APPELLANT'S PETITION FOR REHEARING EN BANC

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 71-1026

HAROLD WEISBERG, Plaintiff-Appellant

v.

U.S. DEPARTMENT OF JUSTICE, Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

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Appellant Weisberg respectfully petitions for a rehearing en banc. Rule 35(a) of the Federal Rules of Appellate Procedure provides that a rehearing en banc may be ordered: 1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or 2) when the proceeding involves a question of exceptional importance. Weisberg submits that rehearing en banc is justified under both criteria. In addition, the decision in this case appears to rest on several wrong statements of fact which are fundamental to the opinion delivered by Judge Danaher.

The Department of Justice previously petitioned this court for a rehearing

en banc on the grounds that the majority decision by the three-judge panel involved a question of exceptional importance. This court granted that petition without requesting an answer opposing it from the Appellant.

In granting the previous petition for a rehearing this court has already determined that this case involves a question of exceptional importance. However, we wish to make it clear that this case is important for reasons neither advanced nor admitted by the Department of Justice.

Freedom of Information Act cases are important because access to information kept secret by government agencies deeply affects First Amendment rights and thereby determines whether our people will have the informed judgment necessary for self-government. In totalitarian governments there is no pretense that a citizen shall have access to the kind of information Weisberg seeks.

Weisberg states under oath that he has compelling evidence which causes him to conclude that the spectrographic analyses he seeks must necessarily disprove the official government theories advanced to explain the assassination of President Kennedy. Weisberg also states that the real reason the Department of Justice continues to suppress the spectrographic analyses is that their revelation would disclose that the FBI deceived the Warren Commission members as to the truth about the assassination of President Kennedy. Weisberg further states that he has knowledge of the destruction of official evidence relating to the assassination of President Kennedy and suggests that the disclosure of the spectrographic analyses could show a possible motive for the destruction of that evidence. (See Weisberg affidavit)

The documents which Weisberg seeks are of critical public importance. The spectrographic analyses are to President Kennedy's assassination and the FBI's investigation of that assassination what the borderaux papers were to the Dreyfus case. Common sense indicates that if the results of these

spectrographic analyses substantiated the official government theory of the assassination they would have been made available to the Warren Commission members. They were not. Indeed, if the spectrographic analyses support the official theory of the assassination, they no doubt would have been released long ago in order to abate the tidal wave of public skepticism about the official explanation of the assassination.

Finally, it must be said that the decision in this case is entirely inconsistent with the prior decisions of this court in Bristol-Myers Co. v. FTC, American Mail Line, Ltd. v. Gulick, Getman v. NLRB, and Vaughn v. Rosen. Yet none of these cases nor the points of law raised by them are even discussed in this opinion!

The sections which follow set forth in detail the factual, legal and procedural reasons why we believe this court should rehear this case.

I. THE OPINION CONTAINS SERIOUS FACTUAL ERRORS

A. THE OPINION WRONGLY STATES THAT WEISBERG CHOSE NOT TO COUNTER THE AFFIDAVIT OF FBI AGENT E. MARION WILLIAMS AND THAT NO ISSUE OF MATERIAL FACT WAS PRESENTED

Footnote 4 of the opinion states:

> The appellant chose not to counter the Department's affidavit filed in support of its Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted, or alternatively, for summary judgment. No material issue of fact was presented in any event. (Slip opinion, p. 3)

It is not true that Weisberg chose not to counter the Williams affidavit. Weisberg did counter the Williams affidavit. On oral argument before the District Court his attorney objected to the Williams affidavit on the grounds that: 1) it was not based on personal knowledge; and, 2) it contained statements which were not true. (See JA 58-59)

Under the Act, the burden is on the government to justify withholding. The government introduced the Williams affidavit in an attempt to meet that burden. Since all decisions of this court prior to the en banc decision in this case require the government to make some showing of harm which might result from disclosure, the Williams affidavit dreamed up some imaginary harms. When Weisberg challenged the harms listed in the Williams affidavit, he put in dispute issues of material fact. Thus, it is also incorrect to state that there were no issues of material fact.

Weisberg did not file a written opposition to the Williams affidavit. In order to understand this it is necessary to recount some of the peculiar circumstances of this case, including some which came to light only last week.

The Complaint in this case was filed on August 3, 1970. Two months later, on October 6, 1970, the Department of Justice filed a Motion to Dismiss, or, in the alternative, for Summary Judgment. No affidavit was attached to the Department's October 6th motion.

On October 16th, Weisberg filed an Answer to the Justice Department's Motion to Dismiss. A hearing was set for November 9, 1970. On November 3, however, the Department of Justice moved ex parte for a postponement until November 16, 1970, which was granted.

On November 9th the Department of Justice filed its Supplemental Motion to Dismiss which contained only the attached Williams affidavit. This motion came just five days before the oral argument before Judge Sirica.

The obvious question is: why did the Justice Department wait so long to file the Williams affidavit? Why didn't the Department file the Williams affidavit with its October 6th motion?

There is reason to think that the Department of Justice deliberately withheld this affidavit until the last moment in an effort to preclude a written

response to it. The copy of the affidavit which was served on Weisberg is an undated, unsigned xerox. Last week counsel for Weisberg examined the court record in this case. The affidavit filed in the District Court on November 9, 1970, bears the date of August 19, 1970. This means that the Williams affidavit was prepared nearly three months prior to the time it was filed in court and some six weeks prior to the date on which the Department filed its Motion to Dismiss. It also means that an undated copy of the affidavit lay moldering for nearly three months until it was needed for service on Weisberg's counsel.

We suggest that this may well have been deliberate. The late filing of the affidavit precluded a written response to it. (The Justice Department was well aware that this case involved an out-of-town client.) The service of an undated copy also prevented counsel from raising questions about the suspicious circumstances of this affidavit at oral argument.

Counsel for the defendant employed two other tricks at oral argument. The first was a ploy to shift the government's burden to justify its suppression to the plaintiff:

> Mr. Werdig: . . . . Ordinarily, inasmuch as the government filed the motion we would ask that we argue first; however, under these circumstances I believe we can reserve our comments more in the nature of rebuttal and I would like to ask Your Honor if I might have the privilege of having the last word as if I had the opening argument. (See JA 53-54)

Caught by surprise, counsel for Weisberg agreed to this proposal. However, this device enabled defense counsel to divert attention from the Williams affidavit--he answered none of the questions about that affidavit raised by counsel for Weisberg--and to shift the burden of the proceedings from the Department of Justice to Weisberg, contrary to the intent of the Freedom of Information Act.

For his second "fast one" counsel for the defendant stated that "the

Attorney General of the United States had determined that it is not in the national interest to divulge the spectrographic analyses." We believe that this is untrue and that but for the fact that it is irrelevant to the FOI Act it would probably constitute perjury. Nonetheless, it served to divert attention from the spurious Williams affidavit.

We believe that the tactics engaged in by the Department of Justice in this case violated the mandate of the Freedom of Information Act that the government must justify its refusal to disclose information. Instead, the government resorted to every trick in the book to avoid having to justify its statements and actions. We suggest that the government's tricks, obfuscation, and false statements were intended to have the same effect as perjury; that is, they are intended to confuse and deceive both the court and counsel for Weisberg.

B. THE COURT APPARENTLY MISAPPREHENDED THE FACT THAT WEISBERG SEEKS GOVERNMENT DOCUMENTS NOT ITEMS OF PHYSICAL EVIDENCE

The first sentence of the opinion in this case states that:

> . . . appellant in the district court sought to compel disclosure of certain materials compiled by the Federal Bureau of Investigation following the assassiination of the late President Kennedy. (Slip opinion, p. a)

A footnote following the word "materials" lists certain items of physical evidence which the FBI had spectrographically analyzed after the assassination. Thus the impression is created that Weisberg requested access to items of physical evidence, again suggesting physical objects.

The typed reports which Weisberg wants are never referred to as documents in this opinion. Once they are referred to as "records", but as that reference (found in n. 3 on p. 3) is put in quotation marks it is apparently intended to be derisive. In every other instance the documents Weisberg seeks are referred to by the ambiguous term "materials".

This gross mischaracterization culminates in footnote 16, which declares that:

> Our appellant had sought to test the spectrographic analyses of materials (listed in our n. 3, supra) not unlike certain items listed in n. 1 of Nichols, supra. There Nichols had sought to make his own scientific analysis of the described material . . . (Emphasis added) Slip opinion, p. 16

We do not know whether this misrepresentation is intentional or accidental. At best, however, it is highly obfuscatory. Weisberg does not seek to "test" any materials. Nichols sought to transport certain items of physical evidence to Kansas where he could subject them to neutron activation analyses. He was denied cert. by the Supreme Court. We hope that the reference to Nichols in this footnote was not an attempt to jeopardize cert. in this case by confusing the request here with that in the Nichols suit. We feel that the obfuscatory language used in this opinion obscures the fact of what Weisberg seeks so thoroughly that the opinion ought to be vacated for this reason alone.

II. THE HOLDING IN THIS CASE IS TOTALLY INCONSISTENT WITH THE PRIOR PRECEDENTS OF THIS COURT

The majority opinion does not even discuss the precedents of this Circuit. The obvious reason for this is that the holdings in Bristol-Myers, American Mail Line, Getman, and Vaughn cannot be squared with the result reached in this case. As the American Civil Liberties Union said of the panel decision in Weisberg:

> Since Weisberg is entirely consistent with prior interpretations of the investigatory files exemption, any different result reached by the Court of Appeals sitting en banc would represent a surprising unwillingness of the Circuit to follow its own precedents. (Plaintiff's Supplemental Memorandum In Opposition to Defendants' Motion to Dismiss Or, in the Alternative, for Judgment on the Pleadings, Weinstein v. Kleindienst, Civil Action No. 2278-72)

The en banc holding is inconsistent with the prior decisions of this court on the following points of law:

1. Even if the records sought were originally compiled for law enforcement purposes, the district court must determine whether the prospect of enforcement proceedings is, at the time of the request for disclosure, "concrete enough to bring into operation the exemption for investigatory files". Bristol-Myers v. FTC.

2. Even if the records sought were to be used for law enforcement purposes, the exemption does not apply unless the government can show how their disclosure would prejudice the government. Getman v. NLRB

3. The government waives its right to claim an exemption if it publicly relies upon the records sought to be disclosed. American Mail Line, Ltd. v. Gulick

4. The Government cannot meet the burden of justifying withholding by filing a conclusory and generalized allegation of exemption. Vaughn v. Rosen, slip opinion, p. 14

5. All exemptions are to be narrowly construed. (All the above cases)

Because these holdings are clearly in contradiction to the result in this case, we request that the court order another rehearing en banc so that it can clarify whether or not it intended to overrule these precedents.

III. APPELLANT WAS NOT ALLOWED TO FILE AN OPPOSITION TO THE GOVERNMENT'S PETITION FOR REHEARING EN BANC

Rule 40(a) of the Federal Rules of Appellate Procedure provides:

> 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.

For reasons unknown to appellant the court did not follow its normal course in this case. Appellant feels he was severly prejudiced by this. Once again the burden was shifted to him rather than to the Department of Justice where it belonged under the FOI Act. As just one example of how this affected the oral argument and the decision in this case, Appellant points out that the en banc decision twice emphasized the point that release of the results of the spectrographic analyses might reveal the FBI's investigatory techniques and procedures. (See pp. 7 & 9 of the slip opinion) This argument was not made before the District Court, nor has the Government ever claimed that the disclosure of the spectrographic analyses would in fact reveal any investigatory techniques or procedures.

Had Appellant been allowed to answer the petition he would have filed affidavits and other materials showing that release of these spectrographic reports could reveal no investigatory techniques not already known to all criminalists.

This is but one example of the way in which failure to request an answer to the petition for rehearing damaged appellant.

IV. APPELLANT'S ABILITY TO ARGUE HIS CASE WAS SEVERELY DAMAGED BY THE CONSOLIDATION OF HIS CASE WITH ANOTHER CASE NOT INVOLVING THE SAME POINTS OF LAW OR FACT

Appellant's case was first ordered reconsidered en banc without further oral argument. Later it was consolidated with another case which involved different and much more troublesome points of law and fact. This unwarranted consolidation of Weisberg's case with a case which had not even been decided by the panel to which it was assigned made it virtually impossible to effectively argue both cases at the same hearing and thoroughly confused both fact and law.

V. THE CASE WAS NOT HEARD BY THE COURT EN BANC

Appellant's case was ordered reheard by the court en banc. In fact the case was heard by the court en banc plus Senior Circuit Judge Danaher. Appellant contends that this was improper because the court en banc is by definition comprised only of the nine active judges who sit on it. In support of this appellant points out that Rule 35(a) provides that:

> A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. (Emphasis added)

In addition, it is appellant's belief that when a circuit judge retires a judge is specifically appointed to replace him, thus confirming that a court en banc consists specifically of the active judges and none other.

VI. JUDGE DANAHER SHOULD HAVE RECUSED HIMSELF FROM THE CASE

Appellant believes that Judge Danaher is so emotionally involved in trying to prevent discussion and research on the assassination of President Kennedy that he is incapable of judging this case on the merits. We suggest that his obsession with this case may have been so great that consciously or unconsciously he influenced the judgment of other members of the court. We suggest, therefore, that Judge Danaher should have recused himself from this case.

Judge Danaher's deep emotions on this issue were made painfully obvious in his dissent to the panel decision. His dissent went so far as to suggest that appellant's first amendment rights ought to be abridged:

> I suggest that . . . the law, as to the issue before us, forfends against this appellant's proposed further inquiry into the assassination of President Kennedy.

REQUIESCAT IN PACE.

Any judge who feels so strongly about an issue that he suggests prior restraint on free speech ought not sit on a case involving the enforcement of the Freedom of Information Act. We submit that the record is replete with indications that Judge Danaher's deep emotional involvement in this issue caused him to cast himself in the role of defense attorney rather than Judge.

In his dissent to the panel decision Judge Danaher referred to Appellant as "some 'party' off the street". (Panel slip opinion, p. 20) In both the dissent to the panel decision (slip opinion, p. 20) and the en banc decision (slip opinion, p. 11) Judge Danaher states that it is unthinkable (his emphasis) that access to the FBI's investigatory files is required under the Freedom of Information Act. This indicates a rather deep prejudice against what we take to be the basic premises of the Freedom of Information Act.

We note several peculiar aspects to Judge Danaher's opinion which may well indicate prejudice. First, Judge Danaher's opinion did not discuss the precedents of this Circuit which did the unthinkable and granted access to investigatory materials where no concrete prospect of law enforcement proceedings existed.

Secondly, prejudice may well explain why Weisberg's request for records is consistently misrepresented as a request either for access to items of physical evidence or for permission to conduct tests on them.

Thirdly, it may explain Judge Danaher's attempt to bolster his opinion with extraneous materials not in evidence and not subject to reply from counsel for Weisberg. We refer here especially to the citation of one paragraph, taken out of context, of the "Regulations Concerning Procedures for Reference Service on Warren Commission and Related Items of Evidence." These regulations have no discernable bearing on this case because the records Weisberg seeks are not in

the National Archives but rather in the Department of Justice. But last week counsel for Weisberg spoke with Dr. Marion Johnson of the National Archives and learned that Judge Danaher had requested the Archives regulations. Apart from their irrelevancy to Weisberg's suit, counsel for Weisberg had no opportunity to argue that the parts of those regulations not quoted by Judge Danaher require an interpretation exactly the reverse of that given by Judge Danaher.

Yet another indication that Judge Danaher based his decision on facts not in the record is found in this passage:

> The Attorney General is directly charged under 28 U.S.C. 534 with the duty to acquire, collect, classify and preserve identification, criminal identification, crime and other records, and to exchange such records with and for the official use of authorized officials, not only of the federal government, but of the States and cities. So it was that the Bureau collaborated with the Dallas police. (Slip opinion, p. 10) (Emphasis added)

It is no doubt convenient for Judge Danaher to be able to dispense with Appellant's arguments in this handy fashion. But convenience is the mother of invention and the difficulty here is that the conclusion that the FBI collaborated with the Dallas police for this purpose is pure invention. This is a conclusion of fact but there is no fact in evidence before this court which supports it. Not even the Department of Justice was brazen enough to claim that these spectrographic analyses or other evidence pertaining to the assassination of President Kennedy were provided to the Texas authorities. Indeed, the government's own affidavit claims that these records "(are) not disclosed by the Federal Bureau of Investigation to persons other than U.S. Government employees on a 'need-to-know' basis." (Williams affidavit, paragraph 4) This blatantly contradicts Judge Danaher's conclusion.

In actual fact, the vital evidence pertaining to the assassination of President Kennedy was seized by the FBI and kept from all local law enforcement

agencies by the Warren Commission and the Department of Justice. (See paragraphs 15 and 16 of the attached affidavit of Harold Weisberg and also the attached letters from Texas Attorney General Waggoner Carr and Dallas District Attorney Henry Wade) The FBI undoubtedly has regulations which give it powers so that it can cooperate with the local police authorities. Notwithstanding the existence of such powers, the fact is that there is no evidence before this Court that it did in fact cooperate with the local police. The truth is that it did not.

Finally, it is necessary to say a word about Judge Danaher's assertion that:

> It was speedily developed that the rifle from which the assassin's bullets had been fired had been shipped to one Lee Harvey Oswald. (Slip opinion, p.4)

Obviously Weisberg would not have spent the past eight years trying to get the spectrographic analyses if he believed they would bear these claims out. The truth is that this one sentence contains several false statements:

1. The rifle alleged to be the murder weapon was not shipped to L. Harvey Oswald but to Alex J. Hidell. Although postal regulations require that a receipt be retained, none is in evidence.

2. This rifle was never placed in Oswald's possession. His wife told the Secret Service that it was not his rifle.

3. At least two other rifles were placed at the scene of the crime; Oswald himself reported them to the police!

4. No bullets fired from this rifle have been connected with the crime except by inference. The only intact bullet which can be connected with this rifle is CE 399 which fell from under a mattress on a stretcher in a hallway at Parkland Hospital. The man who found it protested he could not sleep nights if he swore to what was demanded of him.

VII. THE DECISION INVITES PERJURY AND OBFUSCATION

The holding in this decision totally insulates a government affidavit from attack. This inevitably invites perjury and obfuscation. While it is difficult in the light of Watergate to believe that this has to be pointed out, we call attention to facts before this court in this case which strongly suggest that the Department of Justice committed perjury in Weisberg's earlier suit against the Department of Justice (Civil Action 718-70).

In that case Weisberg sought court documents filed by the Government in the extradition proceedings of James Earl Ray. The Department of Justice claimed these court records were exempt as investigatory files compiled for law enforcement purposes. However, in the Supplemental Memorandum to the Court which was filed with the panel in this case, the Justice Department suddenly confessed--apparently without shame, that: "the extradition documents were, of course, not a part of a FBI investigatory file."

We note that L. Patrick Gray, Richard Kleindienst, and John Mitchell are all involved in this present suit and that each now stands accused of perjury and/or obstruction of justice in connection with Watergate and related matters.

We do not think that Congress intended the Freedom of Information Act to be interpreted in such a fashion that the government could, by resorting to obfuscation and perjury, get out from under its burden of justifying a refusal to disclose information.

VIII. DOCUMENTS FOUND MISSING FROM THE COURT RECORD

After the decision in this case counsel for Weisberg examined the original court record and discovered that a letter he had written the Chief Deputy Clerk in response to a request for certain information was missing from the record.

Missing also were the enclosures which accompanied that letter.

The letter and its enclosures contained additional information about the Warren Commission's reliance upon the spectrographic analyses and the publication of some FBI spectrographic reports in Jessie Curry's book JFK Assassination File. These documents are highly relevant to the question of whether the government has waived its right to claim an exemption from disclosure because it has publicly relied on these documents and made some of them available to persons outside the government.

We do not know whether or not copies of this letter and its enclosure were made available to the members of the full court for the en banc decision. We do note that the en banc decision does not address Wesiberg's contention that under the precedent set by this court in American Mail Line, Ltd. v. Gulick he is entitled to the documents he seeks.

CONCLUSION

The primary purpose of courts is to do justice. For the reasons stated above we do not think that justice has been done in this case. Accordingly, we request that the en banc opinion be vacated and another rehearing ordered.

Bernard Fensterwald, Jr.
910 16th Street, N.W.
Washington, D. C. 20006

James H. Lesar
1231 4th Street, S.W.
Washington, D. C. 20024

CERTIFICATE OF SERVICE

This is to certify that I have this 7th day of November, 1973, served a copy of the foregoing petition for rehearing on Ms. Barbara Herwig by mailing it to the U. S. Department of Justice, Washington, D. C.

James H. Lesar

AFFIDAVIT OF HAROLD WEISBERG

1. I am an author; I presently reside at Route 8, Frederick, Maryland.

2. I have written four published books on the investigation into President Kennedy's assassination. They are: Whitewash: The Report on the Warren Report; Whitewash II: The FBI-Secret Service Coverup; Photographic Whitewash: Suppressed Kennedy Assassination Pictures; and, Oswald in New Orleans: Case for Conspiracy with the CIA. I have also written one book on the assassination of Dr. Martin Luther King: Frame-Up: The Martin Luther King-James Earl Ray Case.

3. For the past decade I have devoted my full efforts to the study of these political assassinations. In the 1930's I was an investigator for and editor of the record of a subcommittee of the Senate Labor Committee. After Pearl Harbor I served in the OSS. I have also worked with the FBI and with several divisions of the Department of Justice in connection with my work for the Senate Labor Committee or through my writing. As a citizen I have helped other government agencies, such as the Treasury Department.

4. I have reviewed the affidavit of FBI Agent Marion E. Williams which was executed on August 20, 1970, but not submitted to the District Court until November 9, 1970, just five work days before the oral argument on November 16, 1970.

5. I state categorically that I have in my possession compelling evidence, in the form of official government docu-

ments and records, which leads me to conclude that the spectrographic analyses whose disclosure I seek must necessarily disprove the official government theories about the assassination of President Kennedy.

6. The Williams affidavit contains many false statements. For example, paragraph four of the Williams affidavit states that the spectrographic analyses and other FBI documents relating to the assassination of President Kennedy are not disclosed by the FBI "to persons other than U. S. Government employees on a 'need-to-know' basis." This statement is false, if not perjurious. I can produce thousands of official FBI documents which disprove this assertion.

7. It is also false to imply, as paragraph five of the Williams affidavit does, that the disclosure of the results of these spectrographic analyses could lead to the exposure of confidential informants. In addition, it is misleading to suggest, as paragraph five of the Williams affidavit does, that I am asking for "raw data from investigative files." I am not asking for the "raw data", which would not be comprehensible to me in any event. I am simply asking for the typed reports on the results of those analyses.

8. The Williams affidavit suggests in paragraph five that the release of the spectrographic analyses to the American public would "seriously interfere with the efficient operation of the FBI and with the proper discharge of its important law enforcement responsibilities . . ." This is both untrue and illogical. The spectrographic analyses should do one of two things: either show that there is scientific support for the official government theories on

the assassination, in which case they will abate the tidal wave of public distrust and suspicion concerning the official explanation of the President's assassination; or else, as I am convinced they must if authentic and unaltered, they will disprove the official explanation of the assassination. If the results of the spectrographic analyses do disprove the official government explanation of the assassination, then their revelation ought to assist law enforcement purposes rather than interfere with the FBI's "proper discharge of its important law enforcement responsibilities."

9. From evidence in my possession I believe that the release of the results of the spectrographic analyses would reveal that the FBI deceived the Warren Commission members as to what these analyses do in fact show. Contrary to the assertions contained in the Williams affidavit, I believe the real reason the Department of Justice continues to withhold these analyses is that they would prove that the FBI engaged in deception of Warren Commission members and the American public.

10. To my knowledge the only reports of the spectrographic analyses given to the Warren Commission members were merely second-hand paraphrases of the documents I seek. Some of these paraphrases, which are entirely meaningless, were published for commercial profit in former Dallas Police Chief Jessie Curry's book, JFK Assassination File. I know of other instances where paraphrases of spectrographic analyses done by the FBI have been released to the public.

11. I have knowledge of the destruction of official evidence relating to the assassination of President Kennedy. I believe that the release of the spectrographic analyses might show a possible motive for the destruction of that evidence.

12. Several years ago I discovered that a transcript of an executive session of the Warren Commission had been faked. This executive session had been forced by three members of the Warren Commission who raised objections to the Warren Report's conclusion that there had been no conspiracy to assassinate President Kennedy. The three dissenting Warren Commission members thought that a transcript of their objections was being made and would be kept as a historical record. Long after the end of the Commission's work and the publication of its Report, the commission members were provided with a covering letter and what purported to be a transcript of this meeting. The first page of the faked transcript counterfeits the work of Ward & Paul, the official reporter for the Warren Commission. The first and succeeding pages of this faked transcript were numbered to make it appear that they were in proper sequence with all preceeding Warren commission transcripts. However, this transcript is in fact a fake and does not include any verbatim report of the actual executive session. It also does not include the objections raised by Senator Russell and the other unsatisfied members of the Warren Commission.

13. I engaged in some correspondence with Senator Richard Russell on this matter and met with him to discuss it. Senator

Russell asked me to make certain investigations for him. Senator Russell was shocked to learn that the purported transcript of the executive session had indeed been faked.

14. Senator Russell also 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.

15. Judge Danaher's opinion concludes as a matter of fact that the FBI "collaborated with the Dallas police" in investigating President Kennedy's assassination. (Slip opinion, p. 10) As a matter of fact this is simply not true. Rather than collaborating with the Dallas police or other Texas law enforcement agencies, the FBI seized the evidence from them and never returned it. Attached hereto are some of a series of communications from Texas Attorney General Waggoner Carr, who was also Chairman of the Texas Court of Inquiry, which complain about the inability of Texas authorities to obtain the evidence in the possession of the federal government. Similar information about the withholding of information from Texas authorities is contained in the attached letter to me from District Attorney Henry Wade.

16. In this connection I note that the rifle which allegedly fired the shots which killed President Kennedy was disassembled and sent to Washington, where it was received with some parts missing. Even this rifle was never returned to the Texas authorities respon-

sible for investigating and prosecuting the crime.

17. I am willing to produce in court the documentary and other evidence which supports the statements which I have made in this affidavit.

Harold Weisberg
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 6th day of November, 1973, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 7-1-74.

Susan E Pearson
NOTARY PUBLIC IN AND FOR FREDERICK COUNTY, MARYLAND

WAGGONER CARR
ATTORNEY GENERAL OF TEXAS

SUPREME COURT BUILDING
AUSTIN 11, TEXAS

February 4, 1964

Honorable J. Lee Rankin
General Counsel
President's Commission
200 Maryland Avenue, N. E.
Washington, D. C. 20002

Dear General:

As all of you well know, President Johnson asked that Texas hold a court inquiry following the assassination of President Kennedy. This I agreed to do and, promptly thereafter, high officials of the Department of Justice and I made joint public statements to the people of Texas assuring them that this would be a cooperative effort between the two governments.

Later, Texas agreed to postpone its Court of Inquiry until after the work of the Commission had been completed and, at the same time, accepted the previously made invitation of Chief Justice Warren to "participate in the Commission's work". There can be no doubt in your mind that Texas would have proceeded at that time with its own investigation had we not been invited to participate in the work of the Commission.

In furtherance of this mutual understanding Texas has made available to the Commission all of its records, evidence and investigation reports. We have received nothing but expressions of gratitude from you and the Chief Justice. If Texas has done anything which falls short of her commitment of mutual helpfulness, I am not aware of it nor have you or the Chief Justice mentioned it to me.

I cannot, therefore, understand why you have apparently broken your commitment to have Texas represented at the time of the examination of Lee Harvey Oswald's surviving widow. Such commitment was expressed several times by you in my presence and the presence of the special counsel.

This development raises serious doubts in my mind as to the wisdom of Texas now relying upon the original understanding that we would "participate in the Commission's work" or upon any future commitment such as the present one we relied upon that we would be invited to be present upon the interrogation of Mrs. Oswald.

If this development represents what Texas may expect in the future then we will feel relieved of our agreement to postpone further our own individual hearing.

I shall look forward to hearing from you if my reaction to this matter is not warranted.

Yours very truly,

Waggoner Carr

WC:cr
cc: Honorable Leon Jaworski
cc: Honorable Robert G. Storey

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

August 17, 1964

Honorable J. Lee Rankin
General Counsel
President's Commission
200 Maryland Avenue, N. E.
Washington, D. C.

Dear General:

You will recall sometime ago I explained to you the difficulty Dean Storey, Leon and I have had lately in getting to Washington to complete our reading of the balance of the depositions on hand. Most of these remaining depositions are relatively minor to the investigation but, consistent with our State objective, we desire to read this testimony to complete our knowledge of the total investigation.

We are hoping the Commission will agree to send me copies of the following depositions so that we may immediately begin our study of them. Otherwise, it continues to be most difficult for us to make the trip to Washington at this time. We know you are anxious to complete your work and it certainly is our desire to cooperate with you to this end.

You may rest completely assured that these depositions will be seen by no one but the three of us. We know and appreciate the desire of the Commission in this regard.

This is not a complete list of the remaining depositions we need to read prior to the conclusion of the investigation, but this will be of great assistance to us at this time. Of course, we will immediately return these depositions to you upon the completion of our reading them. The depositions desired at this time are:

Mark Lane	Vol. No. 18
Robert Hill Jackson	Vol. No. 20
Arnold Louis Rowland	Vol. No. 20
James Richard Worrell, Jr.	Vol. No. 20
Amos Lee Euins	Vol. No. 20
Buell Wesley Frazier	Vol. No. 21
Linnie Mae Randle	Vol. No. 21
Cortlandt Cunningham	Vol. No. 21
William Wayne Whaley	Vol. No. 22
Cecil J. McWatters	Vol. No. 22
Mrs. Katherine Ford	Vol. No. 23
Declan P. Ford	Vol. No. 23
Peter Paul Gregory	Vol. No. 23
Cdr. James J. Humes	Vol. No. 24-A
C[illegible]. J. Thornton Boswell	Vol. No. 24-A
[illegible], Col. Pierre A. Finck	Vol. No. 24-A
Michael R. Paine &	Vol. No. 25
Ruth Hyde Paine	Vol. No. 25
Ruth Hyde Paine	Vol. No. 26
	Vol. No. 27
Howard Leslie Brennan	Vol. No. 28
Bonnie Ray Williams	Vol. No. 28
Harold Norman	Vol. No. 28
James Jarman, Jr.	Vol. No. 28
Roy Sansom Truly	Vol. No. 28

It may be that the list I have in my possession setting out the volume numbers may not be complete or up-to-date. I believe Mark Lane has subsequently testified before the Commission. It would be, of course, helpful to us if you would include any subsequent depositions taken from the above listed witnesses.

Yours very truly,

Waggoner

Waggoner Carr

WC:cr

Rep 2

JLR/bh

August 18, 1964

Honorable Waggoner Carr
Attorney General of Texas
Supreme Court Building
Austin 11, Texas

Dear Waggoner:

After my telephone conversation with you on August 10, before receipt of your letter of August 14th, the Commission had agreed that you could examine the galley proofs of the proposed final report here in the Commission offices prior to the time the report was finally adopted. The Commission thought that this would be in conformity to the mutually cooperative efforts of the past and expressed gratitude for all of the assistance you have given in its work.

I trust that this arrangement will be satisfactory to you.

Kindest personal regards.

Sincerely,

J. Lee Rankin
General Counsel

JLR/jte

August 25, 1964

Honorable Waggoner Carr
Attorney General of Texas
Austin 11, Texas

Dear Waggoner:

I discussed with the Commission your request to read the depositions listed in your letter of August 17 outside of the Commission offices. The Commission decided that it would not permit any of the testimony to be taken out because of the difficulties it has had concerning publications of materials that did not come from the Commission or its staff, but which members of the Press have found it convenient to claim they have received from "sources close to the Commission."

These depositions will be available to you at any time here in the Commission's offices and I am sorry that we cannot make it more convenient for you.

I hope that early this next week we will be able to have copies of galley proof ready for your perusal here at the Commission offices and I shall advise you promptly in that event.

J.L.R.

With best wishes,

Sincerely,

SIGNED

J. Lee Rankin
General Counsel

HENRY WADE
DISTRICT ATTORNEY
DALLAS COUNTY GOVERNMENT CENTER
DALLAS TEXAS 75202

October 10, 1968

Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

I want to apologize for not answering your original letter but I put a note on it for my secretary to find the original correspondence, which she has not done to this day, and I forgot about it until receiving your other letter. I do not recall what the original correspondence concerned, but I guess it is not important, I have not read my testimony before the Warren Commission concerning this instance and frankly do not even know if it is in the report. Whatever I told the Commission is all I knew at the time or since. After the killing of Oswald, I devoted my time largely to preparing the Ruby case for trial and trying it.

Concerning whether or not Lee Harvey Oswald worked for a federal intelligence agency, I know absolutely nothing about it of my own personal knowledge. I never did see a little black book they said was in his possession and possibly made a mistake when the police offered to send all of the evidence, including the gun and physical evidence to me, I told them it would be preferable to index it and

send it to the FBI or the Warren Commission who at that time was investigating it. It was rumored and even in two newspapers that there was a number in the black book and information about him being an informant for either the FBI or the CIA. These rumors caused the Attorney General, Wagoner Carr, to request that Bill Alexander and I go before the Commission on something of a rush basis. We went there and I told the Commission I had not seen the book and I kept hearing they had some numbers in the book and also of his receiving $200.00 a month from someone, but of course this was all hearsay testimony with me. I have the Warren Report and have looked in the index and apparently they did not record that in the Report or I did not find it.

I think the FBI resented me mentioning the numbering of informants and later they brought me some reports I signed in 1941 and 1942 where I had informants working under me and they were recorded under their names rather than numbers in Washington. I know they were upset over the matter but I could not see any reason particularly for them being upset, because if he had worked for either one of them they would have records of some kind either by number or name. Concering the threats on President Kennedy's life prior to his coming to Dallas, I have no personal knowledge of that. This is handled by the police agencies and it seems that the press does not understand that we do not investigate threats of murder. Should we have a murder committed in my office I would call the police to investigate it. As a matter of fact, my going to the police station was due to the circumstances at the time and it had been a year since I had been there and that was not on a criminal case. Whatever testimony you find, I made it to the best of my knowledge and is all I know about it.

I have always felt there was an accomplice or someone else involved in the matter with Oswald but have no proof to establish this fact. Also, I definately am of the opinion he did all of the shooting from the window but of course do not agree with all the conclusions reached by the Warren Commission. I am sorry I can be of no more help to you but would like to have a copy of whatever you write concerning the matter. I have read only one book concerning the matter, that of Professor Waltz, concerning the trial of Ruby which was interesting from a lawyers point of view. Anything I have said in this letter can be attributed to me and there is no need for anonymity and frankly I do not care about any memorandums by the federal agencies because I know they are only trying to keep their skirts clean.

Sincerely yours,

Henry Wade

HENRY WADE
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

HW:pr