

STATEMENT OF JAMES HIRAM LESAR

On November 29, 1963, President Lyndon Johnson announced the appointment of a Special Commission "to study and report upon all facts and circumstances relating to the assassination" of President John F. Kennedy. The White House press release expressly stated:

The President is instructing the Special Committee to satisfy itself that the truth is known as far as it can be discovered, and to report its findings and conclusions to him, to the American people, and to the world. [Warren Report, p. 472]

The Special Commission appointed by President Johnson was headed by the Chief Justice of the Supreme Court, Earl Warren. Ten months later the Warren Commission issued its Report. Two months subsequent to the issuance of the Report, the Government Printing Office published twenty-six volumes of assorted documents and testimony which purportedly supported the Commission's findings and the Report's conclusion that Lee Harvey Oswald, acting alone, murdered President Kennedy.

The public impression created by this deluge of information was that the Warren Commission's findings and conclusions were true and that they were substantiated in overwhelming detail by the evidence which had been gathered as the result of a thorough and honest investigation by the federal agencies, principally the FBI, which served as the Commission's investigative arm. Most importantly, the release of the Commission's massive Report and the publication

of its twenty-six volumes created the impression that the Government was levelling with the American people about the murder of their elected leader and would make public all of the relevant evidence pertaining to his assassination.

Nothing could be further from the truth.

Today, nearly twelve years after President Kennedy was assassinated, some of the most basic and most important information about his murder is still being suppressed.

On May 23, 1966, Warren Commission critic Harold Weisberg wrote FBI Director J. Edgar Hoover a letter in which he called upon Mr. Hoover to make public the FBI's critically important report on the results of the spectrographic analyses which it had performed upon bullets, bullet fragments, and items of evidence allegedly struck by them in order to determine their precise chemical composition. [See Attachment A] Mr. Hoover never responded to Mr. Weisberg's letter.

On August 3, 1970, Mr. Weisberg filed suit under the Freedom of Information Act for disclosure of the FBI's spectrographic report. Today, nine and a half years after his original request and five years after he first instituted suit for the spectrographic analysis, the FBI still has not provided him with a copy of this report.

Today, eleven years after the Warren Commission handed in its Report and dissolved, the entire transcripts of two of its executive

sessions and part of a third are still being withheld from Mr. Weisberg and the American people. Two other Warren Commission executive session transcripts were obtained by Mr. Weisberg only within the past eighteen months, years after he originally requested them and only after protracted litigation under the Freedom of Information Act.

This policy of suppression is in direct contradiction to the Government's announced policy as set forth in the guidelines contained in the Attorney General's April 13, 1965, memorandum on the public availability of Warren Commission records. [See Attachment B]

The Attorney General's memorandum was drafted at the behest of the White House in response to a January 4, 1965, letter to the President from the Mayor of Cedar Rapids, Iowa eloquently protesting that "The decision of the National Archives . . . to withhold from the public 'off the record testimony and exhibits of the Warren Commission for 75 years' is inexplicable and inexcusable and gives cause to doubt the veracity of the published Warren Commission Report"; and expressing chagrin that the President would permit "a 75 year cloak of secrecy to fall over the facts involved in the Kennedy assassination." [See Attachment C]

On April 19, 1965, the White House ordered the Attorney General to implement the guidelines set forth in his April 13, 1965, memorandum. Those guidelines severely curtail the instances in

which government agencies may withhold records pertaining to the assassination of President Kennedy. They state that even where one of the enumerated reasons for nondisclosure may apply, the agency "should weigh such reason against the 'overriding consideration of the fullest possible disclosure' in determining whether or not to authorize disclosure." This adopts the identical language which Chief Justice Earl Warren used to express the Warren Commission's view in his April 5, 1965, letter to the Attorney General. [See Attachment D] The Attorney General's memorandum also noted Chief Justice Warren's statement that "The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies."

The policy of suppression which still continues also contradicts the Warren Commission's official assurances to the elected representatives of the American people. Thus, in his March 11, 1964, letter to Senator Jacob Javits, Warren Commission General Counsel J. Lee Rankin stated:

The final report of this Commission will be complete and documented by reference to relevant testimony and/or underlying investigative materials. At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration. [See Attachment E]

In his letter to Senator Javits, Mr. Rankin quoted a March 4, 1964, statement by Chief Justice Warren as follows:

"The purpose of this Commission is, of course, eventually to make known to the Pres-

ident, and to the American public everything that has transpired before this Commission. All of it will be made available at the appropriate time. The records of the work of the Commission will be preserved for the public."

I have represented Mr. Harold Weisberg in four Freedom of Information lawsuits for the disclosure of records pertaining to the assassination of President Kennedy. In my judgment, there was never any legal basis for denying Mr. Weisberg any of the records which he sought in these four lawsuits. Mr. Weisberg was forced to go to court to obtain these records not because there was any legitimate reason for withholding them but because their release would embarrass the government.

This is shown by the circumstances surrounding Weisberg v. General Services Administration, Civil Action No. 2052-73, in which Mr. Weisberg sought the release of the transcript of the executive session of the Warren Commission held on January 27, 1964. When Congressman Gerald Ford published his book Portrait of the Assassin in 1965, he quoted extensively from the January 27 transcript. Yet for nine years after Mr. Ford had published parts of it, the National Archives continued to suppress the entire transcript on the grounds that it had been classified Top Secret pursuant to Executive Order 10501.

In 1973, when Mr. Weisberg filed suit for the January 27 transcript, the National Archives claimed that it was exempt from disclosure under exemptions (b)(1), (b)(5), and (b)(7). The Archives submitted two affidavits swearing that this transcript

had been classified pursuant to Executive Order 10501. Mr. Weisberg filed counteraffidavits disputing this claim. After considering the opposing affidavits the district court ruled that the government had failed to show that the January 27 transcript "has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501"

While denying the validity of the Archives' exemption (1) claim, the district court did rule that the January 27 transcript was exempt from disclosure under (b)(7), the "investigatory files" exemption, even though the answers to the interrogatories asked by Mr. Weisberg showed that no law enforcement official had seen the transcript until at least three years after the Warren Commission had ceased to exist.

Before Mr. Weisberg could appeal this decision, the Archives suddenly "declassified" the transcript which the district court had ruled was never properly classified and released it to Mr. Weisberg and the public. If declassifying a transcript whose national security status had already been desanctified by court order is not without comical overtones, making the transcript public had more serious implications. Since the district court had upheld the Archives' claim to the "investigatory files" exemption, the Archives did not have to make the transcript public, even if it "declassified" it. But making the transcript public under these circumstances does demonstrate that the Archives had spuriously invoked the "investigatory files" exemption.

The text of the January 27 transcript shows that there was never any basis for classifying it Top Secret pursuant to Executive Order 10501. It contains no information affecting the national defense or foreign relations which warrants classification under the provisions of that or any other executive order.

For nearly 10 years the National Archives suppressed the January 27 transcript on the fraudulent pretext that it was entitled to protection under exemption (b)(1) to the Freedom of Information Act. This, of course, was not the real reason why the Archives kept it from the American people. The real reason is simply that the government knew that its release would severely embarrass two powerful government agencies, the FBI and the CIA, and seriously undermine the Warren Commission's credibility.

What is true of Mr. Weisberg's suit for the January 27 transcript is also true of his other Freedom of Information Act lawsuits. In not one of them is there any legitimate basis for withholding the information which he seeks. The greater the embarrassment to the government, the more desperately the government seeks to avoid disclosure. In the case of Mr. Weisberg's two suits for the spectrographic and neutron activation analyses, this desperation has expressed itself in repeated attempts to deceive the courts. The same FBI Agent has submitted two contradictory affidavits to the district court and the government has refused to answer even simple interrogatories which seek to ascertain what scientific tests were performed on the bullets, bullet fragments, and items of evi-

dence allegedly struck by them.

The use of false, misleading, or obfuscatory affidavits to support a spurious claim of exemption or to deny that the documents sought exist or can be found occurs repeatedly in lawsuits brought for the disclosure of records pertaining political assassinations. Often such affidavits are executed by the wrong government employee, someone selected to swear out an affidavit precisely because he does not have the requisite personal knowledge of the facts recited in his affidavit.

Such tactics have implications far beyond the quest for information about the assassination of President Kennedy. They defy the intent of Congress in enacting the Freedom of Information Act and subvert the law. If the Freedom of Information Act is to be a viable means of compelling the disclosure of government information wrongly suppressed, it is my belief that Congress will have to pay close attention to the government's misuse of affidavits as a means of defeating rightful claims to the disclosure of information.

ATTACHMENT A [Retyped]

May 23, 1966

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

Enclosed is a copy of my book, WHITEWASH--THE REPORT ON THE WARREN REPORT. In it you will find quotations from your testimony and that of FBI agents that I believe require immediate unequivocal explanations and from the FBI's report to the Commission. Of the many things requiring explanation, I would like in particular to direct your attention to these three, in which it would seem no question of national security can be involved:

1) In your brief discussion of the assassination in the report to the Commission you say that three shots were fired, of which two hit the President and one the governor. This does not account for the bullet that hit the curbstone on Commerce Street, which you told the Commission you could not associate with the Presidential car or any of its occupants. In another part of this report, dealing with Oswald, you told the Commission that the bullet that did not kill the President struck him in the back--not the neck--and did not go through his body. Here you seem to fail to account for the well-known wound in the front of the President's neck. And thus, are there not at least five bullets, the three you accounted for and the two you did not account for? The Commission itself considered the curbstone strike a separate bullet, and the President most certainly was wounded in the front of the neck.

2) In his testimony before the Commission, FBI Agent Robert A. Frazier did not offer into evidence the spectrographic analysis of this bullet and that of the various bullet fragments. Neither did FBI Agent John F. Gallagher, the spectrographer. Agent Frazier's testimony is merely that the bullets were lead, which would seem to be considerable less information than spectrographic analysis would reveal. The custodian of this archive at the National Archives informs me this analysis is not included in his archive but is in the possession of the FBI. I call upon you to make it immediately available.

3) In his testimony before the Commission, FBI Agent Frazier said that when the whole bullet was received by the FBI, it had been wiped clean. He does not reveal any FBI interest in this unusual destruction of evidence. He also testified that the cleansing of the bullet was not complete, that foreign matter remains in the grooves in the bullet. Yet his testimony does not show any FBI interest in learning what the nature of the residue was. Did the FBI make the appropriate tests? Could the residue be associated with either the President's body or the governor's? What effort, if any, was made to learn? And if no effort was made, why not?

Sincerely yours,

Harold Weisberg

ATTACHMENT B

APR 13 1965

MEMORANDUM FOR: Honorable McGeorge Bundy
Special Assistant to the President

RE: Public Availability of Materials Delivered to the
National Archives by the President's Commission
on the Assassination of President Kennedy.

The Department of Justice has completed the study, requested by you in your memorandum of January 15, 1965, concerning the advisability of modifying the usual restrictions which would govern the availability to the public of materials delivered to the National Archives by the President's Commission on the Assassination of President Kennedy. In the course of this study, the Department of Justice has obtained the views of the President's Commission, the Archivist of the United States, the interested Federal agencies and the Dallas Police Department.

Under normal regulations governing access to materials deposited in the National Archives, materials are made available to any competent adult with a definite, serious reason for requesting access, unless there is in effect an overriding restriction on disclosure or disclosure would violate obvious requirements of public policy or propriety. With respect to investigative reports furnished to the President's Commission by Federal agencies, the relevant restriction is a rule of nondisclosure for a period of 75 years unless the agency in which the report originated authorizes disclosure.

The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies

of the Government. According to the Chief Justice, the Commission assumed that these determinations would be made in light of "the overriding consideration of the fullest possible disclosure." Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies.

Based on the views of the Commission and the recommendations of the Federal agencies involved (summarized in the Attachment to this letter), the Department of Justice believes that there should be some modification of the normal procedures of the National Archives. The Department recommends that the following procedures be adopted in order to accomplish the most complete disclosure consistent with other legitimate interests:

1. All material furnished to the President's Commission by the Dallas Police Department and the Immigration and Naturalization Service should be made available to the public on a regular basis, since both agencies have authorized full disclosure.

2. Investigative reports and related materials furnished to the President's Commission by other Federal agencies should be administered in accordance with the existing regulations of the National Archives. These agencies should be requested to examine the materials furnished by them with a view to authorizing the immediate disclosure on a regular basis of as much of the materials as possible. (Where materials originated with an agency other than the one furnishing them to the Commission, the decision regarding disclosure should be made by the originating agency.) The following guidelines should be applied:

- a. Statutory requirements of nondisclosure should be observed;
- b. Security classifications should be respected, but the agency responsible for the classification should consider whether the classification can be eliminated or graded down consistently with the national security;

- c. All unclassified material which has been disclosed verbatim or in substance in the Report of the President's Commission or accompanying published documents should be made available to the public on a regular basis. (In this connection, it should be noted that the Archivist has advised that a final determination of which reports have been published in whole or in part, verbatim or in substance, will not be available before 1966.)
- d. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure
- 1) will be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
 - 2) may reveal the identity of confidential sources of information or the nature of confidential methods of acquiring information, and thereby prevent or limit the use of the same or similar sources and methods in the future;
 - 3) may lead to the incorrect identification of sources of information and thereby embarrass individuals or the agency involved;
 - 4) would be a source of embarrassment to innocent persons, who are the subject or source of the material in question, because of the dissemination of gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

- 5) will reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.

Where one of the above reasons for nondisclosure may apply, the agency involved should weigh such reason against the "overriding consideration of the fullest possible disclosure" in determining whether or not to authorize disclosure.

- c. Except in special cases, documents should be withheld or disclosed in their entirety.

3. Classified and unclassified material which is not made available to the public should be reviewed by the agency concerned five years and ten years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at ten-year intervals during the remainder of the 75-year period of nondisclosure. The Archivist should undertake to arrange for such review at the appropriate times.

4. When a request for limited disclosure of particular unclassified documents or groups of documents is received by the Archivist, he should communicate such request to the agency concerned, which should consider the request in the light of the criteria outlined above and, wherever consistent with those criteria, authorize the limited disclosure requested. In the application of the criteria, consideration should be given to the qualifications of the person requesting disclosure and the purpose for which the request is made.

It should be noted that the Archivist has indicated that the arrangement and preparation of an inventory of the material turned over to the National Archives by the President's Commission will not be completed until June 1, 1965. Accordingly, it is unlikely that a review of the material turned over to the Commission by the various agencies can be undertaken before that date. It is suggested that the Archivist be

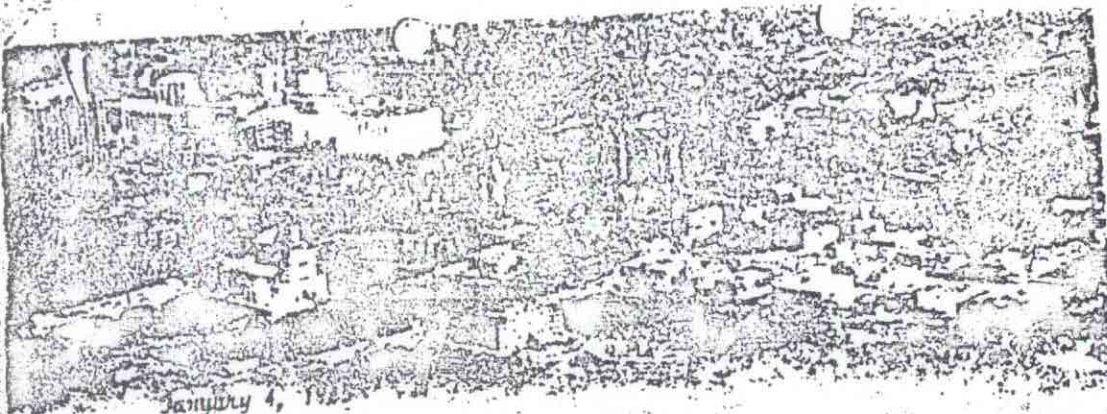
asked to make arrangements with the various agencies for such review to be undertaken at the earliest possible date, to be carried out on an expedited basis.

The Archivist has advised that the disposition of materials originating with the President's Commission itself has been discussed with Mr. Radwin and that a final decision has been deferred until after June 1. He has advised also that pending a determination of the ownership of physical exhibits, requests for access to them will be referred to the Department of Justice. While it is anticipated that the fullest possible disclosure of those portions of the record will be authorized, in accordance with the desires of the President's Commission, the Department believes that particular decisions as to them should not be made until information regarding them is complete.

If these procedures meet with your approval, this Department will prepare the necessary instructions.

Attorney General

ATTACHMENT C



January 4, 1964

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Mr. President:

As one who read and believed the Warren Report on the assassination of President Kennedy I am disturbed and chagrined that you would permit a government agency to dictate to you what will be done with testimony and exhibits for the next 75 years.

Knowing that you believe in the public's right to know - a statement you have often made - it intrigues me that you would permit a 75 year cloak of secrecy to fall over the facts involved in the Kennedy assassination.

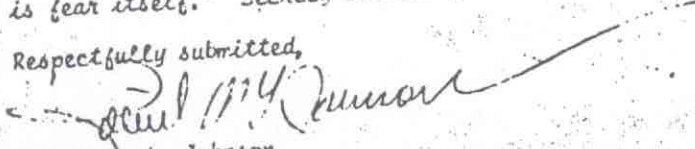
The decision of the National Archives Bureau to withhold from the public "off the record testimony and exhibits of the Warren Commission for 75 years" is inexplicable and inexcusable and gives cause to doubt the veracity of the published Warren Commission report.

I believe in national security but I fail to see the relationship between the facts of the Kennedy assassination and the security of the nation at this time.

May I suggest that if there is true justification for withholding from the public the facts of one of the most tragic events of our time, it is also incumbent upon our national leadership to make it clear why.

Franklin D. Roosevelt said: "the only thing we have to fear is fear itself." Secrecy creates fear.

Respectfully submitted,


Robert H. L. Johnson
Mayor

The President
The White House
Washington 25, D. C.

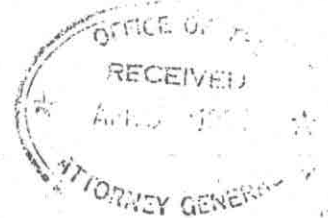
RMLJ/bw

ATTACHMENT D

CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

April 5, 1965



Honorable Nicholas deB. Katzenbach,
Attorney General of the United States,
Justice Department,
Washington, D. C.

Dear Mr. Attorney General:

The President's Commission on the Assassination of President John F. Kennedy gave careful consideration to the proper disposition of its records before it delivered them to the National Archives. It wished them to be held there for the benefit of the American people. At that time, it decided that it was in the best interests of all concerned that the policy relating to the Commission's records provide for the fullest possible disclosure.

At the same time, the Commission recognized that its records contained investigative materials which were classified by the originating agencies to protect the security of the United States. Furthermore, among such materials were numerous items in which inhered serious potential for character assassination and other similar misuse to the injury of innocent persons.

The Commission, after full consideration, concluded that it did not have either the authority or the necessary information to determine the technical questions as to when the classified materials should be released without injury to the security of the country. It decided that the responsibility for that decision must of necessity be left with the originating agencies and the Attorney General, as the chief legal officer, in accordance with established law and policies of the Government. It also concluded that such agencies and the Attorney General could best determine what safeguards were necessary to protect innocent persons in the release of defamatory materials.

In arriving at the foregoing conclusions, however, the Commission assumed that all of the determinations by the agencies and the Attorney General would be made in recognition of the overriding consideration of the fullest possible disclosure, and that all other proper factors, including the disclosures that have been made, would be taken into account. The Commission had no desire to restrict public access to any of its working papers except those classified by other agencies. It was with these thoughts in mind that the Commission, on its dissolution, committed its papers to the National Archives subject to the laws and regulations concerning the release to the public of classified and restricted materials.

We hope that this report of the attitude and conclusions of the Commission concerning the full disclosure of its records will be helpful to you in the formulation of your proposal for making the materials of this Commission now in the National Archives available to the public.

Sincerely,

Earl Warren

ATTACHMENT E

JLR:HPW:al
3/9/64

MAR 11 1964

Honorable Jacob K. Javits
United States Senate
Washington, D. C.

Dear Senator:

I would like to acknowledge receipt of several communications regarding the work of this Commission which you have referred to this office for comment. I apologize for the delay in responding to your inquiry, but I am hopeful that events during this period of time will serve to clarify the position of the Commission on some of the issues raised by these letters.

As you know, this Commission was established by President Johnson to investigate and report upon all the facts and circumstances surrounding the assassination of President Kennedy and the subsequent murder of his alleged assassin, Lee Harvey Oswald. All facets of this matter will be investigated fully and reported upon by the Commission as requested by President Johnson. I would like to assure you and your correspondents that all allegations that Oswald was an informant or undercover agent for the Federal Bureau of Investigation or any other federal agency will be thoroughly investigated.

With regard to the issue of Mark Lane's participation in the hearings of the Commission, the Commission has decided that its mission would not be aided by such a procedure. Mr. Lane did appear before the Commission, however, in a public hearing on March 4, 1964, and the Commission will consider his observations carefully before the issuance of its final report. The Commission has not prejudged Lee Harvey Oswald's implication in the assassination, but is exploring all possibilities that other persons may be involved. We are making every effort to remain sensitive to the rights and reputation of Lee Harvey Oswald. For your information

cc: Mr. Willens - Chrono.
Mr. Rankin

I am enclosing the statement issued by the Commission announcing that the President of the American Bar Association has been appointed to assist the Commission in this effort.

As the events of the last few weeks have indicated, the press has interviewed Marina Oswald, who appeared before the Commission early last month. Neither the Federal Bureau of Investigation nor any other federal agency refused Mrs. Marguerite Oswald permission to see Marina Oswald. Ever since November 22, 1963, Marina Oswald has been free to see whomever she wishes to see.

The Chief Justice has authorized me to assure you that none of his remarks regarding the Commission were intended to suggest that the significant conclusions of fact developed by this investigation would not be made known to the American public. The final report of this Commission will be complete and documented by reference to relevant testimony and/or underlying investigative materials. At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other consideration. On March 4, 1964, the Chief Justice stated as follows:

"The purpose of this Commission is, of course, eventually to make known to the President, and to the American public everything that has transpired before this Commission. All of it will be made available at the appropriate time. The records of the work of the Commission will be preserved for the public."

I hope that this letter is of some assistance to you in responding to this correspondence and I remain available to assist you in any way possible.

Sincerely,

J. Lee Rankin
General Counsel

Enclosure