

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

.....  
HAROLD WEISBERG,  
Appellant,  
v.  
U. S. DEPARTMENT OF JUSTICE,  
Appellee  
.....

Case No. 78-1831

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff/appellant in this instant cause. I am also accredited as a subject expert.

1. On Monday, February 26, my counsel read me by phone the affidavit just filed with the Court by Stephen Garfinkle of the General Services Administration.

2. Mr. Garfinkle's affidavit states that in a 1976 phone conversation he did not disclose the substance of the withheld Warren Commission transcript to the one of the two persons involved with whom he spoke. While Mr. Garfinkle avoided identifying this person, the names of both are public knowledge in connection with the subject matter of the withheld transcript. The person not identified by Mr. Garfinkle is Norman Redlich. (The other is Joseph A. Ball.)

3. Mr. Garfinkle states that as of 1976 Mr. Redlich preferred that the transcript not be disclosed in order that this earlier period of his life not now attract any attention.

4. Mr. Garfinkle does not state how exoneration can be embarrassing, for

this transcript holds exoneration, or how without disclosure of it Mr. Redlich could know all the transcript includes.

5. All the vilest racist and political defamations of Mr. Redlich are and for years have been public at the National Archives. My counsel feared that if we made full use of the nastiest of racial nature it might have been misunderstood by the district court as an indirect special appeal to that court.

6. I believe it is not likely that men like the members of the Warren Commission repeated such language, even in secret. But if they did, they repeated only what is within the public domain.

7. If Mr. Garfinkle did not disclose to Mr. Redlich that Commissioner and later President Gerald Ford was following the desires of extremists and persons of prejudice and the like-minded in the Congress as well as the character of the information available at the National Archives, Mr. Garfinkle failed to give Mr. Redlich information that could have had a significant influence on Mr. Redlich's desires.

8. The publicly available information relating to this executive session is that Mr. Redlich was castigated as a "red" and "nigger-lover" because he supported the kind of fair treatment of black people that since has become stated national policy and has been enacted into law.

9. I believe that the actual reason for the withholding of this transcript is to continue to keep as secret as possible the fact that in secret Mr. Ford aligned himself with and did the bidding of those of racial prejudice and political paranoia while for public consumption, when he knew he was outvoted, he switched and made exoneration unanimous. Mr. Ford, in fact, was the member of the Commission who took the lead in trying to have Mr. Redlich and Mr. Ball fired for what by any rational standard is only human decency and moderate political belief.

10. At the time of Mr. Garfinkle's phone call, Mr. Redlich was Dean of Law

at New York University Law School. Mr. Ball was a senior partner in the prestigious California law firm from which he was recruited to the Commission's staff. One of his partners is a former governor of California and the father of the present governor.

11. Unlike Mr. Redlich, who has preserved a dignified silence, Mr. Ball has been loud in public defamations of many persons who do not agree with the conclusions of the Warren Commission. Supposedly he is being protected, although he also cannot be defamed and can only be exonerated by disclosure of the transcript. Yet he is free to defame me because of his former association with the Warren Commission and in fact does so, including before bar association meetings. I have been provided with a reporter's tape recording of one such defamation by Mr. Ball, made at about the time of Mr. Garfinkle's phone call to Mr. Redlich.

12. If the transcript held unknown and unavailable defamations, in withholding it the Government would be engaging in Mr. Ball's practice. Despite my efforts to use the Privacy Act to have refutations accompany fabricated defamations of me, much more serious (and entirely false) charges than any made by those who sought to get Mr. Redlich fired, I was denied my rights under the Privacy Act. These fabricated mendacities have been disclosed ex parte. They are available in such places as the FBI's public reading room. Earlier those really hurtful lies were widely distributed throughout Government. To my knowledge this includes the White House, Attorneys General, their deputies and others of high station.

13. If what is not true were the fact, that disclosure could defame those whose names are mentioned, the Government is inconsistent in the withholding because it has not applied the same standards to me and to others. I am confident this Court would be shocked by some of the publicly available records relating to

ordinary people as well as the famous, like the late Dr. Martin Luther King, Jr., including handwritten opinions expressed by J. Edgar Hoover.

14. When my requests to be able to use the Privacy Act to provide information contrary to the fabrications relating to my wife and me were ignored by the FBI, my counsel repeated those requests to the FBI Director and the Attorney General. Neither bothered to respond. This was long before public disclosures of the fabrications and distortions I knew were going to be released.

15. If Mr. Garfinkle, by careful language, did not undertake to mislead this Court, he was less than fully forthright in any representation that without the continued withholding of the transcript in question the alleged defamations would be repeated or that by withholding the transcript repetition of the alleged defamations could be prevented.

16. By a coincidence, only a few moments before my counsel phoned to read me Mr. Garfinkle's affidavit, I had written my counsel a note for him to file as a reminder for a possible remand and it is on precisely this. My note relates to the most recent of the public discussions of the subject matter of the transcript.

17. Last week, when I was traveling, I began to read a recent book by an experienced and respected Washington correspondent, Seth Kantor. The book is titled "Who Was Jack Ruby." Its extensive detail includes attributed and previously unpublished information provided by former Warren Commission staff members, including Mr. Redlich.

18. In this I am stating that, as they always have, on a selective basis these former staff members disclose information that is withheld from writers like me, authentic subject experts who do not agree with their beliefs.

19. The first four pages of Mr. Kantor's chapter titled "May Day," attached as Exhibit 1, report that J. Edgar Hoover was involved in the campaign to get Mr. Redlich fired. This information is not included in any of the records made

available to me by the National Archives. These pages also disclose that the campaign against Mr. Redlich had the effect of intimidating him in his performance of his Warren Commission responsibilities relating to the Ruby investigation. These pages also include a version of the content of this withheld transcript.

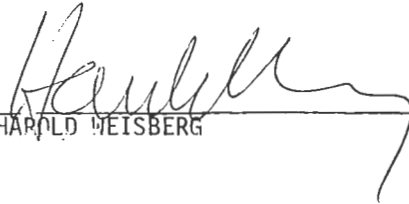
20. Contrary to any inference that with continued withholding of the transcript public discussion will cease, I read these pages on an airplane on February 22, 1979. February 26 was the first opportunity I had to write a memo for my lawyer.

21. My personal experience with mythologies, distortions and exaggerations relating to the assassination of President Kennedy and its investigation is extraordinarily extensive. I spend much time trying to correct misinformation and disinformation, as many well-known reporters and many audiences can attest. From this experience I am certain that if no way is certain to end discussion or misrepresentation of the content of this withheld transcript, the best possible means of reducing misinformation and controversy relating to these two men and their Warren Commission roles is to make the transcript available.

22. If it is disclosed to me, I will do as I did with the other two transcripts that were disclosed the day the Government's brief was due before this Court. I will arrange for a press conference at which I will provide copies at my cost and be available for any questions the press may want to ask. This has been my practice for years when I received readily comprehensible information in my FOIA cases. I had not seen the two earlier transcripts when I made these arrangements and undertook to discourage any prejudicial leaking of them. At my cost I also had copies of other relevant records available for the press.

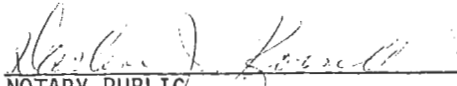
22. My role in this matter is entirely a public role. I have no literary interest in this transcript. Although I do have future literary interest in the other two transcripts, nonetheless, against self-interest I gave them away and

undertook to make the information they hold as widely available as was possible  
for me.

  
HAROLD WEISBERG

Before me this 27<sup>th</sup> day of February 1979 Deponent Harold Weisberg  
has appeared and signed this affidavit, first having sworn that the statements  
made therein are true.

My commission expires July, 1982

  
NOTARY PUBLIC

## CHAPTER 11

# May Day

It was early May, 1964, when J. Edgar Hoover decided to go for the Warren Commission's jugular.

The FBI director still was resentful that the Warren Commission was not accepting his bureau's reports on events surrounding the Kennedy assassination without further layers of questions. He retaliated by seeing to it that derogatory information on Norman Redlich reached a group of reactionary congressmen. Redlich had been serving five months as special assistant to Commission staff director J. Lee Rankin. Redlich was a hard-driving man, on leave from his post as law professor at New York University and in a position of particular power on the Commission staff because he was to shape much of the writing in the Commission's ultimate Warren Report.

On May 5, Ralph F. Beermann, an alfalfa processor from Nebraska who had become a Republican congressman, took the floor of the House to charge that communists were trying to distort evidence in order to blame anti-communists for the President's murder. Beermann then got to the point of his prepared text:

Considering these circumstances, it is amazing—shocking—incredible, to find that although competent and unimpeachable legal and investigative counsel can be found in any community in the land, the Warren Commission has on its staff as a \$100-a-day consultant a member of the Emergency Civil Liberties Committee—an organization cited by both the House Committee on Un-American Activities and the Senate Internal Security Subcommittee.

Prof. Norman Redlich, on the national council of the Emergency Civil Liberties Committee—cited by House and Senate committees as an organization “to defend the cases of Communist lawbreakers”—is currently employed at \$100 a day, for the Warren Commission. And as recently as April 13, 1964, just a few weeks ago, this “consultant” had his name listed in an advertisement appearing in *The New York Times* with other members of the cited Emergency Civil Liberties Committee—an advertisement condemning the Un-American Activities Committee.<sup>1</sup>

Using innuendo and a hint of conspiracy, Beermann pointed out that the “subversive” group with which Redlich was affiliated “has unexplained connections and associations with the very Fair Play for Cuba Committee to which the accused assassin Lee Oswald belonged.” Beermann's prepared remarks added:

Strangely, little has been said or written about the Redlich hiring, although it certainly impresses me as one of the greatest miscarriages of appointive judgment in the history of American Government. I call upon those in responsible positions to dismiss this patently unqualified “consultant” from the Warren Commission staff and to investigate and make public facts concerning how Redlich managed to get hired and keep his job despite his known Communist-front affiliations.

Beermann stuck the knife in, but it was Senator Karl E. Mundt, Republican from South Dakota and a chief spokesman for hybrid rightwing emotions, planted and raised in the nation's farm-belt, who twisted it.

“I think this is a great disservice to President Kennedy's memory,” Mundt intoned. “We want a report from the Commission which Americans will accept as factual, which will put to rest all the ugly rumors now in circulation and which the world will believe. Who but the most gullible would believe any report if it were written in part by persons with Communist connections?”

Mundt predicted “with certainty that Communist leaders around the world will have a detailed report on such testimony long before it reaches the American public—since once a Government body is infiltrated by one with Communist sympathies or connections, history has shown that the pipeline to Moscow is fast and it is filled with classified material.”

Finally Mundt demanded that the Warren Commission suspend the taking of all further testimony and hold up on all writing of its report to the American public until Redlich and others on the Commission staff

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faced the challenge of obtaining "complete security clearances."

Mundt's demand was unobtrusively slipped into the body of the May 11 Congressional Record and no public notice was taken of it. But members and staff of the Commission certainly noticed that the ranking minority member of the Senate Government Operations Committee was insisting that they dump Redlich. They could see an orchestrated attempt beginning on Capitol Hill to embarrass the Commission into conforming with the way the FBI said things happened in Dallas on the weekend of November 22-24, 1963. Three days after Mundt's demand, Beermann was back on the House floor to step up the attack on Redlich—leading off with pointed praise for J. Edgar Hoover. Beermann quoted from passages on page 89 of Hoover's book, *Masters of Deceit*, which said that the Emergency Civil Liberties Committee championed by Redlich was typical of communist-front organizations, where "behind scenes there is a Communist manipulator." This time, five other Republican congressmen joined Beermann on the House floor to intensify the cry for Redlich's scalp.

Redlich was a self-important but prodigious worker and his role on the Commission staff was significant because of his command of the substantive issues that had to be investigated and then assembled to create the packaged conclusions. Redlich hadn't concealed his Emergency Civil Liberties Committee connection when Rankin had hired him. In fact, he had impeccable connections with the academic community, and Rankin was impressed with Redlich's credentials.

But Chief Justice Warren made no immediate move to cut off criticism from the rightwing sharpshooters in Congress and the beleaguered Redlich offered to resign under the growing pressure. The sharpshooters included Commission member Gerald R. Ford's day-to-day associates in Congress, and he pleaded their case to fire Redlich in at least one closed-door session of the Commission. According to August E. Johansen, a Republican colleague who represented a nearby Michigan district in Congress, Ford sponsored the motion that would have sacrificed Redlich up to the critics.

While the Ford motion was failing, Rankin was in the midst of several private discussions with his chief administrator, Howard Willens, who kept urging Rankin not to yield by any means to this kind of pressure. Rankin agreed. He had not wanted the Commission to appear in any way—as Burt Griffin had appeared to some in Dallas in the Patrick Dean affair—to be using the bullying tactics of the McCarthy era. But now the Commission was being bullied, and for political reasons similar to those that Senator Joe McCarthy had used a decade earlier. Two weeks after the concerted attacks began, fronted by Beermann and Mundt, Chief Justice Warren advised Redlich that his security clearance had been granted. That was the end of the witch-hunt, except for a final shot from Ford's colleague, Johansen, on the House floor, May 25.

"The Commission cleared Redlich on the grounds that there was no

evidence of actual Communist Party membership," grumbled Johansen. Standard government security criteria include many other disqualifying factors—among them, 'unsuitability and pressure risk,' and 'sympathetic association with subversive individuals or groups.' . . . By it hiring and retaining Norman Redlich, the Commission has shown about as much concern for public confidence as a clumsy and careless baggageman does for the 'handle with care' labels."

Johansen's sour grapes underscored the fact that the outcome of the Redlich controversy had been no victory for the bulldog-like man in the background, J. Edgar Hoover. But neither would it be a victory for the Warren Commission's Ruby detail.

Leon Hubert and Burt Griffin had found somewhat of an ally in Redlich in their attempts to widen the Ruby investigation into a number of unexplored areas. But after getting his clearance from Chairman Warren, and maybe because of an accommodation that resulted, Redlich seemed to lose his patience for further detective work by the Ruby detail. Warren wanted conclusions written and Redlich became anxious to write them.

On May 14, in the midst of the controversy over Redlich, Rankin received a petulant 11-page memorandum from Hubert and Griffin. In it they chastised the Commission management for failing to authorize a meaningful Ruby probe. The May 14 memorandum established for the record an itemized number of areas not gone into and people not interviewed. The purpose of the harsh memorandum from the Ruby detail was, according to Griffin, to tell the Commission's power center that "you're going to write a report, maintaining you did a job. Then here's the record. You either deal with this record or not, but we're not going to be the ones that bite the bullet on this. We want the record clear that these are the things we're very concerned about."

"We wanted to protect ourselves against any accusation later on that we had not gone far enough," Hubert explained.

But the scolding tone of the May 14 memorandum of course annoyed Rankin and Willens. "I think they thought we were sandbagging them," recalls Griffin. "It's just that they were in a different ball game than we were. They thought ours was psychotic. They really thought that ours was crazy and that we were incompetent. But they finally said to us, all right, we'll look at most of this stuff. Quit bellyaching. Go do it."

Rankin made the policy decisions but Willens had the responsibility of budgeting time, resources and emphasis on staff projects, to make sure that the total Warren Commission investigation went forward. With it, Willens says, he had a "strong intellectual commitment" to make sure that the Commission completed an honest investigation that was as thorough as possible.