

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

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	:	
HAROLD WEISBERG,	:	
	:	
Appellant,	:	
	:	
v.	:	Case No. 77-1831
	:	
GENERAL SERVICES ADMINISTRA-	:	
TION,	:	
	:	
Appellee	:	
	:	
.....	:	

AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, first having been duly sworn, depose and say as follows:

1. I am the appellant in the above-entitled case. The only record which remains at issue in this case is the transcript of the executive session of the Warren Commission held on May 19, 1964. This is the only Warren Commission executive session transcript which is still suppressed.

2. I have read the February 22, 1979 affidavit of Mr. Steven Garfinkel, Chief Counsel, National Archives and Records Service, Office of General Counsel, General Services Administration (GSA), which appellee seeks to lodge with this Court.

3. Mr. Garfinkel states that in a 1976 phone conversation he spoke to one of the two persons who are the subject of the May 19, 1964 transcript. He avoids identifying the person with whom he spoke. However, this information is public knowledge and has been since the date of the executive session itself. The Commission itself identified the subjects of the May 19 transcript as Joseph A. Ball and Norman Redlich. GSA did likewise in response to interrogatory No. 96. [App. 275] This is virtually the only information GSA provided in response to interrogatories on its Exemption 5 and 6 claims.

4. From Mr. Garfinkel's description, the person with whom he spoke is Mr. Norman Redlich, now Dean of the New York University School of Law.

5. Mr. Garfinkel states that he did not tell the person with whom he spoke (Mr. Redlich) the substance of the May 19, 1964 transcript. This means that Mr. Redlich was denied a necessary basis for evaluating any possible embarrassment or invasion of privacy which might occur to him as the result of the disclosure of the May 19 transcript.

6. In addition, Mr. Garfinkel does not state that he informed Mr. Redlich that GSA has made public some 354 pages of materials in the National Archives which contain the grossest defamations against him. This, too, deprived Mr. Redlich of an essential basis for determining whether disclosure of the May 19 transcript would result, in his view, in embarrassment to him or an unwarranted invasion of his personal privacy.

7. Mr. Garfinkel does state that the unidentified person with whom he spoke told him during their second phone conversation that "he did not want to contribute to the resurrection of what he viewed as a very unfortunate chapter in his life." (Garfinkel Affidavit, ¶5) Messrs. Ball and Redlich were both subjected to a full field investigation by the Federal Bureau of Investigation at the request of the Warren Commission. (See Attachment 1, letter from Commission General Counsel J. Lee Rankin to FBI Director J. Edgar Hoover dated March 16, 1964) The Commission reviewed the FBI's field investigations at its May 19 session and "unanimously cleared all of the members of the staff to handle classified information." (See Attachment 2, letter from Commission General Counsel J. Lee Rankin to Congressman Albert Watson dated May 26, 1964) This makes it clear that Ball and Redlich were exonerated. Mr. Garfinkel does not state how exoneration can be embarrassing. Nor does he state how Mr. Redlich could know all that the transcript includes without disclosure of it to him.

8. All of the vile racist and political defamations of Mr. Redlich are, and for years have been, public at the National Archives. This publicly available information shows that Mr. Redlich was castigated as a "red" and a "nigger-lover" because he supported the kind of fair treatment of black people that has since become stated national policy and enacted into law, and because he endorsed the abolition of the House Unamerican Activities Committee, which, after a long and horrid history, was abolished. My counsel

feared that if he made full use of the nastiest defamations of a racial nature which are contained in these materials it might have been misunderstood by the district court as an indirect special appeal to that court. Consequently, this material was not included among that which was put in the record as part of our effort to show the nature of what had already been made public about the campaign against Redlich.

9. I believe that it is not likely that men like the members of the Warren Commission repeated such language, even in secret. But if they did, they repeated only what is in the public domain.

10. Regardless of what defamations, if any, the May 19 transcript contains about Mr. Redlich, it cannot now result in what, according to Mr. Garfinkel, Redlich regarded in 1976 as "the resurrection" of an unfortunate chapter in his life. The campaign against Ball and Redlich is a matter of current public interest. For example, when traveling during the week of February 19th, I began to read a recent book by an experienced and respected Washington correspondent, Seth Kantor. The book is entitled "Who Was Jack Ruby?" Its extensive detail includes attributed and previously unpublished information provided by former Warren Commission staff members, including Mr. Redlich. The first four pages of Mr. Kantor's chapter entitled "May Day" report that J. Edgar Hoover was involved in the campaign to get Mr. Redlich fired. This information is not included in any of the records made available to me by the National Archives. These pages also disclose that the cam-

paign against Mr. Redlich intimidated him in the performance of his Warren Commission responsibilities relating to the Ruby investigation. They pages also include a version of the content of the withheld May 19 transcript. (See Attachment 3)

11. These facts negate any inference that with continued withholding of the May 19 transcript, public discussion of these matters will cease.

12. My personal experience with mythologies, distortions, and exaggerations relating to the assassination of President Kennedy is extraordinarily extensive. I spend much time trying to correct misinformation and disinformation, as many well-known reporters and many audiences can attest. From this experience I am certain that if no way is sure to end discussion or misrepresentation of the May 19 transcript, the best means of reducing misinformation and controversy relating to Ball and Redlich and their Warren Commission roles is to make the transcript available.

13. I believe that the actual reason for the withholding of this transcript is to continue to keep suppressed, insofar as possible, the fact that in secret then-Congressman and Commissioner Gerald Ford aligned himself with, and did the bidding of, those of racial prejudice and political paranoia, while for public consumption, when he knew he was outvoted, he switched and made the exoneration of Ball and Redlich unanimous. Mr. Ford, in fact, was the member of the Commission who took the lead in trying to have Ball and Redlich fired for what by any rational standard is only human decency and moderate political belief.

14. In my view, as a subject expert on the assassination of President Kennedy, Gerald Ford played an extremely important role in subverting the work of the Warren Commission and undermining its integrity. This view has been buttressed by information from FBI files which has been released within the past year or so. Because it was not available to me at the time GSA's Exemption 6 claim was before the district court, I had no opportunity to present this information to the district court so that it could weight the role of Gerald Ford in the workings of the Warren Commission as a factor which must be balanced against whatever privacy interest there is on the part of Messrs. Ball and Redlich.

15. The district court held that the May 19 transcript is exempt from disclosure under Exemption 5. Exemption 5 was also cited as a basis for withholding other Warren Commission executive session transcripts, including the January 21 and June 23, 1964 transcripts which were at issue in this case until they were "declassified" and released to me in order to avoid review by this Court. I note here that when I sought through my interrogatory No. 94 to learn what policies were discussed in the June 23 transcript and pages 63-73 of the January 21 transcript, GSA refused to answer on the grounds that the interrogatory "seeks the disclosure of information which the defendant seeks to protect pursuant to exemption (b) (5) and other exemptions of the Freedom of Information Act in the instant action." [App. 274]

16. This notwithstanding, with the exception of the May 19 transcript, all executive session transcripts for which Exemption 5 was claimed have now been made public.

17. My counsel has informed me that it is his recollection that at oral argument counsel for GSA sought to distinguish the May 19 transcript from those transcripts for which GSA no longer asserts an Exemption 5 claim by stating that the May 19 transcript differs from the other transcripts in that it deals with discussion of the employment of two Warren Commission staff members, not with the assassination investigation itself. If this was in fact asserted, it is misleading. Other Warren Commission executive sessions also dealt with staff employment matters. For example, the December 5, 1963 transcript discussed the possible employment of Leon Jaworski and Richard Olney. (See Attachment 4) Although these names were initially withheld under Exemptions 5 and 6 [See App. 9-10], they have now been disclosed.


 HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Subscribed and sworn to before me this 3RD day of March, 1979.


 NOTARY PUBLIC IN AND FOR
 FREDERICK COUNTY, MARYLAND

My commission expires JULY, 1982.

Attachment 1

Case No. 77-1831

PC &
Ball, Joseph A.

JLR:HPW:al
3/16/64

MAR 16 1964

Mr. J. Edgar Hoover
Director, Federal Bureau of Investigation
Department of Justice
Washington, D. C.

Dear Mr. Hoover:

Continuing my prior conversations with Mr. Halley of the Bureau, I request on behalf of the Commission that a full field investigation be initiated by the Federal Bureau of Investigation relating to the following members of the Commission staff: Joseph A. Ball and Herman Sedlich.

Thank you for your assistance.

Sincerely,

J. Lee Rankin
General Counsel

cc: Mr. Rankin
Mr. Willens - Chicago.

3/16/64
J.L.R.

*P.C.S.
Kiddick*

JLR:HPW:al

5/25/64

MAY 26 1964

Honorable Albert Watson
House of Representatives
Washington, D. C. 20515

Dear Congressman:

The Chief Justice has requested that I respond to your letter dated May 14, 1964, regarding the employment of Professor Norman Redlich on the staff of this Commission.

On May 19, 1964, the Commission reviewed all of the field investigations conducted regarding its employees. After careful consideration the Commission unanimously cleared all of the members of the staff to handle classified information.

Sincerely,

J. Lee Rankin
General Counsel

cc: Mr. Rankin
Mr. Willens

*How
sterky
J.L.R.*

GENERAL SERVICES ADMINISTRATION
ROUTING SLIP

TO	CO	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	
NAME AND/OR SYMBOL						BUILDING, ROOM, ETC.						
1.	<i>Mr. Rankin</i>											
2.	<i>Mr. Williams</i>											
3.												
4.												
5.												

- | | | |
|---|---|---|
| <input type="checkbox"/> ALLOTMENT SYMBOL | <input type="checkbox"/> HANDLE DIRECT | <input type="checkbox"/> READ AND DESTROY |
| <input type="checkbox"/> APPROVAL | <input type="checkbox"/> IMMEDIATE ACTION | <input type="checkbox"/> RECOMMENDATION |
| <input type="checkbox"/> AS REQUESTED | <input type="checkbox"/> INITIALS | <input type="checkbox"/> SEE ME |
| <input type="checkbox"/> CONCURRENCE | <input type="checkbox"/> NECESSARY ACTION | <input type="checkbox"/> SIGNATURE |
| <input type="checkbox"/> CORRECTION | <input type="checkbox"/> NOTE AND RETURN | <input type="checkbox"/> YOUR COMMENT |
| <input type="checkbox"/> FILING | <input type="checkbox"/> PER OUR CONVERSATION | <input type="checkbox"/> YOUR INFORMATION |
| <input type="checkbox"/> FULL REPORT | <input type="checkbox"/> PER TELEPHONE CONVERSATION | <input type="checkbox"/> |
| <input type="checkbox"/> ANSWER OR ACKNOWLEDGE ON OR BEFORE _____ | | |
| <input type="checkbox"/> PREPARE REPLY FOR THE SIGNATURE OF _____ | | |

REMARKS

Do you want the answer? I think we should answer by merely telling of the Commission action -
J.P.R.

FROM	CO	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10
NAME AND/OR SYMBOL						BUILDING, ROOM, ETC.					
<i>pm</i>											
						TELEPHONE			DATE		

ALBERT WATSON
DISTRICT, SOUTH CAROLINA

WASHINGTON OFFICE:
307 NEW HOUSE OFFICE BUILDING
CA 4-3121, EXTENSION 2452

DISTRICT OFFICE:
1524 WASHINGTON STREET
COLUMBIA, SOUTH CAROLINA
AL 4-6983

✓
Congress of the United States

House of Representatives

Washington, D.C. 20515

May 14th, 1964

COMMITTEE ON POST OFFICE
AND CIVIL SERVICE

SUBCOMMITTEE:
MANPOWER UTILIZATION

W. A. "AL" COOK
ADMINISTRATIVE ASSISTANT

RECEIVED

MAY 18 10 38 AM '64

CHAMBERS OF THE
CHIEF JUSTICE

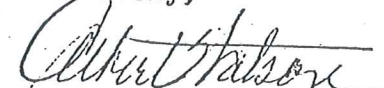
Chief Justice Earl Warren
U. S. Supreme Court
Washington, D.C.

Dear Mr. Chief Justice:

On Tuesday, May 5th, Congressman Beermann of Nebraska strongly condemned the employment of Professor Norman Redlich by the Warren Commission. His remarks appear on Page 9715 of the Congressional Record of that date. No useful purpose will be served by setting out again the facts contained in Congressman Beermann's remarks, but I wish to strongly endorse his remarks. To me it is inconceivable that an individual with the ties such as Redlich allegedly has with an organization condemned by a Committee of each House of the Congress would be employed for such a delicate assignment as your Commission has. As strongly as possible I urge that you investigate this matter promptly with a view toward his immediate discharge.

With best wishes, I am

Sincerely,


ALBERT WATSON, M.C.

CHAPTER II

May Day

Case No. 77-1831

Attachment 3

It was early May, 1964, when J. Edgar Hoover decided to go for the Warren Commission's jugular.

The FBI director still was resentful that the Warren Commission was not accepting his bureau's reports on events surrounding the Kennedy assassination without further layers of questions. He retaliated by seeing to it that derogatory information on Norman Redlich reached a group of reactionary congressmen. Redlich had been serving five months as special assistant to Commission staff director J. Lee Rankin. Redlich was a hard-driving man, on leave from his post as law professor at New York University and in a position of particular power on the Commission staff because he was to shape much of the writing in the Commission's ultimate Warren Report.

On May 5, Ralph F. Beermann, an alfalfa processor from Nebraska who had become a Republican congressman, took the floor of the House to charge that communists were trying to distort evidence in order to blame anti-communists for the President's murder. Beermann then got to the point of his prepared text:

Considering these circumstances, it is amazing—shocking—incredible, to find that although competent and unimpeachable legal and investigative counsel can be found in any community in the land, the Warren Commission has on its staff as a \$100-a-day consultant a member of the Emergency Civil Liberties Committee—an organization cited by both the House Committee on Un-American Activities and the Senate Internal Security Subcommittee.

Prof. Norman Redlich, on the national council of the Emergency Civil Liberties Committee—cited by House and Senate committees as an organization “to defend the cases of Communist lawbreakers”—is currently employed at \$100 a day, for the Warren Commission. And as recently as April 13, 1964, just a few weeks ago, this “consultant” had his name listed in an advertisement appearing in *The New York Times* with other members of the cited Emergency Civil Liberties Committee—an advertisement condemning the Un-American Activities Committee.

Using innuendo and a hint of conspiracy, Beermann pointed out that the “subversive” group with which Redlich was affiliated “has unexplained connections and associations with the very Fair Play for Cuba Committee to which the accused assassin Lee Oswald belonged.” Beermann's prepared remarks added:

Strangely, little has been said or written about the Redlich hiring, although it certainly impresses me as one of the greatest miscarriages of appointive judgment in the history of American Government. I call upon those in responsible positions to dismiss this patently unqualified “consultant” from the Warren Commission staff and to investigate and make public facts concerning how Redlich managed to get hired and keep his job despite his known Communist-front affiliations.

Beermann stuck the knife in, but it was Senator Karl E. Mundt, Republican from South Dakota and a chief spokesman for hybrid rightwing emotions, planted and raised in the nation's farm-belt, who twisted it.

“I think this is a great disservice to President Kennedy's memory,” Mundt intoned. “We want a report from the Commission which Americans will accept as factual, which will put to rest all the ugly rumors now in circulation and which the world will believe. Who but the most gullible would believe any report if it were written in part by persons with Communist connections?”

Mundt predicted “with certainty that Communist leaders around the world will have a detailed report on such testimony long before it reaches the American public—since once a Government body is infiltrated by one with Communist sympathies or connections, history has shown that the pipeline to Moscow is fast and it is filled with classified material.”

Finally Mundt demanded that the Warren Commission suspend the taking of all further testimony and hold up on all writing of its report to the American public until Redlich and others on the Commission staff

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faced the challenge of obtaining "complete security clearances."

Mundt's demand was unobtrusively slipped into the body of the May 11 Congressional Record and no public notice was taken of it. But members and staff of the Commission certainly noticed that the ranking minority member of the Senate Government Operations Committee was insisting that they dump Redlich. They could see an orchestrated attempt beginning on Capitol Hill to embarrass the Commission into conforming with the way the FBI said things happened in Dallas on the weekend of November 22-24, 1963. Three days after Mundt's demand, Beermann was back on the House floor to step up the attack on Redlich—leading off with pointed praise for J. Edgar Hoover. Beermann quoted from passages on page 89 of Hoover's book, *Masters of Deceit*, which said that the Emergency Civil Liberties Committee championed by Redlich was typical of communist-front organizations, where "behind scenes there is a Communist manipulator." This time, five other Republican congressmen joined Beermann on the House floor to intensify the cry for Redlich's scalp.

Redlich was a self-important but prodigious worker and his role on the Commission staff was significant because of his command of the substantive issues that had to be investigated and then assembled to create the packaged conclusions. Redlich hadn't concealed his Emergency Civil Liberties Committee connection when Rankin had hired him. In fact, he had impeccable connections with the academic community, and Rankin was impressed with Redlich's credentials.

But Chief Justice Warren made no immediate move to cut off criticism from the rightwing sharpshooters in Congress and the beleaguered Redlich offered to resign under the growing pressure. The sharpshooters included Commission member Gerald R. Ford's day-to-day associates in Congress, and he pleaded their case to fire Redlich in at least one closed-door session of the Commission. According to August E. Johansen, a Republican colleague who represented a nearby Michigan district in Congress, Ford sponsored the motion that would have sacrificed Redlich up to the critics.

While the Ford motion was failing, Rankin was in the midst of several private discussions with his chief administrator, Howard Willens, who kept urging Rankin not to yield by any means to this kind of pressure. Rankin agreed. He had not wanted the Commission to appear in any way—as Burt Griffin had appeared to some in Dallas in the Patrick Dean affair—to be using the bullying tactics of the McCarthy era. But now the Commission was being bullied, and for political reasons similar to those that Senator Joe McCarthy had used a decade earlier. Two weeks after the concerted attacks began, fronted by Beermann and Mundt, Chief Justice Warren advised Redlich that his security clearance had been granted. That was the end of the witch-hunt, except for a final shot from Ford's colleague, Johansen, on the House floor, May 25.

"The Commission cleared Redlich on the grounds that there was no

evidence of actual Communist Party membership," grumbled Johansen. Standard government security criteria include many other disqualifying factors—among them, 'unsuitability and pressure risk,' and 'sympathetic association with subversive individuals or groups.' . . . By its hiring and retaining Norman Redlich, the Commission has shown about as much concern for public confidence as a clumsy and careless baggageman does for the 'handle with care' labels."

Johansen's sour grapes underscored the fact that the outcome of the Redlich controversy had been no victory for the bulldog-like man in the background, J. Edgar Hoover. But neither would it be a victory for the Warren Commission's Ruby detail.

Leon Hubert and Burt Griffin had found somewhat of an ally in Redlich in their attempts to widen the Ruby investigation into a number of unexplored areas. But after getting his clearance from Chairman Warren, and maybe because of an accommodation that resulted, Redlich seemed to lose his patience for further detective work by the Ruby detail. Warren wanted conclusions written and Redlich became anxious to write them.

On May 14, in the midst of the controversy over Redlich, Rankin received a petulant 11-page memorandum from Hubert and Griffin. In it they chastised the Commission management for failing to authorize a meaningful Ruby probe. The May 14 memorandum established for the record an itemized number of areas not gone into and people not interviewed. The purpose of the harsh memorandum from the Ruby detail was, according to Griffin, to tell the Commission's power center that "you're going to write a report, maintaining you did a job. Then here's the record. You either deal with this record or not, but we're not going to be the ones that bite the bullet on this. We want the record clear that these are the things we're very concerned about."

"We wanted to protect ourselves against any accusation later on that we had not gone far enough." Hubert explained.

But the scolding tone of the May 14 memorandum of course annoyed Rankin and Willens. "I think they thought we were sandbagging them." recalls Griffin. "It's just that they were in a different ball game than we were. They thought ours was psychotic. They really thought that ours was crazy and that we were incompetent. But they finally said to us, all right, we'll look at most of this stuff. Quit bellyaching. Go do it."

Rankin made the policy decisions but Willens had the responsibility of budgeting time, resources and emphasis on staff projects, to make sure that the total Warren Commission investigation went forward. With it, Willens says, he had a "strong intellectual commitment" to make sure that the Commission completed an honest investigation that was as thorough as possible.

APR 2 1975

Deputy Archivist of the United States - ND

FOIA Request from James H. Lesar

Attorney Advisor - LRR

Attached is a Freedom of Information Act request of March 12, 1975, from Mr. James H. Lesar as attorney for Mr. Paul Hoch and Mr. Harold Weisberg and a draft reply. He requests disclosure of certain Warren Commission transcripts.

As you suggested to Mr. Johnson, we have deleted names and identifying information relating to persons discussed in the transcripts as possibilities for employees of the Commission (particularly as General Counsel) who were not later employed by the Commission. This includes the name of Leon Jaworski at the bottom of page 48 of the transcript of December 5, 1963, but not the name of Thomas E. Dewey on page 49 because of the prominence of Dewey as a political leader. At the bottom of page 57 and the top of page 58 of that transcript there is a reference to Richard Olney, at one time Attorney General and Secretary of State. Should this entire passage be deleted on the ground that it would serve as a clue to the identity of Warren Olney III, who was discussed earlier in the transcript as Chief Justice Warren's candidate for General Counsel of the Commission, and that the passage is meaningless without the earlier references to Warren Olney, which have been deleted? Please note also the references to Jenkins and Welch on page 51.

We have requests from the CIA to withhold from research the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, that were made before the recent amendments to 5 U.S.C. 552. The CIA is now reviewing these transcripts again in connection with Mr. Lesar's request, as well as a portion of page 3 of the transcript of December 6, 1975. If Mr. Lesar appeals the denial of these transcripts, perhaps the General Counsel of the CIA should be consulted concerning the reasons for withholding the transcripts. The deadline for reply to Mr. Lesar is April 4. We will inform you if a reply is received from the CIA before then concerning its review of the transcripts.

The transcript of May 19, 1964, involves a discussion among the Commission members concerning two staff members who were accused of left-wing or Communist-front connections. It is difficult to see how a "reasonably segregable" portion of this transcript can be made public.

James E. O'Neill
 JAMES E. O'NEILL

cc: Official file NNFL
 Reading file - NNF
 - ND

MJohnson:ram

NNF JZ NN EK