IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2/9/81

MARK ALLEN, Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, Defendant.	Civil Action No. 78-1743

AFFIDAVIT

GERALD L. LIEBENAU, being first duly sworn, deposes and says:

1. I am the Information Review Officer for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). My responsibilities include the review of DO documents which are the object of Freedom of Information Act (FOIA) requests to and litigation against the CIA to ensure that details made regarding the disposition of such documents, pursuant to provisions of the FOIA, are proper. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and guidance from the Office of General Counsel of the CIA and upon conclusions reached in accordance therewith.

2. Through my official duties, I have become acquainted with this case since the ruling of the Circuit Court of Appeals on 12 November 1980. My predecessor, Mr. Robert E. Owen, had been the DO reviewing official concerning the FOIA disposition of the document at issue in this litigation. Several affidavits of Mr. Owen have been filed during the course of this litigation; one on

9 January 1979, and the other on 11 January 1980. During the course of this litigation the document at issue, marked 509-803 for identification purposes, was initially withheld in its entirety pursuant to FOIA exemptions (b)(1), (b)(2) and (b)(3). During a review connected with Mr. Owen's affidavit of 11 January 1980, a determination was made that portions of the document were no longer exempt from release as a result of disclosures that had recently been made in connection with Congressional hearings. Effective with the Order of the Circuit Court of Appeals on 12 November 1980, all filing instructions previously withheld and deleted from the released version of the document were reinserted in the releasable version. Additionally, all classification markings and related information control markings which had been deleted from the releasable version of the document, as part of the declassification process, were reinserted in the document and then marked to show that the classification designations are no longer appropriate. The newly revised version of the document was provided the plaintiff. (CIA Exhibit A).

3. On the basis of my review of the document at issue, in connection with this affidavit I have determined that one additional modification of the document is necessary. The word "City" has been reinserted in those portions previously marked "B" on the second page in the first line of the text, on page 3, in the second and fourth lines of paragraph 4, and in the third line of paragraph 5. The CIA concern over public acknowledgment of the existence of CIA stations or other facilities in specified foreign locations is real. In

most circumstances, some damage to the official relations between the United States and the named country is predictable. In the case of the acknowledgment of the existence of a CIA station in Mexico City in 1963, it has been alleged or referred to in a number of forums and publications, semi-official and official, including accidental disclosure in CIA documents released under the FOIA. Consequently, withholding the same information in this document can no longer be justified. A copy of the document with "City" reinserted is attached as CIA Exhibit B and is being forwarded to plaintiff.

4. To fulfill my official responsibilities, I have been delegated authority for original classification of information as Top Secret. I have reviewed document 509-803 and have determined that the portions which remain withheld are properly exempt from disclosure because:

a. it is currently and properly classified pursuant to Executive Order 12065 as information requiring continued protection against unauthorized disclosure to protect against damage to national security and thus exempt from release pursuant to FOIA exemption (b)(1);

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

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

5. The letter markings used to identify the kind of information withheld in each instance remains basically as set forth in the affidavit of Robert E. Owen except for the reinsertion of material formerly deleted and identified as category "E" and "F"; said categories being withdrawn and previously deleted material having been reinserted pursuant to the Circuit Court Order of 12 November 1980. The remaining categories are repeated below for the Court's convenience. Additionally, more specific language has been added and underlined. The additions are possible because of the classification of this affidavit.

a. Circumstantial information which, in combination with other information, could lead to the identification of an intelligence source, in this case a foreign government's security service and its intelligence service collaborating with the CIA under an arrangement of confidentiality, withheld pursuant to FOIA exemptions (b)(1) and (b)(3);

b. Circumstantial information which, in combination with other information could lead to the identification of an intelligence method used to collect intelligence information abroad, including the use of liaison arrangements with foreign intelligence and security services and the methods these services

employ in intelligence collection, withheld pursuant to FOIA exemptions (b)(1) and (b)(3);

c. Information which is currently and properly classified in the interest of national security, because it discloses details of CIA's knowledge of the identities and activities of Soviet intelligence officers and the nature of CIA's counterintelligence efforts to collect said information, withheld pursuant to FOIA exemptions (b)(1) and (b)(3); and

d. Information identifying CIA staff employees and organizational components, withheld pursuant to FOIA exemptions (b)(3).

6. In doing my review of the document at issue, I determined that only exempt portions have been withheld. Conversely, all segregable, non-exempt material has been released.

7. The major concern which prompts the CIA to continue to withhold portions of document 509-803 is the damage that would be inflicted upon the liaison arrangements with the National Security Service of the Government of Mexico if the withheld portions of the document were publicly disclosed. Most of the information would not have been available except for the contributions and collaboration of the National Security Service of the Government of Mexico. The information so withheld was received under an arrangement of mutually assured confidentiality. To disregard that arrangement and to disclose the existence and the product of the arrangement would threaten its current viability. The Government of Mexico, through its National Security Service, has been, and is, a very useful partner of

the security and intelligence services of the United States. The collaboration includes efforts to stop the flow of narcotics into the United States, to monitor and negate the activities of Central American terrorists organizations and to monitor and negate the activities of hostile foreign intelligence services, particularly the Soviet services, against the United States. A number of other benefits also accrue to the United States as a result of this collaboration. The loss of this liaison arrangement would cause damage to the United States' ability to protect its national security. The protection the arrangement provides could not be entirely replaced if Mexico withdrew.

8. Disclosure of the kind of collaboration with the United States by the Mexican National Security Service which is apparent in the withheld portions of document 509-803, would cause considerable trouble to the current Government of Mexico. Such activities would not be viewed with favor by a significant portion of the public in Mexico. Disclosure of the existence of such a relationship by the U.S. Government is likely to be used actively and effectively against the current Government of Mexico by dissident political groups. Moreover, the government itself is likely to feel compelled to make public gestures to discredit any allegations or inferences that the current government would engage in such collaboration. Despite the fact that the current collaboration is close, the government would not want to acknowledge it publicly. Furthermore, the Mexican Government may fear that its current cooperation with the U.S. Government also might be disclosed if its past cooperation is revealed. Therefore, it might limit or even

discontinue cooperation with our Government in intelligence or law enforcement activities and possibly also in other areas where we now cooperate.

9. There have been a number of books and magazine articles by private authors in which various allegations of CIA intelligence operations in Mexico City have appeared. The collaboration of the Mexican Government had also been alleged. Such private guessing and speculation does not have the authority of an official disclosure through the FOIA release of official records. Consequently, even though some speculation has accurately described secret activities, the damage has been limited because such disclosures do not officially challenge the Mexican Government to take official note; furthermore, they are only approximately accurate and could not be considered authentic. Disclosure of the withheld portions of document 509-803 would complete the damage possible by making the disclosures precise and authoritative.

10. Beyond purely internal discomfort any disclosures would cause the Mexican Government, there are potentially significant foreign relations consequences also. Diplomatic arrangements with several foreign governments are likely to suffer because certain portions of the withheld material demonstrate the violations of the sanctity of foreign diplomatic territory and facilities in Mexico. Such developments would, at a minimum, increase the likelihood that the Mexican Government would want to diminish any further hazard involved in intelligence collaboration with the United States.

11. It was not possible to identify the liaison equities in an unclassified affidavit. To do so, in light of what was already evident on the public record concerning the substance of the document and the locale of the events described, would have been tantamount to disclosing which government had collaborated with CIA and, given the kind of activity, the specific services involved. An essential element of the intelligence liaison arrangement is an understanding of confidentiality. The intelligence information exchanged normally must be kept secret as well as the fact of the liaison arrangement. An effective working liaison would not exist without the necessary mutual commitment to confidentiality.

12. The reality of such commitments to secrecy is recognized in the language of Executive Order 12065. Section 1-3 describes the kinds of information which are classifiable. It specifically identifies in "Section 1-301(b) foreign government information; 1-301(c) intelligence activities, sources or methods; and 1-301(d) foreign relations of the United States." Section 1-302 states that "Even though information is determined to concern one or more of the criteria in Section 1-301, it may not be classified unless an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security." To further emphasize considerations which are unique to U.S. foreign intelligence activities, Section 1-303 elaborates that, "Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least

identifiable damage to national security." (Emphasis added.) The information withheld from disclosure in document 509-803 resulting from a liaison arrangement and/or which could reasonably be expected to lead to the identification of a confidential intelligence source, in this case a foreign government's security service, is thus properly classifiable and classified.

13. Section 1-501 of Executive Order 12065 states what must be shown on the face of a document when it is "originally classified." This section deals with documents originated after Executive Order 12065 was effective on 1 December 1978. Such requirements could not have been imposed on classified documents already in existence such as document 509-803. Section 1-402 of the same Executive Order states:

> Only officials with Top Secret classification authority and agency heads listed in Section 1-2 may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be not more than twenty years after original classification, except that for foreign government information the date or event may be up to thirty years after classification.

As I indicated earlier, I am authorized to originally classify information at the level of Top Secret. For the purpose set forth in this affidavit, I have reviewed document 509-803 and have determined that portions of the document remain properly classified at the level of Secret. The document is properly marked to show that classification. Furthermore, the document is marked to show a date for a subsequent declassification review, and I am identified as

the classification review authority who determined that classification should be extended.

14. The withheld portions of document 509-803 can be viewed in groups for purposes of discussing their exemption justifications. The deleted portions marked "B" on the second page and the following page marked "No. 2" contain information demonstrating that the source of the information overheard both ends of conversations conducted over telephones located in Soviet diplomatic facilities in Mexico City. The ability to electronically monitor such conversations was possible only with the collaboration of the Mexican National Security Service. Public allegations of such activities have been made by private individuals, but official acknowledgment has been avoided because of the potential damage. The information has been withheld because it is foreign government information and it discloses intelligence sources and methods and is thus properly classified and withheld pursuant to FOIA exemptions (b)(1) and (3).

15. The deleted portions of paragraphs 5 through 9 and 12a through 12d contain information which was provided exclusively by the Mexican National Security Service concerning what the Service had learned of Silvia Duran's knowledge of Lee Harvey Oswald's activities in Mexico City in the fall of 1963. The Mexican Service's information came from the electronic surveillance of the Cuban and Soviet diplomatic facilities in Mexico City and from the interrogation of Silvia Duran by the Mexican Security Service. Silvia Duran was initially identified as a person potentially knowledgable of Oswald's activities, as the result of the

electronic surveillance. On 21 February 1964, the Mexican Government officially made the results of their interrogation of Silvia Duran available to the U.S. Government for the Warren Commission. Most material on the same subject received prior to that date by CIA has been maintained as classified to avoid disclosing information confirming the state of the liaison activity and the scope of the intelligence collaboration with the Mexican Government. Some documents have been released to FOIA requesters which disclose that CIA had some ability to influence the Mexican Service and that that Service provided certain information to CIA. The documents were partially declassified and released because of preemptive disclosures made during the investigation conducted by the Senate Select Committee to Study Government Operations set forth in its report identified as "Book V," dated 23 April 1976. Because the above identified paragraphs of document 509-803 disclose the detailed nature of the Mexican Security Service's knowledge of Silvia Duran's information concerning Lee Harvey Oswald before the Mexican Government publically acknowledged having such information, the nature of CIA's liaison with that Service is disclosed and some of the Mexican Service's intelligence methods are also apparent. Official U.S. acknowledgment of this information can reasonably be expected to do damage to national security and is thus properly clasified and exempt from disclosure pursuant to FOIA exemption (b)(1). Since the same information would disclose the intelligence sources and methods involved in the liaison arrangement with the Mexican Service, it is also exempt from release under 50 U.S.C. 403 (d)(3) and pursuant to FOIA

exemption (b)(3).

16. The withheld portions of paragraphs 10 and 11 contain information which was available from a very sensitive source which monitored conversations between the President of Cuba and the Cuban Ambassador to Mexico. Such an ability is obviously exceedingly valuable and sensitive. The information from this source has been made public in very limited amounts, and it has been extensively rewritten, abbreviated and paraphrased to protect against exposing the source and method which produced the information. The disclosure of the information in document 509-803 could reasonably be expected to result in a clear disclosure and thus damage national security and is, therefore, properly classified and exempt from release pursuant to FOIA exemption (b)(1). In that a disclosure of the information would also expose an intelligence source and method, it is also protected from disclosure by 50 US.C. 403(d)(3) and exempt from disclosures pursuant to FOIA exemption (b)(3).

17. The withheld portions of paragraphs 16, 17, 19 and 20 contain information which discloses the extent of CIA's counterintelligence knowledge of the personnel and activities of the Soviet intelligence service. Because of the amount of time that has gone by, this information has diminished in its potential value to the Soviet intelligence service, but I believe it still possesses value as information that can be used against U.S. counterintelligence efforts. Since some damage can reasonably be expected from disclosure of the information, it is properly classified and exempt from disclosure pursuant to FOIA exemption (b)(1).

18. The withheld portions of paragraphs 21-24 contain

foreign government information or refer to foreign government information received from the Mexican and Nicaraguan intelligence and security services. The liaison arrangements included assurances of mutual confidentiality. Since damage is presumed to flow from the disclosure of such information and the disclosure would expose a foreign intelligence source, the information is protected by classification and 50 U.S.C. 403(d)(3) and thus exempt from disclosure pursuant to FOIA exemptions (b)(1) and (b)(3).

19. Both the CIA and the plaintiff have asserted that most of the substantive information in the document is contained in other documents that have been released to the public. This affidavit attempts to show the Court how the manner in which the information is presented in document 509-803 results in the disclosure of exempt information. I have attached copies of CIA documents in which information concerning the same substance as that being withheld has been publicly released. The documents are grouped and labeled with names to assist in making comparisons with document 509-803. The paragraphs cited are those in document 509-803.

Oswald - paragraph 1, starting on page two;

Duran - paragraphs 5-9 and 12a-d;

Cuban Ambassador - paragraphs 10 and 11;

Kostikov - paragraphs 16, 17, 19 and 20; and

Alvarado - paragraphs 21 and 23-25.

I believe the Court will find that the withheld portions of document 509-803 do in fact disclose information concerning the intelligence sources and methods involved in addition to the intelligence substance produced. A copy of the original, unexpurgated version of document 509-803 is attached and

marked "CIA Exhibit C."

GERALD L. LIEBENAU

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this ____ day of February 1981.

Notary Public

My commission expires: _____