

Mr. Conrad

2/7/67

W. D. Griffith

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

Reference is made to my memo to you dated 1/26/67 concerning the libelous nature of the book "Whitewash II" by Harold Welsberg and his allegations about the FBI and SA Lyndal L. Shaneyfelt. By memo dated 1/31/67 from Mr. Casper to Mr. Mohr the Legal Research Desk set out their review and recommendations concerning this matter.

Since there is no assurance that any benefit to the Bureau would be forthcoming if SA Shaneyfelt undertook the civil suit against Welsberg and since SA Shaneyfelt has no desire to obtain a financial advantage therefrom, he contemplates no action.

RECOMMENDATION: None. For information.

62-109089

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Casper (Legal Research Desk)
- 1 - Mr. Wick
- 1 - Mr. Conrad
- 1 - Mr. Griffith
- 1 - Mr. Shaneyfelt

L.S:mb (11)

62-109090

NOT RECORDED
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62-109089-19

ORIGINAL FILED IN

Mr. Mohr

1/31/67

J. J. Casper

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

Unrecorded
Conrad

62-109090-4473

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
- 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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NOT RECORDED
199 FEB 15 1967

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Memorandum J. J. Casper to Mr. Mohr
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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 public

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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 be later considered. action in this case is considerably weakened.

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RECOMMENDATION:

That this memorandum be referred to the FBI Laboratory.

Mr. Conrad

1/26/67

W. D. Griffith

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The most recent book by Harold Weisberg entitled "Whitewash II - The FBI - Secret Service Coverup" is highly critical of the Bureau and specifically of the testimony of FBI Laboratory Examiner SA Lyndal L. Shaneyfelt. Weisberg previously authored the book "Whitewash" and is now reported to be writing "Whitewash III." Harold Weisberg is a Hyattstown, Maryland, poultry farmer, an ex-State Department employee, and an ex-Senate investigator who was removed from both positions because of suspicion of being a communist or having communist sympathies. Weisberg had the book printed himself because he could not interest any publishers in it possibly due to the libelous nature of its contents.

In Whitewash II, Weisberg extensively quotes the testimony of SA Shaneyfelt regarding the examination of the Zapruder film and the re-enactment that was based on the Zapruder film. He states that Shaneyfelt "ran the re-enactment that was made essential by the doctrine of the Report" and "the FBI knowingly engaged in a reconstruction they knew to be utterly false." He alleges in Whitewash II that SA Shaneyfelt "was the Commission's photographic expert," "he did or supervised their photographic lab work," and "those faces on the cutting room floor may have been put there by Shaneyfelt." After establishing in the reader's mind that SA Shaneyfelt did all the photographic work he refers

Enclosure

ENCLOSURE

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- 1 - Mr. Mohr
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- 1 - Mr. Casper (Legal Research Desk)
- 1 - Mr. Wick
- 1 - Mr. Conrad
- 1 - Mr. Griffith
- 1 - Mr. Shaneyfelt

① 62-109090

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unceasingly to "picture doctoring," "edited or altered" photographs and the "destruction of evidence." He concludes with a very specific implication that SA Shaneyfelt cut out the much-publicized missing frames 208 through 211 of the Zapruder film to conceal from the public what really happened during the assassination. All of these allegations are, of course, completely false. (Life Magazine has recently admitted having spliced the original Zapruder film and cut out the four frames.) These frames were not missing in the FBI copy of the film and were considered in all evaluations by the Laboratory and the representatives of the Commission who viewed the FBI copy. SA Shaneyfelt made several photographic examinations at the request of the Commission but did not "run their photographic lab work." He assisted in the re-enactment but did not "run it" and, of course, did not edit, doctor, or mutilate any evidence. Weisberg suggests that SA Shaneyfelt may be a perjurer.

The allegations of Weisberg would appear to be libelous of both the Bureau and SA Shaneyfelt. Accordingly, in an effort to discourage and stop such highly irresponsible and unwarranted attacks against the Bureau on the part of Weisberg and others like him, the Bureau may wish to explore the feasibility of having a libel action brought against Weisberg in SA Shaneyfelt's name. Factors to be weighed in any such consideration are: (1) Legal estimate of whether successful suit might be sustained based on (a) the irresponsible and malicious statements in the book as opposed to (b) the recent Supreme Court decision holding that newsworthy persons including those who do not seek publicity have only a limited right to sue for damages for false reports that are published about them; and (2) a tactical estimate as to whether a net gain would accrue, bearing in mind the greatly increased forum which such an action would provide for Weisberg, as opposed to the fact that he is now apparently forced to publish his books privately.

SA Shaneyfelt, of course, contemplates no action in the matter unless so desired by the Bureau.

RECOMMENDATION:

The Bureau may wish to refer this memorandum and the enclosed book "Whitewash II" to the Legal Research Desk for review and consideration as to whether it might serve as a basis for libel action against Weisberg.