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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

DECLARATION OF HAROLD WEISBERG

I, Harold Weisberg, make the following declaration:

1. I have read defendants' Opposition of March 29, 1983, and its attached declarations of FBI FOIA Supervisor SA John N. Phillips and New Orleans SA Clifford H. Anderson.

2. I am familiar with the procedures which the FBI follows in searching for records requested under the Freedom of Information Act (FOIA). In other litigation, notably Weisberg v. U.S. Department of Justice, Civil Action No. 75-1996, FBI agents have given testimony regarding these procedures. This testimony is completely consistent in describing what the FBI says it does and

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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 to be determined by the FBI.

3. In the case of my requests to the Dallas and New Orleans Field Offices, these regulations and procedures were not followed by the field offices when they received my requests. Although 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 received no answer. As of that time, my request for a fee waiver for Kennedy assassination records had not been acted upon.

4. My requests sought, among other things, "all records on or pertaining to persons or 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." Instead of making searches, both field offices sent my requests to FBI Headquarters. As Agent Phillips swore in his April 29, 1983 Declaration, on receipt of my request Dallas forwarded it to FBI

Headquarters 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." April 29, 1983 Phillips Declaration ("Fourth Phillips Declaration"), ¶6. Phillips identified these four files as the files on Lee Harvey Oswald, Jack Ruby, the Warren Commission, and the assassination of the President. Id.

5. Similarly, the New Orleans Field Office also forwarded my request to FBI Headquarters instead of processing it. Thereafter, in August, 1978, the New Orleans Field Office sent the same four files to FBIHQ. 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. Fourth Phillips Declaration, ¶¶13-14. Although my request for New Orleans Field Office records included a demand for "all records on or pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation . . .," the search conducted by the New Orleans Field Office was limited to "material related to the JFK assassination." Fourth Phillips Declaration, ¶13. Whatever the FBI may regard as "related to the assassination," that is not identical with my request.

6. The materials provided on discovery reflect what Agent Phillips has attested, that instead of making searches in response to my requests both the New Orleans and Dallas Field Offices sent the requests 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.

7. 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 under after more than 28 months.

8. 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. It is not truthful in claiming that "all indexed individuals involved in or referred to in the investigation ... were searched through search slips." It thus does not reflect a genuine search. (This is the record in which New Orleans distinguished between "search slips" and "workpapers.")

9. The manner in which searches are made was also testified to by FBI FOIA supervisors in other litigation I have instituted. 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 only 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 the instant cases. 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.

10. In other of my FOIA litigation in which the question has arisen as to whether FOIA personnel make the searches, 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 search slip.

11. 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.

12. 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; thus, the first page of Exhibit 5 is 5-1.

13. Without exception, the Dallas search slips conform to the undeviating practise to which the FBI has 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 references", which is correct.) Without being informed, the searchers do not know what kind of search is requested and the resulting search may be more limited than intended.

14. 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.

15. 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.

16. 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.

17. In addition to the usual practice 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.

18. 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, I 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.

19. 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.

20. The Marina Oswald search slip (5-2) is not complete and thus is phony. Although it does list File 66-1313, the wire-tapping file on Marina Oswald, it does not list File 66-1313A, its file on the unauthorized bugging of Mrs. Oswald's home. (On this worksheet the FBI has not claimed exemptions (b)(2) and (b)(7)(D) to withhold the five listings of File 66-1313. However, on other records it continues to wrongly withhold these file numbers under these claims. The claims are spurious because they have nothing at all to do with FBI personnel practices or any person or "confidential source" to be protected.)

21. The late George DeMohrenschildt (5-3) was a friend of both Oswalds. Although this search slip lists the 66-1331 file, it has not citation to the bugging file, 66-1313A. This omission and the omission on the Marina Oswald search slip are consistent with continuing effort by the FBI to hide its illicit activity in not having asked for or received permission to bug Oswald's widow.

22. The James P. Hosty search slip (5-4) does not even list the records Dallas provided, nor does it list other known Hosty records. With regard to Hosty, motive for not conducting a thorough search is obvious. He was involved in and he involved the FBI in several major and embarrassing scandals. 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.

23. 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.

24. 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 Times-Herald. 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.

25. 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.

26. 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.

27. 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.

28. 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 that he was capable of any violence. The investigation following the leak established that the FBI's explanation was knowingly and not accidentally untruthful.

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

30. 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.

31. 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.

32. Although Agent Phillips swore that the Hosty personnel file was searched in this case, it does not appear on the search slip.

33. 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 was able, I searched the subject files I have established of copies of records provided to me by the FBI.

34. 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 are marked for indexing. I believe no further search was necessary and went no farther because these three attached pages do reflect 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 indi-

cated. The only marks I added are two citations to the Dallas volumes in which these volumes 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. (Exhibits 8-10)

35. Although I have attached it to an earlier affidavit, for the convenience of the Court and the defendants 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)

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

37. 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)

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

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

40. 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 the Commission.

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.

41. 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.

42. Six of the destroyed Ruby records are, by the most remarkable of coincidences, from the same 94 file in which the FBI keeps its propoganda, lobbying and similar records and were destroyed on the same day that those pertaining to Oswald (5-1) were destroyed, December 1, 1977. (Both were in 94-55.) As stated above, this destruction coincides with investigations in which their disclosure might embarrass the FBI.

43. These slips represent an obviously phony search because they are limited to but five of the many persons who figured in the investigation into the President's assassination. Of these five, two were added only after I appealed to the Department's ap-

peals office.

44. Although the declaration of SAC Clifford Anderson regarding 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 have 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. Original search slips, regardless of their form, are prepared in the original searches, not "as a result of" them. Because he is swearing to the wrong thing, Anderson 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."

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

46. 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 not 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 investigation of the assassination." (Emphasis added) What he actually 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. In the view of the FBI, Oswald alone "related to the assassination" as the purported lone assassin and Ruby as his killer. Initially, FBIHQ restricted compliance by person to these two. To these, according to his later search slips, Anderson added Oswald's mother, Marguerite Oswald, 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.

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

48. 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 not 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 search slips. ("Senstudy" is the FBI's code name for the Senate Intelligence Committee.)

49. 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.

50. While the Marguerite Oswald search slip (6-1) appears to comply with FBI practice 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 original slip recording that search.

51. 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.

52. What remains is most of the slips, those pertaining to all the other searches: those on John S. (sic) Kennedy, the first and only dated sheet (604, 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.

53. 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 and August 2, 8 and 14, 1978.

54. Of pages 6-4 through 6-35, all but the Ruby pages cannot be searches in this case because the only dated page is dated 1/4/77. From the other dates, even if there is a mistake in the year, this still could not be a search for this case. It was made almost a year before I filed the request and therefore is phony.

55. 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.

56. 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.

57. There is no apparent reason for anyone requesting a search to depart from the FBI practice of making 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. 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.

58. It also is patently impossible for the supposed requester of these supposed original searches to know in advance 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 before any search at all was made, to indicate at the very point at which the Oswald citations would end that a Clay Shaw search was intended by writing in his name at the wrong place, where citations only are posted. Shaw's name, like Oswald's Ferrie's and Garrison's, belongs in the blank space at the top of the slip where the FBI printed the word "subject" and intended that to indicate the subject of the search.

59. 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 which posting all the Oswald

citations would require (258), he also had to know in advance 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 advance knowledge.

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

61. 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 in advance of any search it had to come out just right--the supposed requester had to know in advance of any search exactly how 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.

62. 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.

63. 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 hand. 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.

64. 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.

65. There appears to be no reason for 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.

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

67. The search slips list whole files and individual records as destroyed, yet their existence was copied from the indices which Anderson swears are always destroyed when the underlying records are destroyed. Thus, the search slips which Anderson and Phillips state are authentic say just the opposite of what Anderson swears to, quoted in ¶66 above. If those index cards had been destroyed, they would not exist for the supposed searcher to locate and include on these slips.

68. 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." In my judgment, it is highly unlikely that the actual search would have been asked for under the name of "Jim Garrison". In any event, a search intended to retrieve all records relating to Garrison would include logical variants of his name.

69. 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.

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

71. 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.

72. Although the Anderson and Phillips affidavits 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 the document attached to my March 1, 1983 affidavit plainly states that the 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. These records are plainly relevant to my request, but the FBI has conducted no search for them.

73. In my May 31, 1982 affidavit I stated:

My appeals noted ..., as well as the existence of pertinent and withheld David Ferrie records. The FBI has yet to acknowledge this. The FBI has its own cozy arrangements with some private persons to whom it does leak information, misinformation and copies of its records. With regard to Ferrie, this is how I have proof of the existence of pertinent and withheld Ferrie records.

These relate to his alleged running of guns to Cuba, which is highly pertinent to all investigations of the assassination.

May 31, 1982 Weisberg Affidavit, ¶32. Exhibit 1 to my March 1, 1983 affidavit, the record on David Ferrie which reflects files and documents on him not shown on the copies of the New Orleans search slips provided me, proves my May 31, 1982 affidavit to have been completely accurate. However, I did not then state all I knew. 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, 1983 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.

74. Anderson does report locating the New Orleans version of the FBI record I attached to my March 1 affidavit, but he does not provide it. FBI Headquarters and field office versions of the same record are not identical. Information is included in 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 located by Anderson and still withheld from me is pertinent, is clearly within my request, and might even dispute him. It should be provided forthwith. (My requests for records on David Ferrie date to 1969.)

75. Anderson addresses only one of the allegations in my March 1, 1983 affidavit, although he pretends he addresses them all. However, he does not even claim 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 the search slips.

76. Anderson does admit, however, that the one record I obtained outside this litigation and attached to my March 1 affidavit does still exist in the New Orleans office, in exactly the 105-1456-FRD file correctly identified in my affidavit. 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.

77. 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's, 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.)

78. Anderson's "proof" that the Ferrie neutrality act file was destroyed is limited to his unsupported claim to have "discovered" its destruction. He states that this destruction was at some time before 1977, when no such record should have been destroyed for a number of reasons. Perhaps it was destroyed, but he does not attach his proof and 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.

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

80. 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.

81. Exhibit 1 to my March 1 affidavit, the FBI record it now admits finding in the other file, 105-1456-FRD, tells Anderson how he can get those other records referred to in Exhibit 1, the ones he did not even look for. 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.

82. 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 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."

83. 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 practice it appears that Anderson should have 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.

84. 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.

85. Anderson, the FBI's FOIA and search expert in New Orleans, 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." Anderson Declaration at p. 2. This is remarkably loose language for one expert in these matters 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 ~~is~~ destroyed.

86. 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.

87. 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.

88. Anderson's equivocation and evasiveness and everything else are keyed to a significant untruth. In his Paragraph 4(a), Anderson states that "when the initial search was subsequently conducted for records responsive to plaintiff's FOIA request, 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 any search "responsive to my request." 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 included 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 have included the pertinent Ferrie 2-112 file in any event.

89. 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 records are 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 all records on or pertaining to persons who figured in the investigation into" the assassination and adds wherever or however they are filed. (Emphasis added) No record pertaining to Oswald or the others, with the exception of the President, whom I did not intend to be included, can be "irrelevant."

90. As I stated above, the FBI New Orleans record attached as Exhibit 1 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. The FBI uses this classification 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 on Ferrie.

91. 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 on each of these persons, this fact alone would make them

relevant.

92. Defendants' opposition to my motion to strike the sworn statements provided by Special Agent John N. Phillips ("Opposition") states that on the basis of the one exhibit attached to my March 1, 1983 affidavit I "merely surmised that ^{all} (11) the sworn statements provided by Mr. Phillips in this litigation are false and therefore should be stricken from the record." This is untrue. Phillips provided eight earlier declarations in this litigation and I addressed each in affidavits of great and documented detail to allege that his statements range from swearing to what he knew nothing about at all to stating what is untruthful.

93. The Opposition calls me a liar, states that "there is not a shred of truth to these allegations," and then proceeds to claim (on page 3) that because my description of the search slips slips as "phony" allegedly rests entirely on this one exhibit, my allegations of phoniness are not true. Whether or not there is "a shred of truth to" my allegations is already established by my detailed and documented earlier affidavits. The claim that my description of the search slips as "phony" rests on the one Exhibit attached to my March 1 affidavit is baseless; as I have shown in abundant detail above, there is a great deal of evidence which supports my allegation that the search slips provided me are "phony."

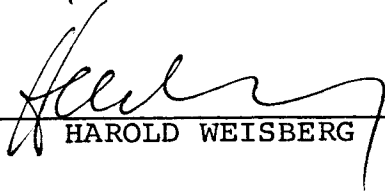
94. Defendants again repeat (Opposition, pages 3-4) the untruthful representation that I have refused to state the basis

of my allegations about the inadequacy of the FBI's so-called searches. The truth is that I have done this over and over again, in the great and documented detail throughout all the many affidavits I have filed in this litigation, in about two file drawers of documented administrative appeals, and in numerous conferences with the appeals office.

95. It is untruthful for the Opposition to assert that I seek to prolong this case by the "tactic" of allegedly keeping my "complaints fluid and obscure and, in turn, virtually irresolvable." To the contrary, I have sought to narrow the issues in this litigation. To this end, I offered to settle this case without requiring a costly and time-consuming Vaughn index to be prepared by defendants. My basic condition for agreeing to do this was that the defendants conduct certain specific searches which require little time and effort and which are clearly within the scope of my requests and the new search instructions given the FBI by Associate Attorney General John H. Shenefield's letter of December 16, 1980. These searches, which require but a tiny fraction of the time and cost of a Vaughn index, represent a very significant narrowing of the scope of my requests. Instead of accepting my offer to put definite limits on this litigation and save the Government the time and expense of a Vaughn showing, defendants rejected my settlement proposal out of hand. Indeed, they have stated that they insist on doing a Vaughn index! Under these circumstances, it is clear that defendants are the ones pro-

longing this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of April, 1983.



HAROLD WEISBERG