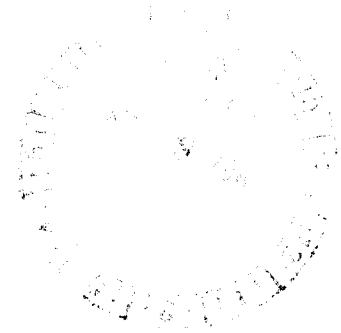


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



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 :
 :

MOTION TO STRIKE ALL SWORN STATEMENTS BY FBI
SPECIAL AGENT JOHN N. PHILLIPS AND MOTION TO
HOLD EVIDENTIARY HEARING ON PLAINTIFF'S CHARGES
THAT DEFENDANTS HAVE SUBMITTED FALSE INFORMA-
TO THE COURT

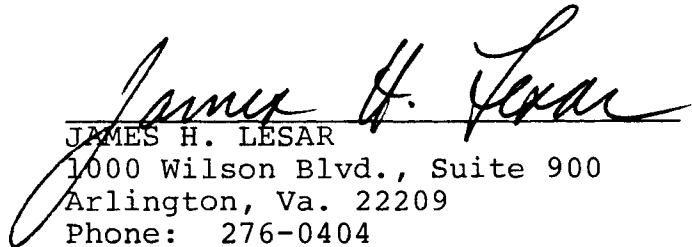
Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court to strike all sworn statements by FBI Special Agent John N. Phillips which have been submitted to the Court in this cause on the grounds that Phillips' affidavits, declarations and sworn statements contain false information which renders them untrustworthy.

Plaintiff further moves the Court to hold an evidentiary hearing on his charges that defendants have submitted sworn statements which contain false information.

A Memorandum of Points and Authorities and proposed orders are submitted herewith.

Also submitted in support of this motion is the attached March 1, 1983 affidavit of Mr. Harold Weisberg.

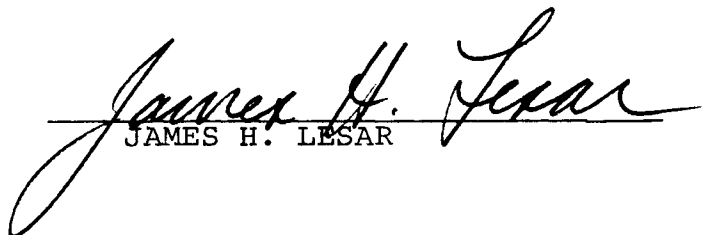
Respectfully submitted,


JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 1983, mailed a copy of the foregoing Motion to Strike All Sworn Statements by FBI Special Agent John N. Phillips and Motion to Hold Evidentiary Hearing on Plaintiff's Charges that Defendants Have Submitted False Information to the Court to Mr. Henry LaHaie, Room 3338, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.


JAMES H. LESAR

UNITED STATES DISTRICT COURT
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MEMORANDUM OF POINTS AND AUTHORITIES

The first of these two cases involves a request of the FBI's New Orleans Field Office which seeks, inter alia, all records on or pertaining to the assassination of President John F. Kennedy and "all records on or pertaining to . . . David Ferrie" The FBI claims to have made a thorough search for the records requested by plaintiff. Some time ago, it informally provided plaintiff with copies of its search slips.^{1/} Plaintiff has previously alleged that these search slips are phonies, that they are

^{1/} Although plaintiff subsequently requested copies of the original search slips pursuant to Rule 34, the FBI has refused to honor this request, asserting that plaintiff has already been given them.

not copies of the original search slips. In responding to plaintiff's interrogatories defendants' have denied this. FBI Special Agent John N. Phillips has specifically sworn that "[t]he search slips provided to plaintiff were copies of the original search slips. Answer to Interrogatory 35.

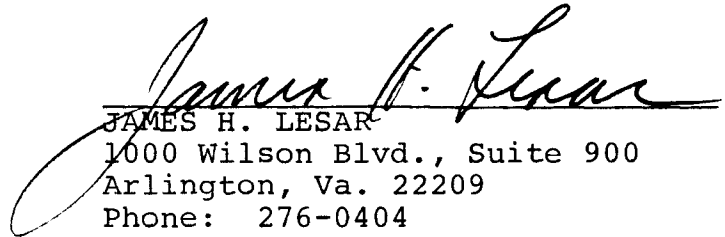
The search slips furnished to Weisberg list David Ferrie in three files only. March 1, 1981 Weisberg Affidavit ("Weisberg Affidavit"), ¶9. These files are numbers 89-69 (and 89-69A), 100-10661 and 94-448. Id. However, a requester in another FOIA lawsuit has just obtained additional files on Ferrie which are not reflected on the FBI's search slips as furnished to Weisberg. Specifically, this document shows that New Orleans file No. 2-112 pertains to David Ferrie, yet this file number is not listed on the search slips. Id.

The failure of the search slips to record this file (and others also containing information on him) raises the gravest questions about the authenticity of the search slips provided Weisberg, the accuracy and integrity of the sworn statements of FBI Special Agent John N. Phillips, and the thoroughness of the FBI's search. If Agent Phillips' sworn statement regarding the authenticity of the search slips is false, then the Court can place no trust in any of his affidavits or declarations and all which have been filed in this case should be stricken.

Because of the central importance to this issue to the integrity of the judicial process and the viability of the Freedom of Information Act, as well as the proper resolution of matters

before the Court in this case, plaintiff has moved that the Court hold a hearing on charges he has made concerning the filing of sworn statements containing false information. In the interest of justice, the Court should grant plaintiff's request for an evidentiary hearing at which he will be permitted to examine appropriate FBI personnel to learn why, and the extent to which, false information has been submitted to the Court in these cases.

Respectfully submitted,


JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
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 ET AL., :
 :
 Defendants :

Q R D E R

Upon consideration of plaintiff's motion to hold an evidentiary hearing on his charges that defendants have submitted false information to the Court, defendants' opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1983,

ORDERED, that the Court will hold an evidentiary hearing into plaintiff's charges on the _____ day of _____, 1983, at the hour of _____.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 FEDERAL BUREAU OF INVESTIGATION, :
 ET AL., :
 Defendants :

O R D E R

Upon consideration of plaintiff's motion to strike the sworn statements of FBI Special Agent John N. Phillips submitted in this cause, defendants' opposition thereto, and the entire record herein, and the Court finding the sworn statements of Agent Phillips in this case to be untrustworthy, it is by the Court this _____ day of _____, 1983, hereby

ORDERED, that all affidavits, declarations and other sworn statements of FBI Agent John N. Phillips submitted by defendants in this consolidated case be, and hereby are, STRICKEN.

UNITED STATES DISTRICT COURT

AFFIDAVIT OF HAROLD WEISBERG

In my affidavit of February 20, 1983 I address the burdensomeness of defendant's discovery demands because of my advanced age and my serious medical and physical problems. In that affidavit I also alleged that the defendant's discovery demands are not necessary to searches and compliance and amount to additional stonewalling. I was not aware when I completed this prior affidavit that I was then incubating additional and further limiting and painful illness as I was. In two days I was ill enough to start seeing my family doctor. He informs me that I have bronchitis, pneumonia and pleurisy. As of February 28, he appears to have ruled out congestive heart failure, included in his earlier and tentative diagnosis.

1. I prepare and present this affidavit to call to the Court's attention FBI information disclosed in another case but withheld from me in this instant cause, information that confirms my prior allegations of FBI false swearing in this case. This just disclosed information raises what I regard as a serious question of official perjury in this case. Based on my extensive experience I regard as significant the matters I address in this affidavit. Otherwise, I would not, in my additionally weakened condition, even attempt to prepare an affidavit.

2. Throughout this case I characterized the search slips provided by the FBI in this case as phonies. I have also alleged that those provided by the New Orleans office are not and cannot be the original search slips but, rather, are a rewriting of other working papers. The FBI has now sworn to the completeness and authenticity of these search slips. In what follows I cite some of the now available FBI proof that its recent attestations to completeness and authenticity are false and were known to be false when uttered.

3. With regard to the late David W. Ferrie, I attested that to my knowledge the FBI had cozy arrangements with private persons and organizations and that it had

given them privately Ferrie information it still withholds from me in this litigation. I alleged that to my knowledge this information includes allegations that Ferrie was suspected on violation of the neutrality act, that I had seen such leaked FBI records, and that at the very least the additional known-to-exist and pertinent Ferrie records must include FBI records bearing the FBI's neutrality act File Classification Number, which is 2. I stated the truth. The FBI's subsequent attestations are not truthful.

4. The pertinent New Orleans neutrality-act Ferrie records are in it file 2-112. The copies of them disclosed to another and withheld from me are from the FBIHQ file 105-104340.

5. I attach as Exhibit 1 the September 22, 1961 New Orleans air mail, registered letter to FBIHQ, "Re ' David William Ferrie Information Concerning,'" indicated as from New Orleans File 2-112. In accord with FBI practise, this record discloses a second New Orleans copy in a separate and " subversive" classification filing. This and all the other existing and pertinent records remain withheld from me in this instant cause.

6. Although the FBI's self-serving formulation does not really disclose its cozy arrangements of which I had knowledge, it does disclose that contrary to the FBI's attestations in this and other cases that it makes no disclosure of its information to private persons and cannot even disclose that it has information on individuals, this record states explicitly that the FBI gave the private investigator " a summary of data contained in a preliminary investigation of DAVID WILLIAM FERRIE under a possible Neutrality Act investigation..."

7. This record does not state that the private investigator received copies of any FBI records. It is phrased to suggest that he did not. However, he did, and later I saw them, thus my knowledge.

8. This record also states that there are other "scattered references to

FERRIE in the indices of this office," New Orleans. This language additionally gives the lie to the FBI's current attestations to the completeness of its search and the genuineness of its search slips.

9. The Ferrie search slips provided by the FBI in this case lists Ferrie records in three files only, 89-69 (and 69A), 100-10661 and what is claimed to be irrelevant but cannot be, nine pages of 94-448. Thus all the records provided as a result of the alleged search, as reflected on the phony search slips, are from two files that did not exist for more than two years after the date of Exhibit 1, yet it refers to "scattered" other references as well as the neutrality act and subversive files none of which are mentioned on the search slips, the authenticity of which was sworn to after I alleged they were phony and incomplete.

10. It thus is beyond question that the FBI's attestations that its Ferrie and New Orleans searches are full and complete are false, that the FBI's attestation that its search slips provided in this case are full and complete also is false and that its affiants had every reason to know and believe that they swore falsely in making these oaths.

11. It also is without question that any and all such Ferris information is and to the FBI's knowledge is within my requests, which I have repeated throughout this long-stonewalled case. (My New Orleans request is Exhibit 1 to the Complaint.) I requested "all records on or pertaining to persons and organizations who figured in the investigation into President Kennedy's murder that are contained within the file(s) on that assassination, as well as those that are not;" and "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 into President Kennedy's assassination." (Emphasis added. Ferrie also figured in the FBI's and the Commission's investigations.)


12. For the information of the Court, over the years, going back to the late 1960's, I also filed a number of requests of FBIHQ for all David Ferrie information.

Finally, in about 1972, after a number of refusals, I was provided with a few self-serving FBI records but only some of those it provided to the Warren Commission. Exhibit 1 thus also reflects the fact that FBIHQ also lied to me repeatedly in withholding the information it did have - and still withholds after a decade and a half - and that after the Department assured the Senate that this and two dozen other ignored requests would be satisfied.

13. For the additional information of the Court, I understand that FBI SA John N. Phillips is the FOIA supervisor in the case in which Exhibit 1 was provided to another litigant. Phillips also is the FBI's supervisor in this instant cause. Throughout it I have alleged that Phillips swears to anything, without regard to fact or his having any knowledge, and that he gags at nothing. While Exhibit 1 is not the only pertinent record provided to this other requester by Phillips and withheld from me by Phillips, I submit that it is ample confirmation that Phillips et al do swear to anything, regardless of truth or falsehood, and that they gag at nothing at all in their untruthful attestations, and that their untruths are not accidental.

14. I have also alleged that the defendant's discovery efforts are not necessary to search or compliance, are not even claimed to be necessary, and in fact are intended for other and improper purposes. I have stated that no discovery or any other information from me is required for belated searches, belated processing of records located by belated searches, and that all the FBI need do is what it was required to do from the outset and still refuses to do: make proper uses of its own indices. This Ferrie matter illustrates the truth of my allegations. It is beyond question that the FBI did not make proper searches to locate information on or about Ferrie; that it knew it had pertinent information it did not include on its phony search slips; that it swore falsely in alleging that the search slips provided are genuine and complete; and

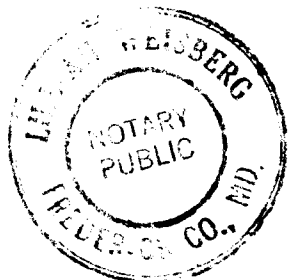
that it needed no information from me to be aware that it had and withheld additional, pertinent Ferrie information.




HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 1st day of March 1983 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true. My commission expires July 1, 1986.





NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

EX-1078/032-0428

FBI

Date: September 22, 1961

Transmit the following in _____

PLAIN TEXT

(Type in plain text or code)

Via _____

AIR TEL - AIR MAIL - REGISTERED

(Priority or Method of Mailing)

REC-41

To: Director, FBI

From: SAC, New Orleans (2-112)

Re: DAVID WILLIAM FERRIE
INFORMATION CONCERNING

72

*For the Bureau
6/2/61*

Enclosed for the Bureau are five copies of a letterhead memorandum dated September 22, 1961, and captioned as above.

For the information of the Bureau, on the afternoon of 9/15/61, [redacted]

[redacted], Washington, D. C., personally called at the New Orleans Office and related that he was investigating the activities of a DAVID WILLIAM FERRIE, a former pilot for Eastern Airlines. [redacted] stated that it may be possible to take some action against FERRIE to keep him from flying commercial airplanes. [redacted] explained that a pilot case is presently under consideration involving an individual from Atlanta, Georgia, and that if a favorable ruling were received in such a case, that proceedings would also be taken by FAA against FERRIE.

[redacted] was furnished verbally with a summary of data contained in a preliminary investigation of DAVID WILLIAM FERRIE under a possible Neutrality Act investigation in September of 1961; however, as set forth in the enclosed letterhead memorandum, initial inquiries failed to indicate the existence of any neutrality matter violation.

[redacted] was also advised that there were scattered references to FERRIE in the indices of this office, and that a memorandum would be prepared concerning all information in the New Orleans files regarding FERRIE, which memorandum would be furnished to Bureau headquarters at Washington, with the request that copies be furnished to the Security Division of FAA at Washington, D. C.

105-104340-1

EX-118 REC-41

62-10-1014

Five copies of this memorandum are furnished to the

- 3 - Bureau (Enclosures 5) (AM - Registered)
- 2 - New Orleans (1 - #2-112) (1 - #105-1436-FRD)

WCD:co

NOV 7 1961

[Signature]
Special Agent in Charge

Sent _____ M Per _____

[Handwritten initials]