

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action Nos.  
78-322 and 78-420  
(Consolidated)

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION  
TO STRIKE AND TO HOLD AN EVIDENTIARY HEARING

I. PRELIMINARY STATEMENT

On March 8, 1983, plaintiff filed a pleading styled "Motion to Strike All Sworn Statements by FBI Special Agent John N. Phillips and Motion to Hold Evidentiary Hearing on Plaintiff's Charges that Defendant Has Submitted False Information to the Court." In support of that motion (herein referred to as the "motion to strike"), plaintiff asserts that Special Agent Phillips' declarations and other sworn statements in these cases contain false information which renders them untrustworthy.

Specifically, plaintiff claims that a document released by the FBI to another FOIA requestor demonstrates that the copies of the search slips provided to Mr. Weisberg were "phonies." Plaintiff divines this conclusion because the document in question reflects that David Ferrie was referenced in New Orleans file nos. 2-112 and 105-1456-FRD, yet none of the copies of the New Orleans search slips provided to plaintiff contain those file references. To plaintiff's mind, this establishes -- in and of itself -- that Mr. Phillips lied when he stated that the search slips provided to Mr. Weisberg were copies of the original search slips drawn up

*Mr. Phillips' affidavits*

*1. Any del not be taken in this*

as a result of the FBI's search in these cases. Since it is thus clear to plaintiff that Mr. Phillips knowingly submitted false information about the authenticity of the New Orleans search slips, he surmises that all the sworn statements provided by Mr. Phillips in this litigation are false and therefore should be stricken by the Court. However, as shown below, there is not a shred of truth to these allegations. <sup>\*/</sup>

## II. ARGUMENT

The document attached to plaintiff's affidavit in support of the motion to strike simply does not prove that Special Agent Phillips was ever untruthful. Rather, as succinctly explained by Special Agent Clifford H. Anderson in his declaration of March 24, 1983 (attached hereto as Exhibit A), the New Orleans search slips do not reflect the files referenced in that document because one of the files (i.e., 2-112) and its corresponding index cards had been routinely destroyed prior to the date of the plaintiff's FOIA request, whereas the other file (i.e., 105-1456-FRD) had never been indexed per the document in question. In other words, when plaintiff submitted his FOIA requests in these cases, there were (and still are) no index cards in the New Orleans general indices referencing David Ferrie to the two files mentioned in the document attached to plaintiff's affidavit. Inasmuch as search slips only reflect the information in a file as indexed on the 3x5

\*/ Plaintiff's propensity for exaggeration and conjecture has apparently been one of longstanding. See Weisberg v. United States, 193 F. Supp. 815, 819 (D. Md. 1961).

cards in an office's general indices, it would have been impossible to draw up search slips based upon nonexistent index cards. This is why the copies of the search slips provided to plaintiff do not list references to New Orleans file nos. 2-112 and 105-1456-FRD.

In light of this explanation by Special Agent Anderson, it is clear that the lack of reference on the search slips to those two New Orleans files does not substantiate plaintiff's conjecture that the copies of the search slips provided to him were "phonies" and that Special Agent Phillips has lied about this as well as the other matters upon which he has submitted information in these cases. Plaintiff's motion to strike should thus be denied.<sup>\*/</sup>

Moreover, plaintiff's motion to strike underscores the very reason why the Court should again order plaintiff to answer defendant's interrogatories and request for production of documents. As the defendant has noted before,<sup>\*\*/</sup> the procedural history of these cases demonstrates that the defendant

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<sup>\*/</sup> Given the sworn statements by Special Agents Anderson and Phillips (see Exhibits A and B attached hereto) concerning the authenticity of the search slips provided to Mr. Weisberg, no purpose would be served in holding an evidentiary hearing on plaintiff's and his counsel's frivolous charges that FBI personnel have submitted false information in these cases.

<sup>\*\*/</sup> See, e.g., Defendant's Opposition to Plaintiff's Motion for a Protective Order, filed on January 27, 1983; and, Defendant's Opposition to Plaintiff's Motion for an Order Compelling Defendant to Answer the Request for Admission, filed on February 18, 1983.

has consistently endeavored to get plaintiff to articulate all the bases for his complaints about the adequacy of the FBI's search so that it could resolve those complaints. Plaintiff, on the other hand, has attempted to avoid such an articulation, preferring instead to reveal his complaints in a piecemeal fashion, if at all. This tactic by plaintiff has kept his complaints fluid and obscure and, in turn, virtually irresolvable.

An apt example of this was when plaintiff opposed the defendant's motion for partial summary judgment by submitting a one sentence Rule 1-9(h) statement in which he contended that the only material fact in dispute was whether the FBI had conducted a thorough, good faith search for records responsive to his FOIA requests. When the defendant, by a motion to strike, forced plaintiff to amend his Rule 1-9(h) statement so as to specify all the factual issues which he alleges are in dispute regarding the adequacy of the FBI's search, plaintiff came up with a list of fourteen disputed facts; he also cited the Court to affidavits by himself and to documents attached to those affidavits which he contended supported his fourteen claims. But then when the defendant demonstrated that those documents and affidavits failed to substantiate the facts which plaintiff claimed were in dispute, plaintiff merely came forward with a few more documents and affidavits. The affidavit and document filed in support of the instant motion to strike are similar examples of this piecemeal approach by plaintiff.

In addition, when the defendant, per the advice in the Court's Memorandum of October 26, 1982, propounded discovery to plaintiff in an effort to ascertain all the facts and documents

which form the core of his fourteen claims about the adequacy of the FBI's search, plaintiff stonewalled -- first, by filing a motion for a protective order and then, in defiance of the Court's Order denying that motion, by filing blanket objections to defendant's discovery requests. As the defendant has twice shown,<sup>\*/</sup> there is no valid reason for this refusal by plaintiff to come forward, once and for all, with an exhaustive list of those facts and documents which he contends supports his assertion that the FBI's search was inadequate. Accordingly, plaintiff should again be ordered to answer defendant's discovery. Such a directive would hopefully cut off what has come to be a never ending flow of frivolous motions and dilatory tactics by plaintiff and his counsel.

For these reasons, defendant requests that the Court both deny plaintiff's motion to strike and issue an order compelling plaintiff to provide responsive answers to defendant's discovery requests.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

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<sup>\*/</sup> See Defendant's Opposition to Plaintiff's Motion for a Protective Order, filed on January 27, 1983; and, Defendant's Motion for an Order Compelling Discovery, filed on March 15, 1983.

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Attorneys for Defendant.

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DECLARATION OF CLIFFORD H. ANDERSON

I, Clifford H. Anderson, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation. Since 1968, I have been assigned to the FBI's New Orleans Field Office. In addition to the usual investigative responsibilities of a FBI agent, I was given the task of supervising the search for records responsive to plaintiff's FOIA request to the New Orleans Field Office regarding the assassination of President John F. Kennedy.

2. Government counsel asked that I read and respond to the statements made by Mr. Weisberg and his counsel in support of plaintiff's "Motion To Strike All Sworn Statements By FBI Special Agent John N. Phillips And Motion To Hold Evidentiary Hearing On Plaintiff's Charges That Defendant Has Submitted False Information To The Court."

3. There is no truth to plaintiff's and his counsel's assertions concerning the authenticity of the copies of the New Orleans search slips provided to him. Rather, the copies sent to FBI Headquarters and, in turn, provided to plaintiff are unaltered photostatic copies of all the original search slips prepared by me or under my supervision.

*Exhibit A*

4. The document attached to plaintiff's affidavit of March 1, 1983, showing that David Ferrie was referenced in New Orleans file nos. 2-112 and 105-1456-FRD, does not substantiate plaintiff's accusations that the search slips provided to him "were phonies." Instead, when I was first made aware of the existence of that document on March 16, 1983, I conducted a search for the two files referenced therein and ascertained the following:

(a) With respect to file no. 2-112, I discovered that such file was routinely destroyed prior to November 1977 per the FBI's standard procedures for the destruction of inactive files over ten years old. Since those procedures always include the destruction of a file's corresponding 3x5 index cards, all the index cards keyed to file no. 2-112 would have been also destroyed prior to November 1977. Consequently, when plaintiff made his FOIA request to the New Orleans Field Office in late December 1977 and when the initial search was subsequently conducted for records responsive to plaintiff's FOIA request, file no. 2-112 and its corresponding index cards were no longer in existence. Given the fact that search slips merely reflect the information in a file as indexed on 3x5 cards in the office's general indices, it would have been impossible to draw up search slips based upon a non-existent file and non-existent index cards. In short, the New Orleans search slips on David Ferrie do not include a reference to file no. 2-112 because such file and its corresponding index cards were no longer in existence when we conducted the search for records responsive to plaintiff's FOIA request.

not as-  
not  
mentioned

how did he  
know - no  
reply

other  
references?

use his "interpretation"

historical

see refs too?



*in my files he met [unclear] # of anything else*


*Why was this not added to [unclear]?*

(b) I did locate a copy of the document attached to plaintiff's affidavit in file no. 105-1456-FRD; however, I also discerned from that copy that a decision had been made in September 1961 (i.e., the date the document was generated) not to have the document indexed to the 105-1456-FRD file. Accordingly, when we conducted the 1978 search in response to plaintiff's FOIA request we did not come across the document attached to plaintiff's affidavit since it had never been indexed to file no. 105-1456-FRD.

5. In conclusion, I would like to reiterate that plaintiff was provided with photostatic copies of all the original search slips which were prepared as a result of the New Orleans Office's search for records responsive to his FOIA request. None of those search slips have been rewritten or reworked in any manner. The document attached to plaintiff's affidavit simply does not demonstrate otherwise.

I have read the foregoing statement consisting of 3 pages and fully understand its contents. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 24<sup>TH</sup> day of March, 1983.

  
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CLIFFORD H. ANDERSON  
Special Agent  
Federal Bureau of Investigation  
New Orleans, Louisiana

UNITED STATES DISTRICT COURT  
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NINTH DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts Section, Records Management Division, FBI Headquarters, Washington, D.C. As I have indicated in the eight previous declarations that were filed in these consolidated cases, I am familiar, due to the nature of my official duties, with the procedures followed in processing plaintiff's FOIA requests for records on the assassination of President John F. Kennedy contained in the FBI's Dallas and New Orleans Field Offices.

2. The accusations made by Mr. Weisberg and his counsel in plaintiff's motion to strike filed on March 8, 1983, are totally false.

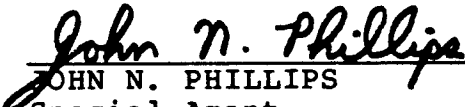
3. Neither I nor, to my knowledge, any other FBI officials have ever submitted false information to this Court. Moreover, I specifically stand by my sworn statement that the search slips provided to plaintiff were copies of the original search slips generated by the Dallas and New Orleans Field Offices as a result

*Exhibit B*

of the search conducted by them in response to plaintiff's FOIA requests in these cases. (See Defendant's Response to Plaintiff's Interrogatories, No. 35).

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 24 day of March, 1983.

  
\_\_\_\_\_  
JOHN N. PHILLIPS  
Special Agent  
Federal Bureau of Investigation  
Washington, D. C.

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ORDER

Upon consideration of plaintiff's "Motion to Strike All Sworn Statements by FBI Special Agent John N. Phillips and Motion to Hold Evidentiary Hearing on Plaintiff's Charges that Defendant has Submitted False Information to the Court", defendant's opposition thereto, and the entire record herein, it is hereby

ORDERED, that plaintiff's motions be, and the same are hereby, DENIED.

Dated this \_\_\_\_ day of March, 1983.

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UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of March, 1983, I have served the foregoing Defendant's Opposition to Plaintiff's Motion To Strike and to Hold an Evidentiary Hearing, and a proposed Order, by first class mail, postage prepaid to:

James H. Lesar, Esq.  
Suite 900  
1000 Wilson Boulevard  
Arlington, Virginia 22209

  
HENRY I. LAHAIE