

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

No. 71-1026

HAROLD WEISBERG, Plaintiff-Appellant

v.

U. S. DEPARTMENT OF JUSTICE, Defendant-Appellee

On Appeal from the United States District Court
For the District of Columbia

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

On February 28, 1973, a three judge panel selected by this court handed down a decision in the above-styled case. The majority opinion, written by Judge Kaufman, remanded the case to the district court.

However, the Government then filed a Petition for Rehearing and Suggestion for Rehearing En Banc. Subsequently, on May 22, 1973, this Court issued an order stating that this case would be

"reconsidered" by the Court en banc "without further argument."

On June 7, 1973, this Court entered another order which consolidated this case with The Committee to Investigate Assassinations v. U. S. Department of Justice, No. 71-1829, and scheduled both cases for a rehearing en banc on July 11, 1973.

Rule 40 of the Federal Rules of Appellate Procedure states: "No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request." In this instance no request for a brief in opposition to the petition for rehearing was made.

Weisberg feels that the Petition for Rehearing raised new arguments which require that they be answered in written form. Specifically, Weisberg points out that the Petition for Rehearing relied upon three cases, Frankel v. Securities and Exchange Commission, Evans v. Department of Transportation, and Environmental Protection Agency v. Mink, none of which are discussed or even mentioned in any of the briefs or memoranda filed by either party. Specifically, Weisberg notes that although Judge Kaufman's decision discussed the Environmental Protection Agency case in footnotes 7 and 9 of the slip opinion, the Supreme Court decision in that case was issued after Weisberg's last brief was submitted to the Court.

Weisberg believes that these points could not be adequately addressed on oral argument, especially since his case was consoli-

dated with another Freedom of Information Act case which, in his view, presented different legal questions. However, through a chance set of circumstances Weisberg has been denied the opportunity to respond in written form to the new arguments raised by the Government in its Petition for Rehearing.

Accordingly, I have prepared a brief answering the new arguments set forth in the Petition for Rehearing. I respectfully request that the Court grant leave to file this Supplemental Brief, copies of which are submitted herewith.

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CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of July, 1973, served a copy of the foregoing Motion for Leave to File Supplemental Brief on Harold H. Titus, United States Attorney, by mailing a copy to him at his office in the Department of Justice, Washington, D. C.

JAMES H. LESAR