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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 PLAINTIFF,)
)
 V.) CIVIL ACTION NO. 78-322 AND
) 78-420
 WILLIAM H. WEBSTER, ET AL.,)
)
 DEFENDANTS.)

WASHINGTON, D. C.

OCTOBER 5, 1982

THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING
BEFORE THE HONORABLE JOHN LEWIS SMITH, JR., UNITED STATES
DISTRICT JUDGE, AT 10:00 A.M.

APPEARANCES;

ON BEHALF OF THE PLAINTIFF:

JAMES LESAR, ESQ.

ON BEHALF OF THE DEFENDANTS:

HENRY LA HAIE, ESQ.

DAWN T. COPELAND
OFFICIAL COURT REPORTER

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: CIVIL ACTION NO. 78-322 AND
3 CIVIL ACTION NO. 78-420.

4 WEISBERG V. FBI. MR. JAMES LESAR FOR THE PLAINTIFF
5 AND MR. HENRY LA HAIE FOR THE DEFENDANTS.

6 MR. LESAR: GOOD MORNING, YOUR HONOR.

7 THE COURT: GOOD MORNING.

8 MR. LESAR: I UNDERSTAND, YOUR HONOR, THAT WE ARE
9 HERE ON THE DEFENDANTS' MOTIONS BUT BEFORE HE BEGINS HIS
10 ARGUMENT, I JUST WANTED TO ADVISE THE COURT ON ANOTHER
11 MATTER.

12 THE COURT HAD ISSUED AN ORDER SOMETIME AGO THAT
13 THE DEFENDANTS JOINED THE COPYRIGHT ORDER OF THE ZAPRUDER
14 FILM IN THIS SUIT AND THAT ORDER WAS STAYED BECAUSE OF THE
15 POSSIBILITY THAT MR. ZAPRUDER AND MR. WEISBERG WOULD BE
16 ABLE TO WORK THAT MATTER OUT AMONGST THEMSELVES.

17 AT THE TIME THE COURT ISSUED ITS STAY ORDER, MR.
18 ZAPRUDER WAS GOING OUT OF THE COUNTRY.

19 WHEN HE GOT BACK OR WITHIN A COUPLE DAYS AFTER
20 THAT, I WENT OUT OF THE COUNTRY.

21 I CAME BACK ABOUT SEPTEMBER 20TH AND LAST WEEK
22 I CONTACTED HIS OFFICE TO SEE IF WE COULD MEET TOGETHER
23 AND HIS -- I DID NOT GET A RETURN CALL SO I CALLED AGAIN
24 YESTERDAY AND WAS INFORMED THAT HE IS NOW OUT OF THE CITY
25 AGAIN.

1 SO THERE HAVE BEEN SOME PROBLEMS GETTING TOGETHER
2 BUT AT THIS POINT, I THINK THERE IS NO NEED FOR THE COURT
3 TO DO ANYTHING FURTHER ON THAT.

4 HOPEFULLY WITHIN THE NEXT WEEK OR TWO I'LL BE ABLE
5 TO SIT DOWN WITH MR. ZAPRUDER AND FIND OUT WHETHER OR NOT
6 WE CAN RESOLVE THE MATTER.

7 THE COURT: VERY WELL.

8 MR. LA HAIE: GOOD MORNING, YOUR HONOR.

9 THE COURT: GOOD MORNING.

10 MR. LA HAIE: MAY IT PLEASE THE COURT, PENDING
11 BEFORE THE COURT ARE TWO MOTIONS.

12 THE FIRST ONE IS THE DEFENDANTS' MOTION FOR PARTIAL
13 SUMMARY JUDGMENT WHICH CONCERNS THE ADEQUACY OF THE FBI
14 SEARCH IN THESE CONSOLIDATED FOIA CASES.

15 THE SECOND MOTION IS THE DEFENDANTS' MOTION TO
16 STRIKE WHICH CONCERNS THE ADEQUACY OF PLAINTIFF'S AFFIDAVITS
17 AND HIS INITIAL STATEMENT OF GENUINE ISSUES IN DISPUTE, ALL
18 OF WHICH WERE FILED IN SUPPORT OF HIS OPPOSITION TO THE
19 DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT.

20 THE DEFENDANTS REQUEST THIS COURT TO GRANT BOTH
21 OF ITS MOTIONS AND THEN PROCEED TO DECIDE THE MERITS OF THIS
22 CASE ON THE BASIS OF A SAMPLE VAUGHN INDEX.

23 YOUR HONOR, THERE IS NO DISPUTE THAT IN A FOIA
24 CASE, THE GOVERNMENT HAS THE BURDEN OF PROVING THAT IT HAS
25 SEARCHED FOR RECORDS RESPONSIVE TO THE UNDERLYING REQUEST.

1 HOWEVER, THAT BURDEN IS NOT WITHOUT LIMITS. RATHER
2 AN AGENCY IS MERELY REQUIRED TO MAKE REASONABLE EFFORTS TO
3 SATISFY THE FOIA REQUEST.

4 THE AGENCIES CAN MEET THIS BURDEN BY SUBMITTING
5 AFFIDAVITS FROM RESPONSIBLE AGENCY OFFICIALS THAT DETAIL THE
6 SCOPE OF THAT SEARCH.

7 GENERALLY, UNDER THE CASE LAW OF THIS CIRCUIT,
8 THOSE AFFIDAVITS SHOULD DENOTE WHICH FILES WERE SEARCHED AND
9 BY WHOM AND SHOULD REFLECT A SYSTEMATIC APPROACH TO DOCUMENT
10 LOCATION.

11 HOWEVER, AS THE COURT OF APPEALS FOR THE DISTRICT
12 OF COLUMBIA RECENTLY MADE CLEAR IN PERRY V. BLOCK, THE
13 ISSUE TO BE RESOLVED AT THIS STAGE OF THE LITIGATION IN A
14 FOIA SUIT IS NOT WHETHER ANY FURTHER DOCUMENTS MIGHT
15 CONCEIVABLY EXIST BUT RATHER WHETHER THE GOVERNMENT'S SEARCH
16 WAS INDEED ADEQUATE.

17 NOW, WITH THOSE FOIA PRINCIPLES IN MIND, IT SHOULD
18 BE REMEMBERED THAT WHAT PLAINTIFF IS REQUESTING HERE IS
19 ACCESS TO THOSE RECORDS IN THE FBI'S DALLAS AND NEW ORLEANS
20 FIELD OFFICES WHICH PERTAIN TO THE ASSASSINATION OF PRESIDENT
21 JOHN F. KENNEDY.

22 NOW, IN RESPONSE TO THOSE FOIA REQUESTS, THE FBI
23 HAS UNDERTAKEN AN EXTENSIVE MULTI-TIERED SEARCH OVER THE
24 LAST THREE AND A HALF YEARS THAT PRODUCED OVER 100,000 PAGES
25 OF DOCUMENTS WHICH WERE PROCESSED AND THOSE WHICH WERE NON-

1 EXEMPT, WERE RELEASED TO PLAINTIFF.

2 THE SCOPE OF THAT SEARCH INCLUDING WHAT FILES WERE
3 SEARCHED AND BY WHOM IS SET OUT IN GREAT DETAIL BY SPECIAL
4 AGENT JOHN PHILLIPS IN HIS FOURTH DECLARATION WHICH WAS
5 FILED IN SUPPORT OF THE DEFENDANTS' MOTION FOR PARTIAL SUMMARY
6 JUDGMENT.

7 NOW ALSO IN THAT DECLARATION SPECIAL AGENT PHILLIPS
8 DESCRIBES THE FBI'S SYSTEMATIC APPROACH TO DOCUMENT LOCATION
9 FOR FOIA REQUESTS IN GENERAL AND IN PARTICULAR PLAINTIFF'S
10 REQUEST IN THESE CASES.

11 IN LIGHT OF THIS DETAILED ACCOUNT OF THE FBI'S
12 SEARCH, THERE CAN BE NO SERIOUS QUESTION BUT THAT THE FBI
13 MADE REASONABLE EFFORTS TO LOCATE DOCUMENTS RESPONSIVE TO
14 PLAINTIFF'S FOIA REQUEST.

15 IN SHORT, THE DEFENDANT HAS MET ITS BURDEN UNDER
16 FOIA.

17 NOW IN ITS OPPOSITION TO THE MOTION FOR PARTIAL
18 SUMMARY JUDGMENT, THE PLAINTIFF CLAIMS, HOWEVER, THAT THE
19 FBI'S SEARCH WAS NOT ADEQUATE.

20 IN SUPPORT OF THAT OPPOSITION, PLAINTIFF FILED A
21 ONE-SENTENCE STATEMENT OF GENUINE ISSUES IN DISPUTE AND TWO
22 AFFIDAVITS, ONE BY HIMSELF AND ONE BY HIS ATTORNEY, MR. LESAR.

23 HOWEVER, AS WAS DEMONSTRATED IN THE DEFENDANTS'
24 BRIEF IN SUPPORT OF ITS MOTION TO STRIKE, THE AFFIDAVITS
25 FAILED TO MEET THE REQUIREMENTS OF RULE 56(E) OF THE FEDERAL

1 RULES OF CIVIL PROCEDURE. WHEREAS, PLAINTIFF'S STATEMENT
2 OF GENUINE ISSUES IN DISPUTE FAILED TO COMPLY WITH THE REQUIRE-
3 MENTS OF LOCAL RULE 1-9(H).

4 RECOGNIZING THAT THE AFFIDAVITS AND HIS ONE-SENTENCE
5 STATEMENT OF GENUINE ISSUES IN DISPUTE FAILED TO MEET THE
6 REQUIREMENTS OF RULE 56(E) AND LOCAL RULE 1-9(H), PLAINTIFF
7 FILED A NEW AFFIDAVIT WHICH HE CLAIMS FOCUSES MORE EXCLUSIVELY
8 ON THE SEARCH ISSUES IN THIS CASE.

9 HE ALSO FILED AN AMENDED STATEMENT OF GENUINE ISSUES
10 IN DISPUTE CONSISTING OF 14 POINTS, ALL OF WHICH ARE KEYED
11 TO PLAINTIFF'S NEW AFFIDAVIT.

12 HOWEVER, NONE OF THOSE 14 ISSUES CONTROVERT ANY OF
13 THE 29 FACTS THAT THE DEFENDANT LISTED IN ITS STATEMENT OF
14 MATERIAL FACTS WHICH ARE NOT IN DISPUTE.

15 ACCORDINGLY, UNDER THE DICTATES OF LOCAL RULE
16 1-9(H) AND THE JUDICIAL DECISIONS OF THIS COURT INTERPRETING
17 THAT LOCAL RULE, THE DEFENDANTS' 29 MATERIAL FACTS SHOULD BE
18 DEEMED ADMITTED.

19 WITH RESPECT TO PLAINTIFF'S 14 ISSUES THEMSELVES,
20 THE DEFENDANT HAS SHOWN THAT THEY ARE EITHER NOT IN DISPUTE
21 OR IMMATERIAL OR NOT GENUINE.

22 SINCE THESE 14 POINTS REPRESENT ALL OF THE FACT
23 ISSUES WHICH PLAINTIFF CLAIMS ARE IN DISPUTE, A BRIEF REVIEW
24 OF EACH POINT AT THIS TIME WILL BE APPROPRIATE.

25 IN REVIEWING THESE POINTS, IT SHOULD BE BORNE IN

1 MIND THAT A PARTY OPPOSING A SUMMARY JUDGMENT MOTION CANNOT
2 DEFEAT IT UNLESS HE COMES FORWARD WITH SIGNIFICANT PROBATIVE
3 EVIDENCE SHOWING THE EXISTENCE OF TRIABLE ISSUES OF MATERIAL
4 FACTS.

5 WE CONTEND THAT HE HAS NOT DONE SO.

6 NOW, THE FIRST TWO ISSUES THAT -- THE FIRST TWO
7 OF THE 14 LISTED IN PLAINTIFF'S AMENDED STATEMENTS OF
8 GENUINE ISSUES CONCERNS SO-CALLED TICKLERS DOCUMENTS.

9 AS EXPLAINED BY SPECIAL AGENT PHILLIPS IN HIS
10 FIFTH DECLARATION, TICKLERS, AS THAT TERM IS USED TO DENOTE
11 POTENTIALLY RETRIEVABLE DOCUMENTS ARE PHOTOSTATIC OR CARBON
12 COPIES OF DOCUMENTS WHICH ARE PREPARED FOR THE INFORMATION
13 OR TEMPORARY USE OF INDIVIDUALS IN THE FBI THAT NEED TO
14 FOLLOW A CERTAIN MATTER.

15 NOW, NOT ALL FBI DIVISIONS MAINTAIN THE SO-CALLED
16 TICKLERS COPIES OF DOCUMENTS THAT THEY GENERATE.

17 INDEED, MOST OF THE FBI'S FIELD OFFICES, INCLUDING
18 THE DALLAS AND THE NEW ORLEANS FIELD OFFICES, DO NOT MAINTAIN
19 THESE TICKLERS COPIES AND SO THERE IS NO DISPUTE THAT THE
20 FBI DID NOT UNDERTAKE A SEARCH OF NON-EXISTENT DOCUMENTS.

21 NOW, PLAINTIFF COMES BACK IN HIS REPLY TO DEFENDANTS'
22 MOTION TO STRIKE AND ATTACHES AN EXHIBIT WHICH CONSISTS OF
23 A DOCUMENT THAT HE OBTAINED THROUGH THESE FOIA REQUESTS, THAT
24 IS, EXHIBIT 2, ATTACHED TO MR. WEISBERG'S AFFIDAVIT OF
25 JULY 21ST OF THIS YEAR, WHICH HE CLAIMS SHOW THAT AT LEAST

1 THE DALLAS OFFICE MAINTAINED AND PRODUCED TICKLERS COPIES
2 OF DOCUMENTS.

3 NOW, THE DOCUMENT IN QUESTION IS A MEMO TO FILES
4 BY AN FBI AGENT DOWN IN DALLAS AND THE FBI AGENT IS NOTING
5 THE FACT THAT A CERTAIN FILE ON A MARINA PORTER WAS BEING
6 CLOSED BUT THAT HE WANTED TO HAVE THE FILE REOPENED IN SIX
7 MONTHS SO THAT HE COULD CHECK THE ADDRESS OF MISS PORTER AS
8 WELL AS MISS PORTER'S FAMILY.

9 SO AT THE VERY BOTTOM OF THE DOCUMENT, THE
10 PARENTHETICAL STATEMENT THE FBI AGENT PUT, PREPARE A SIX-MONTH
11 TICKLER.

12 NOW, AS EXPLAINED VERY SUCCINCTLY BY SPECIAL AGENT
13 PHILLIPS IN HIS EIGHTH DECLARATION, WHAT THE FBI AGENT WAS
14 REQUESTING HERE WAS NOT THE PRODUCTION OF A COPY OF THIS
15 MEMO TO FILE, BUT RATHER A THREE-BY-FIVE INDEX CARD THAT
16 WOULD REMIND HIM TO REOPEN THE FILE IN SIX MONTHS SO HE
17 COULD VERIFY THE ADDRESS OF THE SUBJECT AND FAMILY.

18 THERE IS NOTHING IN THE DOCUMENT OR EXHIBIT THAT
19 WOULD SUGGEST THAT THE DALLAS FIELD OFFICE MAINTAIN TICKLERS
20 COPIES OF DOCUMENTS BUT EVEN ASSUMING, FOR SAKE OF OUR
21 DISCUSSION HERE TODAY, THAT THEY DID, STILL THAT ISSUE WOULD
22 NOT BE A MATERIAL ISSUE, WOULD NOT AFFECT THE OUTCOME OF
23 THIS LITIGATION.

24 MR. -- STRIKE THAT.

25 SPECIAL AGENT PHILLIPS HAS INDICATED IN HIS

1 DECLARATIONS THAT TICKLERS COPIES OF DOCUMENTS ARE EXACT
2 COPIES OF THE ORIGINAL DOCUMENT.

3 THE PLAINTIFF HAS RECEIVED THE ORIGINAL DOCUMENTS. —
4 IT WOULD JUST BE OVERKILL TO MAKE THE FBI GO BACK AT THIS
5 STAGE, ASSUMING THEIR EXISTENCE, TO TRY TO FIND COPIES OF
6 DOCUMENTS THAT HE HAD ALREADY RECEIVED.

7 SECONDLY, AS SPECIAL AGENT PHILLIPS POINTS OUT IN
8 HIS DECLARATION, EACH FBI EMPLOYEE WHO DOES MAINTAIN TICKLERS
9 COPIES OF DOCUMENTS, DOES SO IN VARIOUS FASHION. IT IS
10 FOR THEIR OWN CONVENIENCE AND PERHAPS SOME WILL HAVE THEM
11 IN CHRONOLOGICAL ORDER AND OTHERS WILL HAVE THEM BY SUBJECT
12 MATTER.

13 IT WOULD BE VIRTUALLY IMPOSSIBLE TO GO BACK AND
14 TRY TO FIND TICKLERS COPIES OF ALL THE DOCUMENTS, ASSUMING
15 THEIR EXISTENCE, IN THE DALLAS OFFICE.

16 AGAIN, THE QUESTION AT THIS POINT IN THE LITIGATION
17 IS NOT WHETHER CONCEIVABLY THERE MIGHT BE SOME OTHER DOCUMENTS
18 OUT THERE ON THE KENNEDY CASE, BUT WHETHER THE FBI HAS
19 UNDERTAKEN A REASONABLE SEARCH.

20 WE CONTEND THEY HAVE DONE SO AND WHAT IS MORE, THERE
21 ARE NOT TICKLERS COPIES IN DALLAS AND NO MATTER HOW MUCH
22 THE PLAINTIFF WISHES THERE WERE, THERE ARE NO DOCUMENTS OF
23 THAT NATURE THERE.

24 NOW, THE THIRD ISSUE RAISED BY PLAINTIFF ARE THE
25 SO-CALLED JUNE FILES. HE CLAIMS THERE IS A JUNE FILE OUT

1 THERE THAT WAS NOT DISCLOSED WHICH PERTAIN TO THE KENNEDY
2 ASSASSINATION.

3 NOW JUNE FILES ARE WHAT THE FBI SOMETIMES REFERS
4 TO TO ENCOMPASS ITS ELECTRONIC SURVEILLANCE. THOSE FILES,
5 LIKE ALL THE OTHER FILES IN THE FBI FILES ARE INDEXED TO
6 THEIR GENERAL INDICES.

7 ANY INFORMATION IN THOSE JUNE FILES CAN BE RETRIEVED
8 THROUGH A SEARCH OF THE GENERAL INDICES. IN THIS CASE, THE
9 FBI CONDUCTED A THOROUGH SEARCH MORE THAN ONCE OF ITS GENERAL
10 INDICES. ANY INFORMATION PERTAINING TO THE ASSASSINATION
11 OF JOHN KENNEDY WHICH WERE IN THOSE JUNE FILES WERE PROCESSED
12 AND IF NON-EXEMPT, WERE RELEASED TO PLAINTIFF.

13 HE DOESN'T PUT ANYTHING BEFORE THIS COURT THAT
14 WOULD INDICATE THE EXISTENCE OF A NON-DISCLOSED JUNE FILE.

15 HE SIMPLY REFERS THE COURT TO ONE OF HIS SO-CALLED
16 ADMINISTRATIVE APPEALS BUT WHEN YOU READ THAT ADMINISTRATIVE
17 APPEAL THAT HE FILED WITH THE OFFICE OF PRIVACY AND INFORMATION
18 APPEALS, AGAIN HE DOES NOT PUT FORWARD ANY EVIDENCE THAT
19 WOULD INDICATE THE EXISTENCE. HE JUST SAYS, I KNOW THERE
20 IS ONE. THAT'S NOT SUFFICIENT. IT MUST BE SIGNIFICANT
21 PROBATIVE EVIDENCE.

22 THERE IS NO GENUINE ISSUE WITH RESPECT TO THE
23 SO-CALLED JUNE FILES.

24 NOW, THE FOURTH ISSUE CONCERNS RECORDS SURROUNDING
25 THE ALLEGATIONS OF A WILLIAM WALTER.

1 THE FBI HAS INDICATED AT LEAST TWICE THROUGH
2 DECLARATIONS OF SPECIAL AGENT PHILLIPS THAT THE FBI SEARCH
3 DID LOCATE MATERIAL ON THE SUBJECT AND IT DID PROCESS THE
4 MATERIAL AND IF IT WAS NOT EXEMPT, IT WAS RELEASED TO THE
5 PLAINTIFF.

6 AGAIN, THE PLAINTIFF OFFERS ABSOLUTELY NO PROOF
7 WHATSOEVER BUT JUST A BALD-FACED ASSERTION THAT THERE ARE
8 SOME SORT OF UNDISCLOSED INFORMATION CONCERNING THE ALLEGATIONS
9 OF WILLIAM WALTER.

10 AGAIN, THAT DOES NOT RISE TO THE LEVEL OF CREATING
11 A GENUINE ISSUE.

12 NOW, THE FIFTH IS FILMS AND TAPES.

13 PLAINTIFF HAS SAID OVER AND OVER AND OVER AGAIN
14 THAT HE HAS NOT RECEIVED ALL THE FILMS AND TAPES FROM THE
15 DALLAS AND NEW ORLEANS FIELD OFFICES.

16 EVERY TIME HE HAS RAISED THAT ISSUE, THE FBI HAS
17 INDICATED IN SWORN STATEMENTS THAT HE INDEED HAS RECEIVED
18 ALL FILMS AND TAPES.

19 THEY HAVE RELEASED A LIST OF ALL THE FILMS AND
20 TAPES AND HAVE RELEASED THAT LIST WITH THE COURT. 17

21 NEVER ONCE DOES THE PLAINTIFF EVER INDICATE WHAT
22 FILMS AND TAPES HE IS REFERRING TO UNTIL HIS LATEST SUBMISSION,
23 THE VERY LAST ONE. HE COMES UP WITH ONE FILM AND ONE TAPE
24 WHICH SUPPOSEDLY EXIST OUT THERE, THE SO-CALLED THOMAS
25 ALYEA FILM.

1 NOW, THERE IS SUCH A FILM. HOWEVER, IT IS IN THE
2 HEADQUARTERS FILES. THE FBI HAS INDICATED ANY NUMBER OF
3 TIMES THAT THERE WERE CERTAIN FILMS THAT WERE SENT TO
4 HEADQUARTERS DURING THE INVESTIGATION. THEY ARE NO LONGER
5 IN THE DALLAS FILES. THEY'RE IN THE HEADQUARTERS FILES AND
6 PLAINTIFF KNOWS THAT.

7 HE HAS A FOIA REQUEST FOR HEADQUARTERS DOCUMENTS
8 THAT HE HAS APPEALED THE PROCESSING OF THAT REQUEST. IT IS
9 PENDING BEFORE THE JUSTICE DEPARTMENT'S OFFICE OF PRIVACY
10 AND INFORMATION APPEALS.

11 IF HE IS DISPLEASED WITH THAT DECISION, HE COULD
12 DO WHAT HE DID IN THIS CASE, AND I AM SURE THAT HE WILL, THAT
13 IS FILE SUIT ON THOSE HEADQUARTERS DOCUMENTS.

14 AT THAT POINT THE THOMAS ALYEA FILM WOULD BE RIPE,
15 IF INDEED IT IS NOT TURNED OVER TO HIM, BUT IT DOES NOT
16 BELONG IN THIS LITIGATION. IT IS NOT WITHIN THE SCOPE OF
17 HIS FOIA REQUEST FOR DALLAS AND NEW ORLEANS DOCUMENTS.

18 THE ONE TAPE IS THE SO-CALLED DALLAS POLICE RADIO
19 TAPES. THERE IS NO SUCH TAPE.

20 A TAPE WAS MADE OF THE DALLAS POLICE RADIO
21 BROADCAST ON THE DAY OF THE ASSASSINATION AT THE REQUEST OF
22 THE WARREN COMMISSION. THERE WAS ONLY ONE COPY AND THAT COPY
23 WAS SENT TO THE WARREN COMMISSION. THERE ARE NO COPIES IN
24 THE FBI FILES.

25 THERE IS ABSOLUTELY NO GENUINE ISSUE THAT THE

1 PLAINTIFF HAS NOT RECEIVED ALL OF THE RELEASABLE FILMS AND
2 TAPES.

3 THE SIXTH ISSUE IS WHETHER THE FBI HAS PRODUCED
4 RECORDS ON PERSONS WHO FIGURED IN THE INVESTIGATION, THAT IS,
5 THE FBI'S INVESTIGATION, INCLUDING CLAY SHAW, DAVID FERRIE
6 AND JIM GARRISON.

7 NOW, THE FBI, AGAIN THROUGH SPECIAL AGENT PHILLIPS,
8 HAS UNEQUIVOCALLY STATED NUMEROUS TIMES THAT ALL DOCUMENTS
9 ON THE JFK ASSASSINATION, INCLUDING RECORDS OF PERSONS OR
10 ORGANIZATIONS WHO FIGURED IN THE BUREAU'S INVESTIGATION WERE
11 PROCESSED AND IF WERE NON-EXEMPT, WERE RELEASED TO THE
12 PLAINTIFF.

13 NOW, AS TO CLAY SHAW, DAVID FERRIE AND JIM GARRISON
14 AND JIM GARRISON'S INVESTIGATION, SPECIAL AGENT PHILLIPS HAS
15 INDICATED SEVERAL TIMES THAT THE FBI COULD FIND NO MATERIAL
16 ON THESE -- ON THOSE SUBJECTS OTHER THAN WHAT WAS FUNNELLED
17 IN THE MAIN FILES ON THE INVESTIGATION OF THE ASSASSINATION.

18 THE PLAINTIFF DOES NOT REFUTE THESE STATEMENTS
19 BY SPECIAL AGENT PHILLIPS.

20 INSTEAD, AGAIN, IN HIS LATEST SUBMISSION, HE COMES
21 UP WITH A SO-CALLED NON-INCLUSIVE AND THERE MIGHT BE OTHERS
22 OUT THERE THAT WE WILL LEARN ABOUT LATER, BUT OF 11 ORGANIZA-
23 TIONS AND PERSONS WHOSE NAMES APPEAR IN THOSE DOCUMENTS
24 WHICH PERTAINED IN SOME FASHION TO MR. GARRISON OR HIS
25 INVESTIGATION.

1 PLAINTIFF CLAIMS THAT THE FBI SHOULD HAVE UNDERTAKEN
2 INDEPENDENT SEARCHES ON THESE 11 INDIVIDUALS AND ORGANIZATIONS.

3 NOW, THE FBI DID NOT UNDERTAKE INDEPENDENT SEARCHES
4 ON THESE 11 INDIVIDUALS AND ORGANIZATIONS. THE FBI SUBMITS
5 THAT IT WAS UNDER NO LEGAL OBLIGATION AND IS UNDER NO LEGAL
6 OBLIGATION UNDER FOIA TO CONDUCT INDEPENDENT SEARCHES ON THESE
7 INDIVIDUALS.

8 WHAT THE PLAINTIFF WANTS THE FBI TO DO HERE IS
9 WHEN THEY SEARCH FOR DOCUMENTS ON HIS REQUEST, HE WANTS THEM
10 TO REVIEW THOSE DOCUMENTS AND IF ANYBODY'S NAME APPEARS ON
11 ANY SUBJECT, THEN THEY HAVE TO GO BACK AND SEARCH THOSE. THAT
12 BECOMES A NEVER-ENDING PROCESS.

13 WAY BACK IN JUNE OF 1980 WHEN MR. QUINLAN SHEA, WHO
14 WAS THE DIRECTOR OF THE OFFICE OF INFORMATION AND PRIVACY
15 APPEALS SENT MR. LESAR A LETTER INVITING HIM AND MR. WEISBERG
16 TO HAVE ALL SORT OF INPUT INTO THE ADMINISTRATIVE PROCESSING
17 OF HIS FOIA APPEALS IN THESE TWO CASES WITH RESPECT TO THE
18 SEARCH ISSUE.

19 ONE OF THOSE AREAS THAT HE HAD INVITED HIM TO WAS
20 ON THE SEARCH ISSUE.

21 NEVER ONCE DID THESE 11 INDIVIDUALS OR ORGANIZATIONS
22 COME UP AND ALSO AT THAT TIME, HOWEVER, HE TOLD THEM THAT
23 THE FOIA DOES NOT CONTEMPLATE A NEVER-ENDING PROCESS OF
24 SEARCH, LOCATE, REVIEW AND SEARCH AGAIN AND THAT IS OUR
25 POSITION TODAY.

1 WE ARE UNDER NO LEGAL OBLIGATION TO GET INVOLVED
2 IN NEVER-ENDING PROCESSES OF SEARCH AND SEARCH AND SEARCH.

3 NOW, THE SEVENTH ISSUE IS THE SO-CALLED CRITICS OR
4 CRITICISM ISSUE.

5 NOW, THERE IS NO FACTUAL DISPUTE THAT THE FBI,
6 PURSUANT TO THE INSTRUCTIONS OF THE ASSOCIATE ATTORNEY GENERAL
7 WHO RULED ON PLAINTIFF'S ADMINISTRATIVE APPEALS, PURSUANT TO
8 HIS INSTRUCTIONS, UNDERTOOK A NEW SEARCH ON THE TOPICS OF
9 CRITICS OR CRITICISMS OF THE INVESTIGATION.

10 THERE'S NO DISPUTE THAT THIS SEARCH WAS UNDERTAKEN
11 AS A MATTER OF AGENCY DISCRETION, TRYING TO GO THE EXTRA MILE
12 TO TURN UP ANY DOCUMENT THAT MIGHT PERTAIN TO THE JFK
13 ASSASSINATION.

14 JUST TWO MONTHS AGO WE LEARNED THAT -- AT LEAST
15 ACCORDING TO PLAINTIFF, THAT WHAT MR. SHENEFIELD REALLY WANTED
16 THE FBI TO DO WAS TO CONDUCT SEARCHES ON THE NAMES OF
17 INDIVIDUALS, NOTWITHSTANDING THE FACT THAT HE HAS NEVER
18 SPECIFIED WHO THOSE INDIVIDUALS WERE AND THE PLAINTIFF
19 FINALLY CAME UP WITH 31 NAMES THAT WE ARE NOW SUPPOSED TO GO
20 BACK AND SEARCH FOR.

21 NOW, NEVER ONCE DID THE ASSOCIATE ATTORNEY GENERAL
22 OR HIS STAFF, THE OPIA, INDICATE THAT WHAT HE REALLY MEANT
23 WAS THAT WE HAD TO GO SEARCH FOR FILES OF UNSPECIFIED CRITICS
24 OF THE BUREAU'S INVESTIGATION.

25 SIGNIFICANTLY, IN THAT SAME DECISION, BY THE

1 ASSOCIATE ATTORNEY GENERAL, HE SPECIFIED SEVERAL INDIVIDUALS
2 THAT HE DOES WANT SEARCHES CONDUCTED ON, GEORGE DE MOHRENSCHILDT,
3 FOR EXAMPLE, JAMES P. HOSTY. THEY ARE NOT MENTIONED AT ALL
4 IN PLAINTIFF'S FOIA REQUEST.

5 NOTWITHSTANDING THAT LACK OF MENTION THE ASSOCIATE
6 ATTORNEY GENERAL WANTED FILES -- STRIKE THAT. HE WANTED
7 SEARCHES CONDUCTED ON THOSE INDIVIDUALS.

8 HE SPECIFIED THEIR NAMES AND IF HE WANTED TO SPECIFY
9 THE NAMES OF 31 INDIVIDUALS, HE WOULD HAVE DONE SO.

10 AGAIN, THERE IS NO DISPUTED ISSUE HERE.

11 THE EIGHTH ISSUE IS WHETHER THE FBI SEARCHED FOR
12 RECORDS WHICH ARE REFERENCED IN EXHIBIT 4 ATTACHED TO MR.
13 WEISBERG'S AFFIDAVIT OF JULY 21, 1982.

14 NOW, THE DEFENDANT ASSUMES THAT THIS MEANS RECORDS
15 ON A RAYMOND COMSTOCK. AGAIN, THERE IS NO DISPUTE THE FBI
16 DID NOT UNDERTAKE ANY SEARCH FOR ANY SUCH RECORDS SINCE THEY
17 ARE CLEARLY NOT WITHIN THE SCOPE OF PLAINTIFF'S FOIA REQUEST.

18 PLAINTIFF DOES NOT REQUIRE -- STRIKE THAT.

19 FOIA DOES NOT REQUIRE ADDITIONAL SEARCHES BASED ON
20 THE CONTENTS OF RETRIEVABLE DOCUMENTS. IF PLAINTIFF WANTS
21 DOCUMENTS ON THESE INDIVIDUALS OR ON THIS PARTICULAR INDIVIDUAL,
22 HE CAN FILE A NEW REQUEST AND PAY ANY FEES ASSOCIATED WITH
23 A NEW SEARCH.

24 BUT, AGAIN, THERE IS NO DISPUTE. THERE WAS NEVER
25 A SEARCH UNDERTAKEN FOR RAYMOND COMSTOCK DOCUMENTS AND AGAIN,

1 BECAUSE IT IS NOT WITHIN THE SCOPE OF PLAINTIFF'S REQUEST.

2 THE NINTH ISSUE IS WHETHER THE FBI SEARCHED FOR
3 RECORDS REFERENCED IN EXHIBIT 6 ATTACHED TO MR. WEISBERG'S
4 AFFIDAVIT OF JULY 21, 1982.

5 NOW, WE ARE NOT QUITE SURE WHICH DOCUMENT HE IS
6 REFERRING TO SINCE THERE ARE SEVERAL LISTED THERE BUT AGAIN,
7 THERE IS NO DISPUTE THAT THE FBI DID NOT UNDERTAKE A SEARCH
8 OF ANY OF THESE DOCUMENTS AND AGAIN, IT'S THE RAYMOND COMSTOCK
9 DOCUMENTS, AND AGAIN IT IS JUST NOT WITHIN THE SCOPE OF THE
10 REQUEST.

11 THE TENTH ONE IS WHETHER WE UNDERTOOK A SEARCH FOR
12 RECORDS ON A CARLOS MARCELLO. AGAIN, NO DISPUTE. WE DIDN'T
13 UNDERTAKE ANY SEARCH ON RECORDS -- FOR RECORDS ON MR.
14 MARCELLO. IT IS NOT WITHIN THE SCOPE OF THE SEARCH, NOT
15 WITHIN THE SCOPE OF THIS LITIGATION.

16 THE ELEVENTH ISSUE IS WHETHER THE FBI UNDERTOOK
17 A SEARCH FOR RECORDS OF A JAMES P. HOSTY. AGAIN, THERE IS
18 NO DISPUTE HERE. WE DID, ALTHOUGH IT WOULDN'T BE WITHIN
19 THE SCOPE OF THE PLAINTIFF'S REQUEST.

20 THE ASSOCIATE ATTORNEY GENERAL WANTED THE FBI TO
21 UNDERTAKE A NEW SEARCH AND WE DID.

22 NOW, NO MAIN FILES WERE LOCATED ON MR. HOSTY IN
23 DALLAS BUT A GENERAL PERSONNEL FILE WAS FOUND AND MATERIAL
24 ON MR. HOSTY THAT PERTAINED TO THE KENNEDY INVESTIGATION
25 WAS PROCESSED.

1 NOW, THE HEADQUARTERS OF THE FBI MAINTAINS A
2 PERSONNEL FILE ON EVERY EMPLOYEE. THEY HAD ONE ON MR. HOSTY.
3 IT HAS NOT BEEN PROCESSED IN THIS LITIGATION SINCE IT IS NOT
4 WITHIN THE SCOPE OF HIS REQUEST.

5 AT BEST, IT WOULD BE WITHIN THE SCOPE OF PLAINTIFF'S
6 REQUEST FOR HEADQUARTERS DOCUMENTS AND AGAIN, THAT REQUEST
7 IS PENDING ON ADMINISTRATIVE APPEAL.

8 SO, AGAIN, THERE IS NO GENUINE ISSUE.

9 THE TWELFTH ISSUE IS WHETHER THE FBI UNDERTOOK A
10 SEARCH FOR RECORDS ON MARGUERITE OSWALD.

11 NOW, MARGUERITE OSWALD IS, MY UNDERSTANDING, THE
12 MOTHER OF LEE HARVEY OSWALD.

13 AGAIN, THERE WAS NO SEARCH HERE. THERE IS NO
14 DISPUTE. MRS. OSWALD WAS NOT A FIGURE IN THE JFK INVESTIGATION
15 AND CONSEQUENTLY WOULD NOT BE WITHIN THE SCOPE OF PLAINTIFF'S
16 REQUEST.

17 IF HE WANTS NOW AT THIS LATE DATE A SEARCH FOR
18 RECORDS ON MRS. OSWALD, ASSUMING THEY DO EXIST, HE CAN FILE
19 A REQUEST.

20 NOW, THE THIRTEENTH ISSUE IS WHETHER THE FBI
21 PROCESSED SAC AND THAT STANDS FOR SPECIAL AGENT IN CHARGE
22 CONFIDENTIAL FILES AND SAFES.

23 NOW, I AM NOT SURE EXACTLY WHAT PLAINTIFF MEANS
24 BY THE SO-CALLED CONFIDENTIAL FILES.

25 WE CAN ONLY ASSUME THAT HE IS REFERRING TO THOSE

1 FILES MAINTAINED IN THE SAC SAFES ON PERSONNEL MATTERS AND
2 HIGHLY SENSITIVE INVESTIGATIONS.

3 THE FBI HAS INDICATED THROUGH SPECIAL AGENT PHILLIPS
4 THAT INDEED IT DID UNDERTAKE A SEARCH OF THE SAC'S SAFE OF
5 DALLAS AND NEW ORLEANS.

6 THE PLAINTIFF HAS NOT COME FORWARD WITH ANY EVIDENCE
7 WHATSOEVER THAT WOULD INDICATE THAT THEY DID NOT.

8 SO, AGAIN, THERE IS JUST NO GENUINE ISSUE.

9 THE FINAL POINT RAISED BY THE PLAINTIFF IS WHETHER
10 SEE REFERENCES, THAT IS S-E-E- REFERENCES WERE SEARCHED WITH
11 RESPECT TO THE KENNEDY ASSASSINATION.

12 SPECIAL AGENT PHILLIPS HAS INDICATED ALMOST
13 AD NAUSEUM THAT ANY RESPONSIVE DOCUMENTS IDENTIFIED, INCLUDING
14 BY WAY OF SEE REFERENCES, WERE PROCESSED AND IF NOT EXEMPT,
15 WERE RELEASED TO PLAINTIFF.

16 PLAINTIFF HAS BEEN PROVIDED WITH INDICES SEARCH
17 SLIPS. CONSEQUENTLY, HE HAS THE CAPABILITY OF DETERMINING
18 WHAT FILES, INCLUDING THOSE IDENTIFIED BY WAY OF SEE
19 REFERENCES, WHICH WERE SEARCHED AND PROCESSED.

20 NOTWITHSTANDING THAT CAPABILITY, PLAINTIFF HAS
21 NOT COME FORWARD WITH ANY EVIDENCE WHATSOEVER OTHER THAN
22 HIS BALD ASSERTION THAT SEE REFERENCES WERE NOT SEARCHED IN
23 THIS CASE.

24 AGAIN, SUCH BALD ASSERTIONS DO NOT CREATE A
25 GENUINE ISSUE. GIVEN THIS REVIEW OF PLAINTIFF'S LIST OF

1 14 ISSUES, IT IS CLEAR THAT HE HAS FAILED TO PUT BEFORE THE
2 COURT ANY SIGNIFICANT PROBATIVE EVIDENCE THAT DEMONSTRATES
3 THE EXISTENCE OF A TRIABLE ISSUE OF MATERIAL FACT.

4 ACCORDINGLY, THE DEFENDANT IS ENTITLED TO SUMMARY
5 JUDGMENT AS A MATTER OF LAW ON THE SEARCH ISSUE AND THE
6 DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS WELL AS
7 HIS MOTION TO STRIKE SHOULD THUS BE GRANTED.

8 THANK YOU VERY MUCH.

9 DO YOU HAVE ANY QUESTIONS, YOUR HONOR?

10 THE COURT: I HAVE NO QUESTIONS.

11 MR. LESAR: GOOD MORNING, YOUR HONOR.

12 THE COURT: GOOD MORNING.

13 MR. LESAR: I AM JAMES H. LESAR FOR PLAINTIFF, MR.
14 HAROLD WEISBERG.

15 YOUR HONOR, THE REQUESTS HERE, THE TWO REQUESTS,
16 ARE DIRECTED TO THE DALLAS AND THE NEW ORLEANS FIELD OFFICES.

17 THE ONE TO THE DALLAS FIELD OFFICE HAS ESSENTIALLY
18 THREE PARTS;

19 ONE, ALL RECORDS PERTAINING TO THE ASSASSINATION
20 OF PRESIDENT KENNEDY.

21 TWO, ALL RECORDS ON OR PERTAINING TO PERSONS OR
22 ORGANIZATIONS WHO FIGURED IN THE INVESTIGATION INTO PRESIDENT
23 KENNEDY'S MURDER THAT ARE NOT CONTAINED WITHIN THE FILES ON
24 THAT ASSASSINATION AS WELL AS THOSE THAT ARE AND THIRD,
25 ALL RECORDS ON OR PERTAINING TO LEE HARVEY OSWALD, REGARDLESS

1 OF DATE OR CONNECTION WITH THE INVESTIGATION OF PRESIDENT
2 KENNEDY'S ASSASSINATION.

3 THE REQUEST TO THE NEW ORLEANS FIELD OFFICE
4 REPLICATED THE REQUEST TO THE DALLAS FIELD OFFICE BUT ADDED
5 A FOURTH POINT.

6 ALL RECORDS ON OR PERTAINING TO CLAY SHAW, DAVID
7 FERRIE AND ANY OTHER PERSON OR ORGANIZATIONS WHO FIGURED IN
8 DISTRICT ATTORNEY JIM GARRISON'S INVESTIGATION.

9 FROM THE START OF THIS CASE -- OF THESE CASES,
10 THERE HAVE BEEN PROBLEMS WITH THE GOVERNMENT'S RESPONSE TO
11 IT AND ITS REFUSAL TO ACKNOWLEDGE THE SCOPE OF THE REQUEST.

12 THE FBI ORIGINALLY MADE NO SEARCH AT ALL. IT SIMPLY
13 MADE A DETERMINATION AT FBI HEADQUARTERS TO PRODUCE THE SAME
14 FOUR MAIN FILES IN THE FIELD OFFICES THAT IT HAD ALREADY
15 PROCESSED AT FBI HEADQUARTERS.

16 ON MAY 10, 1979, IN RESPONSE TO AN INQUIRY FROM
17 ME, THE FBI WROTE THAT WE HAVE NOW PROCESSED AND RELEASED
18 TO MR. WEISBERG ALL RECORDS WITHIN THE SCOPE OF HIS REQUEST
19 WITH THE EXCEPTION OF THE THREE BY FIVE INDEX CARDS FROM THE
20 DALLAS FIELD OFFICE, REFERRALS FROM FBI HEADQUARTERS AND
21 A PORTION OF REFERRALS FROM THE DALLAS AND NEW ORLEANS FIELD
22 OFFICES.

23 AS A RESULT OF THAT POSITION THAT THE FBI TOOK IN
24 MAY OF 1979, YOUR HONOR, THAT THEY HAD PROCESSED EVERYTHING
25 WITHIN THE SCOPE OF THE REQUEST, MR. WEISBERG TOOK AN

1 ADMINISTRATIVE APPEAL AND THAT EVENTUATED ON DECEMBER 16,
2 1980 IN A DETERMINATION BY THE ATTORNEY -- THE DEPUTY ATTORNEY
3 GENERAL JOHN SHENEFIELD THAT FURTHER SEARCHES WERE REQUIRED.

4 FIRST, MR. SHENEFIELD DIRECTED AN ALL REFERENCE
5 SEARCH ON THE ASSASSINATION ITSELF, ON LEE HARVEY OSWALD,
6 MARINA OSWALD, JACK RUBY AND THE WARREN COMMISSION.

7 SECONDLY, ALL REFERENCE SEARCHES ON GEORGE
8 DE MOHRENSCHILDT AND SPECIAL AGENT JAMES P. HOSTY.

9 NOW, I WILL STOP A MINUTE IN MY PRESENTATION.
10 THE GOVERNMENT CONTENDS THAT THEY HAVE MADE A SEARCH ON
11 MR. HOSTY. AND THEY HAVE TOLD US THAT THEY PROVIDED US
12 WITH THE SEARCH SLIPS ON THESE INDIVIDUALS SO WE CAN DETERMINE
13 THE NATURE OF THE SEARCH THAT WAS MADE.

14 I WOULD LIKE AT THIS POINT TO HAND THE COURT A COPY
15 OF THE SEARCH SLIP ON MR. HOSTY.

16 AS THE COURT CAN SEE, THERE ARE NO REFERENCES ON
17 THAT SEARCH SLIP FOR MR. HOSTY AT ALL.

18 IN ADDITION, MR. WEISBERG MAINTAINS THAT ESSENTIALLY
19 WHAT HAS HAPPENED HERE IS THAT THE FBI IS TAKING THE POSITION
20 THAT THE RECORDS HE IS SEEKING ON MR. HOSTY ARE IN THE FBI
21 HEADQUARTERS FILE.

22 MR. WEISBERG ASSERTS TO THE CONTRARY THAT THE
23 RECORDS WERE -- ARE DALLAS FIELD OFFICE RECORDS AND THEY HAVE
24 BEEN SENT OR MAY HAVE BEEN SENT TO HEADQUARTERS BUT THEY
25 ARE STILL DALLAS FIELD OFFICE RECORDS AND THAT THEY MUST BE

1 PRODUCED IN RESPONSE TO THIS REQUEST.

2 THE SHENEFIELD LETTER ALSO DIRECTED A SEARCH FOR
3 OFFICIAL OR UNOFFICIAL ADMINISTRATIVE FILES WHICH PERTAIN TO
4 THE KENNEDY CASE WITH PARTICULAR EMPHASIS SEEKING FILES ON
5 CRITICS OR CRITICISM OF FBI -- OF THE FBI'S INVESTIGATION.

6 NOW, WHAT THE FBI DID IN RESPONSE TO THIS DIRECTIVE
7 FROM MR. SHENEFIELD WAS TO LOOK IN ITS INDICES UNDER CRITICS
8 AND CRITICISM AND IT DIDN'T FIND ANYTHING AND IT WAS QUITE
9 OBVIOUS FROM THE START THAT IT WOULDN'T BECAUSE THE NORMAL
10 FILING OF THE FBI IS BASED ON INDIVIDUALS OR ORGANIZATIONS.

11 THERE MAY BE OCCASIONS ON WHICH SUBJECTS ARE INDEXED
12 BUT THE GENERAL RULE IS YOU INDEX THE CRITICS AND THE FILE
13 WOULD BE ON THE INDIVIDUAL CRITIC.

#2 14 MR. SHEA WHO DRAFTED SHENEFIELD'S LETTER WAS WELL
15 AWARE OF THE FBI'S FILING PRACTICES AND PROCEDURES AND WE
16 THINK THAT HE COULD ONLY HAVE CONTEMPLATED THAT THERE BE A
17 SEARCH ON CRITICS AND TO DO THAT ALL YOU HAVE TO DO IS KNOW
18 WHO SOME OF THEM WERE.

19 NOW THIS DOESN'T PRESENT ANY BIG PROBLEM TO THE
20 FBI. THE FBI HAS A LIST OF THEM AND THEY APPEAR PROMINENTLY
21 IN MANY OF THE RECORDS.

22 MR. WEISBERG HAS POINTED THEM OUT TO THE FBI IN
23 HIS APPEAL LETTERS TO THE DEPARTMENT OF JUSTICE AND SOMETIMES
24 SPECIFYING PARTICULAR FILES RELATED TO THESE CRITICS, AND
25 YET THE FBI HAS MADE NO SEARCH FOR THEM.

1 IN ADDITION, AS A RESULT OF THIS COURT'S ATTEMPT
2 TO RESOLVE THIS CASE OR TO GET THE PARTIES TO RESOLVE THE
3 CASE THROUGH NEGOTIATIONS, WE HAVE PROVIDED THE NAMES OF THE
4 CRITICS.

5 NOW I MIGHT POINT OUT AT THIS POINT THAT CONTRARY
6 TO THE GOVERNMENT'S ASSERTIONS THAT WE ARE TRYING TO ADD OR
7 EXPAND THE REQUEST, A COUPLE OF THINGS ARE PERFECTLY CLEAR.

8 ONE, THAT THE REQUEST SOUGHT ALL RECORDS PERTAINING
9 TO THE ASSASSINATION IN THE DALLAS AND THE NEW ORLEANS FIELD
10 OFFICES AND SECOND, THAT IT WAS NOT LIMITED TO MATERIALS
11 IN FILES WHICH THE FBI DENOMINATES AS ASSASSINATIONS-RELATED
12 FILES.

13 THE REQUEST WAS WORDED THAT WAY FOR A REASON. THE
14 FBI CONSTANTLY, IN OUR EXPERIENCE, SAYS IF YOU WANT --
15 WHENEVER WE TRY TO MAKE AN ALL-ENCOMPASSING REQUEST, THEY
16 KEEP SAYING THAT IS NOT RELATED TO THE ASSASSINATION.

17 WE SAY, WHETHER IT IS OR NOT, THAT'S BESIDE THE
18 POINT. WE WANT IT ANYWAY. THAT IS WHAT OUR REQUEST ASKS FOR.
19 THEY ARE TRYING TO ENGRAFT SOMETHING ON TO THE
20 REQUEST, SOMETHING THAT WAS NEVER THERE.

21 THE SECOND POINT IS IF THERE WAS ANY AMBIGUITY IN
22 THE REQUEST AS TO WHAT WAS WITHIN ITS SCOPE, THE DEPARTMENT'S
23 OWN REGULATIONS PROVIDE A PERFECT SENSIBLE PROCEDURE FOR
24 RESOLVING IT AND THAT IS THAT THE AGENCY WRITES THE REQUESTOR
25 AND SAYS, WE DO NOT UNDERSTAND WHAT YOU'RE ASKING FOR, THE

1 REQUEST DOES NOT SUFFICIENTLY IDENTIFY THE RECORDS, AND WE
2 WILL ASSIST YOU TO REFORMULATE IT TO GET WHAT YOU WANT.

3 NEVER IN THIS CASE OR IN OUR EXPERIENCE HAS THE
4 DEPARTMENT USED THAT SIMPLE PROCEDURE.

5 WE THINK THIS INDICATES VERY CLEARLY THAT THEY
6 ARE SIMPLY TRYING TO PUT US TO THE EXPENSE AND DIFFICULTY
7 OF LITIGATING AS FREQUENTLY AND AS MANY DIFFERENT CASES AS
8 WE CAN BE FORCED TO DO.

9 I THINK THAT IS IMPLICIT IN SOME OF THE REMARKS THAT
10 COUNSEL FOR THE GOVERNMENT MADE TODAY WHEN HE SAID THAT
11 MR. WEISBERG COULD MAKE A NEW REQUEST AND HE CAN LITIGATE IT
12 JUST LIKE HE HAS THIS. THAT IS THE GOVERNMENT'S STRATEGY,
13 TO PUT THE PRESSURE ON MR. WEISBERG, TO PUT THE EXPENSE ON
14 MR. WEISBERG AND TO KEEP BRINGING THESE SUITS.

15 THEY HAVE BEEN IN EFFECT TAUNTING US TO FILE A SUIT
16 FOR THE FBI HEADQUARTERS. WE HAVE NOT DONE SO.

17 MR. WEISBERG DOES NOT WANT TO DO SO IF HE CAN
18 AVOID IT.

19 THEY SAY WELL, HE CAN FILE A NEW REQUEST.

20 ONE OF THE SPECIFIC THINGS THEY SAY THIS ABOUT IS
21 A REQUEST FOR MR. WEISBERG'S CONTENTION THAT THEY HAVE NOT
22 CONDUCTED ANY SEARCH FOR RECORDS ON RONNIE CAIRE IN THE
23 NEW ORLEANS FIELD OFFICE. THEY SAY HE CAN MAKE A NEW REQUEST
24 AND LITIGATE THAT.

25 WELL, AS A MATTER OF FACT, MR. WEISBERG MADE A

1 REQUEST FOR RECORDS ON MR. RONNIE CAIRE IN JANUARY OF 1969
2 AND THERE HAS BEEN NO SEARCH FOR THAT.

3 THAT'S NOT THE ONLY ITEM OF THE REQUEST OR MATTER
4 INVOLVED HERE OF WHICH THAT IS TRUE.

5 MR. WEISBERG LONG AGO REQUESTED THE ALYEA FILM
6 WHICH COUNSEL FOR THE GOVERNMENT BROUGHT UP TODAY, IN FACT,
7 THAT WAS IN 1969, I THINK, THAT HE REQUESTED THAT FILM TOO.
8 IT HAS NOT BEEN PROVIDED.

9 AGAIN, THE ALYEA FILM, THE WDSU FILM ARE FILMS OF
10 THE NEW ORLEANS FIELD OFFICE. THAT IS WHERE THEY WERE
11 SUBMITTED AND THAT IS WHERE -- THAT IS THE DIVISION OF THE
12 FBI THAT RETAINED JURISDICTION OVER THEM AND STILL DOES.

13 WHEN RECORDS FROM THE FIELD OFFICE ARE SENT TO THE
14 FBI HEADQUARTERS FOR PROCESSING, THE COVERS BEAR A STAMP.
15 I HAVE ONE HERE FOR A FBI FILE NO. 62109060 AND IT HAS VERY
16 PROMINENTLY STAMPED ON IT, "FIELD OFFICE FILE. DO NOT FILE
17 IN FBI HEADQUARTERS FILES."

18 PART OF THE PROBLEM HERE IS THAT SOME OF THE
19 RECORDS WHICH MR. WEISBERG SPECIFICALLY IDENTIFIED HAVE BEEN
20 TRANSFERRED TO FBI HEADQUARTERS AND THE FBI IS REFUSING TO
21 ACKNOWLEDGE THAT THEY ARE DALLAS OR NEW ORLEANS RECORDS AND
22 SAYING, THEY ARE PART OF A PENDING ADMINISTRATIVE REQUEST
23 FOR HEADQUARTER RECORDS LETTING ME WAIT FOR A DECISION ON
24 HIS ADMINISTRATIVE REQUEST OR SUE FOR THEM.

25 THE FACT IS THAT HE HAS BEEN WAITING FOR ACTION ON

1 HIS ADMINISTRATIVE REQUEST FOR SOME FIVE OR SIX YEARS NOW.
2 HOW MUCH LONGER DOES HE HAVE TO WAIT?

3 THE GOVERNMENT HAS CONCEDED, I THINK, IN ITS PAPERS
4 THAT THE REQUEST IS FOR ALL THE RECORDS IN THE FIELD OFFICES
5 THAT ARE RELATED TO THE KENNEDY ASSASSINATION.

6 THEY REFUSE TO CONCEDE THAT ITS SCOPE IS BROADER
7 THAN THAT BUT THEY AT LEAST CONCEDE THAT MUCH BUT THE
8 GOVERNMENT AFFIDAVITS FAILED TO STATE THAT THEY HAVE MADE A
9 SEARCH FOR ALL RECORDS RELATED TO THE KENNEDY ASSASSINATION.

10 NOW, THERE ARE MANY DIFFERENT TYPES OF RECORDS THAT
11 APPEAR OUTSIDE OF THE FBI CENTRAL RECORDS INDEX THAT ARE
12 RELATED TO THE KENNEDY ASSASSINATION.

13 WE HAVE TALKED ABOUT TICKLERS AND ORIGINALLY
14 MR. PHILLIPS FILED AN AFFIDAVIT SAYING THAT THE FIELD OFFICES
15 DIDN'T HAVE TICKLERS AND MR. WEISBERG CAME BACK WITH A COPY
16 OF A RECORD WHICH TOLD THE DALLAS FIELD OFFICE TO CREATE A
17 TICKLER AND MR. PHILLIPS COMES BACK WITH ANOTHER EXPLANATION
18 THAT IT REALLY ISN'T A TICKLER EVEN THOUGH IT IS CLEAR IT IS.

19 BUT JUST TO MAKE IT EVEN MORE CLEAR, I HAVE
20 MR. WEISBERG'S -- I RECEIVED FROM MR. WEISBERG OVER THE
21 WEEKEND A LENGTHY AFFIDAVIT RESPONDING TO THE LAST PHILLIPS'
22 DECLARATION.

23 MR. WEISBERG SENT IT TO ME BY SPECIAL DELIVERY
24 AS SOON AS HE HAD COMPLETED IT. UNFORTUNATELY, BECAUSE OF
25 OTHER WORK, I DIDN'T OPEN IT UNTIL ABOUT 1:00 A.M. SUNDAY MORNING

1 AND THEN SIMPLY STUFFED IT INTO MY BRIEFCASE AND WENT HOME
2 TO READ IT THE NEXT DAY AND WHEN I GOT TO WORK ON MONDAY,
3 I FOUND OUT THAT THE FIRST PAGE OF IT WAS MISSING, SO I HAVE
4 NOT BEEN ABLE TO FILE IT YET.

5 BUT ONE OF THE EXHIBITS WHICH HE ATTACHED TO THAT
6 AFFIDAVIT IS AN AIRTEL FROM THE DIRECTOR OF THE FBI TO THE
7 SPECIAL AGENT IN CHARGE OF THE DALLAS FIELD OFFICE.

8 IT RELATES TO THIS MATTER OF THE DALLAS POLICE
9 TAPES AND ON THE MARGIN IS WRITTEN, "ONE COPY OF EACH RETAINED
10 IN TICKLER."

11 I WILL SUBMIT IT FOR THE RECORD, I WILL FILE
12 MR. WEISBERG'S AFFIDAVIT AS SOON AS I GET THE ORIGINAL PAGE.

13 THE STATEMENT THAT TICKLERS SHOULD NOT BE SEARCHED
14 FOR BECAUSE THEY ARE SIMPLY DUPLICATES OF OTHER RECORDS IS
15 NOT TRUE.

16 THE TICKLERS ARE NOT AT ALL NECESSARILY JUST
17 DUPLICATES OF RECORDS IN THE OTHER FILES.

18 WE HAD A VERY CLEAR EXAMPLE OF THIS IN THE KING
19 ASSASSINATION CASE WHERE WE KEPT PRESSING FOR A PERIOD OF
20 YEARS TO LOCATE A COUPLE OF TICKLER FILES THAT HAD BEEN
21 CLEARLY IDENTIFIED IN THE RECORDS THAT WERE PROVIDED MR.
22 WEISBERG.

23 THE FBI CLAIMED THEY COULDN'T FIND IT OR IT HAD
24 BEEN DESTROYED AND EVENTUALLY MR. WEISBERG PROVIDED INFORMATION
25 TO MR. QUINLAN SHEA, WHO AT THAT TIME WAS DIRECTOR OF THE

1 OFFICE OF INFORMATION AND PRIVACY APPEALS AND MR. SHEA GOT
2 ON THE FBI AND HAD THEM LOOK AT SOME OF THE LOCATIONS
3 SUGGESTED BY MR. WEISBERG AND LO AND BEHOLD THEY FOUND THE
4 LONG TICKLER FILE. IT WAS A RATHER MASSIVE TICKLER OF SOME
5 35 SEPARATE FILE FOLDERS.

6 IN THAT FILE WERE RECORDS WHICH LISTED MR. WEISBERG
7 AS A SUSPECT IN A BANK ROBBERY -- IN FIVE BANK ROBBERIES, AS
8 A MATTER OF FACT.

9 RECORDS THAT WERE REFERRED TO NOWHERE IN THE MAIN
10 FILE ON THE KING ASSASSINATION BUT SEEMED TO HAVE BEEN
11 CREATED AS A RESULT OF ELECTRONIC SURVEILLANCE ON PROBABLY
12 RAY, JERRY RAY OR JOHN RAY, WITH WHOM MR. WEISBERG HAD SPOKEN.

13 SO THE TICKLERS CAN HOLD IMPORTANT INFORMATION THAT
14 ARE NOT IN THE ORIGINAL FILES.

15 ANOTHER EXAMPLE OF THAT IS ONE THAT WE PROVIDED
16 TO THIS COURT.

17 THE HOUSE SELECT COMMITTEE ON ASSASSINATIONS IN
18 CONDUCTING ITS INVESTIGATION OF THE HOSTY MATTER WAS UNABLE
19 TO RESOLVE CERTAIN QUESTIONS IT HAD AND FINALLY THE FBI
20 PROVIDED PERTINENT INFORMATION FROM A TICKLER FILE, A TICKLER
21 FILE THAT HAD BEEN KEPT FOR MORE THAN 18 YEARS.

22 THAT FACT IS RECITED IN THE HOUSE SELECT COMMITTEE'S
23 REPORT.

24 SO THE TICKLER FILES CAN BE VERY IMPORTANT
25 DOCUMENTS. THEY CANNOT BE DISMISSED AS MERE DUPLICATES.

1 AS FOR THE PROBLEM OF SEARCHING FOR THEM, IT IS NOT
2 A GREAT PROBLEM. THE KNOWLEDGEABLE PEOPLE ABOUT THE
3 ASSASSINATION KNOW WHO WAS WORKING ON THE CASE, WHO WOULD
4 HAVE CREATED A TICKLER AND GENERALLY EACH FBI DOCUMENT HAS
5 A DISTRIBUTION LIST AND THE DISTRIBUTION LIST WOULD INDICATE
6 PEOPLE OR OFFICES THAT WOULD BE CONTACTED TO SEE WHETHER OR
7 NOT THERE WERE EXISTING TICKLER FILES.

8 THERE ARE, OF COURSE, OTHER FILES THAT WE CONTEND
9 HAVE NOT BEEN SEARCHED.

10 THE SAC SAFES AND OTHER FILES, THE GOVERNMENT
11 DENIES THIS, BUT WE HAVE -- THEY HAVE NOT PROVIDED US WITH
12 SEARCH SLIPS ON THE SEARCHES OR ANY OTHER DOCUMENTATION THAT
13 MIGHT EXIST ON SUCH SEARCHES.

14 SO THAT AT BEST WHAT YOU HAVE HERE IS A DISPUTED
15 ISSUE OF MATERIAL FACT AND I WOULD SUGGEST TO THE COURT THAT
16 BECAUSE THERE ARE, I THINK, A NUMBER OF SUCH DISPUTED FACTS
17 IN THE RECORD, FOR EXAMPLE, WHETHER OR NOT MR. WEISBERG
18 HAS BEEN PROVIDED WITH ALL THE FILMS OF THE DALLAS AND THE
19 NEW ORLEANS FIELD OFFICES, THAT IT MAY BE NECESSARY AND
20 APPROPRIATE TO HOLD A SHORT EVIDENTIARY HEARING TO HEAR
21 TESTIMONY ON THIS SO WE CAN RESOLVE THESE QUESTIONS WITHOUT
22 ONE SIDE OR THE OTHER HAVING RECOURSE TO THE COURT OF APPEALS
23 AND FURTHER DRAGGING THIS CASE OUT.

24 MR. WEISBERG HAS INFORMED ME THAT, ALTHOUGH IT IS
25 DIFFICULT FOR HIM TO COME HERE, THAT HE WOULD BE PREPARED,

1 IF THE COURT COULD HOLD AN EVIDENTIARY HEARING AT A SOMEWHAT
2 LATER HOUR TO GIVE HIM TIME TO GET DOWN HERE. HE HAS TO
3 RENT A CAR TO COME DOWN HERE AND HE HAS TO GET SOMEONE TO
4 DRIVE HIM HERE. HE IS NO LONGER ABLE TO DRIVE THAT DISTANCE
5 HIMSELF BUT HE WOULD BE WILLING TO APPEAR AND TO TESTIFY AS
6 TO THESE MATTERS.

7 FAILING THAT, I THINK THAT THE COURT SHOULD PROCEED
8 WITH THE SUGGESTION IT MADE BACK, I THINK, IN MARCH NOW. IT
9 WAS QUITE SOME TIME AGO BUT THAT WE BE ALLOWED TO PROCEED
10 WITH DISCOVERY ON THE QUESTION OF THE SEARCH.

11 I THINK THIS COULD BE DONE EITHER BY DEPOSITION
12 DEPENDING ON WHETHER OR NOT MR. WEISBERG'S SCANT FINANCIAL
13 RESOURCES WILL PERMIT IT OR BY INTERROGATORIES AND THAT WE
14 COULD PERHAPS RESOLVE A NUMBER OF SUCH MATTERS BY RATHER
15 SIMPLE DISCOVERY.

16 I HAVE NOT SUBMITTED A RULE 56(F) AFFIDAVIT SAYING
17 THAT IT WAS ESSENTIAL TO UNDERTAKE THAT DISCOVERY, TO
18 EFFECTIVELY OPPOSE THE DEPARTMENT'S MOTION FOR SUMMARY
19 JUDGMENT, PARTIAL SUMMARY JUDGMENT, ON THE SEARCH ISSUE
20 SIMPLY BECAUSE IT SEEMED TO ME THAT WE HAD SUFFICIENT
21 AMMUNITION SUPPLIED BY MR. WEISBERG INDICATING THE INSUFFICIENCY
22 OF THE SEARCH AND THAT IT WAS NOT NECESSARY.

23 HOWEVER, I WOULD BE PREPARED TO SUBMIT SUCH AN
24 AFFIDAVIT IF, FOR EXAMPLE, THE COURT WERE TO GRANT THE
25 MOTION TO STRIKE MR. WEISBERG'S AFFIDAVITS.

1 I DON'T KNOW IF I WOULD DO SO. IF IT STRUCK THE
2 FIRST AFFIDAVIT, BECAUSE WE HAVE SINCE SUBMITTED A SECOND
3 AFFIDAVIT THAT THE DEFENDANTS HAVE NOT MOVED TO STRIKE AND
4 WHICH I THINK SETS FORTH PERTINENT INFORMATION WHICH ESTABLISHES
5 THE EXISTENCE OF MATERIAL FACTS, BUT I DO THINK THAT IN THE
6 LONG RUN, IT WOULD HELP TO RESOLVE THESE ISSUES AND TO SPEED
7 UP THE PROCESS IF WE CAN SIMPLY TAKE SOME DISCOVERY AND ASK
8 THEM, DID YOU MAKE A SEARCH FOR THIS FILM, FOR EXAMPLE.

9 THE CRITICS KNOW OF HUNDREDS OF PHOTOGRAPHS AND
10 FILMS THAT WERE SUBMITTED TO THE FIELD OFFICES OR THEY KNOW
11 THEY WERE SUBMITTED TO THE FBI. THEY MAY NOT KNOW PRECISELY
12 WHICH FIELD OFFICE HAS THEM BUT WE CAN JUST ASK THEM SOME
13 QUESTIONS AND FIND OUT WHERE THESE THINGS ARE LOCATED,
14 WHERE THEY WERE FILED AND WHETHER OR NOT THEY WERE PROVIDED.

15 EXCUSE ME ONE SECOND, YOUR HONOR. I AM SORRY,
16 YOUR HONOR. I SUFFER FROM DIABETES. I HAVE TO DRINK WATER
17 OCCASIONALLY.

18 THE COURT: WOULD YOU LIKE A SHORT RECESS?

19 MR. LESAR: NO, I AM FINE.

20 I WOULD NOTE THAT THE LETTER OF MR. SHENEFIELD
21 DIRECTED A SEARCH FOR THE UNOFFICIAL FILE -- ANY UNOFFICIAL
22 FILES ON THE ASSASSINATION OF KENNEDY THAT MAY BE PRESENT
23 IN THE NEW ORLEANS FIELD OFFICE AND I BELIEVE THAT MR. PHILLIPS
24 HAS FAILED TO DESCRIBE SUCH A SEARCH.

25 THE PHILLIPS AFFIDAVIT -- THE GOVERNMENT ARGUES

1 NOW THAT THE SCOPE OF THE REQUEST IS VERY MUCH LIMITED BUT
2 THEY OFFER NO EVIDENCE AS TO HOW THEY CONSTRUED THE TERM
3 "PERSONS OR ORGANIZATIONS" WHO FIGURED IN DISTRICT ATTORNEY
4 JIM GARRISON'S INVESTIGATION. OBVIOUSLY THAT REQUIRES
5 SOME EFFORT ON THEIR PART. EITHER THEY HAVE TO COME UP WITH
6 SOME INDICATION AS WHO THEY CONSIDER THOSE FIGURES TO BE OR
7 THEY SHOULD HAVE GOTTEN BACK TO US AS TO WHO THEY ARE.

8 I SUSPECT THAT LURKING BEHIND THEIR POSITION HERE
9 IS A POSITION THAT THEY HAVE TAKEN IN THE PAST. I THINK
10 THEY HAVE ASSERTED IT IN THIS CASE TOO AND THAT IS THAT THEY
11 WILL NOT SEARCH THE FILES ON OTHER INDIVIDUALS WITHOUT A
12 PRIVACY WAIVER.

13 THAT CAN'T BE JUSTIFIED IN THE CIRCUMSTANCES OF
14 THIS CASE, FIRST, GIVEN THE OVERRIDING PUBLIC INTEREST IN
15 THE MATERIALS AND SECONDLY, BECAUSE SOME OF THE PERSONS WHO
16 FIGURED IN GARRISON'S INVESTIGATION HAVE SINCE DIED, JUST
17 TO MENTION ONE, DEAN ANDREWS, A NEW ORLEANS ATTORNEY WHO WAS
18 REPORTEDLY THE GENESIS FOR GARRISON'S CASE AGAINST CLAY SHAW
19 AND WHO, INCIDENTALLY, ALSO TESTIFIED IN FRONT OF THE WARREN
20 COMMISSION.

21 DEAN ANDREWS IS DEAD AND THERE WOULD BE NO PRIVACY
22 RIGHT THAT COULD BE INVOKED ON HIS BEHALF.

23 WITHOUT ANY QUESTION, HE IS A PERSON WHO FIGURED
24 IN DISTRICT ATTORNEY JIM GARRISON'S INVESTIGATION.

25 THERE ARE NUMEROUS OTHER PERSONS. THAT INVESTIGATION

1 WAS A SENSATIONAL INVESTIGATION. IT WAS IN THE HEADLINES
2 OF THE NEWSPAPERS OF THIS COUNTRY FOR A PERIOD OF TWO YEARS
3 AND THERE WERE A LARGE NUMBER OF PERSONS WHO FIGURED
4 PROMINENTLY IN IT BUT THE GOVERNMENT HAS DECLINED TO SEARCH
5 FOR RECORDS ON THOSE PERSONS AND ORGANIZATIONS.

6 FOR EXAMPLE, SOME OF THE CUBAN EXILE ORGANIZATIONS
7 FIGURED VERY PROMINENTLY IN GARRISON'S INVESTIGATION AND YET
8 THERE HAS BEEN NO SEARCH FOR RECORDS ON THE FILES PERTAINING
9 TO THOSE ORGANIZATIONS.

10 I NOTE THAT ON SEVERAL POINTS HERE THIS MORNING
11 THE GOVERNMENT HAS CONCEDED THAT THERE WAS NO SEARCH AND WE
12 CONTEND THAT THAT IS SUFFICIENT TO -- THAT IT IS SUFFICIENT
13 GROUNDS FOR THE COURT TO DENY THE MOTION FOR SUMMARY JUDGMENT
14 BECAUSE THEY HAVE NOT MADE SEARCHES ON THE MATTERS THAT THEY
15 SHOULD HAVE.

16 CARLOS MARCELLO THEY SAY IS NOT WITHIN THE SCOPE
17 OF THE REQUEST. WELL, CARLOS MARCELLO HAS FIGURED IN THE
18 KENNEDY ASSASSINATION IN SEVERAL WAYS.

19 THE HOUSE SELECT COMMITTEE ON THE ASSASSINATION
20 SPENT -- PAID CONSIDERABLE ATTENTION TO HIM AND HEARD HIM
21 TESTIFY.

22 MARCELLO WAS OF INTEREST IN THE INVESTIGATION
23 OF DISTRICT ATTORNEY JIM GARRISON BECAUSE DAVID FERRIE, WHO
24 WAS A PRIME SUSPECT IN MR. GARRISON'S TRIAL OF CLAY SHAW,
25 IN FACT, MR. GARRISON APPARENTLY INTENDED TO INDICT MR. FERRIE

1 ALONG WITH MR. SHAW EXCEPT FOR THE FACT THAT MR. FERRIE DIED
2 JUST PRIOR TO THAT OCCURRENCE AND FERRIE HAD WORKED FOR CARLOS
3 MARCELLO.

4 THE GOVERNMENT TOOK THE POSITION WITH RESPECT TO
5 THE COMSTOCK RECORD THAT MR. WEISBERG DIRECTED SPECIFIC
6 ATTENTION TO, THAT THEY WERE NOT WITHIN THE SCOPE OF THE
7 REQUEST, HE SAID, AND NOT RELEVANT BUT MR. COMSTOCK WAS GOING
8 THE RECORDS CONCERNED AN ARREST WHICH MR. COMSTOCK WAS
9 MAKING OF MR. FERRIE.

10 AND THE ARREST FOR -- WAS IN CONNECTION WITH THE
11 INVESTIGATION INTO THE KENNEDY ASSASSINATION SO EVEN IF YOU
12 ASSUMED THAT THE REQUEST WAS LIMITED TO MATTERS PERTINENT
13 TO THE KENNEDY ASSASSINATION, THIS MATTER WOULD STILL BE
14 PERTINENT TO THAT INVESTIGATION.

15 THE GOVERNMENT ASSERTS THAT MARGUERITE OSWALD IS
16 NOT A FIGURE IN THE INVESTIGATION BUT HERE AGAIN, SHE WAS
17 A CONSIDERABLE FIGURE IN THE WARREN COMMISSION INVESTIGATION.

18 SHE WAS THE MOTHER OF THE ACCUSED ASSASSIN AND
19 MAINTAINED THAT HER HUSBAND -- THAT HER SON WAS INNOCENT AND
20 SUGGESTED THAT HE MIGHT HAVE BEEN EMPLOYED BY THE CIA AND
21 AT ONE POINT SHE HIRED MARK LANE TO REPRESENT HER.

22 I THINK SHE CLEARLY IS A FIGURE IN THE ASSASSINATION
23 CASE.

24 INSOFAR AS THE DALLAS POLICE RADIO TAPES ARE
25 CONCERNED, THERE IS A FACTUAL DISPUTE HERE. MR. PHILLIPS

1 HAS MAINTAINED THAT THE DALLAS FIELD OFFICE SIMPLY DID NOT
2 HAVE THE RADIO TAPES AND HAS SAID THEY WERE SENT TO THE
3 WARREN COMMISSION.

4 MR. WEISBERG MAINTAINS TO THE CONTRARY AND IN HIS
5 NEWEST AFFIDAVIT, WHICH I HAVE NOT FILED, HE MAINTAINS THAT
6 ALTHOUGH THE DALLAS FIELD OFFICE SENT TRANSCRIPTS TO THE
7 WARREN COMMISSION, THEY DID NOT SEND TAPES AND THAT YES,
8 INDEED, THEY DO HAVE TAPES.

9 THAT INFORMATION WILL BE PUT BEFORE THE COURT BY
10 MR. WEISBERG'S AFFIDAVIT WHEN FILED AND WILL CLEARLY INDICATE
11 THE EXISTENCE OF A MATERIAL FACT IN DISPUTE.

12 YOUR HONOR, I THINK THAT CONCLUDES MY PRESENTATION.
13 IF YOU HAVE ANY QUESTIONS OF ME, I'LL BE HAPPY TO ANSWER THEM.

14 THE COURT: I HAVE NO QUESTIONS.

15 DO YOU HAVE ANYTHING FURTHER?

16 MR. LA HAIE: YOUR HONOR, I WON'T DRAG THIS OUT
17 ANY FURTHER IN LIGHT OF THE FACT THAT THE CASE HAS BEEN
18 DRAGGED OUT NOW FOR MANY MONTHS, YEARS, BUT THERE ARE
19 SEVERAL THINGS THAT ARE JUST SO BLATANTLY FALSE THAT IT SHOULD
20 BE POINTED OUT TO THE COURT.

21 FIRST OF ALL, MR. LESAR CLAIMS THAT THERE WERE
22 PROBLEMS WITH THE SEARCH IN THIS CASE FROM THE VERY
23 BEGINNING.

24 ASSUMING THAT IS CORRECT, WHICH IT IS NOT, WHAT
25 WE'RE TALKING ABOUT IS THE ADEQUACY OF THE SEARCH AS OF THIS

1 DATE AND NOT BACK IN 1979.

2 WE FILED AS EXHIBIT A-2 TO THE DEFENDANTS' REPLY
3 TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION CONCERNING
4 ADJUDICATION OF CERTAIN CLAIMS, A LETTER DATED JUNE 16, 1980
5 TO JIM LESAR FROM QUINLAN SHEA.


6 IN THIS LETTER, WHICH IS A FOUR-PAGE LETTER, SINGLE
7 SPACED, MR. SHEA NOTES THAT HIS OFFICE IS SOON TO RULE ON
8 MR. WEISBERG'S ADMINISTRATIVE APPEALS.

9 IN THE SECOND PARAGRAPH HE STATES AND I QUOTE:

10 "WE HAVE ALREADY BEGUN TO FOCUS ON
11 RESOLVING CERTAIN PRELIMINARY ISSUES YOU
12 OR YOUR CLIENT HAS RAISED SUCH AS THE
13 EXACT SCOPE OF MR. WEISBERG'S REQUEST,
14 THE ADEQUACY OF THE BUREAU'S SEARCHES
15 PURSUANT TO THOSE REQUESTS, THE PROPER
16 TREATMENT OF MATERIAL ALLEGED IN THE
17 PUBLIC DOMAIN, REFERRALS AND PREVIOUSLY
18 PROCESSED RECORDS AND THE APPROPRIATENESS
19 OF THE STANDARDS APPLIED BY THE FBI IN
20 ACTUALLY PROCESSING THESE REQUESTS.

21 "FEEL FREE TO BRING TO MY ATTENTION ANY
22 OTHER PRELIMINARY MATTERS YOU FEEL WE
23 SHOULD ADDRESS."

24 THROUGHOUT THIS LETTER MR. SHEA NO LESS THAN FOUR
25 TIMES INVITES INPUT FROM MR. WEISBERG AND MR. LESAR. NEVER



1 ONCE DURING THOSE ADMINISTRATIVE APPEALS DID THIS NONSENSE
2 OF CARLOS MARCELLO OR MARGUERITE OSWALD OR CLAY SHAW -- STRIKE
3 THAT. NOT CLAY SHAW. OR RAYMOND COMSTOCK EVER COME UP AND
4 IT HAS NEVER COME INTO THIS SUIT UNTIL THIS LAST MOTION.

5 TODAY WE FIND --

6 THE COURT: WHAT ABOUT RONNIE CAIRE?

7 MR. LA HAIE: I HAVE NEVER EVEN HEARD OF HIM,
8 YOUR HONOR, NEVER.

9 THERE IS A FILM HE MENTIONED. I NEVER HEARD OF
10 THAT EITHER.

11 GRANTED, THE CASES ARE SO EXTENSIVE BUT IT SEEMS
12 TO ME THAT IF THE PLAINTIFF HAD SOME PROBLEMS IT WOULD BE
13 INCUMBENT UPON HIM TO BRING IT UP.

14 HE FILED A HUNDRED-PAGE AFFIDAVIT AND EVEN BY HIS
15 OWN ATTORNEY, HE CLEARLY DIDN'T MEET THE STANDARDS OF RULE
16 56. WE FILED A MOTION TO STRIKE IN ESSENCE GIVING THEM
17 ANOTHER CHANCE AND THEY COME BACK WITH YET ANOTHER AFFIDAVIT,
18 AN AMENDED STATEMENT.

19 DID WE EVER HEAR OF THE WDSU FILM? NEVER.

20 I MEAN, IT SEEMS TO ME THAT IT IS CLEAR THAT THE
21 PLAINTIFF WILL NEVER BE SATISFIED WITH WHAT THE FBI HAS DONE
22 IN THIS CASE NO MATTER HOW THEY BEND OVER BACKWARDS, NO
23 MATTER TO WHAT EXTENT THEY GO TO SEARCH FOR TOPICS CLEARLY
24 OUTSIDE OF THE SCOPE OF HIS REQUEST.

25 HIS FOIA REQUEST IS THE GUIDEPOST HERE AND YET

1 WE HAVE UNDERTAKEN SEARCHES FOR CRITICS, FOR MR. HOSTY
2 AND YOU ARE TALKING ABOUT DOCUMENTS THAT WERE GENERATED
3 IN 1941 WHEN WE TALK ABOUT MR. DE MOHRENSCHILDT.

4 NOW, PLAINTIFF CLAIMS THAT WHAT THE FBI IS DOING
5 IS TAUNTING HIM TO FILE --

6 THE COURT: EXCUSE ME JUST A MINUTE.

7 YOU MAY PROCEED.

8 MR. LA HAIE: PLAINTIFF CLAIMS THAT WE ARE TAUNTING
9 HIM TO FILE FURTHER LITIGATION. THERE IS ABSOLUTELY NO
10 TRUTH TO THAT WHATSOEVER.

11 IT IS SIGNIFICANT THAT THE COURT SHOULD KNOW THIS
12 AND MAYBE YOU DO, YOUR HONOR, BUT THE JUSTICE DEPARTMENT
13 HAS GRANTED MR. WEISBERG A FEE WAIVER IN THIS CASE. HE GOT
14 THESE HUNDRED THOUSAND PAGES OF DOCUMENTS ABSOLUTELY FREE
15 AT A HUGE EXPENSE TO THE GOVERNMENT.

16 IT SEEMS CLEAR THAT HE IS TRYING TO EXPAND HIS
17 REQUEST TO GET FURTHER DOCUMENTS ALL COVERED BY THIS FEE
18 WAIVER.

19 IF HE WANTS DOCUMENTS ON THESE OTHER SUBJECTS, HE
20 CAN FILE A REQUEST. WE ARE NOT ASKING HIM. WE ARE NOT
21 TAUNTING HIM.

22 HE CLAIMS WE NEVER ASKED HIM TO CLARIFY HIS REQUEST.
23 IT SEEMS CLEAR TO US THAT THE REQUESTS WERE CLEAR, BUT IF
24 HE FELT THAT THERE WERE SOME AREA THAT THE FBI SHOULD SEARCH,
25 HE COULD HAVE BROUGHT IT UP WITH MR. SHEA AND MR. SHEA, AS

1 I SAID EARLIER, INVITED HIM NO LESS THAN FOUR TIMES TO DO IT
2 AND MET WITH HIM AND INDEED BASED UPON HIS CONVERSATIONS AND
3 MEETINGS WITH MR. LESAR AND MR. WEISBERG, THE FBI WENT BACK
4 AND CONDUCTED A SEARCH ON CRITICS, ON GEORGE DE MOHRENSCHILDT,
5 ON JAMES HOSTY AND OTHER ANCILLARY MATTERS.

6 NOW, I THINK WITH RESPECT TO THE SEARCH SLIP ON
7 JAMES P. HOSTY, WE CLEARLY STATED IN THE AFFIDAVITS AND
8 CLEARLY STATED HERE TODAY THAT WE FOUND NOT MATERIAL ON
9 MR. HOSTY OTHER THAN WHAT WAS CONTAINED IN THE GENERAL
10 PERSONNEL FILE.

11 NOW, TODAY, MR. LESAR SAYS WELL, THE FBI MAY HAVE
12 SENT THIS INFORMATION TO HEADQUARTERS AND MR. WEISBERG FEELS
13 THAT THEY DID AND THAT IT REALLY BELONGS IN THE NEW ORLEANS --
14 STRIKE THAT -- IN THE DALLAS FILES.

15 THERE IS NO EVIDENCE WHATSOEVER OF THAT.

16 SO THE ONLY MATERIAL ON MR. HOSTY IN THE HEADQUARTERS
17 DOCUMENTS ARE IN THE PERSONNEL FILE THAT HEADQUARTERS
18 MAINTAINS ON ALL PERSONNEL.

19 NOW, AGAIN, THE FBI UNDERTOOK THE SEARCH OF MR.
20 HOSTY AS A MATTER OF AGENCY DISCRETION.

21 THERE IS ABSOLUTELY NOTHING UNDER FOIA THAT REQUIRES
22 US TO DO THIS IN LIGHT OF THEIR REQUEST AND THE NEXT THING
23 IS THAT MR. WEISBERG -- STRIKE THAT -- MR. LESAR TALKS IN
24 TERMS OF ALL THESE ADMINISTRATIVE APPEALS THAT MR. WEISBERG
25 SENT TO THE DEPARTMENT OF JUSTICE.

1 HE HAS ENUMERATED FILMS, CRITICS, TAPES AND WHO
2 KNOWS WHAT ELSE.

3 THERE IS NO BETTER EXAMPLE OF WHAT WE HAVE BEEN
4 INUNDATED WITH OVER THE LAST SEVERAL YEARS THAN EXHIBIT 3
5 ATTACHED TO MR. WEISBERG'S AFFIDAVIT OF JULY 21, 1982. IT
6 IS A MULTI-PAGE, SINGLE-SPACED RAMBLING SO-CALLED MEMOS TO
7 QUINLAN SHEA FROM HAROLD WEISBERG THAT ARE REALLY IMPOSSIBLE
8 TO DECIPHER OR TO RESPOND TO.

9 NOW, ALL OF THESE SO-CALLED ADMINISTRATIVE APPEALS
10 WERE SUBSUMED INTO THE OMNIBUS BILL THAT WAS FILED BY MR.
11 LESAR BACK IN 1979.

12 AGAIN, THOSE APPEALS WERE RULED ON BY MR. SHENEFIELD
13 IN 1980 AND FURTHER SEARCHES WERE CONDUCTED.

14 NOW, WHAT YOU ARE ASKED TO DECIDE TODAY, AS OF
15 THIS DATE, WHETHER THOSE SEARCHES WERE ADEQUATE AND WE FEEL
16 THAT THEY INDEED ARE.

17 ANOTHER POINT, MR. LESAR STATES, AS HE DID IN ONE
18 OF HIS OTHER SUBMISSIONS, THAT WE HAVE NEVER STATED THAT
19 ALL FILES WERE SEARCHED.

20 NOW, IN OUR REPLY, THAT IS, DEFENDANTS' REPLY TO
21 PLAINTIFF'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT
22 FILED WITH THE COURT ON JULY 21, 1982, WE HAVE STATED THAT
23 PLAINTIFF CLAIMS THAT THE BUREAU NEVER INDICATED THAT IT HAS
24 MADE A SEARCH FOR ALL MATERIAL SOUGHT BY HIS REQUEST.

25 THIS CLAIM IS NOT ACCURATE.

1 INDEED, IN THREE SEPARATE DECLARATIONS FILED WITH
2 THIS COURT, SPECIAL AGENT PHILLIPS LISTED ALL THE DALLAS AND
3 NEW ORLEANS FIELD OFFICE FILES THAT WERE DETERMINED TO BE
4 RESPONSIVE TO PLAINTIFF'S FOIA REQUEST.

5 HE STILL THEN COMES TO THIS COURT AND SAYS WE NEVER
6 STATED THAT. HE SAYS WE NEVER STATED THAT WE SEARCHED ALL
7 THE FILES. IT IS JUST NOT TRUE. WE HAVE NOT ONLY SEARCHED
8 ALL THE FILES BUT OTHER FILES THAT HAD ABSOLUTELY NO RELEVANCE
9 NOR DO THEY PERTAIN TO HIS FOIA REQUEST.

10 HE BRINGS UP OVER AND OVER AGAIN IN HIS PAPERS
11 HERE TODAY WHAT THE FBI DID IN THE KING ASSASSINATION AND
12 WHAT THEY DID IN THE HOUSE SELECT COMMITTEE AND THIS AND THAT
13 AND THE OTHER THING.

14 THERE IS ABSOLUTELY NO TRUTH TO ANY OF THIS NONSENSE.
15 THEY ARE ALL RED HERRINGS IN ORDER TO TRY TO CREATE SOME
16 SORT OF GENUINE ISSUE.

17 HE HAD HIS CHANCE TWICE TO CREATE GENUINE ISSUES
18 AND HE ATTEMPTED TO BY FILING AN AMENDED STATEMENT OF GENUINE
19 ISSUES, THESE 14 POINTS THAT WE HAVE ADDRESSED TODAY.

20 NOW HE WANTS -- TYPICALLY HE WANTS TO COME IN, THE
21 DATE WE ARE HAVING A HEARING, AND SAY, OH, NO, YOUR HONOR,
22 WE WANT TO FILE ONE MORE THING. THIS WILL REALLY CLARIFY
23 HOW THE FBI SEARCHED. THEIR SEARCH, HE SAYS, WAS INADEQUATE.

24 AS FAR AS I AM CONCERNED, IT IS JUST TOO LATE IN
25 THE DAY TO COME UP WITH THIS STUFF.

1 NOW, WITH RESPECT TO HIS REQUEST FOR DISCOVERY, HE
2 HAS NEVER FILED A RULE 56(F) AFFIDAVIT.

3 WE HAVE POINTED THAT OUT TO HIM. HAS HE EVER
4 ATTEMPTED TO FILE SUCH A ONE? NO.

5 INSTEAD, HE NOW CLAIMS THAT MR. WEISBERG'S AFFIDAVITS
6 WERE SO REplete WITH AMMUNITION THAT THERE WAS NO NEED TO
7 AND YET THOSE ARE THE VERY AFFIDAVITS THAT WE HAVE MOVED TO
8 STRIKE BECAUSE THEY ARE ALL BASED -- ALL THESE STATEMENTS
9 WERE BASED ON HEARSAY, UNSUBSTANTIATED CONCLUSIONS, HIS WILD
10 SPECULATIONS AS TO WHAT HAS OCCURRED, ABSOLUTELY FRIVOLOUS
11 CHARGES THAT THE FBI AGENTS HAVE LIED OR PERJURED THEMSELVES
12 AND THAT SORT OF THING.

13 HE ALSO CLAIMS THAT WE DON'T -- DID NOT FILE A
14 MOTION TO STRIKE HIS LATEST AFFIDAVITS.

15 INDEED, WE DID NOT FILE A SEPARATE MOTION. HOWEVER,
16 WE POINTED OUT IN OUR REPLY THAT THAT AFFIDAVIT, MUCH LIKE
17 HIS EARLIER AFFIDAVITS, THE LAST 100-PAGE JOB THAT HE PUT
18 BEFORE THE COURT IS LIKEWISE REplete AND INDEED WE DIDN'T
19 FILE A MOTION BECAUSE WE WANTED TO CUT THIS THING OFF.

20 IF WE FILED A MOTION HE WOULD HAVE ANOTHER REPLY
21 TO IT BUT THAT AFFIDAVIT, JUST LIKE THE FIRST ONE, IS REplete
22 WITH HEARSAY, INNUENDO AND DOES NOT MEET THE REQUIREMENTS OF
23 RULE 56(E).

24 I THINK IT IS TIME TO GET THESE CASES OVER WITH.

25 THE FBI HAS MET THE REQUIREMENTS OF THE COURT OF

1 APPEALS FOR THE DISTRICT OF COLUMBIA, WHAT THEY HAVE SET
2 OUT ESPECIALLY IN THE LATEST OPINION, PERRY V. BLOCK, WHICH
3 IS AFFIRMING THIS VERY COURT, AND THAT WE HAVE SET OUT IN
4 GREAT DETAIL THE SORT OF SEARCHES WE HAVE UNDERTAKEN, WHO
5 SEARCHED THE FILES, A SORT OF SYSTEMATIC APPROACH.

6 WE HAVE MET OUR OBLIGATIONS AND AS FAR AS THE
7 PLAINTIFF IS CONCERNED, WE WILL NEVER MEET OUR OBLIGATIONS.

8 IF WE GO BACK AND SEARCH FOR CARLOS MARCELLO, THERE
9 WILL BE SOMEBODY ELSE THAT HE WANTS US TO SEARCH FOR OR
10 AFTER THE ELEVEN NAMES THAT ARE SUPPOSED TO BE IN JIM
11 GARRISON'S INVESTIGATION, AND SINCE HE ADMITS THAT IT'S NOT
12 INCLUSIVE, WHO KNOWS, WE MIGHT HAVE ANOTHER 12 WHEN WE GET
13 THROUGH WITH THAT ONE.

14 AND THERE IS ONE OTHER THING I WANTED TO MENTION
15 HERE.

16 JIM GARRISON HAD ABSOLUTELY NOTHING TO DO WITH THE
17 FBI. THE FBI CAN'T POSSIBLY BE THOUGHT OF TO KNOW EXACTLY
18 WHO FIGURED IN EVERY INVESTIGATION THAT IS RUN BY SOME
19 DISTRICT ATTORNEY, STATE DISTRICT ATTORNEY, AROUND THIS
20 COUNTRY.

21 WHAT PLAINTIFF REALLY WANTS THE FBI TO DO IS WHAT
22 MR. SHEA, AGAIN IN THAT LETTER OF JUNE 16TH, TOLD HIM THAT
23 WE FEEL THAT FOIA DOES NOT REQUIRE US TO DO, AND THAT IS,
24 TO GET A DOCUMENT THAT HAS SOMETHING TO DO WITH JIM GARRISON'S
25 INVESTIGATION AND IF SOMEONE'S NAME IS THERE, THEY EXPECT

1 US TO GO AND LOOK FOR THOSE DOCUMENTS AND WHEN WE LOOK AT
2 THOSE DOCUMENTS, IF THERE IS ANOTHER NAME THERE, HE EXPECTS
3 US TO GO AND SEARCH THE FILES FOR THAT.

4 IT JUST BECOMES NEVER-ENDING AND IT IS NOT REQUIRED
5 BY THE FOIA.

6 AND SO AS I HEARD MR. LESAR TALK HERE TODAY, I DID
7 NOT HEAR ANY EVIDENCE WHATSOEVER PUT BEFORE THIS COURT THAT
8 WOULD INDICATE THAT THERE ARE ANY GENUINE ISSUES OF MATERIAL
9 FACTS THAT NEED TO BE RESOLVED AND THERE IS ABSOLUTELY NO
10 NEED FOR AN EVIDENTIARY HEARING AT THIS DATE OR AT THIS TIME
11 IN THIS LITIGATION.

12 WE HAVE PUT BEFORE THIS COURT NO LESS THAN EIGHT
13 LENGTHY DECLARATIONS. HOW MUCH MORE CAN BE REQUIRED OF THE
14 FBI?

15 I DON'T THINK THAT THERE IS ANY OTHER FOIA CASE
16 WHERE THE FBI HAS BEEN CALLED UPON OR HAS DETAILED -- OR ANY
17 OTHER AGENCY HAS DETAILED THE SORT OF MULTI-TIERED SEARCH
18 THAT WAS UNDERTAKEN IN A FOIA SUIT AND I HONESTLY FEEL THAT
19 SUMMARY JUDGMENT SHOULD BE GRANTED TO THE FBI IN THIS CASE.

20 THANK YOU, YOUR HONOR, VERY MUCH.

21 THE COURT: I HAVE A MATTER THAT I MUST TAKE CARE
22 OF IN CHAMBERS. WE WILL TAKE A 20-MINUTE RECESS AT THIS TIME.

23 (WHEREUPON, A RECESS WAS TAKEN.)

24 AFTER RECESS

25 THE COURT: YOU MAY HAVE FIVE MINUTES, MR. LESAR.

1 MR. LESAR: THANK YOU, YOUR HONOR. I WILL BE VERY
2 BRIEF.

3 YOUR HONOR, THANK YOU VERY MUCH FOR BEING SO
4 PATIENT WITH BOTH OF US THIS MORNING.

5 GOVERNMENT COUNSEL MADE A STATEMENT THAT I HAD BEEN
6 MAKING FALSE STATEMENTS AND AFTER LISTENING TO HIM, I STILL
7 COULD NOT DETERMINE WHAT IT WAS THAT I HAD SAID THAT WAS
8 FALSE.

9 I DO CALL ATTENTION TO HIS STATEMENT THAT THE FBI
10 HAD ABSOLUTELY NOTHING TO DO WITH JIM GARRISON..

11 I JUST CHECKED THE FBI SEARCH SLIPS ON JIM GARRISON
12 AND THERE ARE AT LEAST A DOZEN PAGES LISTING REFERENCE AFTER
13 REFERENCE TO MR. GARRISON.

14 MANY OF THEM HAVE NOT BEEN PROVIDED BECAUSE THERE
15 IS A LITTLE NOTATION SAYING IRRELEVANT, AGAIN, SOMETHING
16 THAT WE WOULD CHALLENGE.

17 YOUR HONOR, MR. LAHAIE SAYS THAT WE ONLY RECENTLY
18 RAISED THESE ISSUES ABOUT THE SEARCH ON THE CRITICS AND OTHER
19 PERSONS.

20 IT IS JUST NOT TRUE. MY AFFIDAVIT, THE ONE HE
21 WANTS TO STRIKE, SETS FORTH VERY CLEARLY AT LEAST THAT AS
22 EARLY AS JUNE OF 1981, I TOLD THE THEN GOVERNMENT ATTORNEY,
23 DANIEL METCALF, THAT WE WOULD OBJECT TO THE FBI'S INTERPRETATION
24 OF THEIR MANDATE FROM SHENEFIELD TO SEARCH FOR FILES ON
25 CRITICS IF THEY SIMPLY WERE GOING TO LIMIT THE SEARCH RATHER

1 THAN SEARCHING UNDER THE NAMES OF INDIVIDUAL CRITICS.

2 THE GOVERNMENT HAS STATED THAT WE WILL NEVER BE
3 SATISFIED AND THAT IS NOT TRUE.

4 PERHAPS THE EASIEST WAY TO DISPEL THAT NOTION IS
5 THAT WE PUT IN RESPONSE TO THE COURT'S ORDER -- WE PUT FORTH
6 A SETTLEMENT PROPOSAL WHICH WOULD LIMIT THIS TO VERY CLEARLY
7 DEFINED ISSUES AND WE CERTAINLY WERE WILLING TO ACCEPT THE
8 COURT'S DECISION AS FINAL ON THOSE MATTERS AND THE GOVERNMENT
9 REJECTED THAT OUT OF HAND.

10 IT IS THE GOVERNMENT AND NOT US THAT IS PROLONGING
11 THE CASE.

12 THE COUNSEL FOR THE GOVERNMENT BROUGHT ATTENTION
13 TO THE FEE WAIVER. THE SHOE IS ON THE OTHER FOOT. IT IS
14 THE GOVERNMENT THAT IS TRYING TO PUT MR, WEISBERG OFF FROM
15 A FEE WAIVER.

16 IN FACT, THERE IS A MEMORANDUM IN THE RECORD BY
17 MR. SHEA WHICH VERY CLEARLY SAYS THAT THE FBI'S PROPOSAL TO
18 CUT THE FEE WAIVER OFF VIOLATED THE FEE WAIVER AGREEMENT
19 THAT HE GAVE AND HE MAKES IT VERY CLEAR THAT THAT FEE WAIVER
20 IS TO EXTEND TO ALL SUBJECTS ON THE KENNEDY ASSASSINATION
21 REGARDLESS OF WHERE THEY ARE FILED AND THAT IT INCLUDES THE
22 MATERIALS ON THE CRITICS.

23 IT IS THE FBI THAT IS TRYING AGAIN TO FORCE US INTO
24 COURT TO CHALLENGE THEIR UNILATERAL DECISION TO CUT OFF THE
25 FEE WAIVER.

1 FINALLY, THE GOVERNMENT REFERS TO THE CASE OF
2 PERRY V. BLOCK.

3 THE GOVERNMENT'S POSITION FINDS NO SUPPORT THERE
4 BECAUSE THE COURT OF APPEALS IN THAT DECISION VERY CLEARLY
5 AND CAREFULLY DISTINGUISHED THE SITUATION IN FRONT OF IT IN
6 PERRY V. BLOCK FROM THE SITUATION IN THE EARLIER WEISBERG
7 CASE.

8 THE COURT: WHO WROTE THAT OPINION? DO YOU RECALL?

9 MR. LESAR: I BELIEVE IT WAS -- I HAVE IT RIGHT
10 HERE. I DO NOT RECALL NOW BUT IT THINK IT MAY HAVE BEEN
11 JUDGE TAMM. I AM NOT CERTAIN ON THAT.

12 IT VERY CLEARLY DISTINGUISHED THE EARLIER WEISBERG
13 CASE, THE SPECTROGRAPHIC AND NEUTRON ACTIVATION ANALYSES
14 MATERIALS CASE THAT HAD BEEN IN FRONT OF THE COURT ON TWO
15 PRIOR OCCASIONS AND WAS RECENTLY ARGUED THERE FOR A THIRD
16 TIME AND IT SAID THAT IN THE WEISBERG CASE, THERE WERE
17 POSITIVE INDICATIONS IN THE RECORD OF LOCATIONS THAT HAD NOT
18 BEEN SEARCHED AND MATERIALS THAT HAD NOT BEEN PROVIDED AND
19 THAT THE FBI'S AFFIDAVITS WERE INADEQUATE.

20 THOSE SAME FACTORS ARE PRESENT HERE, YOUR HONOR,
21 AND THIS CASE IS CLEARLY DISTINGUISHABLE FROM THE CASE THAT
22 WAS IN FRONT OF THIS COURT IN PERRY V. BLOCK.

23 THANK YOU, YOUR HONOR.

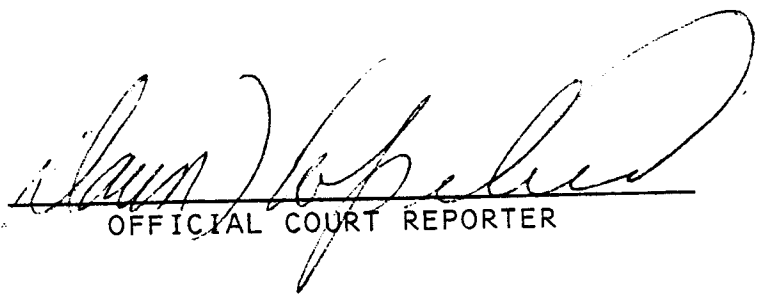
24 THE COURT: GENTLEMEN, I WILL CONSIDER THIS MATTER
25 FURTHER AND ADVISE YOU AT A LATER TIME.

(WHEREUPON, THE HEARING WAS CONCLUDED.)

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CERTIFICATE OF REPORTER

THIS RECORD IS CERTIFIED BY THE UNDERSIGNED
REPORTER TO BE THE OFFICIAL TRANSCRIPT OF THE ABOVE-ENTITLED
HEARING.



OFFICIAL COURT REPORTER