



figured in District Attorney Jim Garrison's investigation ..."  
Weisberg claims that the FBI did not search for all the documents encompassed within his requests. Moreover, he asserts that many of the documents the FBI told him do not exist do in fact exist. The FBI has moved for summary judgment on the adequacy of its search.<sup>1/</sup>

Normal standards of summary judgment apply in a FOIA case; consequently the FBI's motion may only be granted if it proves that no substantial and material facts are in dispute and that it is entitled to judgment as a matter of law. Founding Church of Scientology v. National Security Agency, 610 F.2d 824, 836 (D.C. Cir. 1979) (quoting National Cable Television Association, Inc. v. FCC, 479 F.2d 183, 186 (D.C. Cir. 1973)). In adjudicating the adequacy of an agency's identification and retrieval efforts, the trial court may rely upon agency affidavits, see Founding Church of Scientology v. National Security Agency, 610 F.2d at 836. However, to prevail the defending agency "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." Perry v. Block, No. 81-1330. slip op. at 9 (D.C. Cir. July 30, 1982) (quoting National Cable Television Association, Inc. v. FCC, 479 F.2d 183, 186 (D.C. Cir. 1973)).

In this case, the affidavits of the FBI do not provide a sufficiently detailed description of all aspects of the search undertaken. See Golland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978). The FBI argues that the search it undertook was competent to provide Weisberg with what he requested. Despite the FBI's con-

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1. The FBI also moved to strike Weisberg's first affidavit, and has contested the admissibility of the second Weisberg affidavit. Despite the deficiencies of the second Weisberg affidavit, it provides enough admissible evidence and cites enough documentary evidence to defeat the FBI's motion for summary judgment. Inasmuch as the second affidavit is sufficient for this purpose, it will be unnecessary to consider the FBI's motion to strike the first affidavit.



tentions, neither the description of the search, the search method, or the results are adequate under the applicable standards.

The search undertaken by the FBI was inadequate both with regard to its scope, see Founding Church of Scientology v. National Security Agency, 610 F.2d at 834-36, and as to its effectiveness in retrieving particular documents. See id. at 834. As he has done in previous FOIA cases, Weisberg has produced specific evidence in his second affidavit which casts substantial doubt on the caliber of the agency's search endeavors.<sup>2/</sup> Perry v. Block, No. 81-1330, slip op. at 12-13. In this situation, summary judgment is inappropriate. Id.; Founding Church of Scientology v. National Security Agency, 610 F.2d at 834-35. The following list of contested factual issues regarding the FBI's search for documents is provided in order to give some guidance for the discovery which may be necessary in this case.\*

- 1) What are the documents referred to as "ticklers"? Do the Dallas and New Orleans field offices maintain such records? Although the FBI contends in the Phillips affidavit that ticklers are not maintained in these field offices, Weisberg cites an FBI directive to the Dallas field office, telling that office to prepare a new tickler four years after the assassination [¶¶ 2,3,4,6,7]
- 2) Does the FBI maintain code-named files such as "JUNE" files for surveillances (either at FBI Headquarters or in Dallas or New Orleans) which may hold documents responsive to Weisberg's requests, but which it has not searched? [¶¶ 8,9]
- 3) Does the FBI have confidential files and safes which may contain documents concerning FBI Special Agents in Charge (SACs), which may be responsive to Weisberg's requests, but which have not been searched? [¶ 8]
- 4) Has the FBI searched for records referred to in the October 25, 1975 memorandum by the Dallas Special Agen in Charge? See Exhibit LL to the second Weisberg affidavit. [¶ 10]
- 5) Regarding photographs, films and tapes arguably within Weisberg's requests:
  - a) Do the field offices have indices of retained films, photographs and tapes? Have these been searched? [¶ 13]
  - b) Does the Dallas office have tapes of recorded police

2. Despite the FBI's assertions in its reply to plaintiff's opposition to defendant's motion to strike, filed with the eighth declaration of John N. Phillips, the Court finds that the issues raised by Weisberg are "material," and that factual doubt does exist regarding those issues which is not dispelled by the Phillips affidavits.

\* Paragraph references are to Weisberg's second affidavit.

radio broadcasts? Weisberg claims record exist showing when and by whom these were made. [¶ 14]

- c) Does the Dallas FBI have films of Thomas Alyea for which it has not searched or made claims of exemption?
  
- 6) Are the following within Weisberg's requests for records on "any persons or organizations" who figured in investigations into the Kennedy assassination:
  - a) the Free Cuba Committee
  - b) Double Check
  - c) Alpha 66
  - d) DRE
  - e) JURE
  - f) MNR
  - g) Sylvia Odio
  - h) Carlos Bringuier
  - i) Ronnie Caire
  - j) Dean Andrews
  - k) Perry Russo

If so, has the FBI searched for records on the above?

Are the following within Weisberg's requests for records on Warren Commission critics?

- a) Mark Lane
- b) Harold Weisberg
- c) Howard Roffman
- d) Sylvia Meagher
- e) Josiah Thompson
- f) Jim Garrison
- g) Joaquim Joesten
- h) Leo Sauvage
- i) Edward J. Epstein
- j) Richard Popkin
- k) Paul Hoch
- l) David Lifton
- m) Mary Ferrell
- n) Earl Golz
- o) Penn Jones
- p) Harold Feldman
- q) Vincent Salandria
- r) Bernard "Bux" Fensterwald, Jr.
- s) Hal Verb
- t) Sylvan Fox
- u) Robert Kaffka
- v) Nerin Gun
- w) Herve Lamar (James Hepburn)
- x) Willard Robertson
- y) Cecil Shilstone
- z) Thomas Buchanan
- aa) Truth and Consequences
- bb) Assassination Inquiry Committee
- cc) Assassination Information Bureau
- dd) Citizens Commission of Inquiry
- ee) Citizens committee of Inquiry

Has the FBI searched for records on the above? [¶¶ 15-21]



- 7) Has the FBI searched for all records "pertaining to persons or organizations" who figured in the investigations, regardless of whether those records are in the main files? [¶¶ 22, 32] Has the FBI searched files on all the "see" references within the main files? [¶¶ 23, 24]
- 8) Has the FBI searched for the records referred to in Exhibits 4, 5, and 6 to the second Weisberg affidavit? These are records presumably within Weisberg's request, and yet not provided to him by the New Orleans field office. [¶¶ 25-29, 30-32]
- 9) Exhibits 7-10 to the second Weisberg affidavit refer to more admittedly relevant, and yet undisclosed, records. Have these been searched for? [¶ 31]
- 10) Weisberg claims that disclosed FBI records cite FBI investigations of assassination subjects such as Mafia figure Carlos Marcello, and that such figures were also included in the investigations of the Warren Commission and Jim Garrison. Yet, no mention of records on such people was made in response to Weisberg's requests. Has the FBI searched for such records? [¶ 33]
- 11) Has the FBI searched for records on former FBI Special Agent James P. Hosty, Jr.? Weisberg cites references to records dated December 5, 6, 8, 1963 and to the file in which they may be found (FBIHQ 67-789-3048). The FBI search slip indicates it did not search for records on Hosty. [¶¶ 34, 35]
- 12) Has the FBI searched for all records on Mrs. Marguerite Oswald? [¶ 38]

In light of the inadequacy of the FBI's description of its search efforts, see Goland v. CIA, 607 F.2d at 352, and the inadequacy of the scope, method and effectiveness of the search itself, see Founding Church of Scientology v. National Security Agency, 610 F.2d at 834-36, summary judgment must be denied. Id.

An appropriate order follows.

  
United States District Judge

Dated: October 26, 1982

