Filed FOIA suit for FBI's Dallas and New Orleans field offices' JFK assassination records in 1978. FBI asked for tim e to comply - four years - without making any actual searches, claimed full compliance, was forced to make a few subsequent searches by appeals office. 4/5/82: Weisberg sought to dismiss and not refile case because of adverse health. FBI refused, insisting on making a Vaugh index (which could have required 126,000 man hours). FBI filed for summary judgment. Refused 10/27/82: "search inadequate;" "issues raised by Weisberg material." FBI then demanded discovery as necessary to prove compliance or because Weisberg's subject-matter expertise necessary to locate any withheld records. 12/6/82: FBI sought "each and every" reason and document related to extensive discovery demand. Weisberg's then counsel, Jim Lesar, asked him to make some kind of pro forma response. Weisberg refused because: this would have required false swearing; the discovery demanded was not necessary or appropriate in this case (the first FOIA in which defendant demanded discovery); as clearly excessive and burdensome; as beyond his physical capabilities (health limitations and cost); because he had already, voluntarily, provided all such info of which he knew - two full file drawers of it; FBI's attestations not truthful. Without trial, judgment against him first entered 4/28/83. (No denial of any of Weisberg's above attestations, no judicial determination of fact, no findings of fact.) Weisberg refused to pay, FBI counsel threatened contempt, which Weisberg dared. FBI then sought and got a duplicating judgment against Lesar, creating a conflict of interest. On appeal (only) Nader law group represented counsel, ACLU Weisberg. Remand on judgment against counsel, judgment amended to eliminate him. Pro se, Weisberg filed for relief from judgment under Rule 60(b), alleging fraud, perjury and misrepresentation. The new evidence consists of FBI records disclosed to another requester by the FBI affiant in Weisberg's case. This proved beyond question that he had sworn falsely as basis for discovery order and that FBI's counsel had misrepresented to obtain it. The FBI did not make even a pro forma denial. It claimed a one-year time limit under Rule 60(b), which is not true. 10/18/85: The judge held for the FBI. Weisberg moved

for reconsideration, especially under 60(b)(5) (equity) and (6) (any other reason - fraud, perjury, misrepresentation), which are entirely ignored in Order and Memorandum reaffirming judgment.

The memorandum is full of incredible factual error, i.e., suit said to be for King assassination and New Haven FBI records, neither true, etc., distortions of cases and authorities, claims that Weisberg is limited to 60(b)(1-3), and its one-year time limitation on new evidence. New Evidence first available to Weisberg after case on appeal. ACLU said it would use on remand but did not. Appeals brief due 10/1.

Some unusual aspects of this case:

"Manifestly unconscionable that a judgment be given effect," Moore's Federal practice." FOIA requires a good-faith search with due diligence. No searches were ever made to comply with Weisberg's requests. Dallas claimed compliance before making the few searches later ordered by the appeals office, New Orleans substituted an earlier and different search, then rewrote the search slips. But, because Weisberg had been asked by the appeals office to provide all possible help in this "historical" case, he did provide two full file drawers of memos of information and documentation, almost all FBI records, receipt acknowledged in the litigation. As usual, the FBI ignored all of this. Undeniedly, it includes all "discovery" information and documentation of which Weisberg is aware. The appeals office wrote Weisberg that nobody had ever provided as much information. So, on this basis alone, no discovery was necessary or is justified and the demand is "manifestly unconscionable." Some of what the FBI's affiant swore did not exist was later found exactly where Weisberg had said it was and after two years it remains withheld, without claim to any exemption.

Weisberg's health and the limitations it imposes on him: Having suffered earlier thrombophlebitis in both legs and thighs, he had a left femoral bypass in 9/80, followed by two emergency operations, one not uncommonly fatal, that left him permanently partially disabled. He cannot stand still at all, can walk at best about two city blocks before having to rest and elevate his left leg, has difficulty with stairs which he cannot use frequently, is enfeebled by all of this, lives on a high level of anticoagulent, and a simple fall or minor accident can cause his death, which makes use of stairs sometimes hazardous.

Five hours of therapy: Since the third of these cardiovas$cular operations in 1981, three hours of therapy are required daily and since the first of this year, five. During the period of "discovery," over a six-month period, he suffered a series of

other illnesses, including pneumonia and pleurisy twice, that debilitated and limited him even more. (He is 73) All his medical records are in the case record. He believes that with this undeniedly in the case record, it was "manifestly unconscionable" for the undeniedly excessive discovery to have been demanded and ordered. (There has been no denial or even attempted refutation of any of his attestations and none at all of his allegations of fraud, perjury and misrepresentation.) All his FOIA records - some 40 file cabinets - are in the only place he has for them, his basement, and thus he was, for compliance with the discovery order, without dispute, effectively denied access to them. His only regular income is Social Security, now escalated to $368 a month, so it would be "manifestly unconscionable" to order him to rexerox all he has already provided and in any event that is - attested to and undenied - beyond his physical and financial capabilities. The many detailed, documented and unrefuted affidavits he filed do identify and locate much of the relevant and withheld information.

(On this, in all his FOIA suits, the FBI revised his requests unilaterally. In this case it actually attested to its substitution for his Dallas request and his attestation that this did not and could not comply is unrefuted.)

FOIA's investigatory files exemption was amended in 1974 over one of Weisberg's earlier cases and thereafter DJ had a "get Weisberg" crew of six lawyers assigned to his cases. FBI noncompliance with <u>any</u> of his requests was the subject of Senate FOIA subcommittee testimony by DJ witnesses, several of whom testified that they could not justify the FBI's mistreatment of him.

He differs from all others known as "critics" of the official soclutions to the JFK and King assassination investigations in not being a conspiracy theorist. After the 1974 amending of the Act, he assumed a pro bono and public role. He makes everything he has obtained available to all, provides facilities for the use of these records and for copies of them. All his records are already a public archive either by copies

already provided or for later depsit, without any quid pro quo. (Wisconsin Historical Society, prestigious in history, at the University of Wisconsin, Stevens Point.) Published: six books on the JFK assassination, one on King.

Weisberg's work is a large study of how our institutions functioned or failed to function in those times of great stress and thereafter. It thus is a major embarrassment to the FBI, DJ and other components.

In the King case, after the appearance of his book on it in 1972, he became Ray's investigator, provided Ray with counsel, conducted the successful habeas corpus investigation and then the investigation for two weeks of evidentiary hearing in federal district court in Memphis. This seriously embarrassed the FBI because it exculpated Ray. (The judge held that guilt or innocence was immaterial, that Ray had had effective assistance of counsel and had entered his (coerced) guilty plea voluntarily and knowingly.)

Another unusual aspect is that before the case was dismissed as a sanction Weisberg provided, without refutation and with extensive documentation, that many other and relevant records existed and were known to exist by the FBI.

The records disclosed in the other litigaton by the FBI's affiant in this case leave it beyond question that their existence and relevance were known to the FBI and, through Weisberg's attempted uses of selections of them, to its counsel. It is undenied that this new evidence proves that the entire basis for the discovery demand was perjury, fraud and misrepresentation, that no discovery from Weisberg was necessary, and that no discovery from Weisberg could enable the FBI to prove that it had complied with his requests. Yet the FBI's misrepresentations and false swearings to the court were not withdrawn. FBI counsel's conduct was so bad that in an effort to get the precedent of sanctions against Weisberg's counsel it fabricated defamations and presented them to the appeals court, suggesting counsel's disbarment. FBI counsel attributed a never really defined Svengali influence that Weisberg allegedly exerted on

his counsel that was said to have been "closely observed by the district court throughout the five years of the litigation." But Weisberg was never before that judge in this litigation and for all but the first calendar call, which was pro forma and did not require his presence, it was physically impossible for him to have been there. In addition, the transcripts show that he was never there. And for the first four of those five years, nothing happened because the FBI took that time to process what it ultimately provided.

Weisberg is aware that under Rule 60(b) he can file an independent action and that it need not be in the same court or jurisdiction. If any pro bono group were willing to do this and include damages, which he believes is possible outside FOIA, he would be willing for it to receive anything obtained. (There is DC precedent under failure or refusal to perform officially assigned duties.)

He believes that it is significant that there is not even pro forma denial of his documented allegations of perjury, fraud and misrepresentation.

Familiarity with the case record is probably required to detect the many factual errors and misrepresentations in the district court's 3/4/86 Memorandum. He has drafted some of this and has other portions marked up.

Weisberg believes that amending the judgment to eliminate his counsel is, under the Rule, a "substantial" change in that it tolls the one-year limitation of clauses 1-3. Had that part of the judgment not been withdrAwn there could and he thinks would have been a chaotic effect on lawyers and litigation because lawyers would have been subject to sanctions any time their clients refused to take their advice. The case record is clear, Weisberg's lawyer made a strong effort to get h im to make a gesture and Weisberg refused - and so attested.