UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defendant.	)	

PLAINTIFF"S RESPONSE TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S RULE 60(b) MOTION

INTRODUCTION

In these two 1978 cases, subsequently combined, plaintiff Harold Weisberg seeks the information of the FBI's Dallas and New Orleans field offices relating to the investigations of the assassination of President John F. Kennedy and persons and organizations figuring in them. The FBI requested and was granted additional time and it extended that time to four years, after which it claimed complete compliance without ever making searches in either field office to comply with Weisberg's requests. The Dallas field office abdicated entirely and in unauthorized - and objected to - substitutions for any search in Dallas to comply with Weisberg's requests, SA Thomas H. Bresson, then of FBIHQ Records Management Division, arbitrarily and capriciously decided which few "main" files would be processed for Weisberg. This, Weisberg emphasizes, was without any Dallas search made or even possible. In New Orleans, instead of making a search to comply with Weisberg's request, that field office substituted

what it had done about a year prior to Weisberg's request and for entirely different purposes. The search slips provided by the New Orleans office and sworn to as prepared for Weisberg's request are dated almost a year before he filed his request and are carelessly hand-copied versions of the earlier and unrelated search. Later, at the direction of the Department of Justice's appeals office, Dallas made a few perfunctory searches and provided alleged search slips sworn to as authentic. In some instances these omit any reference to files known to exist (of which an illustration is attached to Weisberg's Rule 60(b) Motion) and in another instance where, without question, a very large number of records relating to several serious scandals embarrassing to the FBI are known to exist, the search slip was and remains entirely blank. This is sworn to be complete and accurate and to represent that so-called "search." After Weisberg alleged noncompliance in response to one of the repeated FBI claims to full compliance, the FBI demanded and this Court ordered alleged discovery. The claimed need for this alleged disvcovery ranges from the sworn-to impossibility - that it would enable the FBI to prove that it had complied with Weisberg's request - to the bizarre notion that because Weisberg is a preeminent subject-matter expert he somehow knows more about the FBI's files than its extensive indices reflect. Weisberg cited a number of reasons for opposing this stonewalling ploy of "discovery" but this Court ordered it, disregarding the unrefuted evidence Weisberg provided in support of his opposition. On appeal the FBI based itself on slanders fabricated by its counsel and the

case record establishes were physically impossible and on what Weisberg established was knowing and deliberate misrepresentation of his information requests. While this case was on appeal, Weisberg began to receive copies of FBI records disclosed to another requester, records that establish the existence of field offices records pertinent and withheld in this litigation. These records were processed in the other litigation under the supervision of FBIHQ SA John N. Phillips, who is also supervisor in this litigation and who provided most of the FBI's attestations in it despite his lack of personal knowledge of the investigations of field offices files. Phillips' attestations to the FBI's alleged need of discovery and what it allegedly would make possible are obviously untruthful, and after Weisberg stated that he was at one and the same time swearing to what is not true in this litigation and disclosing to another what proved it to be false, Phillips has not attempted any refuation and as of today what Weisberg stated in this regard remains entirely uncontradicted. The appeals court remanded on Pearl Harbor Day of last year and on June 13, 1985, this Court again ordered Weisberg to pay the FBI counsel fees allegedly incurred in seeking the so-called "discovery." Based on the newly discovered evidence disclosed to this other litigant by FBIHQ and its supervisor, Phillips, on July 10 Weisberg sought relief from the judgment under Rule 60(b) and on July 22 the FBI filed its Opposition supposedly but not actually in opposition to this relief. Instead it alleges untruthfully that what Weisberg filed is an effort to relitigate what it

describes as "the sufficiency of the FBI's document search." (page 2) Weisberg did and does seek relief from this judgment, asked that it be vacated, and save for the usual official misrepresentation in this litigation, what Weisberg actually filed is almost entirely ignored and is entirely unrefuted. (Additional background is provided with Weisberg's Rule 60 (b) Motion and is incorporated herein by reference.)

ARGUMENT

Rule 60(b) provides for "relief from judgments" other than as the FBI's Opposition represents, which is for no "more than one year after the order is entered." (page 2) Aside from a "motion in the court," the option Weisberg chose, he could have filed "a new or independent action to obtain relief from a judgment, which action may or may not be begun in the court which entered the judgment." (Weisberg understands this to mean that, for example, he could file in the jurisdiction in which he resides as well as in this jurisdiction but he believes either would result in unnecessarily burdening the courts and would increase the costs to all parties, so he did not select it as his first option.)

"Errors" that come from "oversight or omission," the Rule states, "may be corrected by the court at any time on its own initiative or on the motion of any party," and Weisberg's Motion includes "oversight and omission." Following "(t)he incorporation of fraud and the like within the scope of the rule ... relief from a judgment" obtained by fraud and the like "might be after the time stated in the rule had run." As amended, the

Rule makes "fraud an express ground for relief by motion."

These provisions are ignored in the Opposition, as also is the fact that for the time period in question the defendant had and withheld from Weisberg the new evidence on which he based his Motion and more like it addressing the defendant's fraud, misrepresentation and false swearing.

This is more than claiming the right to have the eaten cake, it is to claim what Weisberg believes is anathema to a basic concept of American law and justice, the right to be the beneficiary of one's own misconduct.

The permeating misrepresentation of the Opposition, sought to be rhetorically enhanced through the employment of such neutral lawyer-like terms as "regurgitating" and the suggestion that Weisberg's Motion makes him subject to additional sanctions under Rules 11 and 33 (which he dares the defendant to initiate), is contrived by characterizing his calling to the attention of the Court the possibility of serious offenses, including felonies, by the defendant, as "harassment, unnecessary delay or increased cost of litigation, and by describing his Motion as a "pretext for relief" and as "dilatory" (page 5); and as "frivolous," "an attempt to relitigate a matter unrelated to the final order" and as "abusive of the process of the Court" (page 2), with "relitigate" referred to as the "rehashing of old arguments" on page 4.[1/]

1/ With regard to these alleged frivolities, regurgitations, abuse of process and relitigation, the purpose of Rule 60(b) is to relitigate where a judgment has been, as Weisberg alleges, obtained by misrepresentation, fraud and the like. So, even if these

The defendant's regard for the integrity and reputation of the courts, including this Court, and for how they will be regarded throughout history in this historical case in which the appeals court has stated interest will never die, is reflected in the use of such descriptives as "frivolous," "harassment" and "regurgitate" as a substitution for evidence and fact. This represents the virtual assumption by the defendant that this and all other courts will ignore documented allegations of serious felonies by the defendant, will be servile before errant officialdom and will rubber-stamp any and all irrelevancies and misrepresentations provided by the defendant and thus sanctify serious official felonies.

Because the Opposition presents no evidence to refute the evidence Weisberg provided with his Motion, this Opposition, in effect, acknowledges the truth of what Weisberg states with regard to official misrepresentation, false swearing and fraud in the matter.

If Weisberg erred or was in any way unfactual in his allegations, then the Department of Justice has the obligation, as he asked the Court in his Memorandum, of placing specific charges against him and trying him for any such offense. There is, however, no likelihood that the Department or the FBI will dare risk a trial because of the unquestionable factuality of what Weisberg alleges, and thus their bluster about alleged Rules 11 and 33 violation instead of filing charges that could lead to a trial.

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allegations of the Opposition were pertinent, as they are not, it misrepresents the very purpose of the Rule Weisberg invoked in a transparent effort to make the defendant's impropriety appear to be proper.

The opening and basic misrepresentation of this Opposition is "that the newly discovered evidence [is] about the sufficiency of the [FBI's] FOIA document search" which, the Opposition then represents, is the sole reason Weisberg advanced to require reopening of this case. This, the Opposition then misrepresents, "is a frivolous attempt to relitigate a matter unrelated to the final order." (page 2).

Not a word of this is true. Weisberg presents the newly discovered evidence, the very evidence the defendant withheld from him while knowing its relevance and being aware of possessing it, as evidence of misrepresentation and false swearing to the Court and of fraud, all employed to obtain the judgment from which he seeks relief and thus not possibly "unrelated to the final order."

Weisberg's Motion and Memorandum are not addressed to "the sufficiency of the FOIA document search." They do address misrepresentation, false swearing and fraud to procure the judgment from which he seeks relief, and this actuality cannot have been misunderstood by the defendant or any counsel. Weisberg's allegations to this Court are quite specific in being "about" these serious offenses of misrepresentation, false swearing and fraud which, somehow, the defendant and defendant's counsel pretend to believe are "frivolous" and an "abuse of the process of the Court."

One of the numerous examples Weisberg presented - while informing both the Court and defendant that he presented only illustrations and that there are other illustrations in this newly discovered evidence - the Opposition mentions one only.

And in this, typically, the Opposition is unfaithful to fact, misleading, and misrepresents.

The one illustration misused in the Opposition is ticklers. (pages 2-3) But even then the Opposition does not really refer to ticklers but to something of its own creation, entirely different and utterly irrelevant, "tickler systems." There is no relevance to "systems" of ticklers, and this semantical dodge is clearly intended once again to mislead and to misrepresent to this Court and to be immune in these offenses. This is entirely consistent with the various semantical dodges SA John N. Phillips used in his attestations in which he shifted each knowingly incorrect definition of tickler every time he was corrected and never once interpreted the word correctly, not even after Weisberg provided the dictionary meaning.

There is and there can be no purpose in defining "tickler" as "tickler systems" other than to be evasive and to mislead and deceive the Court and to perpetuate the offenses alleged by Weisberg.

Even then, however, the Opposition is not truthful because, while Weisberg never referred to any "tickler systems," the Opposition, in misrepresenting that he did, then states "that the Dallas and New Orleans field offices, like all others, do not maintain tickler systems." In fact, Phillips himself attested to their use of a "tickler system" when Weisberg presented a FBIHQ directive to the Dallas office to establish a certain tickler. In trying to explain that away, Phillips attested to that particular tickler as a system of keeping track of things to be done.

What gets lost in all of this is that to this day there has

not been any search for any ticklers in either field office and that Weisberg has records of offices indicating the existence of ticklers in them and provided those documents for the case record.

After this deliberate misrepresentation of the unsystemized ticklers in question as "tickler systems," which is basic in the Opposition, it misrepresents further and seriously with regard to the pages of FBIHQ ticklers Weisberg provided with his Motion. It states, with falsehood that cannot be accidental, that his exhibits "include copies of what Weisberg alleges are the 'ticklers' he was asking the FBI to search for pursuant to this FOIA request." This is not true, the FBI and its counsel know it is not true, and the untruth is stated to obfuscate the realities, that when Phillips swore that all FBI ticklers are preserved for only a few days and then are "routinely destroyed" he swore falsely and knew he swore falsely; and that these FBIHQ ticklers, which Weisberg identified as from FBIHQ and not from the field offices, refer to relevant information in the field offices that is known to exist, is known to be relevant, and remains withheld. Even now, at this late date.

Where in the midst of this verbiage, distortion, misrepresentation and straight-out untruth the Opposition is, atypically, not incorrect, it is evasive and it ignores the seriousness of what Weisberg alleges. "In addition," the Opposition states (page 2), "Weisberg argues that the FBI affiant, Mr. John Phillips, who attested to the responses in this case was also responsible for the responses in the other cases." That is the Allen case in which this new evidence was disclosed while, simultaneously, the one and only John Phillips

was swearing to the contrary in this litigation - inconsistently and in self-contradiction to its nonexistence, to the FBI's need of discovery to be able to locate it, and to the FBI's need of discovery from Weisberg to be able to prove that it had provided what it and Phillips knew very well it had and had not provided. The Opposition does not in any way deny that Phillips was at one and the same time supervising disclosure in the Allen case of records reflecting the existence of information relevant in this case and swearing to its nonexistence and alleged discovery needs in this case. Instead of denying what cannot be denied, while pretending to do that, the Opposition again misrepresents in stating that "Weisberg concludes that Mr. Phillips was defrauding this Court by not providing the information to Weisberg which was provided to Allen."

Weisberg concludes no such thing, but this misrepresentation, which is deliberate if the authors of the Opposition read Weisberg's Memorandum, also is basic to the FBI's perpetuated misrepresentations.

Weisberg went into detail (aka "rambling," "regurgitating" and "rehashing" in the Opposition) about the history of Allen's request and of Phillips' personal knowledge of it and of disclosures in it and, specifically, Weisberg stated that when he received copies from Allen he withdrew his information request similar to Allen's for FBIHQ, not field office, information.

Without this deliberate misrepresentation of the reality the Opposition would find it impossible to address the reality that, in addressing the fraud, misrepresentation and false swearing employed to obtain the judgment relief from which he seeks, Weisberg stated

that, from his knowledge of the FBI's methods and practices, what was disclosed to Allen reflects the existence of relevant information in the field offices not provided to Weisberg - and to the knowledge of the FBI's affiant Phillips is known to exist and to be withheld.

Each and every exhibit of illustrations from what was disclosed to Allen was used, clearly and explicitly, to show that the FBI had amd has and knows it had and has field office information withheld from Weisberg, that no discovery from him was necessary for the FBI to locate and process it and that, obviously, no discovery from him could have enabled the FBI to prove in this litigation that it had provided what it knowingly withholds. With Weisberg's repetition of this refrain throughout, honest misunderstanding of it and his purposes is entirely impossible. He used it to show misrepresentation, fraud and false swearing from which he seeks relief.

In the paragraph that begins by describing the new evidence Weisberg presented as "regurgitating," the Opposition pretends that it is addressing all of Weisberg's allegations when in fact it refers to but a single one and then only with the most serious misrepresentation (in referring to ticklers as "tickler systems"). It also pretends that all was explained away in affidavits and argument, which is not true, and it concludes with an even larger untruth that is sweeping in its all-inclusiveness: "Nothing presented in Weisberg's latest pleading shows that the 'new evidence' came from Dallas or New Orleans, as his request specifically required." (emphasis added, page 3)

Origin is entirely immaterial. What is material is whether or not the withheld information exists in either field office so whether or not any "came from" either office is not relevant. However, it

simply is straight-out false to represent that "nothing presented in Weisberg's latest pleading shows that" any of the new evidence came from the field offices. As one of many conspicuous examples, Weisberg cites what he presented on the existence and finding of the recordings of the Dallas police radio broadcasts of the time of the assassination along with documents relating to them and his citation of Phillips' not infrequent false swearings with regard to them. (Phillips began by lying, under oath, in swearing that the FBI had never had them and concluded in his series of lies with another, that they had been given to the Warren Commission. This is not true and he and the FBI know it is not true.) Without question, this information reached Washington from the Dallas field office. Without question, the recordings and documents are relevant. And without question, long, long after they were located, exactly where Weisberg had indicated they would be and even after Weisberg was informed of this in writing, they remain withheld, along with all the located and relevant records. This and more like it is most certainly "in Weisberg's latest pleading," along with illustrative exhibits (Exhibits 3 and 4), which also remain ignored while being lied about all over again to this Court.

Did Weisberg have to inform the FBI that its New Orleans information about the New Orleans persons who figured in District Attorney Jim Garrison's investigation and of the New Orleans Clay Shaw jurors came from its New Orleans office?

Is it possible that any FBI special agent or any Department of Justice lawyer handling FBI litigation does not know that, almost

without exception, case information originates in the field offices and is also routed to them if of other origin? Special agents and Department counsel know very well that such information as Weisberg cited does not originate in FBIHQ. Moreover, he was specific in stating that information was routed to the Office of Origin, Dallas, and other offices, and that New Orleans was virtually a second office of origin because of Lee Harvey Oswald's activity there and because of the Garrison investigation there.

So, while it is not true that Weisberg did not show any of "the 'new evidence' came from" the field offices, because he did, with specificity, it also was not necessary for him to do this, as the Opposition represents.

Bearing on the FBI's intent to keep on misleading and misrepresenting to this Court is the fact that Weisberg also illustrated the routing to both the Dallas and New Orleans offices of relevant information pertaining to the so-called "critics." (Exhibit 6) It thus is obvious that, as the FBI knew without Weisberg informing it, the field offices have relevant information that was sent to them as well as what went to FBIHQ from them. Weisberg believes this was known to the FBI's counsel when counsel made this additional attempt to mislead and misinform this Court. Certainly what he sent to FBI counsel is specific enough and is documented, and this Opposition is their response to it.

With misrepresentation heaped on misrepresentation the Opposition then repeats (page 3) its basic misrepresentation, that "(i)n any event, all these [i.e., Weisberg's] allegations are irrelevant

because they go to the decison of this Court on the merits made over twenty months ago as to the adequacy of the search in this case."

This is a deliberate misrepresentation of the purpose of a Rule 60(b) motion in general and it is, specifically, a deliberate misrepresentation of Weisberg's stated purpose, to obtain relief from the judgment based on misrepresentation, fraud, false swearing and the like. All that follows in the Opposition likewise is irrelevant and does not in any way address the actual and stated purpose for which Weisberg filed his Rule 60(b) Motion and, in fact, to which any Rule 60(b) motion is limited.

But there still is no end to misrepresentation and just plain gall in this Opposition. In admitting that "(a) District Court" can "consider a Rule 60(b) motion after an appellate court has ruled on a matter ... if the motion is not a frivolous attempt to relitigate the claim" (thus explaining the need for all its untruth and misrepresentation and inappropriate descriptives like "regurgitating" to describe indubitably and undeniedly "new evidence"), the Opposition seeks to hold Weisberg responsible for the transgressions of the FBI and Department of Justice by attributing to him "a belated attempt to present evidence which should have been presented earlier." (page 4) The FBI and its counsel know very well, and unrefutedly Weisberg's Memorandum establishes, that the FBI made it impossible for him to present this new evidence earlier because the FBI withheld it from him when, undeniedly, the FBI knew it had this new evidence and knew its relevance in this litigation.

This is like castigating the victim of a rape for being raped. It was, as the FBI and its counsel know very well, impossible for Weisberg to present this new evidence to this Court any earlier simply because they - and in particular SA Phillips - made it impossible.

In all of this verbiage, misrepresentation, distortion, evasion, digression, diversion and slurring language and midst its bluster and new threats against Weisberg, save for its single, untruthful and misrepresentative reference to the nonsystematic ticklers as "tickler systems," a fragile straw man at best, the Opposition ignores all that Weisberg presented that it does not misrepresent. For example, the Associate Attorney General directed the FBI to process and disclose the FBI's records relating to the "critics" and Phillips, who swore to anything and, as Weisberg proved over and over again, gagged at nothing, swore that there are no such records. Yet the new evidence is quite specific on its existence in the form of the information on which FBIHQ prepared what the tickler disclosed to Allen refers to as "sex dossiers" on the critics. It simply cannot deny that this information exists and is relevant. So, it is ignored and lied about. (Weisberg's Exhibit 6, cited above, includes the identifications of files on these "critics" in both field offices and it, too, leaves no innocence for the FBI and its affiant and counsel in this regard.)

That both field offices were directed to establish relevant additional files and did so and that they were not disclosed when compliance and "discovery" need was claimed is likewise ignored.

Yet the new evidence (Exhibit 12) is the source of the proof Weisberg presented and is ignored and misrepresented - it seems fair to say was lied about in this Opposition. (Although without question these files exist and are in the FBI's indices, they do not appear on the search slips the authenticity of which Phillips swore to.)

To this very day, all the relevant information Weisberg correctly identified with this new evidence remains withheld from him and this Court. Even now the FBI and its counsel make no effort to relieve the fraud perpetrated or to withdraw the false swearing by which this judgment was procured, or to relieve their abuse of Weisberg, of process and of the courts. Even at this late date they decline to be in any degree honest and truthful.

It is obvious, as Weisberg stated over and over again without even a pro forma denial in this Opposition, that a) no discovery from him would have enabled the FBI to prove that it had complied when it knew it had not complied, as this new evidence proves beyond question; and b) that no discovery from him was necessary for the FBI to provide the information it knew it had and withheld, which also is established by this new evidence. Yet these are the claims made to procure the wrongful judgment against Weisberg, to perpetrate a fraud from which he seeks relief.

Subsequent to this judgment against Weisberg the appeals court held that Phillips is not competent to provide the attestations he provided because he lacks personal knowledge of the JFK assassination investigation. That, however, does not explain away his false attestations because he accredited himself as an expert with

regard to some of the questions and the Court accepted him as such an expert and thus accepted his attestations; and because at the very time he was making and adhering to his false attestations he was in charge of the disclosure to Allen of the new evidence that establishes the existence of relevant and withheld information in this litigation and thus of his untruthfulness. Even with regard to his false statements relating to the Dallas police tapes, he has no innocence because Weisberg had earlier provided the field office records relating to both its initial and its more recent FBI need of them and its tracing of them in Dallas for the House Select Committee on Assassinations and the Attorney General. (And, as Weisberg also stated, once he attached those records to an affidavit, all subsequent records relating to this matter were withheld from him.)

Having ignored and made no effort to refute what Weisberg provided as new evidence or in any way addressing its clear meaning; having misrepresented, distorted, evaded, slurred and been untruthful, this Opposition now alleges that Weisberg is subject to sanctions for alleged violation of Rules 11 and 33 by attributing to him "Harassment, unnecessary delay," increasing litigation costs, and, among other things, "dilatory tactics," "frivolity" and "abuse of process." Weisberg believes that he has established that, while he is innocent of these alleged abuses, they are, in fact, the practices of the FBI and its counsel. The actuality, of the abuses by government counsel, "must not be tolerated by this Court," and there is no basis for attributing those abuses to Weisberg, whose

truthfulness remains unrefuted and whose new evidence remains ignored and misrepresented.

CONCLUSIONS

Without addressing what Weisberg actually stated or making any effort to rebut the new evidence he presented, the Opposition provides no basis for denying Weisberg's Rule 60(b) Motion and thus, in fairness, to be equitable and to see to it that justice is done, his Motion should be granted.

In support of his Rule 60(b) Motion for relief from the judgment Weisberg stated was procured by fraud, misrepresentation and false swearing, Weisberg cited this new evidence as proving two basic and knowing lies by the FBI: that discovery from him would have enabled the FBI to prove that it had complied and that because of his subject-matter expertise discovery from Weisberg was required for the FBI to be aware of any relevant information it had and had not processed in this litigation. It is because the FBI cannot refute the clear meaning of the new evidence Weisberg presented in support of his Motion that the FBI fails to make the slightest effort to address these two of Weisberg's basic allegations. It is obvious that if this new evidence does not establish exactly what Weisberg states it establishes, the FBI would promptly and vigorously attempt to make a case. It also is obvious that because Weisberg stated the truth and because the truth is that the FBI engaged in fraud, misrepresentation and false swearing to obtain the judgment from which Weisberg seeks relief under Rule 60(b) that it does not - indeed, cannot - even attempt to refute this new evidence proof that the FBI was knowingly and deliberately untruthful in each and every claim it made to obtain the discovery

... I skipped inadvertently

and judgment orders and in this, knowingly and deliberately imposed upon the trust of this and the appeals courts.

This new evidence, unrefutedly, proves that no discovery from Weisberg could have enabled the FBI to prove that it had complied with Weisberg's FOIA requests and that no discovery from him was necessary for the FBI to be aware of existing and relevant records it has and has not processed for him under FOIA.

What makes the FBI's serious offenses even more serious is that it has but one supervisor, John N. Phillips, in this instant cause and in the litigation in which he and the FBI disclosed this new evidence. Thus it is apparent that he should have known, on this basis alone, that he was making untruthful representations to this Court. It likewise is apparent that after the FBI and the Department were made aware of their offenses they preserve their knowingly false posture in this litigation, retracting nothing, apologizing for nothing and processing nothing that was withheld, Weisberg emphasizes knowingly and deliberately withheld while the wrongful and fraudulent discovery and judgment Orders were sought and obtained.

Also compounding the seriousness of these offenses is the fact that the same Department of Justice components handle both FOIA lawsuits and thus, even before Weisberg provided any of this new evidence, should have known of the untruthfulness and fraudulent nature of what they presented to the courts in this litigation.

Moreover, with the Opposition's compounding of the misrepresentations and untruthfulness, there is even more basis for a

judicial inquiry into whether or not in this litigation the defendant has misrepresented, provided false swearing and engaged in fraud. The integrity and the constitutional independence of the judiciary require no less.

Weisberg states again that when he and the representatives of the defendant have sworn in direct contradiction to what is material to the judgment, there has been a felony and this Court has the obligation to determine who is the felon and to punish any felony.

This Court did not make any appropriate Finding of Fact and it took no evidence before ordering sanctions against Weisberg. If the Court does not grant his Rule 60(b) Motion or provide other relief, Weisberg believes that he has a Constitutional right to be tried and to defend himself against charges stated with specificity, and he asks that of this Court. Serious offenses have been attributed to him, they are damaging to his reputation and that of his work of two decades, and he believes he has both the right and the obligation of facing these cowardly and untruthful charges in a trial. He has been the subject of a long-standing campaign of vilification by the defendant, including before the courts, and he believes that while he still lives he is entitled to an opportunity to establish the untruthfulness of these allegations in a public trial based on them.

If the defendant considers Weisberg's allegations of misrepresentation, fraud and false swearing by and on behalf of the defendant to be untrue, then the defendant also should want the

vindication that trial makes possible. Weisberg attributes serious offenses to the defendant, including felonies, and the defendant remains silent save for the Opposition's distortion, misrepresentation and untruth detailed above. If the FBI regards Weisberg's allegations as not true, then it ought not oppose his request for a judicial determination of fact, preferably in the form of a trial.

In a sense the judicial system and the courts involved in this litigation also are on trial and they are the subject of contemptuous disregard by the FBI. The courts may, of course, ignore Weisberg's unrefuted documentation of these serious charges against the FBI and those speaking for it. That officialdom would dare misrepresent, be untruthful and engage in fraud before the courts in itself reflects contempt of the courts. It reflects the brazen and insulting belief that there is no offense by the FBI and those representing it that the courts will not bow low before and accept. Failure to make a serious effort to refute the clear meaning of the new evidence Weisberg presents while simultaneously withdrawing nothing, apologizing for nothing and heaping new misrepresentation and untruth upon those of its past in itself is the FBI's flaunting of its expectation of immunity before the courts from any and all offenses. In and of itself, this unhidden attitude, too, challenges and undermines the Constitutional independence of the judiciary. For this additional reason, Weisberg believes, there must be a judicial determination of fact, preferably one in which he is able to establish through witnesses the truth of his allegations.

In all of this verbiage and effrontery the FBI validates one of Weisberg's reasons for characterizing its "discovery" demand as unserious, unnecessary and still another stonewalling device. Weisberg stated that he had voluntarily provided a simply enormous amount of information only to have it steadfastly ignored save on a few occasions when there was compulsion. The Department itself states that nobody has ever provided as much information as Weisberg did and at what to him was great cost. Yet almost without exception, the exception being limited to infrequest and incomplete compliance under compulsion, the FBI has always refused to make any use of the information Weisberg provided.

The above-reiterated instance of the Dallas police assassination period recordings is illustrative of the FBI's perpetual stonewalling, fraud, misrepresentation and perjury Weisberg has faced in this litigation. After a series of unbelievable, improvised lies under oath about these recordings, last year they and the records relating to them were located by accident - exactly where Weisberg had indicated years earlier they would be only to have the information he provided ignored - and as of this day, after all the allegations the FBI has faced in court and after all the false representations it has made, and when no claim to any exemption can be asserted or sustained, Weisberg has not received a single page of the relevant records, no duplicate of the recordings, and not even a hint of when he might expect anything when no search is needed, no processing is necessary - and this after more than a half-year! This is the FBI's record after all its many lies

to the courts and all its baseless slurs and allegations against Weisberg.

If the FBI did not intend to flaunt its contempt of the courts, the law and common decency, it would at the very least have made a slight gesture and disclosed what it had lied about repeatedly, did have and requires only duplicating for disclosure. It would have used this scanty figleaf to hide the nakedness to which it strips the courts by its serious and, Weisberg believes, felonious misconduct.

This illustration, which is typical in every way, makes it apparent that the FBI's intent in seeking "discovery" and the judgment from which Weisberg seeks relief were intended to be fraudulent. This required the false swearing and misrepresentation Weisberg alleges and documents without refutation. The FBI has a long and clear record of stonewalling and of ignoring all the information Weisberg provided, always by request, and documented in this and in other litigation. If the FBI is not determined to stonewall in this litigation and to ignore all the accurate information Weisberg provided, why did it not search where Weisberg indicated it should and locate the police broadcast recordings and related records years ago instead of lying and lying and lying under oath to the courts; and why, once this information was located by accident exactly where Weisberg had indicated - through the FBI's own records, processed under Phillips' supervision, which it did not need from Weisberg in any event - has it continued its withholding and preserved a stony silence since last year? The

FBI was and remains totally silent. It makes no claim to any exemption, no claim to the need of more time, and in more than a half-year it has not responded to Weisberg's request to be told the cost of a duplicate copy of the recordings of the police broadcasts so he could send a check and provide the second copy to another scholar in the field.

Absent resolute FBI determination to follow a course of illegality in flagrant and deliberate violation of the law and the practice of the serious offenses Weisberg documents against it without even pretense of refutation of most of them, the FBI would have made a slight gesture and provided this information. Its refusal to do so is its own self-description and, historically, will be its self-defamation for this is, regardless of all the FBI's rhetoric and misbehavior, a study of its conduct and performance as well as that of all our other basic institutions at the time of and since that most genuinely subversive of crimes, the assassination of a President - a crime that negates our system of self-government.

Secure in the belief that it will get away with anything before the courts, the FBI has not deigned to deny Weisberg's attribution of additional motive, aside from its omnipresent stonewalling, in its continued withholding of duplicates of the recordings of the police broadcasts. Weisberg has stated that such a motive is its omission of potentially highly significant information in the FBI's supposedly verbatim transcripts of those broadcasts.

With his Rule 60(b) Motion Weisberg presented FBI records

reflecting the known existence of information pertinent and withheld in this litigation and thus addressing the genuineness of what the FBI alleged to procure the judgment from which Weisberg seeks relief. Not only is all of this ignored in the Opposition and undenied in any other way, but in each and every instance all that pertinent information still is withheld. There has been no word from the FBI indicating that even at this late date it would provide any of that withheld and relevant information.

Even if the FBI takes the position that it now need not comply with the request and is entitled to perpetuate its knowing fraud, false swearing and misrepresentation, is there any reason consistent with common decency for it not to admit the truth of what Weisberg provided in his new evidence and it cannot and does not refute? Or any reason for continuing to withhold the identified relevant information in this historical case in which the Attorney General himself ordered that all possible information be disclosed? (Not that the FBI has a record of respecting and obeying attorneys general.)

This is the record of the FBI in this major historical case and under FOIA litigation: it is determined to withhold to the extent it can get away with and there is nothing it will not do to get away with what it wants to get away with, regardless of attorneys general, laws, courts or anything else. And if those who have been critical of it are harmed in the process, so much the better, from its record and attitude.

Now it enlarges and expands its campaigns against FOIA and

requesters of information by procuring this entirely unjustified judgment against a requester whose accurate work has embarrassed it; an aging and ill requester who is without real means; a requester it has undertaken to make unpopular; a requester it has misled the courts into believing is responsible for the time and effort it, not he, has wasted for the courts; a requester less able to contest this totally dishonest precedent it has procured with which it can further frustrate the intent of the Congress and of the Act.

It has converted the Act requiring disclosure into an act for withholding information, and this unjustified judgment will further that improper end and will become the basis for much additional and extremely costly litigation each time the FBI demands "discovery" from a requester, whether an individual scholar who lacks means or a major corporate requester who has able and expensive counsel.

Given the unrefuted evidence in the case record and this also unrefuted new evidence, it appears that there are few cases in which the FBI and other agencies will not be able to assert a demand for "discovery" from the requester/plaintiff, with the consequences indicated above.

For these additional reasons Weisberg's Rule 60(b) Motion to vacate the judgment against him ought be granted.

This is an evil precedent obtained by what ought be punishable misconduct. Justice requires that the relief Weisberg seeks be granted.

Respectfully submitted,

Harold Weisberg, pro se
7627 Old Receiver Road
Frederick MD 21701

August 1, 1985

CERTIFICATE OF SERVICE

I hereby certify that this first day of August 1985 I caused copies of the foregoing Plaintiff's Response to Defendant's Opposition to Plaintiff's Rule 60(b) Motion to be mailed first-class postage prepaid to

Ms. Renee Wohlenhaus
Department of Justice
Room 3334
10th & Constitution Avenue, NW
Washington, D.C. 20530

Harold Weisberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
V.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defandant.	)	
	)	

ORDER

Upon consideration of Plaintiff's Rule 60(b) Motion to Vacate Judgment, of Defendant's Opposition thereto and of Plaintiff's Response to Defendant's Opposition, and of the arguments of the parties, it appearing to the Court that Plaintiff having shown good cause, it is hereby

ORDERED, that the judgment is hereby vacated.

It is further

ORDERED, that this Court will determine at a time convenient to the parties whether or not the Defendant, as alleged by Plaintiff, engaged in fraud, misrepresentation and false swearing.

DATED:_____

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defendant.	)	

PLAINTIFF"S RESPONSE TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S RULE 60(b) MOTION

INTRODUCTION

In these two 1978 cases, subsequently combined, plaintiff Harold Weisberg seeks the information of the FBI's Dallas and New Orleans field offices relating to the investigations of the assassination of President John F. Kennedy and persons and organizations figuring in them. The FBI requested and was granted additional time and it extended that time to four years, after which it claimed complete compliance without ever making searches in either field office to comply with Weisberg's requests. The Dallas field office abdicated entirely and in unauthorized - and objected to - substitutions for any search in Dallas to comply with Weisberg's requests, SA Thomas H. Bresson, then of FBIHQ Records Management Division, arbitrarily and capriciously decided which few "main" files would be processed for Weisberg. This, Weisberg emphasizes, was without any Dallas search made or even possible. In New Orleans, instead of making a search to comply with Weisberg's request, that field office substituted

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what it had done about a year prior to Weisberg's request and for entirely different purposes. The search slips provided by the New Orleans office and sworn to as prepared for Weisberg's request are dated almost a year before he filed his request and are carelessly hand-copied versions of the earlier and unrelated search. Later, at the direction of the Department of Justice's appeals office, Dallas made a few perfunctory searches and provided alleged search slips sworn to as authentic. In some instances these omit any reference to files known to exist (of which an illustration is attached to Weisberg's Rule 60(b) Motion) and in another instance where, without question, a very large number of records relating to several serious scandals embarrassing to the FBI are known to exist, the search slip was and remains entirely blank. This is sworn to be complete and accurate and to represent that so-called "search." After Weisberg alleged noncompliance in response to one of the repeated FBI claims to full compliance, the FBI demanded and this Court ordered alleged discovery. The claimed need for this alleged disvcovery ranges from the sworn-to impossibility - that it would enable the FBI to prove that it had complied with Weisberg's request - to the bizarre notion that because Weisberg is a preeminent subject-matter expert he somehow knows more about the FBI's files than its extensive indices reflect. Weisberg cited a number of reasons for opposing this stonewalling ploy of "discovery" but this Court ordered it, disregarding the unrefuted evidence Weisberg provided in support of his opposition. On appeal the FBI based itself on slanders fabricated by its counsel and the

case record establishes were physically impossible and on what Weisberg established was knowing and deliberate misrepresentation of his information requests. While this case was on appeal, Weisberg began to receive copies of FBI records disclosed to another requester, records that establish the existence of field offices records pertinent and withheld in this litigation. These records were processed in the other litigation under the supervision of FBIHQ SA John N. Phillips, who is also supervisor in this litigation and who provided most of the FBI's attestations in it despite his lack of personal knowledge of the investigations of field offices files. Phillips' attestations to the FBI's alleged need of discovery and what it allegedly would make possible are obviously untruthful, and after Weisberg stated that he was at one and the same time swearing to what is not true in this litigation and disclosing to another what proved it to be false, Phillips has not attempted any refuation and as of today what Weisberg stated in this regard remains entirely uncontradicted. The appeals court remanded on Pearl Harbor Day of last year and on June 13, 1985, this Court again ordered Weisberg to pay the FBI counsel fees allegedly incurred in seeking the so-called "discovery." Based on the newly discovered evidence disclosed to this other litigant by FBIHQ and its supervisor, Phillips, on July 10 Weisberg sought relief from the judgment under Rule 60(b) and on July 22 the FBI filed its Opposition supposedly but not actually in opposition to this relief. Instead it alleges untruthfully that what Weisberg filed is an effort to relitigate what it

describes as "the sufficiency of the FBI's document search." (page 2) Weisberg did and does seek relief from this judgment, asked that it be vacated, and save for the usual official misrepresentation in this litigation, what Weisberg actually filed is almost entirely ignored and is entirely unrefuted. (Additional background is provided with Weisberg's Rule 60 (b) Motion and is incorporated herein by reference.)

ARGUMENT

Rule 60(b) provides for "relief from judgments" other than as the FBI's Opposition represents, which is for no "more than one year after the order is entered." (page 2) Aside from a "motion in the court," the option Weisberg chose, he could have filed "a new or independent action to obtain relief from a judgment, which action may or may not be begun in the court which entered the judgment." (Weisberg understands this to mean that, for example, he could file in the jurisdiction in which he resides as well as in this jurisdiction but he believes either would result in unnecessarily burdening the courts and would increase the costs to all parties, so he did not select it as his first option.)

"Errors" that come from "oversight or omission," the Rule states, "may be corrected by the court at any time on its own initiative or on the motion of any party," and Weisberg's Motion includes "oversight and omission." Following "(t)he incorporation of fraud and the like within the scope of the rule ... relief from a judgment" obtained by fraud and the like "might be after the time stated in the rule had run." As amended, the

Rule makes "fraud an express ground for relief by motion."

These provisions are ignored in the Opposition, as also is the fact that for the time period in question the defendant had and withheld from Weisberg the new evidence on which he based his Motion and more like it addressing the defendant's fraud, misrepresentation and false swearing.

This is more than claiming the right to have the eaten cake, it is to claim what Weisberg believes is anathema to a basic concept of American law and justice, the right to be the beneficiary of one's own misconduct.

The permeating misrepresentation of the Opposition, sought to be rhetorically enhanced through the employment of such neutral lawyer-like terms as "regurgitating" and the suggestion that Weisberg's Motion makes him subject to additional sanctions under Rules 11 and 33 (which he dares the defendant to initiate), is contrived by characterizing his calling to the attention of the Court the possibility of serious offenses, including felonies, by the defendant, as "harassment, unnecessary delay or increased cost of litigation, and by describing his Motion as a "pretext for relief" and as "dilatory" (page 5); and as "frivolous," "an attempt to relitigate a matter unrelated to the final order" and as "abusive of the process of the Court" (page 2), with "relitigate" referred to as the "rehashing of old arguments" on page 4.[1/]

1/ With regard to these alleged frivolities, regurgitations, abuse of process and relitigation, the purpose of Rule 60(b) is to relitigate where a judgment has been, as Weisberg alleges, obtained by misrepresentation, fraud and the like. So, even if these

The defendant's regard for the integrity and reputation of the courts, including this Court, and for how they will be regarded throughout history in this historical case in which the appeals court has stated interest will never die, is reflected in the use of such descriptives as "frivolous," "harassment" and "regurgitate" as a substitution for evidence and fact. This represents the virtual assumption by the defendant that this and all other courts will ignore documented allegations of serious felonies by the defendant, will be servile before errant officialdom and will rubber-stamp any and all irrelevancies and misrepresentations provided by the defendant and thus sanctify serious official felonies.

Because the Opposition presents no evidence to refute the evidence Weisberg provided with his Motion, this Opposition, in effect, acknowledges the truth of what Weisberg states with regard to official misrepresentation, false swearing and fraud in the matter.

If Weisberg erred or was in any way unfactual in his allegations, then the Department of Justice has the obligation, as he asked the Court in his Memorandum, of placing specific charges against him and trying him for any such offense. There is, however, no likelihood that the Department or the FBI will dare risk a trial because of the unquestionable factuality of what Weisberg alleges, and thus their bluster about alleged Rules 11 and 33 violation instead of filing charges that could lead to a trial.

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allegations of the Opposition were pertinent, as they are not, it misrepresents the very purpose of the Rule Weisberg invoked in a transparent effort to make the defendant's impropriety appear to be proper.

The opening and basic misrepresentation of this Opposition is "that the newly discovered evidence [is] about the sufficiency of the [FBI's] FOIA document search" which, the Opposition then represents, is the sole reason Weisberg advanced to require reopening of this case. This, the Opposition then misrepresents, "is a frivolous attempt to relitigate a matter unrelated to the final order." (page 2).

Not a word of this is true. Weisberg presents the newly discovered evidence, the very evidence the defendant withheld from him while knowing its relevance and being aware of possessing it, as evidence of misrepresentation and false swearing to the Court and of fraud, all employed to obtain the judgment from which he seeks relief and thus not possibly "unrelated to the final order."

Weisberg's Motion and Memorandum are not addressed to "the sufficiency of the FOIA document search." They do address misrepresentation, false swearing and fraud to procure the judgment from which he seeks relief, and this actuality cannot have been misunderstood by the defendant or any counsel. Weisberg's allegations to this Court are quite specific in being "about" these serious offenses of misrepresentation, false swearing and fraud which, somehow, the defendant and defendant's counsel pretend to believe are "frivolous" and an "abuse of the process of the Court."

One of the numerous examples Weisberg presented - while informing both the Court and defendant that he presented only illustrations and that there are other illustrations in this newly discovered evidence - the Opposition mentions one only.

And in this, typically, the Opposition is unfaithful to fact, misleading, and misrepresents.

The one illustration misused in the Opposition is ticklers. (pages 2-3) But even then the Opposition does not really refer to ticklers but to something of its own creation, entirely different and utterly irrelevant, "tickler systems." There is no relevance to "systems" of ticklers, and this semantical dodge is clearly intended once again to mislead and to misrepresent to this Court and to be immune in these offenses. This is entirely consistent with the various semantical dodges SA John N. Phillips used in his attestations in which he shifted each knowingly incorrect definition of tickler every time he was corrected and never once interpreted the word correctly, not even after Weisberg provided the dictionary meaning.

There is and there can be no purpose in defining "tickler" as "tickler systems" other than to be evasive and to mislead and deceive the Court and to perpetuate the offenses alleged by Weisberg.

Even then, however, the Opposition is not truthful because, while Weisberg never referred to any "tickler systems," the Opposition, in misrepresenting that he did, then states "that the Dallas and New Orleans field offices, like all others, do not maintain tickler systems." In fact, Phillips himself attested to their use of a "tickler system" when Weisberg presented a FBIHQ directive to the Dallas office to establish a certain tickler. In trying to explain that away, Phillips attested to that particular tickler as a system of keeping track of things to be done.

What gets lost in all of this is that to this day there has

not been any search for any ticklers in either field office and that Weisberg has records of offices indicating the existence of ticklers in them and provided those documents for the case record.

After this deliberate misrepresentation of the unsystemized ticklers in question as "tickler systems," which is basic in the Opposition, it misrepresents further and seriously with regard to the pages of FBIHQ ticklers Weisberg provided with his Motion. It states, with falsehood that cannot be accidental, that his exhibits "include copies of what Weisberg alleges are the 'ticklers' he was asking the FBI to search for pursuant to this FOIA request." This is not true, the FBI and its counsel know it is not true, and the untruth is stated to obfuscate the realities, that when Phillips swore that all FBI ticklers are preserved for only a few days and then are "routinely destroyed" he swore falsely and knew he swore falsely; and that these FBIHQ ticklers, which Weisberg identified as from FBIHQ and not from the field offices, refer to relevant information in the field offices that is known to exist, is known to be relevant, and remains withheld. Even now, at this late date.

Where in the midst of this verbiage, distortion, misrepresentation and straight-out untruth the Opposition is, atypically, not incorrect, it is evasive and it ignores the seriousness of what Weisberg alleges. "In addition," the Opposition states (page 2), "Weisberg argues that the FBI affiant, Mr. John Phillips, who attested to the responses in this case was also responsible for the responses in the other cases." That is the Allen case in which this new evidence was disclosed while, simultaneously, the one and only John Phillips

was swearing to the contrary in this litigation - inconsistently and in self-contradiction to its nonexistence, to the FBI's need of discovery to be able to locate it, and to the FBI's need of discovery from Weisberg to be able to prove that it had provided what it and Phillips knew very well it had and had not provided. The Opposition does not in any way deny that Phillips was at one and the same time supervising disclosure in the Allen case of records reflecting the existence of information relevant in this case and swearing to its nonexistence and alleged discovery needs in this case. Instead of denying what cannot be denied, while pretending to do that, the Opposition again misrepresents in stating that "Weisberg concludes that Mr. Phillips was defrauding this Court by not providing the information to Weisberg which was provided to Allen."

Weisberg concludes no such thing, but this misrepresentation, which is deliberate if the authors of the Opposition read Weisberg's Memorandum, also is basic to the FBI's perpetuated misrepresentations.

Weisberg went into detail (aka "rambling," "regurgitating" and "rehashing" in the Opposition) about the history of Allen's request and of Phillips' personal knowledge of it and of disclosures in it and, specifically, Weisberg stated that when he received copies from Allen he withdrew his information request similar to Allen's for FBIHQ, not field office, information.

Without this deliberate misrepresentation of the reality the Opposition would find it impossible to address the reality that, in addressing the fraud, misrepresentation and false swearing employed to obtain the judgment relief from which he seeks, Weisberg stated

that, from his knowledge of the FBI's methods and practices, what was disclosed to Allen reflects the existence of relevant information in the field offices not provided to Weisberg - and to the knowledge of the FBI's affiant Phillips is known to exist and to be withheld.

Each and every exhibit of illustrations from what was disclosed to Allen was used, clearly and explicitly, to show that the FBI had amd has and knows it had and has field office information withheld from Weisberg, that no discovery from him was necessary for the FBI to locate and process it and that, obviously, no discovery from him could have enabled the FBI to prove in this litigation that it had provided what it knowingly withholds. With Weisberg's repetition of this refrain throughout, honest misunderstanding of it and his purposes is entirely impossible. He used it to show misrepresentation, fraud and false swearing from which he seeks relief.

In the paragraph that begins by describing the new evidence Weisberg presented as "regurgitating," the Opposition pretends that it is addressing all of Weisberg's allegations when in fact it refers to but a single one and then only with the most serious misrepresentation (in referring to ticklers as "tickler systems"). It also pretends that all was explained away in affidavits and argument, which is not true, and it concludes with an even larger untruth that is sweeping in its all-inclusiveness: "Nothing presented in Weisberg's latest pleading shows that the 'new evidence' came from Dallas or New Orleans, as his request specifically required." (emphasis added, page 3)

Origin is entirely immaterial. What is material is whether or not the withheld information exists in either field office so whether or not any "came from" either office is not relevant. However, it

simply is straight-out false to represent that "nothing presented in Weisberg's latest pleading shows that" any of the new evidence came from the field offices. As one of many conspicuous examples, Weisberg cites what he presented on the existence and finding of the recordings of the Dallas police radio broadcasts of the time of the assassination along with documents relating to them and his citation of Phillips' not infrequent false swearings with regard to them. (Phillips began by lying, under oath, in swearing that the FBI had never had them and concluded in his series of lies with another, that they had been given to the Warren Commission. This is not true and he and the FBI know it is not true.) Without question, this information reached Washington from the Dallas field office. Without question, the recordings and documents are relevant. And without question, long, long after they were located, exactly where Weisberg had indicated they would be and even after Weisberg was informed of this in writing, they remain withheld, along with all the located and relevant records. This and more like it is most certainly "in Weisberg's latest pleading," along with illustrative exhibits (Exhibits 3 and 4), which also remain ignored while being lied about all over again to this Court.

Did Weisberg have to inform the FBI that its New Orleans information about the New Orleans persons who figured in District Attorney Jim Garrison's investigation and of the New Orleans Clay Shaw jurors came from its New Orleans office?

Is it possible that any FBI special agent or any Department of Justice lawyer handling FBI litigation does not know that, almost

without exception, case information originates in the field offices and is also routed to them if of other origin? Special agents and Department counsel know very well that such information as Weisberg cited does not originate in FBIHQ. Moreover, he was specific in stating that information was routed to the Office of Origin, Dallas, and other offices, and that New Orleans was virtually a second office of origin because of Lee Harvey Oswald's activity there and because of the Garrison investigation there.

So, while it is not true that Weisberg did not show any of "the 'new evidence' came from" the field offices, because he did, with specificity, it also was not necessary for him to do this, as the Opposition represents.

Bearing on the FBI's intent to keep on misleading and misrepresenting to this Court is the fact that Weisberg also illustrated the routing to both the Dallas and New Orleans offices of relevant information pertaining to the so-called "critics." (Exhibit 6) It thus is obvious that, as the FBI knew without Weisberg informing it, the field offices have relevant information that was sent to them as well as what went to FBIHQ from them. Weisberg believes this was known to the FBI's counsel when counsel made this additional attempt to mislead and misinform this Court. Certainly what he sent to FBI counsel is specific enough and is documented, and this Opposition is their response to it.

With misrepresentation heaped on misrepresentation the Opposition then repeats (page 3) its basic misrepresentation, that "(i)n any event, all these [i.e., Weisberg's] allegations are irrelevant

because they go to the decison of this Court on the merits made over twenty months ago as to the adequacy of the search in this case."

This is a deliberate misrepresentation of the purpose of a Rule 60(b) motion in general and it is, specifically, a deliberate misrepresentation of Weisberg's stated purpose, to obtain relief from the judgment based on misrepresentation, fraud, false swearing and the like. All that follows in the Opposition likewise is irrelevant and does not in any way address the actual and stated purpose for which Weisberg filed his Rule 60(b) Motion and, in fact, to which any Rule 60(b) motion is limited.

But there still is no end to misrepresentation and just plain gall in this Opposition. In admitting that "(a) District Court" can "consider a Rule 60(b) motion after an appellate court has ruled on a matter ... if the motion is not a frivolous attempt to relitigate the claim" (thus explaining the need for all its untruth and misrepresentation and inappropriate descriptives like "regurgitating" to describe indubitably and undeniedly "new evidence"), the Opposition seeks to hold Weisberg responsible for the transgressions of the FBI and Department of Justice by attributing to him "a belated attempt to present evidence which should have been presented earlier." (page 4) The FBI and its counsel know very well, and unrefutedly Weisberg's Memorandum establishes, that the FBI made it impossible for him to present this new evidence earlier because the FBI withheld it from him when, undeniedly, the FBI knew it had this new evidence and knew its relevance in this litigation.

This is like castigating the victim of a rape for being raped. It was, as the FBI and its counsel know very well, impossible for Weisberg to present this new evidence to this Court any earlier simply because they - and in particular SA Phillips - made it impossible.

In all of this verbiage, misrepresentation, distortion, evasion, digression, diversion and slurring language and midst its bluster and new threats against Weisberg, save for its single, untruthful and misrepresentative reference to the nonsystematic ticklers as "tickler systems," a fragile straw man at best, the Opposition ignores all that Weisberg presented that it does not misrepresent. For example, the Associate Attorney General directed the FBI to process and disclose the FBI's records relating to the "critics" and Phillips, who swore to anything and, as Weisberg proved over and over again, gagged at nothing, swore that there are no such records. Yet the new evidence is quite specific on its existence in the form of the information on which FBIHQ prepared what the tickler disclosed to Allen refers to as "sex dossiers" on the critics. It simply cannot deny that this information exists and is relevant. So, it is ignored and lied about. (Weisberg's Exhibit 6, cited above, includes the identifications of files on these "critics" in both field offices and it, too, leaves no innocence for the FBI and its affiant and counsel in this regard.)

That both field offices were directed to establish relevant additional files and did so and that they were not disclosed when compliance and "discovery" need was claimed is likewise ignored.

Yet the new evidence (Exhibit 12) is the source of the proof Weisberg presented and is ignored and misrepresented - it seems fair to say was lied about in this Opposition. (Although without question these files exist and are in the FBI's indices, they do not appear on the search slips the authenticity of which Phillips swore to.)

To this very day, all the relevant information Weisberg correctly identified with this new evidence remains withheld from him and this Court. Even now the FBI and its counsel make no effort to relieve the fraud perpetrated or to withdraw the false swearing by which this judgment was procured, or to relieve their abuse of Weisberg, of process and of the courts. Even at this late date they decline to be in any degree honest and truthful.

It is obvious, as Weisberg stated over and over again without even a pro forma denial in this Opposition, that a) no discovery from him would have enabled the FBI to prove that it had complied when it knew it had not complied, as this new evidence proves beyond question; and b) that no discovery from him was necessary for the FBI to provide the information it knew it had and withheld, which also is established by this new evidence. Yet these are the claims made to procure the wrongful judgment against Weisberg, to perpetrate a fraud from which he seeks relief.

Subsequent to this judgment against Weisberg the appeals court held that Phillips is not competent to provide the attestations he provided because he lacks personal knowledge of the JFK assassination investigation. That, however, does not explain away his false attestations because he accredited himself as an expert with

regard to some of the questions and the Court accepted him as such an expert and thus accepted his attestations; and because at the very time he was making and adhering to his false attestations he was in charge of the disclosure to Allen of the new evidence that establishes the existence of relevant and withheld information in this litigation and thus of his untruthfulness. Even with regard to his false statements relating to the Dallas police tapes, he has no innocence because Weisberg had earlier provided the field office records relating to both its initial and its more recent FBI need of them and its tracing of them in Dallas for the House Select Committee on Assassinations and the Attorney General. (And, as Weisberg also stated, once he attached those records to an affidavit, all subsequent records relating to this matter were withheld from him.)

Having ignored and made no effort to refute what Weisberg provided as new evidence or in any way addressing its clear meaning; having misrepresented, distorted, evaded, slurred and been untruthful, this Opposition now alleges that Weisberg is subject to sanctions for alleged violation of Rules 11 and 33 by attributing to him "Harassment, unnecessary delay," increasing litigation costs, and, among other things, "dilatory tactics," "frivolity" and "abuse of process." Weisberg believes that he has established that, while he is innocent of these alleged abuses, they are, in fact, the practices of the FBI and its counsel. The actuality, of the abuses by government counsel, "must not be tolerated by this Court," and there is no basis for attributing those abuses to Weisberg, whose

truthfulness remains unrefuted and whose new evidence remains ignored and misrepresented.

CONCLUSIONS

Without addressing what Weisberg actually stated or making any effort to rebut the new evidence he presented, the Opposition provides no basis for denying Weisberg's Rule 60(b) Motion and thus, in fairness, to be equitable and to see to it that justice is done, his Motion should be granted.

In support of his Rule 60(b) Motion for relief from the judgment Weisberg stated was procured by fraud, misrepresentation and false swearing, Weisberg cited this new evidence as proving two basic and knowing lies by the FBI: that discovery from him would have enabled the FBI to prove that it had complied and that because of his subject-matter expertise discovery from Weisberg was required for the FBI to be aware of any relevant information it had and had not processed in this litigation. It is because the FBI cannot refute the clear meaning of the new evidence Weisberg presented in support of his Motion that the FBI fails to make the slightest effort to address these two of Weisberg's basic allegations. It is obvious that if this new evidence does not establish exactly what Weisberg states it establishes, the FBI would promptly and vigorously attempt to make a case. It also is obvious that because Weisberg stated the truth and because the truth is that the FBI engaged in fraud, misrepresentation and false swearing to obtain the judgment from which Weisberg seeks relief under Rule 60(b) that it does not - indeed, cannot - even attempt to refute this new evidence proof that the FBI was knowingly and deliberately untruthful in each and every claim it made to obtain the discovery

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and judgment orders and in this, knowingly and deliberately imposed upon the trust of this and the appeals courts.

This new evidence, unrefutedly, proves that no discovery from Weisberg could have enabled the FBI to prove that it had complied with Weisberg's FOIA requests and that no discovery from him was necessary for the FBI to be aware of existing and relevant records it has and has not processed for him under FOIA.

What makes the FBI's serious offenses even more serious is that it has but one supervisor, John N. Phillips, in this instant cause and in the litigation in which he and the FBI disclosed this new evidence. Thus it is apparent that he should have known, on this basis alone, that he was making untruthful representations to this Court. It likewise is apparent that after the FBI and the Department were made aware of their offenses they preserve their knowingly false posture in this litigation, retracting nothing, apologizing for nothing and processing nothing that was withheld, Weisberg emphasizes knowingly and deliberately withheld while the wrongful and fraudulent discovery and judgment Orders were sought and obtained.

Also compounding the seriousness of these offenses is the fact that the same Department of Justice components handle both FOIA lawsuits and thus, even before Weisberg provided any of this new evidence, should have known of the untruthfulness and fraudulent nature of what they presented to the courts in this litigation.

Moreover, with the Opposition's compounding of the misrepresentations and untruthfulness, there is even more basis for a

judicial inquiry into whether or not in this litigation the defendant has misrepresented, provided false swearing and engaged in fraud. The integrity and the constitutional independence of the judiciary require no less.

Weisberg states again that when he and the representatives of the defendant have sworn in direct contradiction to what is material to the judgment, there has been a felony and this Court has the obligation to determine who is the felon and to punish any felony.

This Court did not make any appropriate Finding of Fact and it took no evidence before ordering sanctions against Weisberg. If the Court does not grant his Rule 60(b) Motion or provide other relief, Weisberg believes that he has a Constitutional right to be tried and to defend himself against charges stated with specificity, and he asks that of this Court. Serious offenses have been attributed to him, they are damaging to his reputation and that of his work of two decades, and he believes he has both the right and the obligation of facing these cowardly and untruthful charges in a trial. He has been the subject of a long-standing campaign of vilification by the defendant, including before the courts, and he believes that while he still lives he is entitled to an opportunity to establish the untruthfulness of these allegations in a public trial based on them.

If the defendant considers Weisberg's allegations of misrepresentation, fraud and false swearing by and on behalf of the defendant to be untrue, then the defendant also should want the

vindication that trial makes possible. Weisberg attributes serious offenses to the defendant, including felonies, and the defendant remains silent save for the Opposition's distortion, misrepresentation and untruth detailed above. If the FBI regards Weisberg's allegations as not true, then it ought not oppose his request for a judicial determination of fact, preferably in the form of a trial.

In a sense the judicial system and the courts involved in this litigation also are on trial and they are the subject of contemptuous disregard by the FBI. The courts may, of course, ignore Weisberg's unrefuted documentation of these serious charges against the FBI and those speaking for it. That officialdom would dare misrepresent, be untruthful and engage in fraud before the courts in itself reflects contempt of the courts. It reflects the brazen and insulting belief that there is no offense by the FBI and those representing it that the courts will not bow low before and accept. Failure to make a serious effort to refute the clear meaning of the new evidence Weisberg presents while simultaneously withdrawing nothing, apologizing for nothing and heaping new misrepresentation and untruth upon those of its past in itself is the FBI's flaunting of its expectation of immunity before the courts from any and all offenses. In and of itself, this unhidden attitude, too, challenges and undermines the Constitutional independence of the judiciary. For this additional reason, Weisberg believes, there must be a judicial determination of fact, preferably one in which he is able to establish through witnesses the truth of his allegations.

In all of this verbiage and effrontery the FBI validates one of Weisberg's reasons for characterizing its "discovery" demand as unserious, unnecessary and still another stonewalling device. Weisberg stated that he had voluntarily provided a simply enormous amount of information only to have it steadfastly ignored save on a few occasions when there was compulsion. The Department itself states that nobody has ever provided as much information as Weisberg did and at what to him was great cost. Yet almost without exception, the exception being limited to infrequest and incomplete compliance under compulsion, the FBI has always refused to make any use of the information Weisberg provided.

The above-reiterated instance of the Dallas police assassination period recordings is illustrative of the FBI's perpetual stonewalling, fraud, misrepresentation and perjury Weisberg has faced in this litigation. After a series of unbelievable, improvised lies under oath about these recordings, last year they and the records relating to them were located by accident - exactly where Weisberg had indicated years earlier they would be only to have the information he provided ignored - and as of this day, after all the allegations the FBI has faced in court and after all the false representations it has made, and when no claim to any exemption can be asserted or sustained, Weisberg has not received a single page of the relevant records, no duplicate of the recordings, and not even a hint of when he might expect anything when no search is needed, no processing is necessary - and this after more than a half-year! This is the FBI's record after all its many lies

to the courts and all its baseless slurs and allegations against Weisberg.

If the FBI did not intend to flaunt its contempt of the courts, the law and common decency, it would at the very least have made a slight gesture and disclosed what it had lied about repeatedly, did have and requires only duplicating for disclosure. It would have used this scanty figleaf to hide the nakedness to which it strips the courts by its serious and, Weisberg believes, felonious misconduct.

This illustration, which is typical in every way, makes it apparent that the FBI's intent in seeking "discovery" and the judgment from which Weisberg seeks relief were intended to be fraudulent. This required the false swearing and misrepresentation Weisberg alleges and documents without refutation. The FBI has a long and clear record of stonewalling and of ignoring all the information Weisberg provided, always by request, and documented in this and in other litigation. If the FBI is not determined to stonewall in this litigation and to ignore all the accurate information Weisberg provided, why did it not search where Weisberg indicated it should and locate the police broadcast recordings and related records years ago instead of lying and lying and lying under oath to the courts; and why, once this information was located by accident exactly where Weisberg had indicated - through the FBI's own records, processed under Phillips' supervision, which it did not need from Weisberg in any event - has it continued its withholding and preserved a stony silence since last year? The

FBI was and remains totally silent. It makes no claim to any exemption, no claim to the need of more time, and in more than a half-year it has not responded to Weisberg's request to be told the cost of a duplicate copy of the recordings of the police broadcasts so he could send a check and provide the second copy to another scholar in the field.

Absent resolute FBI determination to follow a course of illegality in flagrant and deliberate violation of the law and the practice of the serious offenses Weisberg documents against it without even pretense of refutation of most of them, the FBI would have made a slight gesture and provided this information. Its refusal to do so is its own self-description and, historically, will be its self-defamation for this is, regardless of all the FBI's rhetoric and misbehavior, a study of its conduct and performance as well as that of all our other basic institutions at the time of and since that most genuinely subversive of crimes, the assassination of a President - a crime that negates our system of self-government.

Secure in the belief that it will get away with anything before the courts, the FBI has not deigned to deny Weisberg's attribution of additional motive, aside from its omnipresent stonewalling, in its continued withholding of duplicates of the recordings of the police broadcasts. Weisberg has stated that such a motive is its omission of potentially highly significant information in the FBI's supposedly verbatim transcripts of those broadcasts.

With his Rule 60(b) Motion Weisberg presented FBI records

reflecting the known existence of information pertinent and withheld in this litigation and thus addressing the genuineness of what the FBI alleged to procure the judgment from which Weisberg seeks relief. Not only is all of this ignored in the Opposition and undenied in any other way, but in each and every instance all that pertinent information still is withheld. There has been no word from the FBI indicating that even at this late date it would provide any of that withheld and relevant information.

Even if the FBI takes the position that it now need not comply with the request and is entitled to perpetuate its knowing fraud, false swearing and misrepresentation, is there any reason consistent with common decency for it not to admit the truth of what Weisberg provided in his new evidence and it cannot and does not refute? Or any reason for continuing to withhold the identified relevant information in this historical case in which the Attorney General himself ordered that all possible information be disclosed? (Not that the FBI has a record of respecting and obeying attorneys general.)

This is the record of the FBI in this major historical case and under FOIA litigation: it is determined to withhold to the extent it can get away with and there is nothing it will not do to get away with what it wants to get away with, regardless of attorneys general, laws, courts or anything else. And if those who have been critical of it are harmed in the process, so much the better, from its record and attitude.

Now it enlarges and expands its campaigns against FOIA and

requesters of information by procuring this entirely unjustified judgment against a requester whose accurate work has embarrassed it; an aging and ill requester who is without real means; a requester it has undertaken to make unpopular; a requester it has misled the courts into believing is responsible for the time and effort it, not he, has wasted for the courts; a requester less able to contest this totally dishonest precedent it has procured with which it can further frustrate the intent of the Congress and of the Act.

It has converted the Act requiring disclosure into an act for withholding information, and this unjustified judgment will further that improper end and will become the basis for much additional and extremely costly litigation each time the FBI demands "discovery" from a requester, whether an individual scholar who lacks means or a major corporate requester who has able and expensive counsel.

Given the unrefuted evidence in the case record and this also unrefuted new evidence, it appears that there are few cases in which the FBI and other agencies will not be able to assert a demand for "discovery" from the requester/plaintiff, with the consequences indicated above.

For these additional reasons Weisberg's Rule 60(b) Motion to vacate the judgment against him ought be granted.

This is an evil precedent obtained by what ought be punishable misconduct. Justice requires that the relief Weisberg seeks be granted.

Respectfully submitted,

Harold Weisberg, pro se
7627 Old Receiver Road
Frederick MD 21701

August 1, 1985

CERTIFICATE OF SERVICE

I hereby certify that this first day of August 1985 I caused copies of the foregoing Plaintiff's Response to Defendant's Opposition to Plaintiff's Rule 60(b) Motion to be mailed first-class postage prepaid to

Ms. Renee Wohlenhaus
Department of Justice
Room 3334
10th & Constitution Avenue, NW
Washington, D.C. 20530

Harold Weisberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
V.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defandant.	)	
	)	

ORDER

Upon consideration of Plaintiff's Rule 60(b) Motion to Vacate Judgment, of Defendant's Opposition thereto and of Plaintiff's Response to Defendant's Opposition, and of the arguments of the parties, it appearing to the Court that Plaintiff having shown good cause, it is hereby

ORDERED, that the judgment is hereby vacated.

It is further

ORDERED, that this Court will determine at a time convenient to the parties whether or not the Defendant, as alleged by Plaintiff, engaged in fraud, misrepresentation and false swearing.

DATED: _____

_____
UNITED STATES DISTRICT JUDGE