

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

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

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff-appellant in this instant cause.

1. My prior experience includes that of investigative reporter, investigator and editor for the United States Senate and intelligence analyst. As an intelligence analyst I was authorized to classify records at the "Secret" level.

2. I have read Defendant-Appellee's Motion for Partial Dismissal dated October 16, 1978 (hereinafter the Motion), and its attached letters, of October 13, 1978, by Acting Archivist of the United States James E. O'Neill and of October 11, 1978, by CIA General Counsel Anthony A. Lapham. I also have read the previously withheld Warren Commission executive session transcripts, 10 pages of the transcript of January 21, 1964, and the entire transcript of June 23, 1964.

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

4. Having read the transcripts in question, based on my knowledge and experience I state that there never was any possibility of disclosure of any intelligence source or method because the only content that could possibly have

been referred to is not and never has been secret. This is obtaining information from defectors.

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

6. On the same basis and from having read countless tens of thousands of pages of formerly withheld pages of information relating to the official investigation of the assassination of President Kennedy, including many thousands of pages of CIA records, and from extensive personal experience in Freedom of Information Act (the Act) matters, including litigation involving the Defendant-Appellee, the CIA, the Department of Justice and the FBI, I state that there is no content in either record that was withheld for any purpose other than withholding it from the American people and to avoid the certainty of official embarrassment if these records were to obtain any extensive public attention.

7. Because this and other information was improperly withheld, it was not possible for me to present what I know about the information to the district court or to this Court before now.

8. Improper CIA practice in this instant cause is duplicated in another cause (C.A. 77-1997) in which I seek other public information from the CIA. This other improperly withheld information includes the location of CIA stations the existence of which is public knowledge. The false claim made to withhold this information is that any official acknowledgment of the existence of these stations would be embarrassing to the governments of the countries in which they are located and thus would endanger United States "national security."

9. The Motion states (at page 5) that the CIA presented John Hart to the House Select Committee on Assassinations (hereinafter the Committee) as the official

CIA representative and as an expert, for the purpose of public testimony, on September 15, 1978.

10. The Hart testimony was broadcast. I heard that broadcast. When Hart was introduced and accredited by the Committee, as the Committee's press package states (at page 6), he was described as "a career agent with the CIA" who "held the position of Chief of Station in Korea, Thailand, Morocco and Vietnam ..."

11. This constitutes an official CIA acknowledgment of having stations in these four countries under circumstances that, to the CIA's knowledge, would receive and did receive extensive international attention.

12. This therefore proves that the prior sworn representations to the contrary by CIA representatives in C.A. 77-1997 were falsely sworn and were knowingly pretextual for purposes that are not in accord with the language and intent of the Act. This illustration of CIA false representation is typical of my experiences with the CIA in FOIA matters and throughout this instant cause.

13. The Motion represents (at page 5) that "the CIA conducted a classification review" of these transcripts because of the Hart testimony and a month after that testimony informed the Department of Justice that it "no longer deemed it appropriate to withhold the transcripts."

14. Having read the two dozen pages in question, I state that declassification review does not require a month and that with a case in court the time required for such a review, if any, is a matter of minutes, not a matter of a month.

15. Because of what I state in the preceding paragraph and because the CIA has a long record of untruthful representations, including under oath and in this instant cause, I attach proof of steps I personally took after the Hart testimony. This may explain or contribute to an explanation of other inspiration for the release of these transcripts that have been denied to me throughout the decade of my effort to obtain them and since 1975 in this instant cause.



16. I have separate FOIA requests filed with the Defendant-Appellée, the FBI and the CIA for the information these agencies withheld from me but provided to another despite my prior requests, as set forth in the addendum I filed with this Court on February 22, 1978. These three requests have been rejected. I have appealed these rejections.

17. Under date of September 17, 1978, I provided further information to Quinlan J. Shea, Department of Justice Director of FOIA/PA appeals, including information relating to these transcripts in question. (Exhibit 1A). Exhibits 17 and 12 of my prior affidavit in this instant cause set forth the impropriety of the withholdings and called the Department's attention to its prior policy decision in violation of the Act, to withhold Warren Commission executive session transcripts from me without specifying any exemption and for clearly political purposes. (Exhibits 1B and 1C)

18. In response, on October 5, 1978, Exhibits 1A, 1B and 1C were forwarded to the Director of the Department's Office of Information Law and Policy. (Exhibit 2) That Office was asked to provide copies of relevant records of the Freedom of Information Committee and the Office of Legal Counsel.

19. The production of records reflecting extralegal reasons for withholding such transcripts from me is certain to be embarrassing to the Department, which is also counsel in this instant cause.

20. Under date of October 3, 1978, I wrote Archivist James B. Rhoads, whose agency is part of Defendant-Appellee General Services Administration (GSA). (Exhibit 3) The first information request I renewed was for public information he had been denying me for 12 years. This information had been televised a month earlier during the Committee's September hearings. More than the 10 days of the Act have passed without any acknowledgment of the renewed request reaching me.

21. Next I called to his attention the fact that some withheld Nosenko



information also had been publicized by the Committee. I stated, "I believe that this requires you to reconsider your previous denials and I ask it." In the third paragraph I requested "reconsideration of the withholding of" the Nosenko transcript. (Inadvertently I gave the wrong date but in a subsequent paragraph did make accurate identification.)

22. I called to his attention the provisions of what is known as a "letter agreement" between GSA and the representative of the executors of the estate of President Kennedy. This agreement prohibits public display of the President's bloody clothing under any circumstances. Because the Archivist and GSA permitted public display and national televising of the bloody clothing, I asked for a copy of any amendment to the letter agreement under which such display is not prohibited. I reminded him that he had gone to court to deny me clear photographs of this clothing for my study. (Utterly incompetenet photographs were provided to the Warren Commission by the FBI. The Commission printed only unclear and distorted photographs. In my C.A. 2569-70, the Archivist told that court that under the letter agreement he could not provide me with prints of any pictures but that he would have photographs made for me.) I reminded him also that he had refused to permit the photographs taken for me to be presented to the court in C.A. 75-226. I renewed my requests relating to all the foregoing matters. These requests also remain totally ignored.

23. In the concluding paragraph, where I identified the Nosenko transcript accurately, I stated that one of those in the CIA who had caused this transcript to be withheld had told a reporter "that while the transcript could not be properly withheld as classified this claim was hoked up so that there could be withholding the CIA desired for entirely different purposes." I also reminded him that he is a classification expert and "ask that you personally review these transcripts that are withheld on claim to classification to determine that the claim is warranted."

24. I concluded with what I believe has great bearing on the present disclosure of these transcripts, "I remind you that there soon will be oral argument in this matter before the court of appeals." I believe it is the inherent threat that I would call this Court's attention to new proofs that the withholdings were unjustified and were for political purposes, as well as the fact of the CIA's official disclosures at the telecast hearings of the Committee, that impelled the present disclosure of these long-withheld transcripts.

25. From the foregoing it is apparent that I called Defendant-Appellee's and the Department's attention to the consequences of continuing to withhold these transcripts after the CIA disclosures before the Committee.

26. There is still another misrepresentation and attempt to deceive and mislead this Court in the Motion and in the CIA's Lapham letter of October 11, 1978.

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

28. On page 5 of the Motion, in Paragraph 10, it is stated that "On September 15, 1978, the House Committee on Assassinations summarized a report ... submitted to the agency for prior clearance. The Director of Central Intelligence reviewed the report within two days of receipt and agreed to declassify the draft. The Director also made Mr. John Hart, an expert in Soviet Intelligence and counter-intelligence, available to testify before the Committee."

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

complaint in this instant cause. I know of no development in the past three years that in any way altered the significance or meaning of the content of these transcripts.

30. What the Motion does not tell this Court is that for a long time, certainly more than a years, the CIA was aware of the fact of the Committee's interest in disclosing information relating to Nosenko and the content of the Warren Commission executive sessions. This is not a matter that came to the attention of the CIA on September 15, 1978, and not before then, the implication of the Motion.

31. There is misrepresentation and intent to mislead in the Motion's formulation, "The Director also made Mr. John Hart ... available to testify ...". This gives the impression that Hart, a CIA "expert in Soviet intelligence and counter-intelligence," was on the job at the CIA and as part of his regular, on-going duties was "available to testify before the Committee." The facts are to the contrary.

32. Hart had retired from the CIA after 24 years of service. Long before September 15, 1978, he was recalled by the CIA in anticipation of the September 15 testimony.

33. In his testimony Hart described months of searching, research and personal investigation. He recounted reading, rereading and comparing contradictory reports of many hundreds of pages each, even of searching out a CIA official's handwritten thinking-aloud about Nosenko. (This deputy chief of a CIA Soviet Union division is one who contemplated what the CIA describes in this instant cause as "model" treatment. His "model" treatment ranged from inflicting brain and mind damage to permanent psychiatric institutionalization to killing Nosenko and leaving no trace of the assassination or the body.

34. During the long period of Hart's inquiries, searching of CIA files and



and interviewing of CIA personnel, there was never a time, from the very first moment, when it was not known that he would be making extensive disclosures relating to defectors and Nosenko. From the very outset it also was known to the CIA that the content of these transcripts was at most an insignificant part of the coming Hart testimony. It thus was known to the CIA from the very first moment, from even before it recalled Hart from retirement, that it would be making public disclosure of what it was withholding in these transcripts. During all this long time, the CIA was persisting in falsely sworn statements in this instant cause to perpetuate withholding them from me and from the meaning I as a subject expert could give them. (Some of this follows.)

35. At the cited point on page 5 the Motion states that "a partial transcript" of the Hart testimony is attached. I heard not part of the Hart testimony but all of it. (The Committee has not responded to my request for the full transcript or the Nosenko report referred to although this report was made available to the press.)

36. Based on careful attention to the Hart testimony and prior and detailed knowledge of this matter, I state that most of his testimony related to the CIA's treatment of Nosenko, which in this instant cause is not relevant. Nosenko's treatment is not mentioned in these two previously withheld transcripts. (The nature of the CIA's treatment of Nosenko was not unknown.) The possibly relevant portion of Hart's testimony also was not secret. This relates to the credibility of what Nosenko said about Lee Harvey Oswald, the only accused assassin of the President. What Nosenko told the FBI about this was not classified but GSA withheld it nonetheless until early 1975, when I obtained copies. Relevant Warren Commission staff papers were not properly classified because the Commission neither had nor sought authority to classify.

37. As one of many available proofs of what has been in the public domain

relating to the Commission and Nosenko, I attach as Exhibit 4 the Commission staff memorandum titled "Yuri Ivanovich Nosenko." Although this is dated the day after the Nosenko executive session, there is no reference to that executive session in it.

38. Having read the transcript and this and other Commission staff reports, I state that there is no information in the transcript relating to Nosenko that is not in the staff reports.

39. The staff report that is Exhibit 4 was declassified on April 7, 1975. This one of many available records establishes that GSA and the CIA have known from prior to the filing of my complaint in this instant cause and all during the time both were making false representations to the district court that both were withholding what was already within the public domain. Yet it was the month after "declassification" of Exhibit 4 that the two transcripts were reclassified.

40. Having read the Nosenko transcript, I state further that it holds no information relating to him that was not made available to Edward J. Epstein for his book Legend, his magazine articles and interviews and his extensive use on nationwide TV and other forums. This is to say that for all or virtually all of the time GSA and CIA were withholding this transcript from the district court and from me the identical information and much more had been made available to Epstein, who published it prior to the time I informed this Court of it in February 1978. Despite this, GSA, the CIA and the Department and its counsel continued to withhold this transcript and continued to make misleading and deceptive statements to courts to accomplish this improper withholding. (The foregoing statements apply to the January 21, 1964, or "defector" transcript, also.)

41. The only content of either of these two transcripts that might be alleged to be subject to classification is not properly classified. This relates to the use of those who defect from an intelligence agency by the intelligence

agency to which they defect. There is no possibility of the "disclosure" of an "intelligence source or method" in this because it has been common practice for as long as there have been intelligence agencies.

42. With regard to the names of defectors and any information they provide, there is no secrecy from the intelligence service from which there was defection. It knows that all its defected personnel know and much more. It assumes that they disclosed to the agency to which they defected all they know. The defector's only alternative is to risk Nosenko's long and barbarous abuse and what was considered for him thereafter, psychological torture or assassination.

43. Nosenko did not possess all of the KGB's knowledge of Lee Harvey Oswald, as he testified to the Committee. (He also provided to the Committee an affidavit I have read along with the Committee's summary of what he told it, the CIA's accounting of the services he rendered it and its payments to him for this service going back to 1962.) There were seven or eight KGB volumes relating to Oswald and various surveillances on him and their fruit. Nosenko testified that, during the brief period after the President was assassinated when he had possession of these volumes, he had time for only a skimming of the first half of the first volume.

44. The only secrecy with regard to Nosenko and what he knew of what the KGB knew about Oswald is what the CIA withholds from the American people. The KGB knows this and more.

45. With regard to the seven or eight KGB volumes relating to Oswald, I state that I have read the questions the CIA proposed having the State Department address to the Government of the USSR and that I recall no CIA request or recommendation that these volumes be provided to the United States Government. Rather were the CIA's questions drawn in a manner calculated to give offense, cause resentment and discourage cooperativeness. The State Department and the Commission did not approve them. In all the many thousands of pages of Warren



Commission records I have and have read, I recall no single page in which the Commission was informed about these KGB volumes by the CIA.

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

47. It was the duty and obligation of the CIA to inform and counsel the Warren Commission wisely and fully. In not informing the Commission about these existing volumes of KGB records relating to Oswald, the CIA failed in its duties and obligations, making the failure in itself highly suspect.

48. Having read both previously withheld transcripts, I state that the actual reason for withholding them is an effort to prevent embarrassment and to hide the fact that the CIA virtually intimidated and terrified the Warren Commission. It misinformed and misled the Commission to avoid what was embarrassing to the CIA. It was in part to make such matters comprehensible that I earlier provided information and records that may have appeared not to be relevant but which are relevant and now are more relevant with what as a subject expert I perceive in these transcripts.

49. Because I was denied discovery and live testimony, I took the only road not barricaded.

50. The previously withheld ten pages of the January 21 transcript are attached as Exhibit 5. The purpose of the discussion, in the words of the Chairman (on page 64), is consideration of a CIA offer of assistance: "they would like to have us give them certain of our records so that they can show them to some of

their people, namely a couple of persons who have defected from Soviet Russia." Commission General Counsel J. Lee Rankin described the expertise of these former KGB intelligence experts (on page 66): "one was in Vienna and one was in Finland and fairly high up in the KGB." He added, with no omission in direct quotation, "The material they (i.e., the CIA) have in mind is nothing that is really classified ... material that Oswald wrote himself ... diary, letters and things of that kind..." what "could mean a good deal to a man who is" a former Soviet intelligence expert who had been "fairly high up" in it. "It is nothing that normally would be classified," Rankin added. (page 66) Former CIA Director Allen Dulles described the information as what the Commission would publish. (page 68). In fact, it was published in facsimile by the Commission. Within a few days of this discussion, some of it was leaked in a commercial venture involving about \$25,000 and a fixing of the national mind and attitudes toward Oswald.

51. This was the month before Nosenko defected. At that time the CIA was being helpful. It recommended that an official request be presented to the Soviet Government through the State Department. (pages 65ff.) It offered to use its KGB defectors for such purposes as looking for any kind of code in Oswald's writings. Dulles personally endorsed these defectors - before Nosenko defected - in these words: "... they have been working very closely with us, one has been working six or seven years and one about two years."

52. The Commission paranoia that borders on the irrational and is, I believe, one of the actual reasons for the withholding of these transcripts, was expressed by the Chairman (on page 64). Speaking of unclassified information and what the Commission was going to publish, he wondered aloud about "whether we should do that," meaning let the defected KGB experts examine the unsecret and unclassified material, "without taking some very careful precautions ..." His reason, suppose these two should redefect or "turn out to be counter-intelligence agents." So, "I myself

question the advisability of showing these records to any defector."

53. Soon thereafter "these records" were published in facsimile in Life magazine and extensively in many newspapers.

54. General Counsel Rankin, who had already described "these records" as not classified or classifiable, sought to reassure the Commission with regard to the Chairman's uneasiness: "... the CIA people say they couldn't hardly defect back again without being in plenty of trouble and they don't believe there is any prospect and they also say that when they have anything like that they have had plenty of notice in advance ... but they think that they could be very helpful because they can interpret these materials and suggest inquiries that we should make to the Soviet ..." (pages 64-5)

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

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

57. That mature and responsible men could be so terrified of a nonexistent shadow - that a Presidential Commission investigating the assassination of a President could be rendered so impotent by irrationalities and impossibilities -



is an unusual glimpse of the inside, but it is not properly subject to classification, never was and contains no "security" secrets.

58. In all the pages of the various CIA, CSA and Department of Justice filings in this cause, there is no statement that the use of defectors by intelligence agencies is an unknown "intelligence source or method." Specifically, there is no representation that this is a CIA secret. There is no claim that it is subject to classification at any level. It is on pretextual and generalized allegations that this case has been so long-drawn-out and my rights under the Act denied and frustrated. The reason there is no such specific representation is that the CIA is well aware that I would prove it to be false swearing. The reasons for this include the CIA's own prior disclosure to me of its use of KGB defectors in precisely the manner it recommended to the Warren Commission.

59. In partial and limited compliance with an older information request, I received these kinds of records from the CIA. One in particular is a record it had made available to the Rockefeller Commission. Earlier it was given to the FBI, under date of December 16, 1963. When the records of which this is part were provided to me, these pages (attached as Exhibit 6) were withheld. Under date of November 1, 1975, the CIA explained this withholding from me: "we were victimized by the reproduction process in which two pages were somehow left out of Documents 413-76A and 513-199B responsive to your request number F-75-6669." (Attached as Exhibit 7)

60. The first two sentences of CIA Deputy Director Helms' letter to the Director of the FBI reads: "Attached for your perusal are the written comments of a Soviet defector (obliterated) on some aspects of the assassination of President Kennedy. As you know (obliterated) defected from the (obliterated) about ten years ago."

61. Contrary to the CIA's representations in this instant cause, this

record bears neither a classification stamp nor indication of the withholding of any classification stamp.

62. Directions for the routing of copies, mostly withheld, do not include the Warren Commission.

63. If the fact of use of information obtained from Soviet defectors was ever classified or subject to classification, this record and the covering letter to me establish that from prior disclosure to me three years ago the CIA itself revealed the information. I believe this means that any CIA or GSA representation to the contrary or any claim to classification or to need to withhold from alleged fear of disclosing "intelligence sources and methods" is a fraudulent misrepresentation.

64. It is well known that Anatoli Golitsin is a Soviet KGB defector. His name fits the spaces in Exhibit 6 from which the typing is obliterated. The space in Exhibit 6 for the place from which the defector defected fits "Finland," from which one of the two defectors the CIA wanted to provide "information" to the Warren Commission did defect. The time of defection approximates the above-quoted Dulles representation.

65. As I informed this Court in February 1978, the CIA had abundant reason from Epstein's earlier writing and sycophancy to expect him to write as it liked. It provided him with information it refused (and still refuses) to provide to me under my prior information requests.

66. It now appears that the CIA's spoonfeeding of Epstein includes what was withheld from the January 21 transcript as well as that of June 23.

67. On page 27 of Legend (Exhibit 8) he identifies Golitsin by name and by the code name of "Stone," both sworn to be secrets that the CIA claims in court it is required to withhold.

68. Within my experience the withholding of the names of defectors is not

the practice of the FBI. It also has the responsibility of protecting legitimate intelligence sources and methods. The first record of the content that I found in a spot check of my files is page 41 of the Commission file identified as CD 49. (Attached as Exhibit 9) As can be seen, the fact that Peter S. Derjabin is "an admitted former Soviet intelligence officer" is neither classified nor withheld by the FBI nor is the fact that he was an FBI source. (The release of his testimony before the Senate Internal Security Committee is reported in a Los Angeles Times story printed in the Washington Post of November 22, 1965. This also dates his defection as in 1955. Three days earlier the Post carried his column-long letter headed "Penkovsky Papers Defended." His name is Anglicized to Peter Deriabin. The first sentence of his letter discloses his CIA connection: "As the translator of The Penkovsky Papers ..." Naturally enough, he defends the authenticity of the manuscript it has since been established he and the CIA created.)

69. According to Epstein, Golitsin "defected to the CIA from Helsinki, Finland" with the rank of "a major in the First Chief Directorate of the KGB." This conforms to the description of the defector whose name is withheld from page 66 of the January 21 transcript, "fairly high up in the KGB."

70. While the dating provided by Epstein, "six months before Nosenko's contact" with the CIA in 1962, does not conform to the ten-year time in the Helms to Hoover memo (Exhibit 6), it is Dulles' "about two years" time for the second KGB defector.

71. If the Committee's narration introducing its Nosenko day of testimony is correct, there were only two KGB defectors to the CIA. Derjabin is publicly known to be a defector and publicly known to serve the CIA. This is established by published accounts that he "edited" the Penkovsky papers and by his 1965 testimony about the KGB, which was published by the Senate Internal Security Committee. The published time of his defection conforms with the earlier one Dulles reported.

72. There is no certainty that Golitsin and Derjabin are the two defectors



over whom, allegedly, the CIA withheld the January 21 transcript. The readily available public information strongly suggests they are. Whether or not these are those two, the fact that this and more is publicly available about them, including their use by the United States, means that on this basis alone the claim to be protecting "intelligence sources and methods" by the withholding is spurious. Then, of course, the KGB is only too aware of its defections. What is withheld is not withheld from the KGB.

73. Golitsin argues in accord with the pretext of the CIA's ultras that Nosenko had been dispatched by the KGB to "disinform" about Oswald and the assassination of the President. The political preconceptions and prejudices presented as impartial "analysis" in Exhibit 6 coincide with the views, indeed the campaign attributed to Golitsin.

74. Those who espoused these beliefs and subjected Nosenko to the unprecedented mistreatment the CIA itself described through its official spokesman Hart as the worst thing he had heard of about the CIA and as subhuman were James Jesus Angleton, who was Counterintelligence chief under Deputy Director and later Director Helms, and the deputy chief of the Soviet section. (Hart did not provide his name. It was reported in the press as Pete Bagley.) Information about Golitsin provided by Nosenko is described by Epstein, for whom Angleton was a major source, as "inconclusive and essentially irrelevant." (page 261, attached as Exhibit 10)

75. The doubt created about Nosenko's bona fides by those who had other than dispassionate reasons for creating this doubt permeates the transcript of June 23. It accounts for the failure of the Warren Commission to question Nosenko or to use the information he provided to the FBI as investigatory leads. Without any evidence and contrary to the available evidence, these political paranoids believed that Oswald was a KGB agent sent back to the United States to assassinate the President. Epstein, pretending otherwise, says the same thing in the book the CIA made possible for him. (Transcript attached as Exhibit 10-A)

76. Examination of the June 23 transcript discloses no classified or classifiable information and no information not long within the public domain, except for the successes of the CIA in terrifying the members of the Commission into irrational fears and an avoidance of their responsibility to investigate fully the assassination of the President.

77. The transcript begins (page 7641) with indication there was prior discussion regarded as requiring even more security than the original "TOP SECRET" classification:

(Members present: Chief Justice Warren and Representative Ford.)  
The Chairman. On the record.

78. At this point Ford appears to be resuming what was discussed earlier, his account of having just received "a number" of lengthy staff papers and that in one of "about 170 some pages - in the first 120 or 130 pages, I noticed at least 10 references, as I recall, to Mr. Mesenko's views." (Throughout the name is misspelled.)

79. In his speech that continues almost without interruption for four pages, Ford also said about Nosenko, "nor have I seen any F.B.I. or C.I.A. reports on him." This means that not fewer than three FBI reports were not provided to a member of the Commission.

80. Mr. Ford did not provide his sources to the Chairman/Chief Justice in stating, "I have been led to believe, by people who I believe know, that there is a grave question about the reliability of Mr. Mesenko being a bona fide defector."

81. Ford was determined that the Commission make no use of any information provided by Nosenko even if the information were proven to be accurate:

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

(The transcript reflects that at this point Dulles entered the room.)

82. Ford stated the Angleton/Bagley view from within the CIA, "that Mr. Mesenko could very well be a plant" for "other reasons" as well as "for the Oswald case." He conceived that this would be "a very easy thing for the Soviet Union." He stated with judicial impartiality in this period prior to the beginning of any Commission investigation or the taking of its first testimony that one reason would be "to extricate themselves from any implication in the assassination." (page 7641)

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

But for us to ignore the fact that an agency of the Government has a man who says he knows something about Oswald's life in the Soviet Union, we ought to say something about it - either say we are not in a position to say it is reliable, it may develop that he was or wasn't reliable. But for us just to ignore the fact, when we know somebody in the Government has information from a person who was in Russia and who alleges he knows something about Oswald would be unfortunate. (page 7648)

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

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



86. Rankin then stated that this "is one of the things that I inquired into, in trying to find out from the C.I.A., as to whether or not he might have been planted for the purposes of furnishing this information ... Mr. Coleman and Mr. Slawson ... assured me that he had been what they called 'dangled before them,' before the assassination occurred, for several months." (pages 4649-50)

87. This is factually incorrect, an error Ford reenforced immediately: "It is my best recollection that he was actually a defector some time in December." Nosenko was working for the CIA inside the Soviet Union beginning in 1962. He then stated firmly that he would never defect and leave his family behind. His actual defection, not "dangled" but entirely unexpected, was in February 1964, which is after, not before the assassination. (page 7650)

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

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

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

91. Despite the fact that Nosenko's name was public, Helms did not want it used. He phoned Rankin just a few minutes prior to this "top secret" executive session to discuss Nosenko. Rankin told the Commission, "I just received a call from Mr. Helms ... he learned that we even had papers that the Commissioners were

looking at. And Mr. Helms said that he thought that it shouldn't even be circulated to the Commissioners, for fear it might get out, about the name Nosenko, and what we received." (emphasis added, pages 7645-6)

92. If there was any Commission Indignation, it will have to be read into the Chairman's words, "Well, that name has been in the papers, hasn't it?"

93. Helms also had a proposal for the Commission as an alternative to performing its duty to investigate leads. In Rankin's words, "And he said would it help if Mr. McCone sent a letter to the Chief Justice as Chairman of the Commission asking that no reference to Mesenko be used. And I said, 'I think that would be helpful to the Commission,' because then the Commission would have this position of the CIA on record ..." (pages 7645-6. John McCone was then Director of Central Intelligence.)

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

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

95. Without any CIA incriminating letter in the Commission's files, this is precisely what happened. It began almost as soon as the FBI arranged for Nosenko to testify before the Commission. It was accomplished in a redraft of the "Foreign Conspiracy" part of the Commission's Report that was written and retyped before July 17, 1964, as the staff memorandum attached as Exhibit 11 establishes. The editing was by Howard Willens, a respected lawyer who then was on loan to the Commission from the Department of Justice. He was not assigned to the "foreign conspiracy" team. This memorandum is from the junior member of that team to its senior member, later a Cabinet member in the Nixon and Ford administrations. W. David Slawson informed William T. Coleman that "all references to the 'secret Soviet Union source' have been omitted."

96. "Eliminated" is more accurate than "omitted" because this part of the Report had been written with Nosenko included. Ford's objection on the very first page included reference to Nosenko as "the basis upon which these statements are included in the proposed draft."

97. None of the information in this transcript is or has been secret. This information also is public in available Commission records and in some books.

98. As early as March 12, 1964, a few days after the FBI arranged for Nosenko to testify, Helms and two CIA associates had already begun to talk the Commission out of any Nosenko interest. All reference to this was suppressed until July 11, 1973, when Exhibit 12 was made available. Most of this excision was restored on January 24, 1975, (Exhibit 13) thus disclosing for the first time the CIA's "recommendation ... that the Commission await further developments" on Nosenko. This "recommendation" does not appear to qualify for "TOP SECRET" withholding.

99. These exhibits also establish that years after the CIA concluded that Nosenko was a legitimate defector, was employing him and paid him a king's ransom, the CIA was making a "national security" claim for information that does no more than report the beginning of its successful effort to influence the content of the Commission's work and Report.

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

101. What concerned the Angletonian wing of the CIA and caused all the commotion over Nosenko is their political concoction, not intelligence analysis, that Nosenko had been dispatched by the Soviet Union to plant "disinformation" about Oswald, an alleged KGB involvement with him and the possibility that the



KGB was responsible for the assassination through Oswald.

102. Aside from the conditions of Nosenko's three years of CIA solitary confinement, the only subject about which Hart was questioned before the Committee is whether or not Nosenko was dependable. When what is totally omitted in all of this is considered (see paragraph 107 below), there is, I believe, a reasonable question of whether history would have been different if these transcripts and still withheld related information had not been withheld from me.

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

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

105. The CIA's major interest, which became the Committee's major interest, was in purging itself of the abusive and unconstitutional way in which it had conducted its "model" treatment of Nosenko. While it is not easy to stretch or twist this to fit a legislative purpose limited to inquiry into the assassination

of President Kennedy, the Committee glowed in scare headlines and the CIA pulled a large and successful diversion, as will be stated in what follows. (see paragraph 107)

106. The CIA also used this forum and the nationwide attention it received to make unequivocal its official, anti-Angleton conclusion of almost a decade ago, that Nosenko was an authentic defector and a dependable intelligence expert. In fact, it has paid him for services rendered during the past 12 years. It employs him today as a consultant at a salary of \$35,327.00 a year. The data it provided to the Committee and the Committee released does not tabulate all Nosenko received. Congressman Harold Sawyer estimated that it was about a half-million dollars, including allowances, salaries and benefits.

107. With Nosenko's dependability firmly, officially and expensively established, neither the CIA witnesses nor the Committee alluded to other and totally ignored information Nosenko gave the FBI, the opposite of Oswald as a KGB operative - the KGB suspicion that Oswald was an "American agent in place," also known as a "sleeper agent."

108. There also is no reference to the suspicion that Oswald was an American agent in the June 23 transcript. So that the Court may know some of what was readily available to the Commission in 1964, to the Committee in 1978, and the CIA still withholds from me, I attach two of the FBI's reports as Exhibits 14 and 15.

109. As is shown in Exhibit 4, the staff memorandum of the day after the Nosenko executive session, the Commission's January paranoia was partly overcome and "Nosenko was shown certain portions of our file on Oswald." (page 2, final paragraph) Nosenko told the Commission that Oswald's support from the USSR Red Cross, of 90 rubles a month, "was probably the minimum." (emphasis in original)

110. Nosenko did not represent to the Commission that he had examined the entire KGB file. He made it clear that he was not aware of the results of all

surveillances on Oswald in the USSR. (Exhibit 4, page 3)

111. Rather than having no intelligence estimate of Oswald, this staff memo states that the KGB obtained its information by a number of means without subjecting the suspected Oswald to a formal interrogation. A formal KGB questioning would have told Oswald he was suspected. It would not be a normal practice if he were to be watched as a suspect without being told that he was under suspicion. The Commission staff report discloses how the KGB formed its appraisal of Oswald: "The KGB in Moscow, after analyzing Oswald through various interviews and confidential informants, determined that Oswald was of no use to them and that he appeared 'somewhat abnormal.'" (emphasis added, from page 3)

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

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

114. In the many assassination mythologies, Marina Oswald's uncle's local militia job has been converted into his having a significant KGB intelligence rank.

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

116. In my first and third books I go into detail, again from what was made



public by the Commission, about Oswald's anti-Soviet and anti-U.S. Communist writing. In his notes, later published by the Commission, Oswald berated the Russians as "fat stinking politicians." The American Communists he declared had "betrayed the working class." His favorite book was the anti-Communist classic, George Orwell's The Animal Farm.

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

118. It is in this context that other facts require examination for what I believe is relevant, motive for the unjustified withholding of this transcript from me and the misrepresentation and false swearing employed to accomplish the end that now, from examination of the transcript, can be seen is not a proper end.

119. The CIA officials who were in a liaison role with the Warren Commission were not of its intelligence component. They were from Plans, the Helms dirty-works or operational part. The Angleton Counterintelligence Staff, under Helms, handled most of it. It is one of these people who told the reporter cited above that spurious claims were made to withhold this transcript merely because the CIA wanted to withhold it and despite the fact that no exemption applied. These are the same people who "reviewed" these transcripts and directed GSA to withhold them.

120. Those who created doubts about Nosenko and are responsible for the

"model" treatment he received and its exceptionally long duration are Angleton and Bagley, Deputy Chief of the Soviet Russia function, according to the testimony of the CIA's official spokesman, Hart.

121. If Oswald had been serving an American intelligence interest, as former CIA Director Dulles told his fellow Warren Commissioners, the USSR is not within the FBI's jurisdiction and is within the jurisdiction of the CIA.

122. This was in the formerly "Top Secret" transcript of the January 27, 1964, executive session, the one referred to in Exhibits 1 and 2. That transcript also was classified and withheld from me by false representation about its "security" nature until the case was scheduled to go before this Court, when it was given to me as an alternative after GSA prevailed before the district court. It was at this session that Dulles described false swearing as CIA patriotism. Once again, when it was possible to examine the transcript, there was nothing in it that qualified for classification and there was much in it that was embarrassing to the CIA and to Commissioner Ford, who then was also House Minority Leader.

123. The foregoing information can be arranged in another manner to reflect motive for withholding these transcripts when they did not qualify for withholding and were required to be released to me:

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

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

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

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

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

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

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

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

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

10. When there was no official investigation and when for a decade I tried to obtain these records, the same CIA people who are responsible for the catalogue of horrors tabulated above succeeded in withholding these records, including the two transcripts involved in this instant cause, because these same people also were the CIA's "reviewing" authority.

11. This is to say that the CIA people who may have pasts and records to hide are those who were able to misuse FOIA and the courts to hide their pasts and records and any possible involvement with the accused assassin Oswald and that the CIA on higher level permitted this.

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

125. The CIA is the country's foremost expert in the fabrication of covers.



The cover story fabricated by those of the motive and record stated above is that the KGB had to misinform the United States about the conspiracy aspect of the assassination. The inference is that, with Oswald having lived in Russia and with Oswald the only official candidate for assassin, the KGB was responsible for the assassination. (The Ford attribution of KGB motive, provided "by people I believe know," is "to extricate themselves from any implication in the assassination.") The cover is diaphanous. If the KGB had been connected with the assassination - and there is no rational basis even for suspecting it from the unquestionable evidence - it still had no need to run the great risk of sending a disinformation agent. The reason is known to subject experts. It should have been known to the Commission and its staff, to the FBI and to the CIA.

✓ 126. The most obvious reason is that the official no-conspiracy conclusion had already been leaked and was never altered.

127. Throughout the entire course of the Warren Commission's life, there was systematic leaking of this lone-nut-assassin, no-conspiracy predetermination. The first major leak was of the report President Johnson ordered the FBI to make before he decided on a Presidential Commission. This report, which is of five bound volumes subsequently identified as Commission Document 1" or CD1, is actually an anti-Oswald diatribe that is virtually barren on the crime itself. This remained secret until after the end of the Commission's life. This report is so devoid of factual content that it does not even mention all the President's known wounds. Nonetheless, especially because of secrecy and Commission complacency, it became the basis of the Commission's ultimate conclusions.

128. The basis conclusions of this five-volume FBI Presidential report were leaked about December 5, 1963. The next day, at a Commission executive session, then Deputy Attorney General Katzenbach told the Commission members that the FBI itself had leaked the no-conspiracy conclusions of its report. The text of this

FBI report did not even reach the Commission until December 9, four days after the leak. The leak, as published, represented the Oswald-alone, no-conspiracy conclusion as the official FBI conclusion.

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

130. But even if the KGB had been responsible for the assassination, from the time of the leak of the FBI's no-conspiracy conclusions, there was no reason the KGB had to believe there would be any other conclusion. There thus was no February need to send a disinformation agent, a project that was at best risky in the extreme when the official "no conspiracy" conclusion had been public knowledge since early December. Nosenko did withstand three years of subhuman abuse in solitary confinement. Despite psychological tortures executed with the incredible attention to detail to which the CIA ultimately confessed in its successful misdirection of the House Committee, Nosenko was shown to be not a KGB disinformation agent but an authentic anti-Soviet defector and an extremely valuable expert on Soviet intelligence. It is not likely that any disinformation agent, anyone not genuinely anti-Soviet and truthful, could have survived this intense and continuous abuse and cross-examination. Any intelligence agency attempting this could expect similar treatment to that accorded Nosenko. It would be tempting almost unimaginable disaster. It would have been the ultimate in foolhardiness and pointlessness.

131. Although the CIA's Nosenko cover story is transparently thin, it succeeded with the terrified Warren Commission in 1964 and it succeeded with the House Committee in 1978. Both totally ignored the lingering unresolved question of Oswald, the only accused assassin of the President, as an American rather than a KGB agent.

132. The self-portrait of the confused, terrified and unreasoning Commission in these two transcripts can perhaps explain its abdication. No such explanation is available for the CIA or the House Committee, which had the largest investigative appropriation in the history of the Congress and was not subject to the pressures that existed at the time of the assassination.

133. This Commission self-portrait, however, is not within any exemption of the Act.

134. CIA misconduct, paranoia and failings also are not within any exemption of the Act.

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

136. As of the time I prepare this affidavit, I am aware that some pages of what I understand is other than the official transcript of the Hart testimony are attached to the Motion. Their content is unknown to me because the government mailed neither the Motion nor these excerpts to me, despite a prior arrangement with the Civil Division and the office of the United States Attorney. I learned of the decision to release these two transcripts when my counsel phoned me to inform me of it on the afternoon of October 16. I asked him to ascertain when and under what conditions. Although the Motion concludes (page 6, Paragraph 13) "copies of the two newly released transcripts will be forwarded to Plaintiff-Appellant as soon as possible," government counsel could not inform my counsel of the time and



conditions of providing copies and, despite a promise to try to call back before the end of the day, did not. I therefore asked my counsel to phone GSA counsel. My counsel then learned that copies would be made generally available, meaning to others as well as to me, at noon the next day. It then was GSA's plan to mail me a copy, whereas others could have earlier access by merely going to the Archives and picking up a copy. Under these conditions I was apprehensive about what is not uncommon in my experience, the misuse of the Act and of releases under the Act for news management. This has become a standard means of misleading the press and the country about information that is politically sensitive and potentially embarrassing to officialdom.

137. I therefore arranged to make personal pickup of the transcripts and to provide copies of them to the press a few hours thereafter, on the afternoon of October 17.

138. My counsel did not receive the mailed copy of the Motion and attachments until October 19. Not having received any copy earlier, he went to the courthouse, obtained a copy of the Motion and mailed it to me on October 18. It reached me for my use in preparing this affidavit on October 19. On that day my counsel also informed me that response is due within a week. This is little time for one who is separated from his counsel by 50 miles and is no longer able to drive his own car that distance. It therefore may be impossible for my counsel to review this affidavit before he must file it. It has been impossible for me to consult with him about each of the points I raise.

139. I understand that Defendant-Appellee's selection from Committee testimony is from the Hart testimony only. The Committee took other relevant testimony, from former CIA Director Helms and from Nicholas Katzenbach, who was Deputy Attorney General at the time of the assassination and was Attorney General when Nosenko was given the CIA's "model" defector treatment.

140. At one point in Katzenbach's testimony he stated that one of the matters about which the CIA consulted him is "suppressing books."

141. I believe this Katzenbach testimony, that the CIA sought the help of the Attorney General in suppressing books, is relevant not only because it is reminiscent of my own past experiences but because what the CIA has done with regard to these Warren Commission transcripts is arrange for their suppression. The CIA contrived false justifications and claims to exemption that it is now apparent were never justified. Its claims, made under oath and through counsel, are baseless. There is no "national security" content in these transcripts. There is no "disclosure" in them of any unknown "intelligence sources and methods."

142. This is consistent with my long and costly experience in seeking public information that officialdom can consider embarrassing. Officials make pretextual claims; provide false and conclusory affidavits; persuade the courts to consider Summary Judgment when, as is inevitable, material facts are and remain in dispute; frustrate discovery and defeat the functioning of the adversary system, which I believe from my experience is essential to the full and accurate informing of the courts; and by these and other means that are possible for those who are well-staffed and immune from prosecution succeed in defeating the purposes of the Act and in making use of the Act for the obtaining of public information prohibitively costly and inordinately burdensome for requesters. Officials have converted the amended Act into an instrument for withholding what the Act requires to be disclosed. (Unjustified delay is a form of withholding and denying.)

143. If it had been public knowledge at the time of the investigation of the assassination of the President that the CIA had, by the devices normally employed by such agencies against enemies, arranged for the Presidential Commission not to conduct a full investigation, there would have been considerable turmoil in the country. If, in addition, it had been known publicly that there was basis for

inquiring into a CIA connection with the accused assassin and that the CIA also had frustrated this, the commotion would have been even greater.

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

145. All of this and other possible consequences and the reforms they might have brought to pass were avoided - frustrated - by the misrepresentations used to suppress these transcripts and to frustrate the purposes of the Act. These purposes include letting the people know what their government is doing and has done so that popular will may be expressed.

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

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



148. From my experience I also believe that when the district courts cannot or do not take testimony, when they do not assure the vigorous functioning of adversary justice and when they entertain Motions for Summary Judgment while material facts are in dispute, the Act is effectively negated. The benefits to the proper working of decent society that accrue to the Act are denied. The cost to any person seeking public information becomes prohibitive. The time required for a writer like me makes writing impossible. (I have one case still not finally decided eight years after the first complaint was filed and another that is without compliance after three years before a district court.)

149. While in my efforts I am handicapped by lack of means, age and the state of my health, I am separated from counsel by only 50 miles. If I were an American living in Alaska or Hawaii or any other remote place and if I had not spent an intensive decade and a half in diligent study, investigation and quest for withheld public information, no matter how young, vigorous or wealthy I might be, it would have been impossible for me to obtain these records or to inform this Court as I have sought to inform it.

150. From my experience what this means is that the executive agencies, which have public information they want to hide and suppress, are able to do this because the district courts have, in effect, permitted them to rewrite the Act, to nullify the adversary system, to commit offenses and be immune from it (as is Briggs in swearing that the unheard-of abuse of Nosenko for three years is "model treatment") and with it all to blot out the cleansing and healing rays of the sun of exposure that the Act can be for the curing of official wrongdoing. Perfection is not a state of man but healing is essential to life. A viable, healthy Act can mean a healthier nation and a government more worthy of public faith and trust.

151. The wrongful purposes of the improper withholding have been accomplished. What has been done cannot be undone. But what the courts can do can discourage

similar future abuses.

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

153. From my subject-matter knowledge, I believe that the May 19 transcript remains withheld from me because of similar impositions upon the district court, which is not a subject expert and denied itself the benefit of expert advice or

guidance. From my subject knowledge I believe that what remains withheld in the May 19 transcript is actually within the public domain save for the precise words used. I believe the actual reason for the withholding is similar to the facts I set forth in this affidavit. In addition, there is the potential for embarrassment of a prominent political personage. The legislative history of the Act is explicit on this - the Act may not be used to withhold what is officially embarrassing.

154. After I prepared this affidavit I received from my counsel a xerox copy of the Motion and attachments as mailed to him. In seeking the description of the Committee "transcript," which I found on page 5, the last sentence in Paragraph 10, I noticed that, for whatever and perhaps an innocent reason, this page is not identical with the copy my counsel obtained for me from the Clerk of the Court. The difference is in the top line on this page. In the mailed copy there is a blank space that does not exist in the Court's copy.

155. The language used is "A partial transcript of the hearings (sic) at which the report was summarized and at which Mr. Hart testified is attached to this motion."

156. This is misleading. It is not faithful to fact. It is used to convey the false impression that Hart testified to what is at issue in and over the withholding of the two Commission transcripts. In fact, there is no content in this "transcript" that relates to the January 21 transcript and there is no real relevance to the June 23 transcript. There is no mention of either. With regard to the June 23 transcript, there also is no use of any of its content. There is no direct or indirect disclosure of anything in it that was previously unknown. There are a few general comments it may be hoped the Court will interpret as coming from that session, but this is not so. These few comments come from what was already within the public domain. The actuality is that there is not even a reasonable inference of any relevance of the Hart testimony or the Committee's introduction to it to



either of the Commission transcripts.

157. While the Motion does not state any purpose for which this "transcript" is attached, the sense in which it is used is to lead the Court to believe that this "transcript" confirms the fact of relevant Hart disclosures that eliminated the alleged need to withhold the two Commission transcripts. This is not in any sense true.

158. Most of what is included in the "transcript" relates to Nosenko's biography and the questioning he underwent during his captivity. Neither is relevant. Neither here nor at the hearing was there reference to the suspicion about Oswald's relations with American intelligence. Hart stated he would not testify to anything related to Oswald and he did not.

159. What is called a "transcript" is only a few words more than one part of the prepared Committee press kit. That part is the previously distributed narration read by chief counsel. Why this is used instead of the readily available Committee press kit I do not know. I do know that it contains considerably less information and had to be purchased, whereas the Committee press kit is a give-away, a freebee.

160. If relevance is imputed to the declassification of the so-called report, that document is not provided. What was said of it, in the "transcript" or at the hearing, bears no relationship to any alleged need to withhold the two Commission transcripts.

161. What the Motion describes as "transcript of the hearings" (sic) is not that at all. It is not a xerox of the transcript by the official reporter, which was available to Defendant-Appellee and counsel. It is not prepared by a court reporter present in the hearing room. It is typed from a tape of the broadcast which at one point caused an omission attributed to "technical" troubles. Rather than "transcript of the hearings," it is a transcript of a radio broadcast. While

this does not mean there is any difference in the content, which is not material in any event, it does give a misleading impression to anyone reading the Motion. Moreover, the pages of "transcript" attached end before Hart's testimony. The last page attached is 11. At this point the Committee was about to take a brief recess "so that we could prepare ourselves for proper questioning" of the testimony Hart had not yet begun to give.

162. In a sense, use of this "transcript" discloses who the real Defendant-Appellee is. The client for whom this "transcript" was made by a commercial service which monitors broadcasts and renders other services is not GSA. It is the CIA. "Public Affairs Staff" is a little-known cover through which for years the CIA has contracted these services while seeming to detach itself from any such interest. In fact, this is one means by which for years the CIA has been accumulating a vast store of transcripts of what Americans think and say.

163. Why the covert-minded could not simply attach the relevant pages of the actual and available official transcript (which would not have been any more relevant) I leave to the spook mind. I believe the accurate description of what is misleadingly described as "transcript of hearings" I provide is relevant to intent. I believe my interpretation of intent is supported by the attempt to mislead the Court into believing that the irrelevancy of this attachment or of what Hart actually did testify to are relevant to the belated release of the transcripts in question when, in fact, they are not. This pretense is but another "Cointelpro" operation, another cover. If it lacks the effectiveness of a piece of tape on a door latch, of two-way radios not in use at the time they were needed, or of a once-fabled red wig and voice-alterator, perhaps this is because the choices were relatively few, given the fact and proofs I set forth in this affidavit.

HAROLD WEISBERG

Before me this 21st day of October 1978 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 1 Jan 1964

NOTARY PUBLIC