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MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

On May 22, 1973, this Court ordered that Weisberg v. U. S. Department of Justice, No. 71-1026, "shall be reconsidered by the court en banc without further argument." On June 7, 1973, this Court entered a second order which decreed that Weisberg was consolidated with The Committee to Investigate Assassinations v. U. S. Department of Justice, No. 71-1829, and scheduled both 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. Sepcifically, Weisberg points out that the petition for rehearing relies upon three cases, Frankel v. Securities and Exchange Commission, 460 F. 2d 813 (C.A. 2, 1972); Evans v. Department of Transportation, 446 F. 2d 821 (C.A. 5,); and, Environmental Protection Agency v. Mink, ____ U. S. ____, 35 L. Ed. 2d 119, 93 S. Ct. _____(1973), 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 opinion in this case discussed Mink in footnotes 7 and 9 of the slip opinion, the Supreme

Court decision in Mink was issued after his last brief was submitted to this Court. In addition, the petition for rehearing cited Mink in support of an entirely new argument it advanced claiming that Congress had intended to create a blanket exemption for all investigatory files so labeled by the Department of Justice.

Weisberg believes that these points could not be adequately addressed on oral argument, particularly since his case was consolidated with the lawsuit brought by the Committee to Investigate Assassinations, a case which, in his view, presented different legal questions.

Accordingly, Weisberg has requested that we, as his attorneys, draw up a brief in response to the new points raised in the petition for rehearing. Having complied with his wishes, we respectfully request that this Court grant us leave to file a Supplemental Brief, copies of which we submit herewith.