UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Mohr

DATE: 1/31/67

FROM : J. J. Casper

SUBJECT: ASSASSINATION OF PRESIDENT
JOHN FITZGERALD KENNEDY
DALLAS, TEXAS, 11/22/63
MISCELLANEOUS INFORMATION CONCERNING
HAROLD WEISBERG

Attached memorandum of 1/26/67, captioned as above, from Mr. W. D. Griffith to Mr. Conrad, concludes by recommending that the Legal Research Unit determine whether the statements made against FBI Laboratory Examiner SA Lyndal L. Shaneyfelt are libelous. For the reasons shown below, the Legal Research Unit concludes that the statements are libelous and that SA Shaneyfelt has a cause of action against the author of Whitewash II.

The statements made in the book definitely are libelous as to any ordinary person. They go far beyond the range of fair criticism and clearly charge, in their total context, that Shaneyfelt is a liar, forger, etc. They provide an ample basis on which the ordinary person could sue for libel, slander or defamation of character as the case may be.

A special problem arises in Shaneyfelt's case, however, because he is a public employee who has come to some public attention as a result of the use of his examinations in the work of the Warren Commission on the assassination of the President. If Shaneyfelt is now a "public official" his case would be determined by a rule different from that used in deciding an action for libel brought by an ordinary person. This rule was laid down clearly by the Supreme Court in New York Times, Inc. v. Sullivan, 376 U. S. 254 (1964), and reads as follows:

ENCLOSURE

"A public official is allowed the civil remedy for libel and slander only if he establishes that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true." In other words, a public official may successfully sue for libel or slander only by proving actual malice and this must be proven by showing that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard

ENCLOSURE

Enclosure
Bufile 62-109060
1 - Mr. Mohr
1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Sullivan
1 - Mr. Wick
1 - Mr. Griffith
1 - Mr. Shaneyfelt
1 - Bufile 62-109090
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of whether it was true or false. A public official is held to this stricter standard of proof because the very nature of the position of a public official is such that in a free government a great deal of criticism concerning the official and his conduct of official affairs must be tolerated.

The Supreme Court has not clearly defined the term "public official" for all purposes. As the Court said in Rosenblatt v. Baer, 383 U. S. 75 (1966):

"We remarked in New York Times that we had no occasion to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included."

After the above language, the Court went on, in Rosenblatt v. Baer, to use other qualifying words which we believe clearly indicate that SA Shaneyfelt is not a "public official" for purposes of suit for libel and slander. The Court said, for example:

"It is clear, therefore, that the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs . . . But a conclusion that the New York Times malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputations. The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy."

From the above language the Legal Research Unit concludes that SA Shaneyfelt is not a "public official" for purposes of the law of libel and slander and that, hence, he is not held to the stricter standard of proof applied to a [redacted]

official who sues. He is, on the contrary, held only to the ordinary standard of proof which is much easier to meet and which can be amply supported by the defamatory language used in the referenced book.

It is believed, moreover, that even should SA Shaneyfelt be held to be a "public official" for this purpose, the referenced book displays such a reckless disregard for the truth or falsity of charges that are actually false that SA Shaneyfelt probably could recover under even the stricter standard applied to public officials.

There are several policy considerations which are not within the province of the Legal Research Unit but we mention them for such value as they may have in making a decision whether SA Shaneyfelt should bring suit:

(1) The author of the referenced book may be inviting a law suit to obtain publicity and sales for his book.

(2) If the libel in the referenced book is not challenged now, the author may come out with Whitewash III - a book which he is said to be now writing - and make in that book additional statements which are even more libelous than those made here. The danger seems considerable if he is not stopped now.

(3) If SA Shaneyfelt's integrity ever is questioned in court where he appears in his usual capacity as an FBI Laboratory Examiner and challenged with particular reference to the statements made in this book, a bad impression is left, to say the least, if SA Shaneyfelt must reply that he took no action in this case. Many might consider failure to take action as a sort of admission of guilt by both SA Shaneyfelt and the FBI.

(4) As time passes and SA Shaneyfelt is not challenged in court during regular testimony, his claim for damages should he later consider action in this case is considerably weakened.

Memorandum J. J. Casper to Mr. Mohr
Re: Assassination of President
John Fitzgerald Kennedy
Dallas, Texas 11/22/63
Miscellaneous Information Concerning

RECOMMENDATION:

That this memorandum be referred to the FBI Laboratory.

Suggest we leave it up to Shanefield as to whether the should see.

2/1/67