3 June 1960

MEMORANDUM FOR THE RECORD

SUBJECT: The Honorable W. Averell Harriman's appearance 2 June 1960 in Open Session before the Senate Subcommittee on National Policy Machinery, Committee on Government Operations.

1. Mr. Harriman began with a prepared statement, a verbatim copy of which is attached. Committee Chairman Jackson asked Mr. Harriman what he thought was the effect in the Soviet Union of the failure of the Summit Conference. Mr. Harriman replied that the Summit failure could be viewed as a victory for those Soviet leaders who did not agree with the detente efforts of Khrushchev. Mr. Harriman added that some efforts were being made by the Soviet leadership to play down the Summit failure citing as examples the recent release of a U.S. transport plane's personnel, and Khrushchev's 29 May speech.

2. Mr. Harriman stated that he was glad to see that the President will continue his efforts to negotiate with the Soviet leaders. He said that the most important loss to come out of Paris was the withdrawal of the invitation to the President to visit the Soviet Union. He said that he believed that Mr. Eisenhower would have received a more tumultuous reception than any world leader has experienced in recent years. While he felt the possibility of success was unlikely, he thought that the United States must make every effort to convince the Soviet Union to renew the invitation.

3. Mr. Harriman stated that Khrushchev had probably been shaken by the President's assumption of full responsibility for the U-2 flight. Khrushchev had staked his reputation on the development of a personal relationship between the President and himself. Mr. Harriman added, however, that the change in attitude in the Soviet Union toward East-West detente had begun before the U-2 incident.

4. Mr. Harriman stated that despite the Summit failure, the United States must press for increased contacts with the Government and people of the Soviet Union. He stated he favored a calm, though unappeasing attitude. He said that the people in the Soviet Union still cling to the hope of returning to the World War II relationship between the United States and the USSR.

5. Senator Javits asked Mr. Harriman's viewpoint on summitry versus traditional diplomacy, pointing out that Mr. George Kennan, in a recent appearance before the Subcommittee, had favored a return to traditional diplomacy. Stating that he had the utmost respect for Mr. Kennan's judgment, Mr. Harriman said that the multi-national nature of almost every world problem today no longer permits the use of time-honored diplomatic

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machinery. Mr. Harriman added that as long as one man in the Soviet Union must approve every decision, summit meetings are the only possible means for solving international problems. He concluded that American policy machinery must contemplate summitry.

6. In reply to a question from Mr. Pendleton, the Minority Counsel, Mr. Harriman stated that the United States should not attempt to sell its own economic system abroad but should confine its activities to fighting the battle between freedom and dictatorship. Private enterprise, he said, should not be a condition of United States foreign aid.

SIGNED

[redacted]
Office of General Counsel

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Attachment

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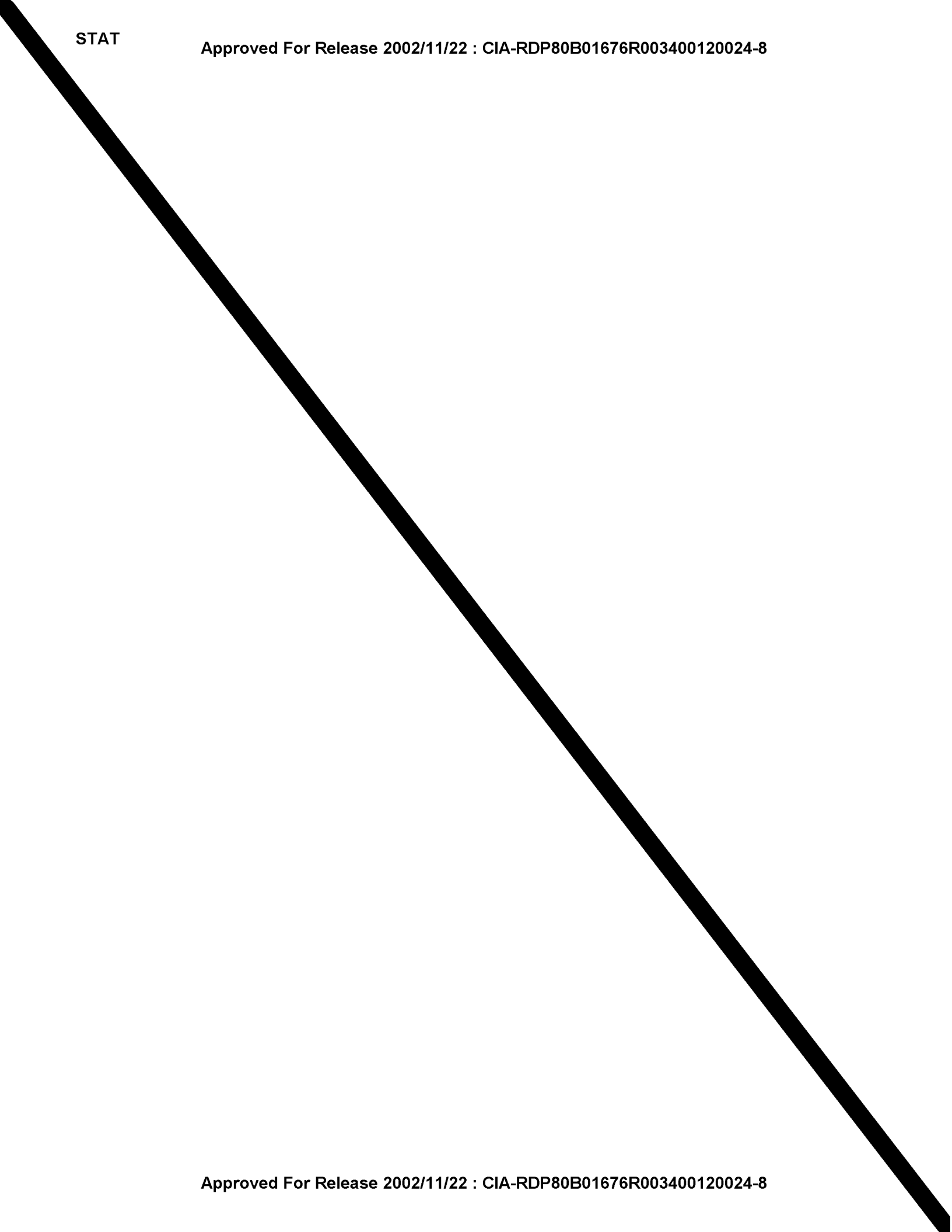

Approved For Release 2002/11/22 : CIA-RDP80B01676R003400120024-8

ER 60-6153

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Possible Suit Against B. T. Singer and the CHICAGO TRIBUNE

1. This memorandum is for information only.

2. You have requested our opinion on your legal rights against B. T. Singer Features, which sold the CHICAGO SUNDAY TRIBUNE an article entitled "What We Know About Russia's Strength," by Allen W. Dulles, Director, Central Intelligence Agency, and published in the TRIBUNE's Sunday Magazine section on 17 July 1960. (Attachment 1).

3. A review of the article in the TRIBUNE indicates that it is substantially a rewrite of your 8 April 1959 speech before the Edison Electric Institute. The article is composed predominantly of verbatim quotes from that speech, although substantial portions of the speech are omitted. After extensive research, we have concluded that a possible action lies both against Singer Features and the CHICAGO TRIBUNE. Also, if Mr. Lloyd Wendt, Sunday Editor of the TRIBUNE, has described accurately his contact with Mr. Singer, the latter's representation that he had the rights of publication would give the TRIBUNE grounds for a fraud action against Singer and his company.

4. At least three possible approaches to legal action on your part are suggested by the facts. First, an action for libel might be maintained if it can be proven that the article, as printed, is not an accurate reflection of your remarks in New Orleans on which the article is based. Mr. Grogan's memorandum of 20 July 1960 (Attachment 2), indicating that Mr. Singer has long been considered a pro-Communist, suggests a stronger motive in his actions than the commercial aspects of selling this article to the TRIBUNE. A careful reading of material removed by him from the New Orleans speech suggests that Singer sought, for the most part, to avoid statements supporting the belief that Moscow has not changed its basic mission of world conquest and its techniques devoted to accomplishing this. He has attempted through careful editing to build a picture of an ever-growing, ever-more powerful Soviet nation, operating under the guidance of an infallible blueprint which is designed to make it the world's economic leader. He omits such statements as "I do not conclude from this analysis that the secret of Soviet success lies in greater efficiency. On the contrary, in comparison with the leading free enterprise economies of the West, the Communist state-controlled system is relatively inefficient." One could, in fact, conclude from the article as it appeared that it is inevitable that the Soviet Union will one day advance to first place in the world in volume of production.

5. The fundamental basis of the law of defamation and therefore an essential element in a plaintiff's argument is proof that the defendant has published false matter which has injured the plaintiff's reputation. (Laun v.

Union Electric Co. of Missouri, 166 S.W. 2d 1065, 144 A.L.R. 622; Grant v. Reader's Digest Association, C.C.A.N.Y. 151 F 2d 733; Berg v. Printers' Ink Pub. Co., D.C.N.Y. 54 F Supp. 795.) Admittedly, the present situation is somewhat afield of the usual libel action. Usually, of course, the defamer has made some statement which reflects directly on the character of the defamed such as charging him with improper conduct in office. Nevertheless, it could be argued, the essential element - a false statement which injures the reputation of the defamed - is present.

6. The falsehood here is the attribution of authorship to you of the story published in the TRIBUNE. The reader could be expected to believe you did, in fact, write the article for the newspaper. He, therefore, would believe that this represents your current position on Moscow's military strength and economic future. From this he would probably also conclude that this is the official position of the United States Government. If, in fact, this rewrite of your original remarks did not reflect accurately the tenor of your original remarks or your present viewpoint, 15 months after the speech was first presented, a good case can be made for the charge that false matter has been published which has injured your reputation. Furthermore, the case is strengthened by applying the rule protecting persons in their office or calling. The protection long afforded to tradesmen to their reputations in their callings has been generally extended to persons holding public office. (Fitzgerald v. Piette, 1923, 180 Wis 625, 193 N.W. 86.) Therefore, facts which might not be actionable in the case of other persons have been used successfully to support an action for injury to the public official in his office or calling. (Lawson, "The Slander of a Person in his Calling," 1881, 15 AM. Rev 573.) To be actionable under this theory the defamatory statement must be made with reference to a matter of peculiar importance to the office itself. (Restatement of Torts, sec 573.) Certainly the facts here would qualify under this rule.

7. A second approach to a cause of action would be a suit for invasion of the right of privacy. This area of the law, admittedly, is very uncertain, particularly in situations in which a public official is suing for invasion of his right. Nevertheless, the situation here in which a party publishes an article, purportedly written by another, which, in fact, is a misleading rewrite of a public speech made 15 months earlier, presents a strong case for finding that a cause of action lies for wrongful invasion of the right of privacy. Professor William Prosser writes:

> Most courts now recognize the existence of a right of privacy which will be protected against interferences which are serious and outrageous, or beyond the limits of common ideas of decent conduct. The right has been held to cover intrusions upon the plaintiff's solitude, publicly given to his name or likeness ... (and) placing him in a false light in the public eye. The right is subject to a privilege to publish matters of news value, or of public interest, of a legitimate kind. (Prosser, Law of Torts, p. 635.)

The right is recognized both in California and Illinois, the two jurisdictions which would be the most likely for bringing suit in your case. (Gill v. Curtis Pub. Co., 1951, 38 Cal. 2d 273, 231 P 2d, 565; and Bleck v. Park Dog Food Co., 1952, 347 Ill. App. 293, 106 N.E. 2d 742.)

8. A New York case, D'Altomonte v. New York Herald Co., 1913, 154 App Div 453, 139 N.Y.S., in which the plaintiff sued for a representation that he was the author of an absurd story provides the type of factual situation with which a comparison could be made with the present facts. On appeal the court reversed the lower court's holding for the plaintiff on the grounds, however, that it was not within the New York Statute concerned with this type of situation. The courts tend to find some other basis for liability than purely an invasion of one's privacy such as defamation, breach of an implied contract or the invasion of some property right. Nevertheless, Prosser notes that there remains "a large and growing field in which privacy becomes important because no other remedy is available."

9. A third approach to a cause of action lies in a suit to force abandonment of a copyright. The newspaper might also be forced to print a retraction of the article with any clarifying comments you might wish to make. Since the original speech was placed in the public domain, by publishing it in several places such as the Congressional Record on 30 April 1959, a direct action for infringement of copyright or exploitation of your personal property would not lie. The Rickover case, in which the admiral succeeded in the federal courts to prohibit a publisher from publishing speeches which he had made on subjects on which he is noted as an expert, could not be applied here, since the court found in that case that the admiral had not published his speeches and that they were not consequently in the public domain. If an action were brought for abandonment of the copyright which the CHICAGO TRIBUNE has taken out on the article, it is unlikely that the defendants would maintain that the case falls within the rule that materials in the public domain may be protected by copyright, if there is a distinguishable variation in the arrangement and manner of presentation. To bring the case under this rule would be to admit that a "distinguishable variation" had been made in your original presentation which, in itself, would support a suit for libel.

10. In summary, Mr. Singer and the CHICAGO TRIBUNE had the right to publish your 8 April 1959 speech, since it was in the public domain, provided they clearly indicated the source and date. They also had the right to publish excerpts from the speech if these excerpts were clearly acknowledged as being such and if, taken out of context, they did not distort the overall tenor of your remarks. However, Mr. Singer had no right to represent, and the CHICAGO TRIBUNE to publish, a rewrite of the speech which was made by omitting key passages of the original and to which was appended an original title supposedly authored by you. In view of the various theories by which an action might be brought and the jurisdictions in which such a suit could be commenced, you may wish, should you decide to pursue the matter legally, to consult private practitioners who have had experience with defamation cases. Of course, we would assist these attorneys in any way we could in preparation of the case. Suit could be brought either in California, the jurisdiction in which Mr. Singer and his company are located, or in Illinois, the jurisdiction in which the article was published. An alternative approach might be for the TRIBUNE to litigate its rights against Singer and his company.

Distribution:
Orig. & 1 - DCI
1 - DDCI
1 - ER
1 - Asst to DCI (Grogan)
3 - Gen Counsel

(S)
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Office of General Counsel

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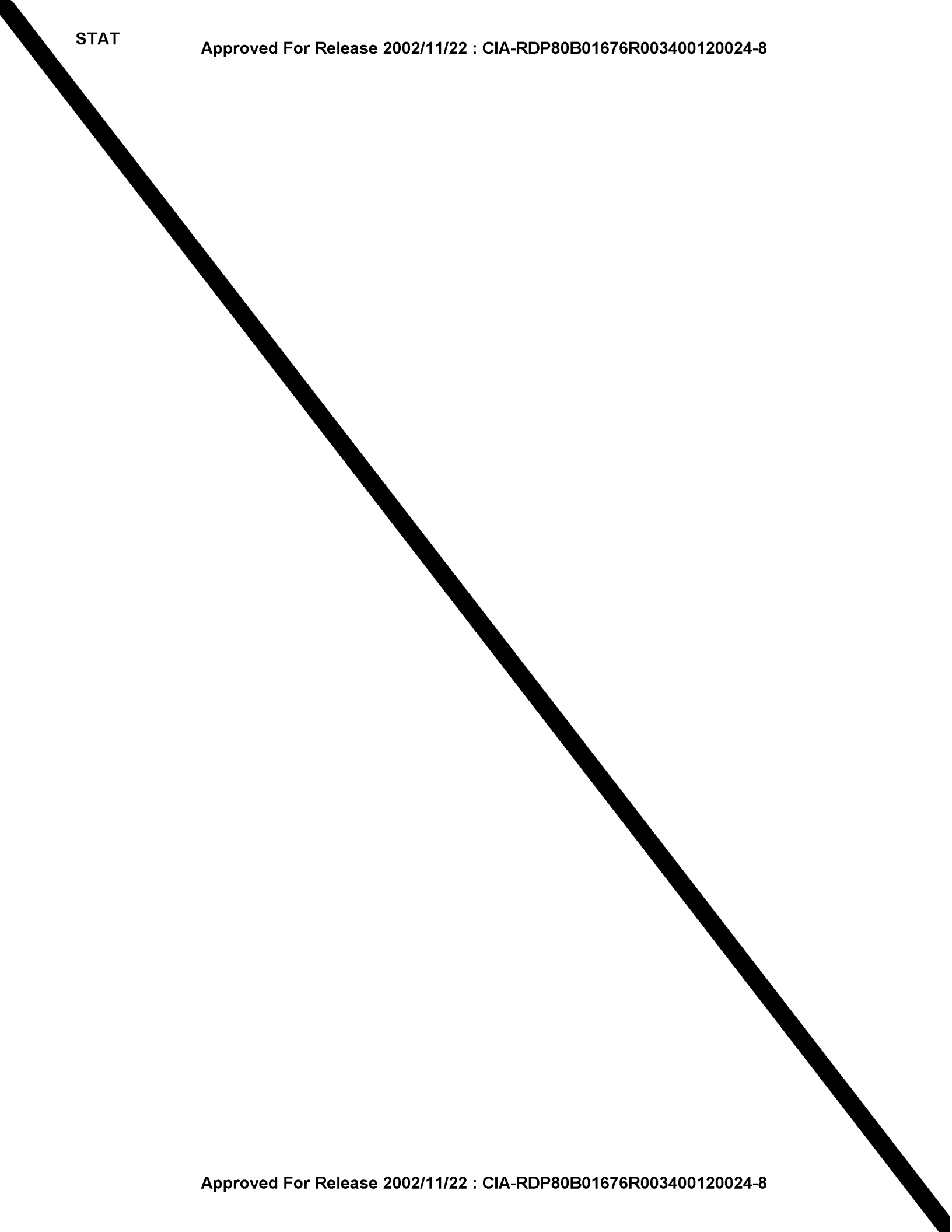
Attachments (3)



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23 August 1960

Allen
June
Kitty
Chris
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MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Powers Trial

1. This memorandum contains a recommendation in paragraph 2 for approval of the Director of Central Intelligence.

2. Mr. Alexander Parker and Mr. Frank Rogers, the two Virginia lawyers who went to Moscow on behalf of Powers, plan to arrive back in New York Saturday night. We will be in touch with them immediately on their arrival. I felt you might want to invite them together with Mr. John Parker, the third lawyer who remained in this country, to discuss the trial with you. If so, I will extend the invitation and arrange a time at the earliest opportunity, probably early next week.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

The recommendation in paragraph 2 is approved. 25 AUG 1960
Date

SIGNED

ALLEN W. DULLES
Director

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