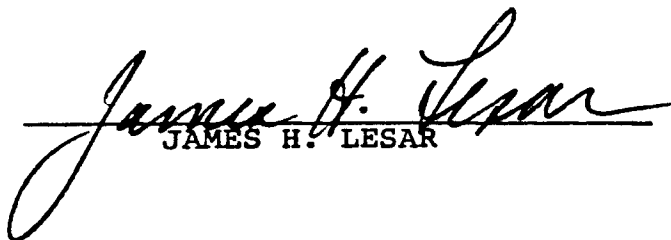


CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of February, 1983, mailed a copy of the foregoing Plaintiff's Motion for an Order Compelling Defendants to Answer Request for Admission to Mr. Henry LaHaie, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 78-0322
 :
 WILLIAM H. WEBSTER, ET AL., :
 :
 Defendants :

HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 78-0420
 :
 FEDERAL BUREAU OF INVESTIGATION, : (Consolidated)
 ET AL., :
 :
 Defendants :

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants have objected to plaintiff's request that they admit that the Central Intelligence Agency (CIA) asked the Federal Bureau of Investigation (FBI) for information on twenty-six named persons. They object, first, on grounds of relevancy, and, second, that the request for admission falls outside the fourteen issues listed in plaintiff's Amended Statement of Genuine Issues of Material Fact in Dispute filed on July 26, 1982. Neither objection is well-founded.

The admission is clearly relevant to the issue of whether defendants have conducted a thorough search for, inter alia, "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" If the CIA did request information from the FBI on these individuals, this is evidence both that they figured in Garrison's investigation and that the FBI knows they did. That being the case, they are clearly within plaintiff's request and there must be a search for records pertaining to them.

Defendants also object on the grounds that "the information sought by the request for admission falls outside the fourteen issue (sic) listed in plaintiff's Amended Statement of Genuine Issues of Material Fact in Dispute filed on July 26, 1982."

This is factually incorrect. The sixth item of plaintiff's Amended Statement lists as a disputed issue:

Whether the FBI has searched for "all records on or pertaining to persons who figured in the investigation of President Kennedy's murder that are contained within the file(s) on that assassination, as well as those that are," and for all New Orleans Field Office records "on or pertaining . . . to any persons or organizations who figured in District Attorney Jim Garrison's investigation into President Kennedy's assassination," including but not limited to the following:

- (a) the Free Cuba Committee
- (b) Couble 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

Not only was this sixth item of the Amended Statement not limited to the persons and organizations named therein, but several of the persons listed in it are also listed in the request for admission. Thus, it is not true that the information sought by the admission falls outside the requested admission.

Defendants' further contention, that discovery on the adequacy of the FBI's search is limited to the fourteen issues specifically set forth in the Amended Statement, is clearly wrong. Defendants rely on a provision in Local Rule 1-9(h) which provides that a party opposing a motion for summary judgment

shall serve and file, together with his opposing statement of points and authorities, a concise 'statement of genuine issues' setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated

Defendants' motion is a motion for partial summary judgment on the adequacy of the FBI's search for responsive documents. It is this single material fact which is in reality at issue, the adequacy of the FBI's search. The many facts which plaintiff set forth are simply illustrations which evidence the dispute as to the basic factual issue: viz., the adequacy of the FBI's search.

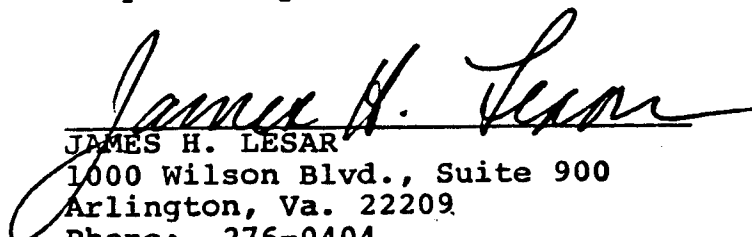
There are many reasons why the position take by defendants is wholly untenable. In the first place, the party moving for summary judgment has the burden of establishing by a record that is

for decision of the legal question presented that there is no triable issue of material fact. Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973); Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970). The papers of the moving party are to be carefully scrutinized, while those of the opposing party, if any, are treated with considerable indulgence. Semaan v. Mumford, 335 F.2d 704 (D.C.Cir. 1964). If the moving party fails to shoulder his burden his motion should be denied, even though the opposing party has presented no evidentiary materials in opposition, and has not presented any Rule 56(f) affidavit. Adickes, supra; Bloomgarden v. Coyer, 479 F.2d 201 (D.C.Cir. 1973).

Thus, there is no requirement that the party opposing the motion set forth all evidence pertinent to a disputed factual issue; only that he set forth sufficient evidence to demonstrate that there is a factual issue in dispute. And if the moving party fails to meet his burden, he doesn't even have to to that.

Defendants, in violation of both the express provisions of the Freedom of Information Act and the principles of summary judgment, are attempting to prevail in this litigation by shifting the burden to plaintiff. This the Court cannot allow.

Respectfully submitted,


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Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

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 Defendants :

O R D E R

Upon consideration of plaintiff's motion for an order compelling defendants to answer his request for admission, defedants' opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, hereby

ORDERED, that defendants shall answer plaintiff's request for admission within _____ days of the date of this order.

UNITED STATES DISTRICT JUDGE