5/31/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION, Et al., Defendants.	Civil Action No. 78-0322 & 78-0420

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 Defendants' Response to Plaintiff's Settlement Proposal (the Response) and the attached declaration of FBI SA John N. Phillips, both dated April 15, 1982. Both are made in bad faith; both misrepresent, seek to deceive, mislead and to accomplish ulterior and improper ends, as I specify below.

2. As I have previously informed the Court, I am 69 years old and suffered serious illness following surgeries. These now limit what I can do. Because of these limitations I do not provide additional copies of records I have already provided to defendants in this case. If the Court desires them, with more time I will provide them.

3. Phillips swears falsely. In this he is not unique among FBI FOIA special agents, nor is it unique for him. I have long experience with the FBI's stable of professional swearers and their long record of swearing to anything that might at any moment appear to be expedient to the FBI. I also have a long record of exposing the falsity of their affirmations. I do not recall a single instance in which I was proven to be wrong or, for that matter, a single protest by any one of them that I had made unfair allegations. These people are immune from any perjury charge because they are the agents of the prosecutor, who does not prosecute himself. In my experience the courts appear to be unwilling to confront these

defendants' regular resort to such false, misleading and deceptive affirmations. Among the consequences is great prolongation of litigation, and even that is an asset to defendants, who escalate FOIA costs in order to plead burdensomeness. In only one case in my experience has any court made any comment about the FBI FOIA false swearing. In that case I provided copies of both the actual records and the phony records that particular FBI special agent swore were authentic. That court merely banished that agent. With specific reference to Phillips, he has repeatedly provided false, misleading and deceptive affirmations. I have repeatedly proved them to be of this character, and he is still up to the same tricks for the same defendants, as I specify below.

4. The history of this case is not at all as defendants represent to the Court. Nor are my requests fairly described by the quotation in the Response of their opening sentence, which is all the Response provides. It certainly is not true, as defendants want the Court to believe, that I seek to expand the requests or to treat them as "open-ended."

5. My first request of the FBI for information pertaining to the assassination of President Kennedy was made May 23, 1966. I never received any response. Later, as I obtained copies of internal FBI records under FOIA and PA, I found specific instructions that FOIA and my requests be ignored. They were igrnoed then, and since then, with rare exceptions, they remain ignored until I file suit, when they are stonewalled to the degree possible. The written intent to violate the Act was bucked up to Director Hoover, who approved it. It remains a fair statement of FBI policy.

6. When the FBI's refusal to comply with my requests became an issue in C. A. 75-1996, I provided that court and the Department of Justice with a summary of 25 ignored requests, attached as Exhibit 1. Providing this information first to the Department and later, again, to its appeals office, was fruitless. The FBI decided and stated that because it does not like me and my writing it does not have to comply with the Act.

7. With regard to the 1967 request, the last item on page 1 of Exhibit 1, the request was for a copy of an FBI press release that was published word-for-word in the newspapers. Years later, when my counsel asked the FBI for a copy for me, he was told I could not get this press release without asking for it under FOIA.

My FOIA request for it added to the inflated statistics pertaining to FOIA labor and costs that the FBI compiles.

8. With regard to the two requests consolidated in this case, prior to the first calendar call, I conferred with both Quinlan J. Shea, Jr., then head of the Department's FOIPA office and then Department counsel in an effort to avoid the problems the FBI had been manufacturing in my prior cases. Two of the most common abuses are not making searches in response to the specific Items of my requests and the withholding of the public domain.

9. The FBI's FOIA personnel are not subject experts. Sometimes they have no convenient way of knowing what is within the public domain. I obtained the agreement of the appeals office to review a sample of the first 5,000 pages of the records involved in this case before disclosure to me so it could correct errors in the processing. I then asked Department counsel to agree to this so that the processing could be improved and the waste of time and costs and creation of unnecessary problems could be avoided. I also agreed to help in any way possible. However, because, as it usually does with me, the FBI wanted to minimize compliance, escalate costs and delay as much as possible, instead of doing this it shipped all the records it claimed satisfied each request all at one time.

10. The FBI has the stated purpose of "stopping" me and my writing. In this and in other cases it has succeeded by tying me up in entirely unnecessary litigation it then stonewalls. Witness the fact that it refuses to settle this case without the time and costs of any Vaughn listing, which also has other ulterior purposes. More than four years after the request the FBI still has not made the required searches. Almost four years after the FBI claimed full compliance - as recently as a month ago - it was still providing records within the requests and it has many more it has not yet provided. It refuses to do what it was directed to do by the appeals office. It is literally true that the FBI plotted to "stop" me and my writing, the word used by several SAs in their memoranda. They schemed, with approval all the way up to Director Hoover, to file a spurious libel suit as one way of "stopping" me and my writing. The FBI's legal division spent time and public money in legal research to determine whether the special agent could sue me. When it reported that he could, he chickened out. Years later when, thanks to FOIA, I learned of this scheme, to turn the wealth and

power of the government against a single writer and his writing. I sent that then retired SA a waiver of the statute of limitatons. I also offered to pay his filing costs if he were man enough to file that spurious suit. Obviously, he was not man enough and equally obviously my writing is not inaccurate. It is because the FBI cannot fault my writing that it makes such special efforts,all improper and all at the cost of the taxpayer, to frustrate my writing.

11. At no time has the FBI ever asked me for any clarification of any request. Specifically, in this case, even after I went to both the appeals office and Department counsel to try to assure that problems might be minimized if not eliminated, I was not ever asked for any clarificaton. One of the fictions of the FBI and its counsel is that I cannot be understood. If so, they are required by their own regulations to seek clarificaton or rephrasing. They did not do it in this case and they never did it in any other case.

12. It is apparent, from the FBI's almost perfect record of noncompliance with the 25 requests summarized in Exhibit 1 - even after the matter was raised in court and was known to the Department - that for me to continue to file simple and narrow requests is fruitless and could require litigating forever.

13. These defendants have the identical record in my King assassination requests. My 1969 King requests were ignored, once again with the approval of the top echelons. I filed specific requests again in 1975 and once again they were ignored. I filed suit; once again the initial searches still have not been made and that case is still before the courts. These defendants stonewalled it for years and recently took it to the Court of Appeals and then asked to reconsider that appeal.

14. With this history and background, I filed the two inclusive requests in this instant litigation. Once again the required initial searches have not been made, four years after suit was filed. Once again these defendants seek summary judgment, knowing full well they have neither made the initial searches nor complied in other ways with the appeals court's controlling decisions in my other cases.

15. In an effort to deceive and mislead this Court into believing that I seek to expand these requests, which I emphasize the FBI never claimed not to understand, defendants now misrepresent that I interpret the requests as "open-

ended" and that those generally referred to as "critics" are not within the requests. To deceive and mislead, the Response quotes only part of the opening sentence of these two requests. The second sentence, which the Response is careful to omit and pretends does not exist, leaves no doubt that I am not in any way seeking to expand the requests. It reads, in its entirety, "This request includes all records on or pertaining to persons and organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that assassination, as well as those that are." Those referred to as "critics" are included extensively and often in defamations in the records disclosed to me. The plain and simple truth is that the FBI first ignored my requests and then provided records from only a few of the so-called "main" files, fewer than the appeals office told it to provide.

16. The FBI has improper motive for withholding its records pertaining to the "critics," as I state below. One of the more important reasons is that it does not want to disclose all the many dirty tricks it played on us.

17. In its unfaithful recounting of the history of this case the Response does not even state the truth about the appeals I filed in this case. It represents in its second paragraph that not until after the Dallas index was provided, in May 1979, did I file any appeals. (This untruth also is ideally suited to deceiving the Court into believing that the index was provided voluntarily, which it was not.) In fact, I provided detailed and documented appeals as rapidly as I read the records provided, beginning with my receipt of the very first of them. If those appeals had not been ignored, the processing of the records subsequently provided would not be subject to as many questions as they are. These appeals and their attachments of pertinent FBI records take up about two file drawers of space.

18. Here I note also the impossibility of overcoming the multitudinous defects in processing documented in these ignored appeals by the proposed Vaughn sampling of one in 100, which even then omits a large percentage of the pertinent records, as stated in my affidavit of March 11, 1982. (See also below, in and in connection with Exhibit 2, Paragraphs 65 ff.)

19. The Response quotes the June 16, 1980, letter of Quinlan J. Shea, Jr., the then director of FOIPA appeals, in an effort to mislead the Court into believing that I seek to expand my request and treated it as "open-ended." The ploy of the

Response is to omit the portion of the request that pertains to what was never searched for, such information as that pertaining to the "critics." Mr. Shea was always under great pressure because of the number of times he overruled the FBI in FOIA matters and he was finally forced out of that position. (In my C.A. 75-1996 he attested that he overruled the FBI in more than 50 percent of the records he reviewed on appeal.) While in the lengthy quotation in the Response he does state that "it is the responsibility of the requester reasonably to describe the records to which he seeks access," he does not state that I did not do this. He also makes no mention of the responsibility imposed on defendants by their own regulations, to seek any necessary clarification. I address this further below in addressing what Phillips states pertaining to the "critics."

20. What neither Mr. Shea nor I then knew is that defendants had lists of persons included in the second sentence of the requests, quoted in Paragraph 15 above. After I obtained them, not, I emphasize, from the FBI, I provided copies to the appeals office, without any response.

21. My settlement proposal greatly simplifies compliance with this unsearched part of the request. It eliminates most of it.

22. The FBI even pretended that the Dallas records on Marina Oswald Porter, widow of the accused assassin and the main witness before the Warren Commission, was outside the request. After intercession by the appeals office, the FBI did provide several files on her, maintained outside the so-called assassination "main" files, as well as similar files on the George DeMohrenschildts, also major Warren Commission witnesses. (However, the FBI insisted that the DeMohrenschildt records are outside the request and demanded payment for them, despite the fee waiver already granted. It has just backed down on this, I have been informed.)

23. The Response adds misleading emphasis to its quotation of the letter from former Associate Attorney General John H. Shenefield. To avoid proper emphasis it underscores "as a matter of agency discretion." Proper emphasis is, "as a matter of agency discretion the Bureau will conduct all reference searches ... attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on 'critics' or 'criticism' of the F.B.I.'s assassination investigation." The FBI did not do this or, if it did, it did not inform me that it had made the

described searches and what they disclosed.

24. The FBI was also to make further searches for records on or about former-New Orleans District Attorney Jim Garrison, who had launched his own investigation, severely critical of the FBI, late in 1966, and the late David W. Ferrie, a controversial figure who knew the boy Oswald when both were active in the Civil Air Patrol. No such records have been provided or offered. (More on this appears below because it is referred to in the Phillips declaration.)

25. Referring to films and tapes, the Response adds false emphasis to the Shenefield letter:

> Lastly, there are various films and tapes in these files which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him."

This added emphasis is misleading. "In these files," which the Response underscores, does not mean physically in Dallas or New Orleans as of the time of the letter. That is the impression intended by the Response, which is careful not to say it because, after noting this particular subterfuge in a prior Phillips declaration and in a letter from the FBI, I informed it that I was aware of the loaning of information within these requests. (It never responded.) The Response has the wrong emphasis state the untruth it dares not state. Wherever they are, field office files are field office files, and as such are included in the records to which the request is addressed. "In these files" means "in Dallas and New Orleans files." As reading the Shenefield letter makes clear, "in" them means the files of those offices, belonging in them. If this were not the case, the Act could be defeated by the simple ruse of shifting files around, which the FBI does often enough in any event.

26. Morever, at the time that letter was drafted for the Shenefield signature, defendants knew that the records in question, including records not provided to me, had been shipped to Washington. As my prior affidavit states without dispute, although Phillips states that he responds to it, whenever any such files are shifted, the shifting is covered by an inventory that is filed at the originating office and in FBIHQ files. FBIHQ, its FOIA unit and Phillips in particular, could learn by a phone call - if he or it did not already know, as he should - exactly what pertinent field office records are at FBIHQ or have been shifted elsewhere. Instead, they misrepresent in order to deceive and mislead the Court.

27. It is the FBI's practice, in my case and in others, to send extensive field office records to be processed to FBIHQ for their FOIA processing. That was done in this case, as Phillips and others know. Defendants' prior counsel also knew because he was involved in the moving, as he informed my counsel and me on the day Judge Oberdorfer recused hismelf. That was before these records were sent to Washington. The FBI FOIA unit and the Civil Division are well aware of this practice.

28. The FBI has not consulted me about this, as it was directed to do, or about any other matter at issue in this litigation. Much later My counsel was told of the existence of Marina Oswald tapes, of which I had earlier informed the appeals office. I told my counsel to decline dubs of these highly personal tapes. Incredible as it may seem in the light of Phillips' feigned concern for personal privacy, the FBI voluntarily disclosed to me the young widow's conversations with a woman friend in which she recounted her nocturnal sexual dreams and her account of sleeping with a married man. These conversations are relevant to nothing except the fact that the young widow had normal yearnings, but because she articulated her dislike of the FBI, the FBI wanted to embarrass her. She told the Warren Commission that the FBI had virtually blackmailed her to say what she was wanted to say, which she did, and the FBI denied it. However, it has disclosed to me its own records in which it describes exactly how it did blackmail her, first seeing to it that the Secret Service, which was guarding her, would not be present. (She also accused the FBI of getting Lee Harvey Oswald fired jobs he had gotten.) Because I knew the content of those tapes, I did not want them and I did not want the FBI to use me as an excuse to put them in its reading room.

29. Field office photographs also were sent to FBIHQ. A friend of mine examined copies of them at the FBI and told me about it because of the remarks about me made gratuitously - really out of the blue - by the SA who made those pictures available for his examination.

30. Earlier, the field offices sent many pictures of various kinds to FBIHQ. In 1967 I wrote a book about those pictures, both moving and still.

31. The record is clear, Despite defendants' misrepresentations, what the FBI was directed to do it did not do then and has not done since, despite my written reminders to it, which remain ignored. (They did not acknowledge receipt

of my letters or dispute what they state.

32. While I deal further with Garrison records in connection with the Phillips declaration, here I note that the FBI does acknowledge their existence, something defendants ignored for years after receiving my appeals. My appeals noted the numbers of some of the files in which they are located, as well as the existence of pertinent and withheld David Ferrie records. The FBI has yet to acknowledge this. The FBI has its own cozy arrangements with some private persons to whom it does leak information, misinformation and copies of its records. With regard to Ferrie, this is how I have proof of the existence of pertinent and withheld Ferrie records. These relate to his alleged running of guns to Cuba, which is highly pertinent to all investigations of the assassination.

33. After pretending that the FBI had done what it was directed to do but did not do, the Response claims that defendants have "demonstrated that plaintiff's administrative appeals had indeed been acted upon by the Justice Department." This is at least in dispute. I believe it is a self-serving statement that is not true. I reiterate: most of my appeals are so completely ignored their receipt was not even acknowledged.

34. The Attorney General, the appeals court and the Congress have held the assassination of President Kennedy to be an important historical case. This means there would be a much more liberal disclosure policy. Mr. Shea is a self-styled "history buff." Because at the request of the court in another case (pertaining to the assassination of Dr. Martin Luther King, Jr.) I was already cooperating with Mr. Shea, we extended that cooperation to include this case, beginning before there was any processing of any records. As stated above and contrary to defendants' representation, as soon as I received and read the records provided in this case, I filed what grew into a very large number of detailed and thoroughly documented appeals that in volume now fill two file drawers. Mr. Shea personally and officially shared the view that the assassination of President Kennedy is a matter of great and continuing historical importance. In particular, he agreed that the performance of the various agencies involved in the assassination investigation is of great public interest and importance.

35. I am an acknowledged subject expert. These defendants have bestowed unique credentials upon me. In C.A. 75-0226 they stated that I know more about

the assassination and its investigation than anyone employed by the FBI. Because of my subject-matter knowledge and experience, I fill a public role with regard to the assassination and its investigation. My files are and have been available to all, including those who might be regarded as competitors and including those with whom I do not agree. My files will become part of a public university archive. They are in constant use by students now. They have been and are being used in a number of collegiate honors papers, in a doctoral thesis and by the authors of a number of books. I am regularly consulted by the press, to which I also make copies available. While perfection is not a human state and the best recollection is not perfect, it is obvious that in the processing of the records provided in this case, for one example, the FBI withholds what was in the public domain because the FBI authorized the Warren Commission to disclose it, because the FBI itself had already disclosed it, and because it was a matter of public domain prior to becoming part of the investigation. These and other similar appeals have not been acted upon. I provided the correct identification of pertinent files that have not been searched, from which pertinent information has not been provided, and neither the FBI nor the appeals office has denied their pertinence. In most if not in all instances I provided the appeals office with xeroxes of the proof of the existence and identification of such records.

35. In making it possible to improve the processing of disclosed records and to eliminate unjustified and unnecessary claims to exemption and consequent denial of information, I serve a public role. This can make more and more dependable information available to those who now use and in the future will use my records and those who examine copies in the FBI's reading room. It would enable me to make more information available in my own writing. In the end, it can reduce the work and cost to defendants because there then will not be any future need for others to ask for examination of these records on appeal or to sue for disclosures of what is withheld improperly. (This possibility is very much in defendants' mind as I state below.)

37. The representation of the Response, that after consulting with me by telephone following the calendar call of March 25, 1982, my counsel "came back with a whole new set of 'counterproposals'" is cheap rhetoric and, based on what I then told my counsel, is entirely and knowingly untrue.

38. Because of my age and seriously impaired health, I have wanted to end this case for some time but without misuse of that by defendants. Based on long prior experience, I state that in my experience they seek to convert the Act that is a mandate to let the people know what government does into a license to suppress what they do not want known. Therefore, sometime prior to that calendar call, I asked my counsel to present my proposal for ending this case. Upon its acceptance I said I would move to dismiss the case and not refile it. This would eliminate any further work and cost for defendants and for the courts on this case. I also told my counsel that I would waive any Vaughn listing. This, too, would save defendants and the courts much time. When he conferred with me each of the two times mentioned in the Response, he told me that it was apparent defendants are determined, come hell or high water, to persist in the sampling they proposed and to waste all the time, money and further litigation entailed. The only basis on which defendants persist in this sampling is their assumption that whatever they file this Court will rubber-stamp. Otherwise, they would not dare do even the kind of scanty, superficial sampling they propose because there is just no possibility at all that I will not prove, even with so minute a sampling, that the FBI, in this case, is withholding what is already in the public domain. There is absolutely no doubt, as any examination of the appeals I have filed will reflect, that improper withholding exists. Quite aside from that, I did file these detailed and documented appeals long ago and whatever is included in this minuscule sampling cannot possibly include all that I have appealed. Thus, material facts will remain in dispute after any such sampling.

39. I have had experience with these defendants' Vaughn sampling. I have proven that they withheld in the sampling what they had already disclosed, that they withheld what was within the public domain, and that within the sampling they both withheld and disclosed the same information. This is because they are bound and determined not to really review their initial improper withholdings and are unwilling to agree that their processors totally ignored what was already disclosed and known. They also persist in their own version of the Act, which is not the Act passed by the Congress. They persist in using exemptions their own appeals authority has found to be inappropriate and has testified are inappropriate, like (b)(2) for what does not meet the requirements of the Act. Their samplings attest

that right is wrong. They require much time only because of the time required to hoke up justifications for what is often unjustifiable. In such a sampling in C.A. 75-1996 the FBI swore to the end of a certain generic withholding. Having admitted that the end had been ordered, they not only practiced it in that sampling. They also refused to reprocess the records processed incorrectly. Save as an attempt to con a court, my experiences with these samplings is that they are intended to perpetuate improper withholdings.

40. With regard to the allegations of the Response, the only changes I made in my proposal (which, without dispute, the case record reflects was rejected out of hand by the Vaughn-hungry defendants) is to eliminate some of the things I had asked be considered. This cannot honestly or fairly be described as either "a whole new set" or any kind of new "counter-proposals." I emphasize that they predate the calendar call by several weeks.

41. The reason defendants are so hell-bound for so minute a sampling is that they presume this Court will find for them automatically. Regardless of fact. If they did not, they would very much fear the consequences of fault found with the processing and having so much to do over again, at considerable cost in time and money.

42. If fault is found in but ten percent of their sampling, an extremely conservative estimate, this means that of the 53,232 pages provided, in 5,232 pages there is improper withholding. If those pages not provided in this instant case as allegedly identical and disclosed in FBIHQ records are included - and Phillips acknowledges that they are field office records - then there is an additional 14,316 pages in which there is improper withholding. (Phillips attested on March 2, 1982, that 143,610 pages were not processed because they are allegedly "previously processed" in a processing that was never before any court. However, as defendants own expert, Mr. Shea, states in Exhibit 2, the "previously processed" records are not identical.)

43. Nobody without ulterior purpose that means very much to him would dare run such a risk when offered an inexpensive means of avoiding it.

44. Assuming that regardless of fact the Court will find for them, defendants see that by this scheme they will get an immunity bath in perpetuity for all the many improper withholdings and for all the many searches not made. Thus, they can

and they continue to misuse this case to gut the Act, a desire they have already expressed.

45. If this were to happen, if it required my last breath, I would appeal it and if that failed I would undertake to lay the entire matter before those in the Congress who regard the Act as an important means of letting the people know what their government does.

46. Defendants, who regard me as persistent and have so stated, are aware of this possibility. They also know both the frequency of my appeals and the high percentage of times I have prevailed on appeal. However, despite their loud lamentation over the burdensomeness and costs of FOIA, their record is a record of forcing cases that need not be litigated into litigation, of stalling and prolonging litigation, and of greatly escalating the burdens and costs of FOIA. They know also that I may not live until the end of such litigation. When they burden the courts without need, as they now are attempting to do in this case, and when they waste large sums of money, which they also are determined to do in this case, then can and do attribute these costs to the cost of FOIA, they succeed in their ulterior purpose.

47. The Response alleges that based on Phillips' attached (and untruthful) declaration "as well ad the administrative history of this case, it is clear that plaintiff will never be satisfied with the FBI's handling of his FOIA requests." What is at issue and what the Response supposedly addresses is this case and only this case, not my other requests. I have offered to end this case without any Vaughn index of any kind and to agree not to refile it. The Response does not mention these things. Instead, it seeks to put me in the position of the raped woman who is charged as an attractive nuisance. There is nothing more Orwellian than the Response's characterization of an offer to end this case and not refile it.

48. However, with regard to the FBI's handling of my other FOIA requests, a few of which are for records still withheld in this case, there is no case in which the courts have not required the FBI to give me what it originally withheld and no case in which the FBI did not deny having records it ultimately produced. Almost nothing was provided without litigation after, with my first request, the bureaucrats got the Director to approve ignoring all my requests. And the record of almost total noncompliance with the requests tabulated in Exhibit 1 speaks eloquently of intent not to comply and persistance in noncompliance.

49. About what, if the unseemly and inappropriate rhetoric and effort to prejudice the Court are to be heeded, ought I be "satisfied"?

50. I ought be "satisfied," it would seem, when the United States Senate was not "satisfied with the FBI's handling of his (my) FOIA requests." It was not satisfied in the 1977 hearing of the FOIA subcommittee and it was not satisfied in 1974 when both the House and Senate, based on this dissatisfaction, amended the investigatory files exemption of the Act.

51. It also seems that I should be satisfied when defendants' own misused expert, Quinlan Shea, was quite the opposite of satisfied in 1980 and made this explicit in Exhibit 2, a record withheld from me in its entirety under a spurious claim to exemption, only to be disclosed without any claim to exemption to another litigant.

52. My dissatisfaction about which the signatory eminences and their underlings complain, also should not extend to defendants' plot to "stop" me by the improper abrogation of the fee waiver granted me only after it was awarded by one court and was being litigated before another. That no court was informed of this, although it was pertinent in four cases; that the basis for the revocation was defamatory, fabricated and untruthful; and that there is no denial of the fact that I did and do qualify for the fee waiver also appear to be matters about which it is unreasonable of me "never to be satisfied."

53. The deliberate violations of the Act, the plotted and ordered ignoring of my requests and an additional plot to waste me by tying me up in spurious libel litigation are not matters about which I should not be satisfied?

54. I should be elated, it seems, that almost all of the 25 requests tabulated in Exhibit 1 and subsequent requests remain ignored for so long, some for more than a decade; and that I obtain almost nothing except by litigation that then is stonewalled.

55. On October 6, 1977, the Senate Judiciary Committee's FOIA subcommittee took testimony from a number of defendants' FOIA officials. "The FBI's handling of his (my) FOIA requests" was Topic A. From the FBI's then FOIA chief, Allen H. McCreight, who was also an FBI inspector and an Assistant Deputy Director, the subcommittee could not get even a promise to begin to comply with my ignored requests. (Some were then more than a decade old and were older than the FBI's

claimed backlog.) Quinlan Shea, whose actual meaning and intent are misrepresented in the Response, testified that he "will never be satisfied with the FBI's handling of his (my) FOIA requests." And even the then second in command of the Civil Division, William G. Schaffer, and the eloquent Portia, Lynne Zusman, then chief of that Division's FOIA section, gave solemn assurances to the Senate that thereafter the Civil Division was determined to "straighten out all of these cases," those tabulated in Exhibit 1.

56. Chairman Abourezk, according to the published hearings (pages 139ff.), began by stating, "Documents released to Mr. Harold Weisberg under the Freedom of Information Act indicate an attitude regarding the act that is, at a minimum, very disturbing. The FBI memorandum indicates that requests from Mr. Weisberg under the Act were totally ignored." He then read from one of the several FBI memos that are printed in full in the hearings. He tried to get any of the witnesses to justify this record.

57. (He apparently was not aware that defendants also cashed my checks once required to accompany the also required DJ-118 forms, without sending me anything, even a letter of acknowledgment of receipt. He also appears to have been unaware that one of these checks had been torn up and then put together again rather crudely with Scotch tape and cashed, with all the banks handling it approving, including my own bank, which returned it to me after charging it to my account.)

58. Pertaining to these requests the FBI's handling of which I am somehow supposed to be satisfied with, from the rhetoric of the Response, those requests that in the chairman's words were "totally ignored," Mr. Shea testified, "if you are looking for a Department of Justice representative to defend that sord of practice in 1969, 1970, or any other time, I am not going to do it."

59. When the chairman said, "I understand that you would not want to, but we are informed that Mr. Weisberg still has some 25 FOIA requests that to date have not been answered," Deputy Assistant Attorney General William G. Schaffer, Civil Division, volunteered, "I can respond to that in part. We had a meeting in my office with Mrs. Zusman,... Mr. Weisberg, and his attorney. Cases like Mr. Weisberg's are not the routine freedom of information requests. I can assure you that the Department is going to try to do something about his requests as a whole rather than treating them piecemeal and processing them in strict chronological

order, and this sort of thing. It (sic) is a unique request. It is a case of unique historical importance. Mr. Weisberg does have reason to complain about the way he was treated in the past. We in the Civil Division are going to try to do something to straighten out all of these cases."

60. So, while defendants' Civil Division volunteered that "in this case of unique historical importance" it is true that "Mr. Weisberg does have reason to complain about the way he was treated," and defendants' top appeals authority found that "way" to be a way he could not and would not defend, in the Response the same Civil Division now, without alleging that any of those 25 ignored requests had been met in the ensuing five and a half years, complains that I "will never be satisfied."

61. While others may have a different name for it, it is official lawlessness and contempt for the law, and it is true that I "will never be satisfied" with that.

62. Mrs. Zusman then described perpetuating the noncompliance and continued contempt for and disregard of the law as a constructive accomplishment, a special kind of effort. At this point she indulged in much of two printed pages of self-praise because she and Mr. Schaffer "did make the time to see Mr. Weisberg and Mr. Lesar ... discussing the problems. This is the type of effort that we are now putting forth."

63. The fruit of this defendants' toiling in the vineyard of FOIA compliance is reflected in a footnote in the hearings that were published several years later. It states the fact that from the time of its proclaimed determination "to do something about his requests" and "something to straighten out all of these cases" I had not received so much as a single page in response to them. As of now I have not received even an acknowledgment of the receipt of any one of these 25 ignored requests. My appeals also remain ignored..

64. However, defendants' declared determination "to try to do something" was not unmeant, although the manifestation of it was not exactly what the Senate was led to believe it would be. The Civil Division formed a team of six lawyers as an anti-Weisberg crew. They succeeded in presiding over perpetuated noncompliance. The pending fee waiver request also remained ignored until, a little over three and a half months later, I filed suit. All six of this anti-Weisberg crew then were in the courtroom - and they were not the only Department lawyers present. This impressive array of well-paid legal talent failed, except to get a dressing down

from that court, which granted the fee waiver, and ordered forthwith delivery of the records in question in that case. This expensive exploit in noncompliance and the devotion of so much time and expense to it, while it is "something," juxtaposes nicely with the third sentence of the Response. It alleges that settling this case without any Vaughn listing and with the assurance that it would not be refiled imposes "burdens far beyond what the Freedom of Information Act (FOIA) requires." Orwell could not have put it any better.

65. Mrs. Zusman, representing that she spoke for Mr. Schaffer, was not without a unique contribution to defendants' "do something" effort. Two months after this testimony, without informing my counsel or me of the "something" they were about to "do," they asked for an urgent in camera meeting in my FOIA case for King assassination records, C.A. 75-1996. They assured that judge that they required my unique services in my suit against them and that by my acting as their consultant - in my suit against them, which they then had been stonewalling for more than two years, almost eight years after the initial request - their great desire for compliance would be gratified. I would, of course, they assured that judge, be paid "generously." This, no doubt, is why they refused to pay me when I delivered a detailed consultancy report of more than 200 typed pages, why they persisted in refusing to pay me when prodded by that judge, why they continued to refuse to pay me when ordered to do so by that judge, and why they now claim that they not only have no obligation to pay me but that Mrs. Zusman was without authority to give the assurances that she did give to that judge. It is, no doubt, defendants' anxiety to avoid those "burdens" of the third sentence of the Response that drove them to the appeals court. No doubt also that I am unappreciative in not being "satisfied" about this.

66. The Shea memorandum (Exhibit 2) that was withheld from me under spurious claim to exemption was provided to another litigant. It was written March 27, 1980, on the subject, "Freedom of Information Requests of Mr. Harold Weisberg." This was the time of internal finagling over the fee-waiver revocation, a time of numerous appeals in this and other cases, and a time when Mr. Shea expressed himself as diametrically opposed to what the Response seeks to have this Court believe. While most of his references are to the King assassination records case, he also clearly addresses and refers to Kennedy assassination records and his statements

apply to both. His caption and text refer to "requests" in the plural.

67. He begins with reference to a memorandum from the then FBI FOIPA chief:

> I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numberous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense that I (and, I believe, the FOIA) use that word.

In his next paragraph he makes it clear that he refers to both King and Kennedy cases. Search is a continuing issue in this case, in which I have alleged that the required searches still have not been made.

68. He then goes into another continuing issue in this case. There the FBI insists, despite my contrary affidavit, that a large proportion of the Dallas and New Orleans records, copies of which were not provided in this litigation, are not within this case. (They now urge me to file a separate suit over them.):

> Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act.

Supported by defendants' Director of Information Law and Information Policy, he held that field office copies are not "duplicates" of FBIHQ copies. Their determination was and remains meaningless to the FBI, witness Phillips' untrue representations about this in his earlier declaration.

69. Although Phillips' newest declaration, that of April 15, 1982, states that he responds to my affidavit, he entirely ignores this matter in it.

70. In opposing the abrogation of the fee waiver, Mr. Shea stated that "it was intended by me at the time it was granted" to "extend to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the 'security investigation' on Dr. King, and about the Bureau's dealings with and attitudes towards its 'friends' and its 'critics' as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent that they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records." (Emphasis added. The revocation of the fee waiver was intended to "stop" me by denying me records for which I could not pay.)

71. In the next and final paragraphs Mr. Shea makes it clear that in these criticisms of the FBI he includes both Kennedy and King cases. After repeating his opinion of the importance of the subject matters of my requests, which Mr. Schaffer

described to the Senate subcommittee as "unique" and "of unique historical importance," Mr. Shea states that the FBI's efforts against me, "what the Bureau wants the (Department's Freedom of Information) Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Aboureszk Subcommittee." He urged that "if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions." (Emphasis in original) This, of course, never happened. Instead, the entire text of this memorandum was withheld from me under phony claim to exemption. Failure to do as he urged, Mr. Shea warned in advance, and adopting the FBI's proposals, which he opposed, would result in a "very real blot on the Department's escutcheon."

72. Defendants' own expert, their ranking FOIA official who is misrepresented in the Response, said exactly what I have stated to this and other courts. He says the exact opposite of what the Response represents. In polite language Mr. Shea says that the FBI and the Department lied and broke their promises to me, to courts and to the Senate. In this defendants are consistent, as I show in additional detail below with regard to the newest Phillips affirmations.

73. In a few prejudicial inappropriate and irrelevant words that are unfaithful to fact, defendants can require and do require considerable length for response.

74. Mr. Shea characterized some of what I said as unfair and inaccurate. As soon as I saw this, because I prize what I regard as an exceptional record for accuracy and because I do not want to be unfair to anyone, I wrote Mr. Shea. I told him that if he is aware of any error I want to know of it so I might correct it. I told him that if he is aware of any unfairness, I want to apologize and do whatever else might be possible to rectify it. I have had no response. I have published seven detailed books and have spoken much in public, extensively ad lib and to millions of people on radio and TV, sometimes in heated debate. I have filed many lengthy affidavits and I have filed a great volume of appeals. One weird lawsuit was filed against me by a crazy publicity-seeking Cuban who actually alleged that he was libeled by the truth, by accurate quotation of the immune Warren Commission's testimony. He was thrown out of court. One FBI agent was used

by the FBI in what amounts to a plot to "stop" me and my writing by filing a spurious libel suit; but as stated in Paragraph 10 above, he got cold feet and he did not accept my direct challenge. I know of no error of any significance and of no unfairness in anything I have written or said, and, except for the above, I have heard of none. Mr. Shea had his own problems with those who were out to get him and did not long after he wrote this memo. I believe he included this paragraph to meet the internal political and bureaucratic problems he faced.

75. On page 4, the Response departs even further from the request and magnifies earlier misrepresentation of it to the Court by saying that it is "merely for 'copies of all records pertaining to the assassination of President John F. Kennedy." As the first sentence after this introductory sentence of the request makes clear, as quoted above, "This request includes all records on or pertaining to persons and organizations who figured in the investigation into" the assassination. While in an effort to bring this long-delayed case to a satisfactory end I have offered to compromise most of this, it clearly is the request. As Mr. Shea himself chided defendants, those he referred to as "critics," his and the usual quotation marks, are very much within the request. These records are of significant historical importance, albeit certain to be embarrassing to defendants, about which more appears below. It is beyond question that my requests are not "merely" for what the FBI put in its assassination main file, the misrepresentation of the Response.

76. At the same point the Response engages in the semantical evasion Phillips cooked up to avoid providing these files. It also alleges, without any support in any evidence of which I am aware, that in the words of the directive, "an all reference search" was made for any "official or unofficial files which pertain to the Kennedy case. The same all-reference search is alleged to have been made for records on the "critics." It was not. What the Response refers to is a known futility, a search for topics that are not within the FBI's filing system or file categories.

77. What the FBI was really directed to do in making this "all reference search" for any "official or unofficial files which pertain to the Kennedy case" is to comply with the Item of the requests the Response pretends does not exist, the above-quoted Item seeking information on persons and organizations which figured

in the investigation. No such search was made. None is attested to. This, of course, requires the deceptiveness and misrepresentation of the Response and of Phillips' declarations.

78. As Mr. Shea knew and as the FBI FOIA agents testified when I deposed them, what is required is searches by name. That is what the directive intended. It is not likely that informed Department lawyers do not know and it is certain that Phillips and his FBI associates do know that such searches must be by name and cannot be made by the title "critics" and "criticism."

79. The Response continues its misrepresentations with "now," meaning for the first time, "plaintiff wants the Bureau to conduct an all reference search" under the names of critics. As stated above, this is the original request and, despite defendants' misrepresentations, is what was directed. If there were any pertinence, as there is not, in the Response's rhetorical, out-of-context quotation of Mr. Shea about the process of adjudicating an appeal, neither Mr. Shea nor anyone else ever in any way acknowledged - in writing - my appeals pertaining to those called "critics." They were not new. Neither delayed nor extended the appeals process, over which no plaintiff ever has any control. Whatever fiction defendants may improvise, the Act, as I read it, requires action on appeals within 20 days, not counsel's prejudicial, inaccurate and irrelevant arguments years later. It is impossible, obviously, the "the process of adjudicating an appeal" to have been "extended indefinitely" by me; it is obvious that this cannot apply to me when it is not I who makes searches in FBI files and when there never had been any searches pertaining to the "critics." My appeals date to 1978, long before what the Response misuses was written. It likewise is obvious that they and their organizations, because they are part of the FBI's investigation, are included in the part of the request the Response pretends does not exist, quoted above.

80. As part of defendants' long-standing campaigns, to make use of FOIA expensive and unwieldy, and to "stop" me by misuse of the courts and the processes of the courts, the Response now proposes a new dodge, bifurcating the case and, assuming that the Court would do as asked, but not waiting for it to do so, defendants say they will provide a "detailed affidavit on how the search was conducted." With a case in court and the searches in question all along, this incomplete offer is anything but premature. However, defendants do not propose to

inform the Court what was searched for.

81. Defendants also propose that this aged and ill plaintiff "can respond by listing in a counter-affidavit all his complaints with the FBI's search." If defendants were not so contemptuous of truth and their responsibilities under the Act, they would be aware that I have done this in the many ignored appeals I did file so long ago.

82. This above-quoted dirty-pool formulation of the Response states what is not true. It is intended to deceive and mislead the Court into believing that defendants did do what they did not do, make a search. Not only did they not make a good-faith search - they made no search at all. I know this from the conference with then Department counsel the day Judge Oberdorfer recused himself. He at that time told us that he was going to Dallas with an FBI crew and they would return with the four "main" files to which the FBI had restricted itself in its general releases of FBIHQ records of a few months earlier. I told him this would not satisfy the request and asked for input on the searches that should be made. I did not get this and no searches were made. Rather than searching in response to the request, the FBI, even then, did restrict itself to those few "main" files. Later, when Mr. Shea was not satisfied with what my appeals and his own inquiries reflected about what the FBI had done, he told me he was going to send a member of his staff to New Orleans. I again asked for input, but if that member of his staff ever went to New Orleans, neither he nor Mr. Shea conferred with me about it and there is no reflection of it in the records I received. New Orleans compliance also was limited largely to the same "main" files, despite the extra Item of that request specifically asking for all records on or about those who figured in the Garrison investigation.

83. The fact is that what I have received in the ensuing years other than these "main" files is limited to some of what Mr. Shea directed be disclosed to me and is not the result of any FBI search. Except for a few inconsequential "miscellaneous references," it also is limited to a few "main" files. The FBI has not claimed that it provided all the pertinent records located through use of its "see" references.

84. As my uncontradicted prior affidavit states, most of the records listed as provided in defendants' proposed Order were not originally provided by the FBI. They were provided after the FBI claimed complete compliance and after Mr. Shea

directed that they be provided.

85. If defendants provide an attestation to a search in compliance with the requests, it will be falsely sworn. From long prior experience I expect it not to be attested to by anyone with first-person knowledge. This is the requirement of a number of well-known decisions.

86. Of course, all of this is really unnecessary except for defendants' determination to serve their ulterior and improper purposes. In it they seek to waste more time and money, thereby further inflating their FOIA statistics, to waste, weary and impose upon the Court, my counsel and me, and to "stop" me and my writing by keeping me tied up in litigation that now is not necessary.

87. The Response concludes with another Orwellian seizure, stating the opposite of fact and truth, what is completely impossible and entirely unsupported: "In conclusion, defendants submit that the above outlined approach is the only way this case can be resolved with finality." The truth, as these defendants who have ulterior purposes know very well, is that they propose the one way they can resolve nothing. It also assures that the dispute over the records involved in this case pertaining to that most subversive of crimes, the assassination of the President and to the FBI's already criticized investigation of it, will continue to be disputed. It is one way to absolutely guarantee that I will go to the appeals court - and that does not end the possibilities. This Orwellian proposal can saddle the Court once again with a great volume of material facts that are in clear dispute.

88. It also is obvious that "the only way this case can" now "be resolved with finality" is for me to end it voluntarily and agree not to refile it. This is what I propose and defendants reject out of hand.

The Phillips Declaration

89. The kindest thing that can be said of this newest in a series of the most dubious affirmations by Phillips is that he swears to what he knows nothing about and about which he has gone out of his way to keep himself ignorant. The only apparent alternative is that he is a professional false swearer. He does attest to what is not true and to what the most cursory inquiry would have revealed is not true. In addition, he is not competent to attest to what he attests to. No shrinking violet, he seeks to turn the Act around and he openly urges additional litigation.

in its hearing, which was broadcast and telecast.

95. In his Paragraph 3 Phillips attests "that I read plaintiff's submission of April 5, 1982." He adds, nothing omitted, "Having read those papers, I make the following statements ... in response to plaintiff's numbered assertions." The first of these is this Mexico City part. The content of my March 11, 1982, affidavit, which is part of that submission with which Phillips affirms he is familiar, eliminates any possibility of innocence in his misstatements to this Court pertaining to FBI records about Oswald in Mexico. If Phillips read Paragraph 22 of my cited affidavit, as he declares he did, and the purpose of his declaration is to respond to it, then he knew that I attested that, "22. One of the many 'national security' withholdings in this case, pertaining to Oswald and his contacts with the Russian and Cuban embassies in Nexico City, is for information the FBI disclosed to another, of which I provided a copy with my ignored appeal. What was withheld from me was unclassified until the FBI started to process records for disclosure. Then it was classified 'Top Secret.'"

96. Phillips must have assumed that this Court would not read the records in this case or would automatically accept without hesitation anything he swears to because in his 3(a) he does not in any way "make ... response" to my affidavit. This may be the least of his offenses, for, knowing that I had stated that such FBI information had been disclosed to another while being withheld from me and that "I provided a copy with my ignored appeal," he states that nothing was or could be released, allegedly because "all such material has been classified by the CIA and thus was withheld.

97. What I referred to is a six-page letter J. Edgar Hoover wrote the day after the assassination to the Secret Service Director. Hoover said that FBI agents who were familiar with Oswald's appearance and voice listened to the tapes of the electronic interceptions and examined the photographs, said by the CIA to be of Oswald, and they said the man was not Oswald. (This language is ambiguous. It does not say whether the FBI's negative identification was based on the voice, the photographs or both.)

98. As his 3(b) Phillips has "Oswald Income Tax Records." He swears that pursuant to the 1980 determination of the appeals office I was given only Jack Ruby tax records, and then only what was disclosed by the Warren Commission. He

90. Phillips' accreditation of himself as an expert does not include any claim to any knowledge except of the FBI's procedures. He does not mention having read the appeals. He does not attest that he spoke with Mr. Shea, or read his communications and directives. His sole claim to expert qualification and pertinent knowledge is, "I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests..."

91. With regard to what Phillips attests to in his 3(a), he crosses the line and swears falsely about what he knows of personal knowledge. This one of his subdivisions is headed "Oswald - Mexico City materials." His false swearing is: "Any material which is referenced by plaintiff under this heading originated from the Central Intelligence Agency (CIA). All such material has been classified by the CIA and thus was withheld pursuant to section (b)(1) of the FOIA."

92. I attach as Exhibit 3 the most recent example of Phillips' personal knowledge of the untruth of his attestation. This record is from the Dallas "Oswald" file and Phillips initialed the FBI's covering letter when it was mailed to me - in this case - on March 16, 1982. That is a day less than a month earlier than Phillips' declaration of April 15.

93. The various stamps reflect the fact that this record was never classified or declassified by the CIA and that, in fact, it was not classified at all until it became pertinent in this case, on October 30, 1979. Then only one paragraph was marked as classified at all and there is nothing in that paragraph that was not within the public domain for as long as 15 years. This record, which includes those "materials" to which Phillips attests, includes in the paragraph not classified until more than a year after this instant case was filed, a statement that is contrary to the official explanation of the crime. The official line is that Oswald phoned the Russian embassy in Mexico City twice. What is new and contradictory of the official explanation of the crime is, "it was reported, but not confirmed, that he had been in touch with the Soviet Embassy in Mexico."

94. There is no doubt that the CIA handled this wiretapping and/or bugging in Mexico City, not the FBI, and that also is within the public domain. The FBI is and Phillips should be aware of the fact that in recent years there have been several Congressional investigations, including one by a committee whose mandate was limited to the political assassinations. It went into this and related matters

does not state when or how I got what I got. It was sent and initialed by him and it was only 35 days before his declaration. He also swears that "the FBI does not know of any instance where, as plaintiff asserts, income tax records of unspecified 'relatives and friends' of Jack Ruby were released to him." (How he can attest to what nobody in the FBI knows or does not know he does not indicate.)

99. Exhibit 4 is the FBI's letter to me dated March 10 of this year, initialed by Phillips. (This is a month and five days only before he signed his declaration.) It states that the records forwarded with it are disclosed because of action on my appeals or as referrals to other agencies.

100. Exhibit 5 is the FBI's inventory worksheet covering the largest of the files sent me with Exhibit 4. Contrary to Phillips' attestation, the worksheet discloses that tax records of three of Ruby's relatives, Sam and Phyllis Ruby and Eva Grant, and two of Ruby's friends, George Senator and Ralph Paul, were disclosed by the FBI. Contrary to Phillips' attestation that the Ruby tax records I received already had been disclosed by the Warren Commission, the FBI's worksheet states clearly with regard to 144 of these pages that they consist only of "Additional material released based on appeal review 1-82." (Emphasis added) There had been referral to IRS and there had been (b)(3) and (b)(7)(C) claims. One FBI version contradicts the other, within a matter of days. If the FBI's worksheets are truthful, Phillips swars falsely. If the FBI's worksheets are phony, then all its claims to exemption covering all the records in this case are clouded and cannot be accepted or trusted.

101. Phillips does not dispute that after my appeal it was decided that Oswald's income tax records would be released to me. Nor does he explain how, under one and the same law, the returns of the then live Jack Ruby could properly be disclosed and those of the dead Oswald were and are withheld or how those of Ruby's living relatives and friends can be and are disclosed. It cannot be because the tax records of Ruby's relatives and friends are of greater public interest than those of the accused assassin who, whether or not correctly, was alleged in the press and by Texas officials to have gotten $200 a month from the FBI.

102. Phillips' 3(c) is "Statement of FBI Special Agent James Hosty." In this Phillips ignores rather than responds to what I stated, that the FBI had hidden the last Hosty report. There is no question but that, by subject matter,

it belongs in the Dallas files and in more than one of them for reasons detailed in my earlier affidavits. Phillips also ignores what the Department's own top appeals official has stated, quoted above and in Exhibit 2. Pertaining to the FBI's failure to make proper searches, really its refusal to make searches, Mr. Shea stated that "the key point is that it extends to records by virtue of their subject and contents, to the extent that they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records." (Emphasis added) If Phillips and the FBI were acting in good faith and had nothing to hide, with the information I provided to the appeals office they could have located the record and provided it. (They could retrieve this record easily without my help, too.) The real reason they have not done so is that the record is embarrassing to the FBI. It behaved in the matter with exceptional duplicity. It lied to and deceived and mislead the Presidential Commission. If the report is filed or misfiled at FBIHQ, it still is a Dallas record by subject and content. It also is because Dallas is the "Office of Origin" in the Kennedy assassination investigation and in the investigation that led to the former Special Agent in Charge almost being indicted for perjury, as my earlier affidavits state. (The reason given for not charging him with perjury is the fear of the accusation of "bootstrapping."

103. In his 3(d), "Weisberg report on Mafia threat," Phillips makes an art form of evasiveness and unresponsiveness in his continuing effort to deceive and mislead the Court to obtain its sanction for improper withholdings. His contempt for truth and lack of concern about any retribution are unhidden, for in my affidavit I state quite clearly that I obtained FBIHQ records reflecting that the New Orleans office informed FBIHQ several hours before I informed the New Orleans office of this threat. I also state that I had provided a copy to defendants by attaching it to that (still ignored) appeal. It therefore is not true, as Phillips swears, that "The FBI knows of no document withheld from plaintiff which could possibly be referenced by him under this heading." Phillips did not have to obtain a copy from the appeals office. All he had to do to avoid this glaring untruth is check the FBIHQ file from which I obtained the record. There is no apparent way for him to provide the information he includes, the exact time posted on the records, without a check of the files. Here again the FBI has motive for dishonesty. As I state

in the prior affidavit, it appears that the only possible means by which the FBI could have learned of this is electronic surveillance. For the FBI to disclose this surveillance would be for it to confess to violation of the law, the dirty tricks of which I was the victim, and possibly to perjury.

104. Phillips is evasive, deceptive and misleading when he says that I had "never been the subject of FBI surveillance." Whether or not I was the "subject" is utterly irrelevant. My response to the 1975 letter he cites states this and offers proof that I was surveilled. It remains without response. It is not honest for Phillips to resort to this evasion or for my 1975 letter to be ignored in defendants' self-serving quotation of their 1975 letter only.

105. Neither my requests nor the FBI files are limited to records pertaining to surveillance "by the FBI," although it is beyond question that I was surveilled by the FBI, whether or not its "subject." The FBI has disclosed long-standing cooperative arrangements with other agencies. Phillips uses this evasive and irrelevant formulation in order to deceive and mislead and, of course, to continue to withhold. Of the many examples, I cite some that are included, with documentation from the FBI's ~~own~~ files, in several of my ignored appeals.

106. The FBI has me filed under "bank robberies," of all things, because of its interception of a phone call to me from Jerry Ray, brother of the accused assassin of Dr. King. This information appears in at least five different files, perhaps more. I have proof of five.

107. The FBI provided me with a record in which it states, quite falsely and malevolently, that I had a personal association with a Soviet national inside the USSR embassy in Washington. This is a vicious lie. I had no such association and no association with anyone in that embassy other than a professional one. I was, for example, a Washington correspondent. My contacts were few, impersonal and slight. Once I was in contact with that embassy at the request of the State Department, for another example.

108. Years ago I was informed by a high Department official that the FBI had picked me up on a bug in a home I visited.

109. The press and court records report taps on the phones of other persons that I used when I visited those places.

110. Years ago the Department disclosed a stack about an inch thick of

copies of transcripts of taps on former New Orleans District Attorney Jim Garrison. I used some of those tapped phones when the man who acted as the agent for the government in that matter made those phones available to me.

111. These are matters about which the FBI lies regularly, even to other government agencies. One of the reasons for such FBI lies is to prevent getting caught in other lies. For example, when the State Department asked the FBI if it had any records on me, the FBI not only lied in stating that it did not, it even annotated its memo to record the fact that it had been untruthful.

112. The FBI has a remarkable facility for not finding records it does not want to disclose. One of these, from my days as a correspondent, is a letter of praise for my writing by J. Edgar Hoover. The magazine for which I then worked printed that letter. The FBI today claims there is no such letter. It dislikes me and is unwilling to let it be known that the founding director praised my work, as did, I add, the White House and several cabinet officers.

113. Phillips captions his 3(e) "Garrison records." In this Phillips cannot even give a straight and honest account of what he presumably examined to be able to state that "All file references located on Mr. Garrison were, in turn, written on a search slip, a copy of which was provided to plaintiff ..." (Emphasis added) I was provided with two inconsistent sets of search slips and it is not possible to be certain which, other than first pages, pertain to any one person. Rather than a single slip, I was provided with a number. Rather than being provided with the original search slips, I was provided with amateurish rewriting of them in which they are consolidated in a manner not possible for original searches. These were done in so amateurish a way that one subject picks up on the page where another ends. This is not the way in which the FBI asks for or records searches. Those search slips also are the subject of an ignored appeal. His Exhibit 2 to which Phillips refers is not the search slips as provided to me. It is merely the covering letter.

114. Phillips admits that records within my request remain withheld. His tricky formulation, which is not the language of the requests, is that the FBI "reviewed each reference to determine if it pertained to the JFK assassination." As the language quoted above from my requests makes clear, they are for all information on persons who figured in the investigation, not only what the FBI

may regard as "pertaining to the assassination." In addition, in the New Orleans request, I added an additional paragraph which reads, "In addition, this request includes all records on or pertaining to Clay Shaw, David Ferrie and other persons or organizations who figure in District Attorney Jim Garrison's investigation into President Kennedy's assassination." "All records" is not the same, obviously, as the FBI/Phillips rewriting of my request. Knowing that there was no compliance with this item, Phillips blandly says now, more than six years later, that "Plaintiff can, of course, seek to obtain the latter records (that is, those not filed under the assassination) by submitting a new FOIA request."

115. Here, with regard to Mr. Garrison, he says what is not true, that if the FBI is to disclose any of those other records, I must provide a privacy waiver. Mr. Garrison, along with those referred to as "critics," is a public figure. As I state above, defendants disclosed as widely as possible, with maximum effort to interest the press and coast-to-coast network TV, a stack of transcripts of his intercepted conversations. That is but one example of the many disclosures by defendants of the most personal information. The FBI also leaked his supposedly confidential military medical records. The Garrison and other similar records are within my request, were located by the FBI according to Phillips himself, and were withheld on the spurious claim that they are not within the requests.

116. All records do not involve questions of privacy. Where there is a legitimate privacy question (b)(7)(C) authorizes withholding that information. If the fact that the FBI has files on the persons within the request were a factor, then the FBI's disclosure eliminates that factor. Aside from the very many thousands of pages the FBI itself has disclosed holding this kind of information, it authorized the Warren Commission to print many thousands of pages more, including names, addresses, telephone numbers, places of employment, friends and associates, etc. Even medical and criminal records and sexual fantasies, preferences and practices of named persons have been disclosed by the FBI.

117. I filed privacy waivers from some persons only to have the FBI be totally nonresponsive. In one case where it did not practice total withholding it provided me with records disclosing the existence of other records not provided and not claimed to be exempt. That appeal has been ignored for four or more years.

118. What I state above pertaining to Mr. Garrison also pertains to Phillips'

3(f), "Warren Commission Critics." (Phillips here does not place "critics" within quotation marks.) What is pertinent here in Phillips' declaration is that about which he is not competent to provide any attestation. He is "interpreting," by which I mean deliberately misinterpreting, the intent and meaning of another of defendants' employees, Mr. Shea.

119. Mr. Shea is available to provide an affidavit. It is not only that he is the best authority on what he said and meant, which he is. According to the recent decision of the appeals court, which I have read and in which the FBI is a defendant, the FBI was told that when one of first-person knowledge is available, an affidavit by another who lacks that first-person knowledge is not acceptable.

120. Phillips acknowledges that there was "a directive to the FBI to 'determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the FBI's investigation.'" Of this Phillips states what is not true and he has no way of knowing even if it were true, that "By putting the words critics and criticism in quotes (which Phillips does not do), it seems clear that the Associate Attorney General meant that those were the topics for which the FBI was to search." This simply is not true. Mr. Shea, who describes himself as a "history buff," recognized the considerable historical importance of anything the FBI did to or about the "critics." We discussed some of those things of which I had knowledge. Mr. Shea is well aware that the FBI has no file category for any such topics. He had and used its list of 205 file categories and, with the FBI's approval, got me a copy to update the old copy I had and was using in my appeals. The FBI's filing hinges on names and these categories. Mr. Shea was not about to direct the FBI to search for what he knew did not exist. Whether or not Phillips read my appeals, they leave no doubt about what was intended in this favorable action on those pertaining to the "critics."

121. What Phillips next states also is not true. He states that not until the recent conference between counsel at the Court's direction did the FBI know or "did plaintiff's counsel even suggest that the FBI should search for names of individuals." This is utterly false, as the quoted items from the requests leave beyond any question. The requests are for "all records on or pertaining to persons and organizations who figured in" the Kennedy assassination investigations and, in

the identical language, the Garrison investigation. It is in response to these items that the FBI was directed to search for records "which pertain to the Kennedy case with particular emphasis on" files holding information about the "critics."

122. Files which pertain to the Kennedy case obviously include files on or about witnesses and organizations. There has been no search in response to this directive and none is attested to for that reason. Phillips loads it with semantics and misrepresentation.

123. Organizations also figured in the investigation. An example is the now defunct Fair Play for Cuba Committee (FPCC), which disclosed FBI records reveal it had under surveillance.

124. Oswald counterfeited a New Orleans FPCC branch and got himself considerable attention by picketing with his own phony FPCC handbills and with literature he bought from the real FPCC. The FBI is so well aware of this and its potential if investigated that when it learned that the New Orleans Secret Service was investigating Oswald's literature, it put pressure on Secret Service headquarters and had that independent New Orleans investigation aborted. Among the consequences are the facts that the Warren Commission was never able to get from the FBI one particular sample of Oswald's literature, a pamphlet on which he had stamped the return address of an anti-Castro group created and financed by the CIA; and there was never any investigation of why Oswald would do such a strange thing and whether he did it on behalf of others unknown.

125. Oswald did use his New Orleans publicity in an unsuccessful effort to persuade the Cuban consulate in Mexico City to give him a visa. It would, of course, be a matter of some interest, particularly to scholars, to know whether or not he made a similar effort during those intercepted phone conversations or any that may have been picked up on bugs.

126. I am the one who brought to light Oswald's use of this address. I also published FBI records which make it clear the FBI reported to the Warren Commission the exact opposite of what its own reports state about Oswald's handbills and records reflecting the fact that the FBI engaged in a superficial cover-up investigation in which it reported much less than it knew about that building and those who were in it. The tenants include a once-prominent FBI special agent in

who had a private anti-Castro outfit of his own.

127. I have no reason to believe either that the FBI loves me for this or that it will not make some effort to deny me pertinent information about these and other such matters. This is true also of other "critics." On the other hand, as the FBI's records disclose, there is almost nothing it does not do for those it regards as "friends." It withholds from me what information it provided to Jeremiah O'Leary, for example, but did not withhold the fact that it edited his work, a condition of its assistance. While it continues to withhold information it provided to other sycophants, it did disclose that it talked the manager of a Dallas area hotel into letting Jim Bishop and his wife have without charge the accommodations used by President Kennedy and his wife the night before the assassination. In addition to his own knowledge, Mr. Shea had copies of such records with my appeals. These are the kinds of things he had in mind. I know because we discussed them.

128. In his March 27, 1980, memorandum (Exhibit 2), Mr. Shea (who therein also refers to "critics" and "friends" within quotes) is specific in stating that the FBI has not made necessary searches while pretending that it has and he criticizes the FBI by saying, "I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed -- largely because the Bureau has 'declined' to search for them." He states that the FBI wrongly limited itself to its "main" files. He also states what I quote above, that, with particular reference to "critics," the FBI is required to search for and process "records by viture of their subjects and contents to the extent that they can be located with a reasonable effort -- and is not determined by where or how the Bureau has filed the records."

129. The FBI can, with "reasonable effort," locate and provide the records on the "critics." If it has no list, I provided a limited one. (With regard to those who figure in the New Orleans investigation, defendants have lists and I provided copies of them to the appeals office.)

130. Phillips claims what is not true, that if as directed the FBI is to search for records on the "critics," I would have to provide privacy waivers. In addition to what I state above about privacy waivers, I state that including the

numerical identification I included in those appeals the FBI has already disclosed that it has files on us. Phillips pretends otherwise in stating that, "In order for the FBI to ascertain whether files exist on the individuals specified by the plaintiff and to publicly acknowledge the existence of such files." If by this language Phillips intends to lead the Court to believe that the FBI has not already done this, then he intends to lie to the Court because it has done this extensively and without regard to the Privacy Act. (When I invoked PA and got less than compliance, my counsel wrote to both the FBI Director and the Attorney General for me in order that correcting statements could be filed and disclosed simultaneously, both officials ignored him. They did not even acknowledge his communications. Thereafter, the FBI disclosed a considerable amount of the most distorted, prejudicial and untruthful information about me.

131. As I have stated repeatedly and neither Phillips nor anyone else speaking for defendants disputes or can dispute, the FBI has disclosed even the numbers of some of these files. The "critics" names also are rarely withheld. I provided these identifications in the many ignored appeals pertaining to "critics." It is not possible to examine these many appeals, going back as far as five years, without knowing the untruthfulness of any allegation that my requests do not include searches and compliance by names. Mr. Shea agreed.

132. Phillips here has an untruthful footnote which reads, "Pursuant to his Privacy Act request of December 5, 1975, Mr. Weisberg was furnished with all FBI documents which pertained to him in any manner." As indicated above, this is untrue. Not only will file and "see reference" searches disclose that this is not true, my appeals have attached copies of FBI records which refer to other records that remain withheld, without claim to exemption. These prove what Phillips states to be untrue. My PA request was repeated to all field offices. Some of them have pertinent records not provided, the subject of other ignored appeals.

133. Whether or not truthful, Phillips does not state that he is competent to make such an affirmation and he is not competent to do so. He was not assigned to my requests then. He could not have been assigned to the 59 different field offices which received copies of my PA request at about the same time.

134. The real reason, aside from harassment, that the FBI will not disclose

the records pertaining to the critics is that those records are embarrassing to the FBI. It did what it had no legal, moral or ethical right to do to us. One example is what it denied in the letter Phillips refers to in connection with my not being the "subject" of FBI surveillance: it did intrude into my personal life. When I first received reports that it had done this, I wrote the Attorney General. He assured me it had not happened. When I obtained what the New York office provided, it reveals that the FBI prepared four erudite lawyers to try to ruin me and my first book on a TV program. When I obtained the San Francisco records, they disclosed that an FBI symbol informant made the same attempt with my second book. Both efforts, happily, backfired. Both made those books successes in those markets. There is no question but that these are intrusions into my life and that they are proper police functions only for such agencies as the Gestapo and the KGB.

135. I believe that if the FBI field office personnel who processed those records a decade after they were generated had correctly understood them, I would not have received them.

136. What also is none of the business of a police agency other than those like the Gestapo and KGB are my letters to the editor of my local papers and what they write about me. But the FBI clipped and filed these things. Whether or not this is a proper way to spend time and tax money, it is certain that the money and time spent on it cannot be used for other functions, like catching criminals, deterring crime or processing information requests.

137. Bearing further on the untruthfulness of Phillips' statement that I had received all records pertaining to me is information I obtained secondhand from his own FOIA unit. There was a time when a number of college students in the Washington area were interested in my work. I am indirect in what I say to protect the FBI person who told one of these students that the FBI was watching all of those who had any association with me and they might get in trouble over it.

138. In this connection, I note again Mr. Shea's reference to "unofficial" as well as "official" files. The FBI has not attested to any such searches.

139. It is a simple matter for the FBI to arrange not to be able to find these records. Copies at FBIHQ need only be kept out of "central records" and its index. The FBI refuses to search anywhere else. With the University of Maryland as an example, the Baltimore office could report that it has no such records "in

its files," as Phillips puts it. But the FBI has a resident agency of the Baltimore office at Hyattsville. It handles the College Park area and its files are Baltimore office files, if not "in" Baltimore. It can have this information in its files and Baltimore could - and I add did - claim not to have it.

140. In 3(g) Phillips attests to "Films, tapes and pictures." He lists what he pretends is all of them. He cites his Exhibit 3, which also lists them and states that those listed are all such tapes.

141. What the FBI lists and what the file numbers and Phillips' language say is that the FBI, contrary to the directives of the appeals office, limited itself to what it filed in a couple of its "main" assassination files. Phillips says that those listed pertain to the assassination. Those pertaining to persons are filed in other files, even though those persons are included in the assassination investigation. For example, the tapes from bugging and tapping Marina Oswald. Originally, their existence was not acknowledged. The FBI withheld their file numbers from me, making a phony (b)(2) claim for it. By accident I learned these numbers. Bearing on the legitimacy and honesty of the FBI's claim to exemption, while it withheld those file identifications from me under FOIA, it actually lists them in its proposed Order in this case.

142. In this connection I reiterate that Mr. Shea told the FBI that the request is for records, however or wherever they may be filed, and for information about both the assassination and its investigation. He also perceived the considerable importance of the investigation, which he noted was not the same as the crime itself.

143. It is conspicuous that neither Phillips' declaration nor his letter, his own Exhibit 3, written for his superior, claims that there are no other tapes.

144. Phillips captions his Paragraph 3(g) "Films, tapes and pictures." At no point does he describe, define or even indicate what he means by "films" or "pictures," nor does he state why he uses both words. This is particularly provocative because he does not distinguish between different kinds of films, if by that word he means motion pictures only. Both the Dallas and New Orleans offices have more than one kind and more than one size. At no point in his declaration does Phillips make any reference to or give any accounting of the large number of still pictures both offices have. This omission is entirely consistent with defendants'

withholding of them. Phillips cannot explain this so he does not even try to explain it.

145. With regard to motion pictures, if this is what Phillips intends to include as "films," these offices have both professional and amateur movies not provided. Each office has both 16mm. and 8mm. sizes. One motion picture not provided is the subject of a request I made more than 14 years ago. I filed a number of appeals because two things about it are quite provocative. The same request asks for the still photographs taken by a woman bystander and an Army intelligence agent and the Army intelligence reports pertaining to that matter. (See Exhibit 1, request of 1/1/69)

146. This 1969 request also includes the identification of a fingerprint lifted from one of Oswald's leaflets, allegedly distributed by Oswald himself. According to the FBI, the fingerprint is not Oswald's. I asked for this identification of the person other than Oswald who was distributing Oswald's leaflets, a person neither identified to the Warren Commission nor sought by the FBI. An obvious suspicion, if not in fact an explanation, is that the FBI, having decided immediately, prior to any investigation, that there had been no conspiracy, that Oswald was entirely alone, was not about to investigate or distribute evidence suggesting a conspiracy. These still withheld records are the records of both offices. It was a New Orleans matter but Dallas is the office of origin and by FBI practice is required to have received the pertinent reports, from New Orleans, FBIHQ or both.

147. This fits neatly with what is known about one of the motion pictures included in this request and still withheld. It was taken by a young man named Jack Martin, then a college student on vacation. He was in New Orleans on August 9, 1963. On that day Oswald achieved the first of his two greater successes in attracting a considerable amount of attention to himself as a pro-Castroite. He got himself arrested for it. Martin just happened to be there with his camera. The FBI never told the Warren Commission that it had a copy of Martin's film. Martin, it happens, while still at the University of Minnesota at Minneapolis, was in an audience I addressed there in May 1968. He offered to let me see his film, which he described accurately as having captured Oswald's arrest - certainly a matter defendants' Hawkshaws knew was of great interest and concern to the

Presidential Commission. Martin told me that he had loaned his film to the FBI for copying. He also told me that what was returned to him was not his original. He said he knew this because the film returned to him is continuous, with the different scenes following each other without any break, whereas he always had some blank film separating different sequences. Before the Oswald footage he had taken shots of exchange students in Dallas and at the Audobon Zoo, in New Orleans. I examined his footage. There is no break between sequences in it, and there is no splice that can be felt or seen with the naked eye. Martin permitted me to have a duplicate made.

148. He and I and some of the sponsoring group were the only persons in the university's projection room, which was made available to us. That night I caught a plan for Kansas City. When I got there I had no luggage. When, ultimately, my luggage was returned to me, in New Orleans, it had been ransacked. A new typewriter was wrecked although the case was without a scratch. No single piece of paper remained. My expense notations and even papers of matches were missing. My almost new tape recorder was damaged beyond repair. The New Orleans Braniff manager told me frankly he did not believe the explanation given to him, that by accident my luggage had been sent to the wrong city, a city to which his line did not go. I had seen my luggage go down the correct chute.

149. While I have no way of knowing what caused this first of several strange interceptions, it is not explained by what the Braniff New Orleans manager was told and did not believe. If my luggage had merely gone astray, there was no reason for removing everything that had or could have notations, for messing up my clothing, for the demolition of the brand new typewriter or for ruining the recording mechanism only of my tape recorder. By the most remarkable of coincidences, on my next trip to New Orleans, then from Dallas, my baggage again was missing when the plane landed. On each of these flights I was ticketed to depart the plane at its first stop and I did. The subsequent explanation for what happened to my luggage at Dallas is that it got jammed in a baggage chute. I can only wonder how long the chute in a major airport could have been jammed without detection, for it had not been detected two hours later when New Orleans Eastern Airlines phoned Dallas Eastern Airlines, in my presence, and was told that they had no information about my luggage.

150. In Minneapolis there were older men, dressed in the Ivy League style of that period, in my supposedly student audience. There were men who were not reporters who were at a press conference I had in Minneapolis. Those at the University were equipped with a poorly hidden tape recorder. It and these nonstudents attracted the attention of some of the students. They reported it to the faculty representative in my presence. These men followed me and the group I was with after my speech, which is when we viewed the Martin film. However, because I did not want to risk the original of Martin's film in the mail, I did not have it with me when I left Minneapolis. Instead, I made arrangements with one of the students to have it copied in Minneapolis and the original returned personally to Martin. In Dallas I interviewed persons not interviewed by the FBI, from the records it has provided, or the Warren Commission.

151. These untoward experiences, particularly when there was reason to believe that the Martin film and tapes and notes of interviews were in my luggage, led me to make an FOIA request for the Martin film. For more than a decade, despite appeals, the request was totally ignored. In this instant cause I did obtain some pertinent records. They reflect the fact that the Minneapolis FBI forwarded Martin's film to New Orleans, that a copy of it was made and the original returned, and that the FBI considered the arrest Oswald contrived for himself to be of no significance or interest in its or the Warren Commission's investigations. I have also examined the information the FBI provided to the Warren Commission in its downplay of the Martin film. It never even told the Commission that it had Martin's film. However, the Commission was supposed to investigate that arrest and a similar incident Oswald arranged for the next week.

152. I was given a story duplicating Martin's by the west coast father of a then high school student named Doyle who, with his family and friends, also was in New Orleans and also photographed Oswald in this picketing the very same day and at about the time of his arrest. The FBI also did not trouble the Commission with a copy of the Doyle film. What is also conspicuous, if one examines all the records now available, is that all the witnesses interviewed by the FBI about the Doyle film told the same and, in the context of the official explanation of the crime, an extraordinary story. They describe an Oswald associate who marched and picketed with him and stated that this is included in the film. The FBI did

provide this film after I informed it I knew it had been disclosed to another and later requester. It contains no such footage. As had Martin, Doyle senior told me that the film returned by the FBI was not identical with the film provided to the FBI, that some sequences were missing. The Oswald associated reported by at least five witnesses does not exist in the copy provided to me by the FBI.

153. The week after his arrest Oswald, armed with unlisted telephone numbers, something also not investigated by the FBI or the Warren Commission, arranged for TV to cover his operation. Two New Orleans TV stations, WDSU and WWL, did cover it. They broadcast it in their evening newscasts. Phillips does not mention these films. Ed Planer, the WDSU news director, told me that it had loaned its footage to the FBI for copying as soon as President Kennedy was killed but that the footage returned was not identical with what it had loaned to the FBI. In 1968 WDSU permitted me to have a duplicate made of the film as it then existed, as returned by the FBI.

154. What makes this even more provocative is that the place Oswald chose to be covered by TV cameras, of all New Orleans had to offer, was the International Trade Mart (ITM). Clay Shaw, later charged by Garrison and acquitted, was its manager. Jesse Core was its publicity man. Core was outraged that Oswald would picket the ITEM and was photographed arguing with Oswald, he told me. Core also was a friend of Planer's. After the picketing, in August, because he feared Oswald had generated bad publicity for the ITM, Core viewed the WDSU film. He and Planer told me he was in it. Sometime after Oswald was arrested in Dallas, he and Planer viewed the film again. Both told me that Core then was not in it. Core is not in the film WDSU permitted me to copy.

155. Several days after the assassination, WDSU make copies of 17 frames or individual pictures of it for the government, according to Warren Commission records. Only two of these stills and one made from the WWL film reached the Warren Commission, which published them. FBI reports disclosed that New Orleans agents displayed as many as six different stills to various witnesses. My appeals include the withholding of these stills. They remain withheld and Phillips makes no reference to them.

156. It required not inconsiderable persistence with the Secret Service but eventually I got it to disclose the caption it wrapped around its copy of this WDSU footage. It states that Oswald had an unidentified associate in that picketing.

157. My January 1969 requests include the WDSU and WWL films. They have not been provided.

158. I use these Martin picture and related requests from Exhibit 1 not only because they remain without compliance after more than 14 years but because Phillips and defendants would have this Court believe they have provided all existing and pertinent records when they have not.

159. In January 1978, in C.A. 77-2155, these defendants assured that Court that they would be complying with these old requests in the records they were to provide. They have not done so. They also, as stated above, gave the same false assurances to the Senate subcommittee. These requests happen to be for information that is inconsistent with the FBI's account of the crime and in some instances dispute the FBI's account. This kind of information the FBI withholds with regularity, as my appeals reflect.

160. This January 1, 1969, request also includes Polaroid pictures taken during the assassination by since-remarried Mrs. Mary Moorman. The Warren Commission published one of her pictures. The FBI told the Commission that she had taken only two pictures. In fact, she took three pictures. Records the FBI provided to me, which include what it did not provide to the Commission, make no mention of her third picture. In other ways the FBI's conduct also appears to be at the least strange.

161. Mrs. Moorman's first picture is of the motorcade. Her second is of the front of the building from which the FBI claims all shots were fired. The third, the one published by the Commission, includes the Presidential limousine and its occupants after the President was shot. That Mrs. Moorman had these pictures was known immediately to the FBI. She was only a couple of hundred feet from the sheriff's office, which collected pictures, conducted brief interviews and turned them over to the FBI.

162. The Dallas FBI made copies of Mrs. Moorman's two pictures and kept this fact secret from the Commission and the Secret Service. When the Commission wanted to examine these pictures, the FBI got them from and then returned them to Mrs. Moorman. When the Commission wanted to examine them again, which it did several times, the FBI did not produce its copies. Instead, federal agents were kept on a Moorman shuttle.

163. With regard to pictures, the record of the FBI is precisely what was articulated by one of its agents: if a picture did not show Oswald in that window with a smoking gun in his hands, the picture was of no interest to the FBI. In 1967 I published a book on the suppression of photographic evidence, Photographic Whitewash. It includes FBI reports on this shuttling back and forth with the two Moorman pictures.

164. While the motorcade was of considerable interest to the Commission in its investigation and ever since has been to official and private investigations, the FBI, by avoiding this first Moorman picture, has kept that evidence out of official files. This is not unique. (See below re the photographer Thomas Alyea and re the Army Intelligence agent Powell.)

165. The records provided to me make no reference to the missing Moorman picture, but they do reflect that the Dallas FBI made copies of the other two.

166. James Powell, of Army Intelligence's 113th unit in Dallas, lunched less than a block from the scene of the assassination. If my recollection is correct, he lunched with the Dallas FBI's Oswald case agent, James P. Hosty, Jr. Apparently, neither had any interest in seeing the President or the motorcade because they left the lunchroom a few minutes after the delayed motorcade was due. Powell walked to Dealey Plaza, the scene of the crime, getting there immediately after the shooting. He had with him a loaded 35mm. camera. He is known to have taken one picture. I did not receive it from the FBI, despite my 1969 request, until more than a decade later, long after it had provided copies to later requesters, who published it. Powell rushed into the building from which the FBI says all the shots were fired. He then was confined to the building, along with others, until the police completed their initial search. Powell filed reports with Army intelligence. These also are included in my requests and ignored appeals. It appears unlikely, illogical and entirely out of character for a trained intelligence agent who was present at the search of the scene of the "crime of the century," the most subversive of crimes, not to use his camera. But the FBI has not provided any other pictures and no reports. I asked the Army under FOIA for copies of the reports. It traced the records of that unit to storage at Indiantown Gap, Pennsylvania, and told me that all those records had been destroyed. So, there is no place they can be obtained except from the FBI.

167. In this litigation the FBI has not made any search under Powell's name. This is certainly required by my 1969 request, no matter how the FBI distorts and misrepresents those presently litigated, which also do require it.

168. Thomas Alyea was a photographer for Dallas TV station WFAA-TV. He passed the scene of the crime almost as soon as it happened as he returned from covering the President's airport arrival. WFAA is located almost in Dealey Plaza. The enterprising Alyea, from the FBI's own reports, grabbed three cans of unexposed film and, with his loaded camera, rushed into the TSBD before it was sealed by the police for their initial search. As he exposed a roll of 16mm. movie film, he dropped it to his colleagues who remained on the street below. They rushed it to WFAA. But the FBI avoided him. By the time he went to the FBI, four months after the crime, the film had been edited and reedited and the outtakes disposed of. The outtakes, which are what holds no TV interest, often are of considerable police and investigative interest. By avoiding this priceless footage the FBI guaranteed that some of it would disappear. What remained by the time Alyea went to the FBI is about one roll. The FBI did obtain that, but it has not provided it to me in this instant cause. There is no way without perjury that Phillips can claim that the Dallas FBI did not get Alyea's film.

169. In 1967, in Photographic Whitewash, I published these facts and more, including facsimile copies of the FBI's Dallas reports as provided to the Warren Commission. (Exhibit 6) These FBI Dallas records reveal that the FBI did not even speak to Alyea until four months after the crime and then, apparently, on his initiative. They also reveal that what then remained of the footage was given to Dallas agent R. Neil Quigley.

170. That the FBI managed to avoid most of the known and available motion picture film is disclosed by two more Warren Commission records published in that book. As of two months after the crime the FBI accounted to the Commission for only two of the many amateur films and only a small percentage of the known TV footage. (Exhibit 7) People who were not approached by the FBI finally went to the United States Attorney's office because they believed they had film of interest and value in the assassination investigation. An example is Exhibit 8. By the time the man who put out a film called "President Kennedy's Last Hour" went there almost nine months had elapsed. He then had not used much of the footage of a

number of amateur photographers. The records provided to me in this case also do not reflect that the FBI ever got all these outtakes. Some of the outtakes, which I have seen, are actually of the TSBD doorway in which some witnesses said they were. From the outtakes this could be confirmed or disproved. There also was considerable controversy, which included the FBI, over whether or not Oswald was then in that doorway. The FBI, which solved the crime prior to investigating it, had a "solution" that did not permit Oswald to be there at that time. So it just avoided the film which might leave no doubt.

171. I do not suggest in the preceding paragraphs that the FBI should provide what it does not have. Rather do I provide motive for the withholding that has existed from the moment of Director Hoover's instant vision, which was not very many minutes after the shots were fired. He boasted of this in an interview with author William Manchester. Hoover's number 2 man of the time, Cartha DeLoach, wrote a detailed memo of that interview for Hoover. Hoover approved it and it was disclosed to me. This motive and the fact that FBI personnel now processing the records do not know which record or picture can open the door of a closet that holds a skeleton is the reason the FBI persists in withholding pertinent records it does have that are within the requests and that it was directed to search for and process.

172. That the Dallas FBI avoided getting pertinent film it knew existed is disclosed in its response, a month after the assassination, to an inquiry from FBIHQ. (Exhibit 9) Dallas states that "No effort is being made to set forth the names of news media throughout the country who made photographs or films in Dallas on 11-22-63." Attached is an incomplete list of local people who took motion and still pictures. It is indicated that some copies were made and the originals returned.

173. One whose motion and still pictures the FBI did not copy is second on this list. (Some of the people on this list could not be located after I learned of their having photographic evidence the FBI had avoided.) In several cases the FBI did, later, obtain the pictures.

174. Charles Bronson, to whom I refer in earlier and undisputed affidavits, took both 35mm. still and 8mm. motion pictures. (Exhibit 10) This Dallas record reflects the FBI's incredible lack of interest in pictures of "the President's car at the precise time shots were fired." The FBI's no less incredible explanation of its disinterest is that "they were not sufficiently clear for identification

purposes." However, this is unlikely because Bronson was a good photographer using good equipment and because the enlarging capabilities of that day permitted great enlargement.

175. If the Dallas FBI agent did not lie, his non sequitur is its own characterization of him, of those who accepted his report and did not forward it to Washington and of the FBI's attitude toward evidence that did not identify Oswald as the lone assassin. No other identification could have been referred to. If the agent did not lie, it is obvious that identification of Oswald was not the only possible value of a picture "of the President's car at the precise time the shots were fired."

176. The Bronson film is a continuing problem for the FBI and for the Dallas FBI in particular because FBIHQ passed the buck there after getting some heat from the House Select Committee on Assassinations (HSCA) and the Attorney General. As of my last and fairly recent knowledge, after more than three years, the FBI was still avoiding doing its assigned job of analyzing the Bronson film.

177. After I obtained Exhibit 10 in this litigation, friends of mine in the press located Bronson and examined his footage. Rather than "failed to show the building from which the shots were fired," which expresses the FBI built-in preconception of the crime before the investigation was really under way, my friends discovered that this footage has almost 100 individual pictures of it. Not only that building but of the very window from which the FBI claimed that Oswald alone shot. This film, taken "at the precise time the shots were fired," shows nobody in that window. It also shows two objects in motion well inside the building at that window. One of these friends is a reporter for the Dallas Morning News. That paper published two pages of frames from the Bronson film. They are clear enough so that after great enlargement and diminished clarity from the printing process they still show these two objects in motion. They also show other things not in accord with what the FBI reported and wants believed.

178. After this great attention to Bronson's pictures, HSCA could not ignore them. But by then its appropriation was exhausted and its life was about to end. It therefore asked the Attorney General to have the FBI investigate this and several other matters. Computer enhancement was asked for these pictures.

179. The Dallas agent assigned to this is Udo Specht. The FBI disclosed it

to me in this case. Although his name also is well and publicly known, for reasons having nothing to do with the privacy claim it made, the FBI also withheld it from me in regard to the Bronson matter. How those who processed the records disclosed to me could begin to conceive that there could be any legitimate privacy claim for the man who was in touch with Bronson and his lawyer and was constantly in touch with the press is not apparent. The apparent reason is the fact that by one pretense after another he avoided getting the film for enhancement or any other study. This is not because it was not available. The last excuse of which I know is that he and the FBI would not accept a retention copy made directly from the original and would not allow the original to be submitted to the computer with the Bronson's lawyer present and in possession of the original. In the end, Bronson's lawyer gave a first-generation copy to the Department's Criminal Division.

180. If Phillips ever does anything except make up convenient stories to which to swear or repeat what he has been told by others, then he has to know of the Dallas FBI's getting copies of the motion and still pictures reflected in their own records, Exhibits 6-9, and from several of these and Exhibit 10 he knows that the FBI had reason to believe there are other pertinent films of both kinds. These records and others like them are from the very file Phillips pretends was searched, the file cited in his declaration and his letter, its Exhibit 3.

181. Despite the rhetoric of the Response and Phillips' evasions, circumlocutions and untruths, no search for what the FBI was directed to search for is attested to, even though the ostensible purpose of both the Response and Phillips is to assure the Court that this was done. If there had been any search, then the other films and tapes that are pertinent and do exist would surface and the FBI knows it. It also is known to Phillips' unit, which provided me with proof of it, in this and the other case cited above, C.A. 75-1996.

182. The FBI has other kinds of tapes, not only tapes resulting from electronic surveillances. It has tapes of the "critics," for example, and it has tapes of broadcasts, both pertinent in this case. As I state above, it has tapes of Jim Garrison. After appeal in C.A. 75-1996 Phillips' own FOIA unit gave me a portion of a transcript of one from a New Orleans file. It is part of a case involving Edwin Grady (Whitey) Partin, Louisiana Teamster leader and a man against whom some 25 charges, including several capital offenses, were excused to get him to set up Jimmy Hoffa, which he did.

183. In referring to tapes other than from electronic surveillance, I am not saying that there are no other electronic surveillance tapes. When the FBI files them outside the main assassination files and does not even claim to have looked anywhere else (except with regard to Marina Oswald, which the appeals office told it to do), it cannot and does not state that there were no other electronic surveillances that are responsive to my requests. I have reason to believe that there were other such surveillances.

184. The FBI has its own way of hiding these things. It attributes its electronic surveillance information to nonexisting live informers and even assigns such numbers to the records for filing. Then it misuses the FOIA exemption intended to protect live informers as an excuse for denying access to what does not and cannot in any way endanger a live informer. I have never had any response to a number fo appeals pertaining to this trickery. The FBI has not denied what I state because it cannot.

185. I provide an example of still another kind of tape, a Dallas record. As far back as the time of the Warren Commission investigation, it was disclosed that the FBI has tapes of the Dallas police radio broadcasts for the period of the assassination and shortly thereafter. These records are tapes and they are Dallas office records.. The Dallas police made them for the FBI and what is not referred to in any official record I recall (although it is possible that my recollection is imperfect), it also made duplicate Dictabelt tapes of the broadcasts on both Dallas police channels for the FBI. In fact, the FBI transcribed those tapes and belts for the Warren Commission, which published the FBI's transcripts. These tapes are and have been contended over and from the time of the HSCA investigation have been the subject of new official interest. One of the requests made of the Department by the HSCA when it ceased to exist was for further study of these tapes. The Department agreed to this. After much footdragging there evolved a scheme to frustrate FOIA. The National Academy of Sciences selected a private group that is not subject to FOIA to make this study. After more than three years and after repeated promises of a date for the appearance of that report, it was delayed until May 14. It is obvious that if the FBI had done its work at the time it investigated this terrible crime, no such questions would linger today. (The conclusion of the committee is that the police tapes hold proof of a fourth

shot and thus of a conspiracy.)

186. It is reported that one of the reasons the special panel failed to report for so long a time is that there are questions about the integrity of the copy of these Dictabelt tapes provided to it for its study. Of course, if they were altered in any way and that became public, it could be quite embarrassing for the FBI.

187. It also is reported that a technique for copying or "dubbing" much more primitive than the FBI and even private citizens of the most modest means possessed was used. Instead of direct coupling of playback and recording machines, which entails use of a readily available cable costing only a couple of dollars, the sound made in playing back was re-recorded with a microphone. This permitted extraneous sounds, even of other recordings, to be included in the dubs.

188. To minimize the possibilities of slip-ups and of disagreement with the official account of the crime, one of the members of the supposedly impartial body making the supposedly impartial study is a well-known supporter of the official explanation of the assassination. He has even misused tax money dedicated to nuclear research for publicizing his sycophantic views on this assassination. Originally it was planned for him to be the chairman but that was a bit too much for him. If his committee agreed with the analysis made by eminent scientists for the HSCA, then his own scientific reputation is seriously damaged. Disclosure of these tapes thus can lead to what can cause serious embarrassment for defendants.

189. From the immediately preceding paragraphs there is obvious motive for the FBI to claim falsely that there are no other pertinent tapes.

190. There is no possibility that the FBI does not know what happened to anything pertinent that is not now in the Dallas and New Orleans offices. As my prior, undisputed and uncontradicted affidavit attests, it makes records of all shifting of all files. A record transferred from one file to another is replaced in the original file with a slip sheet showing exactly where it was placed, with the serial number that enables instant and easy retrieval. When records move around, like from the field offices to FBIHQ and vice versa, duplicate inventories are made and preserved. Until I attested to this defendants pretended it had not happened. Now Phillips practices another misrepresentation and deception.

191. Phillips does not attest to any search for what he claims is not now in Dallas and New Orleans, a matter about which he in any event does not claim and cannot have competent personal knowledge. He cannot attest to it because it is not possible for any search not to disclose the present whereabouts of each and every pertinent record not provided and allegedly missing.

192. One of his tricks is to misrepresent what I stated. Where I stated "loaned," meaning to FBIHQ by the field offices, a common and necessary practice, Phillips misrepresents. He says what I did not say, "loaned out." (Emphasis added) With this deliberate misrepresentation he denies forcefully what I did not state, "In no instance were files loaned out by the FBI."

193. Indirectly, incompletely and for all the world as though defendants had not pretended otherwise until I brought it up recently, he does admit "other films and tapes were sent to FBIHQ during the investigation." He is careful not to state that together with the few he accounts for this accounts for all pertinent and existing films and tapes and he is also careful to avoid any mention of the pertinent and withheld still photographs, which also are "film." With regard to these films and tapes that now, admittedly, do exist and were sent to FBIHQ, defendants and Phillips have a simple solution: After four years I can now file still another lawsuit. He says of these existing field office films and tapes that "they are involved in the pending administrative appeal of plaintiff's separate request for FBIHQ material. But even if this were true, he does not state how long that appeal has been"pending," an Orwellian euphemism. Because these ignored appeals so greatly exceed the claimed backlog it is apparent that defendants intend to continue to ignore them.

194. In his tricky formulation Phillips does not claim that these are not field office records. They are and they are pertinent in this case. Moreover, he now cannot because his own appeals office decided other than he represents with regard to field office records and, quoting once again from its memo, the requests are for "records by virtue of their subjects and contents, to the extent that they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records." (Emphasis added)

195. Phillips, who has no personal knowledge, resorts to another tricky formulation in saying that the few items he lists as accounted for are "all of the

films and tapes which were in the Dallas and New Orleans files at the time those films and tapes were processed in response to plaintiff's instant FOIA request." (Emphasis added) He follows this with the previously quoted admission that "during the investigation," no time specified, "other films and tapes were sent to FBIHQ." What one would normally assume to be the time he means is until the Warren Commission report was issued and perhaps for a short time thereafter, or until about the end of 1964. However, this is a continuing FBI case and "during the investigation" includes right now, 18 years later. Phillips has nothing to say about any subsequent loans or sending of films and tapes that did not exist at the time of the original investigation. There have been many occasions on which FBIHQ had need of field office records. These include several investigations by committees of both Houses of Congress, the Rockefeller Commission, the Garrison investigation, other FOIA requests and processing, including the general disclosures of late 1977 and early 1978, and other FOIA litigation.

196. "In the Dallas and New Orleans files at the time those files were processed" for me is an artificial and meaningless distinction, as Mr. Shea states in Exhibit 2. It is improvised for harassment and withholding. It is contrary to what Mr. Shea states in Exhibit 2, that pertinence is "not determined by where and how the Bureau has filed the records."

197. If this were not true, the Act could be entirely negated by the mere shifting of records from one office to another and, in fact, there would be no purpose at all to the Act.

198. There is no end to Phillips' evasiveness. He claims that "to make a list -- as plaintiff requests -- of all films, tapes and pictures (which he refers to for the first time) which were originally in the Dallas and New Orleans files would require the Bureau to review every evidence envelope which is prepared" and then, passing over it rapidly and without any explanation, "every Bulky Exhibit Inventory sheet ..." Because he is about to tell me to do the FBI's work, he does admit what I alleged, that these "usually contain a written note as to the disposition of the item."

199. What Phillips fails to tell the Court is that the FBI is supposed to have done exactly what he now claims would be burdensome and tells me to do myself, "review every evidence envelope which is prepared." If the FBI did what it is

supposed to have done and claims to have done, then there is no excuse for its failure to locate and provide the unquestionably pertinent records it did not provide.

200. But if it failed to do this, as clearly it did and intended, its task in overcoming its own fault in the searches and processing is not nearly as great as Phillips pretends. The Bulky Exhibit Inventory sheets are not that numerous. They are readily accessible. In addition, at least in the Dallas office, a regular review is required, to the best of my recollection, every six months. It requires precisely the accounting Phillips now claims would have to be made. His own FOIA unit is well aware of this because it processed and disclosed them and the fact that it is normal and required FBI procedure to check the inventories regularly.

201. If the FBI did not consult them, it deliberately refused to do what it was directed to do, to locate and process the films and tapes for me in this case.

202. Phillips makes no mention of what I also stated, that both the field offices and FBIHQ have inventories of what the field offices loaned to FBIHQ. They identify each and every item separately.

203. Phillips pretends that his Exhibit 5, Mr. Shea's letter to me of July 6, 1979, is the last word by the appeals office on the obligation of the FBI to provide existing pertinent records. It is not, for as Mr. Shea's experience with the FBI progressed, he did learn and state other than is stated in that letter. Mr. Shea's letter makes no mention of any films or tapes and it refers to a "random" check only of what is not pertinent or comparable, the return to the owner of a broom and a coat that had no connection with the assassination. Mr. Shea also stated that "To whatever extent 'missing' items still exist elsewhere in the Kennedy files, they would have been processed in their current locations." (Emphasis added) He attributes this to "explanations" provided by the FBI. He does not state that these missing items were processed and provided. It is true that they should have been provided in 1978, when FBIHQ files were processed. But they were not. Then also the FBI did not do what it was supposed to do and it now misleads and misrepresents to avoid belated compliance. Moreover, as Phillips knows, when the FBI was finally compelled to support its allegation that the only pertinent Dallas records not provided were "previously processed" in FBIHQ records, or "would have been processed," as Mr. Shea put it, the FBI discovered that it had withheld about

3,500 pages that had not been "previously processed."

204. Later Mr. Shea was quite specific in stating (in Exhibit 2) that wherever the FBI had these pertinent records, they were to be located and processed. In addition, that is the directive to the FBI with regard to tapes and pictures of both kinds. It persists in refusing to do as directed.

205. Actually, with regard to pictures of various kinds, the FBI's record is infinitely worse than is reflected by its obdurate refusal to comply with the Act and the directives given to it.

206. In early 1978 the FBI informed me that an appointment was required before I could examine Kennedy assassination records, those Mr. Shea stated "would" have been processed for me, in its reading room. I wrote and asked the FBI to set the date for me to examine the various films. The FBI never responded. I then filed an FOIA request for all pictures pertaining to the Kennedy assassination. Again I never got even an acknowledgment from the FBI. I waited much longer than the required time and filed an appeal. That appeal has been, to use the Phillips euphemism, "pending" for going on four years. At least I presume it is pending. It also was not acknowledged.

207. Orwell would appreciate Phillips' conclusion more than I. He pretends to knowledge he does not have to state, in the face of what the case record holds and without rebutting my affidavits, that "plaintiff conclusorily insists that material is missing from the Dallas and New Orleans Office files."

208. While defendants were girding themselves for this newest assault upon the Act and reality and their newest effort to perpetuate litigation, they did send me a few photographs that were previously withheld. Only they were not photographs - they were xeroxes. As xeroxes go, they were exceptionally poor, to the point of incomprehensibility. They were to have provided photographs, not xeroxes. This repeats their earlier practice with regard to Kennedy assassination photographs. Some were not found in the files to which defendants have restricted themselves in this case. Of even intelligence-type photographs of undescribed installations, seized as part of Oswald's property, I was provided with xeroxes and only after disclosure to another and later requester.

209. This is not a run-of-the-mill FOIA case. The assassination of President Kennedy is a major turning point in history as well as a great tragedy. As the

appeals court states (in Allen v. CIA), it is of "unending public interest." In preceding paragraphs I quote some of defendants' own officials on the importance, even the uniqueness, of my requests for the records pertaining to it. In part, this unending public interest comes from widespread public dissatisfaction with the official investigations of that terrible crime. The FBI was the investigating arm of the Warren Commission. Some of that Commission's staff were Department employees. The man who ran the Commission, its general counsel, had been one of the most important officials, Solicitor General. One of his top assistants was on the payroll of the Criminal Division and was also the Commission's liaison with the Department. The FBI also provided almost all of the Commission's technical services. In an unguarded if honest moment Nicholas deB. Katzenbach, the then Deputy Attorney General, soon to become Attorney General, wrote the White House three days after the crime - when investigation was hardly begun - that

> The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial.

He said that even "Speculation about Oswald's motivation ought to be cut off," and that, even before investigation could establish fact, that "we should have some basis for rebutting thought that this was a conspiracy of the left or the right." In addition to telling the White House this, he also sent it to the FBI. I attach three different copies as Exhibit 11. One is his handwritten draft, one is the Department's file copy of the copy to the White House and one is the FBI's copy, from its main HQ assassination file. The initials on the Department's file copy are those of the Criminal Division employee sent to be one of the top staff men on the Commission and its liaison with defendants, Howard P. Willens.

210. The Deputy's memorandum, Exhibit 11, is an accurate statement of what the government did at that time of great crisis and has adopted as its policy ever since. Many citizens communicated their feelings of dissatisfaction with the investigation. Defendant fobbed them all off, responding, when there was response, with unresponsive form letters, never once giving any serious thought to popular feeling, not heeding any of the facts reported. What Hoover ordained as the solution within minutes of the crime, what the Deputy three days later stated as policy, became the substitute for the real investigation the country and the world were misled into believing would be made. While no copy of it was provided to me from

either Dallas or New Orleans records, although it belongs in both, not long after the assassination all field offices were told not to investigate the crime itself, that the crime was solved. I received that record from the FBI outside of this instant litigation.

211. Although the crime itself was never investigated, a matter I do not expect any official to boast about today, there was an extensive investigation. The more trivial and utterly irrelevant the matter investigated, the greater the length the FBI devoted to its reports. Nonetheless, the FBI also collected, sometimes when it had no other choice, a considerable amount of valuable information. Many people continue to study the crime and its investigation. Universities now teach assassination courses as government courses. What information there is that is not legitimately exempt ought to be available for independent study and for any who have any interest in this extraordinary event and its investigation.

212. Books continue to be written on this subject. It has had and in recent years continues to have considerable international TV attention. Much of this TV and other attention is factually and doctrinally incorrect. The most recent and most successful of the books (and not it alone), a long-time best-seller, charges an enormous conspiracy inside the government and extending to the President's own protectors. It attracts attention and sells based on a totally untenable theory. This and so many other incorrect and often baseless theories and "solutions" are possible only because so much information that involves no necessary or proper secrecy remains withheld. The mere act of withholding, particularly when there is no legitimate need for secrecy, spawns suspicion and merchantable conspiracy theories. Publishers and TV and radio producers and their audiences ask themselves a simple question that becomes self-answering: "If the government has nothing to hide, why does it hide so much?"

213. I have had considerable experiences before many audiences, in person, on TV and radio and through interviews in the printed press. More than 10,000 strangers who read my books have written me about them, often asking serious questions that reflect their deep concern and perplexity. While I am not now able to go around and fill speaking engagements, before my health deteriorated to this point it became clear that, because the conspiracy theorists, especially those who charge the government with conspiring against the President, were the only speakers

in real demand. There was a steadily decreasing interest in me because I not only debunked these wild theories but, when it was justified, defended the government. (Mr. Shea used to rib me by exclaiming, "Why, you are defending the FBI!") What was impossible to defend is the government's record in FOIA requests. It also was impossible to convince many in these audiences that abuse of FOIA and unjustified withholding under it does not reflect a conspiracy within the government to kill President Kennedy. Those who invest great amounts of manpower and tax money in withholding when there is no real need or justification for it and in "stopping" writers have become the real fathers of these evil and hurtful proliferated conspiracy theories.

214. Instead of making information readily available, defendants do all they can to deny information. They create false portraits of some of us who seek information and propagandize those who have to do with information requests and litigation. Lawyers and others, including FBI agents who have never met or spoken to me and who had no prior experience with my requests reveal this when they condemn and speak ill of me. It gets back to me. The Act speaks of "any person," not those who are liked by officialdom. Nor does it deny information to any who may be disliked by these officials.

215. If defendants did not have so much to hide and so ardent a desire to continue to hide all they can get away with, there would be no need to litigate to get this information disclosed and there would not be the interminable stonewalling and litigating to withhold information. If there were not this and other ulterior purposes indicated in earlier paragraphs of this affidavit, defendants would not hint, almost solicit, additional lawsuits.

216. An example of how defendants in this case use mean little tricks to add to the burdens of plaintiffs, increase the work loads of the courts and prolong litigation is the last film listed by Phillips, DL 89-43-1A81. In no case does Phillips provide information he had automatically when he had the file number, the identification of the photographer. Unless I then provide it, the Court has no way of knowing what is talked about. It is make-work for me to do the checking that is necessary only because defendants go out of their way to create the need. Defendants assert a copyright claim to withhold DL 89-43-1A81. Now with these

defendants, when they required that I litigate that question - even when, as they withheld from the courts, the copyright owner told them it was not necessary - the appeals court found for me and ruled that claim invalid in such cases as this. This is not unknown to the Civil Division and the office of the United States attorney for both were involved in that case, both forced it to the appeals court and both withheld from the district court the statement of the copyright owner that he needed no additional protection and had no real objection to their letting me have the pictures in question.

217. With regard to that particular film, 89-43-1A81, it was taken by the late Abraham Zapruder. The fair use question was litigated in New York and the then copyright owner, Time, Inc., lost to the writer. In addition, as these defendants also know very well, countless bootleg copies are readily available and they have been shown repeatedly on TV in this country, locally and coast-to-coast, and throughout the world. Yet now, even after the question has been litigated and answered definitively, and between these defendants and me, they nonetheless burden the courts entirely unnecessarily with a claim they know to be spurious.

218. It is conspicuous that the FBI has not yet complied with my earliest request, of May 23, 1966, and that it is the oldest of all FOIA cases. It has been to the Supreme Court, which led the Congress to amend the investigatory files exemption of the Act. After each of the many remands the FBI finds more records it swore did not exist and as of today, with that case again back before the appeals court, it admits that there are places where missing information can be filed that it has not searched - after more than a decade of litigation and after being told explicitly how to search by the appeals unit.

219. One of the places the FBI refuses to search is the Dallas field office. Dallas, as the "office of origin," is known to be the major file repository. In the FBI the office of origin is the case office. Dallas was so much in control that even FBIHQ sent its studies of evidence to Dallas for Dallas to prepare reports that FBIHQ then sent to the Warren Commission. New Orleans was virtually a second office of origin, particularly during the Garrison period, which began in late 1966.

220. Like all field offices, but more so in this sensitive, political case, these two field offices are the FBI's memory holes. Former employees, up to the

rank of Assistant Director, have written about how the FBI hides things in its field offices so that they will not surface in a normal search but can be retrieved when the FBI wants them.

221. In this instant cause defendants used FBIHQ as their memory hole. Not until now, after all the years of litigation, have they dropped the false pretense that records not "now," physically in those field offices do not exist. Once I let them know that I knew these records had been shifted, while they continue to make untruthful representations about them, they tell me to file still another suit if I want them, after all these years of litigation and all their promises to the Court. Now they want me to sue FBIHQ for the field office records litigated in this instant cause.

222. It cannot be denied and it is not denied that the FBI ordered that my information requests be ignored. Almost without exception, despite assurances made as high as to the Congress and the courts, they still remain ignored until I file suit. Then the courts and I are overwhelmed with falsities, misrepresentations, evasions, stonewalling, subterfuges of various kinds and what I believe crosses the line and is perjury. This is why the cases are interminable, why the courts are burdened and wearied, how plaintffs and their counsel are victimized and how they and the Act are frustrated. In my case, these defendants have the stated intention of "stopping" me and my writing. Because defendants are the prosecutor, they will not prosecute themselves.

223. There will be no end to these abuses until the courts no longer accept those that I expose throughout this case and herein.

224. When these defendants reject without any consideration of it at all an offer to compromise this case and reduce enormously the amount of time and money involved in it and instead allege that the work-reducing compromise is overly costly and then press for an entirely inadequate Vaughn justification, it is apparent that they have ulterior and improper purposes and that they act in bad faith.

225. After I had drafted this affidavit to this point, at about noon on May 7, I received from my counsel a copy of Defendants' Motion for Partial Summary Judgment and its attached Memorandum of Points and Authorities (the Memorandum), the Declaration of SA John N. Phillips signed April 29 (the Phillips declaration)

and the word-for-word repetition of it under the title "Defendants Statement of Material Facts as to Which There Is No Genuine Issue" (the Statement).

226. There is nothing else in the statement. It is this Phillips declaration with such total fidelity that it duplicates his punctuation. Even its headings are word-for-word Phillips' words. Clearly it was given to a typist to retype as the statement.

227. This memorandum, statement and declaration also are in bad faith. They state and swear to what is not true and they deceive, mislead and misreprent. They do not state or even indicate what they are required to state, that a search was made in response to my requests. Yet the only purpose they can have is to attest to a good-faith search. In fact, they prove the very opposite, that no search was made to comply with my requests. They also prove the deliberateness with which the required search was not made. They confirm the knowingness and deliberateness of the misrepresentation made of my requests in the Response.

228. Before providing the proofs of these allegations, I address two matters that pertain to withholdings and the undependability of what little action there was because the appeals office ignored most of my appeals. Contrary to the thrust of all the recent filings, which pretend that their representation of appeals action is like a court decision, neither the courts nor I am bound by them. These two matters pertain to withholdings and the totality of unsuitability of defendants' proposed Vaughn sampling.

229. There is no way any Vaughn sampling can overcome the material matters in dispute in these appeals. While most are totally ignored, some were acted on with inconsistency and in a manner calculated not to add to the great pressures under which Mr. Shea labored until he was finally eased out. There is no way any Vaughn sampling can make right out of wrong. Two of the wrongful withholdings that I appealed are the withholding of the names of the FBI agents who wrote the reports and phony "national security" claims.

230. With regard to the withholding of SA names, Director Hoover himself ordered that it not be done. They are published by the Warren Commission and they are disclosed in the copies of FBI records available at the National Archives. With regard to the records provided in this case, the decision not to withhold such names was repeated by the FBI before any of these records were processed.

231. It happens that I use the case of SA Udo H. Specht in the first part of this affidavit to show that the FBI is withholding what it had already disclosed and that it asserts a privacy claim to withhold the names of well-known agents who are in a public role. The Specht name is withheld frequently, particularly with regard to his presiding over the FBI's nonperformance of the duties assigned to it by the Attorney General in response to the request of the House of Representstives. (Specht appears to be the Dallas office's new Kennedy assassination case agent.)

232. When I appealed the withholding of the names of special agents because it is important for students to know who did what work, the appeals office upheld the FBI's withholding of SA's names, even those I informed it had been disclosed. Now Phillips discloses Specht's name. On page 8, Paragraph 18, with regard to a farce that Phillips describes as an "all references indices search," he states that it "was conducted under the direction of Special Agent Udo H. Specht." He also discloses the name of New Orleans SA Clifford Anderson and of several agents assigned to FBIHQ.

233. What actually happened with regard to the withholding of special agents' names is that about half of the Dallas records were processed without those names being withheld. Then, arbitrarily and capriciously, FBI names were withheld in all the rest of the records provided in this case. It is obvious that as a generic withholding it is not proper to withhold and also disclose the same information. But the same names are both withheld and disclosed in this single case. Moreover, while defendants assert a privacy claim to withhold the names of SAs in this case, they also, in this case and from the very same Dallas files permanently and totally eliminate any possibility of making any honest privacy claim for those names. They provided me with a roster of all the agents, including their home addresses and home telephone numbers. I attached a copy of this roster to my appeals.

234. Phillips also is assigned to my C.A. 75-1996. In it his FOIPA associates and counsel from the same Civil Division, none of whom make a fetish of consistency, practiced and sought to justify the exact referse of their present position with regard to the withholding of special agents' names. In that case, throughout the processing of all the FBIHQ King assassination records, they withheld these names, even though directed in advance not to do so by that court. Then, as

soon as the processing of these FBIHQ records was completed and before the processing of the field office records, which followed shortly thereafter, in about the summer of 1977, the withholding of these names ended. In that case, in 1980, these defendants also opted for and were granted a minuscule Vaughn sampling. In that sampling they were confronted with this inconsistency. On April 23, 1980, they attested that the FBI had abandoned the policy of withholding FBI names as soon as those FBIHQ King records were processed, or in 1977. This means that all the withholdings of FBI names in all the records processed in this instant cause were improper and in violation of attested-to FBI policy at the time of the withholdings and at the time it was supported by the appeals office. This also means that when Phillips puts on his JFK assassination hat for the Vaughn sampling, he will have to swear in direct contradiction to his associate in my other case - to which he is also assigned. In that event one of them is a perjuror. Or he will have to swear that a very common withholding, practiced throughout thousands of records, is an improper withholding and all those thousands of records require reprocessing.

235. The second matter referred to in Paragraph 228 above is the often phony "national security" claim. Phillips attests and defendants'counsel repeats word-for-word that, with regard to a withheld Dallas record, "1 'see'reference: 105-976 - the caption is classified, as well as all information in the document." As is not uncommon for swear-to-anything Phillips, this is false with regard to the caption and probably with regard to the "information in the document."

236. The FBI itself disclosed to me that for 105-976 the caption is "Funds Transmitted to Residences (sic) of Russia ." Even if the FBI had not disclosed this, for years it has been anything but secret that the FBI monitored the transfer of funds to the USSR. If that were not true, there still would remain no legitimate "national security" need to withhold the caption, which does not refer to the FBI's monitoring. Funds are transferred internationally with great frequency.

237. That the FBI monitored and disclosed the effort by Lee Harvey Oswald's late mother to send him a small sum is also publicly known, beginning with disclosure by the Warren Commission. If as I believe that is the withheld information in 105-976, then that information, contrary to Phillips' attestation, has been public for more than a decade and a half. With regard to at least the caption, this is

merely the newest of the redundant proofs that Phillips will swear to anything and does, regardless of fact and truth.

238. The Memorandum is largely a rehash of this newest Phillips declaration. It is based on nothing else. That declaration, as I show below, is falsely sworn, misleading and deceptive. It fails to state what it is supposed to state, that a good-faith search was made. Supposedly it addresses "the issue of the adequacy of the search," as its opening sentence states, but it does not even claim to the making of a good-faith search. Instead, because it must recount some kind of history, in its "Statement of the Case" it proves that no search was made and from the very outset none was intended.

239. It states that when the Dallas office received my request, it did not make any search at all but instead, "forwarded plaintiff's request to FBIHQ since many of the documents involved had been previously processed pursuant to a separate FOIA request by plaintiff."

240. The statement that so many of the pertinent records not provided in this case "had been previously processed pursuant to a separate FOIA request" by me is a deliberate untruth. It is made in bad faith in order to perpetrate the fraud already outlined, that those records need not be included in the proposed Vaughn sampling because the withholdings in them can be justified under that alleged separate request. Phillips swears to this untruth as part of a scheme to attain an improper objective.

241. The actuality is that the FBI selected some of its JFK assassination records for general release. This was not in response to any FOIA request for them. It was a rear-guard action intended to frustrate JFK assassination FOIA requests. The FBI decided to release parts of some FBIHQ main files, as I state in the earlier part of this affidavit. The Memorandum represents that all of these main files were disclosed. More than 15,000 pages of them were withheld in the general releases, which were made in two parts, in December 1977 and January 1978.

242. The request I made was for a set of the already processed records. The request and the appeal were ignored, so I filed suit. The hearing in that case was just before the second part of these records was scheduled to be released. By then the records, which were not responsive to any request by me, already had been

processed and duplicated in a number of complete sets. That court ordered one of those sets of existing copies be provided to me forthwith, and it was.

243. When defendants did not appeal the decision, there ceased to be any case in which any of this might be litigated. I certainly cannot claim noncompliance because I did receive, pursuant to the Order of the court, exactly what I asked for, the records that had already been processed for release.

244. As I have already informed the Court, this deliberate deception and misrepresentation, this deliberate and knowing untruth, is designed to deceive the Court into believing that I have another request under which there can be a separate Vaughn indexing of the many withholdings in the nonidentical copies that are not provided in this instant cause. There is no such possibility, not for me and from what defendants have attested to in another case (Blakey v. Department of Justice), not for any one else.

245. Phillips attests to his knowledge and his FOIA expertise. Yet in this case and with regard to this particular untruth, I have already corrected defendants. Their persistance in this canard, which is contrived for the entirely improper purpose specified earlier and above, is therefore knowing and deliberate. In particular it is knowing and deliberate for Phillips, who swears to this untruth in his Paragraph 6. It begins, "Because many of the Dallas documents had been previously processed pursuant to a separate FOIA request by plaintiff for FBIHQ records on the JFK assassination ..." (Emphasis added)

246. The admission that no search was made when my request was received, sworn to by Phillips at this same point, is repeated in the second paragraph of the Memorandum. Phillips attests, following what is quoted in the preceding paragraph, with nothing omitted, "plaintiff's request was forwarded to FBIHQ. Upon review of this latest request by plaintiff, Special Agent Thomas H. Bresson, then Assistant Chief of the FOIPA Branch, determined that four 'main' files in the Dallas Field Office were responsive to plaintiff's FOIA request." This is followed, in this Phillips declaration and in the Memorandum, by the listing of those four Dallas files: 89-43, the so-called assassination file; 100-10461, the Oswald file; 44-1639, "Jack Ruby, Lee Harvey Oswald-Victim;" and 62-3588, which is wrongly described by Phillips. The title is 'President's Commission on the Assassination of President Kennedy." Phillips' description, which coincides with what is required to hide what is not provided, is, "This file consists of material concerning the Warren Commission and the report it issued." In fact, the file was not opened until the end of the

Commission's life. It thus does not hold records pertaining to the Commission's life. activity and representatives. This is significant information, especially because of the FBI's resentment over the Commission's creation. Actually, this file pertains to the Commission's report. No field office file has been provided that coincides with FBIHQ file 62-109090, which is titled liaison with the Warren Commission. The Phillips misrepresentation hides the fact that, contrary to his representation, no file duplicating the FBIHQ Commission liaison file is provided from either field office. No search for any such file is attested to.

247. The forthrightness of Phillips' admission that no search was made in the field office at all, that instead my request was referred to FBIHQ and there, instead of ordering a search, SA Bresson decided to avoid any search and to restrict compliance to these four main files, does not reflect a high opinion of the intelligence of this Court and its staff. It is an admission that no search was ever made, yet it is in the pleadings that are supposed to attest to a good-faith search made with due diligence. Without this the Court may not award defendants partial summary judgment on search.

248. What SA Bresson really "determined" is to further what amounts to a conspiracy to withhold information, not only from me but from the Congress. As of the time of these requests, the HSCA had been created and was seeking access to the FBI records. In both the JFK and King assassination FBIHQ records I found copies of FBI internal records reflecting the fact that the FBI planned to restrict the records it would show to the HSCA to these "main" files.

249. In order to pull that off while simultaneously creating the impression of full and unstinted cooperation, FBIHQ teletyped all 59 field offices requesting what appears to be complete inventories of all pertinent files. In fact, the teletyped directive, as is not uncommon in political cases in which the FBI has much to hide, carefully limited what the field offices would report. The New Orleans copies remain withheld in this instant cause and from the FBIHQ records I received. However, as happens infrequently, by the accident of correct filing they were not withheld from the Dallas records provided in this case.

250. At FBIHQ and in all field offices, the FBIHQ directive and the field office responses should be in the "main" assassination file. The FBIHQ "main" assassination file does not hold the directive and the responses of the 59 field

offices and the New Orleans "main" assassination file does not hold the directive it received and its response. Without doubt, FBIHQ and New Orleans have copies, but they are filed elsewhere, even though the subject is the assassination investigation. But as Mr. Shea stated (in Exhibit 2), the pertinence of a record is not determined by where or how the FBI has it filed but by its content.

251. This is not unique. It is true also of the FBIHQ directive and the field office responses in the King assassination case. In that case an FBIHQ clerk slipped up and filed one of the 59 responses in the FBIHQ King assassination "main" file. The other 58 responses remained withheld. When I gave a copy of this one response, Chicago's, to the FBI's FOIPA supervisor and asked for the inventories provided by the other 58 field offices, he merely lied and said there were no others, that the Chicago inventory was a one-shot and that no other field office had provided any such inventory. Years later, after persistent misrepresentations by defendants and not a few bald untruths, the Court ordered their production of those inventories. Those records hold what is embarrassing to these defendants. These inventories reflect the incredible magnitude of the FBI's attempt to ruin Dr. Martin Luther King, Jr. The field office inventories, once again carefully limited by FBIHQ to a few of the "main" files, run to 400 pages. Those records also reflect how FBIHQ can and does limit the responses of its field offices. That is exactly what happened in this case, how FBIHQ, instead of ordering a real Dallas search, limited response to these four "main" files.

252. In the King case the Washington Field Office, which is in the politically sensitive capital, was impelled to protect itself if what it did not list in its inventory was ever exposed, as it would have been if the Congressional investigators had been really diligent. In Exhibit 12, the Washington response to FBIHQ of December 11, 1975, it repeats the language of the directive and responds "only" to the "main files" of that office. In covering itself for the future, Washington refers to the FBIHQ directive as "circumscribing" its "survey." "In view of the above circumscribed delineations of the survey" are its words. It then makes a record of the pertinent records which "were not located in this main file general indices search." What was known to exist in the Washington field office records was not "located," even though it had been reported in the press: "Likewise no Elsur (electronic surveillance) material was located in this general indices main

file search, however, this would not preclude such material being located in a subsequent general and special indices search for reference."

253. This states pretty bluntly how the FBI phonies search. It also reflects how the FBI deliberately refuses to do what it is directed to do while pretending otherwise to this Court. Phillips and the Memorandum refer only to "indices searches." To the FBI this means its general indices only. Published accounts of the General Accounting Office investigation of FBI filing reflects the fact that only about a fourth of FBI records are covered in its general indices. In this case, the Washington field office referred to how it would find what it knew it had and did not include in its "circumscribed" response and to its "special indices," in the plural.

254. Specifically, under the misleading heading of "searches undertaken ... as a result of the aministrative appeal," using identical language with regard to both field offices, Phillips attests to no more than the "indices searches." However the Court and others may take this and however counsel may seek to make it mean more than it does, it means no more than that the general indices only were consulted, with built-in results and built-in frustration of the appeals office's directive and of compliance in this instant cause. (See this Phillips declaration, pp.8 and 11)

255. Dallas also had reason to want to protect itself when it knew that a new Congressional investigation was in the works and it, as the Office of Origin, was the major file repository. It did limit itself to what it was told to limit itself by FBIHQ and identified only what FBIHQ listed, its "main" files comparable to the four to which FBIHQ had already decided to limit itself - the identical ones to which Bresson decided to limit this instant cause. But there was a chance that Dallas would get in trouble if it did no more because of what could be picked up from other records and what the committee might learn by other means.

256. The Dallas response is attached as Exhibit 13. There is a typographical error in the date. It is January 1977, approximately the sixth. The FBIHQ teletyped directive (Exhibit 14), also from the same Dallas "main" assassination file, is unclear in the copy provided to me. It instructs Dallas to "include," meaning limit to, the five identified main files. It adds one, what the FBI originally withheld from me in this instant cause, the Dallas Marina Oswald file.

257. Apropos of the Phillips suggestion that some records were destroyed, this FBI directive, Exhibit 14, states that in its November 24, 1976, teletype "you were reminded of the fact that records possessing evidentiary, intelligence or historical value such as the Kennedy and King assassination investigations are excluded from our destruction of files and records program and should not be destroyed." (Emphasis added) Bearing on the dependability of defendants' attestations, notwithstanding this reference to standing regulations that prohibit the destruction of such records in both cases, the FBI and the Department have claimed records I sought were destroyed, records, it just happens, that can be embarrassing to both the Department and the FBI.

258. If there had been any destructions, despite the prohibition of it, this directive also orders that any such destructions be listed. No destruction is mentioned in the Dallas responses.

259. The order to limit the inventory to the listed main files is specific in its last paragraph: "You are, therefore, instructed to reply by teletype, setting forth your inventory regarding the above listed John F. Kennedy assassination files."

260. In Exhibit 13 Dallas dutifully lists its itemized ?main? files, giving the linear dimensions of each. With special regard to Phillips' arrogant suggestion that I do the FBI's work for it and his false representation that considerable effort is required to locate the many photographs I stated do exist and can be located with ease; and with particular reference to his false claim that they are not readily identified, the Dallas inventory provided this specific information. On the second page, for example, under 2., it states that in this file there is a separate listing for its "three volumes of inventory worksheets." This is precisely what I stated the FBI has for ready access. It states that "this file also contains 498 exhibits, many individual exhibits containing numerous photographs ..." (Emphasis added) It separates these from other photographs by saying that it has these "as well as copies of Warren Commission exhibits," which were photographed and sent to Dallas by FBIHQ. It then states that these are filed separately, "located in a secure metal cabinet." With regard to its assassination file and to its Ruby file, Dallas also states that they include "numerous photographs."

261. In light of this specific language of this inventory, which was disclosed to me in this case, it is impossible to regard Phillips' flagrant false

swearing as other than deliberate.

262. Moreover, this record was gone over with care, enough care to make three different inappropriate claims to exemption for nonexempt information, as I show beginning two paragraphs below. The FBI FOIPA unit that examined it with this much care should have spotted the existence of "numerous" pictures pertinent to this request and not provided by it.

263. FBIHQ is well aware of the existence of a large number of photographs in the Dallas office because FBIHQ sent them to Dallas to be kept there. Together with the information I present in the immediately foregoing paragraphs, an FBIHQ record reflecting the large number of photographs in the Dallas files (Exhibit 15) also reflects how the FBI files, what Mr. Shea had in mind in stating that it is not how or where the FBI has a record filed that determines pertinence.

264. This internal FBIHQ record, from its "main" assassination file, is captioned for filing in that assassination file. However, the record copy is in another file. It thus will not show in an indices search of the assassination file. This record (Exhibit 15) states that "We have worked out a new procedure to insure the President's Commission has been furnished photographs of every piece of physical evidence received in any of the three captioned cases and/or to furnish photographs of new evidence we receive. ... Four 8 x 10 photographs will be furnished to Dallas. ... The fourth photograph furnished to Dallas will serve as Dallas' file copy." It therefore is clear that Dallas has a "file copy" of a photograph of each and every piece of evidence in the entire investigation and that this is well known to FBIHQ and to its Dallas office. If the FBI cannot find these "numerous" photographs in the Dallas office, then it could not find hair in a barbershop. (The JFK assassination is a current, ongoing case.)

265. With regard to defendants' proposal for a Vaughn sampling of a minuscule fraction of the pertinent records, I note the false claims to exemption made by defendants in withholding 14 entire lines under claims to exemptions (b)(2), (7)(D) and (7)(C). Even if these unjustified claims were justified, as they are not, there remains reasonably segregable information in these lines that are withheld in their entirety. In neither case, whether justified or unjustified, can the total withholding be justified or can their unjustified character be wiped out by the proposed sampling. Based on my knowledge of this matter, I state that what

the FBI withholds here is intended to hide the gross impropriety of what it did to the young widow, Marina Oswald. It intruded into her personal life by both bugging her home and tapping her phone. At the very least, the fact that what is withheld relates to her is not properly justified and is reasonably segregable, as are the file numbers. In fact, all of what is withheld was disclosed by the FBI before this record was processed for me in this instant cause, with the possible exception of some of the file numbers that may not have been disclosed by that time. But all of what is withheld was disclosed by the FBI and that means before it fabricates its Vaughn figleaf.

266. All three claims to exemption are phony. The information is not (b)(2) because it is not "related solely to the internal personnel rules and practices of" the FBI. (Emphasis added) It ought shame even Phillips to pretend that bugging and wiretapping of this young widow had anything at all to do with the FBI's "personnel rules and practics." That is, if anything can shame Phillips.

267. The (7)(D) claim, as I state above and have stated in other cases without even pro forma denial, is the phony cover within the FBI's files so that the identical phoniness can be faithfully duplicated in disseminated records. It is the false pretense that its bugs and microphones are live, human informants whose identities must be protected. The Privacy claim is more than merely phony. It is indecent because of the intensely personal details of the widow's personal life and personal and most intimate thoughts that the FBI picked up electronically and disclosed voluntarily prior to the processing of Exhibit 13.

268. The penultimate paragraph of this exhibit gives the lie to another gross and deliberate misrepresentation sworn to by Phillips and included in the Memorandum. Dallas covered itself by including this, saying it was "for the additional information of the Bureau." This refers to its separate special index of parts of its main assassination files and to its separate index of some of the communications pertaining to the assassination. These were not provided to me as a result of either of Phillips' two representations of how it was.

269. Pertaining to each of these indices the Memorandum, based on Paragraph 5 of the Phillips declaration, states with the deliberate intent of deceiving and misleading the Court that I received them out of the overflowing goodness of the collective FBI heart, "as a result of an onsite review of Dallas records by

Special Agents Horace P. Beckwith and John H. Hawks of the FOIPA Branch." As a result of this alleged review, he says, those two indices "were determined to fall within the scope of plaintiff's FOIA request.: This is false in all particulars save that eventually I did receive copies. It was not because of these two agents, one of whom had been banished from another court in another of my cases, as stated above. The Memorandum, based on Phillips, attributes my index appeals to my counsel alone, and that also is false.

270. My counsel may have repeated my earlier appeals or he may have rephrased them or he may have written a letter by request, but it is I who first made the appeals, beginning as soon as I spotted this record which disclosed their existence for the first time. I sent Mr. Shea a copy of the Dallas records referring to them with my appeals and I kept pushing him to act because of the great value of these indices, particularly in the processing of records in this and other cases. They are, of course, of the greatest value and the name index may be the most important single record in the entire investigation. Their importance to scholars cannot be overestimated. The truth is quite the opposite of these representations about their being made available to me voluntarily and because of the abounding good will of the FBI. The FBI resisted their disclosure and resisted it vigorously and for a long period of time. It is significant that while with regard to the belated disclosure of other Dallas records Phillips provides a date, here he does not. The date alone would reflect the bitter resistance of the FBI to disclosing these indices. In the end Mr. Shea prevailed and the FBI, rather than providing them voluntarily, was compelled to. I have knowledge of this because Mr. Shea stayed in touch with me as the resistance of the FBI compelled him to make compromises, which I accepted once he described them to me.

271. It is worse than ridiculous to state the untruth, that these two SAs "determined" that the indices are within my requests. They are parts of the "main" files the FBI decided to provide as its substitute for a search. Even if they were not, they still are within the request which includes all records pertaining to the assassination and its investigation. In addition, it is Mr. Shea who ruled on their pertinence.

272. It is likewise worse than ridiculous to state, as Phillips attests and the Memorandum uncritically parrots, both in the sentences pertaining to these

indices, that as a result of the beneficence of these two SAs, I was provided with a copy of the Dallas 105-1435 file. Those agents were not required to determine its pertinence. It is the Dallas "main" Marine Oswald file. In fact, it is listed by the Dallas office in its inventory, Exhibit 13, in response to the specific inclusion of it by FBIHQ in its directive, Exhibit 14.

273. These compulsive false pretenses also are necessary to the FBI's effort at face saving, to its present false pretense of complete compliance, and as part of its ongoing vendetta and desire to "stop" me by the creation of a false record it can misuse in an effort to deny me counsel fees.

274. At this point the Memorandum goes into its representations pertaining to the alleged New Orleans search, the same dream world skit that omits the initial FBIHQ limitation instead of search. Magically, New Orleans managed to "find" as a result of its "search" only those very files to which Bresson decided to restrict the request and any compliance. Later a few other records also were provided.

275. There never was a real search in New Orleans, although it did check a few of the many pertinent "see" references. Aside from these, New Orleans limited itself to the same "main" files. Contrary to the present spurious claim to mask the deliberate refusal to make even a belated good-faith search, that the FBI cannot disclose that it has files on people, New Orleans did, as Phillips states, check the "Sam Collier" file. This was perfectly safe in other respects because it means nothing. They selected an irrelevancy in an attempt to make it appear that an effort was made to search "see" references.

276. I have previous experiences with such searches, including in New Orleans and there by the same SA Clifford H. Anderson. To him, the Memorandum, based on this Phillips declaration (Paragraphs 12 and 13) attributes supervision rather than performance of the so-called search. In practice FBIHQ directs what the search will be limited to and what it will locate as pertinent. In C.A. 75-1996 the directive was from the Legal Counsel Division representative assigned to that FOIA litigation. In that case FBIHQ told New Orleans exactly what it would limit itself to and it even went further: it told Anderson that the affidavit to be provided, drafted in advance at FBIHQ, need not be sworn to by one with first-person knowledge.

277. In neither Dallas nor New Orleans is this charade, sworn to by Phillips and uncritically repeated in the Memorandum, anything that reasonable people could consider a search. If those offices had not been directed not to make searches, their initial responses would have included all the pertinent main files and all the many pertinent "see" references. The latter is required by the Items of those requests which ask, specifically, for all records, not only those in the assassination files, on or pertaining to persons and organizations that figure in the FBI's and Garrison's investigations. This was not done and, in fact, as of now and despite the directive from the appeals office, still remains undone.

278. With regard to what is next in the Memorandum, repeating Phillips' Paragraphs 10 and 15, the "lead cards" now claimed to have been destroyed although the investigation is ongoing, that is not what they here represent, a new request, and it was in the form of my appeal to Mr. Shea, once I could (and did) provide him with proof that lead cards were made.

279. When I could provide Mr. Shea with proof of the existence of ticklers, I appealed the withholding of the field office ticklers. Phillips makes no reference to this so the Memorandum does not either and the ticklers remain withheld. The FBI manages not to find its ticklers because they are usually handled by the case agents and are not included in the indices. However, if the FBI ever wants to find these ticklers, it may well take less time than having a clerk make an indices search. Destruction of the ticklers in an ongoing case with so many records is the most inefficient thing the field offices could do. In Dallas, right now, Specht would know where they are because from time to time he needs them.

280. Next the memorandum, based on Phillips' Paragraph 17, would have the Court believe that I did not file the two file drawers of detailed and documented appeals that I did file, and that there was a single appeal, my counsel's later letter. In the Phillips/Memorandum account and with a case in court it then required a year and a half before my counsel received a reply, hardly compliance with the Act.

281. At this point there is further reference to the so-called "methodology to be used in processing the appeals." However one views the invitation for me to participate in evolving a methodology - it could be either a courtesy or an

imposition - the fact that is never addressed by defendants, who simply cannot deny it, is that most of my appeals remain entirely ignored. Processing these appeals is one thing; how they were processed is another. Need of a "methodology" does not and cannot explain away defendants' failure to respond to those appeals. Because of my subject-matter knowledge and because at my own expense I provided quite extensive factual detail and documentation, the mere act of processing those appeals could be of great value to the government, particularly because, as the appeals court, defendants and subject experts agree, public interest in this assassination and its investigation is not going to end in the foreseeable future.

282. The Shea letter was not written until a year after my counsel's and much longer after I began filing these appeals. Because defendants also misrepresented that and because I have been made to appear uncooperative when in fact I was quite cooperative, I state what did happen.

283. Mr. Shea invited me to meet in his office with him, his assigned staff, the assigned FBI personnel and Department counsel. I did not refuse, even though I stated I could not be expected to do their work. Based on prior experience with the FBI in such conferences, I wanted protection against later untrue claims, some pretty ridiculous, that the FBI had made in the past.

284. In C.A. 75-226, the previously referred to oldest of all FOIA cases, the same SA Bresson who rewrote my requests litigated in this instant cause to eliminate all that I requested other than whatever the FBI had filed in the four "main" files, previously identified, invited my counsel and me to a conference. I asked my counsel to request that the FBI make and preserve a tape recording of what was discussed and agreed to. It refused. I would not have attended any conference of which the FBI refused to make and preserve an accurate record, but my counsel urged me to do so and I did. C.A. 70-2301 was limited to records pertaining to the FBI's spectrographic examinations of JFK assassination evidence. In 1975 I amended that request to include records pertaining to neutron activation analyses (NAA). After that conference the FBI provided a few of its many pertinent records but it restricted this limited compliance to the spectrographic examinations. Then defendants produced a Bresson affidavit in which he swore - falsely - that I had declined all NAA records. He claimed that at this "conference" I had stated that I did not want NAA information. It is ridiculous for the FBI to

swear that I amended a request only to include what I did not want, but FBI false swearing is not only commonplace in my extensive experience, it also is utterly shameless. There is nothing too demeaning for some SA not to be willing to swear to it.

285. The only purpose of the Bresson conference was to create a situation in which he could pretend falsely to that Court that I had waived any and all interest in NAA information. What he did is both unreasonable and untrue, but he did do it.

286. Based on this costly experience in C.A. 75-226, I told Mr. Shea that I would attend if a record were made of what was discussed and agreed to. I told him I preferred a tape recording that defendants would make and keep, but from prior experience I did not believe the FBI would agree. I told him that if it would not, I would accept a written summary to be prepared by him or someone he designated. But the FBI would not agree to the making of any kind of record. I believe the Civil Division also refused, but my recollection of this is not absolutely certain. I had and have no reason to believe that honest people intending discussion aimed at reaching an agreement can have an honest reason for refusing to make and keep a record of what was agreed to. The only apparent purpose of not having a record is to be able to lie. I therefore declined to participate in a meeting of which no record was made. Based on what has happened since then, I have no basis for any other belief. However, this does not reflect uncooperativeness on my part. I helped Mr. Shea in this and in other cases to the best of my ability, a matter to which, as defendants' witness, he testified voluntarily and unstintingly in C.A. 75-1996. I also went to considerable trouble and cost to provide him with xeroxes of FBI records to illustrate the appeals because he is not a subject expert.

287. There is duplication of the Response here and elsewhere in the Memorandum. Except where there is special purpose in referring to it, having denied, refuted and disproved its allegations before, particularly in the first part of this affidavit, I do not now address those duplications. However, there is a purpose in not passing entirely over the repeated misrepresentation of the FBI's refusal to search for records on or about those called "critics," which could not be done except by name. I stated earlier that I had provided the appeals

office with the file numbers of such records when I observed them in records from which the FBI did not withhold them on spurious (b)(2) and (7)(C) claims. In the course of looking for the allegedly "national security" caption of the 105-976 file, which I was certain had been disclosed, I came across the identifications of two Dallas files on two "critics." One is Penn Jones, who lives near Dallas. I provided Mr. Shea with his name and this number, 100-9057. Mark Lane, perhaps the best-known "critic," is in Dallas 100-10970. From another note for another purpose, I believe that such a file in New Orleans may be 100-17809. Contrary to defendants' fabrications, it is no big deal to identify all the pertinent Dallas and New Orleans records. Records pertaining to "critics" are indexed and the cards are arranged alphabetically and are readily available to defendants.

288. To this point the Memorandum has completed what it styles its "Statement of the Case" - without quoting my requests. Instead, knowing full well what the requests really seek, it restricts itself to its misrepresentation of them in the Response, addressed in the first part of this affidavit. In a footnote the Statement refers to Phillips Paragraphs 5 and 11. In Paragraph 5 Phillips does admit, by quotation of it, that the Dallas request includes "all records on or pertaining to persons or organizations who figured in the investigation into President Kennedy's murder that are not contained in the file(s) on that assassination as well as those that are." (Emphasis added) In his Paragraph 11, which relates to my New Orleans request, Phillips includes this language plus my additional New Orleans request: "Also requested were 'all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination' as well as 'all records on or pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation ...'" Having correctly quoted the requests, Phillips says nothing further about these Items because of the FBI's initial refusal to search in response to these Items and its persistence in this refusal even after it was directed to make such searches by the Department. However, Phillips' quotation of these Items eliminates any possibility that defendants are not aware of them or do not understand them. With Shaw and Ferrie both dead, as are many others, no privacy claim can be asserted for them. I refer to Phillips' quotation of those Items at this point because the

"critics" are also included in both investigations, as defendants know.

289. Phillips' offense is even greater because his accurate quotation of the requests is under a heading designed to mislead and deceive the Court into believing that there was a search in response to them when there was no such search. With regard to both offices, Phillips has them under the headings, "Initial search." Because there was no such search - and he attests to none - these deceptions and misrepresentations are deliberate.

290. The Alice in Wonderland device of the Memorandum is Phillips' looking glass. When he says that "no additional main files or 'see' references had been located on the subjects," he does not mean the normal FBI usage of the word. What he means is that the search was limited to files known not to exist, files titled "critics." There was no search in the only manner it can be made, by the names of the "critics." These defendants have also rewritten biblical wisdom into "seek not and ye will not find."

291. Based on Phillips' Paragraphs 20 and 24, the Memorandum states that, pursuant to the Associate Attorney General's determination, there was "a search" for films and tapes and six films and eight tapes were located. What was searched to "locate" any films and tapes is not indicated. It is clear that whatever there was that is now referred to as a search was anything but a search, as the opening paragraphs of the second part of this affidavit and Exhibits 13-15 establish.

292. "Located" is a less than forthright choice of words. Other films are known to exist and their present whereabouts, in FBI practice, is always indicated at the point where they belong. Where they are now is always stated in the FBI's files at the place where they were. Some, without any question, are at FBIHQ. They were not provided by FBIHQ. Third-hand affiant Phillips does not state how many were identified. He does not dare because that would disclose his dishonest intentions, his deliberate deceitfulness. Moreover, if he identified them, then the FBI would have to process them, which is what it is determined not to do. Any honest search is certain to "locate" much more than has been provided because it would "locate" all those still withheld. Any honest search for these materials would have told the searcher exactly what materials exist and where those not in their normal locations are. It is deliberate bad faith to use this tricky formulation, "located," to report the results of a legitimate search. While in

1967 I did not have access to any FBI records other than those of the Warren Commission that by then had been disclosed, in that year I published a book in which I identified more Dallas films than Phillips says were "located," and at about that time, from one outside source alone, Richard Sprague, FBIHQ learned of many more.

293. Clearly, the existing bound inventories were not consulted or, if they were, a faithful account of what was "located" is not provided. Those "numerous photographs" remain withheld. In Dallas, at least, some photographs were known not to be in the regular filing cabinets and were known to be in that "secure metal cabinet." (Exhibit 13) This would not have been avoided in a good-faith search, made with due diligence. It also is why Swear-to-Anything Phillips provides the attestation to a "search" instead of the searcher, who would be a perjurer in swearing as Phillips swears.

294. The Memorandum, based on Phillips' Paragraphs 21 and 25, lectures me in a footnote, telling me that I can do defendants' work and consult records with which I have been provided. Their purpose, noncompliance, requires them to turn everything around. This is why I use the "Alice in Wonderland" figure above. They tell me that I can determine for myself what files were checked. I do not have to consult records to be aware of the file numbers. In this they also beg the question with regard to files. The question is not which "files" were checked or processed but which records were and remain ignored. With regard to the files that were processed, the lecture is much more inappropriate than such pontification ordinarily is because, from Exhibit 13 alone, it is clear beyond and question that even the photographs that are identified and "located" in the files supposedly processed still remain withheld and were never processed in this case.

295. I reiterate, the inventories are all collected at one point in the Dallas files, bound in three volumes, and consulting them to identify and locate all the withheld material is simple, easy and not time consuming. It is not possible that the FBI does not know this. I reiterate also that Dallas is required to check its JFK assassination case inventories every six months.

296. Supported only by the same broken reed, Phillips, this footnote then claims that I "was furnished with all the indices search slips." The footnote does not say what was searched for. It does not claim that I was provided with any

search slips seeking motion and still pictures or tapes, or organizations and persons who figured in the FBI's and Garrison's investigations. No search was made for records on any "critic," and above I provide Dallas citations on two of the better-known critics, Mark Lane and Penn Jones. With regard to Jim Garrison, Clay Shaw and David Ferrie (two dead and the third indubitably a public personality), having disclosed that the FBI has records pertaining to them, the fiction employed to withhold being that this "disclosure" violates privacy, the FBI cannot now claim this fiction to withhold those records. It is, even in terms of its own fiction, required to process those records and provide all not within an exemption. Obviously, the few slips provided do not represent anything that can be called a search and, as stated above, these few are not original search slips in any event.

297. The few slips provided do not represent a good-faith search even in terms of defendants' revision of my requests to limit them to what the FBI regards as "related to the JFK assassination." (Phillips Paragraph 13)

298. Without any question, those who testified are "related to the assassination." (Here I note that the request includes the investigations of the assassination which is not the same as the assassination.) Without any question the Warren Commission published about 10,000,000 words of evidence, mostly FBI reports printed in facsimile. An estimated 300 cubic feet of Commission records, largely FBI records, are publicly available at the National Archives, in all cases with the assent of the FBI. In addition, many, many thousands of pages have been disclosed more recently by the FBI itself. I have read them. They name and by other means identify a very large number of people as being included in FBI files. Phillips not only does not attest to any search for records pertaining to persons "related to the assassination," what he refers to as all the "search slips" proves that no such searches were ever made. Without any question there is not and there cannot be any privacy question about the FBI having records pertaining to all these perons disclosed by the FBI as included in its files.

299. While my interest is much narrower than this and focuses on the more significant persons, those Mr. Shea referred to as "players," the FBI never asked me for any interpretation of the requests or to limit them. If they did not fully understand the requests, they are required by their own regulations to seek

clarification, and that also they never did.

300. Now that both Phillips and the Memorandum correctly quote my actual requests, defendants understand very well that they include "all records on or pertaining to persons or organizations who figured in the investigation ... that are not contained within the file(s) on that assassination ..." (Emphasis added) The spurious claim that the FBI cannot disclose whether it has records is ridiculous because it has disclosed that it does have records pertaining to those described above. Were this not true, the fact is already disclosed, so there is, in this regard, no privacy to protect. As defendants own expert, Mr. Shea, testified in C.A. 75-1996, for the privacy claim to be asserted there must be privacy to protect. Then, of course, a number of the persons within the request, such as Ferrie and Shaw, are dead, so again they have no privacy to protect. And even if none of this were true, the FBI itself, by Phillips now and incredibly extensively in the past, has disclosed exactly what it now claims it is required to withhold.

301. Defendants' real purpose of all these contrivances is to hide what can be embarrassing to defendants, ranging from their dirty tricks on the "critics" to their misrepresentations of evidence, as with the Bronson film as described in an earlier affidavit.

302. Throughout there is the dishonest pretense of voluntarily making good-faith searches when, in fact, nothing that can be called a search was ever made and, when the FBI was directed to make certain searches and agreed to do so, even then it engaged in a farce. Consistent with this false pretense, the Memorandum (at the top of page 6) refers to the "result of the above detailed searches." I was provided with the listed files. The truth about them cannot be emphasized too often in the face of this constantly repeated false pretense: the FBI originally limited what it provided to the four main files already disclosed at FBIHQ, claimed complete compliance, and only then, while it kicked and screamed in fierce resistance that has not ended, did it process any additional records as the result of appeals. In his Paragraph 25 Phillips lists 25 files from which records were provided. The actuality is that the FBI originally provided eight of these. The others were provided after appeal.

303. At no point is there any attestation that there are no other pertinent

records that cannot be located after reasonable effort. Unless this is attested to, there is no attestation to a good-faith search made with due diligence. There is no such attestation only because it is known that there are pertinent records that remain withheld, that have never even been looked for but are known to exist. No amount of distortion, misrepresentation, exaggeration, evasion, rhetoric or false pretenses can overcome this basic truth - the initial searches required to comply with my requests have not yet been made.

304. The Argument, pretending that defendants have not tacitly admitted knowing they never made the searches required by the requests, quotes decisions which mean that defendants have not yet done what they are required to do. Their practice of Orwell is uninhibited. They quote the Scientology decision to mean that they have already made "reasonable efforts" to satisfy my requests when they have not and know they have not. They quote the appeals court's decision in one of my cases against them, No. 78-1107, again for all the world as though they have met those standards when they have not and know they have not. They are required to "reflect a systematic approach to document location," and they have not. They have not even consulted their transfer records and their disclosed inventories but demand that I do this. They also have not done what they pretend they have done pertaining to the alleged searches, "provide information specific enough to enable the requester to challenge the procedures utilized." They can provide the instructions from FBIHQ to the field offices, but they will not dare because from their prior practice, detailed above, their instructions detail how to pretend to make a search without making it and instruct the field offices how to limit what they look for. Their instructions tell the field offices, directly or indirectly, to ignore the request itself and not to search for persons and organizations that are within the request. This is, as stated above, my prior experience with them and what is reflected in records that were withheld from me in litigation but were provided by other FOIPA personnel who were not aware of the wraps the field offices were placed under by FBIHQ.

305. The actualities of my suit against them, from which they quote in the pretense of having done as required by that decision when they know very well they have not, reflect their consistent practice in all of my cases against them. That suit, originally filed in 1970, also was the first under the amended Act. As

refiled it was, as the appeals court noted, before them for the third time. Yet each of those times defendants claimed to have made and demonstrated the required searches. The decision (attached as Exhibit 16) states the contrary at the outset: "The present appeal is from a summary judgment in the District Court holding that the Department of Justice has disclosed all available material within the scope of Weisberg's quest. Our review of the record constrains us to conclude that the Department's deminstration on that score was inadequate for purposes of summary judgment." (Quotation marked on the exhibit for the convenience of the Court.)

306. The information requested pertains to spectrographic and neutron activation (NAA) analyses performed on JFK assassination evidence. As the decision notes, John W. Kilty, the FBI agent who made the alleged searches, twice swore that I had been provided with all pertinent information. Defendants sought to prevent my deposing him, and the District Court did prevent it.

307. The appeals court decided that, contrary to defendants' claim, "there remains a genuine issue of material fact as to whether all extant documents encompassed by Weisberg's request have been located." Both of these quotations exactly duplicate the situation in the present cause.

308. The decision next reviews the general principles governing the granting of summary judgment and states that it can be granted only if the moving party proves that no substantial or material facts are in dispute. This the Phillips declaration does not and cannot do. Moreover, "the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion." And for defendants to prevail, they "must prove that each document that falls within the class requested either has been produced, is unidentifiable or is wholly exempt from the Act's inspection requirements." This also defendants have not done, although they are aware of the requirement that they do so.

310. Defendants claimed complete disclosure, based on Kilty's affidavits: "that the search was thorough enough to uncover any data meeting Weisberg's file specifications;" and that I "failed to rebut this preliminary showing;" but when "the evidence is viewed in the light most favorable to Weisberg - as indubitably it must be - we find that solicited but unproduced material may still be in FBI files ... the FBI's affirmations on the quality of the search do not eliminate that possibility."

311. This is an exact duplication of the situation in this instant cause, save that in this instant cause I have told defendants where they have "solicited and unproduced material" and have even provided the numbers of the files holding other "solicited and unproduced material."

312. The decision then notes inadequacies in defendants' claims. The first pertains to the allegedly missing spectrographic plate made in testing a bullet impact on a curbstone. After remand defendants did not provide that spectrographic plate or any first-person attestation to any disposition of it. However, I obtained information in this instant cause that had been withheld from both the Warren Commission and me from FBIHQ records provided to me by defendants. It then turned out that the FBI knew that the damage to the curbstone had been repaired and that, knowing this, the FBI had nonetheless dug up that curbstone and gone through the charade of testing the patch. It then pretended that its testing of the patch was testing of the original damage that was covered by the patch. I also obtained handwritten Laboratory notes that had been withheld by the Lab. Kilty, a Lab agent, had sworn to having provided every locatable scrap. It turns out that these handwritten notes hold significant information that was omitted from the FBI's prepared and distributed reports.

313. With regard to the NAAs, the appeals court found that "viewing the evidence in the light most favorable to Weisberg, one might easily infer that the printouts were not discarded," as another FBI agent had testified on deposition, "and are still in the FBI's possession." In fact, contrary to its many attestations, the FBI knew this all the time. Despite having thrice sworn to complete compliance, after the third remand it finally did cough up these printouts.

314. With regard to the other such matters noted in the decision, the subsequent record is consistent with the immediately preceding Paragraphs. When compelled to and while still resisting strongly, the FBI did provide some of the pertinent information that it had knowingly withheld.

315. With regard to the Kilty affidavits, which are like Phillips' declarations in this case, and to the Department's belief they were adequate, the appeals court quotes itself in the Scientology case as defendants do not: "If the sufficiency of the agency's identification or retrieval procedures is genuinely in issue, summary judgment is not in order." This is in the same

paragraph of the decision as defendants' quotation from it, the requirement that affidavits must be "nonconclusory and must be submitted in good faith." Phillips' declaration is conclusory and is not submitted in good faith.

316. Kilty's affidavits attest to what Phillips does not, that no other pertinent information exists. Kilty was untruthful for later he, personally, produced some of what he had withheld.

317. In its account of the search the Memorandum does not state the facts. It bases what it does say on Phillips' nonfirst-person declaration although first-person affidavits are readily available. It represents that "Phillips describes in great deal (sic) what files were searched and by whom." Phillips does not state "by whom." Instead, he states who the supervisor was, not who did the alleged searching.

318. In boasting again of defendants' claimed diligence in compliance, the Memorandum flaunts incredible ignorance, contempt for fact and truth or both in saying that the FBI made "indices searches on such tangential topics (sic) as George DeMohrenschildt, Special Agent James P. Hosty, etc..." Both were major Warren Commission witnesses and both figure significantly in the FBI's own investigation. The FBI's records on both and pertaining to the assassination investigation are greater in extent than its files on most witnesses. In no sense is the information on them "tangential." Except to those who are married to the official instant preconception of the crime and resist disclosure of the great volume of evidence that refutes this instant "solution." To the FBI it is still that unless evidence puts a smoking gun in Oswald's hands it is worthless and immaterial, the attitude imposed on this case. It causes - nay, requires - noncompliance.

319. DeMahrenschildt, who befriended the Oswalds, spent time with Lee Oswald. Oswald is characterized by the FBI itself as a Marxist. The records on DeMohrenschildt that the FBI finally produced, when it was compelled to after appeal, are classified by it as "Foreign Counterintelligence." This classification formerly was "Internal Security - Nationalistic Tendencies." It is "security-related." The FBI's preassassination records on DeMohrenschildt, tracing him to his youth in the Soviet Union, reflect its suspicion that he was a foreign agent and "red." Because of this and his association with the "Marxist" Oswald after

Oswald returned from the Soviet Union, he is an important figure in the investigation, one of those Mr. Shea termed "players" to distinguish him from the FBI's more numerous irrelevancies. These people, who will and do say anything that at any moment appears to be expedient in their pursuit of their improper objectives, appear not to be aware of the fact that the FBI's own supposedly definitive investigation, made at the direct request of the President before he appointed the Warren Commission, is devoted entirely to Oswald and the FBI's belief that he was a "red." It makes almost no mention of the assassination. The FBI's report on that investigation takes up five bound volumes. Maybe Phillips and defendants' counsel have not read that five-volume report or the 105 file on DeMohrenschildt, but I have. They are not in any sense "tangential." They are significant even if they do not put a smoking gun in Oswald's hands.

320. DeMohrenschildt killed himself a few minutes before he was scheduled to be interviewed by a House assassinations committee investigator.

321. The FBI's Oswald case agent, Hosty, is a "tangential topic" to defendants. This can hardly be because he destroyed all his Oswald notes a month after the assassination and testified that this was no more than normal FBI practice. It can hardly be because Oswald left a threatening note for him before the assassination. It can hardly be because he destroyed this note after Oswald was accused as the lone assassin. It can hardly be because Hosty failed to testify about any of this to the Warren Commission or because he was ordered not to volunteer anything to the Commission. It can hardly be because the FBI's explanation for not letting the Dallas police know what it knew about Oswald and his defection is that Oswald gave no indication of any predisposition toward violence. It can hardly be because in the note he left for Hosty, Oswald, according to Dallas FBI personnel who saw it, threatened to bomb the police and FBI buildings. Of course, it cannot be because the FBI never told the Warren Commission about that note and its post-assassination destruction or because so many FBI Dallas employees who were aware of the note and its contents never told anybody about it, least of all the Presidential Commission. Naturally.

322. What is called "Defendants' Statement of Material Facts as to Which There is No Genuine Issue" (the Statement) is, as stated above, word-for-word the uncredited Phillips declaration. While it has much that is not relevant, and where

it is relevant does not address what is at issue, it also is bizarre. It begins with what is not relevant, how the FBI, in general, processes FOIA requests. It does not say that in this case that is what the FBI did. It tries to use this general statement to con the Court into believing that it is what the FBI did in this case when it is not. For example,

> 3. When a Freedom of Information Act (FOIA) request is received at a field office, the general indices are searched to determine if there is any material located by name or other identifier in the records system which may be responsive to the request ... The requester is then advised of the results of the search and furnished any releasable information.

323. This describes what should have been done and was not done in this case, as is tacitly admitted. (Paragraph 5) When my request was received, it was "forwarded to FBIHQ" rather than being searched through the field office indices. And at FBIHQ, which could not in any event make any searches of field office indices, Bresson, instead of ordering a search, "determined that four 'main' files of the Dallas field office were responsive" to my request. This is contrary to the practice described by Phillips and repeated word-for-word in the Statement. It is the opposite of what was done in this case. Including a general statement of what should be done when it is a known fact that it is what was not done is another blatant effort to deceive and mislead the Court and to provide a convenient quote for improper uses.

324. On impartial reading and without so intending, the Statement does state a material fact that is not in genuine dispute: the required searches were not made on receipt of the request or thereafter and still have not been made. When the Partial Summary Judgment sought by defendants is based on "the adequacy of the FBI's search," the first sentence of the Memorandum, defendants' entirely improper purpose is obvious.

325. Because this Phillips declaration is all there is to the pleadings, I have addressed it, for the most part, in addressing them. His evasiveness is apparent in his beginning. He recounts what the FBI is supposed to do on receipt of a request, as described immediately above, yet he fails to claim that is what the FBI did in response to my requests. If he could not and did not claim that it did, he could have had no purpose other than the improper one of deceiving and misleading the Court with his irrelevancy, the claimed general practice. But that he really intends this deception and misrepresentation to apply in this case is

explicit in his 2., where he states his purpose is "to fully explain the multifaceted aspects of the FBI's search in this case."

326. On occasion Phillips does claim that the four "main" files to which compliance was restricted by Bresson's FBIHQ diktat are "responsive." That those files hold pertinent information is not disputed. But Phillips is careful not to claim that FBIHQ was correct in what it did, for that would mean that those files hold complete compliance, which he does not swear to.

327. As soon as Phillips knew that FBIHQ substituted for my request rather than searching in response to it, he knew that the FBI was determined not to make the necessary searches in this case. That is not outside his experience. As stated above, he is assigned to my King assassination records case. In that case, as its substitute for searching the Items of my request and over my objections, the FBI gave me its "main" file. That left my requests neither searched nor responded to. Phillips can hardly admit this and hope to continue working for the FBI and come to enjoying its retirement benefits.

328. The question is not whether there has been <u>any</u> compliance. Of course there has been. The real question is has there been full compliance. If there has not been, then any motion for partial summary judgment is, at best, premature. Nonetheless, FOIA expert that he is and defendants' only authority in their present advanture, Phillips does <u>not</u> state that there has been full compliance. He does <u>not</u> state that no other pertinent records can be identified or located with reasonable effort. He does <u>not</u> state that good-faith searches, made with due diligence, disclose no other pertinent records.

329. It therefore is incomprehensible that any honest person could claim that in this case all necessary searches have been made and all nonexempt information has been provided.

330. It likewise is incomprehensible that without more than merely making these claims, without at least making an effort to prove them, any government lawyers could move for partial summary judgment because they know that is wrong and unjust. Filing such a motion without meeting its minimum requirements is not merely frivolous, which is serious enough. It is a deliberate effort to deceive and mislead the Court and to defraud me. (In an FOIA case, this really means to defraud the nation.)

331. In most particulars Phillips' word cannot be taken for anything. He does say anything that appears to be expedient, without regard for fact. Where he has the correct title for a file, as, for example, the Dallas 62-3588 file, "President's Commission on the Assassination of President Kennedy," he just assumes the content in his description and provides a conveniently misleading incorrect one: "This file consists of material concerning the Commission and the report it issued." (Phillips' Paragraph 6) In fact, both field office files of this title are restricted to its Report, to the period when there was no Commission because it had ceased to exist. One of my ignored appeals is for the Commission files for the period of its life, for the records predating what is included in 62-3588.

332. In describing the Dallas 3x5 index (Phillips' Paragraph 9), he says it is "related to 'see' references in the Dallas files." (Emphasis added) Actually, this index does not relate to "the" Dallas files, which means all of them. It is restricted to the "main" assassination files and then for a limited period of time. Here also, whether or not Phillips intends it, he misstates in a manner that is consistent with the intent to deceive because one of the remaining questions is the FBI's refusal to use its "see" references to locate records pertinent to the Items of the requests pertaining to persons and organizations that are not in the "main" assassination files. The untrue inference flowing from his statement is that all such information has been provided to me by providing me with this index.

333. Phillips states that New Orleans checked its "see" references pertaining to "Senstudy," the FBI's code name for the Senate Intelligence Committee's investigation. He does not state that the same search was made in Dallas. He also does not state that all pertinent information was provided.

334. Phillips also states that New Orleans "did not find any separate 'main' files on Clay Shaw or David Ferrie. Nor did the New Orleans Office locate any material on Mr. Shaw or Mr. Ferrie pertaining to the JFK assassination or Jim Garrison's investigation other than what was channeled into the files on those subjects." Here Phillips does two things: he evades the real question and the real search that is required to comply with the requets; and he states that there is a file that defendants claim does not exist. On the latter, either he does not

know what he is talking about and his word cannot be taken for anything or there is a file on the "subject" of "Jim Garrison's investigation." No such file has been provided and it is claimed that none exists. But here he quite clearly says there is one into which all pertinent information "was channeled."

335. As I state above, both Shaw and Ferrie are dead. They are key figures in the Garrison investigation, in which both were charged. Shaw was acquitted. Ferrie died before trial. The request is for all information on or about them. As stated above, the FBI does have records pertaining to Ferrie's alleged operations in Cuba, gun-running or suspected nautrality act violation. This certainly is pertinent in all investigations, particularly because of Oswald's phony FPCC activities and because Ferrie and Oswald were in the New Orleans Civil Air Patrol at the same time. This is a matter the FBI did investigate, even if it managed to avoid reporting its own evidence of their activity in the same unit at the same time. Shaw was, as he should have been, a regular source for the FBI. There is nothing reprehensible about it and it was not a confidential relationship. It was open, proper and necessary. Shaw was director of the ITM. It brought all kinds of people into this country, including the Nicaraguan dictator, Samoza, and other controversial figures like him. Shaw also reportedly had a relationship with other agencies, reportedly the CIA. Oswald, as stated above, picketed Shaw's building, of all the many buildings he could have picketed in New Orleans. It is the only building he is known to have picketed. Shaw was certainly a public personality. (Shaw also was a man of some intellectual achievement, including as a playright. One of his earlier plays was made into a successful movie.) That both men were homosexuals is very well known and was extensively publicized. No privacy question is involved in that. In fact, Ferrie was indicted and the charges received extensive publicity. Ferrie figured in the investigations the FBI reported to the Warren Commission, including with reference to his homosexuality, a report the Commission published.

336. It is apparent from the foregoing detailed examination of all the parts of this latest of defendants' filings that at their best they are entirely undependable and at their worst they are knowingly and deliberately false, misleading and deceptive. It is apparent that Phillips does swear to anything, without concern for truth or fact or his own ignorance of what he swears to.

He cannot and does not describe pertinent files correctly.

He cannot and does not describe an index correctly (and it may be the most important single record in the entire case).

He cannot and does not state that there was a search in compliance with my requests.

He actually states the opposite, that FBIHQ decided not to respond to my requests but to substitute records of its own selection.

He cannot and does not state that there are no pertinent records that were not located and processed, although as an FOIA exoert he knows the crucial pertinence of this as a prerequisite of Partial Summary Judgment.

He does state that there is a pertinent New Orleans file that was not searched or provided.

He swears that what the FBI itself previously disclosed is and must be classified in this case and thus is withheld.

He cannot and does not state that I have been provided with all copies of all tapes and photographs, and the FBI's own records, processed and disclosed, are clear in stating that there are "numerous" photographs. They are located exactly where no first-person search is attested to, in the proper place in the Dallas office. This, no doubt, is why swear-to-anything Phillips provides the affirmation because no Dallas agent with any knowledge of the case and files would dare swear to so significant a material untruth.

337. The known noncompliance in this case is great. I cannot provide all defendants' records which reflect the existence and location of all pertinent records not provided, but I have herein provided more than enough to demonstrate that defendants are well aware of this and yet they nonetheless move for Partial Summary Judgment on the "adequacy" of the search.

338. At the same time, also knowing that they have engaged in extensive improper withholdings and have made numerous spurious claims, including but not limited to in the "national security" area, defendants fight for a Vaughn sampling that they know very well cannot justify all their improper withholdings.

339. These are major defects. They now cannot be rectified by additional false swearings or any additional less than honest and accurate claims or by any Vaughn sampling.

340. I have offered a major compromise. If it is not accepted, I will seek compliance with my request, more so now that there is defendants' unintended admissions: that there was no search in response to my requests; and that known, existing and "located" records pertaining to the persons and organizations Items were neither searched nor otherwise complied with. Surely defendants are well aware of the cost of either further litigation or compelled compliance. Yet they persist, knowing that they have not satisfied the prerequisites for summary judgment and cannot begin to justify their withholdings with their proposed Vaughn sampling.

341. There is no explanation for this obduracy (which also is deliberate violation of the law) other than I provide above, that these defendants are determined to "stop" me and my writing; to waste as much as they can of what remains of my life and work; to make use of the Act cumbersome and costly, and to misuse this in seeking amendment of it; and to misuse this Court to obtain a sanction for the unjustifiable withholding of major records and parts of records pertaining to that most subversive of crimes, the assassination of a President and their investigation of it. These are entirely improper and wrongful purposes. If they succeed, given the unique and tragic subject matter of the information they withhold, they will forever in recorded history defame the government, themselves, their families and the Court.

342. It is difficult if not impossible, given the record only partly reflected in the preceding paragraphs of this affidavit, not to believe that defendants actually expect this Court to be their rubber stamp. In providing this Court with false, misleading, deceptive and misrepresentative statements, these defendants knew, from a long history, that I would expose their abuses and offenses. They therefore assume that they are immune before this Court and that this Court will tolerate their offenses, including false swearing to the material. In this they display no concern over the court of appeals, to which this case is going unless defendants end their obduracy and multitudinous offenses and abuses. They place their own value on the time and money they can waste by forcing unnecessary appeals and the additional time that is wasted after remand because one of their purposes is to continue to withhold as long as possible. They also anticipate an amending of the Act for ~~largely~~ spurious reasons they have contrived, as in this case they have contrived to create artifically high costs and simultaneously have gotten away with a very large degree of noncompliance.

343. When the government, knowing that the courts trust the government's word, places the courts in the position of acting on false, deceptive, misrepresentative and misleading information, they do much worse than merely imposing on the trust of the courts. They jeopardize the independence of the judiciary. And that is subversion.

344. After I completed the draft of this affidavit, I received from my counsel the attached copy of the Department's May 13 letter to Judge Harold Greene,

copies to this Court and my counsel. (Exhibit 17) Short and seemingly simple as it is, this letter is entirely consistent with what I state two paragraphs above with regard to defendants behaving as they they expect almost automatic approval from this Court and with regard to their ulterior purposes in insisting upon the unnecessary and costly Vaughn sampling which, even if they get their way, is certain to result in additional costly and difficult litigation that in the end may reflect other than favorably on this Court.

345. In this other case, Shaw v. FBI, C.A. 82-0756, Shaw is represented by the firm with which my counsel is associated. What this letter does not find it necessary to let Judge Greene know is that at the same time my counsel's associate filed two suits, for the same material. The other defendant, I am informed, is the CIA. That suit is assigned to this Court.

346. The Department's letter states that "all of the records at issue" in the case before Judge Greene, Shaw's suit against the FBI, "are encompassed in a case pending before Judge John Lewis Smith," identified as this instant cause. (Emphasis added) While this may appear to be a normal formulation, the use of the plural to refer to a single record - and only one record is involved in Shaw's suit, a record not identified in any way in the Department's letter - certainly gives an entirely different impression, the impression of a number of records.

347. I asked my counsel to obtain the correct file identification of the single record, the Department refers to two judges in the three underscored plurals. He was told that it is Dallas 100-10461-1A328. In the course of checking it, I found much that confirms what I state earlier in this affidavit. I found, for example, that if defendants had done even the most cursory checking, if they had merely glanced at their own worksheets (attached as Exhibit 18) for the volume of Dallas records (1A7), they would have found that, of the 41 records in it, 18 consist of motion and still pictures and, as I also state above, the motion pictures are both 8mm. and 16mm. in size. They would have found, exactly as I state, that there was the funny business with Mrs. Mary Moorman's pictures, copies of which were made, are withheld in this instant cause, and as of the time of processing were physically in the Dallas office.

348. If defendants had had my prior experience with FBI worksheets, they might have checked further, as I did. I find, for example, as the worksheets reflect, that, contrary to Phillips' sworn and defendants' solumn assurance to the Court, I was not provided with all the "evidence envelopes." (FBI Form FD-340) Provocatively, there is none for the record Shaw seeks. It is not subject to total withholding under any exemption or combination of exemptions.

349. They would have found that there is the Moorman shuttle I refer to above, although this is not all of it. Exhibits 19A and 19B are two of the Moorman pictures evidence envelopes. They would also have found that, while the worksheet for Exhibit 19A says that there is one Moorman photo and that it was provided, in fact, this one page is the evidence envelope only, and it states that there are two pictures, neither provided. Exhibit 19B, according to the worksheets, consists of two photos, both provided. But in fact Exhibit 19B consists instead of a second evidence envelope and a xerox of the backs only of both copies that the FBI made and failed to let the Warren Commission know it had made. Contrary to the worksheets, I received no copy of any kind, print or xerox, of these photos. Each part of Exhibit 19 is annotated with the date of shipment to FBIHQ.

350. Where the worksheets reflect that the first exhibit in this volume, Serial 301, is a single Dallas Police Department photo and that I was provided with it, in fact that, too, is the evidence envelope only and on its face the FBI lists 11 different photos as constituting that exhibit. All are of significant evidence, crime scene photographs. They are copies to be retained, not to be returned to the police, and, as I state above, the notation states when they, too, were sent to FBIHQ. Serial 340 also consists of Dallas Police Department photographs, again not to be returned to the police. I was not provided with photographs, as the worksheet reflects. I was provided with unclear xeroxes that, particularly because they also are crime-scene shots, are virtually valueless. When copies were sent to FBIHQ once again is noted on the evidence envelope, once again confirming my statement in the earlier part of this affidavit, that this is the FBI's consistent practice.

351. The foregoing is the result of a superficial check. I do not believe that defendants really want me to check all their evidence envelopes and I do

believe that they indulged in inappropriate rhetoric in telling the Court that I can do so instead of them. I do not believe that they really want me to produce more such evidence when they seek summary judgment. From prior experience I believe that this incomplete check of part of one volume only reflects what can be expected if a real check is made of all of them, and no summary judgment motion can survive that. So, whatever they tell the Court, even under oath, they do not really mean it.

352. In withholding from me the single record at issue in the Shaw case, the FBI claimed "national security." These photos are of participants in an announced walk from Canada to Guantanamo, Cuba. If the FBI expected that these young people would walk on water for the 90 miles to the closest point in Cuba, thus greatly exceeding what Matthew 15:24-29 attributes to St. Peter, then perhaps there might have been some element of "national security." With the passing of years, defendants apparently decided otherwise, because I am informed that they have abandoned the "national security" claim. Now they claim "confidential source." Thanks to their convenient omission of the evidence envelope which Phillips attests I have but the FBI did not provide, I cannot check the pertinent reports, but the legitimacy of a really confidential source claim after 18 years is doubtful.

353. This illustrate the frivolity of FBI claims to "confidential" sources and "national security." The FBI reviewed this 1964 record in July 1978, the date on the worksheets, and as of then they claimed (b)(1). I filed separate "national security" claim appeals and when the then new executive order was promulgated, under its provisions I asked for a review of all "national security" claims. Either this was done and the spurious classification was supported or it was not done, and that is contrary to defendants' present representations to the Court. In 1964 and in 1978 the FBI's expert reviewers did not find any basis for any "confidential source" claim." Only now - and coinciding with an appearance in another court - they suddenly discover an 18-year-old "confidentiality" that had escaped them for all those years and again in their 1978 review.

354. Based on prior experience I believe that the new (7)(D) claim will be attributed to the source of the pictures, either another police agency or an informer. If the latter, it is entirely unlikely, if not impossible, that anyone, particularly after more than 18 years have elapsed, can distinguish these from any of the many other photographs taken in that era of such demonstrations. Also, it is no secret

that the FBI penetrated such groups with informers. With regard to a police source, whether Royal Canadian Mounted Police (RCMP) or any local police, there is no confidential source to protect because the FBI has disclosed to me, over and over again, that the RCMP and other national police and intelligence agencies and local police are among its sources. The FBI has provided me with copies of material it received from these police sources and, as Paragraph 350 above reflects, this includes xerox copies of photos. Based on extensive prior experience with the FBI and these identical claims, I believe there is no legitimate confidential source exemption that can be invoked to withhold these photos even if it was the CIA.

355. Because these particular pictures, which are within my request but were not provided, are not nearly as important to me as so much else that remains withheld, I have waived my interest in them in favor of Shaw and so informed my counsel. However, I note that it is not probable that Shaw or any court has had my prior experiences with the FBI and its similar claims to exemption. A court might be imposed upon if asked to make an in camera inspection and Shaw is not aware of the many copies of material the FBI obtained from foreign and local police and intelligence agencies and disclosed to me.

356. Shaw's counsel may recall, however, that in one of my cases, when the FBI made (7)(D) claim to withhold identification of the RCMP and another foreign police agency as its sources, I produced records provided to me by the FBI itself in which it identifies these agencies by name as its allegedly "confidential" sources.

357. In telling two judges that these six pictures are at issue in this instant cause, the Department confounds itself because, in this instant cause, defendants have yet to admit in any pleading or affidavit that any still photographs are at issue or have been searched for and processed. These defendants now are telling this Court two different things about one matter, still photographs: that they are at issue, although never addressed in any of their supposedly definitive and dispositive filings; and that they are not at issue because they are unmentioned. The pretense in this instant cause has been that no still photographs are at issue. However, this new admission is that they are at issue, but there is no attestation that they have been searched for and provided or claimed to be exempt. In addition to all else that is wrong and dishonest in defendants' claim that no material facts

are in dispute, defendants made their Motion without ever mentioning the "numerous" and existing still photographs even though they know very well that a motion for summary judgment is inappropriate when any material facts are in dispute, and I certainly have disputed them about the many pictures of all kinds that remain withheld. Now, in their letter in other litigation, they finally acknowledge what they knew all along, the pertinence of still pictures in this instant cause.

358. This letter also establishes the falsity of the attested claims to the "adequacy of the search" because no search for any still photos is attested to.

359. In this connection, in the December 3, 1980, letter Phillips wrote for his chief and attached as Exhibit 3 to his declaration of April 18, 1982, which is attached to the Response, Phillips refers to only two motion pictures in the entire Dallas 100-10461 file. He says that if any others are located they will be provided. He makes no reference to any still pictures. He also makes no mention at all of those included in this single volume of the 100-10461 file, Section 1A7, although, as I state above, this one volume lists both still and motion pictures as existing and in Dallas at the time these records were processed.

360. The immediately preceding paragraphs reflect a major and irremedial problem with allegedly adequate search claims and defendants' proposed 1/100 Vaughn sampling. They cannot possibly justify the (b)(1) claim they made to withhold 100-10461-1A328 from me when, without informing me, more than 18 years after creation of the record and four years after asserting the claim to me, they change their claim to exemption. This does not meet the standards of many decisions, some of which defendants themselves cite in their recent filings. They now are in the position of having to justify a nonexisting (b)(1) claim because, to me, that is their only claim, while with Shaw, they have to justify an entirely different claim, both made to withhold the same record. There also simply is no way of knowing how often with how many other requesters these defendants have changed their exemption horses in the midstread of this litigation and how many other claims have been changed or even abandoned without informing me. If they now seek to provide a 1/100 justification, this means that in 99 of every 100 instances there will be no way of even knowing if they also made other changes in their claims or even abandoned all claims for withheld records.

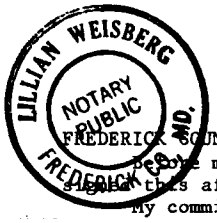
361. In this newest ploy, their attempt to transfer Shaw's case to this

Court, without any question defendants are attempting to foreclose Shaw for at least as long as it takes to dispose of this instant cause and that, it is now abundantly clear, is something defendants are determined to prolong as much more than the four years they have already taken as they can. By their refusal to end this case with the major compromise I offer, defendants signal a determination not to end it without accomplishing the improper objective of foreclosing all other requesters in perpetuity by their Vaughn sampling ploy. These are among its improper ulterior purposes that, based on prior experience and without benefit of their letter to Judge Greene, I was able to allege in an earlier affidavit and in the earlier parts of this affidavit.

362. In its letter the Department fails to inform Judge Greene of the two other cases filed by Shaw mentioned in Paragraph 245 above. The first was assigned to Judge Bryant and the second to this Court. Shaw's case, C.A. 82-0756, is a simple case, particularly when compared with this instant cause. Rather than transferring to this Court the one record involved in C.A. 82-0756, a much easier and much simpler way of disposing of the question would have been to let it proceed under Judge Greene (had I not waived) and then hold his decision binding on me. This would conform to the intent of the Act, that information be provided promptly and that the courts act as rapidly as possible.

363. As this matter indicates the truth of what I allege earlier, that defendants intend to misuse their proposed Vaughn sampling to foreclose all other requesters without having to justify the withholdings in 99 out of every 100 instances, so also does it reflect defendants' belief that they can expect more favorable treatment from this Court than from Judge Greene. If they did not believe this they would have proceeded with the case before Judge Greene and wound up that case promptly.

364. Instead, defendants have chosen the one way that burdens both plaintiffs unnecessarily. Shaw is burdened if he has to wait as long as he will have to wait for this case to end or for that matter to be resolved in it if it is. There is only, at the very best, one chance in 100 that this particular record will be "sampled." If it is not and this Court then does not require it, which the Department has not proposed, then it will be withheld from Shaw and he is denied any meaningful access to the courts. If it is added to the sampling, that increases the burden on my and my counsel.



HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 31st day of May 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.

Lillian Weisberg
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

LIST OF EXHIBITS

C A 78-0322
EXHIBIT 1

Information requests of Department of Justice by Harold Weisberg

This list is not inclusive. There is a file of correspondence more than an inch thick I have not yet been able to go over. I recall none of my many checks not being cashed. This list includes 29 requests, not counting the many duplications of some of them. When with regard to one of these there was an exchange of more than 40 letters during my repetition of that one request, if the actual number of repetitions are counted, there were in excess of 100 requests with virtually total noncompliance.

Four of these earlier requests are for information in the King assassination. My requests represented in C.A. 75-1996 are not included in this listing. There has not been compliance with any of these four requests or a later, relevant one.

One of these requests was complied with after eight years of effort by me. After six years there was partial compliance with that request by another agency. The Department still has and still withholds relevant records, some of which I have obtained from a nonofficial source, which gives me personal knowledge.

In two cases there was incomplete compliance.

In three cases the records sought were claimed not to exist. In at least two this is proved to be false.

In one case one picture I have sought for more than seven years was released to another. It is more than three months since my protests. There has been no response and no compliance - after almost eight years, despite release.

1968

May 23, for spectrographic analysis [illegible] assassination. Still in litigation.

1967

July 10, for FBI press release. This press release related to my second book, unpublished at the time the press release was issued. Additional requests of four different [illegible] January 4, 1968, June 2, 1969, August 13 1973, and September 27, 1975. Obtained October 17, 1975.

1968

September 14, repetition of January 11, 1967, request of National Archives for Department of Justice records on David W. Ferrie. After an exchange of not fewer than 44 requests and letters, after invocation of (b)(7), incomplete compliance December 21, 1970. Nothing since then.

1969

January 1, FBI photos, reports filed, not given to Warren Commission, taken by Moorman, Powell, Doyle and Martin. Number of repetitions of this request. They include WDSU and WWL news film. No compliance.

January 1, fingerprint on leaflet supposedly taken from Lee Harvey Oswald. Not Oswald's print. Number of repetitions of this request. Never provided.

March 24, King assassination evidence, including ballistics, material given other writers, crime scene pictures. Not complied with.

March 30, reference to my January request for "Memorandum of Transfer" of JFK assassination evidence. "I have written many times," meaning to Archives, for what "I believe cannot properly be denied me." Earlier the Secret Service, the agency of paramount interest, had given this record to me. It was intercepted by the Archives and the Department of Justice and was denied me, despite many efforts and letters, until I was about to file a complaint. While other relevant records remain withheld from me, the memo was sent on March 28, 1975.

March 31, King evidence, press statements on case.

April 23, above repeated.

June 2, above repeated.

June 2, working papers of panel of experts who had made a secret examination of the JFK autopsy film and whose report had been released. Within a year I made at least a dozen efforts to obtain these records. I have found that many letters. Filed several DJ 118 forms. Eventually I was told, not by the Department, that these records had been destroyed.

November 4, request for records on "a missile" recovered during JFK autopsy.

1970

April 22, request for color pictures of JFK's clothing showing damage, other than those given Warren Commission. When I went to court and only then was permitted to see some of these pictures, the reason became apparent. Some of the evidence had been destroyed, particularly by the laundering of the necktie after the Warren Commission used that knot as evidence. No compliance.

May 16, another repetition of the Ferrie request. Withheld under (b)(7) June 12, 1970. Later, incomplete compliance.

May 16, two DJ 118 forms with checks totaling $15, neither ever provided:

1) Picture of "missile" recovered during JFK autopsy,

2) Records on chain of possession, processing of JFK autopsy film.

June 2, not then an FOIA request, protest to Attorney General over reports FBI agents were intruding into my life and work. Referred to Director, FBI, none of whom ever responded, even with pro forma denial.

September 15, FBI reports re Ronnie Caire. Eventually I was told what has to be false, that Caire was not interviewed by the FBI. It had represented to the Warren Commission that it had investigated all of Oswald's New Orleans job applications. Oswald had applied to Caire, who had a public relations agency and was active in Cuban endeavors in apparent violation of the neutrality act. Caire's address was masked in Oswald's addressbook.

September 15, resubmitted request on Oswald leaflet and fingerprint, as asked by Deputy's office, with check. After a number of other letters the denial was affirmed by the Attorney General December 14, 1970. As a result the identification of an associate of Oswald remains unknown. This leaflet was obtained by the New Orleans police from someone other than Oswald who was handing out Oswald's leaflets while picketing the carrier Wasp.

December 2, renewal of request of January 1, 1969, for photos and film turned over to FBI and not given to Warren Commission by it. Also ask for copies of reports filed by and about Powell. This was represented by Mr. Lesar as my first request because I then had not located that of January 1, 1969. Finally, on March 17, I was told what is false, that the film was all returned to those who had taken it. Of the Martin film, it "was viewed by the New Orleans office ... returned

... The photograph (sic) taken by Mr. James W. Powell, Special Agent, Region II, 112th [illegible], Army Intelligence Corps, Dallas, Texas, was returned to Mr. Powell on June 20, 1964. I had interviewed Martin and Bogle and been told by both that edited copies of their movies showing Oswald leafleting and being arrested in New Orleans had been given to them instead of the originals. Martin, who lived in Minneapolis, gave his film to the Minneapolis field office, not the New Orleans field office. I have a copy of the copy returned to Martin. Neither of these films had been given to the Warren Commission. It was not told they had been obtained. It was not even told of Martin's existence. Despite my naming the initial request January 1, 1969, and the cashing of my 1970 check, one Powell picture was released to another in 1975. It was published in 1976. Director Kelley has not responded to my letter of protest of June 4, 1976, and I have never been provided with a copy or the relevant reports. The Army replied by telling me been do not exist. No compliance.

December 7, for copies of what had been referrred to the Attorney General, sworn statements of pathologists and neurologists supporting the Warren Commission. There were nonresponses and appeals. The last record I have found is my request of the Attorney General that he [illegible]wer my letters on this. Neither he nor his successors have.

December 23, amended September 15, 1970, requests, Caire and leaflet fingerprint. (Repeated again on March 28 and April 13, 1971.)

1971

January 4, "list of what your Department has released" otherwise "it is necessary to go to the Archives and examine each page separately." March 16, Deputy replied that is not one (record) of [illegible] taining information under the Freedom of Information Act." I have never been provided with these lists, which are public records. As a result it has been impossible for me to examine the released records because of the cost in time and money. The Archives has refused my prepaid request to provide me with copies of all JFK assassination records as they are released.

February 17, repeated January 4 request
March 28, repeated January 4 request
April 13, filed new DJ 118 form on January 4 request with protest over delays.

February 17, renewed request for pictures showing damage to JFK clothing.

March 4, filed new DJ 118 form on renewed request of February 17
June 25, Deputy rejected June 28. After five years no response to appeal.

March 28, new DJ 118 form on Caire request of January 1, 1969, and September 15, 1970.

April 13, repeated above request.

March 28, new DJ 118 form on Oswald leaflet-fingerprint request of January 1, 1969, repeated September 15, 1970.

April 13, repeated above.

July 4, request for copy of indictment of New Orleans District Attorney Jim Garrison.

December 14, repeated request of July 4 for Garrison indictment. Not provided. Copies of attached affidavits only provided.

1972

June 7, request "for access to public information, the part of those files" reported in the New Orleans Times-Picayune "that relate to Pershing Gervais. That he is an informant is not secret, nor is what he did, or his subsequent history, which both he and the Department have publicized extensively." (As an informant Gervais, formerly close to Garrison, had himself wired with a bug and his phone calls taped in an unsuccessful entrapment effort. Garrison was acquitted.)

September 18, Deputy refused June 7 request while acknowledging it is for "public information." Instead of providing them, he referred me to the District Court in New Orleans for records it did not have. (But the Deputy did send me a copy of the speech by the Attorney General to the bar association.) No compliance.

1973

July 28, August 13, Appeals of denials of two items of Watergate evidence entered into the records of two different courts. My earlier requests of the United States Attorney for the District of Columbia and the Watergate Special Prosecutor had been denied on the ground that what had been entered into evidence and reproduced, including an facsimile, was an "investigatory file." There has been no response to any appeal. I have not found the original request and another appeal.

1975

October 27, repeated January 1, 1969, and later requests for the Doyle, Martin and other films. No compliance.

October 27, repeated verbal request of March 18 for copies of records relating to a conspiracy plot to overthrow the United States Government. These were not returned after I gave some to the FBI THE end of 1939 or early 1940. To June 4, 1976, I wrote four additional letters. No compliance.

October 27, request for copies of FBI HQ files on Lee Harvey Oswald. No compliance.

October 27, repeated request of April 22, 1970, and later for color pictures of JFK clothing. In response Director Kelley wrote me February 13, 1976, saying they were running more than three months late. This was then more than three months. It is now 11 months and there has been no compliance. My request was then six years old.

October 27, request for files on me. No compliance.

November 25, above request repeated. It was pretended that I had not filed this request until Director Kelley admitted finding it in his letter of February 13, 1976. No compliance.

December 20, request for scientific tests related to the murder of Dallas police officer J. D. Tippit. No compliance.

1976

January 30, request for list of all my requests because some have not been acknowledged. No compliance.

February 20, request for all information on the late J. A. Hilteer. (This follows up on requests of the National Archives for what had been withheld at the request of the FBI. When it was finally released it did not include what the Department had not given to the Warren Commission. This included a 1963 tape recording made by, and later disclosed by the Miami police. I obtained a partial transcript from the Miami State's Attorney. The police said they had given the tape to the FBI. The tape includes details of threats against Dr. King and how he and JFK would be killed. The tape was exactly as the Warren Commission later said JFK was killed.) No compliance.

June 19, my FOIA/PA appeal to Levi on "the denials of the various FOIA/PA requests with which there has been no compliance." No response.

July 14, the above requested repeated by certified mail, No. 898596. No response although I have since written Mr. Quinlan Shea.

I delayed the appeals for twice the time Director Kelley had said responses were running late, until as long as the longest public statement of this time. Although response to appeal is required in 20 days, in three months there has not been even acknowledgment of receipt of the appeals. These appeals cover requests going back to September 14, 1968, eight years.

The 1966 request is still under litigation.

The 1967 request was finally complied with in 1975.

There was only partial compliance with the Ferrie request of September 14, 1968. Among the records still withheld I know of FBI reports that Ferrie was engaged in running guns to Cuba and similar endeavors. The FBI made these available to a private detective agency, to my knowledge. This private agency was run and owned by former FBI agents.

Using the Ferrie request as an illustration, these records which did not qualify for withholding were withheld under the privacy exemption. Those records subsequently released to me do not qualify for this exemption. The apparent reason was official embarrassment. Ferrie died within weeks of my first request. He had been dead for 14 months at the time of this request. He was unmarried. He left no children. What could have qualified for the privacy exemption was withheld from the Warren Commission. It is Ferrie's record of sex offenses against young boys. (It was not released to me. I have other proofs. There was relevance in this and with regard to the other withheld Ferrie records in the Warren investigation.) However, where political purposes were served by it, medical and other similar records, including of alleged homosexuality, were released to me, through the Archives. They are not included in the above list. I have neither used nor distributed copies. In earlier instances, where there had been no withholding, I censored

what I used to overcome the Department's lack of genuine concern over authentic rights to privacy. One example is in my book, Oswald in New Orleans, owing to early luck. It also includes accurate reporting of the sex charges against Ferrie. One of the Department's real reasons for withholding Ferrie records is the cozy relationship he had with the FBI in New Orleans. The FBI withheld its knowledge of where he was at the time JFK was killed. He and SA Regis Kennedy were both in attendance upon the federal district court. SA Kennedy's report - delayed a week - does not include this information. Ferrie was also a participant in anti-Garrison parties in the FBI's New Orleans Field Office. I have the notes of other participants, reporters. The Department appears not to have informed the Warren Commission that as the investigator for the defense in its effort to deport Carlos Marcello, reputed top Mafia figure, Ferrie conducted the investigation that defeated deportation. There is much more that is relevant to Ferrie and the Department's continued withholdings. I cite this merely as a means of attributing motive and showing that the exemption was invoked without any justification and why there has not been compliance.

The still-withheld photographs are another example.

The Army intelligence agent, Powell, was confined in the Texas School Book Depository Building for some time. He entered it before it was sealed. Prior to entering it, he took at least one picture, the one released to another years after the denial to me. It shows the front of that building immediately after the shooting. It was not in the Warren Commission files of pictures. The reports agent Powell filed also are not. He was in that building with a loaded 35mm camera.

The relevance of the Doyle and Martin films is obvious. They show the Oswald arrest. The Martin film also shows a different view of Oswald than other pictures. Taken from over his right shoulder he looks entirely different. It shows the other participants in the fracas that Oswald did not start. It also shows what can be taken as a man giving a signal.

My information on the withheld originals of the WDSU-TV footage of Oswald's demonstration outside the New Orleans International Trade Mart Building, which to my knowledge housed CIA cover operations, comes from the then news director of that station. He loaned me the copy of his footage that the FBI returned after borrowing it immediately after the JFK assassination. He gave me permission to reproduce it subject to normal

restrictions of nonpublic use without permission. I do have this copy. The refusal based on WDSU copyright is spurious. The real reason is that the FBI edited material out of that film prior to making and returning the copy. This information comes additionally from the man who was public-relations director of the Trade Mart. He and the news director previewed the original footage before lending it to the FBI, as soon as Oswald's name was mentioned from Dallas. He was in the original footage. He is eliminated from what the FBI returned to WDSU. Also in that now missing footage was another Oswald associate. He and the public-relations director were both eliminated. Seventeen still prints were made from the WDSU footage immediately, before the FBI obtained it. They were made by the photographer, Johann Rush. I have FBI reports reflecting the showing of up to six of these at a time to those it interviewed. The Warren Commission files contain a total of only two of those. A third that may appear to be from the WDSU footage actually comes from that of WWL, which also made its footage available to me. Confirming the above, I finally was able to persuade the Secret Service to deposit its copy of the remaining WDSU footage in the National Archives. It required a major effort by me over some period of time to obtain a copy of the caption by the Secret Service. It says the film shows Oswald and two others engaged in that leafleting. The remaining film, however, includes only one other, Charles Hall Steele, Jr. I interviewed Mr. Steele on tape. He also said there was another man in the film, a man he did not know, a man not now in it.

This does not exhaust my personal knowledge of this still-denied film. I intend it as bearing on motive for withholding what is not within any exemption of the Act.

I can do this with just about every item in those requests, in each case indicating motive for withholding.

CA 78-0322
EXHIBIT Z

United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

MEMORANDUM

March 27, 1980

TO: Robert L. Saloschin, Director
Office of Information Law and Policy

FROM: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

I have no strong objection to placing this subject on the agenda of the Freedom of Information Committee, although I see no real need to do so. I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense I (and, I believe, the FOIA) use that word. It is confusing two totally different matters -- the scope of his requests administratively and the scope of a single lawsuit which we claim is considerably narrower than his administrative requests. Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. The Bureau has rejected -- still informally, but very emphatically -- the position I espouse (and with which you agreed in your informal comments on my earlier memorandum to you). Lastly, but very important, is the matter of the scope of the fee waiver granted to Mr. Weisberg. In my view (and as intended by me at the time it was granted), the waiver extends to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the "security investigation" on Dr. King, and about the

K

Bureau's dealings with and attitudes towards its "friends" and its "critics" as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records. Although the Bureau has departed from its initial position in both the King and Kennedy cases (that the only relevant records are those filed by the FBI in the main files on those cases and/or the very principal "players"), it has done so very reluctantly and to a very limited, factual extent. I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed -- largely because the Bureau has "declined" to search for them.

It is perhaps unfortunate that Mr. Weisberg is the principal requester for King and Kennedy records. He has heaped so much vilification on the FBI and the Civil Division -- a considerable part of which has been inaccurate and some of which has been unfair -- that the processing of his efforts to obtain these records has almost become an "us" against "him" exercise. My view has always been that the two cases are too important to the recent history of this country for that attitude to have any permissible operation.

The problem I have is that, although I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Abourezk Subcommittee, I do not have the time to carry out the extensive research that would be required for me adequately to represent Mr. Weisberg's interests before the Committee, in an effort to avoid the very real blot on the Department's escutcheon which would result from the approval of the Bureau's position. Accordingly, if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions.

cc: Vincent Garvey, Esq.
Civil Division

Inspector Flanders
Federal Bureau of Investigation

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C A 78-0322
EXHIBIT

United States Department of Justice

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SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

I have no strong objection to placing this subject on the agenda of the Freedom of Information Committee, although I see no real need to do so. I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense I (and, I believe, the FOIA) use that word. It is confusing two totally different matters -- the scope of his requests administratively and the scope of a single lawsuit which we claim is considerably narrower than his administrative requests. Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. The Bureau has rejected -- still informally, but very emphatically -- the position I espouse (and with which you agreed in your informal comments on my earlier memorandum to you). Lastly, but very important, is the matter of the scope of the fee waiver granted to Mr. Weisberg. In my view (and as intended by me at the time it was granted), the waiver extends to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the "security investigation" on Dr. King, and about the

Bureau's dealings with and attitudes towards its "friends" and its "critics" as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records. Although the Bureau has departed from its initial position in both the King and Kennedy cases (that the only relevant records are those filed by the FBI in the main files on those cases and/or the very principal "players"), it has done so very reluctantly and to a very limited, factual extent. I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed -- largely because the Bureau has "declined" to search for them.

It is perhaps unfortunate that Mr. Weisberg is the principal requester for King and Kennedy records. He has heaped so much vilification on the FBI and the Civil Division -- a considerable part of which has been inaccurate and some of which has been unfair -- that the processing of his efforts to obtain these records has almost become an "us" against "him" exercise. My view has always been that the two cases are too important to the recent history of this country for that attitude to have any permissible operation.

The problem I have is that, although I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Abourezk Subcommittee, I do not have the time to carry out the extensive research that would be required for me adequately to represent Mr. Weisberg's interests before the Committee, in an effort to avoid the very real blot on the Department's escutcheon which would result from the approval of the Bureau's position. Accordingly, if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions.

cc: Vincent Garvey, Esq.
Civil Division

Inspector Flanders
Federal Bureau of Investigation

K

C A 78-0322
EXHIBIT B

SECRET

April 6, 1964

Honorable J. Lee Rankin
General Counsel
The President's Commission
200 Maryland Avenue, N. E.
Washington, D. C.

Dear Mr. Rankin:

Your letter dated March 26, 1964, transmitted specific questions pertaining to the investigation of Lee Harvey Oswald prior to the assassination of President Kennedy and requested a reasoned response to each question. (U)

At the outset, I wish to emphasize that the facts available to the FBI concerning Lee Harvey Oswald prior to the assassination did not suggest in any way that he was, or would be, a threat to President Kennedy; nor were they such as to require the FBI to inform the Secret Service of his presence in Dallas or his employment at the Texas School Book Depository. (U)

The Oswald case was one of many thousands of investigative matters handled by the FBI. During the fiscal year ending June 30, 1963, the FBI handled [illegible] investigative matters in the criminal, civil and security fields. The extent, depth and urgency of each investigation necessarily is dependent on the available facts in the case. A file concerning Oswald was opened at the time newspapers reported his defection to Russia in 1959 for the purpose of correlating information [illegible] as he was considered a possible security risk in the event he returned to this country. When we learned [illegible] 1960 [illegible] was sending him money, we interviewed her [illegible] brother, Robert Oswald, to determine the reason. Again in 1960 investigation was conducted to determine if he was in Switzerland as we were advised he contemplated enrolling in a college there. The investigation was re-instituted at the time of his return to the United States in 1962, and he was interviewed on two occasions in 1962 in an effort to ascertain if he had been recruited by the Soviet intelligence services and to evaluate him as a possible security risk. (U)

SECRET

CLASSIFIED AND EXTENDED BY 5 RJ6/RH 10/30/78
REASON FOR EXTENSION 2, 3
DATE OF REVIEW FOR DECLASSIFICATION 4/16/84

DECLASSIFIED BY [illegible]
per DRA Memo [illegible]

SEARCHED ... INDEXED ...
SERIALIZED ... FILED ...
APR - 6 1964
FBI — DALLAS

100-10461-4967

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The investigation was continued in 1963 when it was reported that Oswald had corresponded with "The Worker," an east coast communist newspaper, and it was also reported he was engaged in activities on behalf of the Fair Play for Cuba Committee (FPCC). This investigation was in progress when he was reported in October, 1963, to be in contact with the Soviet Embassy in Mexico, and on November 18, 1963, in contact with the Soviet Embassy in Washington, D. C. The purpose of the investigation was to determine the extent of his activities on behalf of the FPCC and the reasons for his contacts with the Soviet Embassies. (S) 4

In short, Oswald had gone to the Soviet Union at the age of nineteen and attempted to renounce his American citizenship. He had recanted; his passport had been returned to him and he had been permitted by the Department of State to return to the United States as an American citizen. After his return, he had subscribed to "The Worker," had distributed pamphlets for the FPCC and had admitted publicly that he was a Marxist. He had been in contact with the Soviet Embassy in Washington, D. C.; and it was reported, but not confirmed, that he had been in contact with the Soviet Embassy in Mexico. The reason for his contacts with the Soviet Embassies was possibly to obtain visas to re-enter the Soviet Union. As previously indicated, his activities as known at the time of the assassination did not suggest in any way that he was a dangerous subversive; that he was violating any Federal law; or that he represented a threat to the personal safety of the President. There was no basis for the FBI to keep him under constant observation. In the absence of any information showing Oswald to be a possible threat to the President, there was no basis to inform the Secret Service concerning Oswald's presence or employment in Dallas, Texas. (S) 4

The answers to your specific questions are set forth in the attached memorandum with the exception of questions 23, 28 and 29 which are being furnished to you by separate communication since our answers involve classified information. (U)

Sincerely yours,

Enclosure

~~SECRET~~

C A 78-0322
EXHIBIT 4

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

Reference is made to the administrative appeal you filed pertaining to the processing under the Freedom of Information Act (FOIA) of the Dallas and New Orleans Field Office files on the investigation of the assassination of President John F. Kennedy.

As a result of the review conducted as a part of the administrative appeal and the return of documents referred to other agencies, enclosed is one copy each of 22 documents and the relevant inventory worksheets. This release consists of 221 pages, of which 170 pages were not previously released. Also enclosed is one copy each of 9 index cards.

Sincerely yours,

James K. Hall, Jr.

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Enclosures (9)

FBI/DOJ

CA 78-0322
EXHIBIT 5

Inventory Worksheet
FD-503 (2-18-77)

File No: 44-1639-1A Re: Ruby Date: 7-78 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
83		Ruby letter	4	4	
84		Ruby letter to IRS	3	3 Ø	ADDITIONAL MATERIAL RELEASED BASED ON APPEAL REVIEW 1-82 Referral to IRS b3 b7C
85		Copies of Ruby tax return 1955-62	41	41 Ø	" " ADDITIONAL MATERIAL REL. BASED ON APPEAL REV 1-82 b3
86		Ruby tax delinquency file 1955-62	171	100 Ø	" ADDT'L REL ON APPEAL REVIEW 1-82 b3
87		Tax Returns for Eva Grant	6	1 Ø	" " " b3
88		" " " Sam & Phyllis Ruby 1955-62	121	1 Ø	" " " b3
89		" " " G. Senton 1955-62	19	3 Ø	" " " b3
90		" " " Ralph Paul 1955-1962	54	1 Ø	" " " b3
91		" " BOPA 1955-62	22	1 Ø	" " " b3

FBI/DOJ

FD-302 (Rev. 3-3-59)

FEDERAL BUREAU OF INVESTIGATION

CA 78-0322 EXHIBIT 62 — DL 100-104

1 (2)

Date 3/27/64

THOMAS P. ALYEA, newsman, residence 2333 Lockhart, employed WFAA-TV, Communications Center, furnished the following information:

On November 22, 1963, he and RAY JOHN, also employed by WFAA-TV, were driving back from covering President JOHN FITZGERALD KENNEDY's visit at Fort Worth, Texas, and were stopped at the traffic light located at Commerce and Houston Streets, Dallas, Texas, when a voice, later identified as Chief of Police CURRY, advised over the police radio "all units Code 3 Parkland." A few seconds later over the commercial radio, JOHN ALLEN, WFAA Radio Station, advised shots had been fired at the President at Houston and Elm.

ALYEA grabbed a fully loaded camera, a Bell & Howell, 70 DR, 16 mm., and three extra cans of film which, along with the one can of film he always carries in his back pocket, gave him 500 feet of film. ALYEA ran toward the intersection of Houston and Elm taking photographs as he went. Upon arrival at the intersection he began looking about for some sign of a struggle or an arrest. He did not see the President's vehicle which apparently was already racing toward Parkland Hospital.

He then noticed several people pointing toward the upper floors of the Texas School Book Depository building and he immediately ran inside along with a number of others who appeared to be law enforcement officers. Once inside, he filmed the search for the assassin and when the rifle was located on the sixth floor he photographed it in its original position. He also photographed the dusting of the rifle for fingerprints by the Dallas Police Department Laboratory man.

He remained in the building until about 2:30 p.m., before he was allowed to leave. He had been in the building about 45 minutes before learning the President had been hit by the rifle fire. During the time he was inside the building, he used up all 500 feet of the film.

He recalls seeing Captain WILL FRITZ of the Dallas Police Department along with a number of others he knows to be law enforcement

61 CR 10[illegible]6

on 3/26/64 at Dallas, Texas File # DL 100-10461

by Special Agent R. NEIL QUIGLEY and R. J. ROBERTSON:vm Date dictated 3/27/64

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FD-302 (Rev. 1-25-60)

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On 4/10/64

by SA R. NEIL

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100-10461

3/27/64

the FBI and is loaned to

officers inside the building but cannot identify anyone else by name. He did not see LEE HARVEY OSWALD on November 22, 1963, and to his knowledge has never seen LEE HARVEY OSWALD.

He was the only cameraman inside the Texas School Book Depository to his knowledge on the early afternoon of November 22, 1963.

He had not previously contacted anyone in law enforcement regarding the film he had taken in the Depository since he had made no secret of it while filming and it had been used extensively in television broadcasts both from Dallas and from CBS, New York.

He advised the film has now been cut and spliced with other film regarding the assassination and it is no longer in the original five rolls. He stated WFAA would dub a copy of all of the 500 feet which they could locate and identify and furnish it to the FBI.

62 CR 1066

FD-302 (Rev. 1-25-60)

FEDERAL BUREAU OF INVESTIGATION

(3)

1

Date 4/10/64

BOB TURNER, WFAA-TV, Communications Center, furnished a roll of 16 mm film which was made from the film shot by TOM ALYEA on November 22, 1963, at the Texas School Book Depository, Dallas, Texas. The film contains the portions of ALYEA's filming which could be identified as being shot at the above time and place.

TURNER advised the above film is all of that which is identifiable of the film shot by ALYEA in the Texas School Book Depository on November 22, 1963.

1066

63

On 4/10/64 at Dallas, Texas File # DL 100-10461

by SA R. NEIL QUIGLEY:vm Date dictated 4/10/64

C A

75-0322
EXHIBIT 7

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON 25, D.C.

January 20, 1964

Honorable J. Lee Rankin
General Counsel
The President's Commission
200 Maryland Avenue, N. E.
Washington, D. C.

Dear Mr. Rankin:

With reference to the discussion had by you with J. R. Malley of this Bureau on January 17, 1964, concerning various films which are available of the assassination of President John F. Kennedy, set forth hereinafter is a list of the films that can be shown at any time at the office of the President's Commission:

Type	Subject	Submitted by
8 millimeter color	Presidential motorcade proceeding east on Main Street, north on Houston Street and left on Elm Street, directly in front of Texas School Book Depository Building	Robert J. E. Hughes Dallas, Texas
8 and 16 millimeter color	Assassination of President (taken from President's side of vehicle)	Abraham Zapruder Dallas, Texas
8 millimeter color	Assassination of President (taken from Mrs. Kennedy's side of vehicle)	Orville O. Nix Dallas, Texas
Video Tape black and white	Oswald shooting as shown on television (can be shown only with TV Station equipment)	TV station KRLD-TV Dallas, Texas
16 millimeter black and white	Oswald shooting as shown on television (this is copy of above video tape)	TV station KRLD-TV Dallas, Texas

During my investigation of the suppressed photographic evidence, I was impressed by the lack of any list of the pictures known to have been taken and of those in the possession of the government. Finding none, I asked the Archivist. He told me under date of March 3, 1967, in response to several inquiries, that "The following items are not in the relevant files among the Commission's records." The second item is, "(2) a complete set of the photographers, films or interviews with photographers relating to the assassination." I regard such a list essential to an honest, thorough investigation.

Honorable J. Lee Rank

Type

16 millimeter black and white — Oswald

16 millimeter black and white — Oswald

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Honorable J. Lee Rankin

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20, 1964

Type	Subject	Submitted by
16 millimeter black and white	Oswald shooting	Cameraman George Phenix TV station KRLD-TV Dallas, Texas
16 millimeter black and white	Oswald shooting	J. Jamison - station WBAP-TV, Ft. Worth, Texas

Concerning the above, it is noted the film taken by Abraham Zapruder, Dallas, Texas, was sold by Zapruder to "Life" magazine and a number of the photographs which have appeared in "Life" magazine were apparently taken from this film. Information is not available as to what use has been made of the other films listed above.

Sincerely yours,

J. Edgar Hoover

u with J. R. Malley
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Submitted by

Robert J. E. Hughes
Dallas, Texas

Abraham Zapruder
Dallas, Texas

Orville O. Nix
Dallas, Texas

TV station KRLD-TV
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This can hardly be called even a rudimentary list of the films known to exist at that early date in the investigation, two months after the assassination. For obvious example, the Mary Muchmore movies are not listed. But one of the more exciting things is Hoover's own description of what the Hughes movie contains: "The Presidential motorcade ... on Elm Street, directly in front of the Texas School Book Depository Building." In other words, directly under that sixth-floor window. Yet this movie is not in evidence, not in the files! The modest opinion expressed in the routing slip on the next page is, "At the very least, I think that our Ruby specialists should see the film re the Oswald shooting." The very least indeed when the murder of the President was supposedly being investigated!

C A 73-0322
EXHIBIT 8

(1) 2-1

JUL 16 1964

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
P. O. BOX 198

United States Department of Justice

MJS:ija

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF TEXAS
DALLAS 1, TEXAS

REGISTERED MAIL
RETURN RECEIPT REQUESTED

75221
July 10, 1964

AIRMAIL

Mr. Howard Willens
President's Commission on the
Assassination of President Kennedy
200 Maryland Ave. N.E.
Washington, D.C. 20002

Dear Howard:

Mr. Rudy Brenk brought the enclosed film into this office today.

He states that there are no other persons that took film at the scene of the assassination so far as he knows.

I am attaching a list of photographers who furnished film for "President Kennedy's Final Hour".

Mr. Brenk wants the film back unless the Commission wants to buy it. It costs $24.95.

Sincerely yours,

Barefoot Sanders
United States Attorney

Martha Joe Stroud

Martha Joe Stroud, Assistant
United States Attorney

Enclosures - 2

Mr. Dick Allen .....4222 Summitt Ridge St. Dallas, Texas - FM4-5055

George Shawver ......4926 [illegible] Dr. Dallas, Texas....FF4-1119

[illegible] Parr ....4448 [illegible], Dallas, Texas.... [illegible]-5318

[illegible] ......4404 Ivy. [illegible]...Dallas, Texas ...[illegible]-7240

[illegible] ......605 [illegible] Dr., Garland, Texas - [illegible]-2397

Earl [illegible] .....292 Alta [illegible] .... Garland, Texas

Dr. Howard Zeigler ....6956 Lakeshore , Dallas, Texas

Irving Gewertz ....6422 [illegible] Hill Lane - Dallas, Texas

Charles Montenbaum --5109 [illegible] Blvd. Dallas, Texas

Larry Thomas -- Rt. 1, Box [illegible], Grand Prairie, Texas .

~~[illegible]... [illegible] Dallas, Texas~~

~~[illegible]...[illegible]~~

Allen Rhodes ...4640 Cole St., Apt. 27, Dallas, Texas

Albert [illegible] ...1314 [illegible] St.., Irving, Texas

George Kincaid ...5033 [illegible] St.. Dallas, Texas

Joe Brown ....7009 [illegible] St. , Fort Worth, Texas

C.W. Gray 11327 Fernald St., Dallas, Texas

Mrs. Hazel [illegible] ..[illegible] Dallas, Texas

Mr. Speight ....2729 Crestri[illegible] Dr. Dallas, Texas

Mr. John Martin ....[illegible]

DL 89-43
NY 89-75
NPO

RE: MOVIES TAKEN
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CA 78-0322
EXHIBIT 9

FBI

Date: 12-19-63

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL AIR MAIL (Priority or Method of Mailing)

TO: DIRECTOR, FBI (105-82555)

FROM: SAC, DALLAS (100-10461)

LEE HARVEY OSWALD, aka
IS R CUBA

Rebutel to Dallas 12-17-63.

There are enclosed ten copies of a letterhead memorandum setting forth the names of individuals and their addresses known to the Dallas Office who took photographs or films of the Presidential Motorcade 11-22-63. Two copies of the letterhead memorandum are being designated locally to the Secret Service.

No effort is being made to set forth the names of news media throughout the country who made photographs or films in Dallas on 11-22-63.

3 - Bureau (105-82555)(Encs. 10)
2 - Dallas (100-10461)

GWC:mvs
(5)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

Sec 30

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

Dallas, Texas
December 19, 1963

Individuals Known to Have Taken Photographs or Films of the Presidential Motorcade, November 22, 1963, and other Photographs Relating to the Assassination of President KENNEDY

The following individuals are known to the Dallas Office of the Federal Bureau of Investigation to have taken photographs or film of the Presidential Motorcade in Dallas, Texas on November 22, 1963.

Mr. H. W. Betzner, Jr., 5922 Valesco Street, Dallas, Texas	120 roll film; original returned to Betzner, November 26, 1963
Charles Bronson, Chief Engineer, Zarel Mfg. Co., 9230 Denton Drive, Dallas, Texas	Original in his possession
Robert Earl Croft 709 Clarkson, Denver, Colorado	One roll 36 exposures, Kodachrome X
Mr. Cary Field, Student, North Texas State University, Denton, Texas	
Mr. Robert J. E. Hughes 6615 Hursey, Apt. 3 Dallas, Texas	50' roll 8 mm Kodachrome movie film; original returned to Hughes
Mrs. Mary Ann Moorman 2832 Ripplewood, Dallas, Texas	Original photographs in her possession

COPIES DESTROYED

44 DEC 26 1972

Information Re Photographs and Films of Assassination

December 19, 1963

Mrs. Marie Muchmore 2980 Randy Lane, Farmer's Branch, Texas Employed Justin McCarty Dress Wholesaler, 707 Young Street, Dallas, Texas	Moving pictures; original in her possession
Orville O. Nix 2527 Denley Drive, Dallas, Texas	One roll 8 mm color film depicting Presidential Motorcade turning on Houston Street and approaching the Elm Street intersection to the north; original in Nix' possession
Stuart L. Reed Post Office Box 196, Balboa Heights, Canal Zone	Mr. Reed's daughter, F. A. Holley, 1207 Sunnyside, Dallas, Texas, believed to have the photographs taken by Mr. Reed, which are three 35 mm transparencies depicting apprehension of Lee Harvey Oswald at Texas Theater, November 22, 1963
Jack A. Weaver 829 Fidelity Union Life Building, Dallas. Texas	One photograph of President's car making right-hand turn on to Houston Street from Main showing the Texas School Book Depository building in background
Mrs. E. H. Westfall 4216 San Carlos Dallas, Texas	Two color photographs of Texas School Book Depository building, both photographs showing the pertinent window on the sixth floor as being closed, the photograph taken on the morning of November 22, 1963

Information Re Photographs and Films of Assassination	December 19, 1963	
Abraham Zapruder 3909 Marquette Street Dallas, Texas		One roll 8 mm movie film showing the motorcade approaching Texas School Book Depository building and President subsequently being shot

CA 78-0322
EXHIBIT 10

UNITED STATES GOVERNMENT

Memorandum

TO: SAC, DALLAS (89-43) DATE: 11/25/63

FROM: SA MILTON L. NEWSOM

SUBJECT: ASSASSINATION OF PRESIDENT KENNEDY

Mr. WALTER BENT, Sales Service Manager, Eastman Kodak Company, Processing Service Division, 3131 Manor Way, and Mr. CHARLES BRONSON, Chief Engineer, Zarel Manufacturing Company, 9230 Denton Drive, were contacted by SAS MILTON L. NEWSOM and EMORY E. HORTON on 11/25/63.

Films taken by Mr. BRONSON at the time of the President's assassination including 35 mm. color slides which were taken with a Leica Camera, and 8 mm. Kodachrome film were reviewed. These films failed to show the building from which the shots were fired. Film did depict the President's car at the precise time shots were fired; however, the pictures were not sufficiently clear for identification purposes.

One of the 35 mm. color slides depicted a female wearing a brown coat taking pictures from an angle, which would have, undoubtedly, included the Texas School Book Depository Building in the background of her pictures. Her pictures evidently were taken just as the President was shot. Approximately five other individuals in the [illegible] were taking pictures at the time.

Arrangements have been made with Mr. WALTER BENT whereby each package of film received for processing by that company, will be returned to the owner of the film with a slip of paper attached requesting the individual to notify the local FBI Office in the event pictures in the package reflect the scene when the President was assassinated. Mr. BENT advised this company does the processing for all the southwestern states. An airtel is being furnished southwest offices notifying them of the above arrangements in the event they receive calls of this type.

2 - Dallas
MLN/ss
(2)

89-43-493

SEARCHED INDEXED
SERIALIZED FILED
NOV 25 1963
FBI — DALLAS

0004

CA 78-0322
EXHIBIT 11

November 25, 1963

MEMORANDUM FOR MR. MOYERS

It is important that all of the facts surrounding President Kennedy's Assassination be made public in a way which will satisfy people in the United States and abroad that all the facts have been told and that a statement to this effect be made now.

1. The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial.

2. Speculation about Oswald's motivation ought to be cut off, and we should have some basis for rebutting thought that this was a Communist conspiracy or (as the Iron Curtain press is saying) a right-wing conspiracy to blame it on the Communists. Unfortunately the facts on Oswald seem about too pat--too obvious (Marxist, Cuba, Russian wife, etc.). The Dallas police have put out statements on the Communist conspiracy theory, and it was they who were in charge when he was shot and thus silenced.

3. The matter has been handled thus far with neither dignity nor conviction. Facts have been mixed with rumour and speculation. We can scarcely let the world see us totally in the image of the Dallas police when our President is murdered.

I think this objective may be satisfied by making public as soon as possible a complete and thorough FBI report on Oswald and the assassination. This may run into the difficulty of pointing to inconsistencies between this report and statements by Dallas police officials. But the reputation of the Bureau is such that it may do the whole job.

File
HPW

The only other step would be the appointment of a Presidential Commission of unimpeachable personnel to review and examine the evidence and announce its conclusions. This has both advantages and disadvantages. It think it can await publication of the FBI report and public reaction to it here and abroad.

I think, however, that a statement that all the facts will be made public property in an orderly and responsible way should be made now. We need something to head off public speculation or Congressional hearings of the wrong sort.

Nicholas deB. Katzenbach
Deputy Attorney General

It is important that all of the facts surrounding President Kennedy's Assassination be made public in a way which will satisfy people in the U.S. and abroad that all the facts have been told and that a statement to this effect be made now.

1. The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial.

2. Speculation about Oswald's motivation ought to be cut off, and we should have some basis for rebutting the thought that this was a Communist conspiracy or (as the Iron Curtain press is saying) a right-wing conspiracy to blame it on the Communists. Unfortunately the facts re Oswald seem clear but too pat - too obvious (Marxist, Cuba, Russia wife, etc.). The Dallas police have put out statements on the Communist conspiracy theory, and it was they who were in charge when he was shot and thus silenced.

3. The matter has been handled thus far with neither dignity nor conviction. Facts have been mixed with rumor and speculation. We can scarcely let the world see us, totally in the image of the Dallas police when our President is murdered.

~~Perhaps these objectives will be satisfied by releasing a thorough FBI report on Oswald. The difficulty will be that as such it comes from the~~

I think this objective may be satisfied by making public as soon as possible a complete and thorough FBI report on Oswald and the assassination. This may run into the difficulty of pointing to inconsistencies between this report and statements by Dallas police officials. But the reputation of the Bureau is such that it may do the whole job.

The ~~at~~ only other step would be the appointment of a Presidential Commission of unimpeachable personnel to review and examine the evidence and announce its conclusions. ~~This step is unprecedented, might take time, and would, above all, be carefully handled,~~ This has both advantages and disadvantages. ~~A~~ I think it can await publication of the FBI report and public reaction to it here and abroad.

I think, however, that a statement ~~to the effect~~ that all the facts will be made public promptly in an orderly and responsible way should be made now. We need something to head off public speculation or Congressional hearings of the wrong sort.

November 25, 1963

MEMORANDUM FOR MR. MOYERS

It is important that all of the facts surrounding President Kennedy's Assassination be made public in a way which will satisfy people in the United States and abroad that all the facts have been told and that a statement to this effect be made now.

1. The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial.

2. Speculation about Oswald's motivation ought to be cut off, and we should have some basis for rebutting thought that this was a Communist conspiracy or (as the Iron Curtain press is saying) a right-wing conspiracy to blame it on the Communists. Unfortunately the facts on Oswald seem about too pat—too obvious (Marxist, Cuba, Russian wife, etc.). The Dallas police have put out statements on the Communist conspiracy theory, and it was they who were in charge when he was shot and thus silenced.

3. The matter has been handled thus far with neither dignity nor conviction. Facts have been mixed with rumour and speculation. We can scarcely let the world see us totally in the image of the Dallas police when our President is murdered.

I think this objective may be satisfied by making public as soon as possible a complete and thorough FBI report on Oswald and the assassination. This may run into the difficulty of pointing to inconsistencies between this report and statements by Dallas police officials. But the reputation of the Bureau is such that it may do the whole job.

2 U XEROX 62-109060-1399

DEC 9 1963

ENCLOSURE

Sec'y

The only other step would be the appointment of a Presidential Commission of unimpeachable personnel to review and examine the evidence and announce its conclusions. This has both advantages and disadvantages. I think it can await publication of the FBI report and public reaction to it here and abroad.

I think, however, that a statement that all the facts will be made public property in an orderly and responsible way should be made now. We need something to head off public speculation or Congressional hearings of the wrong sort.

Nicholas deB. Katzenbach
Deputy Attorney General

UNITED STATES GOV

Memorana

TO : MR. BELMONT

DATE: 11/25/63

FROM : C. A. Evans

cc Mr. Belmont
Mr. Evans
Mr. Mohr
Mr. DeLoach
Mr. Rosen
Mr. Sullivan

SUBJECT: ASSASSINATION OF PRESIDENT KENNEDY

Deputy AG Katzenbach handed to me this morning the attached memorandum which he has sent to Bill Moyers, who will be the principal assistant to President Johnson in the White House. Katzenbach said that this memorandum was prepared by him after his discussions with the Director yesterday.

It is Katzenbach's feeling that this matter can best be handled by making public the results of the FBI's investigation. He thought time was of the essence, but that the report, of course, had to be accurate. He said he was thinking in terms of its release by the end of the week if at all possible.

Katzenbach further pointed out that he is having no success in selling the White House on the idea that this report should be released there. He understands that President Johnson has expressed himself as feeling this should be handled on a Department of Justice level. It is Katzenbach's belief that it would be most inappropriate for Robert Kennedy to issue this report. Katzenbach asked that the Director be informed of his feeling that, if the report is not released by the White House, then it should be made available publicly by the Director, pursuant to Presidential instructions.

ENCLOSURE

1 enclosure

Enclosure

CAE:CSH (7)

FOIPA

REC 16 62-109060-1399

25 DEC 9 1963

XEROX

DEC 9 1963

58 DEC 10 1963

EXHIBIT 12

FBI

Date: 12/11/75

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

TO: DIRECTOR, FBI (100-106670)
ATTENTION: INTD

FROM: SAC, WFO (100-40164) -P-

MARTIN LUTHER KING, JR.
Buded: 12/12/75.

Re Bureau teletype to all offices, 12/9/75.

The following survey conducted by WFO consists only of main files maintained by this office as identified in WFO general indices, pertaining to those individuals, organizations, and titles set forth in pages two and three of referenced Bureau communication; In view of the above circumscribed deliniations of the survey, some main files of this office such as those dealing with demonstrations sponsored by Southern Christian Leadership Conference (SCLC), in which captioned individual was a primary participant, were not located in this main file general indices search. Likewise no Elsur material was located in this general indices main file search, however this would not preclude such material being located in a subsequent general and special indices search for references.

21 DEC 23 1975

To facilitate the sub file descriptions utilized in this main file survey, the following description of the uniform filing procedures utilized by WFO are set forth:

REC 4 100-106670-3990

ST-103

2-Bureau
1-WFO
JPC:ldf
(3)

Approved _____ Sent _____ M Per _____

57 JAN 6 1976 Special Agent in Charge

U.S.Government Printing Office: 1972 — 455-574

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depicted on pages 2 and 3 of referenced
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KIN

WF 44-703*

4B ASSASSINATION OF MARTIN LUTHER KING, JR.
CIVIL RIGHTS
(OO:ME)

1C File consists of WFO's investigation of the assassination of MARTIN LUTHER KING, JR.

1D 9 volumes main file (799 serials).
5 volumes sub C (51 items).
Sub C includes photographs of suspects, fingerprints and palm prints of suspects, wanted flyers of suspect's, agent notes of passport office file reviews re suspects, interview logs and waivers of suspects, handwriting samples of suspects, a letter describing the special WFO passport office project with a list of available Passport Office personnel, and a tape recording of a conversation between [redacted] and (b)(7)(C)
a person identified as

- 2 -

C.A 78-0322
EXHIBIT 13

FBI

Date: 1/7/77

Transmit the following in _____ (Type in plaintext or code)

Via TELETYPE (Precedence)

563

FM DALLAS (89-43) (P)

TO DIRECTOR (62-117290) PRIORITY

BT

E F T O

ATTN: GENERAL INVESTIGATIVE DIVISION, CIVIL RIGHTS SECTION, CONGRESSIONAL INQUIRY UNIT.

HOUSE SELECT COMMITTEE ON ASSASSINATIONS.

RE BUREAU TELETYPE TO ALL SACS, JANUARY 6, 1977.

RESULTS OF FILE INVENTORY, DALLAS DIVISION, AS FOLLOWS:

1. ASSASSINATION OF PRESIDENT JOHN FITZGERALD KENNEDY, DALLAS, TEXAS, NOVEMBER 22, 1963, MISCELLANEOUS - INFORMATION CONCERNING. OO: DALLAS, BUREAU FILE 62-109060. DALLAS FILE 89-43.

THE DALLAS OFFICE IS OFFICE OF ORIGIN IN CAPTIONED CASE.

THIS FILE CONSISTS OF 122 VOLUMES, INCLUDING NINE VOLUMES OF NEWSPAPER CLIPPINGS. THE 122 VOLUMES CONTAIN 9930 SERIALS, WITH MANY INDIVIDUAL SERIALS CONTAINING NUMEROUS PAGES. THE

1 - Dallas
UHS:bjw
(1)

89-43-4458

Sent 1830Z M Per

Special Agent in Charge

GPO 1975 O - 569-820

FBI

Date:

Transmit the following in _____ (Type in plaintext or code)

Via _____ (Precedence)

DL 89-43 PAGE TWO

ABOVE VOLUMES ARE APPROXIMATELY 13 LINEAR FEET IN SIZE. THIS FILE ALSO CONTAINS 301 EXHIBITS WITH MANY INDIVIDUAL EXHIBITS CONTAINING NUMEROUS PHOTOGRAPHS AND OTHER DOCUMENTS. THE EXHIBITS ARE APPROXIMATELY TWO LINEAR FEET IN SIZE.

2. LEE HARVEY OSWALD, AKA; INTERNAL SECURITY - RUSSIA - CUBA. OO: DALLAS. BUREAU FILE 105-82555, DALLAS FILE 100-10461.

THE DALLAS OFFICE IS OFFICE OF ORIGIN IN CAPTIONED CASE.

THIS FILE CONSISTS OF 105 VOLUMES, INCLUDING SIX VOLUMES OF TRANSLATIONS, THREE VOLUMES OF INVENTORY WORKSHEETS, AND ONE VOLUME OF OSWALD WRITINGS. THE 105 VOLUMES CONTAIN 9360 SERIALS, WITH MANY INDIVIDUAL SERIALS CONTAINING NUMEROUS PAGES. THE ABOVE VOLUMES ARE APPROXIMATELY 13 LINEAR FEET IN SIZE. THIS FILE ALSO CONTAINS 498 EXHIBITS, MANY INDIVIDUAL EXHIBITS CONTAINING NUMEROUS PHOTOGRAPHS AND OTHER DOCUMENTS. THESE EXHIBITS ARE APPROXIMATELY 2½ LINEAR FEET IN SIZE. IN ADDITION TO THE ABOVE EXHIBITS, ADDITIONAL BULKY EXHIBITS CONTAINING NUMEROUS PHOTOGRAPHS AND OTHER DOCUMENTS AS WELL AS COPIES OF WARREN COMMISSION EXHIBITS ARE LOCATED IN A SECURE METAL CABINET WITH THE TOTAL VOLUME OF THESE EXHIBITS BEING

Approved: _____ Special Agent in Charge Sent _____ M Per _____

GPO : 1975 O - 569-929

FD-36 (Rev. 2-14-74)

F B I

Date:

Transmit the following in _____ (Type in plaintext or code)

Via _____ (Precedence)

DL 89-43 PAGE THREE

APPROXIMATELY 15 CUBIC FEET.

3. MARINA NIKOLAEVNA PORTER, AKA, MARINA OSWALD, IS-R, OO: DALLAS, BUREAU FILE 105-126032, DALLAS FILE 105-1435.

THE DALLAS OFFICE IS OFFICE OF ORIGIN IN THIS CASE. THIS FILE CONSISTS OF ONE VOLUME CONTAINING 182 SERIALS. THIS FILE CONTAINS FOUR EXHIBITS IN THE SUB A SECTION.

4. JACK L. RUBY, AKA; LEE HARVEY OSWALD (DECEASED) - VICTIM. CR. BUREAU FILE 44-24016, DALLAS FILE 44-1639.

THE DALLAS OFFICE CONDUCTED THE PRIMARY SUBSTANTIVE INVESTIGATION IN CAPTIONED CASE. THIS FILE CONSISTS OF 94 VOLUMES, INCLUDING SEVEN VOLUMES OF NEWSPAPER CLIPPINGS. THESE 94 VOLUMES CONTAIN 6455 SERIALS, WITH MANY INDIVIDUAL SERIALS CONTAINING NUMEROUS PAGES. THE ABOVE VOLUMES ARE APPROXIMATELY 11 LINEAR FEET IN SIZE. THIS FILE ALSO CONTAINS 186 EXHIBITS, WITH MANY INDIVIDUAL EXHIBITS CONTAINING NUMEROUS PHOTOGRAPHS AND OTHER DOCUMENTS. THE EXHIBITS ARE APPROXIMATELY FIVE LINEAR FEET IN SIZE.

5. THE PRESIDENTS COMMISSION ON THE ASSASSINATION OF

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

GPO : 1975 O - 569-929

FBI

Date:

Transmit the following in _____ (Type in plaintext or code)

Via _____ (Precedence)

DL 89-43 PAGE FOUR

PRESIDENT KENNEDY. BUREAU FILE 62-109090. DALLAS FILE 62-3588.

THE DALLAS OFFICE SUBMITTED ROUTINE COMMUNICATIONS. A REVIEW OF THE 26 VOLUMES CONTAINING THE RESULTS OF HEARINGS BEFORE THE PRESIDENTS COMMISSION IS SET FORTH IN THIS FILE. THIS REVIEW WAS CONDUCTED BY SAS OF THE DALLAS OFFICE.

THIS FILE CONSISTS OF TWO VOLUMES CONTAINING 189 SERIALS. THE ONLY EXHIBITS IN CONNECTION WITH THIS FILE ARE BOOKS DEALING WITH THE PRESIDENTS COMMISSION AND TWO AFFIDAVITS FROM SAS OF THE FBI.

[redacted]

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Approved: _____ Sent _____ M Per _____
Special Agent in Charge

GPO : 1975 O - 569-929

D-36 (Rev. 2-14-74)

FBI

Date:

Transmit the following in _____
(Type in plaintext or code)

Via _____
(Precedence)

DL 89-43 PAGE FIVE

[redacted]

b7E

FOR THE ADDITIONAL INFORMATION OF THE BUREAU, THE DALLAS OFFICE HAS ESTABLISHED A SPECIAL JOHN F. KENNEDY ASSASSINATION FILES INDICES CONSISTING OF APPROXIMATELY 40 LINEAR FEET OF 3" BY 5" INDEX CARDS. THESE INDEX CARDS ARE MAINTAINED SEPARATE FROM THE GENERAL INDICES. ALSO ESTABLISHED WAS A SPECIAL COMMUNICATIONS INDEX IN THE EARLY MONTHS OF THE JFK ASSASSINATION INVESTIGATION CONSISTING OF APPROXIMATELY 2½ LINEAR FEET OF 5" BY 8" INDEX CARDS WHICH ARE ALSO MAINTAINED SEPARATE FROM THE GENERAL INDICES.

NO KNOWN MATERIAL RELATIVE TO THE MARTIN LUTHER KING, JR. ASSASSINATION (MURKIN) AND THE ABOVE LISTED FILES RELATED TO THE JOHN F. KENNEDY ASSASSINATION HAVE BEEN DESTROYED UNDER THE DESTRUCTION OF FILES AND RECORDS PROGRAM.

BT

#

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

GPO : 1975 O - 569-929

C A 78-0322
EXHIBIT 14

NR0075 3062254

RR AFD

DE HQ

R 060052Z JAN 77

FM DIRECTOR (62-117290)

TO ALL SACS ROUTINE

CLEAR

HOUSE SELECT COMMITTEE ON ASSASSINATIONS

REFERENCE BUREAU TELETYPE NOVEMBER 24, 1976.

REFERENCED BUREAU TELETYPE SET FORTH THE FACT THAT THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS (HSC) HAS BEEN CREATED BY THE NINETY-FOURTH CONGRESS TO INVESTIGATE THE DEATHS OF JOHN F. KENNEDY AND MARTIN LUTHER KING, JR.

IN CONNECTION WITH THE HSC INVESTIGATION THE UNITED STATES DEPARTMENT OF JUSTICE HAS INSTRUCTED THE BUREAU TO MAKE AVAILABLE, FOR REVIEW BY THE HSC STAFF [illegible] ALL [illegible] REGARDING THE JOHN F. KENNEDY ASSASSINATION AND MARTIN LUTHER KING, JR., ASSASSINATION AS WELL AS CLOSELY RELATED CASES.

IN ORDER TO PREPARE FOR THE HSC REVIEW, YOU ARE REQUESTED

89-43-9952
[illegible]
JAN 6 1977
FBI — DALLAS
[illegible]

PAGE TWO (62-117285) CLEAR

TO PREPARE AN INVENTORY OF ALL MATERIALS AVAILABLE IN YOUR [illegible] OFFICE REGARDING THE CASES SET FORTH BELOW. IT IS NOTED THAT [illegible] BUREAU TELETYPE DATED DECEMBER 9, 1975, TITLED MARTIN LUTHER [illegible] KING, JR., BUREAU FILE 100-106670, YOU WERE REQUESTED TO [illegible] INVENTORY ALL PERTINENT MATERIAL RELATIVE TO THE MARTIN LUTHER [illegible] KING, JR., ASSASSINATION. IT IS, THEREFORE, NOT NECESSARY FOR [illegible] FIELD OFFICE AND LEGATS TO REINVENTORY THAT [illegible] AT [illegible]. FILES TO BE INCLUDED IN YOUR CURRENT INVENTORY ARE:

(1) THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY
NOVEMBER 22, 1963
OO: DALLAS BUREAU FILE 62-[illegible]

(2) LEE HARVEY OSWALD
IS - R - CUBA
OO: DALLAS BUREAU FILE 105-[illegible]

(3) MARINA N. OSWALD
IS - R
OO:DL BUREAU FILE 105-126432

(4) JACK RUBY
LEE HARVEY OSWALD - VICTIM
CIVIL RIGHTS BUREAU FILE [illegible]-44-24016

(5) PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY (WARREN COMMISSION)

BUREAU FILE 62-109060

IN PREPARING FIELD OFFICE INVENTORIES FOR ALL MAIN FILES RELATING TO ABOVE, THE FOLLOWING SPECIFIC ITEMS MUST BE INCLUDED: (A) FIELD OFFICE FILE NUMBER, INCLUDING OFFICE SYMBOLS; (B) TITLE AND CHARACTER OF FILE; (C) VERY BRIEF DESCRIPTION OF FILE CONTENTS, INCLUDING WHETHER IT CONTAINS ANY TAPES, ELECTRONIC SURVEILLANCE LOGS AND/OR TRANSCRIPTS, PHOTOGRAPHS, BULKY EXHIBITS AND ANY OTHER SIMILAR MATERIAL WHICH IS IN ADDITION TO ROUTINE CORRESPONDENCE. IF ANY OF THE ABOVE (TAPES, ETC.) IS NOTED, VERY BRIEFLY DESCRIBE. INCLUDE STATEMENT DESCRIBING ALL SUBFILES RELATING TO THE MAIN FILE; (D) ACCOUNT FOR SIZE/SCOPE OF FILE AND RELATED MATTERS. FOR EXAMPLE, INDICATE NUMBERS OF SECTIONS AND SERIALS IN FILE; VOLUME OF LOGS/TRANSCRIPTS AND BULKY EXHIBITS; ETC.

IT IS FURTHER NOTED THAT IN REFERENCED BUREAU TELETYPE OF NOVEMBER 24, 1976, YOU WERE REMINDED OF THE FACT THAT RECORDS POSSESSING EVIDENTIARY, INTELLIGENCE OR HISTORICAL

VALUE SUCH AS THE KENNEDY AND KING ASSASSINATION INVESTIGATIONS ARE EXCLUDED FROM OUR DESTRUCTION OF FILES AND RECORDS PROGRAM AND SHOULD NOT BE DESTROYED.

YOU ARE, THEREFORE, INSTRUCTED TO REPLY BY TELETYPE SETTING FORTH YOUR INVENTORY REGARDING THE ABOVE LISTED JOHN F. KENNEDY ASSASSINATION FILES. IN ADDITION, YOU ARE REQUESTED TO ADVISE WHETHER ANY MATERIAL RELATIVE TO THE MARTIN LUTHER KING, JRNR ASSASSINATION (MLKMIA) AND THE ABOVE LISTED FILES RELATED TO THE JOHN F. KENNEDY ASSASSINATION MAY HAVE BEEN DESTROYED UNDER THE DESTRUCTION OF FILES AND RECORDS PROGRAM. SO, INCLUDE A LISTING OF SAID FILES. THE HANDLING OF THIS MATTER MUST BE UNDERTAKEN IMMEDIATELY AND GIVEN THE HIGHEST PRIORITY. ADVISE YOUR RESULTS ATTENTION: GENERAL INVESTIGATIVE DIVISION, CIVIL RIGHTS SECTION, CONGRESSIONAL INQUIRY UNIT. ALL LEGATS ADVISED SEPARATELY.

CA 78-0322
EXHIBIT 15

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

DATE: 2/10/64

FROM : W. D. Griffith

SUBJECT: LEE HARVEY OSWALD, aka.
IS - R - CUBA

ASSASSINATION OF PRESIDENT JOHN F. KENNEDY
11/22/63, DALLAS, TEXAS

JACK L. RUBY, aka.
LEE HARVEY OSWALD, aka - Victim (Deceased)
CR

Pursuant to your instructions we have worked out a new procedure to insure the President's Commission has been furnished photographs of every piece of physical evidence received in any of the three captioned cases and/or to furnish photographs of new evidence that we receive. I have coordinated this procedure with Inspector Malley, SAC Shanklin in Dallas and Supervisor Lenihan in the Domestic Intelligence Division.

Henceforth as any new evidence is received in the Laboratory, subjected to examination and Laboratory report submitted, the Laboratory report will be directed to Dallas. Four 8 x 10 photographs will be furnished to Dallas along with Laboratory report. The photographs will have been assigned a listing number in the Laboratory and this number will appear on the photographs so that our master list of photographs furnished to the Commission will be complete. Dallas will be instructed to incorporate results of the Laboratory examination in an investigative report and attach three photographs to three copies of each investigative report. One photograph will be attached to the copy of the report that bears the SAC's initials and will eventually be the Bureau file copy. Dallas will flag the other two reports to which photographs are attached as "Commission" copies and in this manner the Commission will receive the photographs along with the report that sets forth the investigation to which the photographs pertain. The fourth photograph furnished to Dallas will serve as Dallas's file copy. Domestic Intelligence Division and the Investigative Division will be furnished copies of our outgoing Laboratory report along with duplicate photographs of those being transmitted to Dallas.

1 - Mr. Belmont
2 - Mr. Sullivan (Mr. Lenihan)
3 - Mr. Rosen (Mr. Malley, Mr. Rogge, Mr. Hines)

WDG:mb (6)

FEB 18 1964

SOVIET SECTION

ORIGINAL FILED IN

Memorandum to Mr. Conrad
Re: Lee Harvey Oswald

With respect to physical evidence currently being sent to the Bureau pursuant to field-wide instructions, it would be undesirable if photographs were transmitted to the Commission before the Commission had received results of investigation which pertained to such photographs. In furnishing photographs to the Commission in the future we will be alert to insure no photographs are sent from the Laboratory if the investigation pertaining to such photographs has not already been incorporated in an investigative report. If such investigation has been previously reported, we will transmit the photographs to the Commission under cover of letter as we have done in the past.

If we are unable to determine readily whether investigation which relates to a particular photograph has been incorporated in an investigative report, we will send four copies of the photograph to Dallas with a request that Dallas determine whether the investigation has been reported. If no investigative report has been submitted, Dallas will submit one and attach photographs as exhibits as indicated above. If the report has been previously submitted, Dallas will prepare a letterhead memorandum suitable for dissemination identifying the report in which the pertinent information is set forth and will attach three of the photographs as exhibits. The Seat of Government Supervisor will then disseminate the letterhead memorandum with exhibits attached.

There will be a number of instances when the Laboratory, as repository only of the physical evidence, has not conducted any examination of such evidence. In those instances, if the evidence has been referred to and described in an investigative report, the Laboratory will furnish the photograph to the Commission by letter. If it has not or we cannot determine readily, we will send photographs to Dallas and Dallas will resolve the problem in accordance with the above-described arrangements.

RECOMMENDATION: None. For information.

CA 78-0322
EXHIBIT 16

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1107

HAROLD WEISBERG, APPELLANT

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*

Appeal from the United States District Court
from the District of Columbia

(D.C. Civil Action No. 75-0226)

Argued March 20, 1979

Decided April 28, 1980

James H. Lesar for appellant.

John H. Korns, Assistant United States Attorney, with whom *Earl J. Silbert*, United States Attorney, at the time the brief was filed, *John A. Terry*, *Michael W. Farrell* and *Michael J. Ryan*, Assistant United States Attorneys, were on the brief, for appellees.

Before BAZELON, *Senior Circuit Judge*, and ROBINSON, *Circuit Judge*, and VAN DUSEN,* *United States Circuit Judge* for the Third Circuit.

Opinion for the Court filed by *Circuit Judge* ROBINSON.

ROBINSON, *Circuit Judge*: Harold Weisberg appears here for the third time in his decade-long crusade under the Freedom of Information Act (the Act)[1] for documents bearing on the assassination of President Kennedy.[2] The present appeal is from a summary judgment in the District Court holding that the Department of Justice has disclosed all available material within the scope of Weisberg's quest.[3] Our review of the record constrains us to conclude that the Department's demonstration on that score was inadequate for purposes of summary judgment. Accordingly, we reverse the judgment and remand the case for further proceedings.

I

In 1970, Weisberg petitioned the Federal Bureau of Investigation (FBI) for release of spectrographic analyses of several items of Kennedy-assassination evidence.[4] The FBI denied his request, claiming that the analyses were protected from disclosure by Exemption

* Sitting by designation pursuant to 28 U.S.C. § 291(a) (1976).

[1] 5 U.S.C. § 552 (1976).

[2] Our previous decisions are *Weisberg* v. *Department of Justice (Weisberg I)*, 160 U.S.App.D.C. 71, 489 F.2d 1195 (*en banc* 1973), *cert. denied*, 416 U.S. 993, 94 S.Ct. 2405, 40 L.Ed.2d 772 (1974); *Weisberg* v. *Department of Justice (Weisberg II)*, 177 U.S.App.D.C. 161, 543 F.2d 308 (1976).

[3] *Weisberg* v. *Department of Justice*, 438 F.Supp. 492 (D.D.C. 1977).

[4] See *Weisberg I*, *supra* note 2, 160 U.S.App.D.C. at 72-73, 489 F.2d at 1196-1197.

7 of the Act,[5] a provision shielding investigatory files compiled for law enforcement purposes.[6] In 1973, this court, sitting *en banc*, upheld that determination.[7] Following our decision, however, Congress amended the Act and narrowed the scope of Exemption 7.[8]

Weisberg then renewed his demands for investigatory data, directing them to both the FBI and the Atomic Energy Commission.[9] Although some documents were disclosed, Weisberg felt that the agencies had made an inadequate response, and attempted to establish through interrogatories that there were additional records not provided to him.[10] On the agencies' motion, the District Court quashed the interrogatories as "oppressive," found that the agencies had "complied substantially" with Weisberg's requests, and dismissed his case as moot.[11] We reversed, however, finding material disputed facts regarding the existence of relevant but unreleased records, and holding that Weisberg was entitled to further discovery.[12]

[5] 5 U.S.C. § 552(b)(7) (1976).

[6] See *Weisberg I*, *supra* note 2, 160 U.S.App.D.C. at 72-73, 489 F.2d at 1196-1197.

[7] *Id.* at 73, 489 F.2d at 1197.

[8] Act of Nov. 21, 1974, Pub. L. No. 93-502, § 2, 88 Stat. 1563.

[9] See *Weisberg II*, *supra* note 2, 177 U.S.App.D.C. at 162, 543 F.2d at 309. Weisberg asked both the FBI and the Atomic Energy Commission for copies of any tests performed on Kennedy-assassination evidence for the Warren Commission, including spectrographic and neutron activation analyses. Brief for Appellant at 22-24.

[10] *Weisberg II*, *supra* note 2, 177 U.S.App.D.C. at 162, 543 F.2d at 309.

[11] See *id.* at 162-163, 543 F.2d at 309-310.

[12] *Id.* at 164, 543 F.2d at 311.

In remanding for that purpose, we expressed the opinion that success in locating the desired data might be promoted if Weisberg sought testimony from those who conducted the scientific tests and generated the records, instead of questioning present custodians of the files.[13] Weisberg followed this suggestion and deposed four FBI agents who had personal knowledge of the tests performed.[14] He also resubmitted interrogatories and requests for production of documents to the FBI and the Energy Research and Development Administration (ERDA), the successor to the Atomic Energy Commission.[15] Weisberg then endeavored to depose FBI Special Agent John W. Kilty on the scope of the search that had been made of FBI files.[16] Kilty had earlier executed

[13] *Id.* In venturing this suggestion, however, we did not intend to foreclose Weisberg from directing discovery to individuals who did not personally participate in the investigation, nor, contrary to the Government's view, see Brief for Appellee at 5, do we perceive any such barrier in our opinion. The issue was whether all documents available to Weisberg had been produced, and we remanded for further proceedings to settle that question, without limiting the nature of those proceedings. *Weisberg II, supra* note 2, 177 U.S.App.D.C. at 164, 543 F.2d at 311.

[14] The deponents were Robert A. Frazier, who was employed as a special agent in the laboratory's firearms and toolmarks unit during the investigation of the assassination; Cortlandt Cunningham, who was a supervisor in and presently is chief of that unit; John F. Gallagher, who was assigned to the spectrographic unit and who conducted spectrographic and neutron activation analyses; and Lyndal L. Shaneyfelt, who was assigned as a documents examiner and photograph specialist. See Joint Appendix (J. App.) 438, 520, 581, 720; *Weisberg* v. *Department of Justice, supra* note 3, 438 F.Supp. at 494, 499.

[15] Brief for Appellant at 26.

[16] See Plaintiff's Notice to Take Depositions, Apr. 19, 1977, Record on Appeal (R.) 37.

two affidavits avowing that the files contained no information of interest to Weisberg other than that already furnished him.[17]

The Department of Justice moved for a protective order to prevent the deposition, and to quash an accompanying subpoena, on the grounds that they would be unduly burdensome and would exceed the scope of our earlier remand, which the Department interpreted as confining discovery to testimony by those directly involved in creating the investigative records.[18] The District Court, persuaded that the deposition would impose "an unnecessary burden," granted the motion,[19] and, in a subsequent memorandum opinion, awarded the Department a summary judgment, holding that it had adequately demonstrated that all available documents within the purview of Weisberg's demands had been released, and thus had met its burden of showing that there remained no genuine issue of material fact.[20]

Weisberg now appeals this disposition, contending that summary judgment was improper because the depositions and the responses to his interrogatories identified documents not given to him, and the Department had not substantiated a file search of a caliber sufficient to assure retrieval of all existing data. After carefully reviewing the record before us, we find that there remains a

[17] See Affidavit of John W. Kilty (May 13, 1975), J. App. 53-54; Affidavit of John W. Kilty (June 23, 1975), J. App. 59.

[18] Brief for Appellee at 5. We disagree with the Department's description of the scope of our remand. See note 13 *supra*.

[19] R. (following item 38) (order of Apr. 25, 1977).

[20] *Weisberg* v. *Department of Justice, supra* note 3, 438 F.Supp. at 504.

genuine issue of material fact as to whether all extant documents encompassed by Weisberg's request have been located.[21]

II

Only recently we summarized the principles governing the propriety of granting summary judgment on a claim that an agency has fully discharged the disclosure responsibility imposed by the Act. We said: [22]

> It is well settled in Freedom of Information Act cases as in any others that "[s]ummary judgment may be granted only if the moving party proves that no substantial and material facts are in dispute and that he is entitled to judgment as a matter of law." [23] It is equally settled in federal procedural law that
>
> > [t]he party seeking summary judgment has the burden of showing there is no genuine issue of material fact, even on issues where the other party would have the burden of proof at trial, and even if the opponent presents no conflicting evidentiary matter. "[T]he inferences to be drawn from the underlying facts . . . must

[21] Although Weisberg initially requested documents from both the FBI and the Atomic Energy Commission (later ERDA), see notes 9, 15 *supra* and accompanying text, he subsequently focused exclusively on the file search by the FBI, see notes 16-20 *supra* and accompanying text. His claims thus are now apparently limited to materials in the custody of this agency. See *Weisberg* v. *Department of Justice, supra* note 3, 438 F.Supp. at 493 n.1.

[22] *Founding Church of Scientology* v. *NSA*, —— U.S.App. D.C. ——, ——, 610 F.2d 824, 836 (1979).

[23] Quoting (with footnotes omitted) *National Cable Television Ass'n* v. *FCC*, 156 U.S.App.D.C. 91, 94, 479 F.2d 183, 186 (1973).

> be viewed in the light most favorable to th party opposing the motion." [24]
>
> So, to prevail in a Freedom of Information Act suit "the defending agency must prove that each docu ment that falls within the class requested either ha been produced, is unidentifiable or is wholly exemp from the Act's inspection requirements." [25]

The Department of Justice relies entirely on a claim of complete disclosure. Thus, to prevail, it must demonstrate that there was no genuine issue respecting its assertion that all requested documents in its possession had been both unearthed and unmasked. In an effort to do so, the Department first contends that Agent Kilty's affidavits made a prima facie showing that the file search was thorough enough to uncover any data meeting Weisberg's specifications.[26] The Department further asserts that Weisberg failed to rebut this preliminary showing because the evidence adduced during discovery did not identify anything responsive to his request that has not now been disclosed.[27] When, however, the evi-

[24] Quoting (with footnotes omitted) *United States* v. *General Motors Corp.*, 171 U.S.App.D.C. 27, 48, 518 F.2d 420, 441 (1975) (quoting *United States* v. *Diebold*, 369 U.S. 654, 655, 82 S.Ct. 993, 994, 8 L.Ed.2d 176, 177 (1962)), and citing *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 160, 90 S.Ct. 1598, 1609-1610, 26 L.Ed.2d 142, 155-156 (1970); *Bouchard* v. *Washington*, 168 U.S.App.D.C. 402, 405, 514 F.2d 824, 827 (1975); *Bloomgarden* v. *Coyer*, 156 U.S.App.D.C. 109, 114-116, 479 F.2d 201, 206-208 (1973); *Nyhus* v. *Travel Management Corp.*, 151 U.S.App.D.C. 269, 281, 466 F.2d 440, 442 (1972).

[25] Quoting (with footnotes omitted) *National Cable Television Ass'n* v. *FCC*, *supra* note 23, 156 U.S.App.D.C. at 94, 479 F.2d at 186.

[26] Brief for Appellee at 16.

[27] Brief for Appellee at 19-24.

dence is viewed in the light most favorable to Weisberg—as indubitably it must be [28]—we find that solicited but unproduced material may still be in FBI files.[29] As the record presently stands, the FBI's affirmations on the quality of the search do not eliminate that possibility.[30]

Among the items identified through discovery was a spectrographic plate made during testing of a lead smear from the Dealey Plaza curbstone to determine whether it was caused by a bullet involved in the assassination.[31] The Department does not deny that this plate once existed; instead, in attempted explanation of the FBI's failure to produce the plate, the Department points to a statement by FBI Special Agent William R. Heilman that he believed the plate was discarded in one of the periodic housecleanings by the laboratory.[32] True it is that this morsel of evidence could lead to the conclusion, reached by the District Court, that the spectrographic plate is no longer in the FBI's possession.[33] But Heil-

[28] In ruling on a motion for summary judgment, factual matters are to be viewed in the light most favorable to the party opposing the motion. *Adickes* v. *S. H. Kress & Co.*, *supra* note 24, 398 U.S. at 160, 90 S. Ct. at 1609-1610, 26 L.Ed.2d at 155-156; *Founding Church of Scientology* v. *NSA*, *supra* note 22, —— U.S.App.D.C. at ——, 610 F.2d at 836; *United States* v. *General Motors Corp.*, *supra* note 24, 171 U.S.App.D.C. at 48, 518 F.2d at 441. See also text *supra* at notes 22-25.

[29] See notes 31-42 *infra* and accompanying text.

[30] See notes 43-51 *infra* and accompanying text.

[31] Memorandum from M. J. Stack, Jr., to one Cochran (June 16, 1975), J. App. 191.

[32] The statement apparently was reported in a memorandum from M. J. Stack, Jr., to Mr. Cochran on June 20, 1975. See *Weisberg* v. *Department of Justice*, *supra* note 3, 438 F.Supp. at 504.

[33] *Id.*

man asserts no personal knowledge that the plate really was discarded, so another permissible inference is that Heilman is incorrect in his belief and that the plate remains somewhere in the FBI's domain. A factual question thus persists, and it was inappropriate for the District Court to undertake to resolve it at the stage of summary judgment.[34]

The deposition of FBI Special Agent John F. Gallagher indicated that neutron activation analysis (NAA) was conducted on specimen Q3, a bullet fragment found on the right front seat of the presidential limousine, and on specimen Q15, residues collected by scraping the vehicle's windshield.[35] Weisberg claimed that the computer printouts containing the raw data from the NAA testings have been withheld. Agent Gallagher testified responsively that these data sheets may not have been kept because they were duplicative of information recorded on worksheets at the time of the testing,[36] copies of which have been provided to Weisberg.[37] Again, although the District Court took this evidence as sufficient to demonstrate that the printouts were no longer available,[38] that result was not compelled. Viewing the evidence in the light most favorable to Weisberg, one

[34] See cases cited *supra* notes 22-24.

[35] J. App. 652, 671-673.

[36] J. App. 673:

> Q: [Mr. Lesar] There would have been print-out on it [NAA testing of Q3 and Q15], wouldn't there?
> A: Probably.
> Q: On each of these specimens, would there not.
> A: Probably yes, unless they were judged to be worthless and not kept.

[37] *Weisberg* v. *Department of Justice*, *supra* note 3, 438 F.Supp. at 503.

[38] *Id.*

might easily infer that the printouts were not discarded and are still in the FBI's possession.

FBI Special Agent Robert A. Frazier stated that he had asked another agent, possibly Paul Stombaugh, to conduct an examination of the shirt worn by the President to determine whether two holes in the collar overlapped—a question bearing on whether both holes were made by a single bullet.[39] After comparing this with Frazier's contradictory testimony before the Warren Commission, the District Court concluded that Frazier examined the shirt himself, and therefore that Stombaugh had not made any such examination at all.[40] The court's deduction was hardly illogical but, more to the point, was not inexorably required; while Frazier's Warren Commission testimony may have been the correct version, from aught that appeared his deposition statements could have been more accurate. Weisberg, we repeat, should have been the beneficiary of the inference more favorable to him—that Stombaugh did make the examination and his report is somewhere in FBI files.

Thus, accepting the indications most favorable to Weisberg, at least these three documents should have turned up during the search of FBI files.[41] Since the Department did not show positively that the primary facts are not susceptible to this interpretation, it was not entitled

[39] J. App. 498-502.

[40] *Weisberg* v. *Department of Justice*, *supra* note 3, 438 F.Supp. at 502-503.

[41] We do not mean to suggest that, aside from these three documents, there were no others with respect to which summary judgment was inappropriate. Our remand leaves it to the District Court in the first instance to review the record and determine whether the Department has met the burden we have described.

to summary judgment.[42] The Department asserts, however, that even if the record did not establish that all once-existing records had either been produced or discarded, the affidavit of Agent Kilty adequately demonstrated the thoroughness of the FBI file search and negated any inference that other requested documents still remained in the files.[43]

We have heretofore taken pains to define the role of affidavits in situations of this sort:[44]

> [O]f course, in adjudicating the adequacy of the agency's identification and retrieval efforts, the trial court may be warranted in relying upon agency affidavits, for these "are equally trustworthy when they aver that all documents have been produced or are unidentifiable as when they aver that identified documents are exempt."[45] To justify that degree of confidence, however, supporting affidavits must be " 'relatively detailed' and nonconclusory and must be submitted in good faith."[46] Even if these conditions are met the requester may nonetheless produce countervailing evidence, and if the sufficiency of the agency's identification or retrieval procedure is genuinely in issue, summary judgment is not in order.

[42] *E.g.*, *Adickes* v. *S. H. Kress & Co.*, *supra* note 24, 398 U.S. at 160 & n.22, 90 S.Ct. at 1609-1610 & n.22, 26 L.Ed.2d at 155-156 & n.22.

[43] Brief for Appellee at 16-17.

[44] *Founding Church of Scientology* v. *NSA*, *supra* note 22, —— U.S.App.D.C. at ——, 610 F.2d at 836.

[45] Quoting *Goland* v. *CIA*, —— U.S.App.D.C. ——, ——, 607 F.2d 339, 352 (1978), *cert. denied*, —— U.S. ——, —— S.Ct. ——, —— L.Ed.2d —— (1980).

[46] Quoting (with footnotes omitted) *id.*, in turn quoting *Vaughn* v. *Rosen*, 157 U.S.App.D.C. 340, 346, 484 F.2d 820, 826 (1973), *cert. denied*, 415 U.S. 977, 94 S.Ct. 1564, 39 L.Ed. 2d 873 (1974).

Kilty's affidavit states only that:

> I have conducted a review of FBI files which would contain information that Mr. Weisberg has requested. . . . The FBI files to the best of my knowledge do not include any information requested by Mr. Weisberg other than the information made available to him.[47]

Even if, as the Department argues, this is to be read as an indication of a review of *all* FBI files potentially containing information Weisberg demanded,[48] the affidavit gives no detail as to the scope of the examination and thus is insufficient as a matter of law to establish its completeness.[49] This is particularly so in view of the

[47] Affidavit of John W. Kilty (May 13, 1975), J. App. 53-54. Agent Kilty executed a second affidavit on June 23, 1975, responding to Weisberg's allegations that he had not received documents to which he was entitled, in which Kilty made an almost identical statement about the search. J. App. 59.

[48] Brief for Appellee at 16-17.

[49] In *Goland* v. *CIA*, *supra* note 45, we agreed that the agency's affidavits portrayed well enough the completeness of the search. There, however, the affidavits, in our words, showed that an " 'exhaustive search' " had been made, —— U.S.App.D.C. at ——, 607 F.2d at 353, and gave "detailed descriptions of the searches undertaken, and a detailed explanation of why further searches would be unreasonably burdensome." *Id.* Similarly, in *Exxon Corp.* v. *FTC*, 466 F.Supp. 1088 (D.D.C. 1978), the court found the search adequate, but there too an affidavit executed by the Secretary of the Federal Trade Commission explained in reasonable detail the breadth and methodology of the search, including a description of offices and bureaus that were contacted. *Id.* at 1093-1094. See also *Association of Nat'l Advertisers* v. *FTC*, 1976-1 Trade Cas., ¶ 60,835 (D.D.C. 1976); *Bodner* v. *FTC*, 1974-2 Trade Cas. ¶ 75,329 (D.D.C. 1974). In contrast, the Department of Justice has submitted nothing that informs us of the manner in which the file search for Weisberg was conducted; Kilty's affidavit merely states the fact that he searched and expresses his conclusion that the files contain nothing else sought by Weisberg.

It is worth noting that, despite the indicia of search thoroughness in *Goland* v. *CIA* described above, the CIA subsequently came across hundreds of additional papers encompassed by Goland's original request. —— U.S.App.D.C. at ——, 607 F.2d at 367 (opinion on denial of rehearing). Although this somewhat accidental strike did not detract from the *bona fides* of the affiants, and was insufficient to warrant relief from the judgment we had already pronounced, *id.* at ——, 607 F.2d at 369-372, it serves to highlight the importance of requiring more detailed descriptions of the document search than were offered here.

Perhaps nowhere should that be accorded greater emphasis than here. Weisberg has proffered to us documents released after the District Court's grant of summary judgment that avowedly "directly contradict the Government's representation that the spectographic plate of the curbstone 'smear' has been destroyed," see text *supra* at notes 31-34, and call into question the accuracy of the claim that the FBI's search was intensive. Appellant's Memorandum Regarding Order of the Court (Mar. 13, 1979), at 6. Because we find the agency's affidavits inadequate without resort to this late-arriving information, we do not reach the question whether a remand or a supplementation of the record on appeal would otherwise be appropriate. With reversal of the summary judgment against Weisberg and remand of the case for further proceedings, the litigants on both sides will be free to introduce any additional evidence relevant to the character of the search in issue.

[50] See text supra at notes 31-41.

[51] See cases cited *supra* note 49.

inferences, arising from the other evidence,[50] that some documents once existing may not have been discarded and thus remain in the files.

Unlike earlier cases in which summary judgment was predicated in part on a finding that the document search was complete,[51] the agency affidavits now before us do not denote which files were searched or by whom, do not reflect any systematic approach to document location, and

do not provide information specific enough to enable Weisberg to challenge the procedures utilized. Under these circumstances, issues genuinely existed as to the thoroughness of the FBI search, and consequently summary judgment was improper. Moreover, since resolution of these disputes was essential to disposition of Weisberg's several claims, the District Court should have permitted him to depose at least Agent Kilty and perhaps others who examined the files. Courts have ample authority to protect agencies from oppressive discovery—for example, by limiting the scope of permissible questioning [52]—and surely they need not sanction depositions down to the level of each individual participating in the search.[53] But the court becomes unduly restrictive when it bans further investigation while the adequacy of the search remains in doubt.[54]

The judgment appealed from is reversed, and the case is remanded to the District Court to enable further proceedings consistent with this opinion.

Reversed and remanded.

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[52] See Fed. R. Civ. P. 26(c), 30(d).

[53] *Association of Nat'l Advertisers* v. *FTC*, *supra* note 49, 1976-1 Trade Cas., ¶ 60,835, at 68,644.

[54] See *Founding Church of Scientology* v. *NSA*, *supra* note 22, —— U.S.App.D.C. at ——, 610 F.2d at 836 ("[e]ven if [the agency affidavits are detailed and nonconclusory and are submitted in good faith,] the requester may nonetheless produce countervailing evidence, and if the sufficiency of the agency's identification or retrieval procedure is genuinely in issue, summary judgment is not in order"); *Exxon Corp.* v. *FTC*, *supra* note 49, 466 F.Supp. at 1094 (court should not cut off discovery before record has been suitably developed).

U.S. Department of Justice
Office of Legal Policy

CA 78-0322
EXHIBIT 17

Washington, D.C. 20530

May 13, 1982

Honorable Harold Greene
United States District Court
United States Courthouse
Washington, D. C. 20001

Re: J. Gary Shaw v. Federal Bureau of Investigation
Civil Action No. 82-0756

Dear Judge Greene:

Pursuant to local Rule 3-4(c), I wish to advise you that it has just come to my attention that all of the records at issue in the above-captioned lawsuit are encompassed in a case pending before Judge John Lewis Smith. The latter case is Harold Weisberg v. William Webster, et al., Civil Action Nos. 78-0322 and 78-0420 (consolidated).

Sincerely,

Miriam M. Nisbet
Attorney for Defendant

cc: Judge John Lewis Smith
James H. Lesar, Esq.

Inventory Worksheet
FD-503 (2-18-77)

1A 7

CA 78-0322
EXHIBIT 18

(1)

File No: 100-1046-1A Re: Oswald Date: 7-78 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
301		DL P.D. Photos	1	1	
302		8mm Nix Movie Film	1	1	
303		Minsk Photo	3	3	
304		School Record	4	4	
305		Paper Co Invoice	2	2	
306		" " "	2	2	
307		24" width wrapping Paper	1	1	
308		Tippit Gunshot wound chart	2	2	
309		Autopsy receipt	2	2	
310		List of Items obtained from Robert Oswald	3	3	
311		" " " " "	3	3	
312		Surveillance log	4	4	

FBI/DOJ

Inventory Worksheet
FD-503 (2-18-77)

File No: _____ Re: _____ Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
313		Tipp. H body Diagram	2	2	
314		Photo JFK & wife	1	1	
315		Signed Statement	9	9	
316		Bus & Taxi exhibits	1	1	
317		West Photos	2	2	
318		Piper "	2	2	
319		Bethlehem ~~Childs~~ childrens home records	9	9	
320		2 photos by Mary Ann Moorman	2	2	
321		Photos of Landry Marks	5	5	
322		" " Oswald in Minsk	1	1	
323		Receipt	2	2	
324		letters to Edwards	8	8	

FBI/DOJ

Inventory Worksheet
FD-503 (2-18-77)

File No: _____ Re: _____ Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
325		Komm Sikm	1	1	
326		Receipt	2	2	
327		letter to Coleman	8	8	
328		Photos	6	0	b1
329		Esquire Article	19	19	
330		Photo exhibit #K-46	1	1	
331		8 photos	1	1	
332		Lab Report	1	1	
333		Photo of L. Kessler	1	1	
334		Payroll checks to Oswald	19	19	
335		Photo of P. Van Per Vorn	2	2	
336		Passport photo of Mary L. Patterson	2	2	

FBI/DOJ

Inventory Worksheet
FD-503 (2-18-77)

(4)

File No: _____ Re: _____ Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
337		Photos of De Cubas	2	2	
338		News Article	11	11	
339		National Enquirer Art	8	8	
340		DL PD Photo	14	14	
341		[redacted] & Aerial Photos	9	9	
342		Photo of Church Parking Lot	8	8	

FBI/DOJ

CA 78-0322
EXHIBIT 19A

FD-340 (REV. 8-17-62)

File No. 100-10461 1A-(314)

Date Received 3/23/64

From Mrs. Mary Ann Moorman
(NAME OF CONTRIBUTOR)

2832 Ripplewood
(ADDRESS OF CONTRIBUTOR)

Dallas
(CITY AND STATE)

By C. Brown
(NAME OF SPECIAL AGENT)

To Be Returned Yes ☑ No ☐

Description:

1. Photo Pres. Kennedy + Mrs. Kennedy shortly after shot fired.
2. Photo Dallas motorcycle officer in Presidential Motorcade.

* Bureau 3-24-64

CA 78-0322
EXHIBIT 19B

FD-340 (REV. 8-17-62)

File No. 100-10461- 1A (320)

Date Received 3-23-64

From Mrs. MARY ANN MOORMAN
(NAME OF CONTRIBUTOR)

(ADDRESS OF CONTRIBUTOR)

(CITY AND STATE)

By WJGH
(NAME OF SPECIAL AGENT)

To Be Returned Yes ☑ No ☐

Description:

Two photographs Furnished by Mrs. MARY ANN MOORMAN.

Returned to mrs. mary ann moorman 4/16/64. C. Brown

Sent to lab 3-24-64
Returned 4-7-64 lmb

PHOTOGRAPH NUMBER ONE

PHOTOGRAPH NUMBER TWO