UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

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

FEDERAL BUREAU OF INVESTIGATION, Defendant.

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in these consolidated cases. My prior professional experiences as an investigative reporter, Senate investigator and editor and decorated war-time intelligence analyst are stated in my prior affidavits, as is my subject-matter expertise, described by this defendant as superior to that of anyone employed by the FBI.

1. I have read and in this affidavit I address defendant's Opposition of March 29, 1983 and its attached declarations of FBI FOIA Supervisor SA John N. Phillips and New Orleans SA Clifford H. Anderson, who for some reason understates his qualifications and expertise.

2. As I show in detail in what follows, the Opposition and these two declarations state what is not true. The Opposition, additionally, slanders me by out-ofcontext reference to an old civil suit for damages that, given what the Civil Division knows about this case, in which it was involved, is utterly dishonest.

3. If the Anderson and Phillips declarations escape false swearing, they accomplish it by semantics, as I show in detail in what follows. The uses made of their unfaithful representations in the Opposition, which refers to the search slips I was provided as also "authentic," impart more significance to them. In the Opposition, they are the basis for the claim that because of "the authenticity of the search slips provided to Mr. Weisberg, no purpose would be served in holding an evidentiary hearing."

4. While the Opposition and the two declarations pretend to rebut my March 1, 1983 affidavit, in fact they entirely ignore all but one statement in it, leaving the other evidence entirely undisputed. This undisputed evidence includes the fact that New Orleans FBI records also contain additional "scattered references" to the late David W. Ferrie and that New Orleans also prepared a report (for forwarding to the FAA) on Ferrie and these records on him that as yet have not been searched for in this litigation.

5. While in my much earlier affidavits in which I stated what Exhibit 1 to my March 1, 1983 affidavit proves to have been completely accurate, I did not state all that I knew, I provided more than enough information for the FBI to have conducted the search that was not made for a very long time, not until I moved to expunge Phillips' declarations. I now state that one of the records the FBI leaked to the private agency to which I referred went to the Miami FBI and that it reported that Ferrie, an Eastern Airlines pilot, was suspected of running guns to Cuba by plane. The one FBI record I attached to my March 1 affidavit is the only such record provided to me by another litigant to whom the FBI disclosed it. There are, however, other FBI Ferrie records that Anderson neither searched for nor reported anything about. Some of these are referred to in the FBI's own language in my March 1 affidavit and there is, in addition, at the very least, the communication to Miami that was leaked by the private persons to whom the FBI did the original leaking.

6. Aside from the inadequacy and untruthfulness of Anderson's pretended

refutation of my March 1 affidavit, which I address in detail below, and aside from the undenied existence of these other Ferrie records, to which I attested and whose existence I established by an FBI record, Anderson does report locating the New Orleans version of the FBI record I attached and he and the FBI still withhold even that.

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7. As the Department's appeals office decided, FBIHQ and field office versions of the same record are not identical. Information included on one version and not on the other, Even routing, filing and indexing information, and any notations can be important to research, private inquiry and the historical record in this major historical case. The copy Anderson found and still withholds is pertinent, is clearly within my request, and might even dispute him. Under these circumstances, it is difficult to attribute only an innocent interpretation to his persistence in continuing to withhold that record after he found it.

8. Both FBI declarations again raise questions of the integrity of the socalled searches and of the FBI's sworn representations of them. As I stated before, without contradiction, the FBI has still not made searches to comply with my actual requests and its so-called searches are phony, despite these self-serving, conclusory and entirely unsupported new attestations. I attach below new evidence of this from the FBI's own records. But I emphasize that my earlier allegation, that the FBI has not searched to comply with my requests, remains entirely unaddressed, by Phillps or by Anderson.

9. As I also show below, both Phillips and Anderson have to know that what was provided to me and they again attest to are the "original search slips," <u>cannot</u> <u>possibly be and are not the original records of the so-called searches</u>. Indeed, as I stated earlier, some were not made in and for this litigation, and some were not even made for more than two years after the FBI claimed full compliance. 10. Despite this, as I also stated several times months ago, without contradiction, these so-called searches identified pertinent records that remain withheld, without claim to exemption.

UNTRUTHFUL STATEMENTS IN THE OPPOSITION

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11. The Opposition represents (on page 2) that on the basis of this one exhibit only I supposedly "merely surmised that all the sworn statements provided by Mr. Phillips in this litigation are false and therefore should be stricken from the record." This cannot be an accidental untruth. Phillips provided eight earlier declarations and I addressed each in affidavits of great and documented detail to allege that they all range from swearing to what he knew nothing at all about to swearing to what is untruthful. Surely neither Phillips nor defendant's counsel have not so soon forgotten my repeated reference to "Swear-To-Anything, Gag-At-Nothing" Phillips !

12. Based on this misrepresentation, the Opposition calls me a liar, states that "there is not a shred of truth to these allegations," and proceeds to additional misrepresentation (on page 3), that, allegedly because my description of the search slips as "phony" rests entirely on this one exhibit, as to defendant's knowledge it does not, my allegations of phoniness are not true. Whether or not there is "a shred of truth to" my allegations is already established by my numerous, detailed, documented <u>and ignored</u> earlier affidavits and in considerably more detail, with new FBI evidence, in what follows below.

13. No matter how often the defendant repeats the untruthful representation that I have refused to state the basis of my allegations about the inadequacy of the FBI's so-called searches (pages 3 and 4), this simply is deliberately and knowingly untruthful. I have done this over and over again, in the great and documented detail throughout all the many (ignored) affidavits I have filed in this litigation, in about two file drawers of documented appeals, and in numerous conferences with the appeals office.

14. One basic and undisputed allegation, about which I add new detail below with FBI records I then did not have, is that the field offices never made searches responsive to my requests and that instead FBIHQ arbitrarily, capriciously and improperly, decided to limit me to four main files. Another is that parts of my requests remain without even the pretence of a search and after five years are ignored entirely, save for a few records the appeals office had provided.

15. What Phillips actually swore to on April 29, 1982 (on page 3) is that instead of searching, on receipt of my request Dallas forwarded it to FBIHQ where SA Bresson, "then Assistant Chief of the FOIPA Section, determined that four main files in the Dallas Field Office were responsive to plaintiff's FOIA request." P hillips identified these four files as the assassination, Lee Harvey Oswald, Jack Ruby and Warren Commission files. He also swore (on page 6) that instead of processing my request New Orleans also "forwarded" it to FBIHQ, after which that office sent its identical files to FBIHQ and, without Phillips' specification of what names were searched through "see" references, he identifies nine additional files the unidentified and undescribed "see" references of which were checked. He admits that the FBI deliberately ignored my actual requests. He states that the alleged search was only "for material related to the JFK assassination." That this is deliberate refusal to search to comply with my actual request he recognizes (on page 3) in quoting my language, not the FBI's revision, that I requested "all records on or pertaining to persons and organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that subject as well as those that are." (Emphasis added) Whatever the FBI or any of its employees may regard as "related to the assassination," that is not identical with my actual request, which pertains to the investigation and despite my request

for information pertaining to persons and organizations not in the assassination main files, the FBI held me to those main files.

16. While the FBI held initially that only four files were responsive to my requests, still without making searches responsive to my request Phillips concludes this particular declaration (page 12) by boasting that a total of 26 files were provided. This is to admit that after its first claim to compliance the FBI disclosed more than three times as many additional files and to this day has not made and has not attested to making searches responsive to my actual requests.

17. In and of themselves, refusal to search to comply with my actual requests and refusal to search for what was not in the main assassination files render these so-called searches no better than "phony."

18. It also is untruthful for the Opposition to allege, (on page 4) as defendant earlier alleged, that I seek to prolong this case by the "tactic" of allegedly keeping my "complaints fluid and obscure and, in turn, virtually irresolvable." Using of the many examples in the case record those referred to in the immediately preceeding Paragraph, there is nothing at all "fluid" in my statement that SA Bresson at FBIHQ substituted records of his selection for my requests and for genuine searches in Dallas and New Orleans. This is a rather solid statement I made repeatedly. If the FBI claims it is not truthful, then the FBI certainly can provide disproof. But in doing this - in even thinking of doing it - the FBI is precluded by Phillips' sworn statement quoted above and by the new FBI records I cite below in another section of this affidavit. Unable to refute itself, the FBI has to make such false accusations. Also in a number of earlier affidavits, as I do again below, I attested that no search at all has ever been made to comply with parts of my requests. Obviously the FBI hasn't denied this because it is true. Now I am able to add to my earlier attestations new proof of it in FBI records I obtained only recently in inadequate and incomplete response to my discovery requests. I state at this point

that these new FBI records state clearly and unequivocally, and in fact the FBI's attestations are keyed to, a deliberately incomplete representation of my actual requests.

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19. It is obvious that I seek the opposite of prolonging this litigation. As the case record shows, when I proposed a simple compromise to end this litigation, asking only that the FBI, belatedly, comply with one of the directives it received from the appeals office, the defendant rejected it out-of-hand. It thus is clear who is prolonging this litigation and I am not doing it. The defendant had seen to it that the litigation continues.

20. It is not true and the defendant knows very well that it is not true to state (on page 5) of my objections to defendant's "discovery" ploy, that "there is no valid reason for this refusal by plaintiff." Of the many <u>and entirely undisputed</u> reasons I have provided it simply is not possible that the defendant does not know that I stated that my age, health and physical limitations make this extremely burdensome for me and that doing exactly what in deliberate excessiveness the FBI asks is a practical impossibility. It also is not possible that the defendant and defendant's counsel do not know that I have stated that a) the defendant does not need discovery and b) and has not even bothered to claim there is any such need.

21. In the immediate preceeding Paragraphs, so there can be no doubt, I intend to state that the defendants untruthful representations I quote are not and cannot be accidental untruths.

THE ANDERSON DECLARATION

22. This entire matter underscores the FBI's real reasons for providing nonfirstperson attestations when attestations made of personal knowledge were readily available. Phillips, in Washington, did not make the searches but attested to them. Anderson, who states he was responsible for the searches in New Orleans, suggested that he prepare an affidavit five years ago and offered to do it but FBIHQ refused this until it had no alternative. (Exhibit 1) Thus the FBI did precisely as I attested over and over again, without contradiction: Phillips swore to what he did not know of personal knowledge. However, if he and the FBI had heeded the completely accurate information I provided long ago, had there been even the most perfunctory search at FBIHQ, where Phillips, <u>personally</u>, could have had it made, he would have located the pertinent record I attached to my March 1 affidavit and he would have located the other pertinent New Orleans records still withheld. I believe this is the reason no check was made at FBIHQ, because minimal effort would have disclosed the existence of the still withheld records I identified with what is now proven to be complete accuracy.

23. Anderson's declaration is misleading, deceptive, conclusory, without any documentary support at all, misrepresents and, if it does avoid false swearing, does so by semantics only, as I show in following Paragraphs.

24. Anderson accredits himself only as another of the thousands of FBI agents who, he suggests it just happens, was assigned to this case. In fact he is and for years has been New Orleans' information and privacy officer (Field Privacy Control Officer), an expert on searches and compliance in FOIA cases, expertise he avoids reporting. I have prior experience with him and his searches and attestations in other lawsuits.

25. Anderson does not entirely avoid untruthfulness, however, despite having had two weeks to prepare a short affidavit in which only three paragraphs even pretend to address what I alleged. He is untruthful in stating that my March 1 affidavit "does not substantiate plaintiff's accusations that the search slips provided to him "were phonies.'" He addresses <u>only one</u> of the allegations in my affidavit but he pretends he addresses them all. (The Opposition makes the same false pretense.) Anderson does not even pretend to have searched for those other New Orleans "scattered records" pertaining to Ferrie or for its report on Ferrie, based on these other

records, for FBIHQ to forward to the FAA. Both are in my affidavit. They are not on search slips.

26. He does admit, however, that the one record I obtained outside this litigation and attached to my affidavit does still exist in the New Orleans office, in exactly the 105-1456-FRD file correctly identified in my affidavit, yet he still does not provide it this late in this litigation. He does not disclose whether or not he found or even looked for these other Ferrie records in 105-1456-FRD or elsewhere. He does not even identify 105-1456-FRD, which is an existing political file on what the FBI regards as subversion that can threaten the nation's security.

27. I do not know the title of New Orleans 105-1456-FRD, but I do know that other files in the same range of numbering pertain to Cuban anti-Castro activity, and that is pertinent in each and every official investigation, the Commission's, the FBI, those of both houses of Congress and Jim Garrison's. (Among the many reasons is the fact that Oswald sought them out in New Orleans and offered to help them, as the FBI reported.)

28. Anderson's "proof" that the Ferrie neutrality-act file was destroyed is limited to his entirely unsupported claim to have "discovered" its destruction. He states that this unproven destruction was at some time before 1977, when no such record whould have been destroyed for a number of reasons. Perhaps it was destroyed but he does not attach his proof and he doesn't even suggest what it is. For him to be able to swear that the file was destroyed he must have some evidence, a record of some kind. But he does not even report an unconfirmed rumor. His failure to provide any proof does not persuade that it exists.

29. The question of destruction of records pertaining to the JFK assassination investigation came up during the hearings of Senate Intelligence Committee's assassination subcommittee. Senator Richard Schweiker asked former Charles Brennan, suppose a file had been destroyed ? Brennan responded, "There would have been a

record of it."

30. If he did not claim that the file was destroyed prior to this litigation, the FBI would face the question of perjury by Phillips.

31. Aside from the House and Senate investigations and that of the Rockefeller Commission, to the work of all of which this file was pertinent, it is an historical record that was not to have been destroyed without the assent of the National Archives. Ferrie and Ferrie records were germane in all those inquiries as they are in the Warren Commission's and the FBI's ongoing investigations in this historical case. This also is true of pertinent anti-Castro Cuban records.

32. Why Anderson does not provide the proof he is required to have to justify his statement that the Ferrie 2-112 file was destroyed I do not know but I do know that he states he read my affidavit and thus knows that, contrary to his representation, it is not limited to this one record he says was destroyed. Paragraph 5 of my March 1 affidavit states with regard to that one record that it "and all other existing and pertinent records remain withheld from me in this instant cause." (Emphasis added) As I stated above, neither Anderson nor Phillips claims to have made any search for these other records. Anderson therefore cannot state that my affidavit (and exhibit) "does not substantiate plaintiff's accusations"

even claim to have checked the others and he does not even pretend to refute them. 32 A. Moreover, my exhibit, the FBI record now admits finding in the other file, tells Anderson how he can get those other records he did not even look for in New Orleans. If they are not in New Orleans or he can't find them or they are not indexed, he can get the information from FBIHQ. My exhibit states that the New Orleans report included "all the information in New Orleans files regarding FERRIE." At FBIHQ no index search at all might have been necessary because my affidavit and its

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because he does not

exhibit included the Ferrie FBIHQ file number.

33. If in my affidavit I had not informed Anderson and FBIHQ that the unsearched Ferrie information, even if destroyed in New Orleans, still exists at FBIHQ they knew it in any event. FBI procedures and practices are stated in a December 30, 1976 memo titled "Destruction of FBI files". This memo is in an FBI file on one of these official investigations, that of the House Select Committee on Assassinations. (Exhibit 2) Field office destruction is contingent upon the destroyed information being available at FBIHQ, this memo states, and is permitted only "since the field office is required to forward to FBI Headquarters the originals, duplicates or summarization of substance of all significant aspects of pertinent investigative matters."

34. I have examined many pages of FBI records reporting the destruction of many thousands of pages of field office records pertaining to trivial local matters. In all instances, where a record was destroyed, a printed FBI form was filled out and on it the FBI provided all necessary details, including where the destroyed information could be retrieved from other records. From this practise it appears that Anderson should have had some recorded proof of destruction he could have attached to his declaration - if at the risk of identifying existing and still withheld pertinent Ferrie information.

35. It is apparent that the FBI ignored all the proper leads I gave it a year or more ago and never intended to comply. If it had made the obviously indicated search then, this question would not exist today except if the FBI wanted it and other unnecessary matters to prolong this litigation.

36. According to the FBI's publication "FBI Central Records System," its file destruction program was halted in January 1975, and all destructions were prohibited until April 1976, when it was resumed under a directive from the Attorney General providing "that the FBI should specifically exclude (from destruction)... matters

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relating to domestic intelligence, extremist, racial and foreign counter- intelligence." (Page 29) Ferrie met all but the racial criteria, so on this basis also that file should not have been destroyed.

37. FOIA and search expert Anderson, who did not disclose his expertise in his declaration, states that he did not locate this Ferrie 2-112 file because the FBI's "procedures always include the destruction of a file's corresponding index cards." (Page 2) This is remarkably loose language for an expert because the FBI draws a careful distinction in "FBI Central Records System" between the main index card to file and the "see" cards. (Page 17) Thus it appears that all Anderson is saying is that the card identifying the 2-112 file is the only card he looked for and the only card destroyed.

38. Anderson's language (in Paragraph 4(b)) explaining how his search did not turn up the Ferrie record in the 105-1456-FRD file is imprecise if not evasive and equivocal. He states that a decision was made "not to have the document indexed to the 105" file and thus he did not "come across" it. Perhaps he meant to say he did not find any reference to it on any "see" card, but **if he** meant that, he could and should have said it. As it stands, he avoids any mention of any "see" card search after he read my affidavit.

39. He does not say how he knows this decision was made, who made it or if there is a record of it. From what he does say, it appears that an equally valid representation would be "I surmise that a decision was made not to index." From what he says he is merely surmising because he found no indexing marks on a not necessarily identical copy.

40. Anderson's equivocation and evasiveness and everything also are keyed to a significant untruth. In his Paragraph 4 (a) Anderson states that "when the initial search was subsequently <u>conducted for records responsive to plaintiff's FOIA request</u>, file no. 2-112 and its corresponding index cards no longer existed." (Emphasis added)

It is not truthful to state that either then or ever did the FBI, Anderson included, conduct <u>any</u> search "<u>responsive to my request</u>." As Anderson revealed in his.December 5, 1978 letter to the FBIHQ FOIA Branch (Exhibit 3), his search was not in response to my requests, which include much more, but was strictly limited to what the FBI and he considered "related to the assassination" of the President. As Phillips attested and the FBI's records corroborate, the FBI intended originally to limit this to Oswald, Ruby and the assassination and Commission files. Thus it is apparent that the original search would not even have included the pertinent Ferrie 2-112 file in any event.

41. It also is provocative that, despite the apparent triviality of some of the records the search slips note were destroyed, Anderson did record destruction 32 times. Seven of these are records indexed to Lee Harvey Oswald, and all such records were <u>not</u> to have been destroyed. No less incredible is it that he claimed three other Oswald records are "irrelevant." But then his search slips claim "irrelevant" for 60 of the records he turned up on Oswald, Ruby, Jim Garrison, Clay Shaw and the President. Yet the request begins, "The request includes <u>all</u> records on or pertaining to persons who figured in the investigation into" the assassination and adds wherever or however they are filed. (Emphasis added) <u>No</u> record pertaining to Oswald or the others, with the exception of the President, whom I did not intend to be included, can be "irrelevant." I believe that his claim of the irrelevance of records in response to a request that seeks "all" records raises the most substantial questions about what the FEI was and is up to in this litigation and about the credence that can fairly be given to its representations.

The Search Slips

42. Anderson concludes, " I would like to reiterate that plaintiff was provided with photostatic copies of <u>all</u> the original search slips which were prepared as a result of the New Orleans Office's search for records responsive to his request. None

of these search slips have been rewritten or reworked in any manner." (Emphasis added. I have not received a single "photostatic" copy of any kind from the FBI, so this part of what Anderson swears to is not true.) Part of what Phillips attests to is, "I specifically stand by my sworn statement that the search slips provided to the plaintiff were copies of the original search slips generated by the Dallas and New Orleans Field Offices as a result of the search conducted by them in response to plaintiff's FOIA requests in these cases." In Paragraph 2 Anderson states that he is responding to my March 1 affidavit. In Paragraph 3 he attests to the authenticity of the copies of the search slips. In Paragraph 4 he denies that the search slips provided to me are "phonies". Phillips states very little in his two short paragraphs of text, but he does state that the "accusations" I made "are totally false" and that neither he nor to his knowledge any other FBI officials "ever submitted false information to this court." Thus both declarations raise again questions of the authenticity and genuineness of the search and of the search slips, whether or not they are the original records of the so-called searches, and the truthfulness of all FBI attestations.

43. FBI FOIA regulations and procedures have been testified to at length and in detail in several of my cases. All of this FBI expert testimony is completely consistent in describing what the FBI says it does and is required to do. Briefly, this is that in all instances, whether or not there is a backlog, there is an immediate preliminary search to determine whether or not there are pertinent records, and, if there are, their estimated volume. Two of the purposes served are informing FBI FOIA personnel of the approximate volume of pertinent records and enabling it to inform the requester of their approximate cost. Prior to any processing, the requester is required to be informed of the approximate cost and, if the volume of records justifies it, is asked to make a deposit of an amount of money determined by the FBI.

44. These regulations and procedures were not followed when my requests were received by the field offices. The violations by both field offices appear not to have been accidental because both of my requests conclude by asking "if you could let me know the estimated volume of records involved in this request and when you expect to begin processing them". I never received any answer. As of that time my request for a fee waiver had not been acted upon, so this does not explain these additional violations by both field offices. And, as Phillips has attested and records I received on discovery reflect, instead of making searches in response to my requests, both offices sent them to FBIHQ and then sent to FBIHQ for processing those four main files decided upon at FBIHQ, without any search being made or possible there, by SA Bresson FBIHQ's FOIA Branch.

45. Exhibit 4, which is about a half-year after my requests, reports what Dallas sent to FBIHQ. It does not state that what it sent was responsive to my request or located after a search. As will become apparent, no search of any kind was made in Dallas until after more than 28 months.

46. Exhibit 1 is the New Orleans report of August 30, 1978, or eight months after my request, on what it sent to FBIHQ for processing. As I state above, this record is not truthful in claiming that "all indexed individuals involved in or referred to in the investigation.... were searched through search clips." It thus does not reflect a genuine search. (This is the record in which New Orleans distinguished between "search slips" and "workpapers.")

47. The manner in which searches are made also was testified to by a number of FBI FOIA supervisors in several of my lawsuits. This testimony is also entirely consistent. In summary, their testimony is that the FOIA personnel prepare requests for searches on search slips, indicating the nature of the search to be made, and that the files personnel <u>only</u> make the searches, which they report by listing pertinent records on the slips requesting the searches. Without exception,

all search slips provided to me in my other litigation, when the FBI was called upon to detail its searches, conform to the FBI testimony about searches summarized above. Copies of search slips also are included in the main files provided to me in this instant cause. To the best of my recollection, all those search slips reflect the request for the searches by the person making the request and, on the same slip, a listing of records identified on search, together with the name of the files employee who made the search. Both the request and the response are dated.

48. The question of whether or not the FOIA personnel make the searches did not come up in all this previous testimony, but on several occasions when it did, those FBI special agents testified that they are not permitted to make the actual searches but are required to submit their written requests on the proper form, which is then returned to them by the files personnel after the searches are made, with the results of the searches listed on each individual request or search slip.

49. In all of my prior experience with FBI search slips, I recall no single instance of more than a single search requested on any one search slip.

50. Exhibit 5 is a copy of the Dallas worksheets, as provided to me with the attached worksheet dated "7-81". Exhibit 6 is a copy of the New Orleans search slips, as provided to me with the attached worksheet also dated "7-81." The only mark I have added is the pagination encircled in the upper right-hand corners. References to the individual pages below will be by exhibit number followed by page number, the first page of Exhibit 5 thus is 5-1.

51. Without exception, the Dallas search slips conform to the undeviating practise to which all FBI FOIA experts testified in my other litigation. Each is on a separate slip, dated and signed by the requester, and each search reported also is signed and dated by the searcher. In all but two instances the nature of the search requested is indicated. ("All reference", which is correct.) Without being informed, the searchersdo not know what kind of search is requested and the resulting

search may be more limited than intended.

52. With two exceptions, these search slips are, stamped for record filing in the appropriate box in the lower right-hand corner. Without such a stamp, the search slip cannot be the record copy because there was no direction for filing it and no means of retrieving it through the index. These two exceptions (5-3 and 5-4) are of a year later and more than three years after my request. Both are made the same day by the same searcher. I believe both also are phony, as I explain in later paragraphs. Neither of these includes even the file number, so neither is a copy that could be filed or could be retrieved from a file and on this basis also are phony.

53. Exhibits 1 and 4, Dallas and New Orleans records pertaining to this litigation, each include its proper file number and each is stamped and serialized for filing in the usual FBI manner, with which I have considerable experience. Both also indicate the main files in which copies are filed. This also is normal. Without serialization it is necessary to search entire files to locate individual records. However, none of the Dallas or New Orleans search slips is serialized and none direct any copies to the appropriate main files, which can save time in avoiding duplicating searches. I therefore believe that they are copies not made from the record copies of those search slips.

54. Exhibit 3 and a large percentage of the records provided under discovery in this litigation bear no file stampings for the clerks to follow, none reflecting record filing, and no serialization. It therefore appears that they also are not record copies and are not the copies that should have been provided.)

55. In addition to the usual practise of tabulating the records identified in a single column thus permitting space for annotations, each of the notations of destruction are precise, each gives the exact date of destruction.

56. Although no historical case records are to have been destroyed and the attorney general specifically directed that none of these JFK assassination records

be destroyed, it is interesting to observe that two of the Lee Harvey Oswald citations (5-1) are noted as destroyed at a time exactly coinciding with Congressional inquiry into the FBI's performance in the investigation and that each also is a 94 record. While this 94 classification is titled "Research Matters," it in fact is the classification used by the FBI for records pertaining to its propaganda and lobbying activities. It thus appears that those destructions eliminated Dallas records that could have been of interest to the Congress and could have been embarrassing to the FBI.

57. This Oswald search slip (5-1) does not cite any Fair Play for Cuba Committee (FPCC) file and the FBIHQ and New Orleans files hold pertinent FPCC records disclosed in response to the request of others. With Dallas the "Office of Origin" or "OO" it is standard FBI practise for those records to have been routed to Dallas if they originated elsewhere.

58. The Marina Oswald search slip (5-2) is not complete and thus is phony. While on this the FBI and Phillips have not claimed exemptions (b)(2) and (7)(D) to withhold the five listings of File 66-1313, they have withheld this on other records and continue to withhold these numbers under those spurious claims, despite my appeals and my correct identification of the file numbers for this, the wiretapping of Marina Oswald, and its companion Bugging file. The Dallas FBI has and later disclosed to me this second file, for its unauthorized bugging of Mrs. Oswald's home. It is 66-1313A, as my uncontradicted affidavits attest. (These claims to exemption are spurious because the records have nothing at all to do with FBI personnel practises or any person or any confidential source to be protected.)

59. The late George DeMohrenschildt (5-3) was a friend of both Oswalds. While this search slip lists the 1313 file, it has no citation of the bugging file. Both of these omissions are consistent with a continuing effort by the FBI to hide its illicit activity in not having asked for or received permission to bug the recently bereaved young woman.

60. The James P. Hosty search slip is a very obvious phony. It does not even list the records Dallas provided. It also does not list other known Hosty records. A duly signed and dated search slip that lists no records at all and does not report that no records exist is an obvious phony. With regard to Hosty, motive is obvious. He was the Oswald case agent. He was involved in and he involved the FBI in several major and seriously embarrassing scandals. (See Addendum)

61. I intend to be unequivocal, and because I have been contradicted and challenged by the FBI's affidavits under oath, I provide details I would not ordinarily go into.

62. First I state that my earlier affidavits are specific in describing this Hosty search slip (5-4) as a phony and that Phillips' sworn denial of this and his sworn reaffirmation of all his prior attestations follow my earlier affidavit and my motion to expunge his declarations.

63. The Hosty records <u>in this instant cause</u> include those in the main files and those disclosed by direction of the appeals office and mailed to me separately by the FBIHQ FOIA Branch, I believe <u>by Phillips himself</u>. (He is the case supervisor. Covering letters are signed with the name of the branch chief, initialled by supervisors.)

64. The fakery of this search cannot be explained away, as Anderson seeks to do with the New Orleans Ferrie records, by any claim that there was no indexing or that any of the records were destroyed. I have checked and state that any such claim would be knowingly and deliberately false.

65. According to Dallas Lieutenant Jack Revill (who later rose to that police department's top echelon), right after the assassination he encountered Hosty as both were rushing into police headquarters. Revill filed a written report in which he quoted Hosty as having told him that, although the FBI knew Oswald was capable of violence, it did not believe he would commit any such crime. The police chief had

Revill execute an affidavit. It was provided to the Warren Commission, which published it.

66. At the time of the assassination Director Hoover learned of this and was very indignant. He insisted that the chief apologize and retract on TV. Even though it was true, as the FBI kept secret for a dozen years (until it was leaked and then confirmed by the FBI's own internal investigation the records of which have been disclosed to me), the chief did apologize. That did not satisfy Hoover, who ordered the rupturing of FBI relations with the Dallas police, including even training at the FBI Academy.

67. After the 1975 retirement of Gordon Shanklin, who had been Dallas Special Agent In Charge (SAC), the basis of the FBI's knowledge that Oswald had made threats was leaked to the Dallas <u>Times-Herald</u>. It informed the FBI prior to publication and offered space for FBI comment. An investigation by the FBI inspector general followed. It succeeded in so thoroughly obfuscating fact that it was not possible to determine who told the truth and who was a perjurer, so there could be no perjury charge. Other records disclosed to me state, however, that a perjury indictment of Shanklin was considered but was abandoned because of the possibility of the alleging of a "bootstrapping" indictment.

68. What was leaked to the newspaper and confirmed by the FBI's investigation is that Oswald left a threatening letter in an unsealed envelope at the Dallas FBI office for Hosty a few weeks before the assassination. Hosty testified that Shanklin, personally, ordered him to destroy this letter after the assassination and that he did this by shredding it and then flushing it down the toilet.

69. Indicative of the FBI's tricky filing and of the phoniness of the search in this case is the fact that no contemporaneous records at all were provided. I do not recall disclosure of any pertinent FBIHQ record, either. I believe that I would not forget having seen such a record. But the FBI's own investigation disclosed that this matter was reported to FBIHQ.

70. One of the areas of contradictory recollection after a dozen years is the exact nature of Oswald's threat. Some Dallas employees who knew of it recalled that he threatened to bomb their offices, some that he threatened to bomb the police, and some that he threatened both.

71. However, the FBI's explanation of its failure to inform the Dallas police of Oswald's presence in their city although it knew he had defected to the Soviet Union and was a self-proclaimed "Marxist" is that the FBI had no reason to believe he was capable of any violence. The investigation following the leak established that the FBI's explanation was knowingly and not accidentally untruthful. (I believe this also explains the FBI's continued stonewalling in not providing a lengthy Hosty memo that was hidden at FBIHQ instead of being filed in Dallas.)

72. I believe it is obvious that the FBI would keep records so extremely sensitive to it and be able to retrieve them.

73. Hosty was a Warren Commission witness. He did not testify to any of the foregoing. The FBI did not inform the Commission of any of it and it warned Hosty not to volunteer any information at all to the Commission.

74. As a result of what he regarded as their failures in the JFK assassination investigation, Hoover had a number of special agents and supervisors disciplined. Another example of the FBI's tricky filing and searching is that none of these records are in the main files where they belong and all, including the records of Hosty's disciplining, remain withheld from me as they are from this phony search slip. Phillips swore that the Hosty personnel file was searched in this case, but it does not appear on the search slip.

75. The search slip for the Presidential Commission (5-5) is a phony because it lists only the one main file that was not created until the Warren Commission went out of existence and because the Dallas records hold many references to it. The FBI fluctuated between indignation and outrage over the Warren Commission's requests and

it simply is not possible that the Dallas FBI would not be able to retrieve such records. The one file cited on this slip is a file on the Commission's published report.

76. The Jack Ruby search slip (5-7) may be accurate in what it cites but it is a phony search that does not include the known Ruby informer file. The FBI has admitted that Ruby was its criminal informant on probation, that it had contacts with him during that period, and that because he was not productive it did not keep him as an informer after this probation. This FBI admission means that there is a Dallas 137 or "Criminal Informants" file in which there is, at the very least, records of approval to try him out, not to keep him on, and of each of the FBI's admitted contacts with him, the latter reported, at the least, on printed FBI forms for such contacts.

77. Six of the destroyed Ruby records are, by the most remarkable of coincidences, from the same 94 file in which the FBI keeps its propaganda, lobbying and similar records and were destroyed on the same day that those pertaining to Oswald (5-1) were destroyed, December 1, 1977. As stated above, this destruction coincides with investigations in which their disclosure might embarrass the FBI.

78. These slips represent an obviously phony search because they are limited to but five of the many persons included in the investigation. Of these five, only three were originally intended by the FBI. The other two were added after appeal.

79. Although Anderson's declaration pertaining to the New Orleans search slips (Exhibit 6) may appear to be straightforward and unequivocal to those without detailed subject matter knowledge and the knowledge I obtained from my experiences with the FBI in FOIA cases, it in fact is equivocal, evasive and semantical. He is careful not to state that these (Exhibit 6) are the original records or slips of the search, which is what is in question. He attests instead that they "were prepared as a result of" the searches. (Emphasis added) Obviously, the two are not identical.

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Original search slips, regardless of their form, are prepared in the original searched, not "as a result of" them. It is by such means that Anderson may accomplish the purposes of false swearing without, perhaps, technically, swearing falsely in his description of the slips provided. Because he is swearing to the wrong thing, he can safely swear also that "none of these search slips have been rewritten or reworked in any manner." (Emphasis added) This does not mean and he does not state that the original records of these searches were not "rewritten or reworked in any manner." I believe that I establish in following paragraphs that they were and that Anderson knows they were.

80. In his August 30, 1978 letter to FBIHQ FOIPA pertaining to this case (Exhibit 1) Anderson distinguishes between the search slips he <u>represents</u> to be the original recordings of the searches and the records that <u>are</u> the original recordings of those searches. He refers to <u>both</u> sets of récords of searches: "New Orleans retains the search slips and <u>workpapers</u>." (Emphasis added)

81. In this letter Anderson reports searches responsive to only part of my request. He uses some of its language. But in his declaration, because his representation of what was searched is not correct or responsive, he shifts to language which is <u>not</u> my request. In Exhibit 1 he states what is not true but would have been proper if it had been done, that the search was of "all indexed references to all known individuals involved in or referred to in the <u>investigation</u> of the assassination." (Emphasis added) What he <u>actually</u> did he states in Exhibit 3. He limited the search for records "to determine if it related to the assassination." Obviously, the two are not identical. The difference is great. Oswald alone "related to the assassination" as the purported lone assassin and Ruby as his killer. Initially FBHQ restricted compliance by person to these two. To these, according to his later search slips, Anderson added Oswald's mother, Marguerite and Jim Garrison, Clay Shaw and David Ferrie, who are included in but are not all of a separate item of my New Orleans request. (Øf these, all but Garrison are dead.)

These four do not begin to comply with the Garrison part of my request, as the FBI knows from many sources, including the records it processed in this case.

82. These search slips do not even include some records Anderson did provide.

83. Although Anderson attests that these search slips were "prepared by me or under my supervision" and were provided as those of this case, two (6-36 and 6-37) clearly are <u>not</u> searches made in this case. They are identified by their file number as of a different case one number removed from mine, 190-33 rather than 190-34. Only one (6-36) of these two of the 37 pages of worksheets is stamped for record filing and retrieval. In addition, both are phony because New Orleans records disclosed to me include Warren Commission and "Senstudy" records other than the single main file cited for each on those slips. ("Senstudy" is the FBI's code name for the Senate Intelligence Committee.)

84. With the possible exception of 6-36 it appears that none of these search slips is a copy of the New Orleans record copies. They are not stamped for record filing, none is serialized and no copies are indicated for the main files.

85. While the Marguerite Oswald search slip (6-1) appears to comply with FBI practise in reflecting who requested the search and who made it, it does not appear to be likely that both persons used the same typewriter that was overdue for a cleaning. (This is the only typed slip.) It also does not appear to be likely that typing is a convenient way of posting citations obtained from a battery of cabinets of 3x5 cards. This does not appear to be the <u>original</u> slip recording that search.

86. The Marina Oswald search slip (6-3) says the search was requested by Anderson and was searched by him. In longhand, it provides samples of his handwriting.

87. What remains is most of the slips; those pertaining to all the other (sic) searches: those on John S. Kennedy, the first and only dated sheet (6-4), Lee Harvey Oswald (6-4 to 6-12 inclusive), Clay Shaw (6-12 to 6-14, inclusive),

"Dave Ferrie" (6-14 to 6-20, inclusive), "Jim Garrison" (6-20 to 6-31, inclusive), and Jack Ruby (6-32 to 6-35, inclusive). I presume pages 33,34 and 35 are part of the Ruby search but I do not know because there is no identification of any kind on them. All of these pages not numbered by the FBI run continuously, as though they were one search, with what can be taken as requests for searches on only the Kennedy and Ruby sheets.

88. On the other pages, where dates are given, there are four different dates for the supposedly single request for searches in this case, July 25, August 2,8 and 14, 1978.

89. Long ago I stated in an affidavit of pages 6-4 and through 6-35 that all but the Ruby pages cannot be searches in this case because the only dated page is dated "1/4/77". I have heard nothing from the defendant about the dates since then. The FBI has not described this as an error. From the other dates, even if there is a mistake in the year, this could still not be a search for this case. It was made almost a year before I filed the request and therefore is phony.

90. It is not possible that this Kennedy sheet (6-4) includes the request for the Lee Harvey Oswald search that is posted with it. All that is possible is that someone copied earlier records off in longhand and ran the Oswald citations right at the end of the Kennedy citations and then continued applying the Oswald citations to the top of the first pair of columns on page 6-12. At the end of these Oswald citations and so close that the "C" in Clay Shaw barely misses overlapping the last Oswald item, the Shaw citations begin. They then continue on this Oswald sheet to its end and thereafter for two more double-columned pages, where, with no gap at all, on the line immediately following the last Shaw citation, the name "Dave Ferrie" appears. (I have never known the FBI to search by nickname only. There is no appearance of Ferrie's full and correct name anywhere on these search slips.) Ferrie citations continue for another five pages, with the Garrison listing beginning at the end of the Ferrie listings and on the same page.

91. It is not possible that this is an original search slip or an original request for a search because it was not possible for the person requesting the search to know in advance exactly how many references to the President of the United States there were in the New Orleans FBI office. This had to be known in advance of any search for the person requesting the search to be certain that all the Kennedy citations would fit in the single column of 17 ruled lines to which those citations are limited by the appearance of Lee Harvey Oswald's name at the top of the second column. And this assumes what is entirely unlikely, if not entirely impossible, that the appearance of Oswald's name where the citations only are posted, not where the FBI's printed form requires the "subject" of the search to be stated, indicated a request for a search.

92. There is no apparent reason for anyone requesting a search to depart from FBI practise of a separate request for each subject and intend a second search on a single search slip, and then not to state that intent. Doing this, if in fact it was done, entailed many entirely unnecessary problems, only one of which is filing this single supposed search in two different places, under the President and under Oswald. I have no knowledge of the FBI ever requesting a second and unrelated search on a single request for a search or of intending a name appearing where the citations only are to appear to be interpreted as a request for a second and unrequested search.

93. Yet this is what characterizes most of the searches the slips of which were provided to me and to the genuineness of which Anderson and Phillips attest.

94. It also is patently impossible for the supposed requester of the e supposed original searches to know in <u>advance</u> that all the New Orleans Oswald citations would require seven full double-columned pages and four lines at the top of the next page, no more and no less, and <u>before any search at all was made</u>, to indicate at the very point at which the Oswald citations would end that a Clay Shaw search was intended by writing in at the wrong place, his name where citations only are posted.

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Shaw's name, like Oswald's, Ferrie's and Garrison's, belong in the blank space at the top of the slip where the FBI printed the word "subject" of the search and intended that to be indicated.

95. For the supposed requester of the search of which this is the supposed original posting of citations to know the exact number of lined spaces on the form posting all the Oswald citations would require (258), he also had to know <u>in advance</u> that the citations would be posted inconsistently - that in one case citing the pertinent pages in a long document would be done by using a separate line for each page number, using up half of one of these sheets this way, and at other points multiple page numbers would be on a single line. Obviously it was not possible for the supposed requester to have filled the form out with this <u>advance</u> knowledge, yet it is absolutely required for the Anderson and Phillips attestations not to be untruthful.

96. In what both Anderson and Phillips represent as the only and the original Clay Shaw search, the supposed requester had to know <u>in advance</u> that all the Shaw citations would require exactly 84 lines. He had to know <u>in advance</u> that again the searcher would post consecutive numbers inconsistently, some on the same line and some on different lines. <u>In advance</u> of searching he had to be able to calculate the inconsistences accurately. This is absolutely essential because the name "Dave Ferrie" appears on the line directly following the last Shaw citation.

97. For the five full pages and parts of two other pages of Ferrie listings to come out just right - and with the posting of Garrison's name on the last Ferrie page <u>in advance of any search</u> it just had to come out right - the supposed requester had to know <u>in advance</u> of any search <u>exactly how</u> the searcher would post the Ferrie citations. This is because at one point 73 citations are posted on 15 lines and at another point 20 citations are posted on five lines.

98. All these sheets give the appearance of having been written by one person

and at the same time. The handwriting clearly is not Anderson's, yet he supposedly requested the searches. On this basis alone these cannot be the slips of the original searches.

99. There is more that is wrong with these search slips. For example, a dozen and a half of the Garrison citations are indicated as "destroyed" not in the handwriting of the supposed searcher but in what appears to be Anderson's. How a searcher and the New Orleans file personnel would not know this and Anderson would is not apparent. And in not one instance is the date of the alleged destruction provided, although with a record of destruction the date should be included. In addition, these notations, apparently by Anderson, raise new questions about the truthfulness of other of Anderson's attestations, addressed beginning in the second following paragraph.

100. It is not possible that the first of these search slips, in not quite the name of the President, includes all the searches that follow it in so long an unbroken chain.

101. There appears to be no reason for the regular FBI procedures not to have been followed in these searches, with a request properly executed for each search requested and, if he made the request, by Anderson. But clearly these are not requests on individual slips or by him and in his writing.

102. It is obvious, as I stated in an earlier affidavit in which the defendant was put on notice with regard to the foregoing information, that these are not and <u>cannot be</u> the <u>original</u> slips of the searches in this case, which is what Anderson and Phillips swear they are.

103. Anderson now swears (in Paragraph 4(a)) that when a record is destroyed the FBI's procedures "always include the destruction of a file's corresponding 3x5 index card." (Emphasis added)

104. These so-called search slips list whole files and individual records as

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destroyed yet their existence was copied from the indices, where Anderson swears they are <u>always</u> destroyed. Anderson's own supposed search slips, the authenticity of which he and Phillips have just sworn to, say the opposite of what Anderson swears to, quoted above. If those index cards had been destroyed they would not exist for the supposed searcher to locate and include on these slips.

105. I have read innumerable FBI New Orleans records on or about Garrison and I do not recall a single one in which it referred to him as "Jim" - although almost everyone else does nothing else, including Garrison himself. To the best of my knowledge, he does not use the name "James." The actual search in this case could not and would not have been asked for under the name "Jim Garrison."

106. I have read innumerable New Orleans FBI Ferrie records. I do not recall a single one in which the FBI referred to him as "Dave." All its records are under David W. Ferrie, to the best of my recollection.

107. It is the FBI's general and to the best of my knowledge undeviating practise to give the full and correct name and include all others under the heading or caption "AKA" (for "also know as.") It follows this practise even with married women, giving both names, one as an "AKA."

108. Even if the New Orleans FBI files were limited entirely to New Orleans area names - and they are not, they include records from FBIHQ, all its field offices and foreign or "legat" offices, other police agencies and records from other sources and agencies - it would not file them only under incomplete or nicknames. It could not make positive identification by either incomplete or nicknames. Garrison, Shaw and Ferrie all have middle names and/or initials in the FBI's records. They are used in the captions and texts of the FBI's records. This is still another reason I believe that these are not the original slips of the original searches.

109. As I stated above, the FBI New Orleans record attached to my March 1 affidavit discloses that the New Orleans FBI prepared a report on Ferrie for FBIHQ to forward to the FAA. This supposedly complete search of the indices does not

include any citation for such a report. The only Ferrie records cited and not processed are nine existing pages of a long "94" classification file. This classification the FBI uses for its propaganda and lobbying activities for which it has no file classification that identifies them. These pages are withheld as "irrelevant" when they cannot be in a request for "all" records.

110. Eight Garrison citations are withheld on the same spurious claim from the very same file, 94-448. By the most remarkable of coincidences, Garrison's and Ferrie's names appear on the same "irrelevant" pages. If my request were not for "all" records, this fact alone would make them relevant.

111. These claims to irrelevance also are phony.

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112. These search slips and supposed searches are inadequate on another ground. The FBI states that it searched only its "general" indices. It has and in this litigation it has provided pertinent records that are not indexed in its general indices. One of the examples of this from my prior affidavits pertains to the officially admitted electronic surveillances of Jim Garrison. My attestation was not disputed or contradicted, but there were no further searches so that these pertinent records the existence of which is officially acknowledged could be processed.

113. To a large degree what I state in this affidavit also is stated in my earlier affidavit and thus should have been known to the defendant prior to the preparation of the Anderson and Phillips declarations I address herein. 114. On Thursday evening, April 7, 1983 my counsel informed me that in pleadings he had just received from the defendant it is stated that the name of FBI SA James P. Hosty, Jr. (now retired) is not indexed in the Dallas general indices. As soon as I completed the draft of the preceeding paragraphs of this affidavit and got them to the friend who is retyping them I searched the subject files I have established of copies of records provided to me by the FBI.

115. I preserve the records provided to me exactly as I receive them so that now and when they are in the university deposit of all my records they will be precisely as I received them.

116. Because of the importance of the Hosty matters referred to earlier in this affidavit I have a number of Hosty files in this separate subject file. I examined the first of these files and found that the first three Dallas records in it <u>are</u> marked for indexing. I believe no further search was necessary and went no farther because these three attached pages. do reflect the fact that Hosty's name was indexed. I have made and attach gopies of the first pages only because it is on them that the indexing is indicated. The only marks I added are two citations to the Dallas volumes in which these records are. All are from the Dallas 100-10461 or Lee Harvey Oswald file. I added "Vol 29" and "Vol 34" below the bottoms of the original pages, which are shorter than the standard letter-sized page so even these identifications are not on the face of the record itself.

117. Although I have attached it to an earlier affidavit, for the convenience of the Court and the defendant I attach a copy of what the FBI agreed for the apoeals office to give me with its publication "FBI Central Records," its "Symbols Used by Records Branch." (Exhibit 7) This reflects the fact that the underlining of Hosty's name "indicates pertinent information to be typed on 'see' card." (Third item) 118. Hosty's name is underlined for carding in the second line of the third

paragraph of Serial 1378. (Exhibit 8)

ADDENDUM

119. Hosty's name is underlined for carding in the second line of the first paragraph of the SAC's February 3, 1964 memo the serial number of which is not clear. It appears to begin "303" but the next number is entirely illegible. (Exhibit 9)

120. Hosty's name is underlined for carding in the fourth line of the second paragraph of Serial 3666. (Exhibit 10)

121. There also is other indexing of Hosty's name in the Dallas general indices. This includes files other than 100-10461.

122. As I stated before I was made aware of the defendant's claim that Hosty's name was not indexed, he was involved in the most serious matters and intensive public controversy and he was the Oswald case agent, so it is obvious and inevitable that his name had to be indexed in Dallas.

WE IS BERG

FREDERICK COUNTY, MARYLAND

Before me this 10th day of April 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.

illian Trister

NOTARY PUBLIC IN AND FOR FREDERICK COUNTY, MARYLAND

SECOND ADDENDUM

Defendant states that "plaintiff's propensity for exaggeration and conjecture has apparently been one of longstanding."(sic) This is a less than honest and entirely incomplete reference to other and entirely onrelated litigation. It is misused to state that in this litigation I have a "propensity for exaggeration and conjecture." The definitive answer to this clander is in the case record in "his litigation. I have addressed each and every declaration provided by the defendant, I have done this under path and with considerable detail and documentation. If there ned been any conjecture or any exaggeration, the defendant had full opportunity to present the evidence to this Court and to confront me with it. Instead, save for Phillips' current conclusory, self-serving and at least in size puny response that is limited to a new words of intratiff l derial of intravantion truthful, he and the defendant have been cilent when confronted not with exaggeration, not with conjecture, but with evidence they are unable to assail and have almost entirely ignored.

In that other litigation, which the Civil Division took to court at the behast of the Army and over the objections of the Department of Defense which at the direction of the Secretary had worked out an equitable settlement that eliminated the need for any litigation - I won and the Civil Division forced an adverse decision which became a major precedent. The Civil Division filed motice of appeal and then abandomed its appeal.

Although there was considerable official nicrepresentation in the original litigation, which temporarily deceived the judge, when the case was refiled for subsequent damages and my then counsel let the statute of limitations run on most of the claims, the Civil Division ultimately settled out of court for about 10 times its original settlement offer- and its original offer was for more than

twice what I was awarded in the first lawsuit.

HAROLD MEISBER

FREDERICK COUNTY, MARYLAND

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Before me this 10th day of April 1983 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true. By commission expires July 1, 1986.

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NOTARY PUBLIC IN AND FOR U



35 (Rev. 3-24-77)		Exhibit 1
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all cases in files separate from the main assassination file (89-69) were identified for inclusion in the serial inventory and shipment to FEIHQ. New Orleans retains the search slips and workpapers and is prepared to execute affidavit regarding the procedure utilized.

In review of the inventory sheets, New Orleans resolved the anomalies noted. Serials which were skipped, repeated or inserted were so noted. Serials which were removed to other files were also noted, and when the secondary file was not one included in the shipment its status was noted (destroyed or title of case).

For information of FBIHQ, the following summarizes the size and volume of these files. The twelve (12) boxes are all 14" X 14" X 10" and average about 30 pounds each. This equates to be about 23,500 cubic inches, and about 360 pounds. The volumes occupied about 21 feet of shelf space or the equivalent of about three, five-drawer cabinets.

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The man hours utilized in all basis of this project

were:

Agent Hours 42 Clerical Hours 176

December 20, 1976

C.A. 78-0322/0420

Exhibit 2

DISPOSITION OF PBI FILES

OR HUTORICAL

Federal regulations (41 CFR 101-11) require that records of continuing value are preserved and that records no longer of current use are disposed of promptly. In connection with these regulations, the FBI follows an active destruction program for obsolete material in accordance with the Records Retention Flan established by the National Archives and Records Service (NARS). Destruction relating to investigative matters generally applies to: (a) cases in which there was no prosecution, (b) perpetrators of violations not developed, and (c) investigation revealed allegations were unsubstantiated or not within the FBI's jurisdiction.

Additionally, MARS has provided authority for all FBI field offices to destroy investigative matters when the case is closed since the field is required to forward to FBI Headquarters the originals, duplicates, or summarizations of substance of all significant aspects of pertinent investigative matters. However, this authority has not been completely delegated to the field since they have a need to maintain certain files for investigative reference. For this purpose, the field may destroy files after they have been closed fors (a) six months in Auxiliary (or lead) Offices and (b) ten years in Office of Origin (controlling offices).

The FBI, however, is taking great care to insure that no files are destroyed that involve litigation or matters that would be of interest to a Congressional inquiry. In accordance with the House Select Committee on Assassinations, the FBI's investigation into the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. would be of prime interest to the Committee. Therefore, FBI Headquarters advised all field offices on Movember 24, 1976, that all files regarding these matters (even though they are duplicated at FBI Headquarters with all pertinent and significant data) should not be destroyed. Legal Coun APPROVEDI Adm. Serv._ Plan & Insp Ext. Affairs_ Fin. & Pers Rec. Mgt. A Director JWA: eypd ASSOC. DI DOT S. & T. Serv. Gen Inv.

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DIRECTOR, FBI (62-109060) ATTENTION: FOIPA BRANCH, ROOM 6986

FROM: SAC, NEW ORLEANS (190-84) (RUC)

ASSASSINATION OF PRESIDENT JOHN F. KENNEDY; HAROLD WEISBERG - REQUESTOR FOIPA MATTER

Re New Orleans airtel to Bureau, 8/30/78 and Bureau telcall to New Orleans, 11/30/78.

C.A. 78-0322/0120

Exhibis 3

12/5/78

7

The following is set out to clarify the information in re New Orleans airtel.

In order to locate all possible files described by the subject requestor, all of the following names or subjects were searched through the comprehensive indices of the New Orleans Field Office (there is no other indices maintained by New Orleans FBI):

> Assassination of President JOHN F. KENNEDY; LEE HARVEY OSWALD; JACK RUBY; Warren Commission; JIM GARRISON; CLAY SHAW; DAVID FERRIE:

All indexed references to those names were listed on search slips, which then were searched as control documents for further review of the references. Each reference, whether main case or

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"see" reference, were reviewed to determine if it related to the assassination of President KENNEDY. Those that were found to relate to the assassination were the ones listed in New Orleans airtel and shipped to FBIHQ. -

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UNITED STATES GOVERNMENT,

SAC, DALLAS (89-43)

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SUEJECT:

FROM

TO

ASSASSINATION OF PRESIDENT JOHN FITZGERALD KENNEDY, 11/22/63, DALLAS, TEXAS; MISCELLANEOUS - INFORMATION CONCERNING

On 4/19 and 4/20/78 the following FBIHQ personnel⁴ were in the Dallas office and reviewed captioned file (Bufile #62-109060) as well as DL 44-1639, captioned, "JACK L. RUBY aka; LEE HARVEY OSWALD (Deceased) - VICTIM," Bufile 44-24016 and DL 100-10461, Bufile 105-82555, captioned, "LEE HARVEY OSWALD aka; INTERNAL SECURITY - RUSSIA - CUBA":

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Exhibit L

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The above individuals, under the supervision of SA packaged and sealed all the volumes in the above listed files including Sub As and bulky exhibits in preparation for shipment to FBIHQ. Also packaged and sealed were the two volumes of DL 62-3588, captioned, "PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY," and one box each containing the communications index for DL 44-1639; DL 89-43; DL 100-10461, as well as one box containing serial description cards for the above three files.

 $\begin{array}{r} 4 - \text{Dallas} & (1) - 89 - 43) \\ (1 - 44 - 1639) \\ (1 - 100 - 10461) \\ (1 - 62 - 3588) \end{array}$

UHS/gcs (4)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

DL 89-43

On 4/24/78, Armed

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Forces Courier Service, San Antonio, Texas, picked up the above described files from the Dallas Office which were contained in 41 separate boxes and weighing approximately 1600 pounds. The above shipment is to be delivered to FBIHQ.

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C.A. 78-0322/0420 Exhibit 7

FBI/DOJ

SYMBOLS USED BY RECORDS BRANCH

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FD-36 (Rev. 12-13-56)
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Date: 12/11/63

Transmit the following in _____

(Type in plain text or code)

TELETYPE Via

(Priority or Method of Mailing)

DIRECTOR, FBI

FROM:

TO:

SAC, DALLAS (100-10461)

LEE HARVEY OSWALD, AKA, IS DASH & DASH CUBA.

RE TELEPHONE CALL OF INSPECTOR MOORE TO THE DALLAS OFFICE ON DECEMBER ELEVEN SIXTYTHREE WITH RESPECT TO SECRET SERVICE MEMORANDUM ALLEGING CERTAIN STATEMENTS MADE BY AN AGENT OF THE DALLAS OFFICE CONTENTS.

THIS MATTER HAS BEEN DISCUSSED WITH PERSONNEL OF THE DALLAS OFFICE AND THE ONLY INCIDENT WHICH IN ANY WAY AND TO ANY DEGREE COINCIDES WITH THE STATEMENTS IN THE SECRET SERVICE MEMORANDUM IS THE FOLLOWING:

ON NOVEMBER TWENTYTWO LAST FOLLOWING ARREST OF OSWALD, SA JAMES P. HOSTY, JR. WAS INSTRUCTED TO PROCEED TO THE DALLAS POLICE DEPARTMENT TO SIT IN ON AN INTERVIEW WITH OSWALD. UPON ARRIVING AT DALLAS POLICE DEPARTMENT, SA HOSTY MET SA JAMES W. BOOKHOUT AND TOGETHER THEY WENT TO THE OFFICE OF CAPTAIN WILL FRITZ. THERE THEY SAT IN ON AN INTERVIEW OF OSWALD WHICH WAS CONDUCTED PRIMARILY BY CAPTAIN FRITZ. THERE WAS NO ONE ELSE IN GAPTAEN FRITZ' OFFICE AT THIS TIME EXCEPT.

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UNITED STATES GO UNMENT

Memorantium

TO : FILE (100-10461)

FROM : SAC SHANKLIN

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SUBJECT: LEE HARVEY OSFALD, aka IS - R- CUBA

> MR. WILLIAM BRANNIGAN of Bureau called at 10:45 AM 2/3/64 in connection with the allegation that SA HOSTY's name, telephone-number and his car license number with one digit off were found among the effects of LEE HARVEY OSWALD. BRANNIGAN stated the Bureau had previously learned that SA HOSTY furnished his name and telephone number to Mrs. PAINE, and that SA HOSTY did not know how Mrs. PAINE or MARINA OSWALD got the license number of his car. He guessed the fact that when he was out in the area, one or both of them might have copied it down. Mr. BRANNIGAN requested we interrogate Mrs. PAINE re this.

I advised Mr. BRANNIGAN that Mrs. PAINE had been interviewed and that she has stated she did not copy down the license of number of HOSTY's car. BRANNIGAN asked if we had ever asked Mrs. PAINE how LEE HARVEY OSWALD got the name and address. He was told that Mrs. PAINE said she gave it to him and told him the date that HOSTY was out there, and it bears the date November 1, but we have never asked MARINA about the license number. I advised BRANNIGAN that I thought if Mrs. PAINE had given it to him, she would have told us. Mrs. PAINE did give HOSTY's name and telephone number of OSWALD, but she did not copy down the license number, and thinks MARINA might have obtained it.

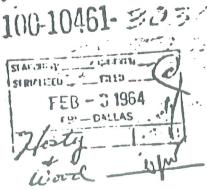
Mr. BRANNIGAN stated the following is the way above information is going to be set out in a brief for the Director:

Mrs. PAINE said she gave HOSTY's name and telephone number to OSWALD. She did not copy down the license. She does not know how OSWALD got this. Mrs. PAINE does think that MARINA might have and Dallas has not yet questioned MARINA as to how this was obtained.

LEAD: When Mrs. OSWALD returns to Dallas, question her as to how HOSTY's car license number was obtained.

(5 - Dallas JGS:mir (5)

See Page 2. Lev 14te typer der



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DATE: 2/3/64

Exhibit 9

.C.S. 78-0322/0420

C.A. 78-0322/0420 OPTIONAL PORM N Exhibit 10 HERE EXPECTION IDL PHEG. NO. 17 UNITED STATES GOVERNMENT emorandum FILE (100 - 10461)2/24/64 DATE: SAC SHANKLIN FROM .:

> LEE HARVEY OSWALD, aka IS - R - CUBA

SUBJECT:

At 4:25 PM today, D. E. MOORE of Bureau called and stated that the Commission has sent to the Bureau a "nasty" letter; the first two paragraphs of it are not important. Mr. MOORE dictated the last 3 paragraphs of this letter, which was from Mr. J. LEE RANKIN, General Counsel, President's Commission, dated 2/20/64. /They are as follows:

"In light of our continuing review of these allegations, I would like to bring to your attention one related matter. Your letter of January 27 1964 advised the Commission that Special Agent James P Hosty's name, office telephone number and automobile license number, one digit off, appeared in Oswald's address book. In so informing the Commission, your letter supplied information which appears to have been omitted from an earlier report of the FBI submitted to this Commission.

"Specifically, the report of Special Agent Gemberling dated December 23, 1963, at Dallas, Texas, beginning at page 672 purports to set forth the names, addresses and/or phone numbers contained in Oswald's address book. At page . 696 of this report, certain entries are set forth with an indication that they appear on page/74 of the address book. Examination of the address book reveals that certain information has been omitted at this point in your report, including Special Agent Hosty's name, a telephone number, a license number, the date 'November 1, 1963', and an address '1114 Commerce St Dallas'.

"The Commission would like to be informed of the circumstances surrounding this omission. More particularly, it would assist the Commission in appraising the significance fof this matter if we knew the names of the Agents, including supervisors, who prepared this portion of the report or make any decision to omit information from the report. Needless to say, we would like a full explanation." SEARCHED _

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

10/83

Civil Action Nos. 78-322 and 78-420

(Consolidated)

HAROLD WEISEERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in these consolidated cases. My prior professional experiences as an investigative reporter, Senate investigator and editor and decorated war-time intelligence analyst are stated in my prior affidavits, as is my subject-matter expertise, described by this defendant as superior to that of anyone employed by the FBI.

1. I have read and in this affidavit I address defendant's Opposition of March 29, 1983 and its attached declarations of FBI FOIA Supervisor SA John N. Phillips and New Orleans SA Clifford H. Anderson, who for some reason understates his qualifications and expertise.

2. As I show in detail in what follows, the Opposition and these two declarations state what is not true. The Opposition, additionally, slanders me by out-ofcontext reference to an old civil suit for damages that, given what the Civil Division knows about this case, in which it was involved, is utterly dishonest.

3. If the Anderson and Phillips declarations escape false swearing, they accomplish it by semantics, as I show in detail in what follows. The uses made of their unfaithful representations in the Opposition, which refers to the search slips

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I was provided as also "authentic," impart more significance to them. In the Opposition, they are the basis for the claim that because of "the authenticity of the search-slips provided to Mr. Weisberg, no purpose would be served in holding an evidentiary hearing."

4. While the Opposition and the two declarations pretend to rebut my March 1, 1983 affidavit, in fact they entirely ignore all but one statement in it, leaving the other evidence entirely undisputed. This undisputed evidence includes the fact that New Orleans FBI records also contain additional "scattered references" to the late David W. Ferrie and that New Orleans also prepared a report (for forwarding to the FAA) on Ferrie and these records on him that as yet have not been searched for in this litigation.

5. While in my much earlier affidavits in which I stated what Exhibit 1 to my March 1, 1983 affidavit proves to have been completely accurate, I did not state all that I knew, I provided more than enough information for the FBI to have conducted the search that was not made for a very long time, not until I moved to expunge Phillips' declarations. I now state that one of the records the FBI leaked to the private agency to which I referred went to the Miami FBI and that it reported that Ferrie, an Eastern Airlines pilot, was suspected of running guns to Cuba by plane. The one FBI record I attached to my March 1 affidavit is the only such record provided to me by another litigant to whom the FBI disclosed it. There are, however, other FBI Ferrie records that Anderson neither searched for nor reported anything about. Some of these are referred to in the FBI's own language in my March 1 affidavit and there is, in addition, at the very least, the communication to Miami that was leaked by the private persons to whom the FBI did the original leaking.

6. Aside from the inadequacy and untruthfulness of Anderson's pretended

refutation of my March 1 affidavit, which I address in detail below, and aside from the undenied existence of these other Ferrie records, to which I attested and whose existence I established by an FBI record, Anderson does report locating the New Orleans version of the FBI record I attached and he and the FBI still withhold even that.

7. As the Department's appeals office decided, FBIHQ and field office versions of the same record are not identical. Information included on one version and not on the other, Even routing, filing and indexing information, and any notations can be important to research, private inquiry and the historical record in this major historical case. The copy Anderson found and still withholds is pertinent, is clearly within my request, and might even dispute him. Under these circumstances, it is difficult to attribute only an innocent interpretation to his persistence in continuing to withhold that record after he found it.

8. Both FBI declarations again raise questions of the integrity of the socalled searches and of the FBI's sworn representations of them. As I stated before, without contradiction, the FBI has still not made searches to comply with my actual <u>requests</u> and its so-called searches are phony, despite these self-serving, conclusory and entirely unsupported new attestations. I attach below new evidence of this from the FBI's own records. But I emphasize that my earlier allegation, that the FBI has not searched to comply with my requests, remains entirely unaddressed, by Phillps or by Anderson.

9. As I also show below, both Phillips and Anderson have to know that what was provided to me and they again attest to are the "original search slips," <u>cannot</u> <u>possibly be and are not the original records of the so-called searches</u>. Indeed, as I stated earlier, some were not made in and for this litigation, and some were not even made for more than two years after the FBI claimed full compliance.

10. Despite this, as I also stated several times months ago, without contradiction, these so-called searches identified pertinent records that remain withheld, without claim to exemption.

UNTRUTHFUL STATEMENTS IN THE OPPOSITION

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11. The Opposition represents (on page 2) that on the basis of this one exhibit only I supposedly "merely surmised that all the sworn statements provided by Mr. Phillips in this litigation are false and therefore should be stricken from the record." This cannot be an accidental untruth. Phillips provided eight earlier declarations and I addressed each in affidavits of great and documented detail to allege that they all range from swearing to what he knew nothing at all about to swearing to what is untruthful. Surely neither Phillips nor defendant's counsel have not so soon forgotten my repeated reference to "Swear-To-Anything, Gag-At-Nothing" Phillips !

12. Based on this misrepresentation, the Opposition calls me a liar, states that "there is not a shred of truth to these allegations," and proceeds to additional misrepresentation (on page 3), that, allegedly because my description of the search slips as "phony" rests entirely on this one exhibit, as to defendant's knowledge it does not, my allegations of phoniness are not true. Whether or not there is "a shred of truth to" my allegations is already established by my numerous, detailed, documented and ignored earlier affidavits and in considerably more detail, with new FBI evidence, in what follows below.

13. No matter how often the defendant repeats the untruthful representation that I have refused to state the basis of my allegations about the inadequacy of the FBI's so-called searches (pages 3 and 4), this simply is deliberately and knowingly untruthful. I have done this over and over again, in the great and documented detail throughout all the many (ignored) affidavits I have filed in this

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litigation, in about two file drawers of documented appeals, and in numerous conferences with the appeals office.

14. One basic and undisputed allegation, about which I add new detail below with FBI records I then did not have, is that the field offices never made searches responsive to my requests and that instead FBIHQ arbitrarily, capriciously and improperly, decided to limit me to four main files. Another is that parts of my requests remain without even the pretence of a search and after five years are ignored entirely, save for a few records the appeals office had provided.

15. What Phillips actually swore to on April 29, 1982 (on page 3) is that instead of searching, on receipt of my request Dallas forwarded it to FBIHQ where SA Bresson, "then Assistant Chief of the FOIPA Section, determined that four main files in the Dallas Field Office were responsive to plaintiff's FOIA request." P hillips identified these four files as the assassination, Lee Harvey Oswald, Jack Ruby and Warren Commission files. He also swore (on page 6) that instead of processing my request New Orleans also "forwarded" it to FBIHQ, after which that office sent its identical files to FBIHQ and, without Phillips' specification of what names were searched through "see" references, he identifies nine additional files the unidentified and undescribed "see" references of which were checked. He admits that the FBI deliberately ignored my actual requests. He states that the alleged search was only "for material related to the JFK assassination." That this is deliberate refusal to search to comply with my actual request he recognizes (on page 3) in quoting my language, not the FBI's revision, that I requested "all records on or pertaining to persons and organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that subject as well as those that are." (Emphasis added) Whatever the FBI or any of its employees may regard as "related to the assassination," that is not identical with my actual request, which pertains to the investigation and despite my request

for information pertaining to persons and organizations not in the assassination main files, the FBI held me to those main files.

16. While the FBI held initially that only four files were responsive to my requests, still without making searches responsive to my request Phillips concludes this particular declaration (page 12) by boasting that a total of 26 files were provided. This is to admit that after its first claim to compliance the FEI disclosed more than three times as many additional files and to this day has not made and has not attested to making searches responsive to my actual requests.

17. In and of themselves, refusal to search to comply with my actual requests and refusal to search for what was not in the main assassination files render these so-called searches no better than "phony."

18. It also is untruthful for the Opposition to allege, (on page 4) as defendant earlier alleged, that I seek to prolong this case by the "tactic" of allegedly keeping my "complaints fluid and obscure and, in turn, virtually irresolvable." Using of the many examples in the case record those referred to in the immediately preceeding Paragraph, there is nothing at all "fluid" in my statement that SA Bresson at FBIHQ substituted records of his selection for my requests and for genuine searches in Dallas and New Orleans. This is a rather solid statement I made repeatedly. If the FBI claims it is not truthful, then the FBI certainly can provide disproof. But in doing this - in even thinking of doing it - the FBI is precluded by Phillips' sworn statement quoted above and by the new FBI records I cite below in another section of this affidavit. Unable to refute itself, the FEI has to make such false accusations. Also in a number of earlier affidavits, as I do again below, I attested that no search at all has ever been made to comply with parts of my requests. Obviously the FBI hasn't denied this because it is true. Now I am able to add to my earlier attestations new proof of it in FBI records I obtained only recently in inadequate and incomplete response to my discovery requests. I state at this point

that these new FBI records state clearly and unequivocally, and in fact the FBI's attestations are keyed to, a deliberately incomplete representation of my actual requests.

19. It is obvious that I seek the opposite of prolonging this litigation. As the case record shows, when I proposed a simple compromise to end this litigation, asking only that the FBI, belatedly, comply with one of the directives it received from the appeals office, the defendant rejected it out-of-hand. It thus is clear who is prolonging this litigation and I am not doing it. The defendant had seen to it that the litigation continues.

20. It is not true and the defendant knows very well that it is not true to state (on page 5) of my objections to defendant's "discovery" ploy, that "there is no valid reason for this refusal by plaintiff." Of the many <u>and entirely undisputed</u> reasons I have provided it simply is not possible that the defendant does not know that I stated that my age, health and physical limitations make this extremely burdensome for me and that doing exactly what in deliberate excessiveness the FBI asks is a practical impossibility. It also is not possible that the defendant and defendant's counsel do not know that I have stated that a) the defendant does not need discovery and b) and has not even bothered to claim there is any such need.

21. In the immediate preceeding Paragraphs, so there can be no doubt, I intend to state that the defendants untruthful representations I quote are not and cannot be accidental untruths.

THE ANDERSON DECLARATION

22. This entire matter underscores the FBI's real reasons for providing nonfirstperson attestations when attestations made of personal knowledge were readily available. Phillips, in Washington, did not make the searches but attested to them. Anderson, who states he was responsible for the searches in New Orleans, suggested that he prepare an affidavit five years ago and offered to do it but FBIHQ refused this until it

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had no alternative. (Exhibit 1) Thus the FBI did precisely as I attested over and over again, without contradiction: Phillips swore to what he did not know of personal knowledge. However, if he and the FBI had heeded the completely accurate information I provided long ago, had there been even the most perfunctory search at FBIHQ, where Phillips, <u>personally</u>, could have had it made, he would have located the pertinent record I attached to my March 1 affidavit and he would have located the other pertinent New Orleans records still withheld. I believe this is the reason no check was made at FBIHQ, because minimal effort would have disclosed the existence of the still withheld records I identified with what is now proven to be complete accuracy.

23. Anderson's declaration is misleading, deceptive, conclusory, without any documentary support at all, misrepresents and, if it does avoid false swearing, does so by semantics only, as I show in following Paragraphs.

24. Anderson accredits himself only as another of the thousands of FBI agents who, he suggests it just happens, was assigned to this case. In fact he is and for years has been New Orleans' information and privacy officer (Field Privacy Control Officer), an expert on searches and compliance in FOIA cases, expertise he avoids reporting. I have prior experience with him and his searches and attestations in other lawsuits.

25. Anderson does not entirely avoid untruthfulness, however, despite having had two weeks to prepare a short affidavit in which only three paragraphs even pretend to address what I alleged. He is untruthful in stating that my March 1 affidavit "does not substantiate plaintiff's accusations that the search slips provided to him 'were phonies.'" He addresses <u>only one</u> of the allegations in my affidavit but he pretends he addresses them all. (The Opposition makes the same false pretense.) Anderson does not even pretend to have searched for those other New Orleans "scattered records" pertaining to Ferrie or for its report on Ferrie, based on these other

records, for FBIHQ to forward to the FAA. Both are in my affidavit. They are not on search slips.

26. He does admit, however, that the one record I obtained outside this litigation and attached to my affidavit does still exist in the New Orleans office, in exactly the 105-1456-FRD file correctly identified in my affidavit, yet he still does not provide it this late in this litigation. He does not disclose whether or not he found or even looked for these other Ferrie records in 105-1456-FRD or elsewhere. He does not even identify 105-1456-FRD, which is an existing political file on what the FBI regards as subversion that can threaten the nation's security.

27. I do not know the title of New Orleans 105-1456-FRD, but I do know that other files in the same range of numbering pertain to Cuban anti-Castro activity, and that is pertinent in each and every official investigation, the Commission's, the FBI, those of both houses of Congress and Jim Garrison's. (Among the many reasons is the fact that Oswald sought them out in New Orleans and offered to help them, as the FBI reported.)

28. Anderson's "proof" that the Ferrie neutrality-act file was destroyed is limited to his entirely unsupported claim to have "discovered" its destruction. He states that this unproven destruction was at some time before 1977, when no such record whould have been destroyed for a number of reasons. Perhaps it was destroyed but he does not attach his proof and he doesn't even suggest what it is. For him to be able to swear that the file was destroyed he must have some evidence, a record of some kind. But he does not even report an unconfirmed rumor. His failure to provide any proof does not persuade that it exists.

29. The question of destruction of records pertaining to the JFK assassination investigation came up during the hearings of Senate Intelligence Committee's assassination subcommittee. Senator Richard Schweiker asked former Charles Brennan, suppose a file had been destroyed ? Brennan responded, "There would have been a

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record of it."

30. If he did not claim that the file was destroyed prior to this litigation, the FBI would face the question of perjury by Phillips.

31. Aside from the House and Senate investigations and that of the Rockefeller Commission, to the work of all of which this file was pertinent, it is an historical record that was not to have been destroyed without the assent of the National Archives. Ferrie and Ferrie records were germane in all those inquiries as they are in the Warren Commission's and the FBI's ongoing investigations in this historical case. This also is true of pertinent anti-Castro Cuban records.

32. Why Anderson does not provide the proof he is required to have to justify his statement that the Ferrie 2-112 file was destroyed I do not know but I do know that he states he read my affidavit and thus knows that, contrary to his representation, it is not limited to this one record he says was destroyed. Paragraph 5 of my March 1 affidavit states with regard to that one record that it "and all other existing and pertinent records remain withheld from me in this instant cause." (Emphasis added) As I stated above, neither Anderson nor Phillips claims to have made any search for these other records. Anderson therefore cannot state that my affidavit (and exhibit) "does not substantiate plaintiff's accusations"

because he does not

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even claim to have checked the others and he does not even pretend to refute them.

32**A**. Moreover, my exhibit, the FBI record now admits finding in the other file, tells Anderson how he can get those other records he did not even look for in New Orleans. If they are not in New Orleans or he can't find them or they are not indexed, he can get the information from FBIHQ. My exhibit states that the New Orleans report included "all the information in New Orleans files regarding FERRIE." At FBIHQ no index search at all might have been necessary because my affidavit and its

exhibit included the Ferrie FBIHQ file number.

33. If in my affidavit I had not informed Anderson and FBIHD that the unsearched Ferrie information, even if destroyed in New Orleans, still exists at FBIHQ they knew it in any event. FBI procedures and practices are stated in a December 30, 1976 memo titled "Destruction of FBI files." This memo is in an FBI file on one of these official investigations, that of the House Select Committee on Assassinations. (Exhibit 2) Field office destruction is contingent upon the destroyed information being available at FBIHQ, this memo states, and is permitted only "since the field office is required to forward to FBI Headquarters the originals, duplicates or summarization of substance of all significant aspects of pertinent investigative matters."

34. I have examined many pages of FBI records reporting the destruction of many thousands of pages of field office records pertaining to trivial local matters. In all instances, where a record was destroyed, a printed FBI form was filled out and on it the FBI provided all necessary details, including where the destroyed information could be retrieved from other records. From this practise it appears that Anderson should have had some recorded proof of destruction he could have attached to his declaration - if at the risk of identifying existing and still withheld pertinent Ferrie information.

35. It is apparent that the FBI ignored all the proper leads I gave it a year or more ago and never intended to comply, If it had made the obviously indicated search then, this question would not exist today except if the FBI wanted it and other unnecessary matters to prolong this litigation.

36. According to the FBI's publication "FBI Central Records System," its file destruction program was halted in January 1975, and all destructions were prohibited until April 1976, when it was resumed under a directive from the Attorney General providing "that the FBI should specifically exclude (from destruction)... matters

relating to domestic intelligence, extremist, racial and foreign counter- intelligence." (Page 29) Ferrie met all but the racial criteria, so on this basis also that file should not have been destroyed.

37. FOIA and search expert Anderson, who did not disclose his expertise in his declaration, states that he did not locate this Ferrie 2-112 file because the FBI's "procedures always include the destruction of a file's corresponding index cards." (Page 2) This is remarkably loose language for an expert because the FBI draws a careful distinction in "FBI Central Records System" between the main index card to file and the "see" cards. (Page 17) Thus it appears that all Anderson is saying is that the card identifying the 2-112 file is the only card he looked for and the only card destroyed.

38. Anderson's language (in Paragraph 4(b)) explaining how his search did not turn up the Ferrie record in the 105-1456-FRD file is imprecise if not evasive and equivocal. He states that a decision was made "not to have the document indexed to the 105" file and thus he did not "come across" it. Perhaps he meant to say he did not find any reference to it on any "see" card, but if he meant that, he could and should have said it. As it stands, he avoids any mention of any "see" card search after he read my affidavit.

39. He does not say how he knows this decision was made, who made it or if there is a record of it. From what he does say, it appears that an equally valid representation would be "I surmise that a decision was made not to index." From what he says he is merely surmising because he found no indexing marks on a not necessarily identical copy.

40. Anderson's equivocation and evasiveness and everything also are keyed to a significant untruth. In his Paragraph 4 (a) Anderson states that "when the initial search was subsequently <u>conducted for records responsive to plaintiff's FOIA request</u>, file no. 2-112 and its corresponding index cards no longer existed." (Emphasis added)

It is not truthful to state that either then or ever did the FBI, Anderson included, conduct <u>any</u> search "responsive to my request." As Anderson revealed in his December 5, 1978 letter to the FBIHQ FOIA Branch (Exhibit 3), his search was <u>not</u> in response to my requests, which include much more, but was strictly limited to what the FBI and he considered "related to the assassination" of the President. As Phillips attested and the FBI's records corroborate, the FBI intended originally to limit this to Oswald, Ruby and the assassination and Commission files. Thus it is apparent that the original search would not even have included the pertinent Ferrie 2-112 file in any event.

41. It also is provocative that, despite the apparent triviality of some of the records the search slips note were destroyed, Anderson did record destruction 32 times. Seven of these are records indexed to Lee Harvey Oswald, and all such records were not to have been destroyed. No less incredible is it that he claimed three other Oswald records are "irrelevant." But then his search slips claim "irrelevant" for 60 of the records he turned up on Oswald, Ruby, Jim Garrison, Clay Shaw and the President. Yet the request begins, "The request includes <u>all</u> records on or pertaining to persons who figured in the investigation into" the assassination and adds wherever or however they are filed. (Emphasis added) <u>No</u> record pertaining to Oswald or the others, with the exception of the President, whom I did not intend to be included, can be "irrelevant." I believe that his claim of the irrelevance of records in response to a request that seeks "all" records raises the most substantial questions about what the FBI was and is up to in this litigation and about the credence that can fairly be given to its representations.

The Search Slips

42. Anderson concludes, " 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 request. None

of these search slips have been rewritten or reworked in any manner." (Emphasis added . I have not received a single "photostatic" copy of any kind from the FBI, so this part of what Anderson swears to is not true.) Part of what Phillips attests to is, "I specifically stand by my sworn statement that the search slips provided to the plaintiff were copies of the original search slips generated by the Dallas and New Orleans Field Offices as a result of the search conducted by them in response to plaintiff's FOIA requests in these cases." In Paragraph 2 Anderson states that he is responding to my March 1 affidavit. In Paragraph 3 he attests to the authenticity of the copies of the search slips. In Paragraph 4 he denies that the search slips provided to me are "phonies". Phillips states very little in his two short paragraphs of text, but he does state that the "accusations" I made "are totally false" and that neither he nor to his knowledge any other FBI officials "ever submitted false information to this court." Thus both declarations raise again questions of the authenticity and genuineness of the search and of the search slips, whether or not they are the original records of the so-called searches, and the truthfulness of all FBI attestations.

43. FBI FOIA regulations and procedures have been testified to at length and in detail in several of my cases. All of this FBI expert testimony is completely consistent in describing what the FBI says it does and is required to do. Briefly, this is that in all instances, whether or not there is a backlog, there is an immediate preliminary search to determine whether or not there are pertinent records, and, if there are, their estimated volume. Two of the purposes served are informing FBI FOIA personnel of the approximate volume of pertinent records and enabling it to inform the requester of their approximate cost. Prior to any processing, the requester is required to be informed of the approximate cost and, if the volume of records justifies it, is asked to make a deposit of an amount of money determined by the FBI.

44. These regulations and procedures were not followed when my requests were received by the field offices. The violations by both field offices appear not to have been accidental because both of my requests conclude by asking "if you could let me know the estimated volume of recerds involved in this request and when you expect to begin processing them". I never received any answer. As of that time my request for a fee waiver had not been acted upon, so this does not explain these additional violations by both field offices. And, as Phillips has attested and records I received on discovery reflect, instead of making searches in response to my requests, both offices sent them to FBIHQ and then sent to FBIHQ for processing those four main files decided upon at FBIHQ, without any search being made or possible there, by SA Bresson FBIHQ's FOIA Branch.

45. Exhibit 4, which is about a half-year after my requests, reports what Dallas sent to FBIHQ. It does not state that what it sent was responsive to my request or located after a search. As will become apparent, no search of any kind was made in Dallas until after more than 28 months.

46. Exhibit 1 is the New Orleans report of August 30, 1978, or eight months after my request, on what it sent to FBIHQ for processing. As I state above, this record is not truthful in claiming that "all indexed individuals involved in or referred to in the investigation.... were searched through search clips." It thus does not reflect a genuine search. (This is the record in which New Orleans distinguished between "search slips" and "workpapers.")

47. The manner in which searches are made also was testified to by a number of FBI FOIA supervisors in several of my lawsuits. This testimony is also entirely consistent. In summary, their testimony is that the FOIA personnel prepare requests for searches on search slips, indicating the nature of the search to be made, and that the files personnel <u>only</u> make the searches, which they report by listing pertinent records on the slips requesting the searches. Without exception,

all search slips provided to me in my other litigation, when the FBI was called upon to detail its searches, conform to the FBI testimony about searches summarized above. Copies of search slips also are included in the main files provided to me in this instant cause. To the best of my recollection, all those search slips reflect the request for the searches by the person making the request and, on the same slip, a listing of records identified on search, together with the name of the files employee who made the search. Both the request and the response are dated.

48. The question of whether or not the FOIA personnel make the searches did not come up in all this previous testimony, but on several occasions when it did, those FBI special agents testified that they are not permitted to make the actual searches but are required to submit their written requests on the proper form, which is then returned to them by the files personnel after the searches are made, with the results of the searches listed on each individual request or search slip.

49. In all of my prior experience with FBI search slips, I recall no single instance of more than a single search requested on any one search slip.

50. Exhibit 5 is a copy of the Dallas worksheets, as provided to me with the attached worksheet dated "7-81". Exhibit 6 is a copy of the New Orleans search slips, as provided to me with the attached worksheet also dated "7-81." The only mark I have added is the pagination encircled in the upper right-hand corners. References to the individual pages below will be by exhibit number followed by page number, the first page of Exhibit 5 thus is 5-1.

51. Without exception, the Dallas search slips conform to the undeviating practise to which all FBI FOIA experts testified in my other litigation. Each is on a separate slip, dated and signed by the requester, and each search reported also is signed and dated by the searcher. In all but two instances the nature of the search requested is indicated. ("All reference", which is correct.) Without being informed, the searchersdo not know what kind of search is requested and the resulting

search may be more limited than intended.

52. With two exceptions, these search slips are stamped for record filing in the appropriate box in the lower right-hand corner. Without such a stamp, the search slip cannot be the record copy because there was no direction for filing it and no means of retrieving it through the index. These two exceptions (5-3 and 5-4)are of a year later and more than three years after my request. Both are made the same day by the same searcher. I believe both also are phony, as I explain in later paragraphs. Neither of these includes even the file number, so neither is a copy that could be filed or could be retrieved from a file and on this basis also are phony.

53. Exhibits 1 and 4, Dallas and New Orleans records pertaining to this litigation, each include its proper file number and each is stamped and serialized for filing in the usual FBI manner, with which I have considerable experience. Both also indicate the main files in which copies are filed. This also is normal. Without serialization it is necessary to search entire files to locate individual records. However, none of the Dallas or New Orleans search slips is serialized and none direct any copies to the appropriate main files, which can save time in avoiding duplicating searches. I therefore believe that they are copies not made from the record copies of those search slips.

54. Exhibit 3 and a large percentage of the records provided under discovery in this litigation bear no file stampings for the clerks to follow, none reflecting record filing, and no serialization. It therefore appears that they also are not record copies and are not the copies that should have been provided.)

55. In addition to the usual practise of tabulating the records identified in a single column thus permitting space for annotations, each of the notations of destruction are precise, each gives the exact date of destruction.

56. Although no historical case records are to have been destroyed and the attorney general specifically directed that none of these JFK assassination records

be destroyed, it is interesting to observe that two of the Lee Harvey Oswald citations (5-1) are noted as destroyed at a time exactly coinciding with Congressional inquiry into the FBI's performance in the investigation and that each also is a 94 record. While this 94 classification is titled "Research Matters," it in fact is the classification used by the FBI for records pertaining to its propaganda and lobbying activities. It thus appears that those destructions eliminated Dallas records that could have been of interest to the Congress and could have been embarrassing to the FBI.

57. This Oswald search slip (5-1) does not cite any Fair Play for Cuba Committee (FPCC) file and the FBIHQ and New Orleans files hold pertinent FPCC records disclosed in response to the request of others. With Dallas the "Office of Origin" or "00" it is standard FBI practise for those records to have been routed to Dallas if they originated elsewhere.

58. The Marina Oswald search slip (5-2) is not complete and thus is phony. While on this the FBI and Phillips have not claimed exemptions (b)(2) and (7)(D) to withhold the five listings of File 66-1313, they have withheld this on other records and continue to withhold these numbers under those spurious claims, despite my appeals and my correct identification of the file numbers for this, the wiretapping of Marina Oswald, and its companion Bugging file. The Dallas FBI has and later disclosed to me this second file, for its unauthorized bugging of Mrs. Oswald's home. It is 66-1313A, as my uncontradicted affidavits attest. (These claims to exemption are spurious because the records have nothing at all to do with FBI personnel practises or any person or any confidential source to be protected.)

59. The late George DeMohrenschildt (5-3) was a friend of both Oswalds. While this search slip lists the 1313 file, it has no citation of the bugging file. Both of these omissions are consistent with a continuing effort by the FBI to hide its illicit activity in not having asked for or received permission to bug the recently bereaved young woman.

60. The dates P. dosty search slip is a very obvious phony. It does not even list the records Dallas provided. It also does not list other known Hosty records. A duly signed and dated search slip that lists no records at all and does not report that no records exist is an obvious phony. With regard to Hosty, motive is obvious. He was the Oswald case agent. He was involved in and he involved the FBI in several major and seriously embarrassing scandals. (Mathematical Content of the c

61. I intend to be unequivocal, and because I have been contradicted and challenged by the FBI's affidavits under oath, I provide details I would not ordinarily go into.

62. First I state that my earlier affidavits are specific in describing this Hosty search slip (5-4) as a phony and that Phillips' sworn denial of this and his sworn reaffirmation of all his prior attestations follow my earlier affidavit and my motion to expunge his declarations.

63. The Hosty records <u>in this instant cause</u> include those in the main files and those disclosed by direction of the appeals office and mailed to me separately by the FBIHQ FOIA Branch, I believe <u>by Phillips himself</u>. (He is the case supervisor. Covering letters are signed with the name of the branch chief, initialled by supervisors.)

64. The fakery of this search cannot be explained away, as Anderson seeks to do with the New Orleans Ferrie records, by any claim that there was no indexing or that any of the records were destroyed. I have checked and state that any such claim would be knowingly and deliberately false.

65. According to Dallas Lieutenant Jack Revill (who later rose to that police department's top echelon), right after the assassination he encountered Hosty as both were rushing into police headquarters. Revill filed a written report in which he quoted Hosty as having told him that, although the FBI knew Oswald was capable of violence, it did not believe he would commit any such crime. The police chief had

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Revill execute an affidavit. It was provided to the Warren Commission, which published it.

66. At the time of the assassination Director Hoover learned of this and was very indignant. He insisted that the chief apologize and retract on TV. Even though it was true, as the FBI kept secret for a dozen years (until it was leaked and then confirmed by the FBI's own internal investigation the records of which have been disclosed to me), the chief did apologize. That did not satisfy Hoover, who ordered the rupturing of FBI relations with the Dallas police, including even training at the FBI Academy.

67. After the 1975 retirement of Gordon Shanklin, who had been Dallas Special Agent In Charge (SAC), the basis of the FBI's knowledge that Oswald had made threats was leaked to the Dallas <u>Times-Herald</u>. It informed the FBI prior to publication and offered space for FBI comment. An investigation by the FBI inspector general followed. It succeeded in so thoroughly obfuscating fact that it was not possible to determine who told the truth and who was a perjurer, so there could be no perjury charge. Other records disclosed to me state, however, that a perjury indictment of Shanklin was considered but was abandoned because of the possibility of the alleging of a "bootstrapping" indictment.

68. What was leaked to the newspaper and confirmed by the FBI's investigation is that Oswald left a threatening letter in an unsealed envelope at the Dallas FBI office for Hosty a few weeks before the assassination. Hosty testified that Shanklin, personally, ordered him to destroy this letter <u>after</u> the assassination and that he did this by shredding it and then flushing it down the toilet.

69. Indicative of the FBI's tricky filing and of the phoniness of the search in this case is the fact that no contemporaneous records at all were provided. I do not recall disclosure of any pertinent FBIHQ record, either. I believe that I would not forget having seen such a record. But the FBI's own investigation disclosed that this matter was reported to FBIHQ.

70. One of the areas of contradictory recollection after a dozen years is the exact nature of Oswald's threat. Some Dallas employees who knew of it recalled that he threatened to bomb their offices, some that he threatened to bomb the police, and some that he threatened both.

71. However, the FBI's explanation of its failure to inform the Dallas police of Oswald's presence in their city although it knew he had defected to the Soviet Union and was a self-proclaimed "Marxist" is that the FBI had no reason to believe he was capable of any violence. The investigation following the leak established that the FBI's explanation was knowingly and not accidentally untruthful. (I pelieve this also explains the FBI's continued stonewalling in not providing a lengthy Hosty memo that was hidden at FBIHQ instead of being filed in Dallas.)

72. I believe it is obvious that the FBI would keep records so extremely sensitive to it and be able to retrieve them.

73. Hosty was a Warren Commission witness. He did not testify to any of the foregoing. The FBI did not inform the Commission of any of it and it warned Hosty not to volunteer any information at all to the Commission.

74. As a result of what he regarded as their failures in the JFK assassination investigation, Hoover had a number of special agents and supervisors disciplined. Another example of the FBI's tricky filing and searching is that none of these records are in the main files where they belong and all, including the records of Hosty's disciplining, remain withheld from me as they are from this phony search slip. Phillips swore that the Hosty personnel file was searched in this case, but it does not appear on the search slip.

75. The search slip for the Presidential Commission (5-5) is a phony because it lists only the one main file that was not created until the Warren Commission went out of existence and because the Dallas records hold many references to it. The FBI fluctuated between indignation and outrage over the Warren Commission's requests and

it simply is not possible that the Dallas FBI would not be able to retrieve such records. The one file cited on this slip is a file on the Commission's published report.

76. The Jack Ruby search slip (5-7) may be accurate in what it cites but it is a phony search that does not include the known Ruby informer file. The FBI has admitted that Ruby was its criminal informant on probation, that it had contacts with him during that period, and that because he was not productive it did not keep him as an informer after this probation. This FBI admission means that there is a Dallas 137 or "Criminal Informants" file in which there is, at the very least, records of approval to try him out, not to keep him on, and of each of the FBI's admitted contacts with him, the latter reported, at the least, on printed FBI forms for such contacts.

77. Six of the destroyed Ruby records are, by the most remarkable of coincidences, from the same 94 file in which the FBI keeps its propaganda, lobbying and similar records and were destroyed on the same day that those pertaining to Oswald (5-1) were destroyed, December 1, 1977. As stated above, this destruction coincides with investigations in which their disclosure might embarrass the FBI.

78. These slips represent an obviously phony search because they are limited to but five of the many persons included in the investigation. Of these five, only three were originally intended by the FBI. The other two were added after appeal.

79. Although Anderson's declaration pertaining to the New Orleans search slips (Exhibit 6) may <u>appear</u> to be straightforward and unequivocal to those without detailed subject matter knowledge and the knowledge I obtained from my experiences with the FBI in FOIA cases, it in fact <u>is</u> equivocal, evasive and semantical. He is careful <u>not</u> to state that these (Exhibit 6) are the original records or slips <u>of</u> the search, which is what is in question. He attests instead that they "were prepared as a result of" the searches. (Emphasis added) Obviously, the two are not identical.

<u>Original</u> search slips, regardless of their form, are prepared <u>in</u> the original searched, <u>not</u> "as a result of" them. It is by such means that Anderson may accomplish the purposes of false swearing without, perhaps, technically, swearing falsely in his description of the slips provided. Because he is swearing to the wrong thing, he can safely swear also that "none of <u>these</u> search slips have been rewritten or reworked in any manner." (Emphasis added) This does not mean and he does not state that the original records of these searches were not "rewritten or reworked in any manner." I believe that I establish in following paragraphs that they were and that Anderson knows they were.

80. In his August 30, 1978 letter to FBIHQ FOIPA pertaining to this case (Exhibit 1) Anderson distinguishes between the search slips he <u>represents</u> to be the original recordings of the searches and the records that <u>are</u> the original recordings of those searches. He refers to <u>both</u> sets of records of searches: "New Orleans retains the search slips and workpapers." (Emphasis added)

81. In this letter Anderson reports searches responsive to only part of my request. He uses some of its language. But in his declaration, because his representation of what was searched is not correct or responsive, he shifts to language which is <u>not</u> my request. In Exhibit 1 he states what is not true but would have been proper if it had been done, that the search was of "all indexed references to all known individuals involved in or referred to in the <u>investigation</u> of the assassination." (Emphasis added) What he <u>actually</u> did he states in Exhibit 3. He limited the search for records "to determine if it related to the assassination." Obviously, the two are not identical. The difference is great. Oswald alone "related to the assassination" as the purported lone assassin and Ruby as his killer. Initially FEHQ restricted compliance by person to these two. To these, according to his later search slips, Anderson added Oswald's mother, Marguerite and Jim Garrison, Clay Shaw and David Ferrie, who are included in but are not all of a separate item of my New Orleans request. (Of these, all but Garrison are dead.)

These four do not begin to comply with the Garrison part of my request, as the FBI knows from many sources, including the records it processed in this case.

82. These search slips do not even include some records Anderson did provide.

83. Although Anderson attests that these search slips were "prepared by me or under my supervision" and were provided as those of this case, two (6-36 and 6-37) clearly are <u>not</u> searches made in this case. They are identified by their file number as of a different case one number removed from mine, 190-33 rather than 190-34. Only one (6-36) of these two of the 37 pages of worksheets is stamped for record filing and retrieval. In addition, both are phony because New Orleans records disclosed to me include Warren Commission and "Senstudy" records other than the single main file cited for each on those slips. ("Senstudy" is the FBI's code name for the Senate Intelligence Committee.)

84. With the possible exception of 6-36 it appears that none of these search slips is a copy of the New Orleans <u>record</u> copies. They are not stamped for record filing, none is serialized and no copies are indicated for the main files.

85. While the Marguerite Oswald search slip (6-1) appears to comply with FBI practise in reflecting who requested the search and who made it, it does not appear to be likely that both persons used the same typewriter that was overdue for a cleaning. (This is the only typed slip.) It also does not appear to be likely that typing is a convenient way of posting citations obtained from a battery of cabinets of 3x5 cards. This does not appear to be the <u>original</u> slip recording that search.

86. The Marina Oswald search slip (6-3) says the search was requested by Anderson and was searched by him. In longhand, it provides samples of his handwriting.

87. What remains is most of the slips, those pertaining to all the other (\$1C) searches: those on John S. Kennedy, the first and only dated sheet (6-4), Lee Harvey Oswald (6-4 to 6-12 inclusive), Clay Shaw (6-12 to 6-14, inclusive),

"Dave Ferrie" (6-14 to 6-20, inclusive), "Jim Garrison" (6-20 to 6-31, inclusive), and Jack Ruby (6-32 to 6-35, inclusive). I presume pages 33,34 and 35 are part of the Ruby search but I do not know because there is no identification of any kind on them. All of these pages not numbered by the FBI run continuously, as though they were one search, with what can be taken as requests for searches on only the Kennedy and Ruby sheets.

88. On the other pages, where dates are given, there are four different dates for the supposedly single request for searches in this case, July 25, August 2,8 and 14, 1978.

89. Long ago I stated in an affidavit of pages 6-4 and through 6-35 that all but the Ruby pages cannot be searches in this case because the only dated page is dated "1/4/77". I have heard nothing from the defendant about the dates since then. The FBI has not described this as an error. From the other dates, even if there is a mistake in the year, this could still not be a search for this case. It was made almost a year before I filed the request and therefore is phony.

90. It is not possible that this Kennedy sheet (6-4) includes the request for the Lee Harvey Oswald search that is posted with it. All that is possible is that someone copied earlier records off in longhand and ran the Oswald citations right at the end of the Kennedy citations and then continued applying the Oswald citations to the top of the first pair of columns on page 6-12. At the end of these Oswald citations and so close that the "C" in Clay Shaw barely misses overlapping the last Oswald item, the Shaw citations begin. They then continue on this Oswald sheet to its end and thereafter for two more double-columned pages, where, with no gap at all, on the line immediately following the last Shaw citation, the name "Dave Ferrie" appears. (I have never known the FBI to search by nickname only. There is no appearance of Ferrie's full and correct name anywhere on these search slips.) Ferrie citations continue for another five pages, with the Garrison listing beginning at the end of the Ferrie listings and on the same page.

91. It is not possible that this is an original search slip or an original request for a search because it was not possible for the person requesting the search to know in advance exactly how many references to the President of the United States there were in the New Orleans FBI office. This had to be known <u>in advance</u> of any search for the person requesting the search to be certain that all the Kennedy citations would fit in the single column of 17 ruled lines to which those citations are limited by the appearance of Lee Harvey Oswald's name at the top of the second column. And this assumes what is entirely unlikely, if not entirely impossible, that the appearance of Oswald's name where the citations only are posted, not where the !BI's printed form requires the "subject" of the search to be stated, indicated a request for a search.

92. There is no apparent reason for anyone requesting a search to depart from FBI practise of a separate request for each subject and intend a second search on a single search slip, and then not to state that intent. Doing this, if in fact it was done, entailed many entirely unnecessary problems, only one of which is filing this single supposed search in two different places, under the President and under Oswald. I have no knowledge of the FBI ever requesting a second and unrelated search on a single request for a search or of intending a name appearing where the citations only are to appear to be interpreted as a request for a second and unrequested search.

93. Yet this is what characterizes most of the searches the slips of which were provided to me and to the genuineness of which Anderson and Phillips attest.

94. It also is patently impossible for the supposed requester of the e supposed original searches to know in <u>advance</u> that all the New Orleans Oswald citations would require seven full double-columned pages and four lines at the top of the next page, no more and no less, and <u>before any search at all was made</u>, to indicate at the very point at which the Oswald citations would end that a Clay Shaw search was intended by writing in at the wrong place, his name where citations only are posted.

Shaw's name, like Oswald's, Ferrie's and Garrison's, belong in the blank space at the top of the slip where the FBI printed the word "subject" of the search and intended that to be indicated.

95. For the supposed requester of the search of which this is the supposed original posting of citations to know the exact number of lined spaces on the form posting all the Oswald citations would require (258), he also had to know <u>in advance</u> that the citations would be posted inconsistently - that in one case citing the pertinent pages in a long document would be done by using a separate line for each page number, using up half of one of these sheets this way, and at other points multiple page numbers would be on a single line. Obviously it was not possible for the supposed requester to have filled the form out with this <u>devance</u> knowledge, yet it is absolutely required for the Anderson and Phillips attestations not to be untruthful.

96. In what both Anderson and Phillips represent as the only and the original Clay Shaw search, the supposed requester had to know <u>in advance</u> that all the Shaw citations would require exactly & lines. He had to know <u>in advance</u> that again the searcher would post consecutive numbers inconsistently, some on the same line and some on different lines. <u>In advance</u> of searching he had to be able to calculate the inconsistences accurately. This is absolutely essential because the name "Dave Ferrie" appears on the line directly following the last Shaw citation.

97. For the five full pages and parts of two other pages of Ferrie listings to come out just right - and with the posting of Garrison's name on the last Ferrie page <u>in advance of any search</u> it just had to come out right - the supposed requester had to know <u>in advance</u> of any search <u>exactly how</u> the searcher would post the Ferrie citations. This is because at one point 73 citations are posted on 15 lines and at another point 20 citations are posted on five lines.

98. All these sheets give the appearance of having been written by one person

and at the same time. The handwriting clearly is not Anderson's, yet he supposedly requested the searches. On this basis alone these cannot be the slips of the original searches.

99. There is more that is wrong with these search slips. For example, a dozen and a half of the Garrison citations are indicated as "destroyed" not in the handwriting of the supposed searcher but in what appears to be Anderson's. How a searcher and the New Orleans file personnel would not know this and Anderson would is not apparent. And in not one instance is the date of the alleged destruction provided, although with a record of destruction the date should be included. In addition, these notations, apparently by Anderson, raise new questions about the truthfulness of other of Anderson's attestations, addressed beginning in the second following paragraph.

100. It is not possible that the first of these search slips, in not quite the name of the President, includes all the searches that follow it in so long an unbroken chain.

101. There appears to be no reason for the regular FBI procedures not to have been followed in these searches, with a request properly executed for each search requested and, if he made the request, by Anderson. But clearly these are not requests on individual slips or by him and in his writing.

102. It is obvious, as I stated in an earlier affidavit in which the defendant was put on notice with regard to the foregoing information, that these are not and <u>cannot be the original slips of the searches in this case</u>, which is what Anderson and Phillips swear they are.

103. Anderson now swears (in Paragraph 4(a)) that when a record is destroyed the FBI's procedures "always include the destruction of a file's corresponding 3x5index card." (Emphasis added)

104. These so-called search slips list whole files and individual records as

destroyed yet their existence was copied from the indices, where Anderson swears they are <u>always</u> destroyed. Anderson's own supposed search slips, the authenticity of which he and shillips have just sworn to, say the opposite of what Anderson swears to, quoted above. If those index cards had been destroyed they would not exist for the supposed searcher to locate and include on these slips.

105. I have read innumerable FBI New Orleans records on or about Garrison and I do not recall a single one in which it referred to him as "Jim" - although absort everyone else does nothing else, including Garrison Einself. To the best of my knowledge, he does not use the name "James." The actual search in this case could not and would not have been asked for under the name "Jim Garrison."

106. I have read innumerable New Orleans FBI Ferrie records. I do not recall a single one in which the FBI referred to him as "Dave." All its records are under David W. Ferrie, to the best of my recollection.

107. It is the FBI's general and to the best of my knowledge undeviating practise to give the full and correct name and include all others under the heading or caption "AKA" (for "also know as.") It follows this practise even with married women, giving both names, one as an "AKA."

108. Even if the New Orleans FBI files were limited entirely to New Orleans area names - and they are not, they include records from FBIHQ, all its field offices and foreign or "legat" offices, other police agencies and records from other sources and agencies - it would not file them only under incomplete or nicknames. It could not make positive identification by either incomplete or nicknames. Garrison, Shaw and Ferrie all have middle names and/or initials in the FBI's records. They are used in the captions and texts of the FBI's records. This is still another reason I believe that these are not the original slips of the original searches.

109. As I stated above, the FBI New Orleans record attached to my March 1 a fidavit discloses that the New Orleans FBI prepared a report on Ferrie for FBIHQ to forward to the FAA. This supposedly complete search of the indices does not

include any citation for such a report. The only Ferrie records cited and not processed are nine existing pages of a long "94" classification file. This classification the FBI uses for its propaganda and lobbying activities for which it has no file classification that identifies them. These pages are withheld as "irrelevant" when they cannot be in a request for "all" records.

110. Eight Garrison citations are withheld on the same spurious claim from the very same file, 94-448. By the most remarkable of coincidences, Garrison's and Ferrie's names appear on the same "irrelevant" pages. If my request were not for "all" records, this fact alone would make them relevant.

111. These claims to irrelevance also are phony.

112. These search slips and supposed searches are inadequate on another ground. The FBI states that it searched only its "general" indices. It has and in this litigation it has provided pertinent records that are not indexed in its general indices. One of the examples of this from my prior affidavits pertains to the officially admitted electronic surveillances of Jim Garrison. My attestation was not disputed or contradicted, but there were no further searches so that these pertinent records the existence of which is officially acknowledged could be processed.

113. To a large degree what I state in this affidavit also is stated in my earlier affidavit and thus should have been known to the defendant prior to the preparation of the Anderson and Phillips declarations I address herein.

ADDENDUM

114. On Thursday evening, April 7, 1983 my counsel informed me that it pleadings he had just received from the defendant it is stated that the name of FBI SA James P. Hosty, Jr. (now retired) is not indexed in the Dallas general indices. As soon as I completed the draft of the preceeding paragraphs of this affidavit and got them to the friend who is retyping them I searched the subject files I have established of copies of records provided to me by the FBI.

115. I preserve the records provided to me exactly as I receive them so that now and when they are in the university deposit of all my records they will be precisely as I received them.

116. Because of the importance of the Hosty matters referred to earlier in this affidavit I have a number of Hosty files in this separate subject file. I examined the first of these files and found that the first three Dallas records in it <u>are</u> marked for indexing. I believe no further search was necessary and went no farther because these three attached pages. do reflect the fact that Hosty's name was indexed. I have made and attach copies of the first pages only because it is on them that the indexing is indicated. The only marks I added are two citations to the Dallas volumes in which these records are. All are from the Dallas 100-10461 or Lee Harvey Oswald file. I added "Vol 29" and "Vol 3h" below the bottoms of the original pages, which are shorter than the standard letter-sized page to even these identifications are not on the face of the record itself.

117. Although I have attached it to an earlier affidavit, for the convenience of the Court and the defendant I attach a copy of what the FBI agreed for the appeals office to give me with its publication "FBI Central Records," its "Symbols Used by Records Branch." (Exhibit 7) This reflects the fact that "the underlining of Hosty's name "indicates pertinent information to be typed on 'see' card." (Third item)

118. Hosty's name is underlined for carding in the second line of the third paragraph of Serial 1378. (Exhibit 8)

119. Hosty's name is underlined for carding in the second line of the first paragraph of the SAC's February 3, 1964 memo the serial number of which is not clear. It appears to begin "303" but the next number is entirely illegible. (Exhibit 9)

120. Hosty's name is underlined for carding in the fourth line of the second paragraph of Serial 3666. (Exhibit 10)

121. There also is other indexing of Hosty's name in the Dallas general indices. This includes files other than 100-10461.

122. As I stated before I was made aware of the defendant's claim that Hosty's name was not indexed, he was involved in the most serious matters and intensive public controversy and he was the Oswald case agent, so it is obvious and inevitable that his name had to be indexed in Dallas.

HAROLD WE IS BERG

FREDERICK COUNTY, MARYIAND

Before me this 10th day of April 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.

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NOTARY PUBLIC IN AND FOR FREDERICK COUNTY, MARYLAND

SECOND ADDENDUN

Defendant states that "plaintiff's propensity for exaggeration and conjecture has apparently been one of longstanding."(sic) This is a less than honest and entirely incomplete reference to other and entirely unrelated litigation. It is misused to state that in this litigation I have a "propensity for exaggeration and conjecture." The definitive answer to this slander is in the case record in "his litigation. I have addressed each and every declaration provided by the defendant, I have done this under oath and with considerable detail and documentation. If there and been any conjecture or any exaggeration, the defendant had full opportanity to present the evidence to this Court and to confrom the with it. Instead, save or Haillips' current conclusory, self-serving and at least in size unity response that is limited to a low words of untruthful denial of not having been truthful, he and the defendant have been silent when confronted not with exaggeration, not with conjecture, but with evidence they are unable to assail and have almost entirely ignored.

In that other litigation, which the Civil Division took to court at the behast of the Army and over the objections of the Department of Defense which at the direction of the Secretary had worked out an equitable settlement that eliminated the need for any litigation - I won and the Civil Division forced in adverse decision which became a major precedent. The Civil Division filed notice of appeal and then abandomed its appeal.

Although there was considerable official misrepresentation in the original litigation, which tesporarily deceived the judge, when the case was refiled for subsequent damages and my then counsel let the statute of limitations run on nost of the claims, the Civil Division ultimately settled out of court for about. 10 times its original settlement offer- and its original offer was for more than

twice what I was awarded in the first lawsuit,

HAROLD VEISBERG

FERDERICK COUNTY, MARYLAND

Before me this 10th day of April 1983 Deponent Marold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true. By commission expires July 1, 1986.



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NO 190-34 CHA:ebc

all cases in files separate from the main assassination file (89-69) were identified for inclusion in the serial inventory and shipment to FEIHQ. New Orleans retains the search slips and workpapers and is prepared to execute affidavit regarding the procedure utilized.

In review of the inventory sheets, New Orleans resolved the anomalies noted. Serials which were skipped, repeated or inserted were so noted. Serials which were removed to other files were also noted, and when the secondary file was not one included in the shipment its status was noted (destroyed or title of case).

For information of FBIHO, the following summarizes the size and volume of these files. The twelve (12) boxes are all 14" X 14" X 10" and average about 30 pounds each. This equates to be about 23,500 cubic inches, and about 360 pounds. The volumes occupied about 21 feet of shelf space or the equivalent of about three, five-drawer cabinets.

7

The man hours utilized in all basis of this project

were:

Agent Hours 42 Clerical Hours 176

December 20, 1976

C.A. 78-0322/0120

Exhibit 2 💬

DISPOSITION OF FRI FILES

OR HUTCHLAN

Federal regulations (41 CFR 101-11) require that records of continuing value are preserved and that records no longer of current use are disposed of promptly In connection with these regulations, the FBI follows an active destruction program for obsolete material in accordance with the Records Retention Plan established by the National Archives and Records Service (NARS). Destruction relating to investigative matters generally. applies to: (a) cases in which there was no prosecution, (b) perpetrators of violations not developed, and (c) investigation revealed allegations were unsubstantiated or not within the FBI's jurisdiction.

Additionally, MARS has provided authority for all FBI field offices to destroy investigative matters when the case is closed since the field is required to forward to FBI Beadquarters the originals, duplicates, or summarizations of substance of all significant aspects of pertinent investigative matters. However, this authority has not been completely delegated to the field since they have a need to maintain certain files for investigative reference. For this purpose, the field may destroy files after they have been closed fors (a) six months in Auxiliary (or lead) Offices and (b) ten years in Office of Origin (controlling offices).

The FBI, however, is taking great care to insure that so files are destroyed that involve litigation or matters that would be of interest to a Congressional inquiry. In accordance with the House Select Committee on Assassinations, the FBI's investigation into the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. would be of prime interest to the Committee. Therefore, FBI Headquarters advised all field offices on Movember 24, 1976, that all files regarding these matters (even though they are duplicated at FBI Headquarters with all pertinent and significant data) should not be destroyed.

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C.A. 78-0322/0h20 Exhibit 3

12/5/78

DIRECTOR, FBI (62-109060) ATTENTION: FOIPA BRANCH,

ROOM 6986

FROM: SAC, NEW ORLEANS (180-84) (RUC)

ASSASSINATION OF PRESIDENT JOHN F. KENNEDY; HAROLD WEISBERG - REQUESTOR FOIPA MATTER

XX

TOI

Re New Orleans airtel to Bureau, 3/30/78 and Bureau telcall to New Orleans, 11/30/78.

The following is set out to clarify the information in re New Orleans airtel.

In order to locate all possible files described by the subject requestor, all of the following names or subjects were searched through the comprehensive indices of the New Orleans Field Office (there is no other indices maintained by New Orleans FBI):

> Assassination of President JOHN F. KENNEDY; LEE HARVEY OSWALD; JACK RUBY; Warren Commission; JIM GARRISON; CLAY SHAW; DAVID FERRIE.

All indexed references to those names were listed on search slips, which then were searched as control documents for further review of the references. Each reference, whether main came or

(3) - Bureau - New Orleans (1 - 190 - 34)[] - 89-69) (5) ebe Rijs Raderson 6-682-2918

NO 190-34 CHA: sbe

"see" reference, were reviewed to determine if it related to the assassination of President KENNEDY. Those that were found to relate to the assassination were the ones listed in New Orleans airtel and shipped to FBIHQ.

C.A. 7C-0322/0120= Exhibit 1

6/2/78

DATE:

UNITED STATES GOVERNMENT

SAC, DALLAS (89-43)

SUBJECT:

то

FROM

ASSASSINATION OF PRESIDENT JOHN FITZGERALD KENNEDY, 11/22/63, DALLAS, TEXAS; MISCELLANEOUS - INFORMATION CONCERNING

On 4/19 and 4/20/78 the following FBIHQ personnel were in the Dallas office and reviewed captioned file (Bufile #62-109060) as well as DL 44-1639, captioned, "JACK L. RUBY aka; LEE HARVEY OSWALD (Deceased) - VICTIM," Bufile 44-24016 and DL 100-10461, Bufile 105-82555, captioned, "LEE HARVEY OSWALD aka; INTERNAL SECURITY - RUSSIA - CUBA":



SA packaged and sealed all the volumes in the packaged and sealed all the volumes in the above listed files including Sub As and bulky exhibits in preparation for shipment to FBIHQ. Also packaged and sealed were the two volumes of DL 62-3588, captioned, "PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY," and one box each containing the communications index for BL 44-1639; DL 89-43; DL 100-10461, as well as one box containing serial description cards for the above three files.

 $\begin{array}{r} 4 - \text{Dallas} & (1) - 89 - 43) \\ (1 - 44 - 1639) \\ (1 - 100 - 10461) \\ (1 - 62 - 3588) \end{array}$

UHS/gcs

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan,

DL 89-43

On 4/24/78,

Forces Courier Service, San Antonio, Texas, picked up the above described files from the Dallas Office which were contained in 41 separate boxes and weighing approximately 1600 pounds. The above shipment is to be delivered to FBIHQ.

Armed

C.A. 76 Pahibit	

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SYMBOLS USED BY RECORDS BRANCH

0 -	Blue circle indicates subject of mail.
Χ-	Red X indicates see reference.
	Red underlining indicates pertinent information to be typed on "see" card."
<i>•</i> -	Dotted circle indicates main card found in index.
0-	Blue zip in circle indicates main card not found.
đ	Green line through blue zip indicates main card has been entered.
⊗-	X in circle over the name indicates not necessary to make a main card. Also means no indexing by the field office, which should be in the lower right hand corner of mail.
0-	Blue flag indicates cards in index on same name but not necessarily subject.
*-	Green zip through X indicates "see" card has been entered.
N-	Blue N before classification number above Records Branch block indicates new case has been opened.
X	Green X or green underlining indicates Agent wants additional indexing.

FD-36 ([Rev. 12	1-13-58)
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FBI

Date: 12/11/63

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TELETYPE

(Priority or Method of Mailing)

TO: DIRECTOR, FBI

FROM: SAC, DALLAS (100-10461)

LEE HARVEY OSWALD, AKA, IS DASH & DASH CUBA.

RE TELEPHONE CALL OF INSPECTOR MOORE TO THE DALLAS OFFICE ON DECEMBER ELEVEN SIXTYTHREE WITH RESPECT TO SECRET SERVICE MEMORANDUM ALLEGING CERTAIN STATEMENTS MADE BY AN AGENT OF THE DALLAS OFFICE EXAMPLE.

THIS MATTER HAS BEEN DISCUSSED WITH PERSONNEL OF THE DALLAS OFFICE AND THE ONLY INCIDENT WHICH IN ANY WAY AND TO ANY DEGREE COINCIDES WITH THE STATEMENTS IN THE SECRET SERVICE MEMORANDUM IS THE FOLLOWING:

ON NOVEMBER TWENTYTWO LAST/FOLLOWING ARREST OF OSWALD, SA JAMES P. HOSTY, JR. WAS INSTRUCTED TO PROCEED TO THE DALLAS POLICE DEPARTMENT TO SIT IN ON AN INTERVIEW WITH OSWALD. UPON ARRIVING AT DALLAS POLICE DEPARTMENT, SA HOSTY MET SA JAMES W. BOOKHOUT AND TOGETHER THEY WENT TO THE OFFICE OF CAPTAIN WILL FRITZ. THERE THEY SAT IN ON AN INTERVIEW OF OSWALD WHICH WAS CONDUCTED PRIMARILY BY CAPTAIN FRITZ. THERE WAS NO ONE BLSE IN-GAPTAIN FRITZ' OFFICE AT THIS TIME EXCEPT

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UNITED STATES GO UNMENT Memoranuum

TO : FILE (100-10461)

FROM : SAC SHANKLIN

SUBJECT: LEE HARVEY OSFALD, aka IS - B- CUBA

> MR. WILLIAM BRANNIGAN of Bureau called at 10;45 AM 2/3/64 in connection with the allegation that SA HOSTY's name, telephone number and his car license number with one digit off were found among the effects of LEE HARVEY OSWALD. BRANNIGAN stated the Bureau had previously learned that SA HOSTY furnished his name and telephone number to Mrs. PAINE, and that SA HOSTY did not know how Mrs. PAINE or MARINA OSWALD got the license number of his car. He guessed the fact that when he was out in the area, one or both of them might have copied it down. Mr. BRANNIGAN requested we interrogate Mrs. PAINE re this.

I advised Mr. BRANNIGAN that Mrs. PAINE had been interviewed and that she has stated she did not copy down the license number of HOSTY's car. BRANNIGAN asked if we had ever asked Mrs. PAINE how LEE HARVEY OSWALD got the name and address. He was told that Mrs. PAINE said she gave it to him and told him the date that HOSTY was out there, and it bears the date November 1, but we have never asked MARINA about the license number. I advised BRANNIGAN that I thought if Mrs. PAINE had given it to him, she would have told us. Mrs. PAINE did give HOSTY's name and telephone number of OSWALD, but she did not copy down the license number, and thinks MARINA might have obtained it.

Mr. BRANNIGAN stated the following is the way above information is going to be set out in a brief for the Director:

Mrs. PAINE said she gave HOSTY's name and telephone number to OSWALD. She did not copy down the license. She does not know how OSWALD got this. Mrs. PAINE does think that MARINA might have and Dallas has not yet questioned MARINA as to how this was obtained.

LEAD: When Mrs. OSWALD returns to Dallas, question her as to how HOSTY's car license number was obtained. 100-10461- 303

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See Page 2. E.

-C.A. 78-0322/0420 Exhibit 9

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DATE: 2/3/64

C.A. 78-0322/0120 Exhibit 10 UNITED STATES GOVERNMENT lemorandum FILE (100-10461) 2/24/64 TE: SAC SHANKLIN FROM :

SUBJECT: LEE HARVEY OSWALD, aka IS - R - CUBA

At 4:25 PM today, D. E. MOORE of Bureau called and stated that the Commission has sent to the Bureau a "nasty" : letter; the first two paragraphs of it are not important. Mr. MOORE dictated the last 3 paragraphs of this letter, which was from Mr. J. LEE RANKIN, General Counsel, President's Commission, dated 2/20/64. /They are as follows:

"In light of our continuing review of these allegations, I would like to bring to your attention one related matter. Your letter of January 27, 1964 advised the Commission that Special Agent James P Hosty's name, office telephone number and automobile license number, one digit off, appeared in Oswald's address book. In so informing the Commission, your letter supplied information which appears to have been omitted from an earlier report of the FBI submitted to this Commission.

"Specifically, the report of Special Agent Gemberling dated December 23, 1963, at Dallas, Texas, beginning at page 672 purports to set forth the names, addresses and/or phone numbers contained in Oswald's address book. At page 696 of this report, certain entries are set forth with an indication that they appear on page/74 of the address book. Examination of the address book reveals that certain information has been omitted at this point in your report, including Special Agent Hosty's name, a telephone number, a license number, the date 'November 1, 1963', and an address '1114 Commerce St Dallas'.

"The Commission would like to be informed of the circumstances surrounding this omission. More particularly, it would assist the Commission in appraising the significance of this matter if we knew the names of the Agents, including supervisors, who prepared this portion of the report or made any decision to omit information from the report. Needless to say, we would like a full explanation." 100-10/61-3/44

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