

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

HAROLD WEISBERG, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. ) No. 77-1831  
 )  
 GENERAL SERVICES ADMINISTRATION, )  
 )  
 Defendant-Appellee. )  
 )  
 \_\_\_\_\_ )

MOTION FOR PERMISSION TO LODGE THE ATTACHED  
AFFIDAVIT WITH THIS COURT

The General Services Administration, by and through its undersigned counsel, respectfully requests permission to lodge the attached affidavit with this Court. In support of this motion, counsel state as follows:

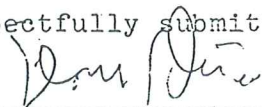
1. This Court heard oral argument in the above-captioned Freedom of Information Act suit on February 13, 1979.
2. During the course of the argument, Judge Bazelon asked counsel for the government whether the General Services Administration had made any effort to contact the individuals who have privacy interests in the non-disclosure of the document at issue.
3. Counsel replied that she did not think so. Counsel also offered the theory that the mere effort to contact these individuals could well constitute the sort of "clearly unwarranted invasion of personal privacy" proscribed by Exemption 6.


4. This statement by counsel is, to our knowledge, in accordance with the record in this case. However, during a subsequent conversation with agency personnel, counsel discovered that Mr. Steven Garfinkel of the General Services Administration did contact one of the individuals in question in 1976. The attached affidavit describes that contact.

5. As noted above, the foregoing contact does not appear to be reflected in the record in this case. Moreover, the district court granted summary judgment for the government on the basis of Exemption 5 and did not reach Exemption 6. We have argued that this Court may affirm solely on the basis of Exemption 5, and should remand the case for consideration of Exemption 6 only if it disagrees with the district court's determination on Exemption 5. Accordingly, the attached affidavit is not strictly speaking pertinent to the issues on appeal. Nevertheless, we are seeking permission to lodge it with this Court in order to correct a possible misimpression of the facts which government counsel may inadvertently have created.

For the foregoing reasons, the General Services Administration respectfully requests permission to lodge the attached affidavit with this Court.

Respectfully submitted,

  
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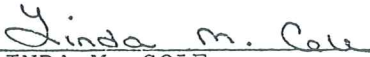
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No. 77-1831

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 1979,  
I served the foregoing Motion For Permission To Lodge The  
Attached Affidavit With This Court upon counsel for the  
Plaintiff-Appellant by causing a copy to be mailed postage  
prepaid, to:

James H. Lesar, Esquire  
910 16th Street, N. W.  
Suite 600  
Washington, D. C. 20006

  
LINDA M. COLE  
Attorney