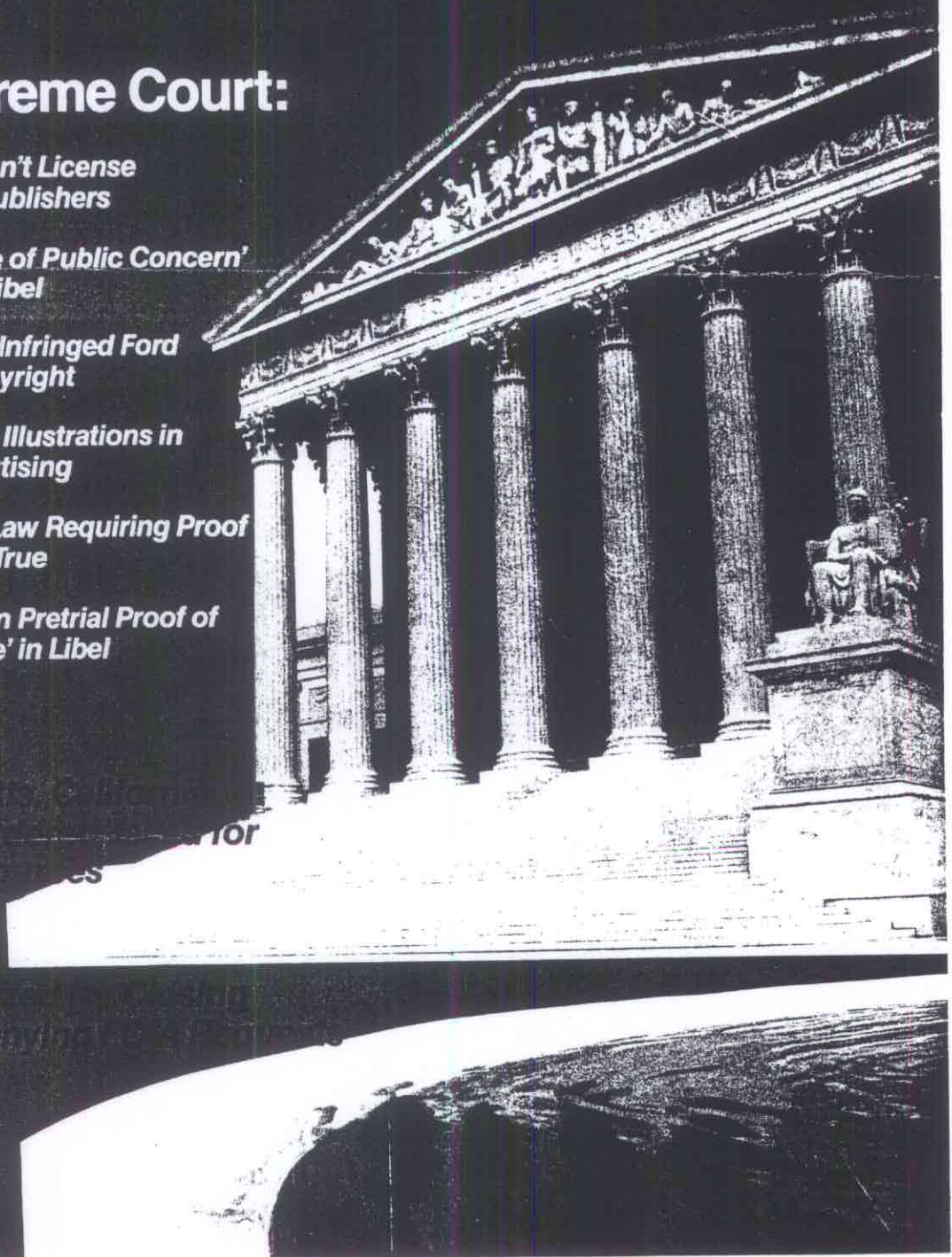


NEWS LAW

U.S. Supreme Court:

- *Rules SEC Can't License Investment Publishers*
- *Revives 'Issue of Public Concern' Standard in Libel*
- *Rules Nation Infringed Ford Memoirs Copyright*
- *voids Ban on Illustrations in Lawyer Advertising*
- *Will Rule on Law Requiring Proof That Story Is True*
- *Will Decide on Pretrial Proof of 'Actual Malice' in Libel*



Pullout Section Inside ■ **Cameras and Microphones in Public Meetings**

Kirtley Named Director

The Reporters Committee for Freedom of the Press has named Jane E. Kirtley executive director to succeed Jack C. Landau. She has served as acting executive director since April.

Kirtley joined the Reporters Committee a year ago as legal defense coordinator. Previously she was an associate at Nixon, Hargraves, Devans & Doyle and had worked in its Rochester, N.Y., headquarters and Washington, D.C., office.

She attended the Vanderbilt University School of Law, where she was an editor of the *Vanderbilt Journal of Transnational Law*. She holds bachelor's and master's degrees from the Medill School of Journalism at Northwestern University. Kirtley was a reporter for the *Evansville Press* in Indiana and the *Oakridger* and *Nashville Banner* in Tennessee.

Clarifications

The Spring 1985 issue of *The NEWS Media & The LAW* incorrectly stated that Jack C. Landau, Reporters Committee executive director until April, was a founder of the Committee. In fact, he joined the organization shortly after its founding.

A story and chart on page 42 of the Spring issue listed states in which cameras and recording equipment are permitted in state courts. Both were based in part on information in the Radio-Television News Directors' Association publication *News Media Coverage of Judicial Proceedings with Cameras and Microphones: A Survey of the States*. We regret that RTNDA was not credited for its contribution to the article.

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The Reporters Committee would like to express its appreciation to the contributing editors who are law and journalism students and who volunteered many hours of their time to make this magazine possible.

We would also like to express our appreciation to Richard Harwood, deputy managing editor of *The Washington Post*, and Ken Feil, photo editor of *The Post*, who helped arrange for the use of many photographs in this issue, and to Harold G. Buell of the Associated Press and Ted Majeski of United Press International for permission to use photographs from their files.

Steering Committee

WASHINGTON	Jack C. Landau *Newhouse Newspapers	Bob Woodward *Washington Post	Nat Hentoff *The New Yorker	JACKSON, MISS.
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*Identification purposes only

Federal - State FOI Acts

struction of the Zimmer facility was halted.

The NRC released 18 documents to Applegate and told him it had withheld four more under the Executive Privilege Exemption (Exemption 5).

However, Applegate believed that the agency had more than 22 documents because Douglas Lowenstein, a Cox Newspapers reporter, had made a similar request a few months earlier. The list of documents given to Lowenstein included some not on the list prepared in response to Applegate's request.

Applegate sued the NRC in U.S. District Court in Washington, D.C., seeking the four withheld documents and documents the NRC had not told him existed.

In pretrial proceedings, an Office of Inspection and Audits inspector said he was ordered by superiors to remove certain documents from the files. Oth-

er witnesses said that under agency policy, drafts of documents and informal notes were not to be kept in the files, but could be kept "at home" if the employee wished.

Applegate argued that such documents were agency records, because they were prepared by agency personnel about agency matters, and represented agency business.

The NRC replied that the drafts were merely "personal," and not agency records.

The judge ordered the NRC to list all of the documents and to explain why each should be exempt from disclosure.

He went on to chastise the agency for its lax handling of documents. Referring to the policy of discouraging employees from keeping notes and drafts in files, the judge said the OIA had acted in a "manner designed to thwart the release of responsive mate-

rials." (*Applegate v. NRC*)

In October 1984, after this case was decided and other FOI Act requesters complained about obtaining access to NRC documents, U.S. Rep. Glenn English (D-Okla.), House Subcommittee on Government Information, Justice, and Agriculture chairman, asked the General Accounting Office to review the NRC's compliance with the FOI Act and agency policies for meeting the law's requirements.

In April, the GAO reported that it had examined allegations that the NRC's use of the Executive Privilege Exemption was excessive, that documents were regularly removed from files, that the agency failed to meet statutory deadlines for responding to FOI Act requests and that implementation of internal FOI Act policies was erratic. But the GAO did not recommend changes or sanctions against the NRC. □

WASHINGTON, D.C.

Historian's Suit to Get Kennedy Papers Dismissed; Agency Costs Assessed to Him

Court Issues Penalties After Historian Refuses to Answer Justice Department Queries About Basis for Claim That Field Office Search for Assassination Records Inadequate

Historian Harold Weisberg's federal Freedom of Information Act lawsuit to obtain FBI documents about President John F. Kennedy's assassination has been dismissed and he has been ordered to pay more than \$800 in attorney fees as sanctions for disobeying a court order to answer FBI discovery questions.

The U.S. Court of Appeals in Washington (D.C. Cir.) rejected Weisberg's claim that the FBI had the burden of proving that it had adequately searched its field offices for the documents. It said that both sanctions are permitted under the law and would deter other litigants from refusing to comply with court orders.

Since the 1960s, Weisberg has been amassing information about the assassination of President Kennedy. In 1978, he sued the FBI in U.S. District Court in Washington, D.C., seeking information from the agency's Dallas and New Orleans field offices.

Over the next four years the FBI released thousands of documents to Weisberg and claimed others were exempt from disclosure. During that time, Weisberg repeatedly claimed that more documents were to be found in field office files that the agency had neither released nor claimed were exempt.

In May 1982, the FBI sought partial summary judgment in the suit, claiming that it had adequately searched the field offices for documents covered by the requests and had told Weisberg about all that were located. It argued that it had met the FOI Act's search provisions requiring a search that was "reasonably" calculated to uncover all relevant documents. Its lawyer argued that it was not required to prove that it had searched every possible location of a record.

Weisberg opposed the motion citing 14 grounds on which he claimed the search was inadequate and made reference to a variety of filing systems used in the field offices.

The judge denied the summary judgment motion without issuing an opinion.

In December 1982, the FBI sent Weisberg a series of written questions designed to determine whether he had independently obtained information either about the existence or content of documents which the agency had not released. The questions sought discovery of "each and every fact" and "each and every document" on which Weisberg claimed the search was inadequate.

Weisberg then requested a court ruling that he not be required to answer the interrogatories. The historian argued that the FBI had access to all of the information and, therefore, he should not be required to tell the FBI where to find its own documents.

The FBI replied that it had searched its files and without further information could not determine where to look or what Weisberg thought the agency might find. It asked the court to require Weisberg to answer the in-

Federal - State FOI Acts

interrogatories and to pay legal expenses the government incurred in obtaining court-ordered compliance with discovery rules.

In February 1983, the district judge ordered Weisberg to answer the interrogatories within two weeks, but it denied the FBI's expense request. He failed to respond by the deadline, and the FBI renewed its request for a court order and attorney fees.

In April 1983, the judge ordered Weisberg to answer the questions within 30 days and ordered him to pay \$684.50, the FBI's legal expenses for obtaining the court order. However, before the 30-day period had passed, Weisberg informed the court that he would not respond to the interrogatories. He asked the judge to reconsider the motion to compel and the award of expenses.

Alternatively, he asked the judge for permission to appeal the order requiring him to answer the interrogatories, arguing that the FOI Act does not require plaintiffs to submit to discovery on the issue of the adequacy of a search.

The judge granted an FBI request for dismissal of Weisberg's suit and awarded the agency \$1,053.55 in attorney fees and expenses incurred in bringing the motion to dismiss. At the agency's request, the judge assessed the fees against the historian and his lawyer, James Lesar.

Weisberg appealed to the U.S. Court of Appeals in Washington (D.C. Cir.). In addition to claiming that he should not be required to answer the questions, Weisberg argued that dismissal was an inappropriate sanction and the award of expenses to the government was unjustified. Lesar argued that the government offered insufficient evidence that he had advised Weisberg (no) to answer interrogatories and, therefore, he could not be held liable.

The appeals court ruled that neither the FOI Act nor the Federal Rules of Civil Procedure prevented the government from obtaining discovery from FOI Act plaintiffs. The panel conceded, however, that in most FOI Act cases "the government will be in possession of all such evidence."

Dismissing Weisberg's suit was an appropriate sanction, the appeals court said, because Weisberg's refusal to answer the interrogatories had been willful and not due to any inability to



Justice Department has released file cabinets full of Kennedy assassination documents

comply. Although a severe sanction, dismissal serves an important "deterrent" function to other litigants, the court held.

The appeals court returned the case to the trial judge to determine whether the government had adequately justified its fee request.

Finally, the appellate court ruled that there was not sufficient evidence of Lesar's participation with Weisberg in refusing to answer the interroga-

ries and ordered the district judge to reconsider the fee assessment against the lawyer.

After reconsideration, the district judge reduced the attorney fee assessment against Weisberg to \$848, stating that the government had offered insufficient documentation to justify the larger award. He voided the fee assessment against lawyer Lesar, saying it "is not now prepared" to hold him liable. (*Weisberg v. FBI*) □

WASHINGTON, D.C.

Contra Aid Files Unsealed

Judge Rules Administration Acknowledged Covert Aid Publicly, Disclosure Couldn't Harm National Security

A federal judge in Washington, D.C., has ordered the CIA and State Department to release documents related to United States support for Nicaraguan Contras to the Center for National Security Studies. The judge ruled that the government had publicly acknowledged that it was giving covert aid to the rebels and, therefore, could not claim secrecy was necessary to preserve national security.

The CIA may withhold information in the documents which would identify intelligence sources and methods,

according to the opinion.

In August 1982, the Center for National Security Studies, an American Civil Liberties Union project, made a number of federal Freedom of Information Act requests to the State Department and the CIA for documents concerning United States activities and policy in Central America. Both agencies released many documents requested.

The CNSS filed suit in U.S. District