

To: Mimi Stavis, Center for Constitutional Rights

From: Sol Rabkin

Date: September 11, 1986

Subject: Possible legal assistance to Harold Weisberg  
in Weisberg v. FBI - U.S. U.S. D.C. Dist of Col.  
Civil Action No. 78-322 + 78-420 (Consolidated)

This action arose in 1978 when Weisberg filed FOIA  
suit for FBI's Dallas and New Orleans field offices' JFK  
assassination records. The FBI obtained extensions of time  
to comply and provided Weisberg [W] with some material <sup>in 1982</sup> and  
claimed full compliance. ~~The Department of~~ <sup>W opposed claim</sup> and was upheld  
by Dept. of Justice's appeals office (W is an expert on the JFK  
case and author of several books on it ~~attacking~~ <sup>attacking</sup> Marshall report's validity)  
FBI was ordered to make <sup>additional</sup> ~~subsequent~~ searches. Later (4/5/82)  
W. because of his increasingly poor health sought to drop his  
case. The FBI opposed this claiming that it planned to  
make a Vaughn index of its ~~JF~~ files on the matter

even though it acknowledged in its papers that this could have required some 126,000 man hours. (W states that the effect of its making such an index could have been suppression of the entire FBI JFK assassination site). FBI never moved for summary judgment on ground of claimed full compliance. Motion denied, 10/27/82 ~~on ground~~ <sup>ground</sup> Court <sup>sums</sup> stated "search inadequate" and "issues raised by W material."

FBI then sought discovery ~~as~~ <sup>as</sup> necessary for it to prove compliance with W's FOIA demand, FBI discovery demand was for "each and every" document and explanation of his claim of noncompliance. W, who had already voluntarily <sup>previously</sup> provided FBI with 2 full filed drawers of material from his file, <sup>opposed the request because</sup> was not only ~~was not only~~ <sup>was not only</sup> ~~excess~~ <sup>excess</sup> ~~burdensome~~ <sup>burdensome</sup> but <sup>also</sup> ~~then~~ <sup>then</sup> beyond his physical abilities. He had ~~suffered~~ <sup>suffered</sup> thrombophlebitis in both legs and thighs, had a ~~left~~ femoral bypass in Sept. 1980 plus two emergency operations and could no longer

go down to the cellar of his home where his very voluminous files were stored. W cannot stand still at all, can walk only short distances and has great difficulty with stairs.

W sought ~~again~~ to drop his <sup>action</sup> case with prejudice. ~~Despite the foregoing the Court granted the FBI's~~ The

FBI opposed and the case was not dropped. On Nov. 18, 1985

the District Court dismissed W's action for W's failure to comply with the defendant's discovery demand. The FBI also <sup>had</sup> then ~~sought~~ petitioned for attorney's fees incurred by it in

the litigation. The D.C. Court of Appeals affirmed the

District Court's dismissal of the action and remanded to the District Court for determination of the validity of the FBI's claim for attorney's fees. That Court on June 13, 1985 assessed W for between \$0 and \$0. ~~When W~~

When W refused to pay, FBI's counsel threatened contempt. FBI then obtained a duplicating judgment ~~deems~~

W's Counsel Counsel, a volunteer from ACLU. On the appeal Mad  
 group represented W's attorney, Lesov, and ACLU appeared  
 W. The D.C. Appeals Court eliminated the judgment against  
 W's attorney

Thereafter W sought relief from the judgment against  
 him under Rule 60(b) alleging fraud, perjury and misrepresenta-  
 tion by the FBI in its affidavits in support of its request  
 for discovery. He based his petition under the rule on new  
 evidence consisting of FBI records disclosed to another party  
 invoking FOIA which showed that the FBI's claim of com-  
 pliance with W's FOIA request was false.

FBI did not answer the petition substantive basis of  
 W's petition but opposed in the ground that the petition  
 was too late claiming that the time limit on Rule 60(b) is  
 one year. The Court ruled for the FBI. W moved for re-

consideration. The Court's memo granting FBI's motion to dismiss is containing substantial factual errors stating that the suit is for material on the King assassination and for records of the New Haven office of the FBI.

This matter is of concern because it manifests a gross attempt by the FBI to undermine the rights given by the FOIA and an effort by the FBI to invoke the aid of the District Courts to furnish a member of the public and a journalist and writer who has criticized it and thus to discourage resort to the FOIA by others.

The FBI's action in refusing to allow W to withdraw his action with prejudice and obtaining the Court's sanction for such action by using first the claimed desire to make a Vaughn index and then the discovery of the FOIA user to unduly burden him raise

a novel ~~question~~ question as to <sup>(constitutional</sup> the validity of a ~~con~~ govern

ment agency<sup>and a court</sup> using an FOIA action to punish the

bringer by using Vaughn index proceedings and discov

ery proceedings <sup>as a basis for punitive action under</sup> ~~to punish the~~ ~~to prevent harm to~~

Rule 11.