

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG,
Plaintiff/Appellant,

v.

GENERAL SERVICES ADMINISTRATION,
Defendant/Appellee.

No. 77-1831

AFFIDAVIT OF STEVEN GARFINKEL

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

I, STEVEN GARFINKEL, Chief Counsel, National Archives and Records Service, Office of General Counsel, United States General Services Administration, Eighteenth and F Streets, Northwest, Washington, D. C., do hereby solemnly swear:

1. I have served as Chief Counsel for the National Archives and Records Service (NARS) of the United States General Services Administration (GSA) for approximately the last five years. I have provided legal services to NARS since I began working for GSA in 1970. From 1974-1978, I concurrently served as GSA's Chief Counsel for Information and Privacy, in which capacity I was the responsible legal officer for GSA's implementation of the Freedom of Information and Privacy Acts. While I no longer serve as

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Affiant's initials SG

GSA's Chief Counsel for Information and Privacy, I retain that responsibility for NARS as well as serving as an adviser to GSA's current Freedom of Information and Privacy counsel.

2. I have worked on the legal problems associated with the present litigation since its inception as a Freedom of Information request to NARS in March 1975. I have continued to serve as GSA's liaison with the Department of Justice on this case during its progress through the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The purpose of this affidavit is to relate my experience in contacting one of the two persons whose employment with the President's Commission on the Assassination of President Kennedy (Warren Commission) is the subject of the transcript that is the focal point of this litigation.

3. Although I have no records of the exact dates, on two occasions I telephoned and spoke to one of the two individuals whose employment with the Warren Commission was the subject of its May 19, 1964 executive session. My best recollection and those of the archivists with whom I discussed these calls places them sometime in June 1976, at a point in the litigation while discovery was proceeding in the District Court. I called this person for the specific purpose of soliciting his views on the potential invasion of his privacy that might be occasioned by the release of the transcript to public scrutiny. In making this inquiry, I recognized that the

Federal courts, including the United States Court of Appeals for the District of Columbia Circuit, had interpreted the Freedom of Information Act's sixth exemption from mandatory disclosure (5 U.S.C. § 552(b)(6)) as calling into play a balancing test between the public interest served by disclosure and the potential harm to the affected individual(s).

I chose to contact this individual rather than the other person discussed in the transcript for two reasons: First, he is the person whose continued employment dominates the discussion among the Commission's members both in scope and sensitivity; and second, although I had never before met or talked to him, I was aware of his present position, which enabled me to get in touch with him with minimal difficulty.

4. When I first contacted this individual, I advised him of the Freedom of Information lawsuit, and of the nature but not the substance of the transcript. I then asked his reaction to the possibility of the public release of the transcript. He responded that he needed some time to think about it, and asked me to call him back in a day or so.

5. When I called him back, he told me that he did not want to contribute to the resurrection of what he viewed as a very unfortunate chapter in his life. Accordingly, his preference was that the Government continue to defend against the disclosure of the transcript.

AS

6. Since those telephone conversations, I have had no further contact with this individual, nor to my knowledge has any other GSA or NARS official.

Steven Garfinkel

STEVEN GARFINKEL

Subscribed and sworn to before me at Eighteenth and F Streets, N. W., Washington, D. C., on this 22nd day of February 1979.

Lois Emma Jones

Notary Public

My commission expires: 5/31/81

