

## Weisberg Loses—At First

# Do Secret Records Imply a Conspiracy?

*This is the third segment of a series on the Kennedy assassination by David R. Wrone, associate professor of history at the University of Wisconsin-Stevens Point.*

*Originally scheduled to run in three parts, the series has been divided once more due to space limitations. Part 4 will run in Thursday's Capital Times.*

*In part 2, Tuesday, Wrone began the drama of one critic's search to learn why certain documents of the Warren Commission Records in the National Archives were classified "top secret." This installment describes researcher Harold Weisberg's initial futility.*

By DAVID R. WRONE

On April 27, 1974, Judge Gerhard Gesell's district court received the affidavit of J. Lee Rankin, former general counsel of the Warren Commission.

In it, Rankin swore he ordered certain executive session transcripts classified—including the Jan. 27, 1974, transcript being sought by Harold Weisberg.

At this point, E. J. Silbert, head of federal attorneys opposing Weisberg's suit, sought dismissal of that suit. We pick up at that point.

Weisberg and his attorney, James Lesar, responded to the Rankin affidavit on the assumption that the prestige of the individual affianting has no bearing on whether an alleged fact is true. The scales of blind truth weigh only facts, not prestige.

On April 24, Lesar launched a fierce attack on Silbert designed to smash the factual base of Rankin's affidavit while at the same time wrecking his credibility. The argument fell into four parts.

• First, Lesar demonstrated the Warren Commission did not have the authority to classify its records pursuant to Executive Order 10501. That order specifically states that "except as such authority may be specifically conferred upon any such agency or unit," they "shall be deemed not to have authority for original classification of

Rankin swore that the Warren Commission had ordered him to classify the transcript and he had directed Ward & Paul, Washington publishers of the Warren Records, to do it.

Weisberg stated there is no document in the Commission files that directs Rankin to classify and that the defendant did not produce any. Moreover, Rankin placed his affidavit in a chronological framework that disproves his own statement.

### No Classification Orders

Rankin began work on Dec. 8, 1963. Weisberg swore and provided proof that no transcript of an executive session was ever classified prior to that date. The transcript of that date does not direct Rankin to classify transcripts or

poses . . . within the meaning of seventh exemption."

Gesell's embrace of the seventh exemption moved Lesar into action immediately filed a motion for reconsideration of the summary judgment. The Freedom of Information Act argued, placed the burden of squarely upon the shoulders of government. It had not prove seventh exemption status applied transcript.

This status had merely been claimed by the federal attorneys, but the not shown the "top secret" stamp on face of the transcript as the Freedom of Information Act explicitly requires.

Moreover, the evidence provided court specifically and in detail pro-

information or material under this order."

No specific authority for classification was given to the Warren Commission. Neither Rhoads nor Rankin nor the federal attorneys could offer one. It did not exist.

• Second, Lesar showed the classification procedures required by Executive Order 10501 were not followed for the documents generated by the Warren Commission. That directive sets forth specific ways for classifying material relating to national security. Persons who have the authority to classify must by law affix the security stamp. Ward & Paul's method of handling their bookkeeping simply did not meet the federal requirements.

Furthermore, it states that documents must be classified with respect to their contents only. Again this could not mean the routine of the stenographers who stamped everything, including putting a "top secret" stamp on documents that had come to them declassified by the government.

• Third, the court was told that the defendant had not shown that compliance with the President Lyndon B. Johnson's Guidelines on making the Warren Commission Records available to the people. This information and its

documentary support presented to the court destroyed a portion of the irresponsible critics' myth concerning the sealed records of the Commission. Many had proclaimed throughout the land that Johnson was behind the killing and had deliberately sealed the evidence of his misdeeds.

Using documents that the Department of Justice attorneys had attempted to hide through subterfuge, Lesar and Weisberg revealed that in January, 1965, President Johnson ordered guidelines set up to release the Warren Commission Records to the public.

In implementing the order, the Attorney General of the United States requested Chief Justice Earl Warren's position on the question of the classification of the papers of the Commission he chaired. On April 3, 1965, Warren replied, saying the Commission wished "fullest possible disclosure" and did not wish to restrict any of its own records.

The Chief Justice's letter bluntly contradicts the reasons preferred by the Department of Justice and the National Archives for keeping the Jan. 27 transcript secret. That is why attorneys for the federal government kept the existence of the Warren letter quiet and then tried to block access to it by Weisberg.

In addition to Earl Warren's statement on disclosure, Lyndon B. Johnson's **Guidelines** supported Weisberg. Johnson had directed the National Archives to implement his **Guidelines** opening the Records to the public as expeditiously as possible consistent with law. The "top secret" stamp blatantly flies in the face of executive decree.

- Fourth, Lesar and Weisberg through a supplemental affidavit argued against Silbert's employment of the Rankin affidavit because substantial material facts are in dispute.

any other documents. The first time an executive session was classified, and this by Ward & Paul, was Jan. 21, 1964.

Between Dec. 8 and Jan. 21, no session of the Warren Commission was classified. The only session held between those dates was the Dec. 16 session. No order appears in it that directs Rankin to classify documents.

Quite soon after the order from President Johnson to declassify, the Jan. 21 transcript was removed from restriction and given to scholars. Its verbatim account does not contain a directive to Rankin. The Commission never directed Ward & Paul to classify documents. The Commission never

directed Rankin to classify documents.

After the destruction of the Rankin affidavit, Lesar made a frontal assault upon Rankin's integrity. He submitted Weisberg's second affidavit in which Weisberg swore that the documentary evidence reveals several pages of the Sept. 18 executive session of the Warren Commission had been faked. J. Lee Rankin had personally delivered the faked pages to the seven members of the Warren Commission.

The session itself had been forced by Sen. Richard Russell in order that he might raise objections to the soon-to-be published conclusions of the Warren Commission. When Weisberg had taken his information to Sen. Russell, the elderly statesman was shocked. Russell asked Weisberg to seek more facts on the subject and report back to him. When this was done, he learned that the only copies of the Sept. 18 session that existed were the faked copies. He was angry.

In letters and telephone calls to Weisberg, the powerful senator communicated his anger. As Weisberg swore in his affidavit:

"Privately, Sen. Russell told me that he was convinced that there were two areas in which Warren Commission members had been deceived by the federal agencies responsible for investigating the assassination of President Kennedy. These two areas were: (1) Oswald's background; and, (2) the ballistics evidence. The first of these two areas was the principal subject discussed by the Jan. 27, 1964, Executive Session."

Lesar then rested his case against the General Services Administration and awaited the decision of Judge Gesell. He felt, and the factual data clearly sustained him, that he had shown that classification of the transcript was unlawful and his client Weisberg should be permitted to examine it. Gesell shocked him.

#### *Gesell Delivers an Opinion*

On May 3, 1974, Judge Gesell delivered his opinion. "The issues," he said, "are ripe for adjudication." He agreed with Lesar that the defendant had failed "to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501." Lesar won the argument but then lost the case with the order.

Gesell decreed that Exemption 7 "appears to be fully justified by the record." Then he buried his opinion in what he thought was the finding of the

recent Supreme Court decision of **Weisberg v. Department of Justice**.

Gesell opined:

"The Warren Commission was an investigatory body assigned to look into the assassination of President Kennedy and the subsequent murder of Lee Harvey Oswald. It can hardly be disputed that its findings would have led to criminal enforcement proceedings had it uncovered evidence of complicity in those events by any living person. The Archives' collection of Warren Commission transcripts therefore constitutes an 'investigatory file . . . compiled for law enforcement pur-

just the opposite of Gesell's finding. The transcript was not stamped "top secret" for law enforcement purposes but to help commercial typists sort and keep records. Archivist Rhoads had refused to swear that the transcript had been compiled for law enforcement purposes, said Lesar, "from a well-grounded fear of committing perjury."

The evidence presented to the court and not questioned by attorney Silbert, established that no law enforcement official ever saw the transcript until the winter of 1967-68. No law enforcement official was ever provided with a copy of the transcript. Furthermore, he continued, in their original correspondence and statements of reasons for classification the General Services Administration invoked the seventh exemption for just one transcript, i.e., Jan. 27.

Gesell gave them the seventh exemption for all documents collected by the Warren Commission, so sweeping that it would include those published 10 years previously in the **Hearings and Exhibits** volumes, as well as the report itself. In effect, the court order suppressed all the "records of an official commission established to make the truth about an assassination known to the public."

*Next: A bizarre twist*