

We did not mean to say on the record, including stopping for lunch. Got back from scheduled visit to production at 10:45 and the old lady completed the retyping of it just before 4 p.m. Nothing for two olds, huh?

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

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 HAROLD WEISBERG, :
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 Plaintiff, :
 q :
 v. :
 WILLIAM H. WEBSTER, et al., :
 :
 Defendants. :

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in this case.

1. I have read defendant's Motion for a proposed Vaughn index to be prepared by a sampling of one record in each 100 records. If granted, it will ignore most of the records pertinent in this instant cause because defendants omit them from the proposed 1/100 sampling. Defendants also ignore the many records that are the subject of documented appeals, most of which remain both entirely ignored and entirely undisputed years after they were filed. Defendants also ignore the many pertinent records for which no search has as yet been made. Some of these are identified below.

2. The reprocessing of some records does not address most of the appeals. In these appeals, many of which address matters that are of primary concern to me and to other scholars who are interested in the assassination of President Kennedy and its investigations, I identified specific files to be searched. In a number of instances I provided their FBI file number identifications.

3. Most of the records defendants admit are within the request litigated in this instant cause have not been provided in this instant cause. Defendants argue that, because similar but not identical records were provided in response to another request that did not require litigation, they are provided as "previously processed" in response to the other request. The declaration of FBISA John M. Phillips is misleading in this regard.

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4. No Vaughn index of any kind was ever prepared for any of the records allegedly "previously processed," although they are, admittedly, within this litigation. Defendants propose to ignore them while failing to inform the Court of this. Thus, if the Motion is granted, almost twice as many records will not be within even a one-in-one hundred sampling.

5. Phillips states that 148,196 ^{pages} records are within the litigated request. Of these he states that only 53,232 pages of these records were processed in this instant cause. Of these processed, he states 51,475 pages were provided, with excisions to be sampled for indexing. This leaves 94,964 pages without even a one-in-one hundred sampling. That is 1.78 times more pages than proposed to be sampled. If it will require 120 man-days to sample index the 51,475 pages, then it will require an additional 171 man-days, or 291 man-days to sample all the records admittedly within this litigation.

6. After being informed of defendants' proposed 1/100 sampling and the claimed amount of time it required, I offered defendants a means of obviating any Vaughn indexing and saving all that time and effort. It was rejected out-of-hand.

7. With regard to these allegedly "previously processed" pages, I have filed many detailed appeals, illuminated with countless copies of the records that are the basis of those appeals. To this day these appeals remain largely ignored.

8. These "previously processed" pages are part of the general FBIHQ general releases of JFK assassination records that were disclosed in December 1977 and January 1978. The information withheld from them has never been tested, never subjected to any Vaughn indexing of any kind, but is included in the appeals I filed. These ignored and undisputed appeals are detailed and extensively documented. With the many pages of documentation I provided, they take up almost two file drawers of space.

9. These "previously processed" pages were processed before the effective date of Executive Order 12065.

10. The FBI and I have an extensive FOIA history, including the amending of the investigatory files exemption in 1974. The FBI does not like but cannot refute my work, which is far and away the most extensive and most

dependable on the JFK assassination and is so recognized by scholars. Because the FBI has not been able to refute my criticisms of it - and I have obtained its records, or at least those it is not unwilling to disclose in response to my information requests - early on, in the late 1960s, it decided instead to ignore my requests. This was bucked up to and approved by Director J. Edgar Hoover. The FBI's subsequent history is that when it can no longer violate and ignore the Act, it stonewalls, refuses to search pertinent files and then engages in wholesale and entirely unjustified and unnecessary withholdings. The reason so many of my appeals are totally ignored in this case is because they prove that the withholdings are unjustified and unnecessary. In a large number of instances I attached to my appeals copies of records the FBI itself disclosed in which the same information was not withheld. It is not generally known, but when the FBI bureaucracy wanted the Warren Commission to withhold all FBI records from the public, Director Hoover ordered that nothing be withheld. Thus, it is not uncommon to find that the FBI in this case withholds from me what Director Hoover ordered the Warren Commission and the National Archives be authorized to disclose. I state that in this case the FBI withholds from me what the FBI itself authorized the Warren Commission to make available to the public. No Vaughn sampling can overcome this defect in the processing of the records I was provided and no sampling can include all the detailed, documented and undisputed appeals I have filed.

11. The extent to which the FBI deliberately, on orders of highest authority, ignored the Act and my requests shocked another court to which, in 1976, I presented an incomplete listing of 25 of my ignored, specific requests. To this day almost all of them remain ignored. Some are 14 years old. I recall only one of those records since provided. It was sent to me a year after I obtained it from the National Archives, which was authorized to disclose it by the FBI itself.

12. For years I filled out the then required DJ-118 forms, each accompanied by a check. It was normal practice for my checks to be cashed and the requests thereafter to be ignored. In one instance some angry and self-important functionary tore my check up. He then decided to cash it, still not providing the information requested. The Scotch-taped check was returned

to me by my bank.

13. ^{Even} When when information is disclosed to other and later requesters after being withheld from me and I make a separate request limited to the information already disclosed to another, the FBI refuses to provide me that information. An example of this is the information the FBI made available to another, albeit sycophantic, writer, Edward J. Epstein. As of today, after the passing of more than four years, the FBI still has not provided me with as much as a single piece of paper it disclosed to Epstein who, from previous experience, it could expect to write and publish what the FBI liked.

14. One of the examples of the continued withholding of what is clearly within the litigated requests even after I provided their correct identifications, including the numbers of the files to be searched, is information pertaining to Jim Garrison. I use this as an illustration because he was very much a public figure and because I provided the numbers of two pertinent New Orleans files in which the FBI had such information hidden. One, incredible as it may seem, is classified and filed as "Laboratory Research Matters."

15. An example of the files not searched is those on the critics. In a number of instances, where I was able to determine them, I provided their file numbers. While still not providing these pertinent records, the FBI then removed the file numbers from other records provided so that identification of the pertinent files it refused to search would be made more difficult. These files are important historical records. In all cases these are on public persons and in all cases, when the FBI had what it regarded as derogatory information about the critics, it disclosed what it regarded as derogatory. With regard to me, for example, the FBI disclosed that it told President Johnson, the Attorneys General and the Congress what is totally false and totally fabricated, that an annual religious gathering at our farm was the celebration of the Russian revolution. The amount of injury from such incredible fabrications and defamations is incalculable. Once my appeals proved that they are false, the FBI ceased any further disclosures and my repeated appeals remain ignored.

16. Also pertaining to Garrison and to me and in the New Orleans records within this litigation are other long ignored appeals. The disclosed records, including some "previously processed" FBIHQ records, recount what I did report

to the New Orleans FBI office, that I had received by telephone when I was in New Orleans a threat against Garrison, attributed to the Mafia in San Francisco. The time at which I informed the FBI is correctly stated in the disclosed records. But one of the FBIHQ records states that the New Orleans FBI office informed FBIHQ of this ~~quote~~ some time before I notified the New Orleans FBI office. Those records, of the FBI's knowledge before I notified it, remain withheld after appeals. The only apparent explanation of earlier knowledge by the FBI in New Orleans is that it learned from a telephone tap.

17. Another kind of continued withholding pertains to a matter about which the FBI deceived the Warren Commission and all others to protect its false pretense, that the accused assassin, Lee Harvey Oswald, had never given any indication of any predisposition toward violence. But in fact Oswald had appeared at the Dallas FBI office several weeks before the assassination left a written threat of violence and, after the assassination, the FBI destroyed Oswald's threat. The FBI was able to suppress this entire matter more than a decade, until after the retirement of then then Dallas Special Agent in Charge, Gordon Shanklin, was secure. After Shanklin's retirement the fact of this threat by Oswald was leaked to a Dallas newspaper. This caused an internal investigation by the FBI. Shanklin was almost indicted for perjury. By all accounts the note was a clear threat. A number of FBI Dallas employees were familiar with this threat and had read it. But their recollections of its contents were not entirely consistent on some details. Some said the threat was to bomb the FBI office, some that it was to bomb police headquarters, and some recalled that Oswald said he would blow up both. To the degree it could, the FBI covered up for itself in its investigation of itself. As one result, the same people had to be reinterviewed repeatedly as others told the inspector general what was not included in his earlier reports. One of those repeatedly reinterviewed is the ^{James P. Hosty, Jr.} Special Agent, who had been the Oswald case agent and who stated that on Shanklin's order he had torn up this Oswald threat and flushed it down the toilet. The last statement taken from Hosty is one he wrote out himself. It remains withheld from me. It was filed in a "67" or "Personnel Matters" file the correct number of which I provided in my still ignored appeal. To avoid providing it, the FBI searched a different "67" file and provided a

few records from it. It has not searched the "67" file whose number I provided in my appeal.

18. Hosty, instead of testifying fully and truthfully to the Warren Commission, pretended to be testifying fully and truthfully. He did not tell the ~~FBI~~ ^{Commission} about Oswald's threat or his destruction of it. He preserved the FBI's cover story for not telling the Dallas police about Oswald, that Oswald displayed no predisposition toward violence, even though a Dallas police officer, Jack Revill, attested that Hosty had told him the exact opposite. After Revill's affidavit was known, the FBI launched a major campaign against the Dallas police and its chief in particular. Motive for this continued withholding is obvious, as is the reason for which the FBI steadfastly refuses to search correctly identified files for indubitably pertinent information.

19. Other examples of still withheld information include what the FBI agreed I was to receive. Its agreement was committed to writing. One example is JFK assassination information disclosed to others. Another is copies of all films and tapes. In these categories my only waiver was of the tapes the FBI recorded when it wiretapped and bugged the young widow, Marina Oswald. I did not want that personal information, some of the content of which was already disclosed to me, and I did not want it publicized. I received a few of the films and then the FBI just ceased sending me any of it. My appeals remain ignored. This, too, is information of exceptional importance.

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20. Here, too, motive for the withholding is apparant: The films disclose the opposite of the FBI's preconception of the crime. The most glaring example of this is a film of which the Dallas FBI office did not inform either FBIHQ or the Warren Commission. Still and motion pictures were taken by an engineer, Charles Bronson. The film processor notified the FBI that the film would be available to it after processing. On the Monday after the assassination the FBI agent who viewed the film said it was valueless because, he said, the movies did not even show the building from which the FBI claimed Oswald fired all the shots. This FBI agent also found Bronson's still pictures to be valueless, even though one showed the President at the time he was killed. When friends of mine in Dallas learned that Bronson had this film, they viewed it and found that in fact the motion picture shows more than the building this

FBI agent claimed it did not show at all. There are almost 100 individual picture frames of the very window from which the FBI claims Oswald fired all the shots. What is and is not visible disputes the FBI's "solution." The House Select Commission on Assassinations was at the end of its life when it learned of this Bronson film. It requested the Attorney General and he agreed to have the FBI analyze that film and have it enhanced by computer. While I have received no information about this for several months, I do know that for two years the FBI avoided obtaining the Bronson film and having it analyzed and enhanced, and that it has not, after several years, issued any report on it.

21. The agent who presided over this stonewalling, whose name is withheld from me in this instant cause, is well known in Dallas where he is in a public role for the FBI and deals regularly with the press. He also is well known to my friends who deal with him. He is Udo Specht. But the FBI withholds this name throughout the records provided in this instant cause on a spurious privacy claim.

22. One of the many "national security" withholdings in this case, pertaining to Oswald and his contacts with the Russian and Cuban embassies in Mexico City, is of information the FBI disclosed to another, of which I provided a copy with my ignored appeal. What is withheld from me was unclassified until the FBI started to process records for disclosure. Then it was classified "Top Secret." With a 1/100 sampling, which will be closer to a 1/300 sampling, the probability of this record being included in the index is very slight. It is not an exceptional case.

23. Recently, in this case, I received a record of what the FBI had been told by a reporter for The National Enquirer, his account of the contents of a declassified and disclosed record. The FBI classified the report of what The National Enquirer knew - what was declassified and disclosed - as "Secret."

24. From my extensive experience with the FBI in FOIA matters, it is apparent that this effort to have the Court sanction a sampling of not much more than a third of the records it admits are pertinent in this instant cause, and then indexing only one in 100 records of that third, is no more than an effort to get this Court to sanction its persisting noncompliance, its unjustified withholdings and its steadfast refusal to make the searches required for

compliance with my requests. It is the usual FBI practice in my cases not to respond to my requests but to select only those records it is less unwilling to have disclosed and then to engage in extensive, unnecessary and unjustified withholdings from them. It thus stonewalls me and my lawyer, tying us up and preventing my doing the writing it does not like. By these means it also enormously inflates the cost of FOIA. It then uses these inflated costs of its own creation to seek the amending of the Act so that the nonexempt information it does not want to disclose may remain unknown to the country and its people.

25. It is highly unlikely if not entirely impossible that any sampling, of one in a hundred, of one in three hundred, or even one in three, can address all the many appeals I have filed and that are without response. It is my understanding of the Act that response to appeals is required and that as long as these material facts are in dispute ^{any motion} ~~my motion~~ for summary judgment is inappropriate.

26. Any Vaughn sampling is premature until there is a competent attestation that all pertinent files have been searched and all nonexempt information has been provided. The FBI has filed no such attestation in this case. It merely ignores the actuality and by its present Motion seeks to deceive and mislead the Court into believing what is not true. The FBI has not made the required searches and therefore cannot attest to having made them.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 11th day of March 1982 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND