

IN THE UNITED STATES COURT OF CLAIMS

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RICHARD C. NAGELL,

Plaintiff,

v.

No. 1-73

THE UNITED STATES,

Defendant.

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff refers to his first amended petition filed on September 4, 1974, and incorporates each and every page and paragraph hereat as if set forth fully, and further amends his petition as follows:

1. At page 9, below paragraph 7, at line 10, insert the following subparagraphs to paragraph 7:

(1) Regarding the aforesaid medical board's recommendation that plaintiff be returned to full military duty, and plaintiff's subsequent return to duty at the CIC School on 11 May 1955, Edwin A. Weinstein, M. D., has testified: "Well, the diagnosis on discharge from Walter Reed Hospital was 'concussion.' Now, I think you have to be familiar somewhat with Army procedure that often the diagnosis is shaped to some degree by the disposition, by what you are going to do with a person. Obviously, you can't make a diagnosis of psychosis and send a person to duty. Now, with a diagnosis of Concus-

1 sion you can send that man to duty; with a diagnosis of post-  
2 traumatic encephalopathy one doesn't send someone to duty, and,  
3 frankly, Nagell sold them a bill of goods about sending him  
4 back to duty."

5  
6 (2) Dr. Weinstein further testified, on 8 June 1964, that had  
7 his diagnosis of post-traumatic encephalopathy been placed in  
8 the Walter Reed Army Hospital file (as distinct from the file  
9 maintained at the Walter Reed Army Institute of Research),  
10 plaintiff would not have been returned to duty upon his release  
11 from the hospital.

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13 2. At page 11, paragraph 11, line 10, following the phrase  
14 "Military Intelligence." insert: "On 22 September 1955, plaintiff  
15 was granted a final type Top Secret security clearance."

16  
17 3. At page 12, below paragraph 11, at line 8, insert the following  
18 subparagraphs to paragraph 11:

19 (1) On 8 June 1964, in response to a query as to whether  
20 plaintiff's facial disfiguration created emotional stress, Dr.  
21 Weinstein testified: "I gather from (one) interview I had with  
22 him at Walter Reed that it would. He at that time (March 1955)  
23 was interested in working as an (CIC) investigator and he  
24 explained to me that that is a handicap in investigation work  
25 to have some readily identifiable personable characteristics,  
26 but then his problem is further complicated by his unwilling-  
27 ness to admit that this is a defect that affects him, so it  
28 was not until 1957 that he actually had some cosmetic surgery."

1 (2) After completing the CIC School, plaintiff's first assign-  
2 ment with the Counter Intelligence Corps was at Los Angeles,  
3 California, from approximately 29 August 1955 to 6 May 1956,  
4 where he was assigned as a CIC investigator (Special Agent)  
5 operating in civilian clothes. For the most part he performed  
6 duties in the field, conducting interviews of civilians,  
7 including relatives, friends and acquaintances of the persons  
8 being investigated. On numerous occasions plaintiff was  
9 hampered in establishing rapport (an integral phase of CIC  
10 investigative principles) with civilian interviewees as a  
11 result of the interviewees questioning him about his facial  
12 disfigurement. Such disfigurement consisted of a wide,  
13 conspicuous, three-inch-long semicircular scar running counter-  
14 clockwise from above the middle of the left eyebrow to the  
15 zygomatic arch below the eye; a partial tarsorrhaphy at the  
16 left lateral lid margin of the left eye that caused a narrowing  
17 of the aperture and a prominent double fold in the upper eyelid  
18 (as distinct from the configuration of the right eye);  
19 paralysis of the left lower eyelid, which became noticeable  
20 when plaintiff blinked his eyes (closure of the left eye could  
21 be effected only upon effort; this defect also precluded  
22 adequate natural lubrication of the eye, resulting in the eye  
23 becoming bloodshot); paralysis of the left upper lip, causing  
24 plaintiff's smile to become twisted when he tried to smile;  
25 depression of the left zygoma and left zygomatic arch, result-  
26 ing in uneven symmetry of the face (plaintiff's right cheek  
27 appeared to be swollen); overlying scar tissue on the left  
28 side of the face extending from the pre-auricular area down to

1 the left jawbone (mandible); depression of the left infra tempor-  
2 al fona with extensive cicatrix in the same region. Plaintiff  
3 also had a tracheotomy scar that became noticeable when his shirt  
4 collar was open. On several occasions plaintiff was refused  
5 entrance to residences because of his facial disfiguration,  
6 despite that he was properly attired, polite in approach, and had  
7 displayed his credentials. In one such instance the occupant  
8 remarked words to the effect that she could not believe that the  
9 Army would "hire" an investigator with plaintiff's degree of  
10 facial disfigurement, and slammed the door shut in his face. On  
11 reporting the incident to his superior officer, Major Keith,  
12 another CIC investigator was dispatched to interview the resident  
13 in plaintiff's stead.

14  
15 (3) The aforementioned encounters were just one example of how  
16 plaintiff's facial disfigurement detracted from his ability to  
17 perform effectively in the field as a CIC investigator. Such  
18 disfigurement also kept him from being used on certain CIC  
19 assignments for which he was otherwise qualified. Consequently,  
20 in early 1956 plaintiff was given a desk job that required little  
21 work and less responsibility, considering his training and rank.  
22 Prior thereto, partly at the suggestion of his superior officer,  
23 plaintiff visited Letterman Army Hospital, Presidio of San  
24 Francisco, where he consulted a plastic surgeon and an ophthal-  
25 mologist to ascertain whether he could obtain cosmetic surgery to  
26 correct some of the defects contributing to his facial disfigure-  
27 ment. The ophthalmologist advised that nothing could be done  
28 about the paralysis of plaintiff's left lower eyelid, that if

1 the partial tarsorrhaphy was removed, the eyelid would droop,  
2 creating a worse cosmetic effect. The plastic surgeon advised  
3 that there was not enough flesh present in the left temporal  
4 region or adjacent to the left eye to correct the semicircular  
5 scar or to cover the cicatrix and the depression of the left  
6 infra temporal fona by plastic surgery. (Two years later, at  
7 Tokyo Army Hospital, the semicircular scar was reduced in width  
8 by a plastic surgeon using a different surgical technique. The  
9 rest of plaintiff's facial disfiguration was never corrected.  
10 In 1959, while at Fort Dix, New Jersey, plaintiff developed an  
11 additional defect that affected his facial appearance, a tic in  
12 the left eye. In 1961, as a civilian, he was referred to in a  
13 written communication as being "cockeyed").

14  
15 (4) Also prior to plaintiff being assigned to the desk job  
16 adduced to in subparagraph 11 (3), above, and chiefly as a conse-  
17 quence of the encounters described in subparagraph 11 (2), but  
18 also because ne had been unsuccessful in obtaining corrective  
19 surgery for his facial disfigurement, plaintiff wrote to the  
20 Department of the Army, requesting overseas assignment in his  
21 primary military occupational speciality (MOS) or return to the  
22 Infantry. As an alternative, he also applied for duty with the  
23 Central Intelligence Agency (CIA). Plaintiff felt that he could  
24 not function properly in the United States in a capacity that  
25 required him to interview civilians at their residences.  
26 Shortly thereafter, plaintiff was officially advised that he  
27 could not be returned to infantry duties as he was tied to an  
28 "obligation tour" with military intelligence, presumably because

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of his language and intelligence training.

(5) Subsequently, by letter dated 5 May 1956, Headquarters, Army Intelligence Center, plaintiff was notified by Major W. R. Joyner, that he was reassigned overseas for duty in MOS 9668 (Area Intelligence Officer) pursuant to Department of the Army Letter Orders dated 23 April 1956. Major Joyner advised that the (then) present officer career planning policy of the Department of the Army was aimed toward broadening the experience of selected officers through diversified assignments, and that plaintiff's selection for such assignment was based on his "fine record and future potential to the service." Major Joyner further advised that plaintiff would retain MOS 9666 (Intelligence Research Officer) as his primary MOS and that he would be eligible for reassignment in his primary MOS upon completion of the assignment (ie: MOS 9666, Intelligence Research Officer, was the cover designation for Counter Intelligence Officer; MOS 9668, Area Intelligence Officer, was the cover designation for Positive Intelligence Officer, that is, a commissioned officer assigned to clandestine espionage duties). Further reference to the letter cited herein, and to Major Joyner, is contained in subparagraph 16 (1).

(6) For approximately one year, from May 1956 to April 1957, plaintiff was assigned to Field Operations Intelligence (FOI) in Japan and the Republic of Korea. FOI was then the clandestine espionage arm of military intelligence. On paper, FOI was subordinate and operationally responsible to the Office of the

1 Assistant Chief of Staff for Intelligence, Department of the  
2 Army. In function, however, FOI was merely an augmentation to  
3 CIA special (military) operations, in effect a covert extension  
4 of CIA policy and activity designed to conceal the true nature of  
5 CIA objectives. A substantial portion of FOI's financial support  
6 came from the CIA, directly or through reimbursement, as did much  
7 of its technological support. A number of FOI operations in  
8 which plaintiff participated or about which he gained knowledge  
9 were closely associated with - if not directed by - the CIA (eg:  
10 the notorious Berlin Tunnel Project, often cited by the news  
11 media as a CIA fiasco, is more accurately described as an FOI  
12 operation sponsored by the CIA).

13  
14 (7) During plaintiff's orientation at the Far East headquarters  
15 of FOI, in Japan, he was ushered into a vault and familiarized  
16 with various tools of the trade, so to speak, including simple  
17 and intricate type weapons furnished agents (as distinct from  
18 Agent Handlers, "case officers" or "control officers") for use in  
19 assassinations and sabotage missions; self-destruction devices  
20 furnished agents who preferred suicide to capture; disguises of  
21 all sorts; miniature recording devices; cameras concealed in  
22 innocuous-appearing objects and standard cameras of German and  
23 Japanese make; radio transmitters and receivers; codebooks; etc.  
24 None of this paraphernalia could be identified as being of  
25 American origin, although plaintiff was advised that some of it  
26 was manufactured in the United States by the CIA's technical  
27 division. The mechanism of one assassination device (purported-  
28 ly already used successfully), a short cylindrical metal tube,

1 was explained to plaintiff in some detail. He was told that he  
2 might come across "this one" in his work. It was at this point  
3 of his orientation that plaintiff's qualms about the moral and  
4 legal aspects of certain peacetime intelligence functions were  
5 revived, misgivings that had first surfaced back at the CIC  
6 School when a civilian instructor attempted to justify one  
7 questionable counter intelligence project by blatantly accusing  
8 news commentators Eric Sevareid and Edward R. Murrow (and other  
9 prominent figures in the news media) of being "dangerous and  
10 well-known Communists" and "witting tools of the international  
11 Communist conspiracy."  
12

13 (8) Also during his orientation in Japan, plaintiff was provid-  
14 ed with various fraudulent "documentation," one item being a  
15 genuine active duty U. S. Armed Forces Identification Card,  
16 No. 5785871, which covered him as "Robert C. Nolan, Captain,  
17 ASN 01438346." Plaintiff was advised that in the event he was  
18 apprehended, killed or compromised during the performance of his  
19 covert (illegal) duties, the Department of the Army would  
20 publicly disclaim any knowledge of or connection with such  
21 duties, or for that matter, with "Captain Nolan," exercising its  
22 "right" of plausible denial. This advisement further intensi-  
23 fied plaintiff's emotional stress.  
24

25 (9) Initially, plaintiff was told that he would operate as an  
26 Agent Handler with the Management Research Detachment (MRD), an  
27 FOI unit engaged in the espionage effort against the Japanese  
28 government. However, when it was determined that he had more



1 potential for the effort in Korea, plaintiff was assigned to  
2 another FOI unit, in the Republic of Korea, referred to hereafter  
3 as "Team 26." Team 26 originally was commanded by Colonel Ned  
4 W. Glenn (true name), later to become the Assistant Chief of  
5 Staff for Intelligence, First U. S. Army, but when plaintiff  
6 joined it, Team 26 was commanded by Lieutenant Colonel Richard  
7 N. Farrell, ASN 0472213 (true name & ASN), whose executive  
8 officer was Major Paul C. Kueber, ASN 01171636 (true name & ASN).  
9 For logistical and administrative support, Team 26 was subordi-  
10 nate to the Army Coordinating Detachment (ACD), another FOI unit  
11 in Korea, commanded by Colonel Herbert E. Eitt (true name), but  
12 for operational purposes it was directly subordinate to the Far  
13 East headquarters of FOI in Japan, commanded by Colonel John B.  
14 Stanley (true name).

15  
16 (10) In addition to its primary function of providing intelli-  
17 gence support to the Headquarters Intelligence Division (HID),  
18 Republic of Korea Army (in itself a violation of the armistice  
19 ending the Korean Conflict), Team 26 was assigned an espionage  
20 mission against the ROK government and other covert activities.  
21 The ingress and egress of FOI agents (as distinct from HID  
22 agents) into North Korea and China (Manchuria) and their debrief-  
23 ings and reports, were handled by Team 25, an FOI unit opera-  
24 tionally subordinate to the ACD. Other FOI agents were launched  
25 to China proper and to the USSR by teams situated on Okinawa and  
26 the Japanese mainland. Some of FOI's Chinese agents were  
27 recruited in Taiwan for training in Japan, but were prohibited  
28 by Japanese law from entering Japan. This ban was circumvented

1 by furnishing the agents with American identification cards  
2 covering them as U. S. Department of the Army civilian employees,  
3 DAC's. Some were furnished U. S. passports in violation of  
4 State Department regulations, though with the connivance of that  
5 agency. By claiming American citizenship, at least one embarrass-  
6 ing incident was avoided when several of these agents went AWOL  
7 from their training facility and were apprehended in Yokohama by  
8 the Japanese police. HID agents that were launched to North  
9 Korea, China (Manchuria) and occasionally to the USSR (Southern  
10 Siberia) were handled by the HID, subject to the approval and  
11 often under the supervision of Team 26. Copies of selected HID  
12 agent reports were turned over to or otherwise obtained by Team  
13 26, translated into English, and forwarded to FOI Far East head-  
14 quarters by courier and other means. Whereas FOI acted as an  
15 organizational cut-out for certain CIA operations, the HID acted  
16 as an organizational cut-out for certain FOI operations. Since  
17 the HID was financed chiefly through FOI, contingent on require-  
18 ments determined at Team 26 headquarters, FOI controlled most HID  
19 operations, the exception being the HID espionage effort against  
20 Japan, which was financed by the ROK government and conducted by  
21 its "C" detachment based on Yando Island. (The HID was the  
22 embryonic predecessor of the present-day ROK Central  
23 Intelligence Agency, which operates worldwide).

24  
25 (11) Plaintiff's primary duties with Team 26 were as the "Senior  
26 Intelligence Advisor" to the HID, First ROK Army (FROKA), another  
27 violation of the Armistice ending the Korean Conflict. These  
28 duties entailed liaison functions between FROKA HID headquarters,

1 four of the HID headquarters at Corps level and Team 26 head-  
2 quarters in Seoul; observing the launching of specified HID  
3 agents from points along the southern boundary of the demilitar-  
4 ized zone (DMZ); supervising the launching of "special" HID  
5 agents through the DMZ; and ensuring that these special agents  
6 were properly equipped and prepared for launching and properly  
7 quartered (in "safehouses"), paid, etc., after completing a  
8 mission, usually, though not always, through a cut-out named Lee  
9 Chung Suk. A Captain MacFarland (true name: McLean) sometimes  
10 acted as liaison with the HID detachment located in the American  
11 I Corps sector. HID boat detachments situated on either coast  
12 were supervised by a Captain Gilbert (true name: Callager) and  
13 a First Lieutenant Tamerlane (true name: Thomas). Most HID  
14 agents that were targeted to North Korea were launched by boat.  
15

16 (12) Although Team 26 operational personnel were officially  
17 instructed not to venture into North Korean waters or land areas,  
18 or into the DMZ, this order was sometimes modified or emphasized  
19 with tongue-in-cheek. Plaintiff entered North Korean territory  
20 on at least three occasions; once past the middle boundary of the  
21 DMZ (on 26 August 1956, in launching an agent coded as Foxtrot  
22 Alpha 1026), once up to the northern boundary of the DMZ to  
23 ensure that three Chinese agents did not sit out their mission  
24 inside the DMZ or double back, and once to accompany a Russian-  
25 speaking Eurasian well past the northern boundary of the DMZ  
26 along a route plaintiff knew well from his experiences during  
27 the Korean Conflict. On these occasions plaintiff carried no  
28 identification and was armed with a Soviet-made PPSH submachine

1 gun.

2

3 (13) During his service with FOI in Korea and during his service  
4 with FOI and the CIC in Japan, FOI sponsored, financed, supported  
5 or otherwise participated in assassinations, kidnappings, black-  
6 mailings and a host of other illicit practices in violation of  
7 U. S. federal statutes, the Uniformed Code of Military Justice,  
8 international law and U. S. treaties. FOI indirectly supported  
9 an HID plan to assassinate ROK President Syngman Rhee on or about  
10 23 October 1956 at Chunchon, Korea, an operation that was aborted  
11 allegedly on FOI insistence the evening before the assassination  
12 was scheduled to take place. Plaintiff was informed that General  
13 Pak Chung Hi (Chung Hee Park), the Commanding General of FROKA,  
14 and currently the President of the Republic of Korea, was the  
15 prime mover in that plot and in an earlier plot on President  
16 Rhee's life in October 1955. Prior thereto, on a Friday in  
17 August 1956, there was an assassination attempt sponsored by the  
18 HID on the life of the ROK Vice President, Chang Myun, in which  
19 as far as plaintiff knew FOI took no part, but about which some  
20 personnel in Team 26 had knowledge prior to Chang Myun being shot  
21 by one Kim Sang Poong. Although Plaintiff was not in Korea at  
22 the time, he later became cognizant by reading a TOP SECRET -  
23 EYES ONLY report that FOI was suspected by the American 30th  
24 Service Battalion (cover designation for the 308th CIC  
25 Detachment) of involvement in the 30 January 1956 assassination  
26 of Major General Kim Chang Yong, the head of the ROK Army Counter  
27 Intelligence, purportedly because of his continued interference  
28 in FOI-HID activities, and notwithstanding the confessions

1 beaten out of Lieutenant Colonel Paik Hak Kyoo, Colonel Huh Tai  
2 Yung and other Second ROK Army officers who were arrested and  
3 tried for the crime.  
4

5 (14) There were less significant assassinations within the  
6 Republic of Korea that plaintiff had definite cause to believe  
7 were sponsored by either FOI or the CIA, but about which he  
8 possessed no direct knowledge. There were less significant  
9 assassinations in North Korea sponsored by both FOI and the HID,  
10 about which he either possessed direct knowledge or gained know-  
11 ledge. There was one murder committed by HID personnel disguised  
12 as ROKA military policemen during an attempted kidnapping in  
13 September 1956 (coded by FOI as "ALBATROSS"), about which plain-  
14 tiff had direct knowledge. (Plaintiff helped provide the cover  
15 story for this operation after it evolved into an incident, which  
16 in turn was fed to the news media through the auspices of the  
17 United Nations Command). There was one murder committed by the  
18 HID in Japan while plaintiff was assigned to the CIC, that of a  
19 Korean resident of Japan, which the Japanese police erroneously  
20 labeled as a suicide. During the same period there was another  
21 murder in Japan, that of an FOI Agent Handler who was handling a  
22 Chinese agent (informant) from Hong Kong, that was perpetrated by  
23 FOI. There were other homicides in which FOI was an accessory by  
24 standards of human decency, if not by law. One such murder that  
25 plaintiff witnessed was the summary execution of a fisherman's  
26 19-year old son (who had been kidnapped from North Korean shores  
27 along with his entire family by one of the HID boat detachments)  
28 when he came to the aid of his father who was being tortured in

1 his presence during a so-called interrogation.

2

3 (15) On one occasion when FOI's source of supply to North  
4 Korean currency was temporarily cut off, the HID counterfeited  
5 such currency under Team 26 supervision, using plates furnished  
6 by FOI, which plaintiff was advised were engraved in the United  
7 States by the U. S. Treasury Department, but which he later had  
8 cause to believe actually were engraved by the CIA's technical  
9 division. The plates were hand-carried to Korea by either  
10 Lieutenant Colonel Farrell or a Major Hightower (true name),  
11 whom plaintiff first met at the Army Intelligence Center. Major  
12 Hightower supervised the project. However, because of a slight  
13 flaw on one of the plates, which in turn showed up on the reverse  
14 side of the bogus notes (notes of 100 Won denomination, at least  
15 one batch of which bore the serial number TL123699), some of  
16 the agents launched to and through North Korea were apprehended.

17

18 (16) Shortly thereafter, plaintiff was instructed by Lieutenant  
19 Colonel Farrell to consult with Lieutenant Chae Hak Mo, the  
20 Commander of FROKA HID, concerning the feasibility of obtaining  
21 genuine North Korean currency by (1) a drug smuggling operation  
22 to be conducted through the DMZ between the HID and North Korean  
23 underworld elements (the drugs, mostly antibiotics, would be  
24 purchased in Japan and furnished by Team 26), (2) an incursion  
25 across the DMZ to Pyongyang by HID personnel and/or agents  
26 disguised as North Korean soldiers to rob a North Korean Army  
27 payroll, and (3) the robbery of a bank at Pyongyang by civilian  
28 agents of the HID. HID headquarters turned down all three

1 proposals, recommending instead a gold-smuggling operation, a  
2 counterproposal that allegedly was turned down at FOI Far East  
3 headquarters because it was felt that the gold would never reach  
4 its destination. Subsequently, the commander of the HID, Lee  
5 Churl Hi, who had made a secret trip to Japan, told plaintiff  
6 that since the HID did most of the "CIA's" (FOI's) "dirty work,"  
7 he felt the matter of trust had become too one-sided, and that as  
8 a consequence of this distrust regarding the gold, the HID might  
9 curtail certain operations (presumably on behalf of FOI) in the  
10 future.

11  
12 (17) On 7 February 1957, plaintiff was assigned to FOI Far East  
13 headquarters in Japan as the Assistant Director of Support. On  
14 3 April 1957, he was reassigned to counter intelligence duties  
15 with the 3d Operations Group (cover designation for the 441st  
16 CIC Group), commanded by Colonel William R. Rainford, ASN 029626,  
17 who immediately debriefed plaintiff on his activities with FOI.  
18 Prior thereto, upon terminating FOI duties, plaintiff had been  
19 required to sign another contract subjecting himself to ten years  
20 imprisonment or a ten thousand dollar fine, or both, if he dis-  
21 closed to unauthorized persons the nature of his duties or other  
22 classified information relating to FOI, including the fact that  
23 an organization like FOI even existed. At the time it was empha-  
24 sized to plaintiff that Colonel Rainford was also deemed to be  
25 an "unauthorized person" within the context of the papers he had  
26 signed, a rather strange advisement plaintiff thought, consider-  
27 ing that Colonel Rainford had helped form FOI and was apprised  
28 of its functions. Nevertheless, plaintiff did not reveal any

1 information to Colonel Rainford or to other CIC personnel about  
2 highly sensitive FOI operations, nor did he reveal such informa-  
3 tion subsequently during a whitewashed investigation conducted  
4 into certain FOI activities by the Office of the Inspector  
5 General and the U. S. Army Intelligence Support Center (USARISC).

6  
7 (18) While assigned to the CIC in Japan, plaintiff's primary  
8 duties were as Administrative Officer, Operations Officer and  
9 Commanding Officer of a CIC detachment; his additional duties  
10 were those of Custodian Evidence Officer, Security Control  
11 Officer, Crypto Security Officer and Top Secret Control Officer.  
12 For approximately three months, beginning in October 1957,  
13 plaintiff was assigned full time to the CIC file depository in  
14 Japan to supervise the review, regrading of security classifica-  
15 tion, and the destruction of thousands of SECRET and TOP SECRET  
16 documents accumulated by the CIC during the years 1945-1957.  
17 Under pressure from the Japanese Diet, the U. S. government had  
18 ordered the disbandment of the CIC in Japan (except for a 34-man  
19 unit destined to be left behind in secret), and all CIC files  
20 were being systematically destroyed after being placed on micro-  
21 film and shipped to the Central Records Facility (now called the  
22 Intelligence Records Repository) in the United States. These  
23 files consisted mainly of Agent Reports, Summaries of Investiga-  
24 tions, Intelligence Summaries, Periodic Intelligence Reports,  
25 individual dossiers (many compiled on U. S. Senators, Congress-  
26 men, newspaper correspondents, American businessmen, tourists,  
27 and other American citizens who had visited or traveled through  
28 Japan over the years) and numerous classified reports originating



1 with the Federal Bureau of Investigation (FBI) and cover organi-  
2 zations of the CIA. It was during this three-month period that  
3 plaintiff gained additional knowledge about illegal American  
4 intelligence operations worldwide. For example, it was during  
5 this assignment that plaintiff came across the TOP SECRET -  
6 EYES ONLY document pertaining to the 1956 assassination of  
7 Major General Kim Chang Yong in Korea, adduced to in subpara-  
8 graph 11 (13); a SECRET report detailing the 1953 kidnapping in  
9 Tokyo of Seguchi Mitsugu (Kaji Wataru) by Colonel Jack Y.  
10 Canon's ZED group, recommending that the CIC stay clear of  
11 the project, because it was considered to be an "indiscreet"  
12 CIA operation; a SECRET report concerning the blackmailing of  
13 Soviet defector Yuri A. Rastvorov and his subsequent plane ride  
14 to Okinawa; and a SECRET document, apparently decoded from a  
15 cablegram, suggesting that one Harry Listner, an American  
16 tourist, "be dealt with severely" while in Japan. These revel-  
17 ations, among others not herein cited, further intensified  
18 plaintiff's emotional stress, directly contributing to his  
19 unfitness to perform the duties of his office then and later.

20  
21 4. At page 19, below paragraph 16, at line 23, insert the follow-  
22 ing subparagraph to paragraph 16:

23 (1) In April 1959, by indorsement to Department of the Army  
24 Letter Order, dated 14 April 1959, addressed to the Commanding  
25 General, First U. S. Army, plaintiff was notified that he had  
26 been declared ineligible for further duty and assignment with  
27 the Counter Intelligence Corps, and that his release from such  
28 assignment was "without prejudice or adverse reflection on

1 officer's character, loyalty and discretion." This notifica-  
2 was in conflict with another notification, dated 29 January  
3 1958, that cited different reasons for plaintiff being declared  
4 ineligible for further duty and assignment with the CIC. Prior  
5 to receiving the second notification, plaintiff visited the  
6 Intelligence-Security Branch (now called the Military  
7 Intelligence Branch) at the Pentagon and spoke to Major W. R.  
8 Joyner about the notification of 29 January 1958. Major Joyner  
9 was the same officer who had advised plaintiff of his overseas  
10 assignment for duty in MOS 9668 in 1956, as adduced to in sub-  
11 paragraph 11 (5) of this petition. When plaintiff queried  
12 Major Joyner about the 29 January 1958 notification and the  
13 favorable comments stated in his letter of 5 May 1956 (regarding  
14 the reason for plaintiff's selection for duty in MOS 9668,  
15 clandestine espionage duty), he replied, "We've got your medical  
16 records now," or words similar, and in the ensuing conversation  
17 stated that plaintiff would not have been selected for FOI duty  
18 or even returned to the CIC School after his discharge from  
19 Walter Reed Army Hospital, had the Intelligence-Security Branch  
20 been apprised earlier of the seriousness of plaintiff's (second)  
21 head injury.

22  
23 5. At page 23, below paragraph 20, at line 13, insert the following  
24 subparagraphs to paragraph 20:

25 (1) Prior to receiving his VA award, Mr. Lee B. Camp, a super-  
26 visor with the VA Contact Division at Los Angeles, suggested  
27 that plaintiff write to U. S. Senator Thomas H. Kuchel (purport-  
28 edly an acquaintance of Mr. Camp) and solicit his assistance in

1 getting re-examined by the Army. Mr. Camp stated that he could  
2 not understand why plaintiff had not been given a disability  
3 retirement from the Army. In May 1960, less than six months  
4 after his discharge, plaintiff wrote to Senator Kuechel, des-  
5 cribing his "concussions" of 1953 and 1954, and requesting his  
6 assistance in obtaining another physical examination from the  
7 Army. By letter dated 1 July 1960, the Department of the Army  
8 replied to Senator Kuechel that, "Mr. Nagell's resignation was  
9 approved after careful review of his physical examination in  
10 the Office of the Surgeon General, Headquarters, Department of  
11 the Army. His request that he 'be considered for disability  
12 compensation for applicable LOD service-connected injuries' was  
13 considered at that time and it was determined that he was  
14 physically qualified for separation."

15  
16 (2) Although plaintiff's separation physical examination, as  
17 performed at Fort Dix, may have been carefully reviewed in the  
18 Office of the Surgeon General, it was not reviewed in conjunc-  
19 tion with his complete medical records.

20  
21 (3) On 8 June 1964, Edwin A. Weinstein, M. D., in discussing  
22 the research project at Walter Reed Army Hospital in connection  
23 with the contract with the Surgeon General, testified: "Well,  
24 Captain Nagell, as he was then, was one of approximately one  
25 hundred forty subjects with severe brain injuries whom we  
26 studied intensively over the years. We began the study in  
27 about 1952, so some of the subjects have been followed as long  
28 as twelve years, and my first acquaintance with Captain Nagell

1 was at the time that he was hospitalized at Walter Reed in 1955  
 2 with his brain injury. We have attempted to follow up these  
 3 men by writing them letters, by interviewing them, if possible,  
 4 and looking through the record I see that in 1961 his name was  
 5 on a list of people about whom we requested information from the  
 6 Veterans Administration, so he was already considered as a  
 7 severe brain injury subject at that time."

8  
 9 6. At page 24, paragraph 21, line 17, following the phrase "brain  
 10 trauma," insert: "(by history of)".

11  
 12 7. At page 24, paragraph 21, line 20, delete the entire sentence  
 13 following the word "wayside." and insert: "While at the Bay Pines  
 14 VA Hospital, in December 1962, plaintiff was given an electroenceph-  
 15 alographic examination, the results of which stated: 'This EEG is  
 16 of low voltage and is primarily 18-24 cycles per second. There is  
 17 some irregular Alpha of 12 cycles per second. No buildup of hyper-  
 18 ventilation. Excessive muscle tension artefact noted.'"

19  
 20 8. At page 24, paragraph 21, line 23, delete the date "20 January  
 21 1963." and insert: "22 January 1963 as 'Treated, Unchanged.'"

22  
 23  
 24 Respectfully submitted,

25 *Richard C. Magell*  
 26 RICHARD C. MAGELL,  
 27 Plaintiff in pro se

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