time from Admiral Stansfield Turner, the Director of Central Intelligence.

It is my purpose to tell you as much as possible about the background of the Nosenko case with the idea not of addressing what have been called his bona fides, but what has been described as his credibility.

Now, I must say that I have difficulty in distinguishing between credibility and bona fides, but in any case, the testimony and the evidence which has been presented regarding Nosenko simply cannot be evaluated properly unless I give you the background which I am about to present.

Mr. DODD. Mr. Chairman, I would like to make a request at this point if I could. As I understood it, last week, the agreement and understanding was that we would prepare a report of our investigation, submit it to the Agency, to which the Agency would then respond in a like report. We were notified earlier this week that a detailed outline of the Agency's response would be forthcoming. Am I to assume that this detailed outline consisting of a single page, listing four subtitles, is the summary of Mr. Hart's presentation? That is, as far as I can determine, the full extent to which we have any response relating to Mr. Hart's testimony at this juncture.

What I would like to request at this point is that this committee take a 5- or 10-minute recess, and we have the benefit of examining your notes from which you are about to give your testimony, so that we could prepare ourselves for proper questioning of you, Mr. Hart.

Mr. Chairman, I would make that request.

Chairman STOKES. Does the witness care to respond?

Mr. HART. Mr. Chairman, I will do anything which will be of help to the committee. I want to state that I am not personally certain what was promised the committee. I was brought back on duty to be the spokesman for the agency. I spent my time preparing testimony which I am prepared to offer here. If it will be of assistance for the committee to see this in advance, I am perfectly happy to do so, if there is a way of doing that.

Chairman STOKES. Does the gentleman from Connecticut, Mr. Dodd, want to be heard further?

Mr. DODD. Yes, just to this extent, Mr. Chairman. It is not my intention to delay these proceedings any more than they have to be. I am not asking for a lot of time. If we could have just 5 or 10 minutes in which we might be able to make some Xerox copies of those notes, so that we could have the benefit of following you along in your testimony on the basis of that outline, it would be helpful I think in terms of the committee assessing the material and also preparing itself for the proper questions to be addressed to you at the conclusion of your statement. So I do it only for that

purpose, Mr. Chairman. It is not in any way designed to thwart the efforts of Mr. Hart or the Agency to make its presentation.

Chairman STOKES. Would the gentleman be agreeable to providing Mr. Hart the opportunity to proceed with his testimony, and then in the event that you deem it necessary to have additional time to review his notes, or to prepare an examination of him after his testimony, that the Chair would grant you that time at that time.

Mr. DODD. That would be fine, Mr. Chairman. I will agree to that.

Chairman STOKES. I thank the gentleman.

You may proceed, sir.

Mr. HART. Mr. Chairman, I also want to emphasize that in order to be of as much help as possible, I am perfectly willing to take questions as we go along. This is not a canned presentation. It may be easier for the members of the committee to ask questions as we go along, in which case I will do my best to answer them as we go along.

Chairman STOKES. I think the committee would prefer to have you make your presentation. Then after that the committee will then be recognized—members will be recognized individually for such questioning as they so desire.

Mr. FITZGERALD. Mr. Chairman, may I ask the witness to move the microphone a little closer in some way or another. We are having some difficulty in hearing from this angle.

Mr. HART. Yes, sir. Is this all right?

Mr. Chairman, gentlemen, the effort in this presentation will be to point out some of the unusual factors in the Nosenko case which resulted in a series of cumulative misunderstandings. And I am hoping that once these misunderstandings are explained—and they were misunderstandings within the Agency for the most part—I am hoping that when these are explained, that many of the problems which are quite understandable, which the staff has had with the questions and answers from Mr. Nosenko, and also allegations concerning him, will be cleared up and go away.

I will endeavor to show that the handling of Nosenko by the Central Intelligence Agency was counterproductive from the time of the first contact with him in Geneva in 1962, and that it continued in a manner which was counterproductive until the jurisdiction over the case was transferred to the CIA Office of Security in late 1967, specifically in August of that year.

The manner in which the defector was handled, which I am going to outline, resulted in generating a large amount of misinformation and in creating difficulties, not only for an investigating body, such as yourself, but for people such as the Director of the Central Intelligence, Mr. Helms, who was not well informed in many cases as to what was actually happening. I do not mean to imply that he was told untruths. He was simply not given the total picture of what was going on.

Since Admiral Turner has become Director of Central Intelligence, he has been quite concerned about this case, and he specifically requested that I come back periodically to the Agency, from which I retired in 1972, and give presentations to senior officials of the Agency on the nature of the case. The complexity of the case is

such that to give a minimally adequate presentation to the first group which I lectured took me 4½ hours of continuous lecturing. However, I think that since the interests of this committee are more pinpointed than that group I have been lecturing, I can certainly do it in a shorter time.

Now, the study which I made was made from mid-June 1976 until late December 1976. It required the full-time efforts of myself and four assistants.

We collected from various parts of the Agency 10 4-drawer safes full of documents, and we had also access to documents which were in repositories in other parts of the Agency, and which we simply didn't have room to collect in our office.

In making this presentation, I will be somewhat hampered, but not to the point where I can't do the job properly, by the fact that this session is, of course, open to the public. Most of the documentation which we had, in fact I would say, almost without exception was heavily classified, and we pulled together pieces of documentation which no single person had ever seen before. So we put together the first full picture which has ever been had of this activity.

The first specific question which I want to address myself to is this case as a human phenomenon, because the human factors involved have a direct bearing on some of the contradictions which have appeared in the case.

And unfortunately the human factors were the last to be considered by the people who conducted this case between 1962 and 1967. Some of them were ridiculously simple things which you might have thought would come to their attention.

I am about to discuss a psychological profile which was made of Mr. Nosenko on June 24, 1964. This would have been available to any of the persons working on the case, but they—and it probably was seen by them, but they paid no attention to it.

Let me say by way of qualification for giving you this evidence that although I am not a psychologist, I have had considerable training in psychology and specifically in giving of intelligence tests. And I am about to talk to you about what is known as the Wexler adult intelligence scale, which was administered to Mr. Nosenko. The Wexler adult intelligence scale measures 10 elements of the—of a person's intelligence. Of the 10 elements shown here on the measure which I have here, and which I will be happy to make available to the committee staff, if you wish, it is shown that Mr. Nosenko's memory was the weakest aspect of his overall intelligence. His memory in terms of the weighted scale came out as a 7. Now, the mean would have been a 10. Thus he was at the time tested, he was registering a memory well below the normal level.

It is impossible to say what he would have scored under conditions which were more normal, because it must be taken into consideration that at the time he was—he was tested, he had been subjected to not only the stresses and strains of—involved in defecting, but also in some rather rough handling which he had received since his defection. However—you will see that if this man—man's memory was below the normal to be expected for a person of his intelligence, that any of the testimony which he gave in the course of various interrogations could be expected to be flawed simply by the human factor of memory alone.

Second, I want to point out that defection is in itself a major life trauma. It has a very serious effect, which I cannot testify to from the medical standpoint, but it is—it has both psychological and physical effects on people, and anybody who has, as I have, had to do, had considerable contact over the years with defectors, knows that a defector is usually a rather disturbed person, because he has made a break with his homeland, usually with family, with friends, with his whole way of life, and above all he is very uncertain as to what his future is going to be.

I have had defectors whom I personally took custody of turn to me and the first question they asked was, "When are you going to kill me?" In other words, defection is an upsetting experience, and you cannot expect of a man immediately after he has defected that he will always behave in a totally reasonable way.

Another circumstance which I want to bring up is the fact that the initial interrogations of Mr. Nosenko, which took place in Geneva in 1962, were handled under conditions which, while understandable, did not make for good interrogations. They did not make for good questioning.

Mr. Nosenko, as of the time he was being questioned in 1962, was still considered by the KGB to be a loyal member of that organization. He had considerable freedom because he actually did not have any duties in connection with the disarmament discussions. He was simply the security guardian of the delegates. He was the KGB's watchdog. And as such, he was able to move freely and in a manner of his own choice. He availed himself of this freedom to make contact with an American diplomat, who in turn turned him over to representatives of the CIA.

In making these contacts, which were recurrent, he each time was nervous that the local KGB element might for some reason be suspicious of him, and therefore he took about an hour and a half before each meeting in order to be sure that he was not being tailed. In his particular case, this countersurveillance measure consisted of visiting a number of bars, in each of which he had a drink. He had one scotch and soda in each of four or five bars. So by the time he got to the point where he was going to be questioned, he had had four or five drinks.

When he arrived on the spot where he was going to be questioned—this was a clandestine apartment, in the Agency's terms, Agency's jargon it is called a safe house, he was then offered further liquor. And he continued to drink throughout the interrogation.

In talking to Nosenko, and requestioning him a few days ago, I asked him to describe his condition during these meetings, and he said, "I must tell you honestly that at all these meetings I was snookered."

And I said, "You mean that you were drunk?"

"Yes, John," he said, "I was drunk." Therefore he was being interrogated about very important things while he was heavily under the influence of liquor. And he said to me that in some cases he exaggerated the importance of his activities, in some cases he really didn't know what he was doing, he was simply talking.

I am prepared to suggest to the staff, if they wish to look at it, they examine some evidence which has been scientifically collected specifically by the Russians which show that long periods of isolation do lead to hallucination.

So, it may have been well that in addition to the other problems which we face in connection with this, or have faced in connection with Mr. Nosenko, that there was a period when he was hallucinating.

Now, I am not here speaking as a technical expert on this subject, but I have examined some technical works on the subject of the effects which long confinement of this sort could have.

I will have to pause here for a minute to get a date, if I may. Well, I will get the date for you in just a minute.

But Mr. Helms, the then Director, became very impatient with the large amount of time spent on this case and the failure to come to a conclusion as to the credibility of this man.

Specifically, this was on August 23, 1966. He set a limit of 60 days for the people who were handling this case to wind it up.

This resulted in a period of frenetic activity because the people handling the case felt that it was impossible to prove the man's guilt and they couldn't conceive of any way of getting at the truth unless some additional measures were taken.

In September 1966 a proposal which they had made that the man be interrogated, Mr. Nosenko be interrogated under the influence of sodium amytal, which was believed to be a drug which lowered the defenses of a subject and made him more vulnerable to questioning, was turned down by the Director, who refused to permit interrogations using drugs.

The staff handling the case therefore took refuge once again on the polygraph and they submitted Mr. Nosenko to a second series of polygraphs, which continued from October 19 through October 28, 1966.

These are the series of polygraphs which we have been told by Mr. Arther of Scientific Lie Detection are the most valid of the polygraphs which were given the man.

We take serious exception to the statement, the judgment given by Mr. Arther that these were valid polygraphs for a number of reasons.

We take serious exceptions to them partly because we have no understanding of the basis for Mr. Arther's conclusions, and we have doubts that Mr. Arther examined all the relevant data in connection with making this judgment.

When Mr. Arther visited the Central Intelligence Agency in connection with evaluating the polygraphs, he did not, as I understand it, evaluate the 1962 polygraph, only the series of polygraph examinations made in 1966.

He was offered the Agency's own 1966 evaluations of the examinations as part of providing him with all the data available. He declined to see the Agency's evaluations.

Since the October 18 test was the most significant because it was the one which had to do with the Oswald matters—

Chairman STOKES. I wonder if the gentleman would suspend for just a minute. It is about 1:30 now. I wonder if you could give the committee some indication as to about how much longer you think

you will go, and then perhaps we can judge whether this is an appropriate time for us to take a recess.

Mr. HART. I can wind this up, Mr. Chairman, in about 15 minutes.

Chairman STOKES. You may proceed then, sir.

Mr. HART. As I was saying, the Agency attempted to give the examiner, Mr. Arther, as much data as they could, in order to make a meaningful analysis. However, he did not accept all the data which they were offered.

The examiners at the Agency feel that it would be very hard for anybody, any expert, themselves or anybody else, to make an evaluation of these, of the tapes of this series of polygraphs without knowing the surrounding conditions, and there were a number of serious conditions which would interfere with a satisfactory polygraph.

For one thing, the times involved in this series of polygraphs were excessive, were very excessive. It is a principle of polygraphing, on which most polygraphers agree, that if you keep the person on the machine for too long, the results, the effectiveness of the polygraph declines.

In the case of this series, on the first day the man was kept on it, on the polygraph machine, for 2 hours. On the second day he was kept on the polygraph for a total of almost 7 hours, and for comparable periods of time leading to a total of 28 hours and 29 minutes of time on the machine. In addition to that, it was later discovered that while he was actually not being interrogated, he was also left strapped on the chair where he was sitting so that he could not move. And so while lunchbreaks were being taken, he actually was not being interrogated but he was still strapped to the chair.

Now these lunchbreaks, or whatever they were, perhaps they were also used as time for further preparation of questions. But at any rate, the record shows that they lasted, for example, on October 20, from 12:15 to 3:30, and on October 21, from 12:45 to 4:45. That is 4 hours that the man was left in the chair with no rest.

In addition to that, the operator was guilty of some provocative remarks. He told, before the polygraph examination, one of the polygraph examinations began, he told Nosenko that he was a fanatic, and that there was no evidence to support his legend, and your future is now zero.

The operator also on another occasion preceded his interrogation by saying that the subject didn't have any hope, there would be no hope for subject, and he might go crazy, to which Nosenko replied that he never would go crazy. Thus the combination of an antagonistic operator who, I might add, was by now not operating under the auspices of the CIA Office of Security, but who was operating under the aegis of the chief of SB and the deputy chief of SB, the fact that the man was kept for extraordinary lengths of time strapped into the chair, all of these add up, in the estimation of the CIA examiners who have gone over this series of tests, to an invalid polygraph.

Now in the handwriting of the deputy chief SB, who was a day-to-day supervisor of the activity which I have been describing, it is—there is an admission which implies fairly clearly that there was no intention that this 1966 series of polygraphs would be valid.

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I read here a direct quotation which exists in writing, and most of it is in the handwriting of the deputy chief of SB. Speaking of the aims to be achieved by the 1966 polygraph examinations, he writes:

To gain more insight into points of detail which we could use in fabricating an ostensible Nosenko confession, insofar as we could make one consistent and believable even to the Soviets, a confession would be useful in any eventual disposal of Nosenko.

Now he doesn't clarify what he means in this document by "disposal," but it is apparent that—

Mr. SAWYER. Excuse me.

Did you use the term "eventual disposal of him"?

Mr. HART. I used the term "the eventual disposal," yes, sir.

Mr. SAWYER. Thank you.

Mr. HART. I want finally to address myself very briefly to the two reports which were turned out, one of which, both of which have been described by Professor Blakey. One was actually about 900 pages, but it came to be called the thousand paper simply because of its extraordinary size.

That was originally, it had originally been hoped that that would be the official CIA write-up on the subject, but there was no agreement between the CI staff and the SB Division on this paper, in part because the SB paper had an implication in it that Mr. X, of whom I have previously talked, had contradicted himself and was not totally reliable. I read here an excerpt in which the chief of the SB Division is talking: "Chief CI said that he did not see how we could submit a final report to the bureau" meaning the FBI "if it contained suggestions that Mr. X had lied to us about certain aspects of Nosenko's past. He recalled that the Director of the FBI had stated that in his opinion Mr. X himself was a provocateur and a penetration agent."

Thus, what happened was that a long negotiation took place during which a briefer paper, which as I remember is 446 pages long, was eventually produced, and this became the agreed document, agreed between the CIA staff, I mean the CIA-CI staff and the SB Division, until such time as Mr. Helms, exasperated by the long delays on this case and dissatisfied with the results, took the matter out of the hands of both the SB Division and the CI staff, turned the matter over to his Director, Admiral Rufus Taylor, and Admiral Taylor brought in the Office of Security to try to resolve the case.

I have nothing more to say about the resolution of that case because it has been adequately covered by Professor Blakey's presentation this morning.

That is all I have to say in this presentation, Mr. Chairman.

Chairman STOKES. Thank you, sir.

I think this is probably an appropriate place for us, then, to take a recess.

The committee will recess until 2:30 this afternoon, at which time we will resume questioning of the witness.

[Whereupon, at 1:43 p.m., the select committee was recessed, to reconvene at 2:30 p.m.]

AFTERNOON SESSION

Chairman STOKES. The committee will come to order.

The Chair recognizes counsel for the committee, Mr. Klein.

Mr. KLEIN. Thank you, Mr. Chairman.

Mr. Chairman, I would only like to state for the record that I have spoken to Mr. Arther, the committee's polygraph consultant, and his account of the events leading to the writing of his report are significantly different than those stated today by Mr. Hart, and I understand that Mr. Hart has stated that he was only repeating what was told to him by the Office of Security. But for the record, Mr. Arther states that he accepted and read all materials made available to him by the CIA and considered all of these materials in reaching these conclusions.

That is all I have to say, Mr. Chairman.

Thank you very much.

Chairman STOKES. Thank you, Counsel.

The Chair will recognize the gentleman from Connecticut, Mr. Dodd, for such time as he may consume, after which the committee will operate under the 5-minute rule.

Mr. DODD. Thank you, Mr. Chairman.

Mr. Hart, thank you for your statement this morning.

Mr. Hart, let me ask you this question at the very outset.

Would it be fair for me to conclude that it was the responsibility of the Central Intelligence Agency to find out, from whatever available sources between late 1963 and 1964, what the activities and actions of Lee Harvey Oswald were during his stay in the Soviet Union?

TESTIMONY OF JOHN HART—Resumed

Mr. HART. Congressman, I want to answer that by telling you that I do not know—

Mr. DODD. Let me say this to you, Mr. Hart.

Wouldn't it be a fair assessment that the Central Intelligence Agency had the responsibility during that period of time to examine whatever information could point to or lead to those activities, to provide us with information regarding Lee Harvey Oswald's activities in the Soviet Union? Isn't that a fair enough, simple enough statement?

Mr. HART. Sir, I can't agree to that in an unqualified manner for several reasons. May I give the reasons in sequence?

Mr. DODD. Go ahead.

Mr. HART. In a telephone conversation between the then Director of Central Intelligence, John McCone, and Mr. J. Edgar Hoover, which took place on the 16th of November 1963 at 11:20 a.m., Mr. McCone said:

I just want to be sure that you were satisfied that this agency is giving you all the help that we possibly can in connection with your investigation of the situation in Dallas. I know the importance the President plays on this investigation you are making. He asked me personally whether CIA was giving you full support. I said they were, but I just wanted to be sure that you felt so.

Mr. Hoover said "We have had the very best support that we can possibly expect from you."

Then the implication through the rest of this document, which I am perfectly happy to turn over to the committee, is that Mr. McCone and Mr. Hoover feel that the main responsibility for the investigation falls on the FBI.

My second point is that when I came on board in the Agency, having been recalled in mid-June, I asked about the responsibility for the Lee Harvey Oswald matter because I knew that he had entered into the overall Nosenko case. I was told that the responsibility for the investigation had rested almost entirely with the FBI. There were a couple of reasons for that.

First, it was understood, although I realize that there had been violations of this principle, Mr. Congressman, it was understood that the jurisdiction of the Central Intelligence Agency did not extend within the territorial limits of the United States, and the Central Intelligence Agency had no particular, in fact, did not have any assets capable of making an investigation within the Soviet Union, which were the two places really involved.

Third, I want to say that in my own investigation, since I intended to depend entirely or almost entirely on documentary evidence for the sake of accuracy, I ruled out going into the Lee Harvey Oswald matter because I realized that I could not possibly have the same access to FBI documents which I had in the Agency where I had formerly been employed which gave me complete access to everything I wanted.

Mr. DODD. Mr. Hart, as I understand what you have given me in response to my question is the fact that you assumed that the FBI was principally responsible for the investigation, and that Mr. McCone, as Director of the Central Intelligence Agency, in his conversation with Mr. Hoover, indicated that he would be cooperating fully in that investigation. So to that extent, and that is the extent I am talking about, it was the responsibility of the Central Intelligence Agency to cooperate in a responsible fashion in ferretting out whatever information would bear on the activities of Lee Harvey Oswald when he was in the Soviet Union, utilizing whatever sources of information were available to the Central Intelligence Agency in achieving that goal.

Is that not a correct and fair statement of the responsibilities of your Agency?

Mr. HART. Insofar as I am aware of them. Keep in mind please, Congressman, that I had nothing to do with this case. I do not know about—

Mr. DODD. I am asking you Mr. Hart, for a comment about the activities of the Agency, not specifically your actions as one individual. You spent 24 years with the Agency, so you are familiar with what the responsibilities of the Agency are.

Mr. HART. My response to that is that I believe that the Agency should have done everything that it could to assist the FBI. I do not know exactly what the Agency did to assist the FBI, nor do I know what relevant assets or capabilities the Agency had during the time we are concerned with to take any relevant action.

Mr. DODD. All right.

But you are answering my question; you are saying, "yes," in effect. It was their responsibility to assist the FBI or do whatever

else was necessary in order to gain that information about Lee Harvey Oswald's activities when he was abroad.

Mr. HART. Congressman, I have to repeat that there may have been agreements between the Agency and Mr. Hoover or other parts of the Government of which I am not aware. I, for example, am virtually without knowledge of a very long span of time during which the Director of the Central Intelligence Agency and Mr. Hoover were barely on speaking terms. I know that it was very difficult for the two Agencies to get along. I do not happen to know the reasons for it, and I am in no position to judge what they did, why they did it or what they should have done in order to resolve the lack of cooperation.

Mr. DODD. Well, after listening to your statement for 1 hour and 40 minutes this afternoon, do I take it that you would concede the point that, as the CIA's activities pertain to one vitally important source, potential source of information namely, Mr. Nosenko, that in the handling of that potential source of information, as it bore on the assassination of a President of the United States, the Central Intelligence Agency failed in its responsibility miserably?

Mr. HART. Congressman, within the context of the total case, I would go further than that. I would say that the Agency failed miserably in its handling of the entire case, and that since the Lee Harvey Oswald question was part of that case; yes.

Mr. DODD. And, Mr. Hart, I am not going to—I will ask you if you recall with me, basically, the conclusion or one of the conclusions of the Warren Commission report.

Were we not told in the conclusion of the Warren Commission report that "All of the resources of the U.S. Government were brought to bear on the investigation of the assassination of the President," and in light of your last answer, that conclusion was false?

Would you agree with me?

Mr. HART. Well, Congressman, I do not like to have my rather specific answer extrapolated.

Mr. DODD. But we do consider the Central Intelligence Agency to be part of the U.S. investigatory body; don't we?

Mr. HART. I do.

Mr. DODD. And you just said they failed miserably.

Mr. HART. I said they failed miserably in the handling of this whole case.

Mr. DODD. Therefore, it would be fair to say that the conclusion of the Warren Commission report in its statement that all of the resources of the U.S. Government were brought to bear in the investigation of the death of the President is an inaccurate statement. That is not a terribly difficult piece of logic to follow, I don't think.

Mr. HART. It requires me to make a judgment, which I am not sure that I am willing to make, because I can think of possible other evidence which might come up which might show that there is a case to support the fact that the leader, top leadership of the Agency, may have thought they were bringing all their resources to bear. I simply do not know that.

Mr. DODD. The only question left, it would seem to me, in going back to Mr. Blakey's narration at the outset of this part of our

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investigation, where he noted that the Nosenko case was important in two areas. One had to do with the efficiency, the effectiveness, the thoroughness of the CIA's performance, and, second, the credibility of Mr. Nosenko.

It would seem to me, in response to the last series of questions you have just given me, that we have answered the first question, and what is left is the second question, that is, whether or not this committee and the American public can believe Mr. Nosenko's story with regard to the activities of Lee Harvey Oswald during his tenure in the Soviet Union.

And Mr. Hart, I would like to ask you, in light of your testimony today, again going more than an hour and a half, why should this committee believe anything that Mr. Nosenko has said when, after your testimony, you state that he was intimidated, not interrogated, for more than 3 years, that he was probably hallucinating during various stages of that interrogation, that he was, according to your testimony, a man of a very short memory; that he was drunk or at least heavily drinking during part of the questioning; that there are no accounts, verbatim accounts, of some of the interrogation but rather notes taken by people who didn't have a very good knowledge of Russian. Why then should we believe any of the statements of Mr. Nosenko, which from point to point contradict each other, in light of the way he was treated by the Central Intelligence Agency from the time he defected in January of 1964 until today?

Mr. HART. I believe that there are important reasons why you should believe the statements of Mr. Nosenko. I cannot offhand remember any statements which he has been proven to have made which were statements of real substance other than the contradictions which have been adduced today on the Lee Harvey Oswald matter, which have been proven to be incorrect. The important things which he has produced, which we have been able, which the Agency have been able to check on, have, by and large, proved out. The microphones were in the Soviet Embassy. He has clarified the identities of certain Soviet agents who are in this country. His information led to the arrest of an extremely important KGB agent in an important Western country. The volume of material which he has produced far exceeds my ability to have mastered it but it has been found useful over the years, and to the best of my knowledge, it has been found to be accurate.

Mr. DODD. What you are asking us, therefore, to believe is, because Mr. Nosenko may be credible on certain issues and in certain areas, he is therefore credible in all areas.

Mr. HART. No, sir. I am not asking you to believe anything in connection with his statements about Lee Harvey Oswald. I am only asking you to believe that he made them in good faith. I think it is perfectly possible for an intelligence officer in a compartmented organization like the KGB to honestly believe something which is not true.

Mr. DODD. Which statements of Mr. Nosenko's would you have us believe? Have you read, by the way, the report that we sent you, a 40-page report, that was sent last week to the Central Intelligence Agency pursuant to the request of the Agency?

Mr. HART. Are you speaking of the report which, the essence of which, Professor Blakey read today?

Mr. DODD. Yes, I am.

Mr. HART. Yes, I have read that.

Mr. DODD. You have read that report?

Mr. HART. Yes.

Mr. DODD. I am curious, Mr. Hart, to know why—it was my belief and understanding, and I am really curious on this point—why it was that you didn't address your remarks more to the substance of that report than you did? I don't recall you once mentioning the name of Lee Harvey Oswald in the hour and 30 minutes that you testified, and I am intrigued as to why you did not do that, why you limited your remarks to the actions of the Central Intelligence Agency and their handling of Nosenko, knowing you are in front of a committee that is investigating the death of a President and an essential part of that investigation has to do with the accused assassin in that case; why have you neglected to bring up his name at all in your discussion?

Mr. HART. The answer is a very simple one, Congressman. I retired some years ago from the Central Intelligence Agency. About 3 weeks ago I received a call from the Central Intelligence Agency asking me to, if I would, consent to be the spokesman before this committee on the subject of the Nosenko case. I said that I will be the spokesman on the subject of the Nosenko case but I will not be the spokesman on the subject of Nosenko's involvement with Lee Harvey Oswald. That was a condition of my employment. And if they had attempted to change that condition before I came before this body, I would promptly have terminated my relationship because I do not want to speak about a subject concerning which I do not feel competent.

Mr. DODD. Do you appreciate our particular difficulty here today in that our responsibility and obligation is to focus our attention more directly on that aspect than on the other, and that we are a bit frustrated in terms of trying to determine what the truth is with regard to the activities of the Agency as they pertain to Mr. Nosenko's statements regarding the activities of Lee Harvey Oswald?

Mr. HART. Congressman, I fully appreciate the difficulty, but I must observe that it is not a difficulty which I created. I was perfectly frank about what I was willing to testify about and what I was not willing to testify about.

Mr. DODD. So it would be fair for me to conclude that really what the Central Intelligence Agency wanted to do was to send someone up here who wouldn't talk about Lee Harvey Oswald.

Mr. HART. I personally would not draw that conclusion, but I think that is a matter best addressed to the Director of Central Intelligence rather than to me.

Mr. DODD. Well, you told them you wouldn't talk about Lee Harvey Oswald and they said that is OK you can go on up there.

Mr. HART. I told them, once I came on board, that is as I saw it, a crucial question lay here in the credibility of Lee Harvey—of Nosenko, and that I thought I was qualified to address myself to the question of the credibility of Nosenko, now I mean the general credibility of Nosenko.

Mr. DODD. But you cannot really testify as to the credibility of Mr. Nosenko with regard to statements he may have made about Lee Harvey Oswald's activities in the Soviet Union.

Mr. HART. I can say this, and here you realize that I am entering into an area of judgment, it is my judgment that anything that he has said has been said in good faith. I base that judgment on an enormous amount of work on this case in which I see no reason to think that he has ever told an untruth, except because he didn't remember it or didn't know or during those times when he was under the influence of alcohol he exaggerated.

Mr. DODD. You understand our difficulty. We are trying to find out which one of his statements are true. All right?

Do you have that report in front of you, by the way, the one that we sent you?

Mr. HART. No, sir; I do not have it in front of me.

Mr. DODD. Mr. Chairman, could we provide the witness with the copy?

Chairman STOKES. Do you have it with you, sir?

Mr. HART. I have what we were given this morning, which is substantially the same thing, I believe, as the one we received. I believe that Professor Blakey had some items in this morning which were not even in here; is that correct, sir?

Mr. BLAKEY. The report as read is a partial reading of what was there. The narration that preceded it was not given to you before you came, although of course it was given before you testified. The report that was given to the public is substantially the report that was given to you. There have been some grammatical changes in it, correction of some typographical errors, but all matters of substance are the same.

Mr. HART. Thank you.

Mr. DODD. Is that a complete copy of the report that Mr. Hart has in front of him?

Mr. BLAKEY. Yes.

Mr. DODD. Mr. Hart, just some of them. I don't want to belabor this point but to impress upon you the difficulty we have in light of what you have said this afternoon, in terms of us trying to determine what in fact we can believe from Mr. Nosenko's story. Turn to page 27 or 28 of that report, if you would, please, 27 first.

Look down around the middle of the page, and let me begin reading there in our report.

Speaking to the CIA on July 3, 1964, Nosenko was specifically asked whether there was any physical or technical surveillance on Oswald, and each time he replied "No."

In 1964, after stating to the CIA that there was no technical and physical surveillance of Oswald, Nosenko made the following statement upon being asked whether the KGB knew about Oswald's relationship with Marina before they announced that they were going to be married:

Answer: "They (KGB) didn't know she was a friend of Oswald until they applied for marriage. There was no surveillance on Oswald to show that he knew her."

Although in 1978 Nosenko testified that there were seven or eight thick volumes of documents in Oswald's file, due to all of the surveillance reports and that he could not read the entire file because of them, in 1964 he told the FBI agents that he "thoroughly reviewed Oswald's file." There was no mention of seven or eight thick volumes of surveillance documents.

Now, there, and I should have probably started up above, but there we have two cases where, one, he is claiming that there was

no surveillance. Then he is stating there was surveillance. He is telling us that he, on the one hand, didn't have the opportunity or didn't see any reports on Oswald from Minsk and then turns around and says that he did have a chance to look at them.

Which can we believe?

I mean these are two contradictory statements by a man who, according to your testimony, may be acting in good faith, but we are confronted with two different sets of facts.

Which do we believe? Can we in fact believe him, if we accept your testimony this afternoon that he went through this outrageous treatment for a period of more than 3 years?

Mr. HART. Congressman, I think what this boils down to, if I may say so, is a question of how one would, faced with a choice as to whether to use this information or not, would do so. It would be a personal decision. If I were in the position of this committee, I frankly would ignore the testimony of Mr. Nosenko but I wouldn't ignore it because I think it was given in bad faith.

Let me express an opinion on Mr. Nosenko's testimony about Lee Harvey Oswald. I, like many others, find Mr. Nosenko's testimony incredible. I do not believe, I find it hard to believe, although I, as recently as last week, talked to Mr. Nosenko and tried to get him to admit that there was a possibility that he didn't know everything that was going on, I find it very hard to believe that the KGB had so little interest in this individual. Therefore, if I were in the position of deciding whether to use the testimony of Mr. Nosenko on this case or not, I would not use it.

I would like to say, just to conclude my remarks, let me tell you why I don't believe it. I had 24 years of experience in a compartmented organization, and I was chief of several parts of the organization which had done various things at various times which came under investigation, happily not while I was in charge of them. I will make one specific, give you one specific example.

I was once upon a time chief of what we can call the Cuban Task Force, long after the Bay of Pigs, within the Agency. At some point I was asked whether I knew anything, whether I thought there had been an attempt to assassinate Castro. I said in all good faith that I didn't think there had. I had absolutely no knowledge of this. It had been kept from me, possibly because my predecessor several times removed had taken all the evidence with him. I didn't know about it, but I said it in good faith. And I think it is very possible that an officer of Nosenko's rank might have functioned within the KGB and not known everything which was going on in regard to this particular man.

Mr. DODD. So you would suggest to this committee that we not rely at all on Mr. Nosenko for information that could assist us in assessing the activities of Lee Harvey Oswald in the Soviet Union?

Mr. HART. I believe as a former intelligence officer in taking account of information of which there is some independent confirmation if at all possible, and there is no possibility of any information, independent confirmation of this, and on the face of it, it appears to me to be doubtful. Therefore, I would simply disregard it.

Mr. DODD. I would like to, if I could—first of all, do you still maintain your security clearance?

This much we know—Nosenko was in the possession of the CIA, not the FBI, isn't that true?

Mr. HART. That is true, sir, yes.

Chairman STOKES. Now, we know that under American law the CIA has responsibility for matters outside the jurisdiction of the United States, don't we?

Mr. HART. Yes, sir.

Chairman STOKES. We know that the FBI has primary responsibility within the confines or the jurisdiction of the natural borders of the United States, isn't that true?

Mr. HART. Within the borders of the United States, yes, sir.

Chairman STOKES. Therefore, it is simple logic under law that with reference to the activities of Oswald in Russia, that would fall within the domain and the jurisdiction of the CIA, would it not?

Mr. HART. It would fall within the jurisdiction, but not necessarily the competence to do anything about that jurisdiction, yes.

Chairman STOKES. Well, being a historian, and being a part of the CIA as long as you have, you know that the CIA had a certain responsibility in terms of the investigation of the facts and circumstances surrounding the assassination of President Kennedy, do you not?

Mr. HART. Yes.

Chairman STOKES. Now, this much we also know, that Nosenko was under arrest and was in jail in the United States, isn't that true?

Mr. HART. That is right, sir.

Chairman STOKES. And during the period he was under arrest and in jail, out of 1,277 days he was only questioned in part 292 days, and according to your calculation 77 percent of the time he was not being questioned, is that correct?

Mr. HART. Absolutely correct, sir, yes.

Chairman STOKES. Then obviously the only conclusion that we can come to is that with reference to the activities of Oswald, through Nosenko, that there was no investigation of that matter by the CIA. Isn't that true?

Mr. HART. Off the top of my head I would tend to say that was true, because I have not seen any indications in those files which I have read of any energy on the subject.

I do want to point out that simply by virtue of the fact that a piece of correspondence was about Lee Harvey Oswald it would have been in a file which I did not ask for because I had pointed out that I could not do an adequate job which met my standards of scholarship if I didn't have access to all the documents.

So, I don't think I am really quite—I don't think I am completely competent to answer that question.

Chairman STOKES. Let me ask you this. One of the responsibilities of this committee is to assess the performance of the agencies in relation to the job that they did, cooperating with one another and with the Warren Commission in terms of the investigation of the assassination.

In light of your statements here to other members of the committee with reference to the performance of the agency which you have described as being dismal, et cetera, if I were to ask you to rate the performance of the agency in this matter on a scale of 1 to

10, with 10 representing the highest number, top performance, where would you rate them?

Mr. HART. I would rate it at the lowest possible figure you would give me an opportunity to use. I am perfectly willing to elaborate on that, Mr. Chairman.

I have never seen a worse handled, in my opinion, worse handled operation in the course of my association with the intelligence business.

Chairman STOKES. I have one other question I would like to ask you.

In the final report submitted by the Warren Commission, page 18 says this: "No limitations have been placed on the Commission's inquiry. It has conducted its own investigation, and all government agencies have fully discharged their responsibility to cooperate with the Commission in its investigation."

"These conclusions represent the reasoned judgment of all members of the Commission and are presented after an investigation which has satisfied the Commission that it has ascertained the truth concerning the assassination of President Kennedy to the extent that a prolonged and thorough search makes this possible."

Then at page 22 it further says this: "Because of the difficulty of proving negatives to a certainty, the possibility of others being involved with either Oswald or Ruby cannot be established categorically. But if there is any such evidence, it has been beyond the reach of all the investigative agencies and resources of the United States, and has not come to the attention of this Commission."

In light of your testimony here today with reference to the performance of the agencies, obviously the conclusions of the Warren Commission which I have just read to you are not true, are they?

Mr. HART. May I add one point. It is my understanding that the Nosenko information was made available to the Warren Commission but it was made available with the reservation that this probably was not valid because this man was not a bona fide defector and that there was a strong suspicion that he had been sent to this country to mislead us.

And therefore again speaking, sir, from memory and as somebody who has already told you that he is not an expert on this subject, I believe that the Warren Commission decided that they simply would not take into consideration what it was that Nosenko had said.

Chairman STOKES. But in light of the fact that we now know that the CIA did not investigate what Nosenko did tell them about Oswald in Russia, then obviously the Commission then still could not rely upon that data for that reason. Isn't that true?

Mr. HART. Mr. Chairman, I am not sure, when you use the word "investigate"—I am not absolutely certain, and I don't want to quibble about semantics needlessly, but I am not actually certain that there was much more to do.

I hesitate to judge in retrospect their actions on that basis. I would make harsh judgments on most other aspects. But I don't really know whether they did all they could or not because I do not happen to know whether, for example, all the other defectors were queried on this subject. No such file came to my attention.

So, I am once again having to say that I don't know for sure the answer to your question.

Chairman STOKES. My time has expired.

The gentleman from Connecticut, Mr. DODD.

Mr. DODD. Thank you, Mr. Chairman.

Mr. Hart, in response to Chairman Stokes' question in terms of how you would rate the CIA's performance if you had to rate it on a scale of 0 to 10, I gather from your answer that you would rate it zero, that being the lowest score.

Mr. HART. Yes, sir.

Mr. DODD. Let me ask you to hypothesize with me for a minute. Let's assume, given the level of performance that you have just rated the Central Intelligence Agency's activities during that period of time, let's just suggest that if in fact there had been a conspiracy, or had been some complicity—and by that statement I am not in any way suggesting that I believe there was, but let's just for the sake of argument say there was—are you saying in effect that even if there had been some involvement by the Soviets that the caliber of the activity of the CIA during that period of time was such that we wouldn't have ever found out anyway?

Mr. HART. No, sir, I am not saying that.

Mr. DODD. You used a word in response to Mr. Sawyer. During your testimony you raised a point. He heard you use the word "disposal"—

Mr. HART. Yes, sir.

Mr. DODD [continuing]. In talking about a memo that you were quoting, on how Mr. Nosenko would be treated if certain things didn't occur. Is that a word of art in the Central Intelligence Agency and, if so, what does it mean?

Mr. HART. I would like to make—there is a two-part answer, Congressman. I would like to say that the word "disposal" is often used, I believe, rather carelessly because it can mean simply in the case of, say, a refugee whom you have been handling how do we dispose of this matter, how do we relocate him.

Now, the second part of my answer will be more specific. I think I know what it meant in this case, but I would prefer to depend on documents, and I will read you a document.

I am about to read you a very brief excerpt from a document, also written in the handwriting of deputy chief SB, which was not a document which to the best of my knowledge he ever sent anybody.

He appears to have been a man who didn't think without the help of a pencil. Therefore, he wrote, tended to write his thoughts out as they occurred to him.

I will read you the document. I don't believe that I am going to have to make any judgment. I think you will be able to draw your own conclusions, sir.

He was talking about the problems which were faced by the fact that a deadline had been given the organization to resolve the case. Mr. Helms had given them a deadline. As I have previously said, he believed that there would be "devastating consequences" if this man were set free.

What he wrote was, "To liquidate and insofar as possible to clean up traces of a situation in which CIA could be accused of illegally holding Nosenko."

Then he summed up a number of "alternative actions," which included—and I start with No. 5 simply because the first four were unimportant.

"No. 5, liquidate the man; No. 6, render him incapable of giving coherent story (special dose of drug, et cetera). Possible aim, commitment to loony bin." Some of the words are abbreviated, but I am reading them out in full for clarity.

"No. 7, commitment to loony bin without making him nuts."

Mr. DODD. The word "disposal," was that the word "liquidation" you were talking about?

Mr. HART. I am drawing the conclusion that disposal may have been a generalized word which covered inter alia these three alternatives.

Mr. DODD. There is no question about what the word liquidate means, though, is there?

Mr. HART. No, sir.

Mr. DODD. Since I have got you here, and you have that memo right in front of you, the words "devastating effect" that were predicted if Nosenko were released, to your knowledge, Mr. Hart, are you aware of any contract that may exist between the Central Intelligence Agency and Mr. Nosenko that in payment of the money that he has received he would not tell his story and that, therefore, we averted the alternative suggested in that memo or that note by the payment of money to Mr. Nosenko?

Mr. HART. No, sir. I can tell you that Mr. Nosenko will learn of this for the first time when he reads about it in the press because this information has been known to me, and I was the one in fact first to run across it.

I didn't feel that I needed to add to the miseries of Mr. Nosenko's life by bringing it to his attention. So, I did not do so.

Mr. DODD. Let me ask you this. In response to Chairman Stokes, you really—and I appreciate the position you are in in not being able to comment on what steps have been presently taken by the current administration or the immediately previous administration to reform some of the practices that have gone on in the past.

But can you tell us this, if you are not fully capable of talking about the reforms: Are some of these characters still kicking around the Agency, or have they been fired?

Mr. HART. There is nobody now—well, I will make one exception to that. There is one person now in the Agency whose activities in this regard I could question, but I do not like to play God. I know that—

Mr. DODD. Is it the deputy chief of the Soviet bloc?

Mr. HART. No, sir.

Mr. DODD. He is gone?

Mr. HART. Yes, sir.

Mr. DODD. I gathered by what you have told us here today that we really cannot rely on the statements of Mr. Nosenko for a variety of reasons, and that your suggestion to us was to discount his remarks, albeit you believe that in good faith he is a bona fide defector.

Mr. SAWYER. Well, do you know the answer to it?

Mr. HART. I think I know the answer to it, but I believe that the Director of Central Intelligence should reply to that. I am not a lawyer, and I do not have counsel to consult here. But I do feel that is an improper question for me to answer.

Mr. SAWYER. Now, you say Helms had limited information, or at least some limitation on the information that he received on this. He must have known about this torture vault or whatever it is you had specially built. He would have known about that, wouldn't he?

Mr. HART. He sent two people down to take a look at it before it was used. The two people happened to be the chief of the SB division, and the chief of the CIA staff.

Also, if I remember correctly, the chief of the Office of Security. They came back and said that it was a satisfactory place to keep someone.

Mr. SAWYER. But he must have known the general format of it, wouldn't you think?

Mr. HART. I can't say how much he knew.

Mr. SAWYER. He also knew apparently that they had held him in solitary confinement for 1,277 days.

Mr. HART. He did know that, yes, sir.

Mr. SAWYER. And actually, he thought they were interrogating him the whole 1,277 days, was that the thrust of the fact—

Mr. HART. Well, I am not sure he thought they were interrogating him every day. But I—and here I want to make clear that I am entering into the realm of presumption—I never saw any indication that anybody told him that 77 percent of the time that this man was in this prison, that nothing was happening to him.

Mr. SAWYER. He knew, too, apparently that they wanted to use sodium pentathol on him, which he turned down.

Mr. HART. Sodium amytal, but the same thing.

Mr. SAWYER. Did the Department of Justice know or were they advised what you intended to do with this man, when you were consulted?

Mr. HART. I do not believe that that was spelled out in detail. At the time that Mr. Helms went over to see Mr. Katzenbach, as I interpret events, nobody realized that this man would be held that long. I am quite sure that nobody had any thoughts that he would be held that long.

Mr. SAWYER. Well, did they tell the Department of Justice that they planned to subject this man to torture over this period of time by depriving him of adequate food and reading material?

Did the Department of Justice have any information what they were proposing or even the outlines of what they were proposing to do to this man?

Mr. HART. I do not believe that they did.

Mr. SAWYER. I don't have anything else, Mr. Chairman. Thank you.

Chairman STOKES. The time of the gentleman has expired.

Mr. Hart, I just have one question. It is based upon what I have heard here today. It troubles me, and I am sure that it is going to trouble some of the American people.

The American people have just spent approximately \$2.5 million for this congressional committee to conduct a 2-year investigation

of the facts and circumstances surrounding the death of President John Kennedy.

Pursuant to that, this committee met with Mr. Nosenko 2 successive evenings, where we spent in excess of 3 or 4 hours with him each of those evenings.

In addition to that, counsel for this committee, Kenny Klein, spent in excess of 15 hours with him preparing before the committee met with him. In addition to that, Mr. Klein has perhaps spent hundreds of hours at the CIA researching everything about Mr. Nosenko.

I want to predicate my question, my final question to you, upon this statement which appears in the staff report at page 17. It was read by Chief Counsel Blakey here earlier today in his narration.

It says:

Following acceptance of Nosenko's bona fides in late 1968, an arrangement was worked out whereby Nosenko was employed as an independent contractor for the CIA effective March 1, 1969.

His first contract called for him to be compensated at the rate of \$16,500 a year. As of 1978 he is receiving \$35,325 a year. In addition to regular yearly compensation in 1972, Nosenko was paid for the years 1964 through 1969 in the amount of \$25,000 a year less income tax. The total amount paid was \$87,052.

He also received in various increments from March 1964 through July 1973 amounts totaling \$50,000 to aid in his resettlement in the private economy.

We know in addition to that now about the home we don't know the cost of, that the CIA has built for him.

To this date, Nosenko is consultant to the CIA and FBI on Soviet intelligence, and he lectures regularly on counterintelligence.

So that I can understand, and the American people can understand, the work of this congressional committee, do I understand you correctly when you say that with reference to what Nosenko has told this congressional committee about the activities of Oswald in Russia, this man who is today, not 15 years ago but today, your consultant, based upon everything you know about this bona fide defector, you would not use him?

Mr. HART. Mr. Chairman, when the question arose about whether I would use—depend on the information which he offered on the subject of Lee Harvey Oswald, I replied that I find that information implausible, and therefore I would not depend on it.

I did not make that same statement about any other information which he has offered over the years or the judgments which he has given. I was addressing myself specifically to his knowledge of the Oswald case. I was making a judgment.

Chairman STOKES. Your judgment is that from everything you know about him, and from what you know that he knew about Oswald in Russia, you would not depend upon what he says about it?

Mr. HART. I would not depend on it, but I am not saying that he wasn't speaking in good faith because I repeat that one of the principal qualities of an intelligence organization, whether we like intelligence organizations or don't like intelligence organizations, is compartmentation as it is called.

That means that a person at his level might well not know about something which was going on up at a higher level. The KGB is a very large organization, considerably dwarfing any intelligence organization which we have and, therefore, it is perfectly possible for

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something else to have been going on which he wouldn't have known.

Chairman STOKES. Can we then leave the term "in good faith," and can you tell us whether he would be telling us the truth?

Mr. HART. He would be telling us the truth insofar as he knows it, yes.

Chairman STOKES. Thank you.

The Chair recognizes counsel for the committee, Mr. Gary Cornwell.

Mr. CORNWELL. Mr. Hart, may we look at the document that you referred to several times that has the list of the ways in which they could have disposed of the problem that Nosenko posed at the time of his contemplated release? Is that a document we could look at?

Mr. HART. I would like, if I may, to simply excerpt this part of it. If that is an acceptable procedure, I will give you exactly what it was that I presented in my testimony.

I have here a mixture of things which have been declassified at my request, and not declassified and so forth. So, if you will allow me simply to make this available. There we are.

[The document was handed to counsel.]

Mr. CORNWELL. Mr. Hart, do you not have with you the items that would appear on the list prior to item number five?

Mr. HART. I do not have that with me. It would be possible to dig them up. The reason that they are not in there is that I considered them insignificant. I consider this obviously very significant, and I simply wasn't using up space with insignificant things.

In many cases throughout my study I was using portions of rather long documents. But it would be possible to find that, yes.

Mr. CORNWELL. All right. The portion that you did bring with you, though, however, seems to refer to notes which were prepared prior to 1968, is that correct?

Mr. HART. Yes, sir.

Mr. CORNWELL. By the deputy chief of the Soviet branch.

Mr. HART. Yes, sir.

Mr. CORNWELL. And at a time in which the Agency was contemplating the release of Nosenko, the release from confinement.

Mr. HART. Yes. The director said, as I remember his specific words, "I want this case brought to a conclusion."

First he asked for it to be brought to a conclusion within 60 days, which I think would have put the conclusion in sometime in September of 1966. Later on they went back to him and said, "We can't do it that fast," and he extended the deadline until the end of the year.

Mr. CORNWELL. And this was the same deputy chief of the Soviet branch who earlier in your testimony you stated had referred to potentially devastating effects from that release; is that correct?

Mr. HART. He later used that term. That term was used by him much later after he was no longer connected with the Soviet Division. That was in the letter which I described he wrote, so that it bypassed me as his superior, and I happened to find it in the file.

Mr. CORNWELL. And you testified that at one point, I believe, you didn't know specifically what dangers this deputy chief foresaw might stem from his being released; is that correct?

Mr. HART. He had refused to tell me. He refused to tell me. I can read you that.

Mr. CORNWELL. No, I think we remember that. But at least in this memo it appears that the principal fear that he had was with respect to the CIA being accused of illegally holding Nosenko; is that correct?

Mr. HART. That was a fear expressed in there. I frankly think that there must have been something else in his mind, but I, for the life of me, don't know what it was. He had built up a picture which was based on a good deal of historical research about a plot against the West, and since I don't happen to be able to share this type of thing, I don't know.

Mr. CORNWELL. I think we understand.

Let me simply ask you this: Nosenko has never publicly complained of his illegal detainment, has he? He has never taken that to any authorities and asked that anything be done with it, has he?

Mr. HART. He, I believe, when he was released, that in connection with the release but not as a condition of release, you must understand that this was not a condition of the release, but as of the time that the settlement was reached with him, I believe that he signed some type of document saying "I will no longer, I will not make further claims on the organization," something of that sort. I have never actually read the administrative details.

Mr. CORNWELL. That was the point that I was coming to.

Thank you.

Mr. HART. Yes.

May I say something more, Mr. Cornwell? He does periodically get very upset. He got very upset, for example, on the subject of the Epstein book. He is a very—he is a normal human being, and when he feels that he is being maligned, he gets just as upset as anybody else around.

Mr. CORNWELL. But your conclusion then is that in 1968 he was paid a large sum of money. In connection with it, he agreed not to voice any complaints about the way he was treated prior to that, and the fears that were at least in certain persons' minds prior to that did not come to pass.

Mr. HART. I don't believe, I do not interpret these events, although they can be so interpreted, as his being paid off not to cause trouble. The fact is that two responsible members of the Agency had made commitments to him, and they are clearly, you can hear them, you can see the tapes and you can, I believe, hear them on the tapes if you listen to them talking. They made commitments to him that they were going to do this.

Mr. CORNWELL. Thank you.

I have no further questions.

Chairman STOKES. You don't think though, Mr. Hart, that if he were to sue the CIA for his illegal arrest and detention that they would continue to keep him as a consultant, do you?

Mr. HART. Sir, you are getting into a point which I cannot speak about. I have no idea what they would do. As a matter of fact, I don't think he would do it. I think it is suppositious.

Mr. CORNWELL. Mr. Chairman, may we have the document that Mr. Hart provided marked as an exhibit and placed in the record?

Chairman STOKES. Without objection, and he may want to substitute a Xeroxed copy for the original.

Mr. CORNWELL. Thank you. It will be JFK F-427.
[JFK exhibit F-427 follows:]

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Deputy Chief, SB
✓ in a series of handwritten notes, set forth the Task Force objective as he saw it: "To liquidate & insofar as possible to clean up traces of a sitn in which CIA cd be accused of illegally holding Nosenko." Further on, he summed up a number of "alternative actions," including:

5. Liquidate the man.
6. Render him incapable of giving coherent story (special dose of drug etc.) Poss aim commitmt to looney bin.
7. Commitment to loony bin w/out making him nuts.⁸²

JFK EXHIBIT F-427

Chairman STOKES. Mr. Hart, at the conclusion of a witness' testimony before our committee, under the rules of our committee, he is entitled to 5 minutes in which he may explain or comment in any way upon the testimony he has given before this committee. I at this time would extend the 5 minutes to you if you so desire.

Mr. HART. I don't think I will need 5 minutes, Mr. Chairman, but I thank you for your courtesy.

The final remark that I would like to make is that I have had 31 years, approximately, of Government service, both military and civilian, and participated fairly actively both as a, first, as a military man in the Army, and then in quasi-military capacities as chief of station in two war zones.

It has never fallen to my lot to be involved with any experience as unpleasant in every possible way as, first, the investigation of this case, and, second, the necessity of lecturing upon it and testifying. To me it is an abomination, and I am happy to say that it does not, in my memory, it is not in my memory typical of what my colleagues and I did in the agency during the time I was connected with it.

That is all, Mr. Chairman. I thank you.

Chairman STOKES. All right, Mr. Hart.

We thank you for appearing here as a witness, and at this point you are excused.

There being nothing further to come before the committee, the Chair now adjourns the meeting until 9 a.m. Monday morning.

[Whereupon, at 3:35 p.m., the select committee was adjourned, to reconvene at 9 a.m., Monday, September 18, 1978.]

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UNITED STATES GOVERNMENT

Memorandum

TO : MR. DASSETT *11/13/76*

FROM : FRED B. GRIFFITH *FBG*

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

DATE 4/30/75

Sec. AD. Inc. _____
 Asst. Sec. _____
 Admin. _____
 Comp. Syst. _____
 Ext. Affairs _____
 Files & Com. _____
 Gen. Inv. _____
 Ident. _____
 Ins. & Control _____
 Intell. _____
 Lab. & Equip. _____
 Plans & Eval. _____
 Spec. Inv. _____
 Training _____
 Legal Coun. _____
 Liaison & Int. _____
 Director's Sec'y _____

Attached hereto is self-explanatory memorandum and enclosure from Department requesting review of transcript of executive session of Warren Commission to determine if it can be declassified in whole or in part. Transcript pertains to emergency meeting of Commission on 1/22/64 to discuss information to effect Lee Harvey Oswald was a Bureau Informant. Page 7 deals with discussion as to FBI capability to operate "people" in USSR.

ACTION:

In view of the subject matter of the transcript, particularly that on page 7 which may pertain to a continuing FBI intelligence operation, it is recommended this memorandum and attachment be forwarded to Intelligence Division to review and resolve.

Enclosure.

FBG.wm

(4)

1 - Mr. Wannell (Branigan)

REC 68 62-109090-634

FEB 25 1973

107 CONT. (P. 106) (P. 107)

57 MAY 3 1975

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Memorandum

TO: Mr. W. R. Wannall

FROM: Mr. W. A. Branigan

SUBJECT: WARREN COMMISSION TRANSCRIPT
DECLASSIFICATION MATTER

DATE: 2/7/75

- 1 - Mr. W. R. Wannall
- 1 - Mr. W. A. Branigan
- 1 - Mr. F. B. Griffith
- 1 - Mr. J. P. Lee

Sup. AD Adm. ---
Sup. AD Inv. ---
Asst. Dir. ---
Adm. Serv. ---
Crim. Inv. ---
Ext. Affairs ---
Files & Com. ---
Gen. Inv. ---
Ident. ---
Inspection ---
Intell. ---
Laboratory ---
Plan. & Eval. ---
Spec. Inv. ---
Training ---
Legal Coun. ---
Telephone Rm. ---
Director's Sec'y ---

This memorandum recommends that the transcript of an Executive Session of the Warren Commission for 1/22/64, now classified Top Secret, be declassified.

By memorandum of 1/30/75 from Mr. Griffith to Mr. Bassett, it was recommended that the Intelligence Division review the Executive Session testimony of the Warren Commission dated 1/22/64 to determine if it could be declassified. A review of the transcript shows this Session included discussion among the members of the Commission concerning the possibility that Lee Harvey Oswald had been a Bureau confidential informant based on information furnished by Wagner Carr, Attorney General of Texas. Carr said he had received the information from District Attorney Wade of Dallas County. The source of information, unnamed, was described as a member of the press who received this information from one of his sources, also unnamed. The discussion reveals that the members of the Commission felt that the Bureau would not admit that Oswald had been an "undercover agent" even if he had been. In discussing the ability of the FBI to operate agents abroad, Allen Dulles stated that the Bureau might have agents in Russia and "they have some people, sometimes American Communists, who go to Russia under their guidance and so forth and so on under their control."

It is not believed that any of the information reported in this transcript merits classification. The statement concerning our dispatching of American Communists to Russia is quite general and does not pinpoint any particular operation.

JPL:vek (5)

FEB 25 1975
CONTINUED - OVER

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CC

Memorandum to Mr. W. R. Wannall
Re: Warren Commission Transcript
Declassification Matter

ACTION:

It is recommended that the Office of Legal Counsel
of the Department of Justice be advised that this Bureau has
no objection to declassifying this document.

WFO/ru
JPC

Jo-646

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINISTRATION,

Defendant
.....

SUPPLEMENTAL AFFIDAVIT OF JAMES HIRAM LESAR

I, James Hiram Lesar, first having been duly sworn, depose
and say as follows:

1 I am the attorney for the plaintiff in the above-entitled
cause of action.

2. I have read defendant's Opposition to plaintiff's motion
for an award of attorney's fees and other litigation costs. I ex-
ecute this affidavit to respond to questions raised by the Opposi-
tion and to update and supplement my previous affidavit.

3. The Opposition argues, at page fourteen, that "[s]hould
this Court decide to award fees, it is essential for plaintiff's
attorney to establish that fees awarded are not being paid twice--
once by the government and once by the plaintiff." Whether this is
relevant to FOIA suits at all--and in my view there is good reason
to think it is not--the simple fact is that I have not been paid
any fee whatsoever for representing plaintiff in this case.

4. The Opposition asserts, at page thirteen, that I have not
submitted any evidence as to my reasonable hourly rate in 1975-
1979. It then declares: "Attorney Lesar merely states that \$85 an
hour is appropriate because of his experience in handling FOIA

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matters' and because of the 'prevailing rates for attorney services in the Washington, D.C. area.'" This, it states, "is an admission that the rate suggested is based on current rates in Washington--not on his rates and without regard to his rates when the services were offered."

5. Since February 19, 1975, the date on which the amended FOIA became effective, I have spend most of my time working on the dozen FOIA cases which I have handled for Mr. Weisberg. Because Mr. Weisberg could not afford to pay me for this work, I have received no fee for any of it.

6. As my previous affidavit stated, I requested payment of \$85 per hour for work done in Weisberg v. Bell, et al., Civil Action No. 77-2155. When the government offered \$75 an hour, I accepted. This, I would think, is evidence of my hourly rate, at least for the period of late 1977 and early 1978.

7. I take the position that I am entitled to an hourly rate of \$85 for the FOIA work I have done from 1975 to date. I base this upon my experience and expertise in this specialized area of law--experience and expertise acquired before the amended FOIA became effective--and on the fact that attorneys of roughly comparable experience and achievements in handling FOIA cases have sought--and obtained--fees at this rate or higher for work done during this period.

8. For example, court records in Aviation Consumer Action Project v. Civil Aeronautics Board, Civil Action No. 413-73, show that Alan Morrison charged \$85 an hour for work done between November, 1974 and May, 1976, and \$90 an hour for work done from June to December, 1976. Another attorney, Larry Ellsworth, charged at rate of \$60-65 per hour during these two periods. The government signed a stipulation agreeing that payment of \$24,479.25 based upon these fees was reasonable. (See Attachment A)

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9. The government signed a similar stipulation in Vaughn v. Rosen, Civil Action No. 1753-72. The stipulation recited that a payment of \$33,705 "is reasonable under the circumstances." The schedule attached to the stipulation shows that the government considered as "reasonable" payment to Alan Morrison at the rate of \$85 an hour for work done in March-December, 1975. (See Attachment B)

10. In undertaking to represent Weisberg in his FOIA cases, I undertook work which I thought would be very much in the public interest. I believe that events have proven my judgment on this correct. However, I expect that it will be some time yet before the full significance of what has been accomplished is appreciated, or even comprehended.

11. In undertaking this work, I assumed a very large personal risk. Much larger, in fact, than I realized at the time I assumed it.

12. In personal terms, the economic risk has been enormous. After four years largely devoted to Mr. Weisberg's FOIA cases, I have received a total of \$5,500 in attorney's fees. With the exception of a small portion which I used to buy a wedding gift for my wife, that sum has been entirely used to pay my office rent and expenses. Whether I will be compensated for any of the work which I have done on Weisberg's other FOIA cases remains to be seen. From the history of this case it seems likely that the government will oppose, delay, and appeal any such awards I might receive. Given the monumental power of the Department of Justice to grind any FOIA litigant it does not like into the dust, there is some question as to whether my client and I can hold out long enough to receive the remuneration due us for attorney's fees and costs. I can only hope that at some point before we go under for the last time some court will understand the war of attrition which the government is waging against us--and undoubtedly other FOIA

litigants and their attorneys--and take forceful action to put a stop to this latest of innumerable government tactics aimed at undermining the Freedom of Information Act.

13. The large amount of time which I have had to spend on Weisberg's FOIA cases, including this one, has kept me from earning income from other cases I could have taken had I had the time to do so. In addition, having to devote so much of my time to Weisberg's FOIA cases has deprived me of experience in handling other kinds of cases. Because experience in handling a variety of legal problems is particularly important to the viability of a solo practitioner, the relinquishment of the opportunity to gain such experience is also an important risk factor which I think should be taken into consideration.

14. Most of the work which I have done in Weisberg's FOIA cases was--and continues to be--entirely unnecessary if the government was concerning with implementing the FOIA rather than trying to obdurately forestall compliance to the extent possible. In this case, for example, the several hundred hours which I have expended upon it, and for which I now seek attorney's fees, could have been eliminated completely if the government had provided the June 21 and June 23 transcripts when they were requested, as it should have done.

15. In my previous affidavit I neglected to mention that in 1977 I was invited to attend--and did in fact attend--the Judicial Conference held at Hershey, Pennsylvania.

16. I also omitted to mention that in 1975 I submitted a statement in connection with a hearing of a subcommittee of the House Committee on Government Operations on "National Archives--Security Classification Problems Involving Warren Commission Files and Other Records." My statement was published in the committee print on that hearing. A copy of it is attached hereto as Attachment C.

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17. The Opposition argues, at page fourteen, that the Court should not award any fees for work done in the case on appeal after October 16, 1978, the date on which all issues except those with respect to the May 19 transcript became moot. On this basis it argues that the request for fees "for approximately 340 hours" of work should be reduced by 55 5/12 hours.

18. I note, first, that the government has made a mathematical error in calculating the number of hours which it says should be deducted from the total. The hours it lists in the first full paragraph on page fourteen of the Opposition come to 53 5/12, not 55 5/12. The "approximately 340 hours" from which the government wishes to deduct this 53 5/12 hours comes, by calculations, to exactly 348 1/3 hours.

19. I agree that some of these hours should be eliminated because they relate solely to the May 19 transcript. However, the government has lumped these together with hours which were spent on work directly related to the issues now before this Court. For example, the government wants to deduct 8 1/2 hours for work done on February 13, 1979 (2 hours), February 15, 1979 (2 hours), February 16, 1979 (2 1/2 hours), and February 17, 1979 (2 hours). The schedule attached as Exhibit 2 to my previous affidavit shows that this time was spent working on the motion for attorney's fees. Therefore, it is clearly compensable and should be included in the total.

20. The same applies, for the most part, to the 21 hours which are listed on my schedule as "work on opposition to motion to dismiss on grounds of mootness." This work, done on October 24, 1978 (1 1/2 hours), October 25, 1978 (11 1/2 hours), and October 26, 1978 (8 hours), was for the most part spent working on the 11-page affidavit of Harold Weisberg, which although originally filed in the Court of Appeals in support of the opposition to the motion

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to dismiss on mootness grounds, was also submitted to this Court in support of plaintiff's motion for attorney's fees. Because the affidavit is directly concerned with issues now before this Court, the time spent working on it is compensable and should be included in the total hours for which an award of attorney's fees is made. I believe that 13 of the 21 hours listed as "work on opposition to motion to dismiss on grounds of mootness" were actually spent working on Weisberg's affidavit and should be included in the total number of hours for which reimbursement is made.

21. In summary, of the 53 5/12 hours which the government has specified as deserving elimination, I maintain that 21 1/2 are properly included in the total number of hours for which compensation should be paid. I would agree that 31 11/12 should be subtracted from the total.

22. The Opposition also contends, at page thirteen, that no distinction was made between attorney hours devoted to challenging the withholding of the May 19 transcript in the District Court and on appeal, and the time devoted to challenging the withholding of the January 21 and June 23 transcripts. Insofar as the time devoted to the May 19 transcript on appeal is concerned, this has already been dealt with in ¶¶17-21 above. Insofar as the time devoted to the May 19 transcript in the District Court is concerned, the simple fact is that the status of this transcript occupied a miniscule portion of the attorney time expended in the proceedings in the District Court. I did spend two hours on October 10, 1976 preparing a motion for summary judgment with respect to the May 19 transcript. I would agree that this 2 hours should also be deducted from the total of attorney hours for which compensation is sought.

23. In order to update and correct the itemization of attorney's time for which compensation is sought, I have prepared an "Amended Itemization of Attorney's Time." (See Attachment D)

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As the amended itemization shows, after eliminating 33 1/2 hours of time previously listed, and updating the schedule to included hours expended since plaintiff moved for attorney's fees, the total number of hours for which compensation is now sought comes to 363 1/3.

24. Attachment E to this affidavit is a copy of the transcript of Judge Gesell's ruling in Weisberg v. Bell, Civil Action No. 77-2155, that Mr. Weisberg was entitled to a complete waiver of search fees and copying costs for 40,000 pages of documents pertaining to the assassination of President Kennedy. This transcript shows that Judge Gesell cited Mr. Weisberg's indigency and poor health as a basis for his ruling.

25. Attachments F-H are affidavits by Les Whitten, Howard Roffman, and Prof. David Wrone which were filed in Weisberg v. Bell, Civil Action No. 77-2155, and Weisberg v. Department of Justice, Civil Action No. 75-1996, in support of a complete waiver of search fees and copying costs for the documents involved in each case. These affidavits refute the government's suggestion in this case that Weisberg has commercially profited from records he has obtained under the Freedom of Information Act and establish the importance of his work and its benefit to the public.

26. Finally, because I think it very much addresses the bad faith of the CIA in its handling of FOIA requests by my client, I state that Mr. Weisberg has informed me by phone that he has pending requests for Nosenko materials, including those provided to author Edward J. Epstein, which date to 1975 and subsequent years. Despite the claim that Nosenko materials have been declassified, allegedly because of the interest of the House Select Committee on Assassinations, he has not been provided with the documents sought

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by his requests.

James H. Lesar
JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 11th day of September,
1979.

Francis R. Gailan
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires March 14, 1980.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant

RECEIVED

SEP 15 1979

JAMES E. DAVEN, Clerk

Civil Action No. 75-1448

REQUEST FOR PRODUCTION OF DOCUMENTS

Comes now the plaintiff, Mr. Harold Weisberg, and requests the defendant, pursuant to Rule 34 of the Federal Rules of Civil Procedure, to produce the following documents for inspection and copying within 15 days from the date of service hereof:

1. All reports, memoranda, notes, letters or other form of written records in the possession of the General Services Administration, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure of the January 21, 1964 Warren Commission executive session transcript.

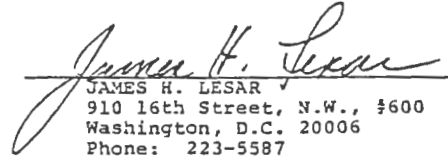
2. All reports, memoranda, notes, letters or other form of written records in the possession of the General Services Administration, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure of the June 23, 1964 Warren Commission executive session transcript.

3. All reports, memoranda, notes, letters or other form of written records in the possession of the General Services Administration, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure of the January 27, 1964 Warren Commis-

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sion executive session transcript.

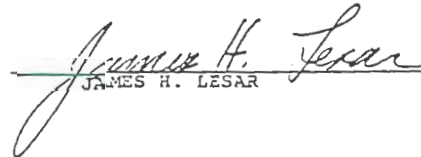
4. All reports, memoranda, or correspondence in the possession of the General Services Administration, or subject to its control, regarding the decision of the United States Court of Appeals for the District of Columbia in Ray v. Turner, 587 F.2d 1187, and its significance for, or its impact on, any cases then in litigation.


JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of September, 1979 hand-delivered a copy of the foregoing Request for Production of Documents to the office of Ms. Patricia J. Kenney, Assistant United States Attorney, Room 3212 United States Courthouse, Washington, D.C. 20001.


JAMES H. LESAR

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

OCT 9 1979

JAMES F. DAVEY, Clerk

Civil Action No. 75-1448

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant
.....

NOTICE TO TAKE DEPOSITIONS

To: Ms. Patricia J. Kenney
Assistant United States At
3212 United States Courthouse
Washington, D.C. 20001

Please take notice that plaintiff will take the depositions of Dr. James B. Rhoads, Mr. Charles A. Briggs, Mr. Robert E. Owen, and Mr. Arthur Dooley on Wednesday, October 17, 1979, at the hour of 10:00 a.m., at the office of James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006, for purposes of discovery and for use as evidence in this cause.

The deponents will be examined on the following issues: (1) whether the January 21, January 27, and June 23, 1964 Warren Commission executive session transcripts were ever properly classified; (2) whether the hearings held by the House Select Committee on Assassinations caused the declassification and public release of the January 21 and June 23 transcripts; (3) whether the decision of the United States Court of Appeals for the District of Columbia in Ray v. Turner, 587 F.2d 1187 influenced the decision to "declassify" and release the January 21 and June 23 transcripts; and (4) whether the affidavits which were submitted in this cause by Messrs.

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Rhoads, Briggs, and Owen were made in good faith.

In connection with these depositions, subpoenas duces tecum are being served on Mr. Robert E. Owen, of the Central Intelligence Agency, and Mr. Steven Garfinkel, of the Office of General Counsel, General Services Administration. Mr. Owen's subpoena requires him to produce the following records: (1) all reports, memoranda, notes, letters, or other form of written records in the possession of the Central Intelligence Agency, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure of the January 21, January 27, and June 23, 1964 Warren Commission executive session transcripts; (2) all reports, memoranda, or correspondence in the possession of the Central Intelligence Agency, or subject to its control, regarding the decision of the United States Court of Appeals for the District of Columbia in Ray v. Turner, 587 F.2d 1187, and its significance for, or its impact on, any cases then in litigation; (3) all FOIA requests by Harold Weisberg for information pertaining to Yuri Ivanovich Nosenko, and any response thereto; (4) all records which reflect or pertain to the disclosure of records or information on or about Yuri Ivanovich Nosenko to persons not employed by the United States Government, including but not limited to, John Barron and Edward J. Epstein or anyone acting on their behalf.

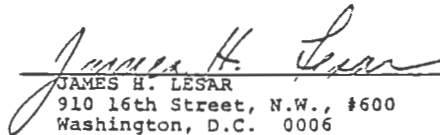
The subpoena duces tecum which is being served on Mr. Garfinkel requires him (or his delegate) to produce the following records: (1) all reports, memoranda, notes, letters or other form of written records in the possession of the General Services Administration, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure of the January 21, January 27, and

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June 23, 1964 Warren Commission executive session transcripts; and
(2) all reports, memoranda, or correspondence in the possession of
the General Services Administration, or subject to its control,
regarding the decision of the United States Court of Appeals for
the District of Columbia in Ray v. Turner, 587 F.2d 1187 and its
significance for, or its impact on, any cases then in litigation.

Copies of these subpoenas as attached hereto.

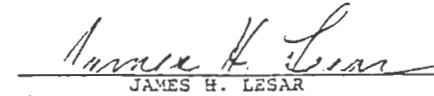
The aforesaid depositions will be upon oral examination before
a Notary Public for the District of Columbia.


JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 0006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of October, 1979
hand-delivered a copy of the foregoing Notice to Take Depositions
to the office of Ms. Patricia J. Kenney, Rm. 3212, United States
Courthouse, Washington, D.C. 20001.


JAMES H. LESAR
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CIVIL SUBPOENA

United States District Court
for the
District of Columbia

HAROLD WEISBERG,

Plaintiff.

vs.

CIVIL ACTION No. 75-1448

GENERAL SERVICES ADMINISTRATION

Defendant.

To: Mr. Steven Garfinkel (or delegate)

United States General Services Administration

YOU ARE HEREBY COMMANDED to appear in (this case) (the office of James H. Lesar,
910 16th Street, N.W., Suite 600, Washington, D.C. 20006.)

to give testimony in the above-entitled cause on the 17th day of October, 1979
(1) all reports, memoranda, notes, letters
at 10:00 o'clock A.M. (and bring with you) or other form of written records in the
possession of the General Services Administration, or subject to its
control, which in any way pertain to the classification, review of clas-
sification, downgrading, declassification, or disclosure of the January
21, January 27, and June 23, 1964 Warren Commission executive session
transcripts; and (2) all reports, memoranda, or correspondence in the
possession of the General Services Administration, or subject to its
control, regarding the decision of the United States Court of Appeals
for the District of Columbia in Ray v. Turner, 587 F.2d 1187, (continued
and do not depart without leave. JAMES F. DAVEY, Clerk on attached sheet)

By

Robert R. Linn

Deputy Clerk.

Date October 9, 1979

James H. Lesar
Attorney for Plaintiff.
Defendant.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to him and tendering to him the fees
for one day's attendance and mileage allowed by law, on the _____ day of _____,
19 ____, at _____

Dated _____

Subscribed and sworn to before me, a _____ this _____ day of _____,
19 ____

NOTE.—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

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(contuation of subpoena duces tecum addressed to Mr. Steven Garfinkel, or his delegate)

and its significance for, or its impact on, any cases then in litigation.

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CIVIL SUBPOENA

United States District Court
for the
District of Columbia

HAROLD WEISBERG

Plaintiff.

vs.

CIVIL ACTION No. 75-1448

GENERAL SERVICES ADMINISTRATION

Defendant.

To: Mr. Robert E. Owen

Central Intelligence Agency

YOU ARE HEREBY COMMANDED to appear in (~~the~~) (the office of James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006) to give testimony in the above-entitled cause on the 17th day of October, 1979, at 10:00 o'clock a.m. (and bring with you) (1) all reports, memoranda, notes, letters, or other form of written records in the possession of the Central Intelligence Agency, or subject to its control, which in any way pertain to the classification, review of classification, downgrading, declassification, or disclosure (continued on attached sheet) and do not depart without leave.

JAMES F. DAVEY, Clerk

By

Robert R. Line

Deputy Clerk.

Date October 9, 1979

James H. Lesar
Attorney for Plaintiff.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h_____ and tendering to h_____ the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, 19____, at _____

Dated _____

Subscribed and sworn to before me, a _____ this _____ day of _____, 19____

NOTE—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

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(continuation of subpoena duces tecum addressed to Robert E. Owen)

of the January 21, January 27, and June 23, 1964 Warren Commission executive session transcripts; (2) all reports, memoranda, or correspondence in the possession of the Central Intelligence Agency, or subject to its control, regarding the decision of the United States Court of Appeals for the District of Columbia in Ray v. Turner, 587 F.2d 1187, and its significance for, or its impact on, any cases then in litigation; (3) all FOIA requests by Harold Weisberg for information pertaining to Yuri Ivanovich Nosenko, and any response thereto; (4) all records which reflect or pertain to the disclosure of records or information on or about Yuri Ivanovich Nosenko to persons not employed by the United States Government, including, but not limited to, John Barron and Edward J. Epstein or anyone acting on their behalf.

CIVIL SUBPOENA

United States District Court
for the
District of Columbia

HAROLD WEISBER
Plaintiff.

vs.

CIVIL ACTION No. 75-1448

GENERAL SERVICES ADMINISTRATION
Defendant.

To: Dr. James B. Rhoads
6502 Cipriano Rd., Lanham, Maryland

YOU ARE HEREBY COMMANDED to appear in ~~(his court)~~ (the office of James H. Lesar,
910 16th Street, N.W., Suite 600, Washington, D.C. 20006)

to give testimony in the above-entitled cause on the 17th day of October, 19 79,
at 10:00 o'clock a.m. (and bring with you)

and do not depart without leave.

JAMES F. DAVEY, Clerk

By Robert L. Lurie
Deputy Clerk.

Date October 9, 1979

James H. Lesar
Attorney for { Plaintiff.
Defendant.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h_____ and tendering to h_____ the fees
for one day's attendance and mileage allowed by law, on the _____ day of _____,
19 _____, at _____

Dated _____

Subscribed and sworn to before me, a _____ this _____ day of _____,
19 _____

NOTE—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

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CIVIL SUBPOENA

United States District Court
for the
District of Columbia

HAROLD WEISBERG

Plaintiff.

vs.

CIVIL ACTION No. 75-1448

GENERAL SERVICES ADMINISTRATION

Defendant.

To: Mr. Charles A. Briggs

Central Intelligence Agency

YOU ARE HEREBY COMMANDED to appear in ~~(this court)~~ (the office of James H. Lesar
910 16th Street, N.W., Suite 600, Washington, D.C. 20006)
to give testimony in the above-entitled cause on the 17th day of October, 19 79,
at 10:00 o'clock a.m. (and bring with you)

and do not depart without leave.

JAMES F. DAVEY, Clerk

By

Robert R. Line

Deputy Clerk.

Date October 9, 1979

James H. Lesar
Attorney for { Plaintiff.
~~Defendant.~~

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h____ and tendering to h____ the fees
for one day's attendance and mileage allowed by law, on the _____ day of _____,
19 _____, at _____

Dated _____

Subscribed and sworn to before me, a _____ this _____ day of
_____, 19 _____

NOTE—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

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CIVIL SUBPOENA

United States District Court
for the
District of Columbia

HAROLD WEISBERG

Plaintiff.

vs.

CIVIL ACTION No. 75-1448

GENERAL SERVICES ADMINISTRATION

Defendant.

To: Mr. Arthur E. Dooley

3031 N. Nottingham, Arlington, Virginia

YOU ARE HEREBY COMMANDED to appear in (his court) (the office of Mr. James H. Lesar,

910 16th Street, N.W., Suite 600, Washington, D.C. 20006)

to give testimony in the above-entitled cause on the 17th day of October, 1979,

at 10:00 o'clock a.m. (and bring with you)

and do not depart without leave.

JAMES F. DAVEY, Clerk

By

Robert L. Linn

Deputy Clerk.

Date October 9, 1979

James H. Lesar
Attorney for Plaintiff.
Defendant.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to him and tendering to him the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, 19____, at _____

Dated _____

Subscribed and sworn to before me, a _____ this _____ day of _____, 19____

NOTE.—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff :

v.

: CIVIL ACTION 75-1448

GENERAL SERVICES
ADMINISTRATION,

Defendant :

FILED

OCT 17 1979


ORDER

JAMES F. DAVEY, CLERK

It is by the Court this 17th day of October,
1979,

ORDERED, that all pending discovery requests
shall be held in abeyance pending further order of this
Court; and it is

FURTHER ORDERED, that Defendant shall file any
supplemental affidavits in support of its Opposition to
Plaintiff's Motion for Attorney's Fees on or before
November 21, 1979.


Aubrey E. Robinson, Jr.
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

Civil Action No. 75-1448

SUPPLEMENTAL AFFIDAVIT

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

1. I am the Information Review Officer for the Directorate of Operations of the Central Intelligence Agency (CIA). My authority and responsibilities remain as described in my affidavit of 26 July 1979. This affidavit is offered to provide supplementary information concerning circumstances surrounding my decision to declassify two of the Warren Commission transcripts at issue in the above-styled litigation.

2. The classification of the executive session transcripts of the Warren Commission meetings of 21 January 1964 (CIA Exhibit A) ⁽¹⁾ and 23 June 1964 (CIA Exhibit B) must be viewed in terms of the circumstances in which the transcripts came into existence. What is evident on the faces of the documents themselves provides only part of the rationale. The circumstances surrounding the events recorded in the documents were also essential causative factors in the classification process. Thus, the documents and factors external to, but related to, the documents must be part of the perspective from which the documents and their classification is viewed.

(1) CIA Exhibit A consists of pages 63 through 73 of the transcript.

3. In the early 1960s, the United States and the Soviet Union had been in active competition for most of two decades in numerous and varied arenas; military, economic and political. Both countries had proven their abilities in the area of nuclear destruction. Both countries were anxious and concerned about the unpredictable nature of the other. Neither trusted the other and each expected the worst from each other. The "Bay of Pigs" and the "Cuban Missile Crisis" had only recently taken place, raising the level of mutual tension. On 22 November 1963 the President of the United States was assassinated. Much of the world held its breath, waiting to see what would happen next. The accused assassin was an American who had defected to the Soviet Union and lived there for several years. He had returned to the United States about a year before the assassination. His personal behavior pattern was unusual. His untimely death made it impossible to resolve many of the mysteries surrounding his activities. One of the most disturbing questions at the time was whether Lee Harvey Oswald was a Soviet agent.

4. In February of 1964, Yuriy Nosenko, an officer in the KGB, the Soviet intelligence organization, defected to American intelligence. Among other things, he indicated he possessed information about Lee Harvey Oswald's contacts with the KGB while Oswald was in the Soviet Union. As Nosenko was debriefed, it became clear that Nosenko's information tended to establish that Oswald was not an agent of the Soviet KGB. The problem then became one of establishing Nosenko's bona fides. If Mr. Nosenko could be proven to be honest and his information to be believable, it would be possible to conclude that Oswald had no connection with the Soviet KGB and that the Soviet Union had nothing to do with President Kennedy's death. If, on the other hand, Mr. Nosenko was proven to be not bona fide but instead to have been

programmed by the KGB to provide false information to establish the "innocent" nature of Oswald's contacts with the KGB, it would have been possible to conclude that Oswald may have been an agent of the KGB and was acting on behalf of the KGB when he shot President Kennedy. The possible consequences of the conclusion based on the latter set of circumstances were staggering. Establishing Nosenko's bona fides was a critical element in making any judgment on the possibility of Soviet involvement in President Kennedy's death.

5. Establishing the bona fides of a defector from a hostile foreign country necessarily involves the ability to provide independent verification of a substantial portion of the intelligence information received from the defector. Such verification normally involves the use of other sources of information completely independent of the defector to cross-check the defector's information. An intelligence agency's ability to provide such verification is normally a well-guarded secret, since public acknowledgement usually prompts hostile action to negate such sources. Likewise, the public acknowledgement of a lack of such capabilities can be very effectively used against an intelligence service by hostile foreign intelligence services. In brief, the extent of an intelligence service's ability to provide independent verification of a defector's information is significant counterintelligence data. The significance of such circumstances is vastly increased when the defector is an intelligence officer and the independent verification requires other sources knowledgeable of the daily, inner workings of the defector's intelligence service. Hypothetically, acknowledgement of the CIA's ability to provide independent verification of information received from a KGB defector would establish the likelihood that the CIA had sources inside the KGB able to report

on and possibly influence KGB intelligence activities. On the other hand, if it became clear to the KGB that the CIA lacked the means of independently verifying certain information about the KGB, it might mean that the CIA had no source inside the KGB which could in turn signify that the CIA had no way of knowing about any KGB agents operating inside of the CIA or KGB attempts to establish such agents. These are only a few of the possible consequences of disclosures concerning the limitations of the CIA's ability to verify information concerning developments in the Soviet Union or in the Soviet KGB. The examples are hypothetical but concerns are real.

6. The two Warren Commission transcripts cited earlier are both concerned with different aspects of the U.S. intelligence capability of providing independent verification of information concerning developments in the Soviet Union. The transcript of 21 January 1964 reveals a discussion of the problems of how to verify information concerning activities in the Soviet Union related to Lee Harvey Oswald's personal experiences as a defector. It is clear that CIA representatives had briefed the Commission staff on the Agency's capabilities and have proposed to use the services of two Soviet KGB defectors in drafting questions to be put to the Soviet government and in reviewing the documents written by Oswald, see page 63 et seq, CIA Exhibit A. The fact that two officers had defected from the KGB was obviously not a secret to the Soviet KGB. However, the status of their relationship with the CIA and the manner in which they were proposed for use in support of the Warren Commission suggested a great deal about the level of confidence the CIA had in those defectors. Conversely, the fact that no other intelligence capabilities were discussed to support the same objective of the Commission suggested strongly that other assets were either not available or

not considered appropriate or reliable. This would have had particular meaning, for example, if there had been more than two KGB defectors available to the CIA at the time.

7. As a designated spokesman for the CIA, Mr. John Hart testified before the Select Committee on Assassinations of the U.S. House of Representatives on 15 September 1978, concerning the Soviet defector, Yuriy Nosenko. The final report of that Committee is titled "Investigation of the Assassination of President John F. Kennedy," hereinafter referred to as "Volume II" (CIA Exhibit C). Volume II contains the testimony of Mr. Hart and the Committee's staff study on Nosenko, based on classified information provided by the FBI and the CIA. The study appears on pages 439 through 481 of Volume II. The classified material on which the study was based was declassified at the request of the Committee, by the CIA and the FBI, to enable the Committee to include the study in the final report in Volume II. See remarks of Mr. Blakey in the first complete paragraph on page 487 and the third and fourth paragraphs on page 438 of Volume II. Regarding the transcript of 21 January 1964 in which the limitations on the CIA intelligence capabilities relating to certain kinds of activities in the Soviet Union are evident and which provided the principal and major justification of the classification of the transcript; Mr. Hart testified in the third paragraph on page 506 of Volume II "...and the Central Intelligence Agency had no particular, in fact, did not have any assets capable of making an investigation within the Soviet Union...." That statement, though brief, was obviously a comprehensive appraisal of the CIA ability to conduct a certain kind of investigation within the Soviet Union in 1964. That public acknowledgement of CIA's limitation on intelligence activities in the Soviet Union in 1964 could still, in 1973, be used by the Soviet KGB to the disadvantage of the CIA and in a manner in which identifiable damage could result. The amount of probable damage

in 1978 was low, however, CIA would have maintained the classification on the document except for the political necessity posed by the Congressional investigation.

8. The discussion of the Commission contained in the 23 June 1964 transcript (CIA Exhibit B) is primarily concerned with expressions of concern about the inability of the government agencies, principally the CIA, to establish the bona fides of Nosenko as a credible Soviet defector and the negative consequences of this uncertainty for the Commission's hope to use Nosenko's information. It might be noted that a variety of Nosenko-related information was being released to numerous Freedom of Information Act requesters by the CIA and the FBI in 1976 and 1977, including to the plaintiff. The material released was limited to what Nosenko claimed to know about Lee Harvey Oswald and his experiences in the Soviet Union, including contacts with the Soviet KGB. None of the documents released prior to the report of the House Committee in its Volume II contained details concerning the problems involved in establishing Nosenko's bona fides.

9. The House Committee on Assassinations Staff prepared a summary report based, in part, on classified material made available by CIA and the FBI. The report is titled "Investigation of Yuriy Nosenko" and commences on page 439 of Volume II. A section containing the kind of knowledge expressed by the Commission members in the 23 June 1964 transcript (CIA Exhibit B) appears commencing on page 444 of Volume II and is titled "Doubts About Nosenko's Bona Fides." The entirety of the staff report in Volume II is concerned with the details of Nosenko's debriefing; the various factual statements he made which were believable or which were in doubt, and the variety of efforts made to establish the truth in the matter.

10. Mr. Hart's testimony before the Committee, which appears in Volume II commencing with page 487, contains a much more detailed recitation of the nature of CIA's doubts about Nosenko's bona fides and the attempts to establish the truth. One of Mr. Hart's most succinct statements on the point appears on page 495, line 40, Volume II, where he stated, "The Agency's activity was devoted to breaking Nosenko, who was presumed, on the basis of supposed evidence given by Mr. X, that Nosenko was a 'dispatched KGB agent' sent to mislead the United States." Again on page 496, line 34, Volume II, Mr. Hart stated, "The question of just how to deal with Nosenko has been carefully examined, and it was decided that although the Agency was intensely suspicious of him, perhaps more than suspicious, they had concluded that he was being dispatched to mislead the U.S. Government." Finally, on page 523, line 31, Volume II, Mr. Hart stated, "It is my understanding that the Nosenko information was made available to the Warren Commission but it was made available with the reservation that this probably was not valid because this man was not a bona fide defector and that there was a strong suspicion that he had been sent to this country to mislead us.... I believe that the Warren Commission decided that they simply would not take into consideration what it was that Nosenko had said."

11. Clearly, the problems that the U.S. Government had in 1964 in confirming the details of events taking place in the Soviet Union and in establishing the details of activities of the Soviet KGB, and particularly the bona fides of a Soviet KGB defector, were demonstrated in general terms in the Warren Commission transcripts which were declassified as a consequence of the more detailed disclosure on the same subjects made in the

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House Committee's Volume II. The classification of the transcripts had been to protect against providing the Soviet RGB with the advantage of the insight into CIA that the transcripts could provide. The declassification and release of the study and testimony provided in Volume II made the continued classification of the transcripts untenable. The transcripts were declassified because of the declassification of material necessary for the release of Volume II, not because of plaintiff's litigation.

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) ss.

Subscribed and sworn to before me this 20 day of
November 1979.

Richard A. Jones
Notary Public

My commission expires: 14 June 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.
.....

AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff in this instant cause.
I reside at 7627 Old Receiver Road, Route 12, Frederick, Md.

1. My prior experiences include those of reporter, investigative reporter, Senate investigator and intelligence analyst. My experience as an intelligence analyst was in the forerunner of the Central Intelligence Agency (CIA) and in the Department of State.

2. In addition to these prior experiences, I have devoted 16 years to study of the assassination of President Kennedy and its official investigation. I am responsible for bringing to light much of what did not come to public attention as a result of the Warren Commission's (the Commission) work. The first of my seven books was the first definitive analysis of the work of that Commission. It and my subsequent books also analyzed the functioning of the various police, investigative and intelligence agencies involved in the investigation of the assassination. I have made extensive use of the Freedom of Information Act (FOIA), obtaining and studying an enormous volume of records of the various agencies. I know of no one who has examined as many formerly secret records relating to the crime and its investigation. My knowledge is such that in C.A. 75-226 the Department of Justice stated that I know more about the assassination of President Kennedy and its official investigation than anyone in the FBI.

3. I have read the November 26 affidavit of Robert E. Owen (the Owen affidavit), of the Directorate of Operations of the CIA.

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

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

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

7. Because the Court ^{10:11:16-6} ~~was~~ at the October 17, 1979, calendar call that the Court does not read all the affidavits and because of the length required for a paragraph-by-paragraph rebuttal of the Owen affidavit, I state at the outset that it is the purpose of this affidavit to show that the Owen affidavit is deceptive, misleading, inaccurate and untruthful in ways that are not accidental and that part of the proof is the attachments, most of which are of CIA documents that were disclosed by it long before the two Commission executive session transcripts in question (the transcripts) were disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

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

20. About Owen's "most disturbing" question (Paragraph 3), "whether Lee Harvey Oswald was a Soviet agent," the CIA knew better and its records say otherwise. One, of the time prior to Nosenko's defection and reporting of the Russian belief that Oswald was an American agent, is CIA Document Number 176-154 (Exhibit 2). The CIA released this before shutting down all compliance. It debunks any Soviet involvement in the assassination.

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

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

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

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

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

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

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

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

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

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

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

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

30. Owen's conjectures are neither logical nor reasonable. If Nosenko were not being "honest," there could be other explanations. Those provided by Hart include the physical and emotional consequences of the severe punishment and the exceptional strain of three years of isolation in a vault, broken only by interrogations and efforts to break Nosenko down. Moreover, there was no need for the Soviet Union to "program" Nosenko with "false information" and dispatch him "to establish the 'innocent' nature of Oswald's contacts with the KGB" or to lead this country to believe that the KGB had no connection with the assassination once the official conclusions stating this were published. This was on and after December 5, 1961.

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

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

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

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

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

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

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

38. Owen then seeks to terrify the Court again with still another horror that, even if it were true, has no applicability in this case, that "if it became clear to the KGB that the CIA lacked the means of independently verifying certain information about the KGB," whatever "certain" may mean, "it might mean that the CIA had no source inside the KGB which could in turn signify that the CIA had no way of knowing about any KGB agents operating inside of the CIA ..."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53. In June of 1978 the CIA disclosed a copy of the Commission's February 1964 internal memo on this as CIA Document 513-1998. (Page 1 only attached as Exhibit 8)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10, adds justification of the FBI's opinion.

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

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

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

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

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

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

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

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

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

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

attempt to frighten this Court, in "public acknowledgement of CIA's limitation: on intelligence activities in the Soviet Union in 1964 could still, in 1978, be used by the Soviet KGB to the disadvantage of the CIA and in a manner in which identifiable damage could result."

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

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

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

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

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

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

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

89. Owen states that while some information was disclosed earlier, "None of the documents released prior to the report of the House Committee in its Volume II contained details concerning the problems involved in establishing Nosenko's bona fides." This is a careful phrasing intended to deceive by misstating what is at issue in the June 23 transcript and what was disclosed prior to its release. In fact, the transcripts themselves were disclosed prior to the publication of Volume II. The June 23 transcript is not concerned with "the problems involved

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

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

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

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

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

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

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

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

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

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

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

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

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

not to the CIA's effort to establish Nosenko's bona fides but to its attempt to destroy him, thus confirming my prior affidavits: "The question of how to deal with Nosenko has been carefully examined, ..." and "The Agency's activity was devoted to breaking Nosenko, who was presumed, on the basis of supposed evidence given by Mr. X, that Nosenko was a "dispatched KGB agent" sent to mislead the United States." The Hart statement that the Commission was told that Nosenko "was not a bona fide defector" is not reflected in any Commission records I have seen and Owen cites none.

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

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

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

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

101. The generalities with which Owen begins his eleventh and concluding Paragraph are not careless phrasing. They are necessary to avoid overt false swearing and as a prelude to his tag line, that the "transcripts were declassified because of the declassification of material necessary for the release of Volume II, not because of plaintiff's litigation." Owen shows no relevance of the content of the transcripts to "... the problems that the U.S. Government had in 1964 in confirming the details of events taking place in the Soviet Union and in establishing the details of activities of the Soviet KGB ..." Nor does he say what events or activities. This is because there were none. Moreover, the CIA had no difficulties in establishing the details of some events in the Soviet Union, such as the firings, global circumnavigations and landings of Soviet satellites. Long before the time in question, we had the capabilities of photographing from space "events in the Soviet" Union with such "detail" that, as President Eisenhower informed the nation, the painted stripes on parking areas were clearly visible and, as stated above, bugging the most intimate conferences of top Soviet officials. If by "activities of the Soviet KGB" Owen means but for some reason fails to state "dispatching" Nosenko to provide disinformation relating to the assassination of the President, then he fails to state this because he cannot. He does not contest my prior affidavits which state that no such need existed because the conjectured need was eliminated weeks earlier by the disclosure of the conclusion of the investigation the President directed the FBI to make, that there had been no conspiracy.

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

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

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

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

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

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

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

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

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

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

111. What the staff withheld from the Commissioners, as the CIA wanted, the FBI's Nosenko information, it let Helms know immediately. (CIA Document 582-249A attached as Exhibit 14) This CIA record also makes it clear that the CIA had not informed the Commission about Nosenko or any of the information it had received from him. By then Dulles, personally, knew about Nosenko. This is established in Exhibit 15, CIA Document 657-831. Exhibit 15 shows how Dulles connived with the CIA to tell it how not to inform the Commission of which he was a member; how not to volunteer information it should have had; and how to hold off on responding to its inquiries, which the CIA did. Of all things the CIA refers to a "reply," and that on a "priority basis," to the FBI's two Nosenko reports. When it expected perpetual secrecy, the CIA did not refer to a commentary or an analysis but to a "reply," as to charges, and this when, according to Owen, it had no means of "independent verification" of anything at all.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

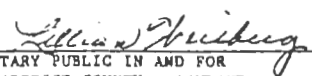

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 22nd day of December 1979 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.




NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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EXHIBITS

Exhibit No. Paragraph No. Page No.

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

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UNITED STATES GOVERNMENT

CA 75-1448
EXHIBIT 1

Memorandum

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

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

SUBJECT: RELATIONS WITH CENTRAL INTELLIGENCE AGENCY (CIA)

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

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

The charges against McCone can be described as follows:

(1) He allegedly informed Congressman Jerry Ford that CIA had uncovered a plot in Mexico City indicating that Lee Harvey Oswald had received \$6,500 to assassinate President Kennedy.

(2) McCone allegedly made this same statement to Drew Pearson.

(3) In both instances, the statements were false and McCone should have known that they were false since his agency was fully informed that the story concerning the receipt of money in Mexico was completely discredited.

ACTION:

NOT RECORDED

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

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

memo Brennan to Sullivan, as memo, 12/23/63.
copy to SJP:chs

22 DEC 31 1963

LIAISON

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

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

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

ABP

gal

A

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GM.
H

Vitell

had

C.A. 75-1448
EXHIBIT 2

11 December 1964

MEMORANDUM FOR:

TO: DIRECTOR

FROM: SAC, NEW YORK

SUBJECT:

Additional Notes and Comments on the
Oswald Case - Summary of Reasons
for Not Concluding Soviet Involvement
with Oswald

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

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

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

Document Number 376-154

for FOIA Review on MAY 1976

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11 Dec 6

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

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

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

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

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

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

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

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

b) To the tune of some \$437, the US picked up the tab for Oswald's return to this country. This loan was repaid between October 1963 and January 1963. During this period, Oswald was earning \$50 per week. Thus, over half of his total earnings went to the government and he supported himself, his wife and child on somewhat less than \$23 weekly. His rent at that time was \$39 per month. The possibility that he received outside help in repaying the government apparently has not been raised in the press.

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

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

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

Distribution:

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CLASSIFIED MESSAGE

C.A. 75-1-48
EXHIBIT 3

TO : DIRECTOR

FROM :

ACTION:

INFO :

271400Z

PRIORITY DIR

27 NOV 69 0629

REF DIR 35133-~~XX~~

1. NO/ TRACES ~~OSWALD.~~ CHECKED ALL
AVAILABLE SOURCES INCLUDING LANDING CARD AND HOTEL REGISTERS
WITHOUT RESULT.

2. SOURCE REPORTED SOVIETS GREATLY SHOCKED BY NEWS AND IMMEDIATELY
BLAMED ASSASSINATION ON EXTREME RIGHT WING ELEMENTS. NO SIGNI-
FICANT INFO ANY OTHER OPS.

3.

COMMENT: /

**REQUESTED TRACES HARVEY LEE OSWALD.

Document Number 151-60

for FOIA Review on APR 1976

27 NOV 69 0629

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C.A 75-1448
EXHIBIT 4

CLASSIFIED MESSAGE

TO : DIRECTOR

FROM :

ACTION:

INFO :

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2	2
3	3

272056Z

DIR INFO

7 DEC 63 IN 75594

REF /

(IN 64294)

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

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

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

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Copy No.

Document Number 350-140

for FOIA Review on MAY 1976

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CLASSIFIED MESSAGE

IN 7554 PAGE 2

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

2.

3.

4.

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MEMORANDUM FOR: Director
Federal Bureau of Investigation

SUBJECT : Yuri Ivanovich NOSENKO, Espionage - Russia

1. Reference is made to your memorandum dated 6 March 1964, subject as above, file (S) 65-48530, in which you requested information which would tend to corroborate or disprove NOSENKO's information concerning Lee Harvey OSWALD. Our files contain the following information from NOSENKO as OSWALD which may amplify or contradict the information forwarded in reference:

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

the room.

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

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

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

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

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

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

/ Soviet authorities,

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

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

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

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

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

13. The information in

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

JAMES ANGLETON

OSI - 3/732,796

QUESTIONS FOR NOSENKO

3 March 64

Knowledgeability

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

Initial KGB involvement

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

OSWALD's citizenship request

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

Preliminary KGB assessment

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

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

- Discussed

- Handwritten

3 March 64

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Citizenship denied

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

Suicide attempt

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

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

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

Controls

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

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

Psychological assessment

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

/psychologists, psychiatrists

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

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

Exploitation

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

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

Residence permit

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

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

KGB control in Minsk

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

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

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

/Initial efforts

Initial efforts to return to US

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

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

Marina PRUSAKOVA

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

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

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

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

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

/ 28. To what

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

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

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

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

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

KGB presence and activities

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

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

/retain US

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

OSWALD's contacts

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

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

KGB procedure

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

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

OSWALD in the US

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

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

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

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

/43. What was

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

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

21 January 1963

MEMORANDUM FOR: Mr. J. Lee Rankin

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

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

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

Richard Helms
Deputy Director for Plans

Document Number

489-196A

for FOIA Review on

Re: - 2/1/63

20 January 1964

The Commission of Investigation into the facts and circumstances of the assassination of President John F. Kennedy,

22 November 1963, has:

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

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

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

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

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

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

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

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

(3) results of any physical examinations.

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

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

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

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

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

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

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

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

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

(1) Oswald's own letters;

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

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

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

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

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

(3) employment records, including:

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

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

(c) any work books;

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

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

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

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

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

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

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

(1) Oswald's own written requests or state-
ments of intention to depart;

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

(3) a chronological narrative account of his
departure.

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

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

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

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

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

CA 75-1448
EXHIBIT 8

Feb-64

OFFICIAL FILE COPY

MEMORANDUM

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

J.L.

Background

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

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

16 Dec 63

TO : Director
Federal Bureau of Investigation
Attention: |

FROM : Deputy Director (Plans)

SUBJECT : | Comment on the Kennedy Assassination

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

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

Enclosures: Per paragraph 1

12 December 1963

Distribution:

BASIC:
None

Orig. & 1 - Addressee

1 -
1 -
1 -
1 -
2 -
1 -

Document Number

413-76A

for FOIA Review on

MAY 1976

16 DEC 6

SUBJECT :

Assassination

Comments on President Kennedy's

1. We should understand that my comments which follow are not based solely on the thesis that OSWALD was specifically dispatched to murder our President. The very real possibility also exists that OSWALD was sent here on another mission by the KGB and subsequently accomplished the deed on his own initiative. However, such a possibility does not make the KGB less culpable as the seeds for OSWALD's act must have been planted while he was being trained in the USSR for his other mission. He might first assume the position of assassin in the whole of our life. Therefore, there are the USSR here to gain by killing the President. I believe we can make a good case as to the reasons for the USSR and most specifically for OSWALD's assassination of President Kennedy would accomplish the following for KENNEDY personally:

2. First of all, during the leadership of the KGB would undoubtedly end up. Witness President Johnson's immediate constitutory telegram to KENNEDY, after the murder. He might mention that the KGB was the chief proponent for not extending long range credits to the USSR. Extension of long range credits is vital to the USSR on their structure.

3. This leads us into the most pressing problem within the USSR. The East predominantly understands the extent of the Soviet internal situation. It was my position that as a result of the mismanagement of the 1963 harvest and the CUBAN argument that KENNEDY would resign during the upcoming December plenary of the Communist Party of the USSR. Our President's death thus effectively diverts the Soviet's attention from their internal problems. It directly endangers KENNEDY's longevity.

4. In any Cuban situation any USA or Cuban expeditions against Cuba will not be tainted by the fact that there are various acts against Cuba because of OSWALD's "Fair Play for Cuba" associations. Obviously the Soviets properly interpret our situation in that President KENNEDY will restrain any planned interventions in Cuba for a long time.

5. A more available America will strengthen KENNEDY's hand in his ongoing battle with the CUBA. He will thus have another reason to say his form of powerful assistance is superior to that of the CUBA.

27 November 1963

MEMORANDUM FOR:

Chief,

SUBJECT:

Assassination

Soviet Defector

Comments on President Kennedy's

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

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

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

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

for FOIA Review on

MAY 1976

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

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

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

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

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

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

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

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

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

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

c. OSWALD did escape from the book building.

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

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

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

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

b. He successfully silenced OSWALD.

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

d. He has a good legend of temporary insanity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEDERAL BUREAU OF INV

A 75-1448
EXHIBIT 11

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

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

- P -

ADMINISTRATIVE DATA:

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

DEC 2 1963

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE <i>[Signature]</i>	DO NOT WRITE IN SPACES BELOW
COPIES MADE: 10 - Bureau (105-82555) 3 - Dallas (100-10461) 3 - Washington Field (105-37111) (1 - 89-75)		105-82555-440 1079 1079 REC-34 10 DEC 31 1963
COPIES DESTROYED 30 FEB 16 1973		
Dissemination Record of Attached Report		Notations
Copy	<i>[Signature]</i>	<i>[Signature]</i>
Recd.	2-14-64	<i>[Signature]</i>
Fwd.	2-5-64	<i>[Signature]</i>
Fwd.	2-27-64	<i>[Signature]</i>
JAN 20 1964		577

WFO 105-37111

6

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

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

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

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

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

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

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

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

WFO 105-37111

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

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

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

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

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

On November 27, 1963, IC MICHAEL VERNON DEVOL determined from U. S. Marine Corps files the service record for DEPADRO, which would contain his home address, ¹⁰ presently stored at the Military Personnel Records Center, St. Louis, Missouri.

CA 75-1448

EXHIBIT 12

8 April 1964

MEMORANDUM FOR: Deputy Director for Plans

SUBJECT: Status Report on Work for
the Warren Commission

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

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

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

Attachment

Document Number

647-824

for FOIA Review on JUN 1076

US COPY

581

8 April 1964

MEMORANDUM FOR:

SUBJECT : Status Report on Work for the
Warren Commission.

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

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

b. Questionnaire for Mrs. Marina OSWALD

c. Biographic Information on Mrs. OSWALD and Her Relatives

d. Name List with Traces

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

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

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

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

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

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

/c. Pictures and biographic

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

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

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

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

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

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

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

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

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CA 75-1448
EXHIBIT 13

Program Transcripts
SPECIAL PROJECTS DEPARTMENT
CBS News

CBS TELEVISION NETWORK

CBS EVENING NEWS WITH WALTER CRONKITE

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

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

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

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

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

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

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

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

—Daniel Schorr, CBS News, Washington.

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CA 75-1448
EXHIBIT 14

PRESIDENT'S COMMISSION
ON THE
ASSASSINATION OF PRESIDENT KENNEDY

200 Maryland Ave. NE.
WASHINGTON, D.C. 20002

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

6 Mar 64
J. LEE RANKIN,
General Counsel

MAR 6 1964

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

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

Dear Mr. Helms:

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

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

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

Sincerely,

J. Lee Rankin

J. Lee Rankin
General Counsel

Document Number 582-247A

for FOIA Review on JUN 1973

586

cc copy

6 Mar. 6

13 April 1964

MEMORANDUM FOR THE RECORD

- copy red
14 Apr 64*
1. | called me in at 0900 and showed me in draft a memorandum recording his conversation with Allen Dulles on Saturday 11 April re CIA assistance to the Warren Commission. In essence, the conversation dealt with questions which the Warren Commission will direct to CIA. Copy follows?
 2. | has suggested that nothing further be done re preparation of an analysis of the OSWALD affair pending receipt of the questions from the Commission. Answering these questions might make it unnecessary to prepare an analysis.
 3. | asked that we prepare, on a priority basis, a reply to the FBI communication containing two reports on the OSWALD case from Nosenko. | is handling. | and | are to see it in draft.

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

Document Number 657-831

for FOIA Review on JUN 1976

587

13 April 1964

MEMORANDUM FOR: Deputy Director for Plans

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

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

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

657-021

CS-1013

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

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

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

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

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

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

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C.A 75-1448
EXHIBIT 16

9 March 1964

175

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

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

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

Document Number 583-814
for FOIA Review on JUN 1976

591

9 Mar 64

Office of FOIA Requests/Appeals
Central Intelligence Agency
Washington, D.C.

11/9/79

Dear Sir,

You have not acted on my appeal for a waiver of charges. I have provided proof that my work and interest are public rather than for personal gain. The courts and the Department of Justice have so found and the Department has waived fees and refunded what I had paid. Now I have read that a court has held that under these conditions the CIA also may not assess charges. I therefore write to remind you of this and other appeals on which you have not acted, some relating to requests now almost eight years old.

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

I would like to know when you expect to act on these quite old appeals.

I also would like to know when to expect the balance of the JFK assassination material.

In particular I would like to know when to expect the Rosenberg information your affidavits in one of my cases claim was declassified for the House Select Committee on Assassinations.

Sincerely,

Harold Weisberg

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

CA 75-1448

EXHIBIT 18

5 AUG 1976

Mr. Harold Weisberg
Route 12
Frederick, MD 21701

Dear Mr. Weisberg:

This responds to your letter of 21 July.

Enclosed you will find the list of numbers given to your requests, with the shorthand descriptions used by us. Note that we have, indeed, included the name Yuri Nosenko, currently under F-76-143.

In regard to your request for an organizational chart of this Agency, we quote in part from the CIA Act of 1949, Section 6:

"...the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...."

As you can see from this language, a formal request from you would have to be denied under (b)(3) of the Freedom of Information Act as being specifically exempted by statute.

Request number F-75-6669 is broadly comprehensive on the Kennedy assassination and the investigation thereof, and obviously overlaps and duplicates some of your more specific requests. You have described a "new request" which duplicates in part what has recently been requested by Mark Allen. However, any documents responsive to this "new request" are already covered by the broad and comprehensive wording of your request under F-75-6669 and are part of the re-review currently in process and of which you are aware. Therefore, we have not assigned a new number to this request but shall continue to treat it under F-75-6669.

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You again refer to the "the Borsages request." If you mean Borosage, we do not have a request from him on the Kennedy assassination topic. We reiterate our belief that you were possibly confusing the name Borsage with Belin who did make a similar request and who did receive exactly the same documents released to you, nothing more.

Regarding the name Hugh McDonald, first raised in your letter of 2 March 1976, we were given insufficient biographical information with which to make any positive identification. In light of your language, "If you can confirm or deny that McDonald was ever an Agency employee of any kind....So, if there is any information you can let me have I would appreciate it. I will not contest a negative decision....", we did not record this as a formal request warranting a separate number. However, you should understand that under the same provision of the CIA Act of 1949 quoted above, we would have to provide a formal denial under FOIA (b)(3) of any document responsive to such a request.

Finally, although not raised by your letter of 21 July, we must advise you that certain of the documents found responsive to your F-76-382 on Martin Luther King, Jr., have necessarily been referred to another component for review. We shall not be able to get our response to you on this request by the end of this month as earlier projected, but shall do our best to expedite it when the materials reach our hands.

Sincerely,



Gene F. Wilson
Information and Privacy Coordinator

Enclosure

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Requests of Harold Weisberg

F-75-004 Personal (subsumed under F-75-4927)
F-75-4765 Yuri Nosenko, etc. (subsumed under F-76-143)
F-75-4927 Personal
F-75-6669 Kennedy assassination
F-75-6838 Materials given to FDR
F-76-105 Heine affidavits
F-76-143 Yuri Nosenko, etc.
F-76-149 Olson papers
F-76-219 Rocca source material
F-76-382 Martin Luther King, Jr.
F-76-405 1967 CIA review of Kennedy assassination info
F-76-437 CIA's use of Rocca
F-76-438 Behavior modification

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APPENDIX 4.—1976 ATTORNEY GENERAL GUIDELINES FOR REVIEW OF
ACTING INSTRUCTIONS ON WARREN COMMISSION RECORDS

PREPARED BY THE ATTORNEY GENERAL, 1976

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

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

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

1. Minimum requirements prohibiting disclosure should be observed.
2. Security classifications should be reviewed, but the agency responsible for the classification should carefully re-evaluate the contents of each classified document and determine whether the classification can, consistently with the national security, be eliminated or downgraded. *See Attorney General's Directive No. 10, 1974.*
3. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis or upon request under the Freedom of Information Act unless such material is exempt under the Act and its alternative.

(A) Would be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;

(B) Would reveal the identity of confidential sources of information and impede or otherwise harm the national defense or the national security;

(C) Would be a source of embarrassment to innocent persons, who are the subject, source, or recipient of the material in question, because it contains gossip and rumor or details of a personal nature having no significant connection with the administration of the President.

Wherever one of the above reasons for nondisclosure may apply, your department should make every effort to minimize damage to national security, which that reason might reflect the overriding policy of the Executive Branch favoring the fullest possible disclosure.

Unless source referred to the public, classified and unclassified material which is not now made available to the public shall, as a minimum, be reviewed by the agency concerned five years and ten years after the initial examination has been completed, and its status must be reviewed whenever necessary for review and proper processing of a Freedom of Information request. The review and proper processing of a Freedom of Information request, which is not now made available to the public, shall be reviewed by the agency concerned five years and ten years after the initial examination has been completed, and its status must be reviewed whenever necessary for review and proper processing of a Freedom of Information request. The review and proper processing of a Freedom of Information request, which is not now made available to the public, shall be reviewed by the agency concerned five years and ten years after the initial examination has been completed, and its status must be reviewed whenever necessary for review and proper processing of a Freedom of Information request.

(10)

APPENDIX 5.—SUPERVISORY INSTRUCTIONS FOR REVIEW OF
CLASSIFICATION MARKINGS ON EXECUTIVE COMMISSION RECORDS

COMMISSION OF THE UNITED STATES

INQUIRY OF INVESTIGATION

WASHINGTON, D.C. DIRECTOR

Mr. JAMES H. HIRSHMAN,
Director of the United States
Department of Justice,
Washington, D.C.

Dear Mr. HIRSHMAN: Thank you for your letter of November 24, 1975, in which you requested that this Subcommittee be kept advised of any change in the marking of the Warren Commission records. This Subcommittee is currently reviewing the marking of the Warren Commission records and is currently reviewing the marking of the Warren Commission records.

During the hearing, the Warren Commission has been reviewing the marking of the Warren Commission records and is currently reviewing the marking of the Warren Commission records.

It is requested that you keep this Subcommittee advised of any change in the marking of the Warren Commission records and is currently reviewing the marking of the Warren Commission records.

With respect to the marking of the Warren Commission records, the Warren Commission has been reviewing the marking of the Warren Commission records and is currently reviewing the marking of the Warren Commission records.

Sincerely,

DELLA B. AS

Chairman

Enclosure.

Enclosure.

To: Mr. THOMAS H. JACOBSON, Subcommittee on Current

Events and Intelligence

From: Mr. WILLIAM H. JACOBSON, Subcommittee on Current

Events and Intelligence

Subject: Classification Markings on Warren Commission Records.

This is in response to your request for comments on the question

of classification markings on Warren Commission records.

According to available facts, the Warren Commission did not have

the authority to classify records and is currently reviewing the marking

(11)

The President's policy for classifying official information during the period that the Warren Commission existed was stated in Executive Order 10601, as amended by Executive Orders No. 10610, 10611, 10621, 10624 and 10625, Sections 2(a) and (b) of the Executive Order 10241 listed the departments, agencies and commissions which exercised the authority of the President to originate classified information. The list did not include the Warren Commission.

Subsection 2(c) of Executive Order 10501 stated the President's creation of an executive ordered classification authority:

"(c) Any act, order, or regulation of the President, or any department or agency thereof, which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter."

There is no real reason for concluding that authority for original classification was never conferred upon the Warren Commission. It was not included in Executive Order 11254, which established the Commission to Investigate the Assassination of President Kennedy, and the executive order which created the Commission was not included in the list of executive orders which conferred authority 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. 2002-25). 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 hearing held on January 27, 1964, before the marking "TOP SECRET" was removed by Rankin. Mr. Rankin stated that:

"(1) He was instructed by the Commission "to security classify all 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 declassify them responsibility to him existed pursuant to Executive Order 10241, as amended."

"(3) He understood that the transcript of certain executive sessions of the Commission, including that of January 27, 1964, was classified "TOP SECRET" by Mr. J. Lee Rankin. Mr. Rankin stated that he was not aware of the Commission's policy on classification in the case (Wechsberg v. General Services Administration), involving Mr. Rankin's affidavit. The Court concluded that they "fail to demonstrate that the declassified transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10241 . . . as amended by Executive Order 10601." However, the Court went on to hold that the Warren Commission transcript in question could be withheld as an investigatory or under exemption 7 of the Freedom of Information Act, and rescind the decision on that ground."

On the basis of these affidavits, more of the Commission's original records should be declassified and records by the Warren Commission have not been declassified. They need not be subject to declassification action since one cannot declassify that which was never properly classified.

After-the-fact classification markings

As for any past or future action by an official of a Federal agency in action a classification marking on records, the Commission could be subject to the provisions and the security criteria of Executive Order 10601 or the current Executive Order 11252.

Section 1 of Executive Order 10601 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 11252 permitted the use of the lowest security classification, Confidential, only if the classifier determined that unauthorized disclosure of the information could reasonably be expected to cause damage to the national security, a collective harm for national defense or foreign relations of the United States.

In short, the assignment of a classification is authorized only if the classifier official can and does determine that future unauthorized disclosure of the information could reasonably be expected to cause damage to the national defense interests of the nation. Information that was originated outside the prescribed Executive order classification and security procedures, or which became known outside those procedures, could not qualify later for incorporation into the system. A new secret cannot be changed into a secret by applying a classification label to it.

The problem with an attempt to apply a security classification to information that has existed for a period of time is that the classifier normally would be unable to determine the classification of information and 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 classification 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 this into the Commission seemed to exist.

EXHIBIT HH

JUL 26 1972

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

Dear Mr. Helms:

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

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

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

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

Sincerely,

James E. O'Neill

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

Enclosures

cc: Official file - NMF
Reading file - RMFC
Day file - M

MJohnson:vk x23171 7-28-72

NMF *JP* RM *JP*

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

1 October 1974

Mr. Marion Johnson
National Archives and Records Service
Pennsylvania Avenue at 3th Street, N.W.
Washington, D.C.
20408

Dear Mr. Johnson:

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

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

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

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MILITARY AUDIT PROJECT, et al.,

Plaintiffs

v.

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

Defendants

Civil Action No. 75-2103

FILED

JUL 11 1977

JAMES F. DAVEY, Clerk

Washington, D. C.
June 28, 1977

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

APPEARANCES:

WILLIAM A. DORROVIR, Esq.,
Counsel for Plaintiffs

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

IDA Z. WATSON
Official Reporter
U. S. Court House
Washington, D. C.

COPY FOR:
COURT FILE

ES: 1-13

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PROCEEDINGS

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

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

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

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

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

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

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

I heard witnesses. I reviewed documents, at your

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

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

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

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

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

THE COURT: Yes, surely.

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

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Your Honor to set the hearing today.

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

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

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

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

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

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

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

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

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

MR. AXELRAD: Let me --

THE COURT: How can I sit?

MR. AXELRAD: Let me answer it in this way, if I may. Your Honor, we asked for the ex parte proceeding --

THE COURT: You certainly did.

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

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

Whether or not in this unique situation Your Honor

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

THE COURT: Let me read you from my opinion.

MR. AXELRAD: Your Honor, I --

THE COURT: For instance, I say:

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

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

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

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

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

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

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

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

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

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

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

MR. AXELRAD: Your Honor --

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

Should I return to you all these documents now?

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

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

or not. That depends on how you interpret Weisman.

What about the transcript of the testimony?

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

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

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

THE COURT: Well, it must have been.

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

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

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

THE COURT: I assumed it was.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Perhaps there is.

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

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

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

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

THE COURT: So there was no transcript.

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

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

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

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

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

THE COURT: But with an index also.

MR. DOBROVIR: With an index also.

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

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

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

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

Now, there is a mass of papers.

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

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

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

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

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

MR. DOBROVIR: Yes, sir.

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

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

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

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

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

MR. DOBROVIR: Yes, sir.

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

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

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

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

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

THE COURT: Yes.

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

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

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

THE COURT: Well, the transcript will show.

MR. AXELRAD: Very well.

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

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

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

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

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

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

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

THE COURT: Why are you bringing it up then?

MR. AXELRAD: Because of Mr. Dobrovir's suggestion.

I felt I should respond to Mr. Dobrovir's suggestion.

THE COURT: You mean to his motion?

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

indicated --

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

MR. DOBROVIR: Your Honor, one thing.

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

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

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

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

THE COURT: I am aware of that.

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

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

All right, gentlemen, thank you.

CERTIFICATE OF COURT REPORTER

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

Ida Z. Watson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

JAN 29 1980

JAMES F. DAVEY, Clerk

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.
.....

Civil Action No. 75-1448

AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff in this case. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland.

1. In my affidavit of December 22, 1979, which begins with a statement of my qualifications, I state that the November 26, 1979, affidavit of Robert E. Owen of the CIA is untruthful, deceptive and misleading and is intended to deceive and mislead the Court.

2. After my December 22, 1979 (previous), affidavit was filed, I learned that I had seriously understated the degree of deliberateness of Owen's, the Central Intelligence Agency's (CIA) and National Archives' untruthfulness and deceptiveness. I also learned that Owen has boilerplated his misrepresentations and filed a close variant in another lawsuit, Mark A. Allen v. CIA, C.A. 78-1743 (the Allen case).

3. Late on the afternoon of January 17, 1980, I located misfiled records of my appeal from National Archives withholding of other Warren Commission records. They were withheld at the behest of the CIA. In that case, when I was at the point where I could have filed suit, the CIA agreed to substantive disclosures. In that matter, in 1976, the CIA and the National Archives disclosed information identical with what they had withheld and continued to withhold in this instant cause, identical with information Owen and others in the CIA swore had to be withheld until it was disclosed at the moment the Government's brief was due at the appeals court. Authority for that disclosure is the same Charles A. Briggs who swore exactly the opposite in this case. (He was Owen's predecessor.)

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4. In the Allen case, after remand by the appeals court, the CIA again withheld until the last minute, when it again provided an Owen affidavit and an excised copy of the record sought, CIA Document 509-803.

5. I have and have read this Owen affidavit of January 11, 1980, and Document 509-803. In this affidavit, although Owen is more careful in his deceptive and misleading phrasing, he still represents falsely that the Allen disclosure also is attributable to CIA disclosure to the Congress.

6. The CIA had withheld this 14-page record in toto. The major part of it that it has now released was entirely within the public domain years before Allen filed suit. It was not in the public domain because of any disclosures to or by any Congressional committee. This information was readily available at the Archives and was disclosed in even greater detail by the FBI in its release of about 80,000 pages of Headquarters records relating to its investigation of the assassination of President Kennedy. I obtained copies of these records by C.A. 77-2155. Also before Allen filed suit, I obtained other pertinent FBI records from its Dallas and New Orleans field offices in C.A. 78-0322 and C.A. 78-0420. In addition, some of what the CIA still withholds under "national security" claim is and long has been within the public domain. Exhibits illustrating all these statements are attached to following Paragraphs. The essence was disclosed by the CIA itself in 1975 and 1976.

7. If none of this were true, the CIA refused to disclose to Allen what it is now clear was reasonably segregable and the CIA did segregate and disclose at the last minute.

8. Moreover, and indicative of bad faith, what the CIA now discloses to Allen is within my information requests of the CIA going back to 1975, but the CIA has not provided this information to me.

9. In this it duplicates its bad faith in this instant cause in still not having provided to me the Yuri Nosenko and other information I did request, despite its several affidavits alleging that this information was declassified for the House Select Committee on Assassinations whose life ended a year earlier.

10. In both cases the CIA made the traditional false claim with which it seeks to terrify and intimidate the courts, of a need to protect intelligence

sources and methods.

11. In this instant cause the CIA additionally alleged an urgent need to keep secret its use of KGB defectors and anything bearing on what it refers to as the bona fides of the KGB defector, Yuri Nosenko. Information pertaining to the CIA's use of defectors and to Nosenko is included in the records I located on January 17. These records were disclosed to me by the defendant in 1976, when they were released by the CIA.

12. When I appealed, the Archives referred that matter to the CIA, on January 15, 1976. (Exhibit 1) The CIA did not act until May 28, 1976, when it released what is itemized in its letter to me. (Exhibit 2) The unreasonable, unnecessary and unjustifiable nature of CIA classifications and withholdings under FOIA is illustrated by its classification of the list of Archives records withheld by direction of the CIA. (Exhibit 3) While on this classified list the records are identified only by arbitrary numbers, much more information was readily available at the Archives, which provided it to me, including the claimed authority for each withholding.

13. In Exhibit 1 the defendant in this instant cause admitted that "the (Warren) Commission's authority to classify is somewhat doubtful." This is hardly a momentous concession years after a federal court ruled in my C.A. 2052-73 that there was no such authority. That the two transcripts at issue in this case were included in the CIA's review the year after I filed this instant lawsuit is disclosed in Exhibit 4. This Archives letter to me also identifies what my previous affidavit refers to as the long Commission memorandum on Oswald's foreign activities.

14. That this supposedly classified record, withheld for a decade as classified, was never properly classified is disclosed by the copy sent to me, the first and cover page of which is attached as Exhibit 5. No classification or declassification stamp appears on it. "APPROVED FOR RELEASE" on April 2, 1976, does appear.

15. Where page numbers do not appear on the pages from this memorandum that follow, this is because of the nature of the copies provided to me. My somewhat angry letter of November 5, 1975 (Exhibit 6), yielded copies even less

suitable for copying so I cannot provide full copies of all pertinent pages.

16. In Exhibit 5 I also notified the Archives of the probability, since confirmed as the reality, that the CIA itself had earlier disclosed to me and to others what it withheld in the January 21 transcript, the CIA's use of defectors, as stated in my previous affidavit. I have bracketed this paragraph on Exhibit 6, my letter of November 5, 1976. From the time the Archives received Exhibit 6, it was on notice that its and the CIA's withholding of the January 21 transcript was improper. Yet four years later Owen provided a spurious affidavit to this Court on precisely this point.

17. When I received no response, I added emphasis on November 21, 1976. (Exhibit 7) In the two paragraphs I have bracketed, I put the Government on notice that "there is a substantial question of defrauding me and of deceiving and misrepresenting to the Court" because "The claimed reason for withholding this transcript from me no longer exists - if it ever did." Disclosure of the transcript proves I was correct and that, despite my accurate notification of the Government, it persisted in fraudulent misrepresentation and did deceive and mislead the Court, against which I had warned it.

18. In 1976 the Archives and the CIA disclosed to me exactly what in his latest of the CIA's ever-shifting misrepresentations to this Court Owen swore had to be withheld, any reflection of whether or not Nosenko or anything he said was or was not credited or believed. On the four pages (19-23) of the long Coleman-Slawson memorandum (Exhibit 8) identified in Exhibits 4 and 5, I have added no markings. Those that appear are on the originals and are consistent with markings I have seen on records reviewed for release. Those making the initial review bracket what they believe should or might be withheld.

19. Relating to Nosenko, the CIA approved 1976 release of "(and whose reliability has not yet been ascertained)" and "(Nosenko's testimony on this point cannot be taken with absolute assurance. Besides the obvious fact that whether he is sincere or whether he is a Soviet plant has not yet been determined ...)" All of this was bracketed and underlined in the copy provided to me. It is precisely what Owen swore was not released until it was "declassified" in 1978 for the House assassinations committee.

20. That the CIA provided the Commission with "information ... flatly at variance with" other information provided by the CIA is underscored in the records as provided to me. (page 20)

21. The heavy bracketing and underscoring relating to Nosenko (page 23), "if we can assume that his statements are sincere," also is on the record as provided to me.

22. The next page, as provided to me in 1976, is 45. (Exhibit 9) The double bracketing and underscoring is on the record: "The CIA has not yet given us an evaluation on the reliability of Nosenko, but they indicated that they ought to be able to give us an evaluation soon. As developed elsewhere in this memo, the authenticity of Nosenko is of high importance."

23. What the second sentence quoted above makes clear is that, in contriving questions about Nosenko's "authenticity," the CIA was really controlling what the Commission could believe and conclude.

24. As provided to me, the pages preceding and following Exhibit 10 also have their page numbers eliminated in the Government's xeroxing. This page also disclosed to me in 1976 what Owen swore in 1979 had to be withheld in the claimed interest of "national security," that "Yuri Ivanovich Nosenko, if he is sincere, would provide a conclusive answer; namely, that what we know is the truth and not a legend. Unfortunately, the CIA cannot give us quite the assurance of Nosenko's reliability that we would need to, rely solely upon his testimony."

25. In other pages of this memo that were provided to me in 1976 the CIA disclosed what it withheld from Allen, leading to his 1978 litigation and Owen's additional untruthful affidavit of January 11, 1980, in that case. This is particularly true of what Oswald was doing in Mexico, especially relating to one the FBI described as a "Nicaraguan secret agent," Gilberto Alvarado Ugarte.

26. By August 22, 1964 (Exhibit 11) the CIA had thoroughly frightened the Commission about Nosenko and using any of the valuable information he provided. By then - even in internal records - Nosenko was referred to as "N." The CIA also bamboozled the Senate Intelligence Committee into doing this in its report, although Nosenko's name and career were public. Nonetheless, there was a lingering Commission staff desire to use Nosenko's information. This memo sets forth how

it all was to be masked to the CIA's satisfaction. Yet precisely what Owen swears had to be withheld in the January 21 transcript is disclosed. It was disclosed to me, by the CIA, in 1976, that it used KGB defectors. (What Nosenko said "will be used but attributed to the CIA and its 'stable' of Soviet defectors.") The proposed language of this part of the Report, again disclosed to me by the CIA in 1976, makes the same disclosure Owen swears was secret. It reads, "The CIA has made an especially valuable contribution by supplying the Commission with information originating with defectors from the Soviet intelligence services..." (Emphasis added)

27. There are thinly masked references to Nosenko on page 2, paragraphs 2 and last. The KGB would have had no difficulty in perceiving what Owen swore in 1979 had to be withheld so that the KGB could not know it. Similarly, there is other masked but readily perceived reference to Nosenko on page 3, at the top. And at the bottom, the CIA disclosed to me in 1976, contrary to Owen's 1979 affirmation, that Soviet defectors, in the plural, were working for it. "Still working with Soviet intelligence when Oswald was in Russia" pointed at Nosenko.

28. Although this record was originally classified "TOP SECRET," no authority is noted and none was possessed by the Commission. Then, after my request, it was downgraded to merely "confidential." This was by 012208 at the CIA, on May 21, 1976. After my appeal, when it was ultimately declassified, it became apparent that it held no secrets from the KGB, that in the 14 years of withholding, information had been withheld from the American people only.

29. The Commission's March 6, 1964, letter to the CIA (Exhibit 12) informed it that the FBI had provided reports on its interviews with Nosenko and asked for a Nosenko conference with the CIA. This document also was withheld 14 years, until it was ruled "unclassified" by the CIA's 058375, also on May 21, 1976. However, both the FBI's Nosenko reports and the Commission memo on its conference with the CIA, used in my prior affidavits, were disclosed to me by the Archives a year earlier. Here again withholding was not necessary, but for more than a decade important information was withheld from the American people, not the KGB. It knew that Nosenko had defected, had talked and what he could have said. It also could have obtained the FBI's Nosenko reports from the Archives, as I did a year

earlier, in May 1975.

30. Nosenko's accurate report, that Oswald was so lousy a shot his friends had to provide his game when they went hunting together, was separately confirmed by Oswald's wife and his brother in other records that were never classified, yet the CIA's 058375 did not disclose the Commission staff Nosenko version until May 21, 1976, again a year after the FBI version was made available to me by the Archives. This is inconsistent with Oswald as the William Tell of expert riflemen, the official explanation of the assassination, but it was known to the KGB prior to the assassination. Once again, for more than a decade, it was withheld not from the KGB but from the American people.

31. A Commission staff memo of March 12, 1964, also was disclosed to me after the CIA approved its disclosure on May 21, 1976. The subject is Owen's no-no, "Checking Nosenko's Reliability."

32. Each of the four pages of the July 15, 1964, Commission memo on the undisguised (if unnamed) Nosenko also holds exactly what Owen swore had to be withheld from me, yet it was disclosed by the CIA and its 058375, again on May 21, 1976. (Exhibit 14) By July 1964 the CIA had conned the Commission into childish ellipsis in its internal papers relating to Nosenko. But the data provided about "the 'confidential Soviet Union source, the reliability of which has not been established,'" (page 1) informs the KGB. That reference was and could have been to Nosenko and only to Nosenko.

33. This page also demolishes the CIA's pretended reason for allegedly suspecting Nosenko, his statement that the KGB never formally interviewed Oswald. The memo here and elsewhere states that the Intourist guide assigned to Oswald was KGB. It also swears that the KGB used others who met Oswald. This obviated any need to show its hand or waste time with an overt formal interview.

34. The information on page 3, paragraph numbered 4, attributed to "a Soviet Union source the reliability of which has not been ascertained" could have come only from Nosenko. Paragraph 5 eliminates any other source. ("The same Soviet Union source previously mentioned...") This also is true of paragraph 7, especially in the continuation of page 4 and its reference to the KGB suspicion that Oswald was an American sleeper agent-in-place or "dormant." A CIA ad placed

in Pravda could not have told the KGB more specifically that Nosenko was the source whose credibility had not been established. This also is what Owen swore was and had to be kept secret.

35. Next to the last of the records disclosed to me in 1976 by the defendant in this case and establishing the falsity of the CIA's 1979 representations is the March 6, 1964, Hoover to Commission letter. (Exhibit 15) It, too, was released by the CIA on May 21, 1976. The underscoring in "...Nosenko, whose reliability has not yet been established," is on the record as provided to me.

36. Last of this series of records the CIA disclosed to me in 1976, still another 1976 disproof of its 1979 affirmations, is the February 28, 1964, Hoover to Commission letter and its one-page attachment. (Exhibit 16) After reinterviewing Nosenko, the FBI arranged for him to agree to testify before the Commission, which the CIA aborted. "...attempt to determine the accuracy of his statements" is underlined in the copy provided to me. That the deletion of what Owen swore had to be withheld was considered and rejected prior to disclosure is reflected by "Delete?" in the margin opposite this underscored statement. "Delete?" also appears opposite the underscored "...Nosenko, Soviet defector, whose credibility has not yet been established." The 1976 decision to disclose what in 1979 Owen swears had to be withheld in this litigation was not accidental. Whether or not to delete what was not deleted was considered, despite Owen's affidavit to the contrary.

37. It is a remarkable upsetting of the law of averages that each and every one of the records the CIA disclosed in response to my 1976 appeal to the defendant gives the lie to the Owen affidavit. It does this with records of which the CIA has copies that should have surfaced in any search prior to Owen's preparation of his November 26, 1979, affidavit.

38. While even Owen's dirty-works department of the CIA cannot be expected to exceed a perfect record for misleading, deceiving, misrepresenting and untruth as set forth in the preceding paragraphs and in my previous affidavit, his January 11, 1980, affidavit in the Allen case demonstrates that he and it remain determined to practice their sinister arts on the courts, the Act and requesters of information under the Act.

39. In the Allen case the information sought is a simple record identified as CIA Document 509-803. It also was withheld by Charles A. Briggs, Owen's predecessor, on June 1976/review and again in the Fensterwald case, on April 14, 1977.

40. In his January 11 affidavit, Owen states (page 2) that in review for the Allen litigation (no time is specified and the document was denied prior to and during that 1979 litigation) "it became clear that a number of substantively related, official disclosures had been made in recent years. Several congressional investigations ... The most recent and the most comprehensive ... by the Select Committee on Assassinations" of the House.

41. Here Owen avoids saying that the records had to be disclosed because of disclosure to and by that or any other committee, as he did in this instant cause. I addressed that in my previous affidavit. Instead, he phrases his affidavit to have this believed without stating it explicitly, thus avoiding an overt lie.

42. He does state untruth in this same paragraph (page 3), that "new disclosure of CIA records ... decreased the volume of materials still withheld from release." I state categorically that although my requests, by the CIA's own interpretations, go back to 1975 and include all records pertaining to the assassination of the President, the CIA has not, during the period in question, provided me with a single such record. Not those relating to Nosenko, which is relevant in this instant cause, and not Document 509-803. Allen did not file suit until after the life of the House Select Committee ended. Some records may not have been withheld from Congressional committees, but they remain withheld from citizens of interest, including subject experts and scholars.

43. It is a combination of these and similar factors and the passage of time to which Owen attributes his personal "determination" that "portions" of the document Allen requested "may now be released, but that some portions must continue to be withheld." In all aspects this also is false, as I specify in detail below in amplification of the opening Paragraphs of this affidavit,

44. His first reason for continued withholding (Paragraph 4.a.) is "because it is currently and properly classified pursuant to Executive Order

12065." Even for the CIA, which writes law and regulation to suit its immediate conveniences and defends this with verbal smoke with which few requesters and courts can grapple, this is a far-out description of the record. It is attached as Exhibit 17. It bears neither classification nor declassification indication or authority, which the E.O. does require.

45. Owen does not state who classified or who declassified this particular record. He whistles his way past that churchyard by stating that he has "authority to originally classify official documents up through Top Secret." His allegation that his review shows this record to be "currently and properly classified" amounts to certification that the public domain is properly classified. Specifics appear below.

46. His second reason (page 4.b.) is because some information "is related solely to internal practices" and exempt under (b)(2). He alleges that only "internal filing instructions" are withheld under this claim. Even if that is true, it does not relate "solely to internal practices" but is of considerable importance to those using the records. It is particularly important to those requesters who have to wend their ways through the verbal mazes constructed by the CIA to avoid search for and disclosure of relevant records. Yet he contradicts this on page 5 at 6.F., where he states that "Classification and information control markings" were "deleted in the process of producing a declassified version ... for release... No FOIA exemptions claimed." Examination of Exhibit 17 discloses that it is not a new version that he produced. It is an excised copy of a copy of the original. Therefore, withholdings are required to be within an exemption of the Act. Moreover, my FOIA experience holds instances of multitudinous unjustified claims to (b)(2) and many instances of my locating withheld records when I obtained the allegedly (b)(2) information.

47. His third reason (page 4.c.) is that the withheld information "reveals facts about intelligence sources and methods which the Director of Central Intelligence is responsible for protecting against unauthorized disclosure," requiring (b)(3) claim. This states that such information is not known, else it could not be "revealed" by its disclosure to Allen and me. This also is false, as I illustrate below.

48. His fourth reason (page 4.d.), also at least in part false, is that the withheld "information reveals facts about CIA organization, functions, names, official titles ..." Again the (b)(3) claim and again no claim that any of this is not within the public domain. A common public domain source of such information is the published hearings of Congress. Another is what has been disclosed relating to the assassination, by the CIA itself and by other agencies. Still another is what its letters to me conveyed. In fact, Owen withholds what was front-page news from coast-to-coast under this claim.

49. Owen uses letters to represent the exemptions claimed, a CIA contrivance for avoiding the recognized practice of writing the exemption claimed at the point of withholding, as the FBI and Department of Justice do, for example. (His Paragraph 6, A-F.)

50. This also is a means by which he avoids claiming that none of what is withheld is reasonably segregable. The most obvious reason for this is that, with access to the reasonably segregable, there is a good possibility that subject experts would be able to prove the information is not properly withheld, and the CIA has much to hide, as also follows below.

51. Neither in any way nor at any point does Owen claim that anything withheld is not within the public domain. All now disclosed was within the public domain when it was withheld. Illustrations of this also follow.

52. In Paragraph 8 Owen claims that some of what is withheld under (b)(2) "is unlikely to have any meaning to individuals not directly and currently involved in the administrative handling of the documents." It is not the right or function of the CIA to decide for me or others what can have meaning to us. An example is a withholding from the record as disclosed, the CIA's misidentification of Oswald as "Henry." This is the kind of information Owen claims a (b)(2) need to withhold. It is a "filing designation" and it relates to "the administrative handling of the document." Merely knowing what nonsecret parts of the CIA were involved in this self-serving and misleading - in fact, untruthful - record is a matter that is not "solely" of interest to the CIA. It is of great interest to me and I am confident to Allen and to the country.

53. Paragraph 10 makes a claim of need to withhold information indicating foreign "intelligence organization affiliations..." Once again, and related to the information that is not withheld in this record as well as what is withheld, such information is public domain and has been for years, particularly with regard to the subject of that portion of the record, Gilberto Alvarado Ugarte, and those who investigated him in Mexico.

54. Another typical CIA effort to frighten the courts follows with Owen's invalid generality that ^{he} does not specifically attribute to this matter, "Such knowledge comes almost exclusively from counterintelligence operations" which must be protected. This is false in this specific case, as is illustrated below.

55. The spookery slipped up in Paragraph 11, limiting it to a single intelligence method, after the usual intended-to-frighten generalities that again are not related to what is in question or at issue: "The deleted remarks tended to characterize certain factual data in a way in which the nature of the method used to collect the information is made obvious." I lead the Court around this Robin's barn by stating that the circumlocution is designed to befuddle the Court and Allen and in plain English what Owen is talking about is within the public domain. The method is not secret, is within the public domain quite extensively, and is electronic surveillance of the Russian and Cuban embassies in Mexico City. Were this not true, it is hardly secret or unique that the CIA engages in such methods, as do all intelligence agencies. It is anything but secret that the CIA illegally provided such equipment to E. Howard Hunt of Watergate infamy. The CIA is not known to have objected to Hunt's writing about his part in the CIA's planting of electronic devices in Mexico City.

56. If one takes the time to check Owen's citation, as I did, with what he incorporates by reference (Paragraph 3, page 2), there is no doubt that he refers to but a single so-called "intelligence method." The justification for withholding in Penservald, attached to his January 9, 1979, affidavit in the Allen case, is quite specific after Document Number 509-803. It refers to but a single method, "a sensitive foreign intelligence operational method." (Emphasis added)

57. This particular disclosure he alleges (January 9, 1979, affidavit, page 3, paragraph 3) "could reasonably be expected to cause serious damage to the

national security in terms of disrupting foreign relations..." This more than three years after that one of its many publications which received widest, page-one attention and three years after the public attention added to it by the then just-beginning House assassinations committee.

58. Examination of the excised Document 509-803, from which Owen excised even this number, although it is in the justification (he does not state whether this is one of his (b)(2) claims or one of his withheld-without-any-claim-to-any-exemption withholdings), discloses that the prerequisite for a CIA affidavit is either an affiant who knows nothing at all about what he swears to, is willing to swear to what is not true, or both.

59. All textual excisions on the first three pages are attributed to the letter "B" for their withholding. This is alleged to be what could "compromise ... an intelligence method." However, none of the paragraphs on these three pages is included in his explanation and justification in his January 11, 1980, affidavit, Paragraph 6, page 5.

60. The first of these, repeated several times, appears to be the well-known fact that the CIA station in Mexico is located in Mexico City: "... the CIA station in Mexico (obliterated) received the following information from a reliable source." If the location of this CIA station were not already and quite extensively known, it was published in the past five years by a number of Congressional committees, by CIA employees, and is in hundreds of records disclosed by the FBI. There is no legitimate need of or legitimate justification for this withholding. However, I do note that in affidavits from this same CIA stable of affiants in my C.A. 77-1997, it was sworn that officially disclosing even the fact of the existence of a CIA station in any country could do irreparable harm to the "national security." This is but the first of a number of such disclosures in this record.

61. The next excision, also attributed to "B," says that "An American citizen named Lee OSWALD had contacted the Soviet Embassy in Mexico City on Tuesday, 1 October 1963. He had spoken (obliterated) to the Soviet Embassy guard, Ivan Ivanovich OBYEDKOV, to whom he said he had visited the Embassy two days earlier ..." This does not say that Oswald visited the embassy. He "contacted" ^{on October 1}

it, how being obliterated. If words like "by telephone" are inserted at the point of obliteration, the sentence makes sense: "He had spoken by telephone to the Soviet Embassy guard," which is precisely what happened.

62. Because much of the withholding relates to this, I provide more extensive documentation. First of all, this electronic interception was well-known for years. I have known for close to ten years and not much less than that long ago a friend of mine published this story. It was syndicated from coast-to-coast. To the best of my knowledge, it was never denied. Later and more sensational use was by the Washington Post, on November 26, 1976, also syndicated. I attach the Post's and Los Angeles Times' printing of this story as Exhibit 18. (There was even more spectacular treatment in other places, like Chicago. The New York Times story actually quotes from the content of this record that remained withheld by the CIA for more than three additional years.)

63. It is stated that the CIA had both embassy phones tapped and this "with the full cooperation of the Mexican government."

64. One of the names for which Owen makes (b)(3) claim is that of "the late Winston M. Scott." Others are also in the public domain.

65. This news account also includes some of the information withheld in the Allen case for more than three more years.

66. The Post did not have the full story and it is not the CIA alone that withheld from the Warren Commission, which is what the Post reported. The FBI and the Secret Service also did. It is probable that at least Navy Intelligence also did for, despite the excisions in Exhibit 19, both the tape recording of this interception and CIA photographs allegedly but not of Oswald were flown to Dallas in the Naval Attache's plane, in the possession of then Legal Attache FBI Special Agent (later Congressman) Eldon Rudd. Dallas FBI agent and "red" specialist Wallace Heitman met the plane and rushed Rudd, with his precious cargo, to the FBI's Dallas office. There FBI agents familiar with Oswald's voice and face examined the CIA's tape and photographs.

67. Early in the morning of November 23, 1964, a three-page teletype was dispatched to Washington Headquarters from the Dallas FBI field office. Rudd also prepared a memorandum. In response, FBIHQ demanded and received a transcript of

the tape. (I have these records and with more time can provide copies.) FBI Director Hoover immediately informed Secret Service Director James J. Rowley, sending his memo of the same day by courier. (Pages 4 and 5 attached as Exhibit 20.) Hoover stated that his agents who looked at the pictures and "listened to a recording of his voice ... are of the opinion that the above-referred-to individual was not Lee Harvey Oswald."

68. Neither the FBI nor the CIA has responded to my requests for this and related information. My appeals remain ignored after years. When the FBI was processing other records, which I received in early 1978, it classified as TOP SECRET relevant records that had not been classified for a decade and a half. My request of the CIA for all "records of any kind of surveillance conducted on Lee Harvey Oswald in Mexico City or elsewhere" was treated by the CIA as part of a 1975 request with which it has yet to comply. (Its letter to me of August 23, 1976, attached as Exhibit 21.) The final paragraph, which reports that the CIA sent me an organizational chart, rebuts the Owen affirmation that it is required to withhold all organizational information under (b)(3).

69. On page 2 of Document 509-803 is one of the several points at which it is self-serving. This raises new questions about the legitimacy of the withholdings, especially when all that can be made out are unjustified and the disclosed portions were always reasonably segregable and in the public domain. It states that "A file check in Washington ... revealed the possibility of an identity between the Lee OSWALD who had spoken to OBYEDKOV, and ... Lee Harvey OSWALD." This "explanation" is made necessary because of what the record withholds, that initially the CIA gave Oswald's name as "Henry." This is reflected in the CIA's "Personality Profile" and in many other disclosed records. (See Paragraph 71 below and Exhibit 23.)

70. There follows, beginning on page 2, a series of references to various CIA records, the first dated October 10, 1973. That there is no justification for ever withholding any paraphrase of them is established by the fact that at least some were disclosed by the CIA, to me and to others, years ago. Because there is no organization or structure to the CIA's releases, I cannot be certain and cannot make a complete check. However, I believe that all the records cited

and some only referred to with indefiniteness have been disclosed by the CIA. A spot check of my files disclosed three, whose dates are given in Exhibit 17, including this first one, of October 10, 1963. I attach these three as Exhibit 22.

71. A footnote to this paragraph refers to a single file on Oswald, "The CIA file on Oswald was opened on 9 December 1960 ..." (Emphasis added) This deceived and mislead those inside and any outside the CIA who saw this record because there was more than a single file on Oswald. For example, there was also a 201 or "Personality Profile" file. The copy disclosed to me in about 1976 is unclear and incomplete so with it, as Exhibit 23, I include the clearer copy provided to the House assassinations committee and five other relevant pages from the testimony of former CIA Director Richard Helms. The fact that 37 documents are allegedly missing from the Oswald 201 file left the CIA unperturbed. The "Personality Profile" is only one of the CIA records in which it got Oswald's name wrong. This one was "corrected" for the House committee.

72. After extensive withholdings in which nothing segregable is disclosed, there is a section titled "III. Monetary Payments to OSWALD - Investigation of Allegation." This also is self-serving, less than fully forthright, in some cases not accurate, long has been in the public domain, and under (b)(1) and (b)(3) claim withholds what also long has been in the public domain, "identification of an intelligence source." (In fairness to Owen, if not also to his skill in evasiveness and overwriting to deceive and mislead, he does not claim that the alleged source is unknown or in any way secret and none is. However, this did not discourage claim to exemption, particularly when the CIA had something to hide in this caper. It could have launched World War III, from other disclosed CIA records not included in this summary.) Because the underlying records have been disclosed, including extensively by the FBI, there is no apparent need, reason or justification for making (b)(1) and (b)(3) claim to withhold portions of the paraphrase.

73. Nobody in his right mind would have believed Gilberto Alvarado Ugarte's fabrication and the FBI did not. However, the CIA station pressed to make it appear credible, as is not indicated in the portions not still withheld.

74. One of the withholdings may well be what the FBI disclosed, that Alvarado was a "Nicaraguan secret agent."

75. Part of the self-serving content is in Paragraph 22, which states what is not certain, that because Oswald was "known to have been in New Orleans on both 17 and 19 September," he could not have been in Mexico on the 18th. By plane that was no trick at all, as anyone reading this record would know. However, Oswald was also placed in New Orleans on the 18th, the key day in the Alvarado fabrication. This is reflected in one of the earlier (12/1/63) records in the FBIHQ "Oswald" file, attached as Exhibit 24. This teletype begins by stating that "OSWALD WAS NOT IN MEXICO SEPTEMBER 18TH LAST." It directs discontinuation of any investigation of this.

76. Following other excisions for which the "intelligence sources" claim is made, there is more of this self-serving and covering up of the CIA on page 13. It states that at a carefully unspecified time, "because of the importance of resolving the problems" of Alvarado's instantly obvious fabrication - one of countless fabrications of similar nature, all disproven - "CIA personnel continued the interrogation in close coordination with the FBI." Long before then the matter was resolved.

77. Two months earlier the Legat, with whom the CIA worked closely in Mexico City ("city" obliterated in record), phoned and told FBIHQ that Alvarado "confessed to the Mexican officials that his statement on Oswald was false." (Exhibit 25) By then the FBI had cleared it all up and won the praises of the ambassador. As the FBI continued to knock it all down, it reported that Alvarado probably got the idea for his fabrication from a newspaper story. (Exhibit 26, page 2) And a month and a half earlier than the January 31, 1964, date of this record, the FBI vehemently denounced CIA Director McCone for deceiving the Warren Commission with this fabrication. (Exhibit 27)

78. That the Mexican police were involved and immediately broke Alvarado down, which has been public domain for years and is disclosed in many official records, may be the figleaf covering the CIA's withholding of its nakedness in this matter. From the typical CIA lingo of ambiguous generalities and extensive overwriting, one cannot be sure but if the Mexican police are "an intelligence

source" their involvement, while not mentioned in this record as disclosed, was public domain.

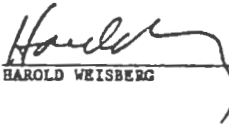
79. At this point (page 13, paragraph 25) Owen makes two identical claims to withhold "information (which) could lead to the identification and compromise of an intelligence method used in the collection of intelligence information abroad." For this he makes both (b)(1) and (b)(3) claim. The last part, "used in the collection of intelligence information abroad," is superfluous and is deceptive as applied to a polygraph examination. "A (withheld) polygraph expert, assisted by an FBI special agent" is the first withholding and "The (withheld) polygraph expert concluded" what Alvarado had already admitted to the Mexican police, "from the results of his tests that ALVARADO had fabricated his story about OSWALD in toto."

80. In these "national security" withholdings the CIA classified as a (b)(1) matter what was never classified in the FBI's files, from which I attach Exhibit 28. On the second page this states of the Mexico City polygrapher and the Alvarado polygraphing: "He was given a polygraph examination in Mexico by CIA which showed that he was lying. Our Legat assisted ...". (Emphasis added)

81. I have not exhausted all the possible exhibits pertaining to the foregoing paragraphs nor have I fully exploited the baseless claims, false, misleading and deceptive representations of the Owen affidavit in the Allen case or its untruths, some encapsulated in typical spook verbiage. I received Document 509-803 at midday on Saturday, January 19, when I was unwell. I had to complete the draft of this affidavit and make the necessary searches, all on Sunday, the next day, which I did, because on the following day I had a medical appointment out of town. This was followed by a large amount of work in another FOIA case for which I had to be clear when I returned from the Monday medical appointment. However, if the Court desires more proofs or more exhibits showing that the CIA and Owen withheld what is in the public domain and made exaggerated as well as false claims to such intimidating exemptions as "national security" and jeopardy to the nation's necessary intelligence operations, I can provide them. My hurried purpose was limited to providing more information showing that the CIA's affidavits are falsely sworn and are intended to deceive and mislead, in which they succeeded,

so that the Court might better perceive that this CIA "intelligence method" against the Act, the courts and requesters is its SOP and so that a question of sanctions might begin with a factual and documented base.

82. From my long, extensive, painful and costly experience, these abuses of the courts, the Act and requesters will not end as long as those who inflict the abuses are immune. The longer this immunity continues, the more incentive, from my extensive experience, there will be for these abuses to continue to be practiced.

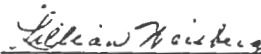

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 23rd day of January 1980 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.




NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

LIST OF EXHIBITS

EXHIBIT	PARAGRAPH	PAGE	DESCRIPTION
1	12	3	Letter, Archives to CIA (Wilson)
2	12	3	Letter, CIA (Wilson) to Weisberg
3	12	3	Letter, CIA to Archives
4	13	3	Letter, Archives to Weisberg
5	14	3	Cover page of memo (Exhibits 8-10)
6	15	3	Letter, Weisberg to Archives
7	17	4	Letter, Weisberg to Archives
8	18	4	Pp. 19-23, Coleman-Slawson memo
9	22	5	P. 45, Coleman-Slawson memo
10	24	5	Page from Coleman-Slawson memo
11	26	5	Slawson memo, 8/22/64
12	29	6	Letter, Warren Commission to CIA, 3/6/64
13	30	7	Slawson memo, 3/9/64
14	32	7	Slawson memo, 7/15/64
15	35	8	Letter, Hoover to Commission, 3/6/64
16	36	8	Letter, Hoover to Commission, 2/28/64
17	44	10	CIA Document 509-803
18	62	13	News stories, Wash. <u>Post</u> , L.A. <u>Times</u>
19	66	13	Dallas FBI (Heitman) memo, 11/22/63
20	67	14	Report, Hoover to Rowley, pp.4-5
21	68	14	Letter, CIA (Wilson) to Weisberg, 8/23/76
22	70	15	3 CIA documents
23	71	15	CIA 201 file - Lee Harvey Oswald
24	75	16	FBI teletype, 12/1/63
25	77	16	FBI Memo, 11/30/63
26	77	16	FBI cablegram, 1-13-64
27	77	16	FBI memo, 12/19/63
28	80	17	Letter, Hoover to Commission, 10/22/64

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JAN 15 1976

Mr. Gene F. Wilson
Information and Privacy Coordinator
Central Intelligence Agency
Room 2E42
Washington, D. C. 20505

Dear Mr. Wilson:

The National Archives has received a Freedom of Information Act appeal from Harold Weisberg for certain documents from the Record of the Warren Commission which were denied to him. Certain of the documents are of CIA subject matter interest or origin and they are being referred to you for a determination concerning their release.

Three of these documents were originally classified by the CIA. We are informing Mr. Weisberg that the decision of whether they may be released to him is being referred to the CIA and that he will be informed directly by the CIA of that determination. These documents include the following:

1. Thomas H. Karamessiness, Deputy Director for Plans, CIA, to Robert H. Bahmer, Archivist of the United States, October 2, 1967.
2. Lawrence R. Houston, General Counsel, CIA, to James B. Rhoads, Archivist of the United States, December 22, 1972.
3. Charles E. Savage for Robert Young, Freedom of Information Coordinator, CIA, to James B. Rhoads, Archivist of the United States, May 20, 1975.

Various documents originally denied to Mr. Weisberg were originally by and classified by the Warren Commission staff. Since the Commission's authority to classify is somewhat doubtful, continued protection of this material on grounds of national security is dependent

on the CIA's written determination that the information contained in the documents retains a national security sensitivity. It is, therefore, necessary that the CIA inform us whether these documents may be released, released with deletions, or closed entirely. Please specify both the Freedom of Information Act exemption to disclosure and the appropriate exemption to declassification of Sec. 5(B) of Executive Order 11652 which pertains to the information the CIA has determined must be restricted. These documents include the following:

1. William T. Coleman, Jr., and W. Davis Slawson to The Commission and J. Lee Rankin, "Oswald's Foreign Activities: Summary of Evidence Which Might be Said to Show that There was Foreign Involvement in the Assassination of President Kennedy" and attachments. This material has previously been reviewed by the CIA and some material has been released. The re-review is, therefore, directed only to those portions which the CIA indicated should not be released at that time.
2. Records relating to Yuri Nosenko.
 - a. Memorandum of July 23, 1964 (no names given).
 - b. Memorandum, Slawson to Rankin, August 22, 1964.

Other records relating to Yuri Nosenko are not security classified. Although it is the responsibility of the National Archives to make the final determination whether these documents will be released, we would like the CIA's opinion whether there are any Freedom of Information Act exemptions which may be applicable to these documents. They include the following:

1. J. Lee Rankin to Richard Helms, March 6, 1964.
2. Memorandum of Slawson to Jenner, Liebler, Ball and Belin, March 9, 1964.
3. Memorandum of Coleman and Slawson to Stern, March 12, 1964.
4. Memorandum of Slawson to Rankin, July 15, 1964.
5. Memorandum of Slawson to Coleman, July 17, 1964.
6. Cover letter of Commission Document #451, J. Edgar Hoover to J. Lee Rankin, March 6, 1964.
7. Cover letter of Commission Document #434, J. Edgar Hoover to J. Lee Rankin, February 28, 1964; and first page of same document, "Lee Harvey Oswald Internal Security -R- Cuba, February 28, 1964.

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Copies of the documents under appeal and a copy of Mr. Weisberg's appeal letter are enclosed. We would appreciate a response to this inquiry by January 26 to allow us sufficient time to complete our consultation with the Justice Department's Freedom of Information committee which is necessary if any portion of Mr. Weisberg's appeal must be denied. Please return the enclosed document copies with your response.

Sincerely,

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

Enclosures

ACThomas/lpd 1/15/76
Official File - ND
Reading File - ND
NDA
NNFL ✓

NDA _____

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Copy for NARS

CA 45-1448
EXHIBIT 2

28 MAY 1976

Mr. Harold Weisberg
Route 12 - Old Reservoir Road
Frederick, MD 21701

Dear Mr. Weisberg:

We have been asked by the Deputy Archivist of the United States to respond directly to you regarding three documents from the Records of the Warren Commission previously denied to you by the National Archives, subsequently appealed by you. These documents have been reviewed by CIA officers in light of their CIA origin with the following determinations made:

a. The letter of 2 October 1967 from Karamessines to Bahmer has been approved for release in its entirety and is enclosed herewith.

b. The letter of 22 December 1972 from Houston to Rhoads was previously released in sanitized form to a Government Operations subcommittee of the House of Representatives, and is provided herewith in that same sanitized form. Those portions deleted are covered by exemptions (b)(1) and (b)(3) of the Freedom of Information Act as amended.

c. The letter of 20 May 1975 from CIA's Freedom of Information Coordinator to the Archivist of the United States is denied release in its entirety under exemptions (b)(1) and (b)(3) of the FOIA.

The applicability of the Freedom of Information Act subsections cited above is explained as follows:

(b)(1) applies to material which is properly classified pursuant to Section 1 of Executive Order 11652, and is exempt under Section 5(B) of the same Order;

(b)(3) applies to the Director's statutory obliga-

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tions to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency, in accord with the National Security Act of 1947 and the CIA Act of 1949, respectively.

The CIA official making the above decisions to deny in whole or in part is Mr. Charles A. Briggs, Chief of Services Staff. Although it is recognized that these documents were already under appeal in your request to the National Archives, you retain the option of appeal on these three documents to the Agency's Information Review Committee. If you should choose to appeal, your communication with the Committee should be via the undersigned.

Sincerely,

~~W~~ Gene F. Wilson

Gene F. Wilson
Information and Privacy Coordinator

Enclosures: (2)

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C A 75-1448
EXHIBIT 3

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

2 OCT 1967

Dr. Robert H. Bahmer
Archivist of the United States
National Archives and Records Service
Washington, D.C. 20408

Dear Dr. Bahmer:

We appreciated the opportunity to review the documents furnished by Mr. Marion Johnson to this Agency on 15 August 1967. Pursuant to your written request of 14 August 1967, we have made appropriate recommendations on the lists provided by Mr. Johnson. As you will note, we have no objections to the release of the following items:

List No. 1

1, 4, 8, 9, 10, 11, 12, 13, 22, 23, 26

List No. 2

4, 8, 11, 13, 14, 15, 17, 18, 19, 24, 26, 27, 33, 34, 35, 36, 39, 41, 42, 43, 45, 46, 49, 50, 52, 57, 60, 61, 62, 63, 64, 65

The above releases apply only to the exact document(s) listed and not to related items in the Commission's possession. We also note that other agencies concerned will be consulted, as appropriate.

Sincerely,

TH Karam
Thomas H. Karamessines
Deputy Director for Plans

Attachments: a/s

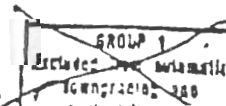
CLASSIFICATION CANCELED

By authority of: C 26 Etc. 7 10/20/75

Name and title of person making the change
M. H. G. NNFL

Date 10/23/75

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UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408

CA 75-1448
EXHIBIT 4



October 8, 1976

Mr. Harold Weisberg
Route 12
Frederick, MD 21701

Dear Mr. Weisberg:

This is in further reply to your letter of September 24, 1976.

A count of the pages in the numbered documents and parts of documents released by the FBI and other agencies in the 1975 review, of which lists were sent to you in February 1976, has revealed a total of 2,737 pages. Copies of the documents on the list of documents released in the calendar year 1975, which was also sent to you in February, have already been furnished to you. Our current charge for electrostatic copies furnished by correspondence is 15 cents a page, with a minimum charge of \$2.00. Your present deposit account balance is \$332.12, including your remittance of \$300.00. An additional \$78.43 will be needed to complete your order for the 2,737 pages. Please send a check or money order made payable to the National Archives Trust Fund (NNFL) and addressed to the Cashier, National Archives (GSA), Washington, DC 20408.

Enclosed are copies of our letter of January 15, 1976, to the CIA and of the unclassified attachments to Mr. Wilson's letter.

The Coleman-Slawson memorandum referred to in Mr. Wilson's letter is the long memorandum concerning Oswald's foreign activities.

The material released in Mr. Wilson's letter was sent to you with our letter of August 5, 1976. That letter informed you of your right to file a suit for the material denied to you on your appeal as well as to appeal to the CIA if you wish to do so.

The CIA has reviewed unnumbered documents of the Warren Commission in which it has a subject matter interest, including those involved in your appeal dated January 3, 1976, and the executive session transcripts of January 21 (part) and June 23, 1964, involved in your suit.

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Our charge for electrostatic copies will be increased to 20 cents a page for orders received on and after October 11, 1976.

Sincerely,

Jane F. Smith

(MISS) JANE F. SMITH
Director
Civil Archives Division

Enclosures

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TO : The Commission
J. Lee Rankin

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

SUBJECT : Oswald's Foreign Activities: Summary of Evidence
Which Might be Said to Show that There was Foreign
Involvement in the Assassination of President Kennedy

RECEIVED FOR INDEXING
FEB 11 1964

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Miss Jane Smith, Director
Civil Archives Division
The National Archives,
Washington, D.C. 20403

Rt. 12, Frederick, Md. 21701
11/5/76

Dear Miss Smith,

In your letter of 11/4 you say in response to mine of 10/12, which is well past the time in which you are to have responded, that you can't give me better copies because you have received illegible copies from the CIA and if I'll let you know what was missing, you'll undertake to check them for completeness.

I'm going to do neither. You people have been running me around that unpainted barn for more than a decade. It is the pseudo-scholar way of Nixonian stonewalling. I'm not even going to check my files to see what is involved.

There is an obligation imposed upon you people I insist you meet without running me ragged when in age and physical condition it is burdensome, not only unnecessary.

There is no record I seek that you or the CIA or some other agency does not have clear copies of. In every case the original should be available.

I'm dismayed at the permeating insensitivity, including yours.

These are records relating to the most heinous of all crimes, the assassination of a President, and to the official investigation of it, if that word is not obscene. These records relate to the subverting of our system of society and to the acts, decisions and performance of the administration that came into power by that crime.

You have no shame in providing people illegible copies? Incomplete records?

I guess not because in a decade I've not been able to get you to replace a single one of the many records you permitted to disappear or did not replace when you knew they were not in your files.

You all also appear to have no shame about having to be sued for what you withhold on one hoked up excuse after another, so I guess it is foolish to expect you to provide copies that can be read - at four times the commercial cost of xeroxing.

Do or do not do what you will. If as I suspect this related to a suit or in litigation I'll ask my counsel to present this problem to the Court. I'm satisfied that if it is there is no representation you have made that is not spurious and I am now going to ask you a question that is relevant to this. I am doing it myself because my lawyer does not now have the time and because we will both be away next week, all week.

The subject matter of the withheld pages of the Warren Commission transcript of 1/21/64 is a defector or more than one. There was a KGB defector of about 10 years before the JFK assassination. This is neither secret nor the disclosure of a secret intelligence source nor to the best of my knowledge of any other nature that fits any of the exemptions of the Act. The CIA has and has disclosed a long memo from him, typical for all of you as illegible as it can be short of total illegibility. I am asking is this is in the 1/21/64 transcript that is withheld. If there is no little internal communication as I have generally found to be another means of negating the Act I also want you to know that there is a hearing on this case 11/18/64.

I am also asking why, with the many weeks that have elapsed, I still have not received all the records I paid for so long ago, of the 1975 releases I was refused when I tried to pay for all that was released subsequent to 1970. I want there to be a record of this foot-dragging. I also would appreciate a written assurance that I can pick them up when I have to be in Washington for the 11/18 hearing. I would hope this gives you enough time. I do not want packages of this mine going through the mails because I cannot recall a single instance in which you have

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C 4 75-1448
EXHIBIT 7

11/24/76

Miss Jane Hart, Director
Civil Archival Division
National Archives
Washington, D.C. 20540

Dear Miss Hart:

In the penultimate paragraph of my letter of 11/9/76 I asked you a ^{third} question relevant to my O.A. 75-1448 in which the Archival is the defendant. In the course of the full explanation I gave you I informed you that there was to be a hearing on that matter in 15 days. Now, of course, gave you ample time to respond. Therefore you did not respond. Not in any way. You did not, for example, return the answer my letter or the question. You juststonalined.

I asked if the defendant of the 1/21/64 transcript is the same one about whom the CIA has recently made releases. I did not ask his name, for example. Not that the KOB does not know it. "National security" has come to mean more than from the American people only so that the KOB knows we may not know. I asked only what cannot be national-security information relating to that is before the court.

If there is anything improper in this request I'd appreciate an explanation of it. If there is not I'd like a prompt and unequivocal response.

Let me explain this in a different, layman's way.

If the CIA release relates to the subject of the 1/21/64 transcript the CIA agreed, as I may understand, in asking the Archival to withhold that transcript from me. If the Archival is aware of this then I think there is a substantial question of defaming me and of defaming and misrepresenting to the Court. The standard reason for withholding this transcript from me no longer exists - if it ever did.

There appears to be no complicity in this, no problem in stating yes or no, no need required to learn and respond.

If you persist in not responding I have no choice but to ask counsel to present this to the Court. This then becomes an unnecessary burdening of the Court and your counsel as well as of me and my counsel.

I believe there is no question of relevance, that this is very relevant.

In my letter of 11/9/76 I also wrote into whether or not any of this was really secret. You have not responded to that, either. As I have said, in answer that the Court may know, whether the name of the defendant is public in any way. Or either if there is more than one. If names are known there can be no secrecy as alleged. If this is true then there would appear to be a fraudulent claim to deny me this public record on this basis alone. In turn this means someone who claims of the secret, the not and of me and my counsel and for no enormous costs over the many years I've been trying to obtain this public record.

This matter will again be in the court shortly. I do hope you can stop this streamlining and either respond or explain why you refuse to.

Sincerely

Harold Volenberg

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Second, the Soviet authorities may have been entirely ignorant of Oswald's pending arrival, but when he did arrive he, Oswald, immediately made known his strong sympathy with the Communist cause, his intention to defect and possibly even the fact that he had been a radar operator in the United States Marine Corps and the "fact" (doubtful) that he possessed secret information related to this job which he was ready to disclose. If this is the way Oswald conducted himself at the Soviet Consulate at Helsinki, then indeed his application would have been handled with dispatch. American Embassies throughout the world would presumably do the same thing if they believed they had a potential defector who possessed valuable information. Oswald himself claimed that he said nothing out of the ordinary to the Russian Consulate in Helsinki; he told the officials at the American Embassy in Moscow on October 31, when he appeared there in an attempt to renounce his citizenship, that he had said nothing to the Russians about defecting until he arrived in Moscow. Likewise, Yuri Ivanovich Nosenko, the Soviet KGB agent who defected to the United States in February 1961, (and whose reliability has not yet been ascertained) claims that the KGB at least had no knowledge whatever of Oswald until he appeared in Moscow.

(Nosenko's testimony on this point cannot be taken with absolute assurance. Besides the obvious fact that whether he is sincere or whether he is a Soviet plant has not yet been determined, there is also the fact that to date the only report available to the Commission on what Nosenko has said about Oswald was obtained through the FBI, and the FBI interrogators did not have the detailed knowledge of Oswald's travels which are

been brought to the attention of the FBI interrogators. (It is not inconceivable that when Nosenko says the first word the KGB received was when Oswald arrived in "Moscow" that he was speaking loosely and meant when Oswald arrived in "Russia" or "at the Russian border." Or what is even at least as likely, that Nosenko really does not remember the precise moment at which Oswald first made his intentions known to the Soviet Government.)

Another piece of evidence relating to the same point should be brought to the attention of the Commission. The following paragraph is an exact quote from a CIA report (Commission No. 698):

"c. October 1959: Stockholm newspaper, Dagens Nyheter, of 25 November 1969 states Lee OSWALD passed through Sweden during October 1959. Article also adds that OSWALD was unsuccessful in obtaining visa to the USSR in Helsinki which resulted in his returning to Stockholm. Two days after he arrived in Stockholm OSWALD traveled directly to Moscow. Concluding sentence of article states 'This indicates that the Russian Embassy (Stockholm) gave him a visa.'"

it was difficult to explain how OSWALD might have received his visa in two days without going through normal channels. The only conclusion which can be drawn is that OSWALD must have received his visa directly from the Soviet Embassy in Stockholm which occasionally is done in special cases, but the source had no evidence to confirm this assumption."

The information contained in the foregoing paragraph is flatly at variance with the other CIA report, previously mentioned, to the effect that Oswald stayed in Helsinki after having arrived there on October 10, with the information obtained from Oswald's American passport, with his own statement to the American Embassy in Moscow on October 31, 1959, and with the documentary material given us by the Russian Government. All

of the latter could be lies or forgeries, however, including even the American passport, since it was in Oswald's possession for about two weeks before he came into the Embassy -- two weeks when he was in the hands of the KGB in the Hotel Berlin and in a hospital in Moscow. The CIA itself is apparently of the opinion that the information which places Oswald in Helsinki, rather than Stockholm, is more reliable. It certainly fits the other evidence we have of Oswald's travel better than does the "Stockholm" report.

The foregoing summarizes or sets out all the information available to us at this time on the problem of whether Oswald obtained his visa unusually quickly.

The final judgment which must be made on all this data is of course, What conclusion may legitimately be drawn if it is assumed first, that Oswald did get his visa unusually early, second, that the quick issuance of a visa was significant, and third, that its significance was that the Soviets had warning well ahead of time that Oswald was coming to Russia to defect? Even all this does not necessarily add up to a conclusion that Oswald was ever used as an agent by the Soviet Government. It could add up to the conclusion that they hoped to get him to Russia so that he could there be analyzed for possible use as an agent and then so used only if the examination of him resulted in a favorable conclusion. It could also mean something less serious, for example, that they knew or suspected that Oswald was going to defect and wanted to make it as easy as possible for him to get into Russia so that they would be sure to obtain the propaganda benefits of his defection before he had a chance

Some light on what was happening behind the scenes has been shed by Yuri Ivanovich Rosenko, the recent Soviet defector. If we can assume that his statements are sincere. The rest of our information comes from the records of the American Embassy in Moscow, the memories of some of the officials there, and the notes of two newspaper reporters, Miss Aline Mosby and Miss Priscilla Johnson, who interviewed Oswald in his hotel room during this period. The following is a capsule outline of the major events as we think they occurred:

<u>Date</u>	<u>Event</u>
October 16, 1959	Oswald arrives in Moscow from Helsinki. On this same day he told his Intourist guide, Rima Shirokova, that he wanted to become a Russian citizen. He did <u>not</u> notify the American Embassy in Moscow of his arrival.
October 22	When told by the Soviets that he could not become a citizen and must leave Moscow within two hours, Oswald slashed his wrists in an attempt to commit suicide.
October 22-29	Oswald was confined in a hospital in Moscow and treated for a self-inflicted wound on his left wrist.

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permanently in Russia, and said, "Oswald was not regarded by the YGB as being completely normal mentally nor was he considered to be very intelligent." [The CIA has not yet given us an evaluation on the reliability of Nosenko, but they indicated that they ought to be able to give us an evaluation soon. As developed elsewhere in this memo, the authenticity of Nosenko is of high importance.]

C. Special benefits granted to Oswald while he was in the Soviet Union: Do they show that he was being paid to receive training as a Soviet Agent?

Once he was accepted as a resident alien in the Soviet Union, Oswald by no means lived "just like a Russian." On the contrary, he was given all sorts of special benefits which a Russian citizen in his position would not have obtained. The question is not whether he received special benefits, but whether his receiving them indicates that he was undergoing some sort of training as a future agent of the Soviet system, or at least that he was being indirectly bribed to become such an agent. We want to emphasize that the problem of interpretation here is not simply whether he was being "bribed," but whether he was being bribed for the specific purpose of setting him up as some sort of foreign agent. For there is no question but that the special treatment amounted to a bribe. Oswald recognized this fact himself in his Diary, and Marina and Nosenko both say that it is standard practice in the Soviet Union for Americans and other foreign defectors from countries with high standards of living to be

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CA 75-1448

EXHIBIT 10

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Federal government. Our conclusion, as already stated, is that all "Russian" evidence is consistent with Lee Harvey Oswald's having been substantially what he purported to be and no more, that is, it is consistent with his not being an agent of the Russian government.

The fact that the evidence on Oswald's life in Russia is consistent with the conclusion just stated is of course highly important; however, this alone is not sufficient reason to conclude that Oswald was in fact not a Russian agent. A high proportion of all the evidence on Lee Harvey Oswald which relates to his travel to and life in Russia derives from sources that could have been fabricated or otherwise falsified. The main sources of such evidence are his own statements after he returned to the United States, the letters he wrote from Russia to members of his family; Marina's statements to friends after she came to America and her testimony to the Commission, and all sorts of writings and documents dating from the Russian period or shortly thereafter. All of these sources could have been put together by the KGB or be the result of its careful "coaching."

OK The question therefore rises, How are we to assess whether or not what we know as Oswald's "real life" is not just a "legend" designed by the KGB and consistently lived out by Oswald thereafter? Yuri Ivanov, Nosenko, if he is sincere, would provide a conclusive answer; namely, that what we know is the truth and not a legend. Unfortunately, the CIA cannot give us quite the assurance of Nosenko's reliability that we would need to rely solely upon his testimony. We are therefore forced to fall back upon Oswald himself, and ask, from all we have learned about him -- literally from his infancy until the day of his death -- whether he was

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DECLASSIFIED

E.O. 11652, Sec. 1.4

by MAJ NARS Date 9/27/78

MEMORANDUM

August 22, 1964

To: J. Lee Sanidin

From: W. David Elsworth

Subject: Language in the Possible Foreign Conspiracy section of the Report relating to "N"

(The name has been reflected with deletion of this paragraph in the original)

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 Madame Furtseva, but it will be attributed solely to Madame Furtseva. The language of the sections I propose to use is quoted below:

I

(Taken from page 3 of the Introduction.)

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

q. Some of the information furnished by the afore-mentioned 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

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Downgraded to Confidential

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EXEMPTION CATEGORY 1
DATE 10/1/80 BY 1043

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- 2 -

TOP SECRET

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 Furtseva; footnote No. 137, as the text states, is to the Historic Diary.)

"The Commission has information from confidential sources that the normal Soviet procedure for handling would-be defectors is to give the KGB the initial task of examination and assessment. 133/ Presumably this was done with Oswald. His rejection on October 22,

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- 3 -

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 Furtsova, 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 Furtsova'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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E.O. 11652, Sec. 304

BY mmg NARS Date 9/29/76

CIA 75-1448
EXHIBIT 12

JLR:MPH:nl
3/6/64

MAR 6 1964

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

Dear Mr. Helms:

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

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

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

Sincerely,

J. Lee Rankin
General Counsel

cc: Mr. Rankin
Mr. Willens -- Chrono.

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per 058375

date 21 MAY 1976

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Leaving. Other 4-12-64

EXHIBIT 13

MEMORANDUM

March 9, 1964

TO: Jenner-Liebeler
Eail-Belin

FROM: W. David Slawson

SUBJECT: Testimony of Yuri Ivanovich Nosenko, recent Soviet Defector

The testimony of Nosenko is contained in documents carrying Commission Nos. 434 and 451, insofar as we have received information to date. Of special interest to your sections are the following statements by Nosenko in regard to Oswald's marksmanship:

"Following President Kennedy's assassination Nosenko ascertained from Oswald's file that he had had access to a gun which he used to hunt game with fellow employees in the U.S.S.R. He could not describe the gun used by Oswald but did remember that it was used to shoot rabbits. Nosenko stated that Western newspaper reports describe Oswald as an expert shot; however, Oswald's file contained a statement from fellow hunters that Oswald was an extremely poor shot and that it was necessary for persons who accompanied him on hunts to provide him with game."

Nosenko purports to have been a high official in the counter-intelligence division of the KGB, the Russian Secret Police. He also purports to have been the person who supervised the examination and treatment of Lee Harvey Oswald for the KGB, both when Oswald first entered Russia in 1959 and after the assassination of President Kennedy, when Oswald's file was reexamined by the KGB to determine whether he had ever been used as an agent by that organization. Nosenko states that the KGB at no time used Oswald as an agent.

Mailroom

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Content UNCLASSIFIED

per 058375

date 21 MAY 1976

MEMORANDUM

July 15, 1964

To: J. Lee Rankin
From: W. David Slawson

Subject: Proposed references to the "confidential Soviet Union source, the reliability of which has not been established" in the Foreign Conspiracy and Russian sections of the report

You have asked that I quote those sections of the report in which I propose to use the confidential Soviet Union source described above. The portions which will be included in the section on the existence of a foreign conspiracy are:

1. The agency with primary responsibility for examining all defectors arriving in Russia is the KGB, and Oswald was presumably brought to its attention as soon as he made known his intention to defect. In 1959, at least, virtually all Intourist guides were KGB agents or informants, so we can also assume that Oswald's guide, Rina Shirokova, was following orders from the KGB or at least was guided by her training in KGB methods. As Oswald's Historic Diary notes, she informed her superiors of his desire to defect and helped him draft his letter to the Supreme Soviet on October 16 asking for Soviet citizenship.

The KGB made use of the time provided by Oswald's waiting in Moscow to learn as much as they could about him through Rina and through virtually everyone else at the Hotel Berlin where he was staying, in an attempt to assess his possible usefulness to the Soviet Union as a defector. (As you can see, I have not felt it was necessary to attribute the following to the Soviet Union source, even though that source is the one I used for this information. I believe that we could easily obtain a letter from the CIA stating that in their opinion the foregoing is true, as a matter of general operating procedures in Russia.)

2. A confidential Soviet Union source, the reliability of which has not been determined, has stated that Oswald, after he was given the usual examination the KGB gives to all defectors, was rejected because he was considered not mentally stable and not too

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per 058375

21 MAY 1976

intelligent. The suicide attempt, according to the same source, only confirmed the KGB in the correctness of its opinion. The KGB supposedly never reversed its decision not to accept Oswald, and so informed him when he was released from the Botkinskaya Hospital. Oswald then allegedly threatened to attempt suicide again, but before the situation reached the crisis point another Soviet ministry--probably the Ministry of Foreign Affairs--intervened and took the responsibility for approving Oswald's application for permission to stay. The Ministry of Foreign Affairs was presumably interested in Oswald for his potential propaganda benefit and therefore was not deterred by the KGB's diagnosis of him as mentally unstable. Although the Commission has no way of testing the reliability of this source, it is interesting to note that the purported shift of Oswald's case from the KGB to the Ministry of Foreign Affairs, shortly after his release from the hospital fits well with an entry in Oswald's Diary commenting that the officials he met after the hospital treatment were different from those he had dealt with before. The Diary entry expresses some irritation at the fact that the new officials asked him many of the same questions he had already answered two weeks earlier. (The foregoing is taken from the very end of my discussion on whether Oswald was accepted unduly soon for permanent residence in the Soviet Union. I do not rely at all upon the paragraph just quoted for the conclusion I came to, that Oswald was not accepted unduly soon. The foregoing is just put in for its general interest and to show that we are aware of the source.)

The following quotes are taken from Oswald's Life in Russia.

3. On the third day after his arrival, October 19, Oswald was probably interviewed in his hotel room by a reporter from Radio Moscow. Two years later, when he was trying to return to the United States, he told the American Embassy officials in Moscow that the interview had occurred. Oswald said that the reporter represented himself as seeking statements from American tourists on their impressions of Moscow and that he had therefore made a few routine comments of a visiting-tourist nature, the whole interview lasting no more than two or three minutes and of no political significance. The information which the Commission has on the ordinary procedures of the KGB, the Soviet Agency charged with the responsibility for espionage and counter-espionage activities, would indicate that the so-called "reporter" was in reality a KGB agent sent to assess Oswald's desirability as a defector from the point of view of that agency. The contents of that interview was therefore probably not as innocent as Oswald later described them. (Just as in number 1 above, I believe that we can obtain a letter from the CIA confirming the truth of this as a matter of general operating procedure for the KGB.)

4. Some insight on what was going on behind the scenes, unknown to Oswald, has been shed by the Central Intelligence Agency. The Agency's information on normal KGB handling of American defectors would indicate that virtually everyone who had contact with Oswald at this time, which would include Rima Shirokova and the Radio Moscow reporter, among others, was a KGB informant. Their job was to assess Oswald from every possible point of view, for example, his sincerity, i.e., whether his stated reasons for wanting to defect were the real ones or whether he was perhaps an agent of American intelligence and planted for the purpose, his psychological stability, and his intelligence. According to a Soviet Union source the reliability of which has not been ascertained, the KGB decided to reject Oswald's application for permanent residence in the Soviet Union on the grounds that he was "not regarded..... as being completely normal mentally nor was he considered to be very intelligent." If this account is correct, it must have been this decision, communicated to Oswald on the evening of October 21, that precipitated his suicide attempt. According to the same source, the attempted suicide only confirmed the correctness of the KGB's initial adverse judgment.

5. The same Soviet Union source previously mentioned has stated that the KGB decision not to accept Oswald was never reversed. Presumably, therefore, his continued presence in the Soviet Union was a result of an intervention by some other agency of the Soviet government. The Ministry of Foreign Affairs would seem a logical guess, because it would have been interested in Oswald for his propaganda value as a defector, rather than for the use he might have been as some sort of agent or as a source of intelligence information about the United States.

6. The account of this interview in the Historic Diary also states that the officials to whom he spoke on October 20th asked him about the other official who had spoken to him earlier, before he was hospitalized, and then proceeded to ask some of the same questions he had already answered for the other official. Oswald comments on this that there must have been a lack of communication between the men who were now interviewing him and the man who had interviewed him previously. This tends to confirm the Commission's information that the KGB, a representative of which was presumably the first official who spoke to Oswald, had washed its hands of Oswald and that the group which picked him up after his hospital stay was from some other branch of the Soviet state.

7. A Soviet Union source, the reliability of which has not been ascertained, says that after the decision was made to send Oswald to Minsk his department was asked to bring Oswald's file up-to-date and transfer it to the KGB office in that city. This was done. Accompanying the file to Minsk was a cover letter instructing the

local office to take no action concerning Oswald except "passively" to observe his activities to make sure he was not an American intelligence agent temporarily dormant. (In the vocabulary of international intelligence, a "dormant agent" is one who has been ordered not to carry on any intelligence activities whatever until he is contacted by his superiors or until some other condition has been fulfilled. It is not uncommon for agents to be left dormant for many years, in the hope that any suspicions originally aroused by their arrival will have dissipated and they will have succeeded in being accepted as a loyal citizen within their area of contemplated operations.) The same source goes on to say that in view of the instructions from the Moscow office, the Minsk office would do nothing in regard to Oswald except to alert its informants to keep an eye on him and make occasional reports on what he was doing, how he liked Russia, etc. These reports would be drawn up on the basis of periodic checks at his place of employment, inquiries of neighbors, friends and fellow workers, and by secretly reading his mail. After he returned to the United States, Oswald told a friend that on several occasions it had been brought to his attention in Minsk that the KVD (the predecessor of the KGB for this purpose) had inquired of his neighbors and fellow workers about his activities. The Soviet Union source goes on to say that the Moscow office had no further concern or even knowledge of Oswald until after the assassination of President Kennedy, when the KGB was immediately alerted to find out as much as it could about him. The Minsk office's file on Oswald was immediately ordered to be brought to Moscow. The Moscow office examined it as soon as it arrived and was satisfied that nothing that was not authorized had been done relative to Oswald while he was in Minsk, that is, the Minsk office had done nothing during the entire period of his residence in Minsk but "passively" observe him.

W. David Glavin

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Cowale, Leo H. Russian P.
CA 95-1448
EXHIBIT 1

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON 25, D.C.

March 6, 1964

BY COURIER SERVICE

Honorable J. Lee Rankin
General Counsel
The President's Commission
200 Maryland Avenue, N. E.
Washington, D. C.

Dear Mr. Rankin:

Reference is made to my letter dated February 28, 1964, which enclosed a memorandum of the same date containing information furnished by the recent Soviet defector, Yuri Ivanovich Nosenko, whose reliability has not yet been established.

Enclosed is one copy of a memorandum dated March 4, 1964, which contains the results of a detailed interview with Nosenko on March 3, 1964, concerning Lee Harvey Oswald. Nosenko has read a copy of the enclosed memorandum, initialed each page, and has stated he has no additional information concerning Oswald.

Nosenko advised this Bureau that under no circumstances does he desire any publicity given to this information. He also advised that he is willing to testify before the President's Commission provided no publicity is given to his appearance before the Commission or to the information which he might furnish.

In the event you desire to have Nosenko appear before the Commission, it is suggested that you make arrangements with the Central Intelligence Agency, which Agency has custody of Nosenko.

Sincerely yours,

[Handwritten signature]

Enclosure

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per 658375

OFFICE OF THE DIRECTOR



CA 75-1448
EXHIBIT 16

Commission No. 434

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON 25, D. C.

February 28, 1964

BY COURIER SERVICE

Honorable J. Lee Rankin
General Counsel
The President's Commission
200 Maryland Avenue, N. E.
Washington, D. C.

Dear Mr. Rankin:

There is enclosed one copy of a memorandum concerning Lee Harvey Oswald dated February 28, 1964, containing information furnished by the recent Soviet defector, Yuri Ivanovich Nosenko.

This is a preliminary interview and we plan on interviewing Nosenko further in an attempt to determine the accuracy of his statements. He is, of course, in the custody of the Central Intelligence Agency and our interviews will be contingent on other assessments on his time.

Sincerely yours,

J. Edgar Hoover

Enclosure

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Content UNCLASSIFIED

per 058375

date 21 MAY 1976



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

WASHINGTON 25, D.C.

February 28, 1964

LEE HARVEY OSWALD
INTERNAL SECURITY - R - CUBA

The following information was furnished on February 26 and 27, 1964, to representatives of the FBI by Yuri Ivanovich Nosenko, Soviet defector, whose reliability has not as yet been established. D.L.L.

Nosenko said he was Deputy Chief of the Tourist Department, Second Chief Directorate of the Committee for State Security (KGB) at the time of his defection February 4, 1964, at Geneva, Switzerland, and held the rank of Lieutenant Colonel. He said the Second Directorate of the KGB is concerned with the internal security of the Union of Soviet Socialist Republics (USSR).

Nosenko advised he was familiar with the visit of Lee Harvey Oswald to the Soviet Union in the Fall of 1959 and supervised the handling of the KGB file on Oswald in the Tourist Department.

Nosenko stated that when Oswald arrived as a tourist in the Soviet Union the KGB had no current interest in him and possessed no information that Oswald was a member of the Communist Party, USA, elsewhere, or that he was a member of any pro-Soviet organization. Nosenko advised that upon arrival in Moscow Oswald contacted Intourist, the official Soviet travel agency. Oswald informed representatives of the Intourist that he desired to remain in the Soviet Union. Thereafter, Oswald's case was referred to the Seventh (Tourist) Department, Second Main Directorate, KGB.

Nosenko related Oswald was discouraged from remaining permanently in Russia. It was suggested to him that he complete his visit as a tourist and return to the United States. It was further suggested he could thereafter make application through routine channels at the Soviet Embassy in the U. S. for admission as an immigrant to the Soviet Union.

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31 January 1964

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

I. OSWALD's Activity in Mexico City

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

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

B whom OSWALD had talked: B

B had probably been KOSTEKOV. OBYEDKOV.

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OSWALD the telegram had been sent to Washington but
no answer had been received.

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

2. A file check in Washington which is routine in these
matters revealed the possibility of an identity between the Lee
OSWALD who had spoken with QBYEDKOV, and presumably
with KOSTIKOV, and the defector returnee, Lee Harvey OSWALD.*

3. On 10 October 1963 CIA Headquarters disseminated by
cable the report in substantially the form and in the detail
indicated above, in paragraph 1, to the Federal agencies whose
jurisdictional interests had been established by a review of
OSWALD's file; the Federal Bureau of Investigation, the Depart-

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

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

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

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

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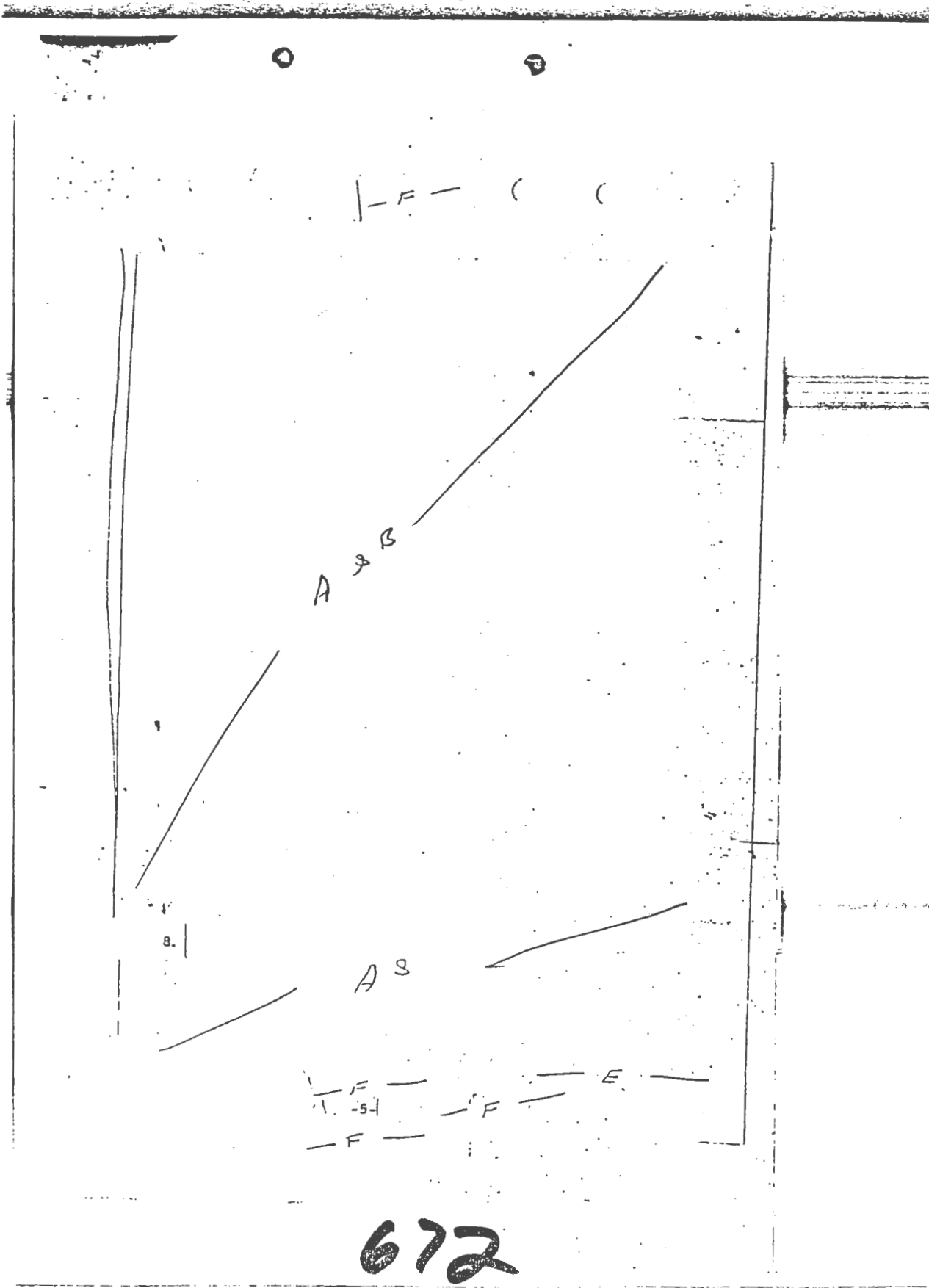
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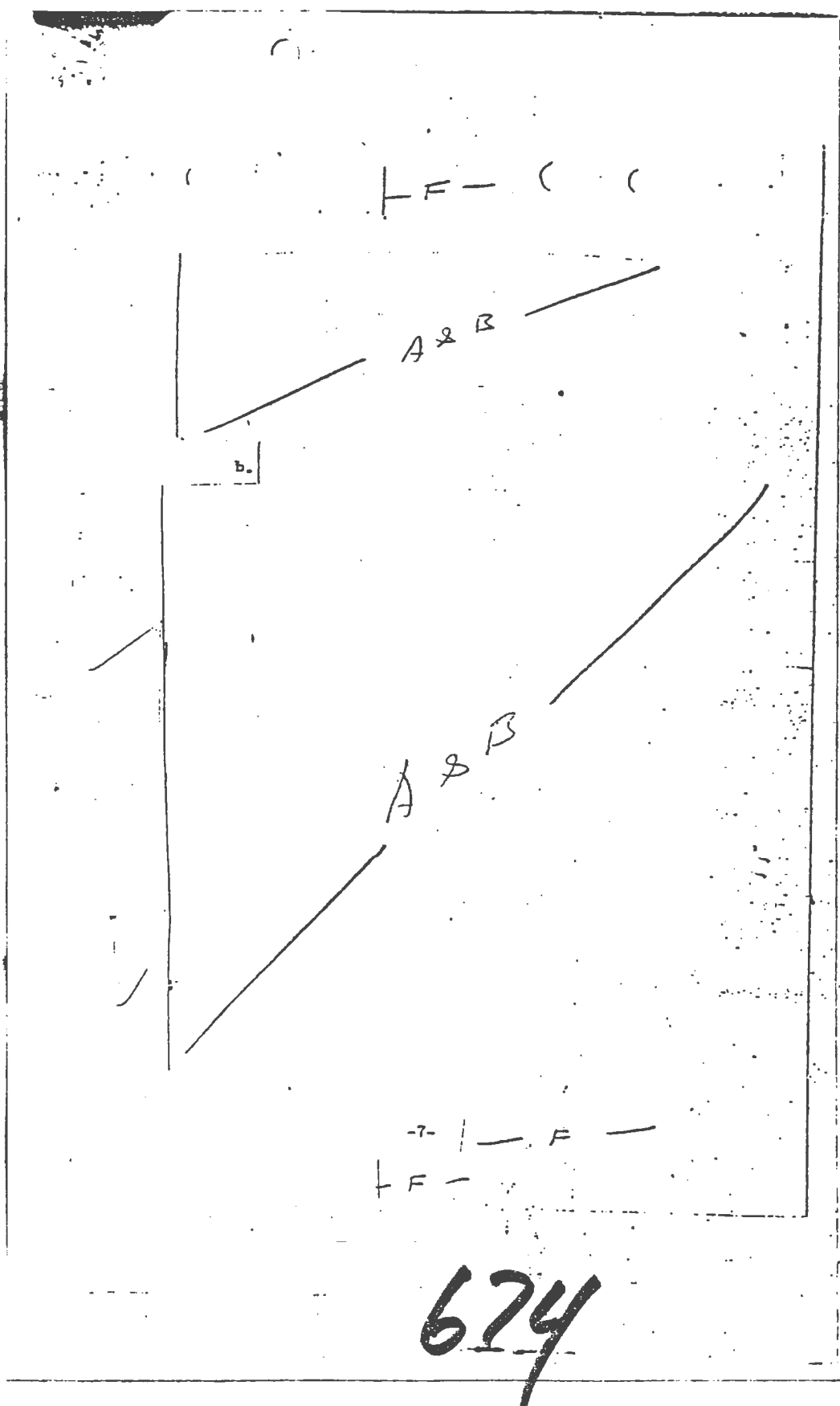
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These additional materials were promptly disseminated in Washington by the CIA to the White House, the Department of State, and the Federal Bureau of Investigation.

c. 1 October. See paragraph 1 above for Lee OSWALD's contact with the Soviet Consulate.

II. Valeriy Vladimirovich KOSTIKOV

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

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

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

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

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18. An intensive review of the files of our Mexico Station was undertaken immediately after the assassination to comb out any previously unreported information about KOSTIKOV's activity. No useful new information bearing on the assassination resulted from this effort.

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III. Monetary Payment to CSWALD - Investigation of Allegation

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

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

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

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

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

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But because of the importance of resolving the problem CIA personnel continued the interrogation in close coordination with the FBI. ALVARADO voluntarily agreed to a lie detector examination. A/B polygraph expert, assisted by an FBI special agent, questioned ALVARADO and secured admissions that he must have been mistaken. The B polygraph expert concluded from the results of his tests that ALVARADO had fabricated his story about CSWALD in toto.

26. It should be noted that when he first told his story on 26 November, ALVARADO could have known from the Mexican press that CSWALD had visited the Cuban Consulate

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

Attachment - photograph.

CIA Withheld Details on Oswald Call

By Ronald Kessler

The New York Times

In late September, 1963—eight weeks before the assassination of President Kennedy—Lee Harvey Oswald telephoned the Soviet embassy in Mexico City and tried to make a deal.

In exchange for unspecified information, he wanted a free trip to Russia.

This conversation was intercepted and recorded by the Central Intelligence Agency at the time. But it was not then turned over to the FBI, which has responsibility for investigating possible spies, and it was not later turned over to the Warren Commission during its investigation of the assassination.

The unanswered question is why not.

The existence of the CIA telephone intercept of Oswald's conversation in Mexico City and the contents of the still secret transcript have been verified by The Washington Post. The Post has also verified that the CIA failed to turn over the complete

transcript to either the FBI or the Warren Commission.

Instead, the CIA gave the FBI in October, 1963, only a brief report saying Oswald had made contact with the Russians. It gave the Warren Commission a transcript of the taped conversation but for unexplained reasons failed to include in the transcript Oswald's offer of information and his suggestion that the Russians would want to pay his way to the Soviet Union.

The Post has also determined that the CIA, for unexplained reasons, told the Warren Commission that it learned of most of Oswald's activities in Mexico City only after the assassination. The fact is, however, that the CIA monitored and tape-recorded his conversation with both the Russian and Cuban embassies in Mexico City in the fall of 1962, before Kennedy's death.

It was the CIA's belief that the two embassies were heavily involved in the spy business and that, specifically, they were operational bases for intelligence activities directed at the United States.

So with the full cooperation of the Mexican government, CIA wiretaps were installed on telephone lines going into both embassies.

The CIA was especially interested in U.S. citizens who made contact with the embassies.

Thus, when Oswald showed up in Mexico City in late September and telephoned the Russian embassy, his conversation was picked up from the wiretap. A transcript was made and circulated in the CIA offices in the American embassy in Mexico City.

The station chief at that time was the late William A. Scott, who personally reviewed a transcript emanating from wiretaps on Soviet bloc installations.

The Oswald transcript, according to a CIA translator who worked with Scott, aroused a lot of interest.

"They usually picked up the transcripts the next day," he said. "This they wanted right away."

What that transcript contained is a matter of some dispute, and the CIA says it routinely destroyed the tape before the assassination. But some

See OSWALD, A7, Col. 1



LEE HARVEY OSWALD
... telephoned Soviet embassy

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OSWALD. From A1

people who saw the transcript or heard the tape before the assassination recall that Oswald was trying to make a deal.

One of them is David A. Phillips, a former CIA officer, who now heads the Association of Retired Intelligence Officers and is a leading defender of CIA activities. Phillips was stationed in Mexico City at the time.

The transcript revealed, Phillips recalled, that Oswald told the Soviet embassy: "I have information you would be interested in, and I know you can pay my way" to Russia.

The stenographer who typed up the script and the translator who produced it had similar recollections.

"He said he had some information to sell them," the typist said in an interview in Mexico. His main concern was getting to one of the two countries [Russia or Cuba] and he wanted them to pay for it. He said he had to meet them."

The Warren Commission later concluded the Russians and Cubans were not much impressed by Oswald. This view is supported by Sylvia Duran, a Mexican citizen who worked in the Cuban embassy at the time of Oswald's visit. She talked to Oswald on Sept. 27, 1963, and recalls the meeting in some detail.

In a joint interview in Mexico City with this reporter and Post special correspondent Marjorie Simons, Duran said Oswald told her that he wanted to go to Cuba and Russia and disprove the rumors to show he was a friend of the Cuban revolution. Among other things, he claimed to be a member of the American Communist Party.

Duran said she informed Oswald that in order to travel to Russia he would have to obtain permission from the Soviets. Oswald went off and returned later in the day to inform her that he had obtained the necessary permission. Duran said she saw Oswald at the Soviet embassy and was told of his application for a visa. It took three to four months to be approved of this, Duran said,

Oswald "got really angry and red. He was gesticulating." Duran said she had to call for help from the Cuban consul who got into a shouting match with Oswald and told him to get out. Duran said she never saw him again.

However, Duran's story covered only the first day of Oswald's five-day stay in Mexico City. Oswald later referred in a letter to "meetings" he had in the Soviet Embassy.

How interested the CIA was in Oswald's dealings with the two embassies is uncertain.

The translator and typist who handled the transcript of the intercepted conversation recalled that the level of interest was high. But the CIA's own actions lead to a different conclusion.

The agency waited until Oct. 10, 1963, to notify the FBI of Oswald's activities. And its teletyped report made no mention of Oswald's offer of information in exchange for a free trip to Russia or of his attempts to travel to Cuba and Russia. "On October 1, 1963," the teletype message said, "a reliable and sensitive source in Mexico reported that an American male, who identified himself as Lee Oswald, contacted the Soviet Embassy in Mexico City inquiring whether the embassy had received any news concerning a telegram which had been sent to Washington."

That was strictly a routine handling of the matter, and similar to the standard reports made to the FBI at that time on other contacts with the communists by American citizens in Mexico.

Even after Kennedy's assassination, the CIA failed to turn over to the Warren Commission the full transcript of the telephone intercept it had made in Mexico City. Oswald's offer of information to the Russians in exchange for passage was omitted from the transcript, and the CIA claimed it did not know of most of Oswald's activities in Mexico City until after the assassination.

The significance of the CIA actions is difficult to assess. The FBI in the fall of 1963 was already showing in-

termittent interest in Oswald and might or might not have intensified that interest if it had been told of Oswald's conversations.

Whether the new information would have affected the Warren Commission's deliberations is also an open question. The commission investigated the possibility of a foreign conspiracy and concluded there was no evidence to show Oswald acted on behalf of a foreign power.

Nevertheless, there is yet no explanation for the CIA's handling of Oswald's conversations. The CIA today refuses to comment, saying it would not be appropriate in the light of an impending investigation by the House Select Committee on Assassinations.

When asked if they could explain the agency's actions, some CIA officers stationed at the time in Mexico City said the CIA may have had a relationship with Oswald that it sought to conceal. The CIA has denied this.

David W. Belin, who was an assistant counsel to the Warren Commission and later executive director of the Rockefeller commission's probe of the CIA, said that if the Warren Commission had known of Oswald's conversations and other new information, it would have been less sure that the assassination was not part of a foreign conspiracy.

Sen. Richard S. Schweiker, R-Pa., who led the Senate intelligence committee's probe of the assassination, said that investigation would have taken on an entirely different direction and perspective if the committee had been aware of Oswald's conversations.

In interviews with The Post, Belin, who documented the CIA plots against Castro in his capacity as executive director of the Rockefeller commission, revealed the CIA also did not tell the Warren Commission of a report from an alleged witness to a meeting in Mexico City between Oswald and Cuban intelligence agents.

At the time, Cuban agents coordinated their more important activities

with agents of the KGB, the Soviet intelligence service.

Belin called on the CIA to make full disclosure of its knowledge of Oswald and his contacts with the Cubans and Russians.

Belin, a staunch defender of the Warren Commission's conclusion that Oswald was the lone assassin who killed Kennedy, said he recognizes the CIA's concern about disclosing secret sources and intelligence techniques. But he said a greater national interest would be served by disclosing the truth.

A CIA spokesman specifically denied that the agency has a report of a meeting between Oswald and Cuban agents. "The agency is aware of only one such specific allegation, and that was debunked," the spokesman said.

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RACING
RESULTS-ENTRIES

Los Angeles Times

FRIDAY
MORNING
FINAL

LARGEST CIRCULATION IN THE WEST, 1,020,479 DAILY, 1,289,183 SUNDAY

VOL. XCV

SEVEN PARTS—PART ONE

138 PAGES

FRIDAY, NOVEMBER 26, 1976

MORNING ★ FINAL

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Los Angeles Times

DAILY 15c

CIA Taped Oswald-Russ Talk

Newspapers
Challenged as



He Wanted to Make Deal
in September, 1963, Call

OSWALD OFFER OF DEAL TO RUSSIA

Continued from First Page

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In an interview in Mexico City, Miss Duran said Oswald told her that he wanted to travel to Cuba and Russia and displayed documents to show he was a "friend" of the Cuban revolution.

Miss Duran said she informed Oswald that in order to travel to the Soviet Union he would have to obtain permission from the Russians. Oswald

left and returned later in the day to inform Miss Duran that he had obtained the necessary permission. Miss Duran said she called the Soviet Embassy and was told Oswald's application for a visa would take three to four months to process. Informed of this, Miss Duran said, Oswald "got really angry and red. He was gesticulating," Miss Duran said she had to call for help from the Cuban consul, who got into a shouting match with Oswald and told him to get out. Miss Duran said she never saw him again.

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One of MIG Designers Dies

MOSCOW (AP)—Mikhail I. Gurevich, mathematician and aircraft designer who collaborated with Artem Mikoyan in designing Russia's MIG series of fighter aircraft, died at age 84, the Moscow newspaper Sovetskaya Rossiya reported Thursday.

MIG is from the MI in Mikoyan and the G in Gurevich.

The first jet fighter by modern standards developed by Gurevich and Mikoyan was the MIG-15, which entered widespread service in 1949.

Gurevich was officially listed as still working in aircraft design in 1974, a year after the latest aircraft in the MIG series—the MIG-25—went into regular military service.

Mikoyan died Dec. 9, 1970, at age 85.

Oswald Calls Reported Taped by C.I.A.

Continued From Page 1, Col. 2

assassination and has led to more calls for a reexamination of the inquiry.

The Mexico City trip was given scant treatment in the Warren Commission report because publication of information about it might have exposed "sources and methods" of the C.I.A. and impaired national security, intelligence officers and commission staff sources have said.

In response to inquiries about the matter from The New York Times, the C.I.A. issued an unusual public statement on the matter. It would not confirm that there were any tape-recorded conversations but said the raw data upon which they were based were turned over to the Warren Commission.

On October 9, 1963, Central Intelligence Agency headquarters received information that a person named Lee Harvey Oswald had been in contact with the Cuban Embassy in Mexico City in late September or early October, 1963. In transmitting the information on October 10, 1963, Central Intelligence Agency headquarters said Lee Oswald was probably identical to Lee Harvey Oswald, a former radar operator in the United States Marine Corps, born 18 October 1939.

Mr. Oswald was identified to the Soviet Union in 1959 and who subsequently made arrangements to return to the United States with a Russian wife.

From F.B.I. Reports

This biographical data was based upon Federal Bureau of Investigation reports received to Central Intelligence Agency following Oswald's defection to the Soviet Union.

This information was also provided to the Immigration and Naturalization Service, the Department of the Navy, the United States Ambassador and the staff in Mexico and in the Representative of the F.B.I. in Mexico.

Following the assassination of President Kennedy, Central Intelligence Agency records revealed that a person believed to be Oswald was in contact with the Cuban Embassy in Mexico City in late September or early October, 1963. The purpose of this contact was for use enough to the U.S.S.R. In addition, number of photographs of individuals believed to be in contact with the Cuban and Soviet Embassies in Mexico City were received from the Central Intelligence Agency station in Mexico City on October 10, 1963.

These photographs were believed to be in contact with the Cuban and Soviet Embassies in Mexico City on October 10, 1963. It was suggested that none of these photographs was the



Lee Harvey Oswald

photograph of Lee Harvey Oswald. The Warren Commission members, along with the information from the C.I.A. about Oswald's contact with the Cuban Embassy in Mexico City, were used in the Warren Commission report. The Warren Commission report also mentioned that Oswald had been in contact with the Cuban Embassy in Mexico City in late September or early October, 1963. The Warren Commission report also mentioned that Oswald had been in contact with the Cuban Embassy in Mexico City in late September or early October, 1963.

been no "conspiratorial" tone to the conversations and one source called them "benign." Moreover, the source said, the C.I.A. had information that the Cubans were suspicious of and unsympathetic to Oswald. The source said the Cubans regarded Oswald's behavior in returning to the United States from the Soviet Union and then asking to go back as "strange." Asked if anything said might have "triggered" Oswald, a Castro supporter, to take "retaliation" against President Kennedy, one source said he thought not but said that he thought Oswald had been "frustrated" by the Cubans.

Known by F.B.I.

The F.B.I. acknowledged at the Warren Commission hearings that it has received information from the C.I.A. about Oswald's contact with the Cuban Embassy in Mexico City in late September or early October, 1963. The F.B.I. agents involved in the investigation had been trying to return to the Soviet Union.

Under Bureau operating procedures at that time, the F.B.I. followed up on any unexplained contacts by an American citizen to Communist embassies and consulates. It would have been particularly useful in the case of Oswald, who had defected from the Soviet Union.

Mr. Tolson said in a telephone interview that he was "disappointed" about the possible role of Oswald in the assassination. He said he had been in contact with the C.I.A. and F.B.I. staff members who had received information from the C.I.A. about Oswald's contact with the Cuban Embassy in Mexico City in late September or early October, 1963.

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Communism in U.S. industries
Reported Taped by C.I.A.

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

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, DALLAS (89-43)

DATE: 11/22/63

FROM : SA W. R. HEITMAN

SUBJECT: ASSASSINATION OF
PRESIDENT JOHN F. KENNEDY

[REDACTED] (C)

ANDERSON advised SA ELDON RUDD is proceeding to Dallas in the Naval Attache plane, a C-47, ID # 50752. It is due to arrive at Love Field at approximately 2 AM, 11/23/63.

[REDACTED] (C)

*Heitman meeting NAVY 50752 (plane)
from Memphis City
do is for field 2:47 AM
Heitman advised*

Clark Anderson

WRH:ej
(3)

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*Lead
Heitman*

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89-43-10

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FBI - DALLAS	

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CA 75-1448
EXHIBIT 20

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11/13



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON 25, D.C.

November 23, 1963

Honorable James J. Rowley
Chief, U. S. Secret Service
Washington, D. C. 20220

Dear Mr. Rowley:

There are enclosed the results of our inquiry into the assassination of President John F. Kennedy and background information relative to Lee Harvey Oswald.

Additional information with respect to this matter will be furnished to you when available.

Sincerely yours,

J. Edgar Hoover

Enclosure

688

Assassination of President John F. Kennedy

Oswald was interviewed by Special Agents of this Bureau at Fort Worth, Texas, on June 26, 1962, at which time he was curt, sullen and arrogant. He declined to answer questions as to why he made the trip to Russia or his experiences while there. He indicated that he had been employed as a sheet metal worker in a television factory and admired the Russian form of Government. He claimed familiarity with the theories of Karl Marx, but denied being a member of the Communist Party or having renounced his United States citizenship. According to Oswald, the Soviets never attempted to obtain information from him nor did he make any deals with the Soviets in order to obtain permission to return to the United States. He disclaimed any affiliation with Soviet Intelligence.

Upon reinterview on August 16, 1962, he acknowledged recently visiting the Soviet Embassy in Washington, D. C., but indicated his visit was solely to register his wife's current address as required by Soviet law. He again denied requesting revocation of his United States citizenship or allegiance to the Soviet Government.

According to information developed by this Bureau, Oswald was arrested on August 9, 1963, for disturbing the peace in New Orleans, Louisiana, as a result of distributing a pamphlet for an organization known as "Fair Play for Cuba." He pleaded guilty and elected to pay a fine of \$10.

Oswald was interviewed on August 10, 1962, at which time he indicated he was unemployed and had been in New Orleans for approximately four months. While there he read literature distributed by the Fair Play for Cuba Committee which he considered not to be communist dominated or controlled. He corresponded with the Committee at 729 Broadway, New York City, and paid a \$5.00 membership fee. He received a membership card in the New Orleans chapter dated June 6, 1963, signed A. J. Hidell.

The Fair Play for Cuba Committee is a pro-Castro organization founded during the Spring of 1960, whose function is to propagandize the Castro regime.

The Central Intelligence Agency advised that on October 1, 1963, an extremely sensitive source had

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Assassination of President John F. Kennedy

inquiring as to any messages. Special Agents of this Bureau, who have conversed with Oswald in Dallas, Texas, have observed photographs of the individual referred to above and have listened to a recording of his voice. These Special Agents are of the opinion that the above-referred-to individual was not Lee Harvey Oswald.

A highly confidential source of this Bureau advised that an individual identifying himself as Oswald on November 18, 1963, was in contact with the Soviet Embassy in Washington, D. C., at which time he referred to a recent meeting with Comrade Koshin at the Soviet Embassy in Mexico City. This individual indicated that he originally intended to visit the Embassy in Havana, Cuba, where he would have had time to complete his business, but that he had been unable to do so. He furnished his address as Box 626, Dallas, Texas, and claimed to be the husband of Marina Nikolovna Oswald, a Soviet citizen and father of Audrey Marina Oswald, born October 30, 1963, at Dallas, Texas.

Oswald during previous interviews with FBI Agents claimed to have married his wife, Marina Nikolovna Oswald, nee Fruschkova, at Minsk, Russia, on April 30, 1961. He likewise claimed an American passport, number D002523, issued at New Orleans, Louisiana, on June 25, 1963, for proposed travel of three months to one year as a tourist to England, France, Germany, Holland, USSR, Finland, Italy, and Poland. He indicated an intention to depart from New Orleans during the latter part of 1963.

Additional information developed by this Bureau indicated one Lee Oswald during September, 1962, was a subscriber to "The Worker" an east coast communist newspaper.

C A 75-1448
EXHIBIT 21

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

23 AUG 1976

Mr. Harold Weisberg
Route 12
Frederick, MD 21701

Dear Mr. Weisberg:

This responds to portions of your letters to me of 21 July and 6 August, which we are handling under F-75-6669.

The "new request" of 21 July in your penultimate paragraph for records of any and all surveillance conducted on Lee Harvey Oswald in Mexico City or elsewhere is a restatement of one segment of your broad request for any and all materials related to the Kennedy assassination and the investigation thereof, i.e., F-75-6669. As you know, all materials in the entire Oswald file are currently undergoing second review, a review expected to yield a better product than the first review. In light of the number of requesters waiting anxiously for this product, we are not prepared to institute a special and costly search for your request which would disrupt and delay the process for all of these requesters simply to satisfy your recent restatement of request.

In view of your own recognition that the "new request" duplicates while going beyond that of Mark Allen, we quote for you the response to his request of 13 July:

"Please be advised that the existence or non-existence of the records you request is currently properly classified pursuant to Executive Order 11652 and therefore is exempt from disclosure in accordance with exemption (b)(1) of the FOIA. By this answer we are neither confirming nor denying that such records exist. It is further determined that the fact of the existence or non-existence of the records also pertains to information relating to intelligence sources and

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methods which the Director of Central Intelligence has the responsibility to protect from unauthorized disclosure pursuant to 50 U.S.C. 403(d)(3) and is therefore exempt from disclosure in accordance with exemption (b)(3) of the FOIA."

The above decision was made by Mr. Charles A. Briggs, Chief of the Services Staff. The decision is currently under appeal by Mr. Allen but is now subject to your appeal. As you know, such appeal should be addressed to the Agency's Information Review Committee via the undersigned.

The enclosed organizational charts are those included on pages 96-102 of the Senate Committee's Supplementary Detailed Staff Report on Foreign and Military Intelligence, Book IV, Report 94-755 of the 94th Congress, 2nd Session, dated 23 April 1976. The publication is available to the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Sincerely,



Gene F. Wilson
Information and Privacy Coordinator

Enclosures

CA 75-448
EXHIBIT 22

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DATE

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TO : SEE BELOW

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FROM: ~~ROSEN~~ CENTRAL INTELLIGENCE AGENCY

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7-48

DEPARTMENT OF STATE
FEDERAL BUREAU OF INVESTIGATION
~~DEPARTMENT OF THE NAVY~~
DEPARTMENT OF THE NAVY

SUBJECT: LEE HENRY OSWALD

1. ON 1 OCTOBER 1963

MEXICO REPORTED THAT AN AMERICAN MALE, IDENTIFIED
AS LEE OSWALD, CONTACTED THE SOVIET EMBASSY IN
MEXICO CITY INQUIRING WHETHER THE EMBASSY HAD RECEIVED
ANY NEWS CONCERNING A TELEGRAM WHICH HAD BEEN SENT TO
WASHINGTON. THE AMERICAN WAS DESCRIBED AS APPROXIMATELY
35 YEARS OLD, WITH AN ATHLETIC BUILD, ABOUT SIX FEET TALL
WITH A FRECKLED HAIRLINE.

2. IT IS BELIEVED THAT OSWALD MAY BE IDENTICAL TO LEE
HENRY OSWALD, BORN ON 18 OCTOBER 1939 IN NEW ORLEANS, LOUISIANA
A FORMER U.S. MARINE WHO DEFECTED TO THE SOVIET UNION IN
OCTOBER 1959 AND LATER MADE ARRANGEMENTS THROUGH THE UNITED
STATES EMBASSY IN MOSCOW TO RETURN TO THE UNITED STATES WITH
HIS RUSSIAN-BORN WIFE, MARINA NIKOLAEVNA PUSAKOVA, AND THEIR

DESCRIPTION
OF
INDIVIDUAL
WHOSE
AFFILIATION
IS
NOT
KNOWN

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(CONTINUED)

CLASSIFIED MESSAGE

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ROUTING

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2		5
3		6

TO :
 FROM: DIRECTOR

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PAGE TWO

TO INFO CITE DIR

CHILD.

3. THE INFORMATION IN PARAGRAPH ONE IS BEING DISSEMINATED TO YOUR REPRESENTATIVES IN MEXICO CITY. ANY FURTHER INFORMATION RECEIVED ON THIS SUBJECT WILL BE FURNISHED YOU. THIS INFORMATION IS BEING MADE AVAILABLE TO THE IMMIGRATION AND NATURALIZATION SERVICE.
 END OF MESSAGE

INFO BASED ON (IN 36017)

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CMS :
UNIT :
EXT :
DATE : 12 Oct 1963

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461

ROUTING

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FROM : DIRECTOR

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TO

INFO

CITE DIR

REF:

(IN 36017)*

7483

WHO CONTACTED SOVIET EMBASSY

1. LEE OSWALD

1 OCT. PROBABLY IDENTICAL

LEE HENRY OSWALD

BORN 18 OCT 1939, NEW ORLEANS,

LOUISIANA, FORMER RADAR OPERATOR IN UNITED STATES MARINES

WHO DEFECTED TO USSR IN OCT 1959. OSWALD IS FIVE FEET TEN

INCHES, ONE HUNDRED SIXTY FIVE POUNDS, LIGHT-BROWN WAVY HAIR,

BLUE EYES.

2. ON 31 OCT 1959 HE ATTEMPTED TO RENOUNCE HIS UNITED

STATES CITIZENSHIP TO THE UNITED STATES EMB IN MOSCOW,

INDICATING HE HAD APPLIED FOR SOVIET CITIZENSHIP. ON 13 FEB

THE US EMB MOSCOW RECEIVED AN UNDATED LETTER FROM OSWALD

POSTMARKED MINSK ON FIVE FEB 1961 IN WHICH SUBJ INDICATED

HE DESIRED RETURN OF HIS US PPT AS WISHED TO RETURN TO USA

IF "WE COULD COME TO SOME AGREEMENT CONCERNING THE DROPPING

OF ANY LEGAL PROCEEDINGS AGAINST ME." ON 8 JULY ON HIS OWN

INITIATIVE HE APPEARED AT THE EMB WITH HIS WIFE TO SEE ABOUT

HIS RETURN TO STATES. SUBJ STATED THAT HE ACTUALLY HAD NEVER

APPLIED FOR SOVIET CITIZENSHIP AND THAT HIS APPLICATION AT

106

COORDINATING OFFICERS

RELEASING OFFICER

(CONTINUED)

AUTHENTIC OFFICE

705

Document Number

for FOIA Review on

CLASSIFIED MESSAGE

ROUTING

ORIG:
UNIT:
EXT:
DATE:

☒ INDEX
☐ NO INDEX
☐ FILE IN CS FILE NO.

ROUTING		
1		4
2		5
3		6

TO:
FROM: DIRECTOR
CONF:
INFO:

DEFERRED

ROUTINE

PAGE TWO

TO:

INFO

CITE DIR

748

THAT TIME HAD BEEN TO REMAIN IN USSR AND FOR TEMPORARY EXTENSION OF HIS TOURIST VISA PENDING OUTCOME OF HIS REQUEST. THIS APPLICATION, ACCORDING TO OSWALD, CONTAINED NO REF TO SOVIET CITIZENSHIP. OSWALD STATED THAT HAD BEEN EMPLOYED SINCE 13 JAN 1960 IN BELORUSSIAN RADIO AND TV FACTORY IN MINSK WHERE WORKED AS METAL WORKER IN RESEARCH SHOP. OSWALD WAS MARRIED ON 30 APRIL 1961 TO MARINA NIKOLAEVNA PUSAKOVA A DENTAL TECHNICIAN BORN 17 JULY 1941 USSR. NO EDQS TRACES. HE ATTEMPTED ARRANGE FOR WIFE TO JOIN HIM IN MOSCOW SO SHE COULD APPEAR AT EMB FOR VISA INTERVIEW. HIS AMERICAN PPT WAS RETURNED TO HIM. US EMB MOSCOW STATED TWENTY MONTHS OF REALITIES OF LIFE IN SOVIET UNION HAD CLEARLY HAD MATURING EFFECT ON OSWALD.

3. LATEST EDQS INFO WAS | REPORT DATED MAY 1962
STATE
SAYING | HAD DETERMINED OSWALD IS STILL US CITIZEN AND BOTH HE AND HIS SOVIET WIFE HAVE EXIT PERMITS AND DEPT STATE HAD GIVEN APPROVAL FOR THEIR TRAVEL WITH THEIR INFANT CHILD TO USA.

706

(CONTINUED)

RELEASING OFFICER

COORDINATING OFFICERS

AUTHENTICITY
OFFICE

REPRODUCTION OTHER THAN THE ISSUING OFFICE PROHIBITED.

UNIT :
EXT :
DATE :

☐ INDEX
☐ NO INDEX
☐ FILE IN CS FILE NO.

ROUTING

1		4
2		5
3		6

TO :
FROM : DIRECTOR
CONF :
INFO :

DEFERRED/
ROUTINE

PAGE THREE

TO

INFO

CITE DIR

748

4. SHOULD PASS INFO REF AND PARA ONE

LOCALLY. INTO PARAS

TWO AND THREE ORIGINATES WITH

5. REF AND POSSIBLE IDENTIFICATION BEING DISSEMINATED

PLS KEEP

HDQS ADVISED ON ANY FURTHER CONTACTS OR POSITIVE IDENTIFICATION
OF OSWALD

END OF MESSAGE

REF ON

CMT: According to

1 Oct, an American male/
name Lee Oswald

stated he at Sov Emb on 28 Sept when
spoke with Consul. He discussed sending a telegram
to Washington. No local Dissemination had been made

707

RELEASING OFFICER

COORDINATING OFFICERS

AUTHENTIC
OFFICE

REPRODUCTION BY OTHER THAN THE ISSUING OFFICE IS PROHIBITED.

CLASSIFIED MESSAGE

12-62

ROUTING

1		4	
2		5	
3		6	

ORIG :

UNIT :

EXT :

DATE :

7 DECEMBER 1963

☐ INDEX☐ NO INDEX☐ FILE IN CS FILE NO.

TO : ^{DISSEMINATING TO} FEDERAL BUREAU OF INVESTIGATION RE. GILBERTO
 FROM : ~~RECEIVED~~ CENTRAL INTELLIGENCE AGENCY

7 DEC 63 17 1

CONF :

DEFERRED

INFO :

ROUTINE

PRIORITY

TO :

INFO

CITE DIR

8768

SUBJECT: LEE HARVEY OSWALD CASE

THE RE-INTERROGATION OF GILBERTO ALVARADO, NICARAGUAN INFORMANT WHO CLAIMED TO HAVE SEEN LEE OSWALD RECEIVE MONEY TO ASSASSINATE KENNEDY, HAS BEEN CONCLUDED IN MEXICO. ADVISES US THAT ALVARADO ADMITTED HE MUST HAVE BEEN MISTAKEN IN SAYING THAT HE SAW OSWALD IN THE CUBAN EMBASSY. ALSO, HE WAS UNCERTAIN OF THE DATE ON WHICH HE MIGHT HAVE SEEN SOMEONE LIKE OSWALD AND THOUGHT IT MUST HAVE BEEN ON A TUESDAY, WHICH WOULD HAVE MADE IT 17 SEPTEMBER 1963. ALTHOUGH THE FINAL REPORT IS NOT YET AVAILABLE, THE PRELIMINARY FINDING IS THAT ALVARADO EVIDENCED DECEPTION WHEN TALKING ABOUT OSWALD.

IT IS EXPECTED THAT ALVARADO WILL BE DEPORTED TO NICARAGUA ON 9 DECEMBER 1963.

A REPRESENTATIVE OF YOUR BUREAU PARTICIPATED IN THE INTERROGATION OF ~~ENRIQUE~~ ALVARADO.

END OF MESSAGE

Document Number 349-7

for FOIA Review on MAY 1976

708

COORDINATING OFFICERS

RELEASING OFFICER

FOR OFFICIAL USE ONLY

DATE

9 December 1972

ACTION

NOTE: This must be typed or printed in black letters.

NOTE I: All known aliases and variants (including maiden name, if applicable) must be listed. If only data source with the alias used, a separate form must be used. Note USDO's for alien you state.

NOTE II: Cryptonyms or pseudonyms will be entered in Headquarters.

NOTE III: To be completed in all cases.

SECTION I

IDENTIFICATION

1. SOURCE DOCUMENT

(Last)

(First)

(Middle)

(Title)

OSWALD

LEE

HENRY

NAME VARIANT

(Last)

(First)

(Middle)

(Title)

CLASSIFICATION CANCELED

By authority of: C.A. Lee, 12/24/72

Name and title of person making the change:

Date 1/11/73

1. PHOTO 2. BIRTH DATE 3. COUNTRY OF BIRTH 4. CITY OR TOWN OF BIRTH 5. OTHER IDENT

1-18-10-1929

USA

New Orleans, La.

1-AS 2-

6. OCCUPATION/PROFESSION

Radio operator, U.S. Marine Corps 1946-1948

CCC/POS. CO

SECTION II

CRYPTONYM

PSEUDONYM

SECTION III

COUNTRY OF RESIDENCE

10. ACTION DESK

11. 2ND COUNTRY INTEREST

12. 2ND COUNTRY INFO

USSR -

COMMENTS

at 18

Deported to the USSR in October 1959

597-3526

COPY OF

Document Number

Document Number

1-13

for FOIA Review on JUN 1976

for FOIA Review on JUN 1976

CLASSIFICATION

RESTRICTED

SIGNATURE

PERSONALITY (201) FILE REF TEST

TO READ/WRITERS, | DATE 9 Dec 1964

FROM | ACTION | INDEX | SERIALIZED

INSTRUCTIONS: Form must be typed or printed in block letters.

SECTION I: All known aliases and variants (including maiden name, if applicable) must be listed. If the identifying data varies with the alias used, a separate form must be used. Refer ORIGINATOR for items you are unable to complete.

SECTION II:

SECTION III: To be completed in all cases.

SECTION I

1. SOURCE DOCUMENT

2. NAME (Last) (First) (Middle) (Title) SEE

OSWALD, LEE HENRY R-1

3. NAME VARIANT (Last) (First) (Middle) (Title)

4. PHOTO

5. BIRTH DATE 18-10-39

6. COUNTRY OF BIRTH USA

7. CITY OR TOWN OF BIRTH New Orleans, La.

8. OTHER IDENTIFICATION

9. OCCUPATION/POSITION Radar operator, U.S. Marine Corps 1960-1964

10. OCCUPATION CODE

11. CRYPTONYM

12. PSEUDONYM

SECTION II

13. COUNTRY OF RESIDENCE USSR

14. ACTION DEM

15. AND COUNTRY INTEREST IS

16. AND COUNTRY INTEREST IS

17. DOCUMENT NUMBER 1-1

18. FOR FOIA REVIEW cpl. 255

19. PERMANENT CHANGE

20. RESTRICTED

21. SIGNATURE

22. RECORD COPY

JFK EXHIBIT F-523

-JFK EXHIBIT F-524-

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

Office of Legislative Counsel

19 September 1978

Mr. G. Robert Blakey
Chief Counsel & Director
House Select Committee on Assassinations
Washington, D.C. 20515

Dear Mr. Blakey:

Forwarded herewith is an unsigned memorandum dated 20 February 1964 concerning a machine listing of documents for the Oswald 201 file. This document was not released earlier under FOIA, but has been declassified in the light of new considerations. It formerly bore the classification of Secret and the handling restriction of Eyes Only.

Mr. Goldsmith requested this statement for use of the document in the public hearings, as the classification and handling restriction had been removed when the document was approved for release under FOIA.

Very truly yours,

S.D. Breckinridge
Principal Coordinator, HSCA

encl.

JFK EXHIBIT F-524

20 February 1964

MEMORANDUM FOR: Chief,

SUBJECT: Documents Available in OSWALD's 201 File

1. A machine listing of documents officially recorded as being in OSWALD's 201 file was requested and is attached. The actual machine work of this type was begun in 1963, but a few items of previous dates were also recorded.

2. A comparison of the documents physically available in the 201 file and those recorded as being in the 201 file has shown that 37 documents which should be in the 201 file are not available in it. This total is made up of:

2 dispatches
7 memoranda from the FBI
1 CSCI
2 State Department documents
25 cables.

3. Machine inquiries for the location of these documents have not been made.

Document Number

563-810

for FOIA Review on

JUN 1976

As per
lovely in file
the Band
volume of
Oswald's
201

JFK EXHIBIT F-526

Chief,

Chief,

Chief of Station,

- Lee Harvey OSWALD

For information

For the record we forward herewith a memorandum ⁰ *still in type*
in which he gives his recollections of interest in Subject following *OSW*
Subject's return to the United States from the USSR. *12-1-63*

45

Encl.

Distribution

3 -

Document Number

455-173A

for FOIA Review on

JUN 1976

17 Dec 1963 209 12 1963

25 November 1963

SUBJECT: Mr. Lee Harvey Oswald

TO :

1. It makes little difference now, but I had at one time an interest in Oswald. As soon as I had heard Oswald's name, I recalled that as I had discussed — sometime in Summer 1960 — with the laying on of interview(s) through or other suitable channels. At the moment I don't recall if this was discussed while Oswald and his family were en route to our country or if it was after their arrival.

2. I remember that Oswald's unusual behavior in the USSR had struck me from the moment I had read the first STATE dispatch on him, and I told my subordinates something amounting to "Don't push too hard to get the information we need, because this individual looks odd." We were particularly interested in the info Oswald might provide on the Minsk factory in which he had been employed, on certain sections of the city if, and of course we sought the usual that might help develop in personality dossiers. BIOGRAPHIC INFORMATION

3. I was phasing into my next cover assignment at the time. Thus, I would have left our country shortly after Oswald's arrival. I do not know what action developed thereafter.

Addendum

4. As an afterthought, I recall also that at the time I was becoming increasingly interested in watching develop a pattern that we had discovered in the course of our bio and research work: the number of Soviet women marrying foreigners, being permitted to leave the USSR, then eventually divorcing their spouses and settling down abroad without returning "home". The case was among the first of these, and we eventually turned up something like two dozen similar cases.

became interested in the developing trend we had come across. It was partly out of curiosity to learn if Oswald's wife would actually accompany him to our country, partly out of interest in Oswald's own experience in the U.S.S.R., that we showed intelligence interest in the Harvey story.

Mr. GOLDSMITH. The first page of JFK exhibit F-524 is a letter from Mr. Breckinridge to Professor Blakey of this committee. would refer your attention—why don't you read both pages.

Mr. HELMS. I have had a chance to read not only Mr. Breckinridge's covering memorandum to Mr. Blakey but also the attached memorandum which is unsigned and just says "To Chief." I don't know what.

Mr. GOLDSMITH. Does this memorandum make reference to 37 documents being missing from Oswald's 201 file?

Mr. HELMS. Yes, it does. It says that:

In 1964, February 20, a comparison of the documents available in 201 file and those recorded as being those in the 201 file has shown 37 documents which should be in the 201 file are not available in it.

And there is a breakdown of what seems to be missing.

Mr. GOLDSMITH. Was this document ever brought to your attention?

Mr. HELMS. I can never remember it having been brought to my attention.

Mr. GOLDSMITH. Were you ever informed that at some time there were at least 37 documents missing from Oswald's 201 file?

Mr. HELMS. No; I doubt that would have been brought to my attention. I would assume somebody in charge of the registry would have gone looking for the documents.

Mr. GOLDSMITH. Is the information contained in this document particularly sensitive?

Mr. HELMS. You mean sensitive operationally or in a security sense?

Mr. GOLDSMITH. Sensitive in the sense that the Agency normally attributes to that term.

Mr. HELMS. I wouldn't have thought so.

Mr. GOLDSMITH. In light of that, why would this document have carried the classification of "secret" and the restriction "for eyes only" prior to its declassification?

Mr. HELMS. Sir, I am sorry but I don't see "eyes only" on it nor do I see "secret" on it.

Mr. GOLDSMITH. I understand that. I said prior to its declassification.

Please reread the letter to Professor Blakey from Mr. Breckinridge.

Mr. HELMS. I don't know. Maybe it was overclassified. A lot of documents in the agency were.

Mr. GOLDSMITH. Thank you, Mr. Helms. I have no further questions.

Mr. GOLDSMITH. Mr. Chairman, there are a number of other exhibits which relate generally to the subjects of Mr. Helms' testimony, but with respect to which there was not sufficient time to ask specific questions. They have been marked for identification as JFK F-513 through F-517, F-519, F-521, F-525, F-528, F-530, and F-533. May they be admitted into evidence at this time?

Mr. PREYER. Without objection, they may be admitted into evidence.

(The exhibits referred to above follow.)

CA 75-144
EX 47B/10

12/1/63

CODE

TELETYPE

URGENT

1 - Mr. Stokes

TO SACS DALLAS
NEW ORLEANS

FROM DIRECTOR FBI

LKE HARVEY OSWALD, IS-R.

AS IT HAS BEEN DETERMINED OSWALD WAS NOT IN MEXICO
SEPTEMBER EIGHTEEN LAST, INVESTIGATION IN REGARD TO
PLACING HIM THAT DATE SHOULD BE DISCONTINUED. DALLAS
ADVISE AUXILIARY OFFICES.

JCS:RBM
(3)

NOTR:

Allegation that Oswald received money from Cuban Embassy,
Mexico City, on 9/18/63 in connection with plot to assassinate
the President has been proven unfounded as source has now
recanted.

COPIES DESTROYED

21 FEB 01 1973

REC-40

105-82555-66

19 DEC 2 1963

FEDERAL BUREAU OF INVESTIGATION
U S DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 1 1963

TELETYPE

58 DEC 5 1963

MAIL ROOM ☐ TELETYPE UNIT ☐

UNITED STATES

DEPARTMENT

Memorandum

TO : A. J. Belmont

DATE: 11-30-63

FROM : L. C. McILVOY

1 - D. E. Moore

1 - Turner

1 - C. D. Brennan

1 - Sullivan

SUBJECT: RE: HARVEY OSWALD

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

I just talked to our Legal Attache, Clark Anderson, in Mexico City. He advised me as follows:

Gilberto Alvarado Ugarte in Mexico City from Nicaragua has confessed to the Mexican officials that his statement on Oswald was false. This was a statement to the effect that he saw Oswald at the Cuban Consulate in Mexico City on September 18, 1963, and that Oswald had been hired to kill President Kennedy and was given at that time \$6500 for the job.

Alvarado stated his motive was personal and did not involve his country. He said he wanted to give the U. S. a reason for overcoming Castro.

Our Legal Attache said Ambassador Mann is very pleased at the way the matter was handled and has so advised the Department. Ambassador Mann also wanted his personal gratitude extended to the Director.

SA Lawrence Keenan sent to Mexico from the Seat of Government to handle our aspects of the matter will be returning to Washington, D. C., tomorrow afternoon with full particulars.

RECOMMENDATION:

For your information.

ECB:jdb
(6)

REC-15

R2 DEC 24 1963

823

714

3
O.C. 475
DECODED COPY

Classified
Controlled
Declassified
Excluded
Exempt
From
Automatic
Downgrading
and
Declassification

AIRGRAM ☒ CABLEGRAM ☐ RADIO ☐ TELETYPE

UNITED STATES 1-13-64

TO DIRECTOR
FROM LEGAT MEXICO CITY NO. 282

BUFILE 105-82555

LEE HARVEY OSWALD IS-R

REBUCAB JANUARY 9 LAST

CONCERNING DIAZ VERNON ALLEGATION THAT SILVIA DURAN HAD
OSWALD AS GUEST IN HER HOUSE, NO INFORMATION HAS BEEN RECEIVED
FROM MEXICAN OFFICIAL SOURCES NOR HAS ANY APPEARED IN MEXICAN
PRESS INDICATING THIS IS CORRECT. DR. EDUARDO BORRELL NAYARRO
1303 HUMERO STREET, APARTMENT 301, MEXICO CITY INTERVIEWED ON
JANUARY 11 LAST BY SA MATTHEW D. CRAWFORD, JR. AND ADVISED AS
FOLLOWS

SALVADOR DIAZ VERNON WAS IN MEXICO CITY AS CLAIMED AND
DISCUSSED INSTANT MATTER WITH BORRELL AND OTHERS. DIAZ VERNON
VISITED BORRELL IN HIS HOME. BORRELL DID NOT TELL STORY CREDITED TO HIM BY DIAZ VERNON
TO EFFECT THAT OSWALD AND DURAN WENT TO RESTAURANT ON
OUTSKIRTS OF MEXICO CITY WHERE THEY MET OFFICIAL OF CUBAN
EMBASSY. BORRELL HAD NEVER HEARD THIS STORY BEFORE. HE KNEW OF
NO MEETING BETWEEN OSWALD AND CUBAN EMBASSY OFFICIAL OTHER
THAN ONES WHICH SUPPOSEDLY OCCURRED AT TIME OSWALD VISITED
CUBAN CONSULATE HERE. HE KNEW NOTHING OF ANY VISIT BY OSWALD TO
HOME OF DURAN. BORRELL IS FORMER CUBAN MINISTER OF EDUCATION
DURING BATISTA REGIME AND SHOULD BE RELIABLE.

PHONE BOOK HERE LISTS NO CABALLO BLANCO RESTAURANT BUT
THERE IS CABALLO BAYO RESTAURANT ON OUTSKIRTS OF MEXICO CITY.

REC-45 105-82555-1387

8 JAN 10 1964

25 JAN 17 1964

cc: Beanyen

If the intelligence contained in this message is to be disseminated outside the Bureau, it is suggested that it be edited in order to protect the Bureau's cryptographic systems.

775

3
3
DECODED COPY

☐ AIRGRAM ☒ CABLEGRAM ☐ RADIO ☐ TELETYPE

PAGE TWO MEXICO CITY NO. 282

INQUIRIES BEING CONDUCTED THERE THROUGH RELIABLE INFORMANTS TO RUN OUT DIAZ VERNON'S ALLEGATIONS. RE ALLEGATIONS GILBERTO ALVARADO UGARTE. ARTHUR C. PLAMBECK, STATE DEPARTMENT ASSISTANT REGIONAL SECURITY OFFICER, ADVISED IT IS HIS PERSONAL RECOLLECTION AND THAT OF ELDREDGE A. SNIGHT, REGIONAL SECURITY OFFICER, THAT ALVARADO TELEPHONICALLY CONTACTED EMBASSY AT ABOUT 2:30 P.M. ON NOVEMBER 25 LAST. ADVISED HE AND SNIGHT MADE ARRANGEMENTS TO MEET ALVARADO NEAR MARIA ISABEL HOTEL IN MEXICO CITY AT ABOUT 5 P.M. ON SAME DATE AND THIS MEET OCCURRED AS SCHEDULED. AT THIS TIME ALVARADO FIRST MADE HIS ALLEGATIONS.

"EXCELSIOR", IS MORNING DAILY NEWSPAPER WHICH IS ON STREETS BY ABOUT 6 A.M. FROM THIS IT CAN BE SEEN THAT PRIOR TO REPORTING HIS ALLEGATIONS TO EMBASSY ON NOVEMBER 25 ALVARADO HAD MORE THAN ADEQUATE TIME TO HAVE READ "EXCELSIOR" STORY WHICH APPEARED ON SAME DATE AND WHICH REPORTED OSWALD'S CONTACT WITH CUBAN CONSULATE IN MEXICO CITY ON SEPTEMBER 27.

CLARK D. ANDERSON

RECEIVED: 9:08 PM JD

U.D. CC: MR. BRENNAN

DEPARTMENT OF JUSTICE

RECEIVED
TELETYPE UNIT

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

716

UNITED STATES GOVERNMENT

Memorandum

CA 75-1448
EXHIBIT 27

Mr. W. C. Sullivan *W.C.S.*

DATE: 12/19/63

TO: Mr. D. J. Brennan, Jr. *D.J.B.*

SUBJECT: RELATIONS WITH CENTRAL INTELLIGENCE
AGENCY (CIA)

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

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

The charges against McCone can be described as follows:

(1) He allegedly informed Congressman Jerry Ford that CIA had uncovered a plot in Mexico City indicating that Lee Harvey Oswald had received \$6,500 to assassinate President Kennedy.

(2) McCone allegedly made this same statement to Drew Pearson.

(3) In both instances, the statements were false and McCone should have known that they were false since his agency was fully informed that the story concerning the receipt of money in Mexico was completely discredited.

ACTION:

NOT RECORDED

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

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

memo Brennan to Sullivan, 12/23/63
copy to 5 JP:chs

22 DEC 31 1963

LIASON

717

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

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

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

AB

gal

h

wes

Vitale

1-2-2

GMH.

H

718

THIS SERIAL HAS BEEN REFERRED TO
ANOTHER AGENCY AND IS IN A PENDING STATUS:

FILE NO. 105-82555

SERIAL NO. unrec before 1061

PAGE NO.

NO. OF PAGES 2

SECTION NO.

47

CIA

REFERRAL

719

CA 75-1448
EXHIBIT 28

- 1 - Mr. Belmont
- 1 - Mr. Branigan
- 1 - Mr. Rosen
- 1 - Mr. Tolley
- 1 - Mr. Sullivan
- 1 - J. C. Stokes

October 22, 1964

BY COURIER SERVICE

OCT 22 11 55 AM '64
REC'D-READING ROOM
BT

Honorable J. Lee Rankin
Commission
200 Maryland Avenue, Northeast
Washington, D. C.

Dear Mr. Rankin:

In connection with the conversation on October 16, 1964, between Mr. Alfred Goldberg of your staff and Mr. John C. Stokes of this Bureau, there were delivered to the Commission on October 21, 1964, two copies each of a redraft of pages 154 through and including 157 of our summary memorandum dated May 18, 1964, two copies of which were furnished to you by our letter of October 12, 1964. It is requested that you replace the present pages 154 through 157 in our summary memorandum with the revised pages 154 through 157 which were delivered to the Commission October 21, 1964.

For your information, the revised pages 154 through and including 157 were prepared by us at the request of the Central Intelligence Agency to avoid disclosure of the identity of the confidential source in this matter who is referred to in the attached pages 154-157.

We will confirm delivery to the Commission of the revised pages 154 through and including 157 of our summary memorandum dated May 18, 1964.

Sincerely yours,

J. Edgar Hoover

62-144890
NOT RECORDED
100 OCT 23 1964

REL: me

(B)

ENCLOSURE

On 10/16 Mr. Goldberg, the Air Force historian who is presently working up the Commission's exhibits which are to be made public, advised SA J. C. Stokes that the Commission had been requested by CIA not to publicly disclose the name of the confidential source, the 22-year-old Embassy Messenger who on November 23, 1963, walked into our Embassy.

NOTE CONTINUED PAGE TWO.

64 OCT 28 1964

Honorable J. Lee Rankin

FOR CONTINUED

in Mexico City and made the wild allegation that he saw Oswald receive \$6,500 in the Cuban Consulate in Mexico for the purpose of killing the President. Alvarado's story was completely discredited. He was given a polygraph examination in Mexico by CIA which showed that he was lying. Our Legat assisted in the polygraph examination following which Alvarado admitted he was in error.

The Alvarado incident was recorded in detail in Legat's summary memorandum of 5/18, copies of which were furnished to both the Commission and CIA. It was not known to us at the Bureau or to Legat that CIA desired Alvarado's name not be placed in the public record. At the Commission's request, we on 10/12 furnished them a sanitized and unclassified version of Legat's 5/18 summary in which Alvarado was identified as the complainant. Liaison Agent Tipton on 10/16 checked with Ray Rocca of Office of Deputy Director, Plans, CIA. Rocca said that CIA would prefer that Alvarado's name not be placed in the public record. While the incident is described in some detail in the Commission's summary report, Alvarado's name was not inserted therein. Hence, in view of CIA's request, we have rewritten four pages of Legat's summary memorandum from which Alvarado's name and other data tending to identify him have been removed.

The amended pages were delivered to Mr. Douglas Brather, a member of the staff of the President's Commission on 10/21/64 at the specific request of Dr. Alfred Goldberg of the Commission. Mr. Goldberg explained that the Commission desired to get the revised pages involved to the Government Printing Office immediately for printing.

EXHIBIT 1
Defendants'
Motion To
Dismiss.

Attachment 1

C.A. No. 75-1448

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants.

Civil Action No. 78-1743

AFFIDAVIT

JAN 1 1978

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

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

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

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

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

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

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

5. I have reviewed the document in issue pursuant to section 1-303 of the new Executive Order which provides:

It is presumed that information which continues to meet the classification requirements in section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head, a senior agency official with responsibility for processing Freedom of Information Act requests or Mandatory Review requests under this Order, an official with TOP SECRET classification authority, or the Archivist of the United States in the case of materials covered in section 1-303. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

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

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

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)

) ss.

COUNTY OF FAIRFAX)

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

Debra M. Weir
Notary Public

My commission expires: 17 Aug 1982

<u>Document No.</u>	<u>Date</u>	<u>No. of Pages</u>
505 - 212	30 January 1964	1

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

506 - 213	9 January 1964	1
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Disposition - This document was released with portions deleted. The deleted portions include information identifying Agency components and staff employees, as well as Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(2) and (b)(3).

507 - 802	31 January 1964	2
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Disposition - This document was denied. The document is a brief review of information provided by the FBI. The information has been referred to that agency and will be dealt with directly by the bureau.

508 - 214	30 January 1964	2
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Disposition - This document was released with portions deleted. The deleted portions include information from which it would be possible to identify a foreign intelligence source, as well as information identifying Agency components and Agency staff employees. Also deleted was the identity of a special agent of the FBI and Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(1), (b)(2), (b)(3) and (b)(7)(F).

509 - 803	31 January 1964	14
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Disposition - This document was denied. The document contains a discussion of a collection of information available from very sensitive intelligence sources and in one instance the results of a sensitive foreign intelligence operational method of collection. Most of the substantive information in this document is available in other unclassified documents. In this particular document, it is inextricably mixed with operational details which, if exposed, would compromise several sensitive foreign intelligence sources, as well as a sensitive foreign intelligence operational method. In addition, the document contains information identifying a number of Agency components and Agency internal filing instructions. This denial was made under the authority of exemptions (b)(1), (b)(2) and (b)(3).

Attachment 2

Civil Action No. 75-1448

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,

Plaintiff

v

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants

Civil Action

No. 78-1743

FILED

JAN 12 1979

JAMES F. OWEN, C.

MEMORANDUM OPINION AND ORDER

This case arises under the Freedom of Information Act, 5 U.S.C. § 552. Only one document is at issue. The defendants contend that the document is properly withheld from public inspection pursuant to 5 U.S.C. § 552 (b) (1), (b) (2) and (b) (3). The matter is before the Court on defendants' motion to dismiss.

The requested document has previously been described in a Vaughn v Rosen (484 F.2d 820 (D.C. Cir. 1973), index filed in Bernard Fensterwald v CIA, Civil Action No. 75-0397 (D.D.C. 1978) (Sirica, J.). This Court held that the document was protected from disclosure. In addition, the appropriate office in the CIA has re-reviewed the document in question in light of the new, more stringent, criteria set forth in Executive Order 12065, effective December 1, 1978, and has determined that the material is classified at the SECRET level and should be withheld from disclosure. Agency affidavits concerning the classification of documents are entitled to "substantial weight." Adele Malkin v Helms, Nos. 77-1922 and 77-1923 (D.C. Cir. June 16, 1976).

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Accordingly, it is by the Court this 12th day of
January 1979

ORDERED that defendants' motion to dismiss is granted
and it is further

ORDERED that the case is dismissed with prejudice.

J. Michael J.
United States District Judge

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Attachment 3

Civil Action No. 751448

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1454

September Term, 1979

Mark A. Allen,
Appellant

Civil Action No. 78-1743

v.

Central Intelligence
Agency, et al.,

United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 5 1979

BEFORE: Tamm, Wald and Mikva, Circuit Judges

W. F. FISHER
CLERK

ORDER

On consideration of appellee's motion to remand, the opposition thereto and of the reply, it is

ORDERED by the Court that the order of the District Court on appeal herein is vacated and this case is remanded to the District Court for further proceedings not inconsistent with The Founding Church of Scientology of Washington, D.C., Inc. v. Bell (D.C. Cir., No. 73-1391, June 23, 1979).

This Court has noted the length of time this matter has been pending and unresolved. While this period is in no way attributable to the District Court we nevertheless recommend to that Court that it proceed with this matter as expeditiously as its business permits.

Per Curiam

Circuit Judge Wald did not participate in the foregoing order.

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Attachment 4

Civil Action No. 75-1448

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants.

Civil Action No. 73-1743

FILED
JAN 11 1980

SUPPLEMENTAL AFFIDAVIT

JAMES A. DAVEY, Clerk

ROBERT E. OWEN, being first duly sworn, deposes and
says:

1. I am the Information Review Officer for the Directorate of Operations of the Central Intelligence Agency (CIA). My responsibilities and authorities remain as stated in my affidavit of 9 January 1979, filed in the above-styled litigation. For convenient reference, a copy of my previous affidavit and that of my predecessor, Mr. Charles A. Briggs, dated 14 April 1977 and filed in the litigation styled Fensterwald v. CIA, Civil Action No. 75-1897 (D.D.C.) accompany this current and supplementary affidavit as Attachments A and B respectively. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and counsel from the CIA Office of General Counsel and upon conclusions reached in accordance therewith.

2. Plaintiff filed his Complaint in the above-styled litigation for the purpose of contesting a CIA determination that a CIA document, identified as No. 509-303, was exempt

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Deletions designated with the letter "F" are marked on the top and bottom of all pages of Document No. 509-303. The portions deleted were markings put on the document to show its classified status. The document was originally marked "SECRET" and the complete, official copy remains so classified. Other markings on the document were warning notices intended to alert the reader that the document contained certain specific kinds of sensitive intelligence information. Since the document has been modified to remove the classified information and the information requiring the warning notice, those markings have also been removed as part of the process of creating a declassified version of the document.

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

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

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

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

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

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

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

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

14. Deletions designated with the letter "B" in paragraph 25 were deletions made to avoid the disclosure of an intelligence method. The protection of such intelligence methods is mandated by 50 U.S.C. 403(d)(3) and is thus exempt from release pursuant to FOIA exemption (b)(3).

15. To provide any more detail about the nature of the withheld material in Document No. 509-803 would risk exposing information that requires continuing protection; the disclosure of information that is currently and properly classified, and which would disclose and compromise intelligence sources and methods. The Agency is prepared to present such additional evidence, should the Court so direct, for ex parte, in camera examination.

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) ss.

Subscribed and sworn to before me this 11th day of
January 1980.

David C. Fivola
Notary Public

My commission expires:

July 24, 1983

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

----- x

HAROLD WEISBERG,

Plaintiff

v.

Civil Action 75-1448

GENERAL SERVICES ADMINISTRATION,

Defendant

----- x

Washington, D. C.

Wednesday, October 17, 1979

The above-entitled cause came on for hearing on
pending motions before the Honorable AUBREY E. ROBINSON, JR.,
United States District Judge, at 9:45 a.m.

APPEARANCES:

On behalf of the Plaintiff:

JAMES HIRAM LESAR, ESQ.

On behalf of the Defendant:

PATRICIA J. KENNEY, AUSA,
LAUNIE ZIEBELL, CIA, and
STEPHEN GARFINCKEL, GSA

- - -

EVA MARIE SANCHE
Official Court Reporter

VOLUME: A
PAGES: 1 - 40

FOR:
The Plaintiff.

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P R O C E E D I N G S

1 THE DEPUTY CLERK: Harold Weisberg v. General
2 Services Administration, Civil Action 75-1448.

3 MR. LESAR: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. LESAR: James H. Lesar representing the
6 plaintiff Harold Weisberg.

7 Does the Court have any preference as to how it
8 wants to proceed this morning?

9 THE COURT: No. I think, as I indicated in the
10 notice, we will hear all the motions. Whichever way you want
11 to approach them, I think we can do it that way and I will let
12 the Government respond in between so that we can have all the
13 arguments at the same time.

14 MR. LESAR: Do you want me to take both motions at
15 the same time?

16 THE COURT: Well, let's have the first motion and
17 then I will have the Government respond to that and hear what
18 they have to say about it, and then we will take up the second
19 motion.

20 MR. LESAR: Fine, Your Honor.

21 ARGUMENT IN SUPPORT OF PLAINTIFF' MOTION FOR
ATTORNEY'S FEES

22 MR. LESAR: The first matter before the Court is
23 plaintiff's motion for attorney's fees in this case.

24 This case arose under the Freedom of Information
25 Act. The plaintiff originally sought copies of three Warren

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1 Commission executive session transcripts. This Court initially
2 ruled in favor of the government with respect to all three
3 transcripts. An appeal was taken.

4 While the appeal was pending, additional materials
5 became available to plaintiff which he thought disputed the
6 government's contention in the case and he filed those material
7 with the Court of Appeals. The Court of Appeals ordered him to
8 present the newly discovered materials to this Court first. He
9 did so. This Court again upheld the government's contention
10 and a separate appeal was taken to the Court of Appeals.

11 On the day that the government's brief was due in
12 the second of the two cases which had been consolidated in the
13 Court of Appeals, the government elected to make two of the
14 three transcripts at issue available to Mr. Weisberg.

15 The Court of Appeals subsequently upheld this
16 Court's determination with respect to the status of the third
17 transcript.

18 Mr. Weisberg contends that the release of the two
19 transcripts -- the two purportedly classified transcripts of
20 January 21 and June 23, 1964 -- entitles him to attorney's fees
21 under the Freedom of Information Act because he has substantially
22 prevailed. He contends in support of this that the documents
23 should have been provided to him at the time that he requested
24 them, that they were never properly classified.

25 THE COURT: Well, of course, that is his contention.

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1 Obviously, his contention wasn't valid with respect to one
2 transcript, was it?

3 MR. LESAR: That is correct.

4 THE COURT: So, he didn't prevail as to that.

5 MR. LESAR: That is correct.

6 THE COURT: All right. So, we are talking about
7 two transcripts.

8 MR. LESAR: We are talking about two transcripts.

9 THE COURT: All right.

10 MR. LESAR: With respect to those, he contends that
11 they were not properly classified and that the government
12 spuriously withheld them.

13 THE COURT: Well, that doesn't add anything. He
14 contended he was entitled to them by virtue of his request.

15 MR. LESAR: I understand that but there are two
16 things that do add to it: One is that we have the transcripts
17 themselves. Under the Freedom of Information Act, any portions
18 of the transcripts which are segregable would have had to
19 have been released, and you can read the transcripts. In our
20 view, you can read page after page until you finish all of the
21 material withheld without discerning any basis for their having
22 been withheld.

23 THE COURT: But that's only half of it. I can
24 read report after report from the CIA and FBI and everywhere
25 else and can see nothing in it that would suggest -- I have no

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1 way of knowing how to put two and two together and get four.

2 MR. LESAR: The other half of it is that there is
3 no competent affidavit from the agency stating that these
4 materials were properly classified. The Owen affidavit, which
5 has been submitted in support of the government's opposition
6 to the motion for attorney's fees, fails to state that they were
7 ever properly classified, fails to state what the big secret
8 was that required them to be withheld all these years. So
9 that the government has not made out its case.

10 In addition, the alleged bases for the declassifi-
11 cation is that it was necessitated by the hearings before the
12 House Select Committee on Assassinations. However, Mr. Weisberg
13 has filed an affidavit and submitted materials which make it
14 quite plain that there is no reference in the House Committee's
15 proceedings to these transcripts or to their contents. The
16 Owen affidavit does not so state, nor did the House Select
17 Committee make these materials or their contents available.
18 Therefore, the government's claim simply doesn't stack.

19 Now, under the law in this Circuit, this Circuit
20 has adopted basically the decision of Vermont Low Income
21 Advocacy Council v. Usery, and there are two criteria set forth
22 there for determining whether or not a plaintiff has substan-
23 tially prevailed: One, whether or not the prosecution reason-
24 ably could be regarded as having been necessary. Well, I think
25 there is absolutely no doubt that the record is quite clear that

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1 plaintiff requested these transcripts time and again over a
2 period of a decade or more. He was vigorously opposed in this
3 Court at all levels up to the very moment that the transcripts
4 were released.

5 The second criteria set forth by the Vermont case
6 is whether or not the litigation had a substantial causative
7 effect on the release of the information. Mr. Weisberg con-
8 tends that it did, that they would not have been released but
9 for this litigation.

10 It is important to understand the context of the
11 case at the time the release was made. The United States Court
12 of Appeals had just handed down a landmark decision in Ray v.
13 Turner which, in plaintiff's view, made a reversal inevitable
14 because it substantially modified, if not overturned, the
15 Weissman decision upon which this Court had relied. In additio
16 there would have been a new Executive Order which would have
17 taken effect shortly, which also would have changed the legal
18 status of the transcript.

19 The government has cited the lower court decision
20 in the Vermont case for the proposition that when the governmen
21 voluntarily releases a transcript, the mere fact that the
22 plaintiff had to file suit for it does not mean that he has
23 substantially prevailed. However, this case presents an
24 entirely different issue. In that case, the Court found that
25 the delay in releasing the material was excusable delay and

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1 that the government had proceeded in good faith.

2 Here, we contend that neither of those is true:

3 That the release of the transcripts has been delayed for years,
4 and that the government submitted affidavits to this Court
5 which misrepresented and misled the Court about the justifica-
6 tion for withholding the transcripts.

7 Now, plaintiff has submitted a bill for legal fees.
8 It is approximately \$30,000 at this point, plus about \$1,438.00
9 in expenses and costs. Plaintiff contends that the amount
10 requested is reasonable under the circumstances. The number of
11 hours has been documented. The government has made some object
12 to some of the hours. Plaintiff agrees that the government is
13 correct with respect to approximately 21-1/2 -- I think exactly
14 21-1/2 of the 55 hours that the government objected to and has
15 agreed to eliminate that time.

16 The rate of \$85.00 an hour is reasonable. It is
17 the rate which other attorneys of comparable experience under
18 the Freedom of Information Act have charged. Plaintiff has
19 submitted copies of court records in other cases in which
20 attorneys have been awarded at rates between \$65.00 an hour and
21 \$90.00 an hour from 1975 to the present time, so we would submit
22 that that is a reasonable rate.

23 Plaintiff has requested that the Court, in exercis-
24 ing its discretion, increase the amount of the basic award for
25 several reasons: one is the long delay in payment. Much of the

1 work was done in 1974 and 1975; that there has been a loss of
2 income for a period of four or five years/for much of the work
3 and lesser periods of time for more recent work and that is
4 one risk factor that ought to be taken into account. There
5 was, of course, at the very beginning an enormous risk of no
6 compensation whatsoever as evidenced by the fact that this
7 Court twice found against plaintiff with regard to the status
8 of these transcripts and had that been upheld, the entire
9 amount of time expended would have been lost.

10 THE COURT: Why? Did you take it on up?

11 MR. LESAR: I took it without any payment from
12 Mr. Weisberg, yes. That's correct.

13 THE COURT: That is a risk you were prepared to take

14 MR. LESAR: Yes, I understand --

15 THE COURT: That is a decision you can make: I
16 expect to get compensated but I am certainly going to put it on
17 the government if the government is supposed to pay.

18 MR. LESAR: Yes, I understand. But under the law,
19 the Court may, in its discretion, award additional sums taking
20 into consideration the fact that counsel did risk a loss of
21 income as a result of agreeing to undertake the work. In this

22 THE COURT: I see. I misunderstood the point you
23 made.

24 MR. LESAR: In this case -- to give an example
25 directly from this case -- a portion of the time that was

1 risked has already been lost because we did not prevail with
2 respect to the May 19 transcript and we concede that we are
3 not entitled to recover for that time, so that is lost time.
4 That is one of the risk factors that has to be taken into the
5 case.

6 Basically, I think I would like to call the Court's
7 attention to the fact that in the conclusion to the reply to
8 the government's opposition, I stated the amount of attorney's
9 fees requested but I neglected to add to that sum the amount
10 of \$1,438.41 which is for the expenses of cost of litigation.
11 That had been previously included with the original motion but
12 I neglected to include it with the reply.

13 In conclusion, I would like to stress the
14 importance of an attorney fee award in this case. The Freedom
15 of Information Act is a uniquely American law. It is a law
16 that was in gestation for a very long period of time. The
17 revelations which have resulted from it have been of primary
18 importance to the public life of this country to congressional
19 legislation. It has revealed innumerable scandals that had
20 been previously suppressed and enabled the citizens of this
21 country to hold more informed views as to public policies and
22 to the workings of their government.

23 I think that without the incentive of attorney's
24 fees, the Freedom of Information Act would soon be turned into
25 a shambles. There are few citizens who can afford the time or

1 the expense that it costs to hire an attorney experienced in
2 handling this kind of litigation and if the Act is going to be
3 made to work, it requires that attorney's fees be awarded where
4 appropriate. This, we think, is an appropriate case and that
5 Congress intended that it was precisely this kind of situation
6 where the government unjustifiably withheld and delayed access
7 to nonexempt information, that attorney's fees should be
8 awarded.

9 Thank you, Your Honor.

10 ARGUMENT IN OPPOSITION

11 MISS KENNEY: Your Honor, we are opposing the
12 motion for attorney's fees and costs primarily because we
13 maintain that plaintiff has not prevailed in this action and
14 that to deem plaintiff a prevailing party under these circum-
15 stances would leave the words in the statute meaningless.

16 THE COURT: Well, what happens when somebody
17 litigates for years and then the government caves in? Do you
18 just wipe out the attorney's fees and say, Well, we fought him
19 for four or five years and we are tired, or we want to cut off
20 counsel fees? Here it is. We made you wait four years, but
21 now here it is.

22 MISS KENNY: I think we indicated in our brief
23 that there are certain circumstances under which a plaintiff,
24 even if the plaintiff does not obtain a judgment in his favor,
25 could be awarded attorney's fees but this is not one of those

1 cases.

2 The standard is that the plaintiff must show that
3 the prosecution was reasonably regarded as necessary to the
4 release of the documents; also, that the action has substan-
5 tial causative effect on the release of the information.

6 THE COURT: You have no question but what the
7 prosecution was necessary to get the Warren Commission reports
8 is there?

9 MISS KENNEY: This prosecution?

10 THE COURT: Yes.

11 MISS KENNEY: As to those --

12 THE COURT: Yes.

13 MISS KENNEY: -- those two reports, those two
14 transcripts?

15 THE COURT: Yes.

16 MISS KENNEY: No. We maintain --

17 THE COURT: Why didn't you turn them over when he
18 first asked for them, then?

19 MISS KENNEY: We maintain that the reason --

20 THE COURT: No, no. That is not my question.

21 There wasn't any doubt that there was a stonewall
22 as far as Mr. Weisberg was concerned with respect to these
23 transcripts.

24 MISS KENNEY: There wasn't any doubt that they
25 were classified documents, the basis on which we defended the

1 action, along with the assertion of the (b)(3) argument which
2 was based on the CIA's need to protect its intelligence
3 sources and methods; but the reason that these two particular
4 transcripts were withheld was primarily because of their
5 ability-- They wanted an ability to be able to authenticate
6 information concerning activity within the USSR of the KGB and
7 that was why they were withheld.

8 The first transcript, the January 21st transcript,
9 which was released dealt with how to put questions to the
10 Soviets with regard to Oswald, and how to authenticate whether
11 or not the answers which were provided were accurate.

12 The second transcript, the June 23rd transcript,
13 was whether and how to use Nosenko in connection with determin-
14 ing whether Oswald was in fact a KGB agent.

15 The ability of the CIA to protect its intelligence
16 sources and methods was at stake in both of these transcripts,
17 and it was so held below by yourself earlier.

18 THE COURT: I understand that, but that is just
19 the point I am making: Mr. Weisberg had to sue. You were not
20 going to give him any portion of it for that reason, isn't that
21 correct?

22 MISS KENNEY: I respectfully disagree because in
23 September when the information was used before the Committee
24 in testimony by two gentlemen, that information, up to that
25 time, had not been released publicly.

1 THE COURT: That is exactly right, so Mr. Weisberg
2 had to sue. He had to sue long before that.

3 MISS KENNEY: No. The information brought before
4 the Committee was the information which was declassified.
5 After that testimony came in, then the transcripts were com-
6 pared with the testimony and the transcripts were released.

7 Now, are you suggesting that --

8 THE COURT: I don't think you understand what I am
9 saying.

10 Point one is that from the very beginning, the
11 government's position had never changed up until the time that
12 it went before the House Subcommittee that he was not entitled
13 to this information, and that is what this Court held. So
14 then, in that sense, Mr. Weisberg had to sue because the
15 government contended he wasn't entitled to any of them. That
16 is point one, the litigation was necessary in that sense.

17 MISS KENNEY: Well, had Mr. Weisberg not requested
18 the information but had he made it after September 15th, 1978,
19 he wouldn't have had to sue.

20 THE COURT: No. That is not the way the Act works.

21 MISS KENNEY: True.

22 The point is that the Committee's use of the
23 information --

24 THE COURT: That is the second point that you are
25 making. Point number one is that litigation was necessary. Yo

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1 can't deny that. At no time did the government say they were
2 going to give him any portion of those transcripts, at no
3 time.

4 MISS KENNEY: Correct.

5 THE COURT: I am talking about Mr. Weisberg now.

6 MISS KENNEY: Right.

7 THE COURT: All right. So, in that sense, the
8 litigation was necessary, isn't that correct?

9 MISS KENNEY: In that sense, it is correct; but the
10 point that I was trying to make --

11 THE COURT: Now, there came a time, the government
12 contends step two: that his action was not the primary motive
13 for the government eventually giving him the two transcripts.
14 That is the second point you make.

15 MISS KENNEY: Yes. But the point that I was
16 trying to make is that over a period of time -- these
17 transcripts dated from 1964, information --

18 THE COURT: Over a period of time, there wouldn't
19 be any necessity. But the Act doesn't work that way. The Act
20 doesn't say, Well, look, you can get a request and you can sit
21 around and wait long enough so that the information is meaning-
22 less. So if we can stonewall somebody for ten or fifteen years
23 then we will give him the whole thing; but the Act doesn't work
24 that way. There will come a time when all this stuff is just
25 down the drain. The next generation won't care about the

1 Warren transcripts, this one does.

2 MISS KENNEY: The need for classification does
3 change.

4 THE COURT: Of course, it does; but the Act
5 doesn't say that. The Act doesn't say that you can stonewall
6 an applicant until you decide later on that there is no need
7 for any of the information to be classified and then you can
8 give him the whole shebang. That is not the way the Act works.
9 Certainly, a lot of this stuff will be declassified. In the
10 Year 2050, most of it; but the Act doesn't work that way. No.
11 It is today that they are entitled to it under the existing
12 statute.

13 MISS KENNEY: Well, if one acknowledges that there
14 are changes in the need for classifying information, then it
15 can also be said that if you sue before the need for classify-
16 ing the information has changed, you are not going to get the
17 information; but if you sue afterwards, you will get the
18 information.

19 THE COURT: You may, or you may not. That is just
20 the point Mr. Weisberg makes. It doesn't necessarily follow
21 that you get it. The government has a way of giving it out
22 to A and withholding it from B. It depends upon who is asking
23 for it and what the circumstances are at a particular time.

24 MISS KENNEY: It is clear to the government, at any
25 rate, that plaintiff was not a substantial cause in the release

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1 of the information. We believe that the affidavit submitted
2 in connection with our opposition demonstrates that. It
3 demonstrates it by attaching to it documents contemporaneous
4 with the decision to declassify. The actual decision to give
5 up the transcripts was made extraordinarily quickly for any
6 agency. The testimony was heard on September 15th. By
7 September 22nd, a request was made from the General Counsel's
8 office at the CIA to Mr. Owen to determine whether or not the
9 need to withhold this information under the exemptions could
10 be justified. Mr. Owen, on September 26th of 1978, determined
11 that there was no longer a tenable basis for holding the
12 documents.

13 THE COURT: Well, what changed all of a sudden?

14 MISS KENNEY: The testimony before the House. The
15 public release of information as a result of the House Committee

16 THE COURT: The public release of what information?

17 MISS KENNEY: There was testimony -- for the
18 details of the testimony, I will let Mr. Ziebell speak because
19 there was approximately, as I understand it, two days of
20 testimony which --

21 THE COURT: What part of that testimony tracks
22 anything in the Warren Commission report? That is the issue.

23 MISS KENNEY: What part of that testimony --

24 THE COURT: Of the testimony before the House
25 Subcommittee. In fact, anything that can be related to the

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1 Warren Commission report.

2 MISS KENNEY: Well, as I understand it, they were
3 talking about defectors; in particular one defector, Yuri
4 Nosenko. The June 23rd transcript related to the use of
5 Nosenko, who was a defector, in connection with determining
6 whether Oswald was a KGB agent.

7 It wasn't clear, perhaps, at that time whether
8 Nosenko could be believed or not, whether his judgment could be
9 believed or not believed, but more importantly, it may not be
10 apparent from the transcripts themselves, either their reason
11 for classification or their impact on intelligence sources
12 because what happens in these situations is that, presumably,
13 the Soviets see what we know and are able to determine how
14 accurate our intelligence-gathering sources are. That in
15 itself is information which they would not otherwise have if
16 these types of documents were withheld.

17 In turn, by releasing certain information, the
18 KGB, the Soviets do know the strength and the weaknesses of
19 our intelligence-gathering ability.

20 THE COURT: Well, that is a calculated risk that
21 Congress took when it wrote this statute and that is what we
22 have every time we are confronted with a national security
23 problem. The courts are in no position to second-guess --

24 MISS KENNEY: But, Your Honor, that's the error
25 that plaintiff makes. We aren't confronted with that in this

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1 motion; we are confronted with whether or not he was a
2 prevailing party and whether or not his action was a causative
3 factor in the release of the documents in question, and it is
4 clear from the affidavit, from the documents submitted in
5 connection with the affidavit that the transcripts were
6 released not because of plaintiff's action but because of what
7 was transpiring in the House, in the Subcommittee, in testimony
8 before the Subcommittee.

9 But more importantly, plaintiff places great emphasis
10 on the fact that Ray v. Turner was a precedent-setting opinion,
11 one which this case was following in the wake of and that this
12 case had the potential for being in itself a precedent-setting
13 opinion. But the fact of the matter is that Ray v. Turner
14 essentially gives guidance and direction for the affidavits
15 that the agency must submit in connection with this kind of
16 case, and also suggests that when the Court is in doubt on a
17 de novo review, an in camera inspection is available.

18 Even if the affidavits, as plaintiff implies, did
19 not meet the standards set by Ray v. Turner, the appropriate
20 thing would have been on appeal -- had the Court found that --
21 to remand and to supplement the affidavits, to have an in camera
22 inspection, whatever. There is no guarantee that plaintiff
23 would have won even if the standards of Ray v. Turner had
24 applied to this case and if the affidavits were not up to those
25 standards.

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1 Moreover, in Ray itself, that is exactly what
2 happened: The case was remanded to the District Court, supple-
3 mental affidavits were filed, an in camera inspection ensued
4 and the Court still found for the government below. So,
5 plaintiff's emphasis on Ray v. Turner is misplaced because
6 even if Ray v. Turner standards were not met by the affidavits
7 in this case, it would not have automatically meant that the
8 plaintiff would have been the prevailing party. There would
9 have still ensued District Court proceedings and there was no
10 guarantee that the plaintiff would have won. Consequently,
11 plaintiff's suggestion that he might have been the prevailing
12 party is purely speculative and totally unfounded.

13 We have argued in our opposition that the Court
14 shouldn't exercise its discretion to award attorney's fees even
15 were this Court to find that plaintiff prevailed.

16 Additionally, we have noted that the amounts
17 requested by plaintiff are unreasonable. There has been no
18 evidence of plaintiff's hourly rate during any of the years in
19 question. Moreover, the number of hours included initially all
20 the hours relating to the May 19th transcript. Plaintiff has
21 now said at least 21 of those hours spent on appeal after the
22 other portions of the case were dismissed as moot should not be
23 counted in but plaintiff made no attempt to distinguish the
24 hours spent below on the May 19th transcript, and the burden is
25 on plaintiff to establish precisely how many hours he should be

1 compensated for, should he be compensated.

2 Plaintiff dismisses this by saying he spent
3 virtually no time below, and yet he spent some 21 hours on
4 something that he had spent no time on below when the case was
5 on appeal. So, we submit that at the very minimum, plaintiff
6 has not established the number of hours for which he should be
7 compensated accurately.

8 In sum, we think that to award attorney's fees in
9 this case would be to render meaningless the words in the
10 statute relating to a prevailing party, and requiring that
11 plaintiff be a prevailing party in order to be entitled to
12 award of attorney's fees. We think that to award attorney's
13 fees would be a disincentive to any agency to give up short of
14 pursuing each case to a complete and final judgment.

15 THE COURT: What is that argument again?

16 MISS KENNEY: Well, had the information in the
17 transcripts -- Had the CIA not undertaken to evaluate whether
18 or not the information in the transcripts could be released in
19 view of the testimony, none of this would have occurred.

20 THE COURT: None of what would have occurred?

21 MISS KENNEY: In other words, what plaintiff is
22 arguing for essentially is a determination as of the date the
23 court case is filed as to whether or not the information should
24 be released. He argued that on appeal in arguing against
25 dismissing as moot a portion of the case because he felt that

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1 he was entitled to a determination, and to award attorney's fees
2 in cases such as this would be a disincentive to the agency to
3 make the kind of review that it did effectively and efficiently
4 as it did because there would be no incentive. They under-
5 took a review immediately of the transcripts.

6 THE COURT: Yes, there would be an incentive
7 because if they didn't do it and he eventually got the material
8 they would have to pay for it. That is just the point that he
9 is making. If they didn't turn it over right away, there
10 wouldn't be any possibility that they are going to avoid being
11 stuck with counsel fees, because it would have been perfectly
12 apparent that they should have given it to him in September, as
13 they did.

14 So, they have no alternative in those circumstances
15 to release the material. They can play games if they want to,
16 but they knew they were going to lose on the attorney's fees
17 question; but I understand your argument.

18 MISS KENNEY: Well, we disagree.

19 Thank you, Your Honor.

20 THE COURT: Nobody has agreed about anything
21 throughout this entire litigation.

22 MR. LESAR: Given my experience under the Freedom
23 of Information Act, that is not entirely surprising.

24 THE COURT: Well, you have gained considerable
25 experience and expertise with this case alone, with this client

1 alone.

2 MR. LESAR: That is correct, Your Honor.

3 REBUTTAL ARGUMENT

4 MR. LESAR: Just a couple of brief things I want
5 to call to the Court's attention:

6 One, in the August 20, 1979 affidavit which
7 Mr. Weisberg submitted, he states that the Owen affidavit,
8 which is the basis for the government's opposition, does not
9 state what information -- that is, the Owen affidavit states
10 that some CIA information was declassified in response to the
11 House Select Committee on Assassinations but Owen "does not
12 state what information or that it includes these transcripts or
13 their content." There has been no rebuttal to that, nor has
14 there been any rebuttal to the statements in the October 31,
15 1978 affidavit which Mr. Weisberg originally filed with the
16 Court of Appeals but which has also been submitted in support
17 of this motion.

18 Paragraph 8 of that affidavit says: "Having read
19 the June 23rd transcript and this and other Warren Commission
20 staff reports, I state that there is no information in this
21 transcript relating to Nosenko that is not in the staff reports
22 This is one of many available records ..."

23 Then in paragraph 9, he states: "Having read the
24 June 23rd transcript, I further state that it contains no infor-
25 mation relating to Nosenko that was not made available to

1 Edward J. Epstein for his book Legend, his magazine articles
2 and interviews and his extensive use on nationwide TV and
3 other forums."

4 There has been no rebuttal to those statements, so
5 that it seems quite --

6 THE COURT: I am not going to get dragged off in
7 that quagmire.

8 MR. LESAR: All right. Fine.

9 THE COURT: It is relatively simple. We have
10 transcripts of two days of hearings before the Select Sub-
11 committee, and we have the Warren Commission reports that were
12 issued as a result of whatever went on before the House. The
13 government's contention is that once we went to the Select
14 Committee, the information that was in the Warren Commission
15 reports, we declassified as a result of those hearings. That
16 is their position.

17 MR. LESAR: That is their position but they
18 provide no specifics and there is no correlation between the
19 two.

20 THE COURT: That can be done very easily, can it
21 not?

22 MR. LESAR: Yes, it can.

23 One final point, with respect to whether or not I
24 made any attempts to distinguish the work done in the District
25 Court on the May 19th transcript, in my affidavit I did find

1 two hours that were clearly spent on that and that alone and
2 I have eliminated that. There may have been a couple of
3 additional hours scattered throughout the case. I made a
4 review of the documents and it is very difficult to pinpoint
5 any appreciable time without spending more time making the
6 examination than the amount of time involved.

7 The May 19th transcript was not the central reason
8 we brought the suit and just in terms of pages, if you go back
9 and read the opposition to the government's motion for summary
10 judgment, there are only a couple pages that are addressed to
11 that issue. None of the interrogatories or discovery material
12 were addressed to the status of the May 19th transcript, so I
13 really think it is not a significant issue. I did make an
14 attempt to segregate the material that was clearly segregable,
15 the work that was clearly spent on the May 19th transcript.

16 That, I guess, is the end of my presentation on
17 this motion.

18 THE COURT: All right.

19 ARGUMENT IN SUPPORT OF MOTION OF PLAINTIFF FOR
20 DISCOVERY

21 MR. LESAR: Plaintiff has attempted to take dis-
22 covery in various forms, one being a request for production of
23 documents and the second being a notice of depositions.

24 The government has vigorously opposed all discovery
25 in this case.

It is plaintiff's position that the Court can

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1 decide this case in his favor without the necessity of dis-
2 covery, but that the Court cannot decide the case against him
3 without allowing further discovery. The reason for that is
4 that there are certain factual claims made by the government
5 on which the government's position rests. Plaintiff disputes
6 them and in order to gain the necessary materials to fully
7 present his position, he would need to take further discovery;
8 but if the Court feels that the materials on file would justify
9 an award in plaintiff's favor, then there is no need for dis-
10 covery. If it is uncertain about the outcome, then discovery
11 is necessary in order to pin down the specifics of the govern-
12 ment's claims.

13 THE COURT: Well, the specifics of the government's
14 claims, it seems to me, would be revealed by the transcripts
15 of the Senate Select Subcommittee.

16 MR. LESAR: There are several things that are
17 dependent on the government's claim. We think, for example,
18 that they have got to establish that the transcripts were
19 properly classified to begin with at the time Mr. Weisberg
20 requested them, and they would have to go through the transcrip
21 page by page and say what was in the transcripts that would
22 have jeopardized national security, what would have revealed
23 an unknown source or method of the CIA. So that, if there is
24 any validity to their claim, we would be entitled to subject
25 it to --

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1 THE COURT: You mean start the litigation all
2 over again.

3 MR. LESAR: I would do that only if the government
4 were to --

5 THE COURT: Well, we would be right back to round
6 zero. We would start all over again with affidavits and
7 counter-affidavits as to what exemptions under the statute
8 could be claimed.

9 MR. LESAR: I think we can avoid the affidavits by
10 going simply directly to deposition testimony.

11 THE COURT: No way. No.

12 MR. LESAR: Well, the government's position is
13 that as the material is now public, it has been declassified
14 so there is no national security problem. So that now, there
15 is no jeopardy in our seeking to learn what there was in the
16 transcripts that they considered previously warranted classifi-
17 cation, and we would be entitled to test them on that and also
18 to test on what it was about the House Select --

19 THE COURT: Well, the way you are proceeding, these
20 cases would never end.

21 MR. LESAR: Well, it is not a position that -- I
22 would prefer to get the matter over with. The government has
23 forced it on me by making claims that I think are clearly un-
24 substantiated. The fact that they are clearly unsubstantiated,
25 to me, does not lessen my obligation to my client to make sure

1 that the Court has been provided with all the relevant
2 information. If they are making a claim that the House Select
3 Committee's proceedings caused the release of these transcripts
4 then I want the right to cross-examine them and see precisely
5 what information was revealed at the hearings that caused the
6 release of the transcripts.

7 THE COURT: Well, why do you have to cross-examine
8 somebody?

9 MR. LESAR: Well, the reason is abundant experience
10 indicates that you cannot rely on the government's affidavits
11 to establish the truth, particularly not where they are as con-
12 clusory and vague as they are in this instance.

13 THE COURT: Well, you are never going to get any-
14 thing but conclusory and vague affidavits out of them when they
15 start talking about national security and that kind of business
16 That is why we go through the process of waning it down and
17 ultimately get into in camera inspections and, even then, they
18 can snow you.

19 MR. LESAR: I think they have reached the end of
20 the tether as to how much they can snow this particular
21 plaintiff on this particular case. This is not the normal
22 situation where the plaintiff is utterly in the dark. Mr.
23 Weisberg has a vast fund of information and if they make claims
24 that are bogus, I think he will be able to establish that they
25 are bogus.

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1 THE COURT: Well, if he has that much information,
2 he ought to be able to establish that right now.

3 MR. LESAR: Well, I think he has done that in his
4 affidavits --

5 THE COURT: No. I am talking about in response
6 to this question about the relationship, if any, between the
7 Senate Select Committee and their affidavits.

8 MR. LESAR: He stated in his affidavits that there
9 is none.

10 Thank you, Your Honor.

11 THE COURT: I think the government definitely has
12 the burden to show what the relationship is; it is just a
13 question of what we are going to go through to make them carry
14 the burden.

15 MR. LESAR: Yes. Thank you, Your Honor.

16 ARGUMENT IN OPPOSITION

17 MISS KENNEY: The reason we requested this hearing
18 today, Your Honor, was that after noticing four depositions
19 earlier in September and finding that he had not subpoenaed
20 certain witnesses and after we had submitted a request for a
21 protective order, plaintiff went out, re-noted the depositions
22 and also issued four subpoenas.

23 We contend that no discovery is necessary.
24 Plaintiff seems to center his request for discovery on whether
25 or not the transcripts were properly classified at the outset.
That is not an issue in this proceeding, nor is it relevant to

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1 this proceeding. The issue is whether or not plaintiff
2 prevailed. Plaintiff has the burden of establishing that.

3 There has been no dispute that there were hearings
4 before the House Subcommittee. There is no dispute that the
5 CIA on its own initiative immediately thereafter analysed the
6 documents that they had previously withheld under Exemptions
7 1 and 3, determined that they should be released and did seek
8 their release.

9 THE COURT: But there has to be a relationship
10 between the two before you can cut Mr. Weisberg off. That is
11 all that he is contending. Otherwise, the government is in a
12 position to use any subterfuge, any excuse. Something can
13 happen over here and say, Oh, by the way, we have got this
14 case tethered over here, now is the time to get rid of it so
15 we will relate the two. Relating the two in their own minds
16 is one thing. That is why I say we have to focus on what is
17 the relationship between the two; and if there is none -- if
18 they are talking about apples on the Hill and he has got
19 oranges over here, that doesn't mean anything.

20 They decide after the hearings on the Hill. Why?
21 Was it convenient for them? That is not the issue. What was
22 there about the Senate Select Subcommittee testimony as it
23 related to the Warren Commission transcript that induced the
24 CIA to go back and declassify them. That is the issue, not
25 that they did it. What is the relationship between the two

1 things? He contends there is none.

2 Now, isn't that the issue?

3 MISS KENNEY: I think the affidavit that we have
4 submitted of Mr. Owen establishes that he undertook the review
5 at the specific behest of the General Counsel's Office, that
6 the review resulted in his releasing the documents. There is
7 no suggestion --

8 THE COURT: If that is true, then Mr. Weisberg's
9 contention is right. They never should have been classified
10 in the first instance if that is all there is to it and, in
11 that sense, he prevails because they are conceding. They
12 should have given it to him years ago if that is your position.

13 MISS KENNEY: That is not our position, Your Honor.

14 THE COURT: State your position, then.

15 MISS KENNEY: Our position is that Mr. Owen has,
16 in an affidavit to this Court, stated the exact process that
17 he went through in making his decision to recommend that the
18 documents be declassified.

19 Declassification decisions in and of themselves
20 entail knowledge of classified information. It is our position
21 that no more than what was presented should have to be pre-
22 sented in order to refute their allegation, unsubstantiated,
23 that plaintiff is a prevailing party.

24 THE COURT: All right.

25 MISS KENNEY: Plaintiff did not win the case below.

1 In fact, on two separate occasions this Court upheld the (b)(3)
2 exemption --

3 THE COURT: That is not the test, whether he won
4 the case or not. Did he get what he wanted? When did he get
5 it? And, why did he get it?

6 He got two out of the three things he wanted.

7 MISS KENNEY: The plaintiff said under oath that
8 they gave the documents over as a result of examining in
9 connection with that testimony before the House. What you're
10 suggesting, Your Honor, is that there should be some mental
11 process exposed to the Court and to the parties --

12 THE COURT: No. I am suggesting that they have to
13 say more. I am suggesting that more has to be said than, Oh,
14 by the way, we had two days of testimony up on the House and
15 because of the two days of testimony on the House, they went
16 back and reviewed and declassified. There has got to be more
17 than that I think.

18 That is why I say, What went on before the House?
19 Not just that there was a hearing but what was there in those
20 hearings. It was the content of the hearings, not the fact of
21 the hearings that I think is the focal point of the contention
22 between the parties here at the moment.

23 MISS KENNEY: We maintain that the discovery that
24 is sought in the forum that it is sought would be totally
25 inappropriate. For one thing, to --

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1 THE COURT: No -- Well, that is the second
2 argument that you have. I have some questions about that, too

3 MISS KENNEY: For one thing, documents have been
4 subpoenaed from, for example, Mr. Owen and Mr. Briggs over
5 which they have no control. They aren't even within their
6 domain.

7 Secondly, the breadth of the request is important.
8 Mr. Lesar has requested documents relating to classification
9 decisions which may be twenty or more years old. Were we ever
10 to have to comply with such a request, it would entail an
11 enormous search of documents at this time, many of which would
12 be in the Archives or often government files someplace,
13 government old files someplace.

14 Apart from that, we don't maintain that additional
15 information is necessary for the resolution of this particular
16 motion because in order to determine that additional discovery
17 is necessary, the Court and the plaintiff simply would choose
18 to disbelieve the affidavits which have been presented and
19 which establish that the plaintiff did not cause the release
20 but, rather, that the release was due to the testimony before
21 the House.

22 THE COURT: What testimony before the House? That
23 is all I am asking. What testimony? I wasn't there before
24 the House. I do not know. There has been no statement as to
25 what testimony.

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1 MISS KENNEY: May I ask Mr. Ziebell to address
2 that?

3 THE COURT: Yes.

4 MR. ZIEBELL: Good morning, sir.

5 THE COURT: Good morning.

6 MR. ZIEBELL: The Congressional Record contains
7 the transcript of the testimony given by John Hart, a former
8 Agency employee who was brought back as a consultant, who did
9 a review of the Agency records and the handling of a defector
10 named Nosenko.

11 His testimony on the 15th was concerned principally
12 and almost exclusively with his appraisal of the manner in
13 which Nosenko became available to the Agency; the manner in
14 which the Agency treated Nosenko; the difficulties faced in
15 trying to authenticate and establish the credibility of
16 Mr. Nosenko as a source of information on the Soviet KGB, the
17 Soviet Intelligence Service; and on matters relating to the KGB
18 awareness of what Mr. Oswald's activities in the USSR were.
19 Whether or not, for example, there was a relationship establish-
20 ed between the KGB and Mr. Oswald while he lived in the USSR,
21 and whether or not Mr. Oswald was in fact controlled by the KGB
22 when he came back to the United States.

23 In the process of this discussion, Mr. Hart, who
24 was a long-time senior intelligence officer with considerable
25 operational experience, expressed a number of professional

1 opinions based on his experience in the business of
2 intelligence. That experience, if you will, sir, is part of
3 what goes into any officer's judgment on whether or not
4 information is classified, whether damage could ensue from
5 the disclosure, and how much damage and with what certainty
6 or what degree of probability the damage would fall. Such
7 opinions, obviously, vary from one officer to another because
8 our experiences are not uniform. Each one of us has been
9 burned in a different way as a consequence of some kind of a
10 leak.

11 Mr. Hart expressed a number of opinions about the
12 probable validity of the judgments of the Agency. The various
13 components of the Agency is therefore in conflict as to
14 whether or not you could or could not believe what Mr. Nosenko
15 said. Their opinions and their judgments reflect an awareness
16 that comes from experience with the kind of operational
17 practices, the kind of operational procedures and the kind of
18 intelligence sources the KGB uses.

19 This, in turn, reflects CIA's ability to be aware
20 of how the KGB functions. Our willingness to believe or doubt
21 a particular allegation regarding the likelihood of the Soviet
22 involvement with someone as an intelligence agent is dependent
23 in part on our knowledge of how the KGB works, what it does do
24 and what it does not do.

25 If, for example, in the process of recruiting an

1 agent, one of the practices of the KGB for years was to
2 insist on a written receipt for all payments of money. Not
3 only that, they insisted on payment of money to establish a
4 bond between the officer of the KGB and the person who was
5 working with him.

6 This kind of knowledge is reflected in the judg-
7 ments made as to whether or not you could believe Nosenko.
8 How much or how little the Agency knew about the KGB is
9 reflected in not only the testimony of Mr. Hart, but also in
10 the two transcripts. There is a good deal of discussion in
11 there which includes remarks from Mr. Dulles who was on the
12 Commission, and Justice Warren who had been briefed by
13 Director Helms on the level of certainty or uncertainty, if
14 you will, of the Agency and whether or not you could believe
15 Mr. Nosenko.

16 The Agency, at that point, was not satisfied that
17 it had established the credibility of Mr. Nosenko as an honest
18 valid source of information on the KGB or on Mr. Oswald. The
19 misgivings and the reasons for them come through. They will
20 come through much more meaningfully for someone in the KGB who
21 will understand the basis for the uncertainty or the certainty,
22 if you will. If they have engaged in operations to convince us
23 of certain practices and our judgments appear to reflect a
24 knowledge of their practices, they will know whether or not
25 we have penetrated their organization to a point where we have

1 found a protected secret of theirs or whether we have been
2 taken in by a particular red herring they have dragged in front
3 of us to see if we would follow.

4 It is difficult to discuss the background for
5 decisions of this kind without exposing more about what we
6 know. Our perplexity in writing affidavits that are meaning-
7 ful, persuasive and honest reflections of the facts are com-
8 pounded. The difficulties expand. The more you know about the
9 secret background of these things, the more difficult it
10 becomes to discuss them.

11 Sir, I don't know if I might do better answering
12 specific questions at this point. I don't want to elaborate
13 endlessly.

14 There is a relationship, I think. The transcript
15 is clearly concerned with Nosenko and our ability to judge his
16 motives: What we went through to establish his credibility;
17 what he went through in the process. This is clearly reflected
18 in one of the transcripts where the entire subject of the
19 discussion is whether or not Nosenko was a credible source and
20 how he could be used.

21 MISS KENNEY: That is the June 23rd transcript.

22 MR. ZIEBELL: Thank you.

23 The January 21st one is a discussion of how we
24 might go about trying to validate and authenticate and authen-
25 ticate information we hoped to get from the Soviet government.

1 The Commissioner at that point was planning to put questions
2 to the Soviet government; and when you are in that kind of a
3 circumstance, one of the things you like to try to do, of
4 course, is to ask questions which you already know the answers
5 to. The Soviets know that as well as we do. There are ways
6 of laying out questions that make it less apparent and more
7 likely that you will get a testable answer. And this was the
8 sort of background that was in the minds of the people talking
9 about how to go about written inquiries put to the Soviet
10 government that had some chance of getting an honest and
11 accurate kind of response.

12 THE COURT: Thank you, Mr. Ziebell.

13 REBUTTAL ARGUMENT

14 MR. LESAR: Your Honor, it is plaintiff's position
15 that none of the explanation offered by Mr. Ziebell is relevant
16 and that if it had been relevant, it should have been stated
17 under oath and such points should have been made in response to
18 the affidavits which Mr. Weisberg has filed with this Court.

19 I am informed by my client that the CIA's uncertainty
20 ty about whether or not Nosenko was a plant or not had long
21 been publicly known, had been publicly known before this suit
22 was even brought.

23 So, I think that the claims do not show the
24 required relationship and have not been made in the proper
25 form.

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1 As to the discovery that is sought, we will leave
2 it in the Court's judgment. Of course, we feel that if the
3 Court maintains any doubt about whether or not plaintiff is
4 entitled to attorney's fees, then the discovery should go
5 forward; if not, then it need not.

6 THE COURT: Well, it will not go forward tomorrow.

7 MR. LESAR: It cannot because I will be leaving
8 the country.


9 THE COURT: To the extent that there is any out-
10 standing request for production or depositions set, I will
11 issue an order and they will be held in abeyance until I
12 decide this question. We have ample time to do that without
13 throwing the government into chaos. They have got hundreds of
14 Freedom of Information Act requests to process besides
15 Mr. Weisberg's.

16 MR. LESAR: I understand that, Your Honor.

17 MISS KENNEY: Your Honor, without conceding that
18 it is necessary, we will -- if you permit us to -- by the time
19 Mr. Lesar returns, submit an additional affidavit attempting
20 to further delineate the link between the two transcripts that
21 were released and the testimony.

22 THE COURT: I would suggest strongly that you do
23 that because unless it is perfectly apparent to me, I am going
24 to -- Somebody is going to lay it out for me, put it that way.

25 Now, I don't want to become a CIA agent or a
specialist, I have no desire to. But I have to make certain
judgments and there has to be certain basic information from



1 which I have to make those judgments.

2 MISS KENNEY: May we have until Mr. Lesar returns?

3 THE COURT: Well, I don't know how long that will
4 be.

5 MR. LESAR: I will be returning November 21st.

6 THE COURT: Yes, certainly. I don't see any
7 reason why you shouldn't have that opportunity.

8 If there is any question about what you really
9 want -- I haven't gone through all of your affidavits -- if
10 you want to realigne what you figure you are entitled to, you
11 can have some time to do that too.

12 MR. LESAR: Yes. I will do that.

13 THE COURT: That will be after you return. I am
14 not putting any time restrictions on you, except I would like
15 to get this back to the Court of Appeals before the end of the
16 year.

17 MR. LESAR: Thank you, Your Honor.

18 THE COURT: All right. Fine.

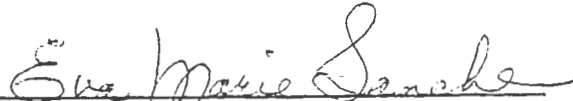
19 (Whereupon, at 10:50 a.m., the hearing on motions
20 was concluded.)

21 - - -

22 C E R T I F I C A T E

23 The foregoing is certified to be the official
24 transcript in the case of Weisberg v. General Services Adminis-
25 tration, Civil Action 75-1448, held on Wednesday, October 17,
1979.

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Eva Marie Sanche
Official Court Reporter

Soviet Plan to Kill Nixon Reported

By [Name] [Location]

...after he defected to the West, phire" Soviet ring, which be-
The worried Golytsyn tried to come the model, in part, for the
war—Nurajev of the possibility, novel and movie "Topaz."
according to our sources, also Britain's Kim Philby and Swe-
though they don't know whether the den's Sir Eric Wennerstrom,
the warning ever reached Nurajev. Two of the most celebrated So-
[Soviet international agents, were
For years, Golytsyn's spectacular revelations have been hid-
den in the CIA's files. But after Germany, France and NATO.
The CIA's plot was about the CIA's assassin. In time, the strong-willed Go-
devalued the CIA's reputation. Golytsyn tired of CIA surveillance
agents. After a brief, stormy, CIA sources confided Go-
lytsyn's KGB assassination tales to the late Robert F.
Kennedy, then the Attorney
General. The defector was
one of the highest ranking So-
viet defectors in CIA history.
The United States paid him
\$250,000 in compensation and
spent at least \$500,000 more to
protect him, our sources say.
Part of the money was spent on
an ingenious scheme to sneak
him and his family into the
United States.
By comparison, a far more
publicized defector, Peter Der-
zhnev, was paid only \$25,000. Our
sources agree, however, that the
CIA's reputation for its money
worth from Golytsyn.
During 18 months of debrief-
ing, Golytsyn blew the cover on
one dangerous Communist spy
operation after another. Our
sources say he helped identify
members of the notorious "Sap-
form residence in the 1960s,
CIA agents close to Golytsyn
thought at first that the KGB
might have caused it. A CIA
spokesman had no comment on
Golytsyn's disclosures.
Shan Connections—The color-
ful Shan guerrillas have made
another signed, secret offer to
sell most of the Southeast Asian
opium crop to the U.S. govern-
ment at the prevailing black
market price. The sale would
dry up 20 per cent of the heroin
supply now reaching the United
States.
The Shan hillmen are willing
to back up that offer, moreover,
by attacking any other convicts
that try to bring opium out of the
back country.
The offer has been relayed to
Washington through Rep. Le-
ster Wolff (D-N.Y.), chairman of a
House narcotics subcommittee
and the House's leading expert
on Burma-Thailand opium pro-
duction.
It has been submitted to the
House Foreign Affairs Commis-
tee in a secret subcommittee re-
port, signed by Wolff, Rep. Mor-
gan Murphy (D-Ill.) and Rep. J.
Herbert Burke (R-Fla.).
A similar offer was rejected
by the U.S. government in Au-
gust, 1972.
Footnote: When a forest fire
was reported near Nixon's Cali-
fornia residence in the 1960s,
CIA agents close to Golytsyn
thought at first that the KGB
might have caused it. A CIA
spokesman had no comment on
Golytsyn's disclosures.

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Attachment ICivil Action No. 75-1448CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

The Honorable Walter F. Mondale
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1978.

During 1978, 4,172 requests for access to records were logged and put into processing by the Agency, of which 1,608 were handled under the Freedom of Information Act. An additional 1,055 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity during 1978, including Privacy Act and Executive order mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. The figures on requests carried over from 1977 have been adjusted from those reported last year in order to conform with the data contained in our automated log.

	<u>FOIA</u>	<u>PA</u>	<u>EO</u>	<u>Totals</u>	<u>(1)</u>
Workload					
Cases carried over from 1977	762	1227	130	2119	(33.68)
Cases logged during 1978	1608	2136	428	4172	(66.32)
Totals:	<u>2370</u>	<u>3363</u>	<u>558</u>	<u>6291</u>	
Actions taken					
Granted in full	175	179	85	439	(12.14)
Granted in part	315	568	105	988	(27.32)
Denied in full	128	121	25	274	(7.58)
No records found	325	1155	1	1481	(40.95)
No CIA records found	7	72	0	79	(2.18)
Referred elsewhere	29	1	6	36	(1.00)
Canceled	223	33	5	261	(7.22)
Withdrawn	21	6	0	27	(.75)
Early appeal	22	1	0	23	(.64)
Early litigation	9	0	0	9	(.25)
Totals:	<u>1254</u>	<u>2136</u>	<u>227</u>	<u>3617</u>	
Cases carried over to 1979	1116	1227	331	2674	
Increase in backlog	354	0	201	555	(26.19)

Exhibit B

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff :

v.

: CIVIL ACTION 75-1448

GENERAL SERVICES
ADMINISTRATION,

Defendant :

FILED

JUL 14 1980

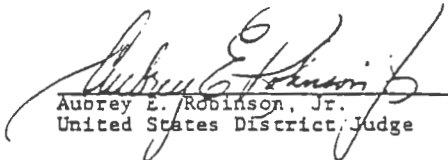
ORDER

JAMES F. DAVEY, CLERK

This matter is before the Court on plaintiff's motion for an award of attorneys fees and other litigation costs pursuant to 5 U.S.C. §552(a)(4)(E). The Court has reviewed plaintiff's motion, the opposition thereto, plaintiff's reply and additional filings by both parties, and is familiar with the entire record herein.

In this action plaintiff sought disclosure of three Warren Commission executive session transcripts. Defendant was initially granted summary judgment with respect to all three transcripts. However, while this case was pending on appeal and for reasons unrelated to this litigation, defendant disclosed two of the three transcripts to plaintiff. Upon the record herein this Court finds that plaintiff has not "substantially prevailed" within the meaning of 5 U.S.C. §552(a)(4)(E), and therefore, it is by the Court this 14th day of July, 1980,

ORDERED, that plaintiff's motion be and hereby is DENIED.


Audrey E. Robinson, Jr.
United States District Judge

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In addition to the above, the Agency, as in the past, responded to numerous other requests from members of the public for copies of unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies with responsibility for the distribution of such CIA products.

Although the number of formal requests levied upon the Agency decreased by nearly 13.9 percent when compared with the previous year, the number of new Freedom of Information requests, which tend to be the most difficult to process, showed an increase of more than 28.4 percent (356 cases) over 1977. The Agency expended manpower resources equivalent to 116.6 employees working full-time in processing Freedom of Information and related requests, appeals, and litigation. However, despite this augmented effort, the initial processing backlog grew during the year by 555 cases and the appeals backlog increased by 87 cases. In no small part, the growth of our processing backlogs can be attributed to the increasing demands placed upon the Agency by litigation arising out of these requests. This burden will be worsened in the future as a consequence of a recent opinion by the U.S. Court of Appeals for the District of Columbia (Ellen L. Ray and William H. Schaap v. Stansfield Turner), which requires that federal agencies describe in considerable detail, on a deletion-by-deletion basis (as opposed to a document-by-document basis), the nature of the material being withheld and the legal justification for its denial. Henceforth, even more of our available manpower resources will have to be diverted to work on litigation aspects, and, unless the request and appeal volumes decline, we can anticipate further increases in our backlogs and even less timely responses.

The factors which have made the processing of Freedom of Information and similar requests a burdensome and time-consuming matter for the Agency have been explained in some detail in previous reports. Our decentralized files, the frequent need for intra- or interagency coordination, and the urgent requirement that sensitive records be reviewed carefully by successive levels of experts have made it impossible in almost all instances for the Agency to comply with statutory deadlines. To be fair to all, we follow a general policy of first-in, first-out in handling both requests and appeals, and our processing backlogs are such that the deadlines have usually elapsed long before a specific request or appeal has reached the top of the queue.

We have developed an active training and information program in an attempt to improve skills and productivity. Moreover, during the past year a systems study was conducted within the Agency which, utilizing data from the automated request log to create a computer model of the overall process, sought to identify bottlenecks and other problem areas and to devise possible solutions. The recommendations are currently under study. Given the compartmented nature of our systems of records--which is essential to the maintenance of security--and the damage to the national security which could result if intelligence sources and methods

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,
Defendant

Civil Action No. 75-1448

AFFIDAVIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and
say as follows:


1. I am attorney for plaintiff in the above-entitled case.
2. On Thursday, July 24, 1980, I telephoned Mr. Harold Weis-
berg in regard to his affidavit of July 21, 1980, which is being
filed in support of a motion for reconsideration in this case.

Upon my reading him the first sentence of paragraph 5 of his affi-
davit, he immediately commented that it was in error. To correct
the typographical omission that was made, I have inserted the
words "of consequence" after the word "nothing" and added my ini-
tials.


JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 24th day of July,
1980.


NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires My Commission Expires August 31, 1984.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

V.

GENERAL SERVICES ADMINISTRATION,

- Defendant.
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Civil Action No. 75-1448
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AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland. I am the plaintiff in this instant cause.

1. The CIA represents that it disclosed the two Warren Commission executive session transcripts to me - at the very time the brief was due at the appeals court - because the content was included in a considerable amount of information it declassified for and disclosed to the House Select Committee on Assassinations. The CIA represents that for these reasons it could no longer withhold them.

2. If these representations were true, as my prior affidavits state they are not, then there is much other information the CIA should have disclosed to me under information requests going back for a decade. In fact, I have not received a single piece of paper from the CIA since its alleged declassifications and disclosures. I have not even received a letter indicating that records were being processed and would be disclosed to me in response to a number of requests to which information given to the House committee is pertinent.

3. The CIA has disclosed to other requesters information that is within my earlier requests but it has not provided me with that information, not even after it was disclosed to others.

4. That the CIA has disclosed information to others does not mean that I can or will get it without suing for it, as the two preceding paragraphs reflect. For years I have obtained nothing from the CIA except under compulsion.

5. In my C.A. 77-1997, in which I sought information pertaining to the assassination of Dr. Martin Luther King, Jr., I received nothing ^{of consequence} from the CIA until

after I filed suit. It did not act on referrals by the FBI (also pertinent in another case) until after I filed suit. Even then it did not produce records until the time of a calendar call.

6. The most recent of my experiences referred to in Paragraphs 2-4 above, that the CIA does not provide me with copies of what it discloses to others, is included in my January 29, 1980, affidavit, in which I refer to Mark Allen's suit for a single CIA record. Allen also received nothing but typical CIA stonewalling until he was before the appeals court. The CIA then made partial disclosure of that one record. Examination of what it disclosed, as my uncontradicted affidavit states, reveals that the CIA withheld information that was in the public domain before the CIA withheld it. In the half year since that partial disclosure to Allen, the CIA has not provided me with any copy of what it disclosed to him, although that information is within several of my requests.

7. When the CIA stonewalled my broad request for information pertaining to the assassination of President Kennedy, about which I have published six books, and I desired certain information for further study and writing, I made a separate request for its information pertaining to Lee Harvey Oswald in Mexico. Under date of August 23, 1976, the CIA acknowledged receipt of that request. In that same letter it acknowledged that there was duplication between my request and Allen's. Nonetheless, in a half year, it has not provided me with the information it disclosed to Allen.

8. The CIA has disclosed information within my requests to others without disclosing it to me.

9. The CIA has not disputed my representation that it provided to one Edward J. Epstein information that I had requested earlier and it did not provide to me. After Epstein's publication I renewed my request and the CIA still did not comply. I then filed a separate request, limited to the records it had already processed and disclosed to Epstein, but the CIA still did not provide me with copies of that information, which it had already processed and disclosed.

10. Although the CIA refuses to provide me with what it disclosed to Epstein despite my prior request, that information now appears in another book, titled Conspiracy, by Anthony Summers.

11. In general, this is the CIA record with me. My oldest request that has not been complied with dates to the first of 1971. I renewed it after the amending of FOIA. The CIA assigned a new sequential number to it rather than treating it as the earlier request it is. That number is P-75-4927, meaning that it was then treated not as the 1971 request but as the 4927th request of 1975. However, in the ensuing five years the CIA still has not complied with that request. Its number for my broad request for information pertaining to the assassination of President Kennedy is P-76-6669. I have heard nothing from the CIA about this in many years. It is a request that includes what the CIA disclosed to the House committee. Similarly, my Yuri Nosenko request (P-75-4765) is pertinent in this instant cause. It seeks information the CIA represents it declassified and disclosed because of what it revealed to the committee. Contrary to its representations, I have received nothing from the CIA pursuant to that request. Other requests with which the CIA has not complied and which include information the CIA attests it has released because of its disclosures to the committee have its numbers P-76-219, P-76-405 and P-76-437.

12. The foregoing does not represent all my pertinent requests. I merely cite from a single CIA acknowledgment of some under date of August 5, 1976.

13. The CIA's record with me is clear: It does nothing without compulsion, not even when it indicates to a court that it will act promptly.

14. My request of the CIA for information pertaining to the assassination of Dr. King has its number P-76-382. Three months ago it acknowledged in another court that it has and withheld a record of but three pages, to which its attention had been drawn by referral back from the FBI. (The FBI's referral was three years earlier.) The CIA provided the FBI with an affidavit attesting that it was then processing those three pages. Since then I have heard nothing.

15. Unlike others who are better known, like Mark Lane, and those who combine in conspiracy-oriented organizations, I am not one who theorizes conspiracies. My work, which is the most extensive in the field, focuses on the functioning of government agencies in time of great stress. It is embarrassing to agencies that failed to function as well as the country could have expected them to perform. Because my work is at once embarrassing and at the same time accurate, I am singled out for special discrimination and special efforts are made to frustrate my work.

For example, I have several FBI records in which it is stated explicitly that I and my writing must be stopped, and that to this end my information requests would not be complied with. The FBI used the word "stop." I have a CIA record in which it acknowledges having records it did not provide to an official processing one of my information requests. Even when its own general counsel asked for records pertaining to me, the CIA denied having such records and then, inadvertently, provided me directly with a record that states on its face that it had been withheld from the CIA's general counsel. It also states where other withheld records are.

16. This practice is not limited to the CIA. Other agencies, embarrassed by my writing and unable to cite any serious error in it, have disclosed to others what I also requested without providing me with copies. These include the Department of Justice and its FBI, General Services Administration and its National Archives, and the Secret Service.

17. My uncontradicted affidavits state that this is not the only case in which withheld information was not provided until the matter was before the court of appeals. Subsequent to my prior affidavits, I received from a Department of Justice component a record in which the lawyers actually state that they should moot a case after oral argument before the appeals court by providing the information that had been withheld for years.

18. If the CIA's representations in this instant matter had been made in good faith, the CIA would have provided me with copies of the pertinent information it attests to having revealed, its basis for claiming it disclosed the two transcripts for reasons having nothing to do with this instant cause. But in fact, as I state above, I have received nothing from the CIA, not even a letter making a promise of later and belated compliance.

19. At the October 17, 1979, calendar call the Court reflected awareness of the actuality, that I am required to sue to get any compliance from the CIA, in its following statements:

There wasn't any doubt that there was a stonewall as far as Mr. Weisberg was concerned with respect to these transcripts. (page 12, lines 21-23)

I understand that, but that is just the point I am making: Mr. Weisberg had to sue. You were not going to give him any portion of it for that reason, isn't that correct? (page 13, lines 18-21)

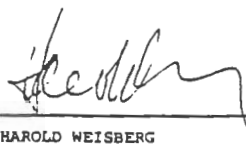
That is exactly right, so Mr. Weisberg had to sue. He had to sue long before that. (page 14, lines 1-2)

I don't think you understand what I am saying. Point one is that from the very beginning, the government's position had never changed up until the time that it went before the House Subcommittee that he was not entitled to this information, and that is what this Court held. So then, in that sense, Mr. Weisberg had to sue because the government contended he wasn't entitled to any of them. That is point one, the litigation was necessary in that sense. (page 14, lines 8-16)

That is the second point you are making (to government counsel). Point one is that the litigation was necessary. You can't deny that. At no time did the government say they were going to give him any portion of those transcripts, at no time. (Government counsel agreed, "Correct," as she did also with what the Court then stated, "In that sense, it is correct ...") Now, there came a time, the government contends step two: that his action was not the primary motive for the government eventually giving him the two transcripts. That is the second point you make. ... Over a period of time, there wouldn't be any necessity. But the Act doesn't work that way. The Act doesn't say, Well, look, you can get a request and you can sit around and wait long enough so that the information is meaningless. So if we can stonewall somebody for ten or fifteen years, then we will give him the whole thing; but the Act doesn't work that way. There will come a time when all this stuff is just down the drain. The next generation won't care ... (page 14, line 24, to page 15, line 25)

That is not the way the Act works. Certainly, a lot of this stuff will be declassified. In the Year 2050, most of it; but the Act doesn't work that way. No. It is today that they are entitled to it under the existing statute. (page 16, lines 8-12)

Well, (to my counsel) you are never going to get anything but conclusory and vague affidavits out of them when they start talking about national security ... That is why we go through the process of waning it down and ultimately get into in camera inspections and, even then, they can snow you. (page 28, lines 13-18)


HAROLD WEISBERG



FREDERICK COUNTY, MARYLAND

Before me this 21st day of July 1980 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true. My commission expires July 1, 1982.


Lillian Weisberg
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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ATTACHMENT 1

C. A. 75-1448

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 75-1996

AFFIDAVIT

GERALD L. LIEBENAU, being first duly sworn, does hereby
depose and say:

1. I am the Information Review Officer for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). I am responsible for the review of DO documents which are the object of Freedom of Information Act (FOIA) litigation involving the CIA. I make the following statements based upon my knowledge, upon information made available to me in my official capacity and upon advice of the CIA Office of General Counsel.

2. The purpose of this affidavit is to advise plaintiff and the Court regarding CIA's FOIA determinations on ten documents. They are CIA-originated documents retrieved by the Federal Bureau of Investigation (FBI) from its records in response to plaintiff's FOIA request for documents on Martin Luther King, Jr. and James Earl Ray. During the same period, plaintiff Weisberg was also engaged in litigation with the CIA in this district (Weisberg v. CIA, Civil Action No. 77-1997) concerning the FOIA request for documents about the same two individuals in CIA records. Nine of the ten documents retrieved from the FBI files were dealt with in

plaintiff Weisberg's litigation with CIA. They are discussed in the affidavit of Robert E. Owen of 25 May 1978 and identified in the Document Disposition Index which accompanied the affidavit as Document Nos. 224, 250, 251, 277, 279, 284, 285, 326 and 327.

3. Available records do not establish what disposition was made of the tenth document, an informal three-page biographic statement, stamped Secret, concerning one individual apparently received by the FBI from the CIA on 17 April 1968. The document is currently being reviewed for possible release under FOIA to plaintiff Weisberg, who will be advised directly of the determinations.

Gerald L. Liebenau
GERALD L. LIEBENAU

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) ss.

Subscribed and sworn to before me this 20th day of April 1980.

Richard B. Johnson
Notary Public

My commission expires: June 14, 1983

Attachment 2

C. A. 75-1448

C. A. 77-1997
EXHIBIT 8

at. 12, Frederick, Md. 21/01
3/1/78

Mr. Gene Wilson, FOIA/PA Coordinator
VIA
Washington, D.C. 20505

Dear Mr. Wilson,

Thank you for your letter of yesterday and the four cartons of records, both of which came today. I'm surprised at. Thanks you also for your apology for what you do not exaggerate in describing as your "inordinate delay in responding."

But I do remind you that although this is a two-year delay it is not your record in FOIA/PA matters with me. I await compliance with a 1/11 request.

Because I did not expect this I do not have enough money in the bank to cover a \$1,435.70 check. As soon as possible I will arrange to be able to give you a check.

If my letters have reached you personally you are aware that I have requested a waiver under the provisions of the statute which permit that as a matter of administrative action. I meant this to cover all my requests, as I believe I said.

However, I do assure you of a check after I hear from you following your receipt of this letter. By then I will have had a chance to speak to my lawyer, "in -ear, who is out of town for the rest of this week. I'll be in Washington on the 7th for a status call in as FOIA case and will be able to speak with him then.

It would be much more convenient for me if you would agree to postpone payment until there is a final decision on the request for a waiver.

I do not recall what I have told you about this, in general. I have mailed all these records to a university in the middle of the country and have made some available as I have been able to. The delay in compliance, which is not exactly as you now represent, has been reaching me at a time when I cannot even look at them for a long time. And as a matter of practice I make all my records available to others. On this particular subject this includes one who cannot even repay me the cost of making the copies. He has a proper interest in them and I have sent him copies of everything I've received, not just what I have received from you. There are other considerations, including my present situation and condition. If you require more than you have please let me know.

As you will know before you receive this I have just recently written you about another of your "inordinate" delays, one that again gives another an "exclusion" on what I requested earlier and did not receive. In that case it is Edward J. Epstein, of a syncretistic record.

There are by now a large number of requests and a large number of appeals and other reminders and no compliance as a result of them. This reduces my choices to two: accepting what I cannot accept or litigating the matters. I would much prefer voluntary compliance. If I do not have some dependable assurance of it by the time Mr. "ear can file a suit I will be seeking relief from the courts. I believe that I have asked you for an accounting of the status of these requests and appeals without receiving it. I hope you will provide one promptly. For whatever it is worth to you I report that on its own and after some recent court experience (a news account of one of which I enclose) the Department of Justice has and taken to list all my requests and appeals. The result seems to be surprising to the person doing it.

Sincerely,

Harold Weisberg

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff :

v.

CIVIL ACTION NO. 75-1448

GENERAL SERVICES
ADMINISTRATION,

Defendant :

FILED

SEP 3 1980

ORDER

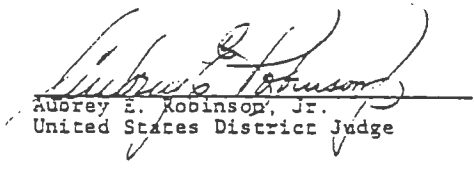
JAMES F. DAVEY, Clerk

Upon consideration of plaintiff's motion for reconsideration, defendant having failed to file opposition thereto, and the entire record herein, it is by the Court this 3rd day of September, 1980,

ORDERED, that plaintiff's motion be, and hereby is, GRANTED; and it is

FURTHER ORDERED, that this Court's Order of July 14, 1980, is VACATED; and it is

FURTHER ORDERED, that this Court's ORDER of October 17, 1979, is VACATED, and that plaintiff may commence discovery proceedings on the issue of whether the two transcripts released to him while this case was pending on appeal were released for reasons unrelated to this litigation.


Audrey E. Robinson, Jr.
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

RECEIVED

OCT 27 1980

NOTICE OF FILING

JAMES F. DAVEY, Clerk

Comes now the plaintiff, Mr. Harold Weisberg, and gives notice of the filing of the following three documents:

(1) March 23, 1978 letter from Mr. Gene F. Wilson to Mr. Harold Weisberg;

(2) March 23, 1978 letter from Mr. Harold Weisberg to Mr. Gene F. Wilson;

(3) March 26, 1978 letter from Mr. Harold Weisberg to Mr. Gene F. Wilson.

Plaintiff submits these letters to the Court because they rebut the Government's attempt to deceive the Court as to the facts regarding a \$1400 duplication fee for records relating to the CIA's involvement in testing and research on mind control drugs.

On March 1, 1978, plaintiff Weisberg wrote the CIA in regard to this \$1400 duplication fee. (A copy of his March 1 letter is attached to his reply to defendant's motion for reconsideration.) He requested postponement of payment of the duplication fee "until there is a final decision on the request for a waiver." (Emphasis added) In the meantime, the CIA had obtained a \$500 deposit from Weisberg in connection with his request for records pertaining to Dr. Martin Luther King, Jr., Dr. King's assassination, and James Earl Ray. (The \$500 deposit extorted from Weisberg--for a total of 488 pages of documents--was one-half of the CIA's alleged estimate of the actual costs.) On March 20, 1980, the CIA wrote Weis-

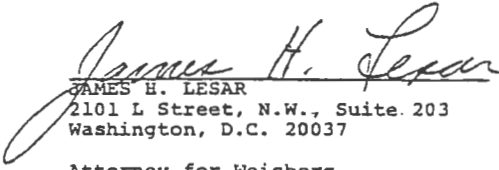
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berg that he could either apply this \$500 to defray the costs of copying the documents on Dr. King, or he could apply it against the \$1400 fee for duplication of the CIA's mind control records. Treating the CIA's letter as a denial of his fee waiver request, Weisberg promptly appealed it. (See attached March 23, 1980 letter from Weisberg to Gene F. Wilson.)

To the best of Weisberg's knowledge and recollection, the CIA has not to this date acted upon his appeal of its denial of his fee waiver request. Accordingly, there has not been a final decision on that issue. It is still pending.

The CIA's lack of candor on this matter is another reason for requiring that its declarations be subjected to cross-examination under oath and the appropriate discovery of relevant records.

Respectfully submitted,


JAMES H. LESAR

2101 L Street, N.W., Suite 203
Washington, D.C. 20037

Attorney for Weisberg

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of October, 1980, hand-delivered a copy of the foregoing Notice of Filing to the Office of Ms. Patricia J. Kenney, United States Courthouse, Washington, D.C. 20001.


JAMES H. LESAR

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

23 MAR 1978

Mr. Harold Weisberg
Route 12
Frederick, MD 21701

Dear Mr. Weisberg:

This is in reference to our letter of 20 March 1978 wherein we advised you that search fees were being waived in connection with the processing of your request concerning the Rev. Martin Luther King, Jr., and James Earl Ray. We have reviewed the matter further and are able to provide you with the following details which may be of help to you.

Our records indicate that we have already released 488 pages of material in response to that request. The cost of providing you retention copies at 10¢ per page amounted to \$48.80. You may, therefore, choose to apply your \$500 deposit against that amount, and the cost of future releases on this subject. On the other hand, you may also choose to apply the balance against the cost, \$1,435.70, of providing you copies of 14,357 pages of released materials in response to your request concerning this Agency's involvement in drug and behavioral research. You may, of course, also choose to pay separately, and in that case we will be prepared to refund the \$500 deposit to you.

Sincerely,

Charles F. Wilson

Gene F. Wilson
Information and Privacy Coordinator

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Rt. 1st, Frederick, Md. 21701
3/26/78

Mr. Gene Wilson, FOL/FA Coordinator
CIA
Washington, D.C. 20505

Dear Mr. Wilson,

Although I see no need for you to have written your letter of 3/23/78 I respond.

With regard to the King/Key request, that matter is currently before a court, you knew and I also reminded you.

Your refusal to comply over so long a period of time, your refusal to respond to letters and other such official conduct forced me to place this matter before the courts. Until I did you stonewalled. On my part I prefer to avoid anything that can be misinterpreted relating to the processes of the court. Unless advised otherwise by Mr. Jim Lesar, to whom I have been sending copies of your letters and my responses, I believe that doing anything further about your belated proposal is inappropriate for me. If there is anything you might want to raise with him in addressable 910 16 : NW, Suite 600, 20006.

You also make some suggestions with regard to the 14,357 pages you withheld from me for so inordinately long. In this you ignore the written assurances I had offered you. In addition, you ignore the fact that I appealed your rejection of my request for a waiver of all costs, under the provisions of the Act. Prior to making any such suggestions I believe it was incumbent upon you to make a formal decision on my appeal and to provide me with written, specific reasons if you rubber-stamped yourself, a not uncommon official practice.

While I can take your suggestions with regard to these 14,357 pages as your decision because it so crudely ignores my appeal I believe I am entitled to specifics with regard to any negative determination and that there should be an adequate record in the event I take a negative decision to court.

You also shift your ground with regard to the King/Key records. It was, as I tell you, my recollection that your demand for a \$400 deposit included estimated search charges. You had written me that you never charged me for any searches. You now seek to interpret your letter as one wherein I advised you that search fees were being waived in connection with it. While I can understand your reluctance to face the fact that you extorted more than 10 times the costs of \$48.00 as a precondition when to me I have always paid you promptly I believe that any effort to create a false record is a matter that is before a federal court is inappropriate and unbecoming of the government.

I remind you still again that you have not responded to my repeated requests for a statement of the status of each and every one of my requests. And the appeals. These matters are now as much as ever than seven years past date of compliance as stated in the Act.

Sincerely,

Harold Weisberg

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Rt. 12, Frederick, Md. 21701
5/23/78

Mr. Gene Wilson
FOIA/Pa Coordinator
CIA
Washington, D.C. 20505 FOIA appeal

Dear Mr. Wilson,

Your letter of 5/20/78 is a refusal for my request for a waiver of all charges in either the drug and related materials request or in all my requests. For your language I am not certain that you intended addressing all of them.

It will be easier for both of us if I interpret it as including all my requests and appeal this refusal with regard to all of them.

Perhaps my recollection is incorrect but it is my recollection that your estimate in the drug case of \$1,000 in costs included both search and copying. It is in this case that you asked me I want you \$500.

Although you do not refer to it my recollection is that this matter is not before a federal court. I therefore will do nothing about that \$500 until there is a judicial determination or perhaps some agreement between the CIA and my lawyer.

Your letter does not state that you have considered my request in the light of the Act and its relevant provisions. It also does not state that I represent that I meet the standards for the waiver. However, I did cite the Act and I did represent that I do meet the standards. Whatever your purposes were I want to make this clear in this record between us. I also want to make clear that your letter does not cite the standards, if any, by which you "considered" my request.

Unless, of course, you meant "It would be unfair to/other requesters..."

You are concerned about unfairness? You have provided to others who made their requests following mine what you did not provide in response to my requests. What you sent me most recently was under a request of long ago. You simply stopped providing the records as they were released to others. Most recently you provided some to a still a requester. In pausing time after refusing to send them you did apologize.

I regard your use of "unfairness" as I regard your decision - as arbitrary and capricious.

Sincerely,

Harold Wisberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

OCT 29 1980

JAMES F. DAVEY, Clerk

.....
HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.
.....

Civil Action No. 75-1448

AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff in this case. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland.

1. For a month beginning in mid-September I was hospitalized for two operations. I am severely limited in what I can do. It now is not possible for me to make any real file searches.

2. In Defendant's Reply to Plaintiff's Opposition filed October 16, 1980, it is alleged that my prior affidavits are untruthful and that I have undertaken to mislead the Court in other ways. These representations are not in accord with fact and are refuted by a written record that defendant does not produce. These misrepresentations have the clear purpose of seeking to deceive and prejudice the Court.

3. It is alleged (pages 3 and 4) that "plaintiff's statement under oath that he gets information from the CIA 'under compulsion' after bringing suit is not true" (sic) because, allegedly, "plaintiff overlooked the thousands of pages of documents which he obtained from the CIA without compulsion in connection with requests (sic) for information relating to the Kennedy assassination and certain drug experiments." (This falls short of stating that the original requests were mine.)

4. These misrepresentations are followed by further misrepresentations,

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alleging an unpaid bill and "Plaintiff does not deny that he has failed to pay his bill. Plaintiff admits it."

5. Attached to and described in my prior affidavits are proofs of a number of information requests I made of the CIA going back to 1971. The CIA does not claim to have complied with these requests and almost without exception they are not complied with.

6. What government counsel fails to state to the Court is that the records referred to, pertaining to the assassination of President Kennedy and the CIA's toying with minds, were not disclosed pursuant to my request. In fact, they were not. The CIA, in writing and repeatedly, refused to comply with my information requests pertaining to the assassination of the President, on the ground that it was making general releases. It also has refused to continue with its general releases. It suspended them several years ago and since then has provided what has not been truthful promises about when what remains withheld would be disclosed. As of the time of the appeals court hearing in this instant matter, when I asked CIA house counsel when I could expect further JFK assassination records, his response was that "green lights are flashing all over the place." Those lights may have been flashing in anticipation of Christmas, but there have been no further disclosures.

7. Not even those records that the CIA claims it cannot withhold because of its disclosures to the House Select Committee on Assassinations have been provided - after about two years.

8. With regard to the CIA's mind-bending and other abuses of humans in the name of national security, those records were provided to another litigant, John Marks. In his book about that matter which I have read, Marks states that he was stonewalled by the CIA until he engaged counsel. In no sense was as little as a single piece of paper on this subject disclosed as a result of my FOIA request.

9. My interest does not coincide with that of Marks. My original request was based on the CIA's representation of the extent of those records and, in fact, I paid for the first of those records that were provided. But as is not uncommon for the CIA, even when it speaks through the mouth of its Director, its public

representations are not truthful. With regard to the total extent of these records and with regard to their alleged earlier destruction, its and his statements were enormously inaccurate. This misled me and others with regard to their cost. I could not begin to pay for what the CIA finally admitted was the total extent of these records. Had I known this to begin with, I would not have sought copies or I would have begun with the fee-waiver request.

10. Government counsel attaches the CIA's letter to me of March 20, 1978, suggesting thereby that it is full and complete. The CIA knows full well that it is not. The CIA wrote me further three days later and I responded immediately. My response has been ignored by the CIA for more than two years. It is my appeal from the CIA's refusal to waive fees, exactly as I earlier informed the Court the CIA also refuses to act on my appeals.

11. My prior affidavits list my personal FOIA requests with which I stated the CIA had not complied. Since those affidavits were filed, the CIA has not complied with any one of those requests. It has not informed me when I might expect compliance. It has not acted on my appeals, including for the fee waiver, whose prerequisites I believe I meet and another court has held I meet. (See also Paragraph 7 above.)

12. I do not mean to suggest that the CIA always provides me with information it provides to others. It does not and it has not. Related by subject matter to this instant case are my information requests pertaining to Yuri Nosenko. My first request was prior to that of the sycophant Edward J. Epstein. After he wrote of being provided with information by the CIA under FOIA, subsequent to my ignored request, I filed an additional request with the CIA, for copies of what it had disclosed. After two years or more, the CIA has not complied with that request, which is limited to what it had already processed and disclosed.


HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 28th day of October 1980 Deponent Harold Weisberg
has appeared and signed this affidavit, first having sworn that the statements
made therein are true.

My commission expires July 1, 1982.



Lillian Weisberg

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff :

v.

CIVIL ACTION 75-1448

GENERAL SERVICES
ADMINISTRATION,

Defendant :

FILED

OCT 30 1980

ORDER

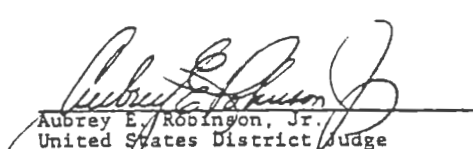
JAMES F. DAVEY, Clerk

Upon consideration of Defendant's Motion for Re-consideration of the Court's Ruling on Plaintiff's Motion for Reconsideration and the entire record herein, it is by the Court this 30th day of October, 1980,

ORDERED, that Defendant's Motion be, and hereby is, GRANTED; and it is

FURTHER ORDERED, that this Court's Order of September 3, 1980 is VACATED; and it is

FURTHER ORDERED, that this Court's Orders of July 14, 1980 and October 19, 1979 be, and hereby are, REINSTATED; and in effect as they were prior to September 3, 1980.


Aubrey E. Robinson, Jr.
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINIS-
TRATION,

Defendant

Civil Action No. 75-1448

RECEIVED

DEC 29 1980

NOTICE OF APPEAL

JAMES F. DAVEY, Clerk

Notice is hereby given this 29th day of December, 1980, that HAROLD WEISBERG, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order denying plaintiff's motion for reconsideration entered in this action on the 5th day of November, 1980, and from the Court's orders of October 17, 1979, and July 14, 1980.

James H. Lesar
JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

CLERK: Please mail copies of the above Notice of Appeal to:

Patricia J. Kenney
Assistant United States Attorney
United States Courthouse
Washington, D.C. 20001

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