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.	)	

RULE 60(b) MOTION TO VACATE JUDGMENT, REOPEN CASE AND FOR OTHER PURPOSES

Rule 60(b) relates to reopening litigation because of "Mistakes," including "Newly Discovered Evidence; Fraud, etc." and it states that "(o)n motion and upon terms that are just, the court may relieve a party ... from a final judgment, order or proceeding for ... (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party ... or (5) ... is no longer equitable ..."

Weisberg makes this motion under Rule 60(b), based on "newly discovered evidence," because he and the courts were victimized by fraud, misrepresentation and other misconduct, including false swearing that appears not to have been accidental or unintended as stated herein, and because, regardless of what may or may not have been true earlier in this litigation, it is no longer equitable to assess any fees against him under these circumstances. Weisberg believes that the offenses he herein documents with this newly discovered evidence ought invoke

the conscience of the court, which did not make the requisite "Finding of Fact" to begin with, and he prays the court to invoke both its conscience and a judicial inquiry to determine whether or not the Federal Bureau of Investigation Special Agents (SAs) and counsel had knowledge of the misconduct he alleges. Weisberg believes also that this is necessary to the integrity and the constitutional independence of the judiciary.

If the court does not grant this motion to vacate and reopen, Weisberg believes, particularly because the court did not make the requisite "Finding of Fact," that he has a right to a trial on charged offenses, stated with specificity, and he herewith requests such a trial.

BACKGROUND

Plaintiff Weisberg is 72 years old and is in seriously impaired health because of not uncommonly fatal complications following arterial surgery. He is severely limited in what he is able to do, as is detailed in the case record, which also includes his medical history, in particularly great detail with regard to the additional illnesses he suffered during the period in which the defendant was demanding alleged "discovery" from him.

Weisberg has published six books on the assassination of President John F. Kennedy and its official investigations and one book on the assassination of Dr. Martin Luther King, Jr., and its official investigations. In this work Weisberg drew upon earlier experiences as an investigative reporter,

a Senate investigator and an intelligence analyst. His work differs from other works in these fields in that he has not pursued whodunits and instead has made a careful and detailed study of the functioning (and failures) of the basic institutions of our society in those times of great stress and thereafter. Two decades after he published his first book (which also was the first book on the "Warren Commission" appointed by President Johnson) it remains in use as a college text, as his later books also are.

After the enactment of the Freedom of Information Act (FOIA) he made information requests, mostly of the FBI, to obtain undisclosed information. It is not generally known, but the FBI decided not to provide this Presidential Commission with a considerable amount of relevant FBI information. It ordered its SA witnesses not to volunteer any information to the Warren Commission, and its founding director praised SA James P. Hosty, Jr., records relating to whom are at issue in this litigation, after Hosty deceived and misled the Commission and knowingly lied to it. (Hosty was the Dallas office Oswald case agent.) Among other things, Hosty attested to the Commission that the FBI has no reason to believe that Oswald was capable of any violence and had no history of violence when in fact Oswald had, in a letter to Hosty, threatened to blow up the Dallas FBI office and/or the headquarters of the Dallas Police Department. There was an FBI internal investigation of this matter when it was leaked to the Dallas Times-Herald in 1975,

after the retirement of the Dallas Special Agent in Charge (SAC) Gordon Shanklin was secure. Both versions of the bombings Oswald threatened are included in the FBI's investigation of itself. In that investigation Hosty attested to his personal destruction of Oswald's threatening letter. This he stated was on SAC Shanklin's direct order. On the interpretation that it would be "bootstrapping," the Department did not prosecute Shanklin for perjury. This is but one of innumerable illustrations of FBI withholding of enormously significant information from the Warren Commission and thereby of its control of the Commission's investigation, for which the FBI provided most of the investigative and technical services.

Like this, the withheld information Weisberg sought under FOIA is potentially embarrassing to the FBI and from the very first, under a variety of subterfuges, the FBI decided to ignore Weisberg's FOIA requests. This was approved up to and including Director Hoover, as the records Weisberg provided in his FOIA litigation reflect. In 1967 two FBI SAs, Lyndal Shaneyfelt and Marion Williams, urged that Weisberg and his writing be "stopped," their word, and in Shaneyfelt's case the filing of a spurious libel suit against Weisberg, with Shaneyfelt fronting for the FBI, was approved all the way up to and by Director Hoover. Shaneyfelt then chickened out.1/

1/ In C.A. 2301-70 SA Williams swore that if the FBI disclosed copies of the results of nonsecret laboratory ballistic-related testing, the FBI's informer system and the FBI itself would crumble into ruins. The information sought is only that which is normally used publicly in prosecutions and when the FBI stonewalled that litigation for almost a decade, it did not

Thereafter, SA T. N. Goble, who had the internal reputation of being a "liberal Harvard lawyer," in an opinion also approved and acted upon, held that because the FBI does not like Weisberg under FOIA it is not required to respond to his requests. This was FBI policy and almost without exception the FBI ignored all of Weisberg's information requests and without any exception, once he filed suit, stonewalled with a variety of devices and stratagems. In no case did it begin by making and properly attesting to the required searches. In this litigation, in which Weisberg seeks information from the FBI's Dallas and New Orleans offices, it asked for and was granted four years to comply and even then did not provide any first-person attestation to making searches responsive to Weisberg's requests. Instead of providing an attestation relating to any search by the Dallas office, the FBI provided an attestation by FBIHQ SA supervisor John N. Phillips in which he actually attested that no search was made anywhere and instead of a search, particularly in Dallas, to which Weisberg addressed his request, SA Thomas Bresson at FBIHQ decided to limit Weisberg to the companion files of those of FBIHQ that had been disclosed earlier. 2/

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crumble with disclosure. However, in 1974, citing that litigation the Congress amended FOIA's investigatory files exemption to eliminate the FBI's revision of the legislation and its alteration of the meaning of this exemption. This opened to public inspection some of the FBI's and CIA's "dirty works" in which they targeted on and in some instances destroyed Americans who had not engaged in any criminal activity but whose views were not in accord with the party lines of the agencies.

2/ Weisberg attested that Phillips was not competent to provide the FBI's attestations in this litigation because he lacked personal knowledge and because those with personal knowledge

With regard to the New Orleans requests, where again no search to comply with Weisberg's request of it is attested to other than indubitably falsely, SA Clifford Anderson provided handcopied search slips relating to an entirely different request of a year earlier.

The degree to which the FBI has gone not to comply with Weisberg's requests is amply reflected, without any refutation at all, in the case record in this and in other litigation. When the Senate's FOIA subcommittee heard that some 25 of his information requests, going back to 1968, had been entirely ignored and the Department assured that subcommittee that it could not defend the FBI's record and would take care of those requests, it did no such thing and they remain ignored to this day, even after Weisberg filed this list as an additional appeal before he filed and during this litigation. His filing of this list with the FBI remains without response after a decade. These were mostly limited requests, for few records requiring little time for compliance. When they were ignored, Weisberg believed he had no alternative to making inclusive requests and he thereafter made the all-inclusive requests involved in this litigation.

Illustrative of the complete ignoring of Weisberg's requests

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were available to the FBI. This court thereafter continued to accept Phillips' incompetent attestations. However, in Shaw v. FBI No. 84-5084, the appeals court held that because he lacks personal knowledge of the FBI's JFK assassination investigation, Phillips is not competent to attest as he attested in this instant cause.

are two, for Dallas and New Orleans information, that he filed in 1970. (Exhibits 1A and 1B) The proper form has boxes for indicating which of the three possible options the FBI exercised. It ignored all three. These perfectly proper requests were not "granted," not "denied" and not "referred" elsewhere. However, although it languished for more than a half year, Weisberg's covering check was not entirely ignored. After being torn into shreds and then pieced together and taped rather amateurishly, as can be seen from the attached xerox of what remains of both sides (Exhibit 2), this Scotch-taped confetti was actually depsited by the government, accepted throughout the banking system and ultimately was honored by Weisberg's bank and charged to his account!

Early on, when it had reason to expect eternal secrecy to protect its transgressions against American belief, if not also law, the FBI engaged in a campaign of vile defamation of Weisberg. This and the other courts did not have to accept Weisberg's interpretations because he provided copies of the FBI's own records. They include complete fabrications. In no instance has the FBI made any response, issued any denial or explanation and, naturally, there has been no apology. Only widespread misuse.

One such fabrication consisted in converting an annual religious gathering, at a small farm the Weisberg s then owned, after the Jewish high holidays (which are in September and October) into their alleged annual celebration of the Russian

Revolution, which was in November. Weisberg's alleged subversion, if subversion it was, actually was that of a rabbi. It consisted of children seeing eggs hatch, playing with just-hatched chicks and waterfowl, gathering eggs just laid and playing with and riding on tame farm animals. This was so truly great a subversion that the University of Maryland adopted it and carried on the project for children as "McDonald's Farm." But the FBI so cherished this fabrication that it gave it wide distribution. While the full distribution has not been disclosed to Weisberg, records he has filed with the courts reflect distribution to the White House, Attorneys General and their closest assistants and even to those defending against Weisberg's FOIA suits.

Another illustration of the FBI's contrived defamations of Weisberg resulted from his informing the Department that FBI records it provided to the Alabama Highway Patrol were being given by it to a notorious racist, J. B. Stoner, who was Weisberg's source. The FBI contorted Weisberg's accuratre information, provided in the FBI's interest, into a conspiracy to defame the FBI by Weisberg and this virulent anti-Semite. (Stoner since has been convicted of bombing a black church.)

So completely did the FBI contort everything in order to better fabricate a defamation, it even stated that Weisberg sought the interview when in fact the FBI knew he had appeared at the Department's request and about an entirely different and unrelated matter of interest to the Department.

When those in the FBI who had no knowledge of the subject matter of the records disclosed these and other such defamations

and they included reference to withheld underlying records, the underlying records remain withheld. Thus the complete falsehood that Weisberg had personal relationships with a Soviet national in the Soviet embassy is disclosed but the underlying records cited, which cannot possibly justify this falsehood and cannot have any basis in fact at all, remain withheld. The same is true with regard to the FBI's disclosed falsehood which states that Weisberg had visitors from the Soviet embassy, as he never did.

Also early on and consistent with its efforts to prejudice everyone possible with the untrue belief that Weisberg was a Commiunist, toward the end of 1966, the FBI construed its law enforcement and national security responsibilities to require that it intrude into Weisberg's rights and possibilities as a writer in efforts to ruin him and his first two books, according to its own records Weisberg provided, from New York to San Francisco. In New York it provided information to four private lawyers for them to use in an effort to ruin Weisberg and his first book on a TV talk show. In San Francisco one of its symbol informers tried to red-bait Weisberg with garbled and misrepresented matters of before the FBI's informer was old enough to be aware of them. In both instances the FBI's supposed law enforcement and/or national security efforts backfired and in both instances it sold out all copies of his books that were available. In New York, in fact, its self-defeating propaganda efforts required an additional printing of his first book to meet the demand created in New York alone.

After FOIA's investigatory files exemption was amended in 1974, a crew of six Civil Division lawyers was detailed as a "get Weisberg" crew, in addition to FBI personnel so assigned. After all six appeared in one case and failed, the stonewalling detailed and unrefuted in the case record in this litigation was opted instead. Thus the FBI consumed the first four years of this litigation in processing records of its choice without making the initial searches to comply with Weisberg's requests.

One means of stonewalling was the claimed need for discovery prior to any competent attestation to search by those of personal knowledge. In no instance did the FBI present any evidence to counter what Weisberg presented to this court relating to this alleged discovery. Instead, it counsel merely stated what was not true and what, under oath and himself subject to the penalties of perjury, Weisberg attested was not true. In presenting fabrications to the courts, counsel was no less imaginative and innovative than the FBI. For example, in the FBI's appeals brief (at page 44), in seeking to attribute serious misconduct to both Weisberg and his lawyer and to invoke additional sanctions against Weisberg's lawyer, it told the appeals court that "(t)he district court had closely observed counsel's relations with plaintiff in this litigation for more than five years."

The actuality is that this court did not - ever - see Weisberg with his counsel in this litigation because the one time he was present, in 1979, having agreed to give the FBI time to process records, he sat with a friend in the audience, not with his lawyer. The FBI then took the first four years

of this litigation to process those records and nothing transpired before this court. From the time of the first status call, as the case record reflects, it was physically impossible for Weisberg to be present; and as the transcripts reflect, he was never present - not once. Yet to this day no one in the FBI or of its counsel has seen fit to withdraw or to modify in any way this contrived defamation of both Weisberg and his counsel, gross and deliberate a malevent untruth as it is.

The defendant's obfuscations and misrepresentations were so successful that by the time this case was before the appeals court it believed - and actually stated (decision, page 3) - that this lawsuit seeks records relating to the King assassination and its investigation, as it does not.

To obfuscate the fact that the FBI did not and never intended to comply with Weisberg's New Orleans request, its appeals brief, in pretended direct quotation of his requests (page 2) eliminates entirely the language of the request that relates uniquely to the New Orleans records. This misrepresentation, which cannot be accidental, also has never been withdrawn, never been apologized for. (It also pretends that the Dallas request is limited to its introductory sentence.)

Essentially, the FBI gave two reasons for its discovery demand, Weisberg's unique subject-matter knowledge and expertise and the claim that, if and when Weisberg provided it, the FBI would be able to prove that it had complied with his requests - even though, as it knew and as the case record reflects, it had not even made the required initial searches but had

without sanction substituted for them and had even attested to that. This attestation was provided by SA John N. Phillips, case supervisor. Throughout the last part of this litigation, Weisberg provided a series of affidavits, making himself subject to the penalties of perjury if he himself lied about what is material, in which he detailed the varying degrees of untruthfulness he attributed to Phillips and others in the FBI. When this court ignored Weisberg's attestations, he requested that it determine whether or not it had been addressed with less than truth by the FBI. This court declined. And when Weisberg, again making himself subject to the penalties of perjury, presented his several reasons for not providing this supposed "discovery," the FBI made no effort to provide counter-affidavits and this court ignored Weisberg's attestations.

As Weisberg then noted, what the FBI demanded under the guise of discovery greatly exceeded its claimed need. It did not demand merely proof of the existence of withheld records or of information indicating their existence. It demanded "each and every" reason, "each and every" bit of information and "each and every" related document. This meant that if in Weisberg's some sixty file cabinets of materials he had 100 different records relating to the existence of what the FBI withheld while only a single document would establish the existence of the information, he was actually required by the demand and the court's Order to search out, copy and provide all 100 relevant documents. In addition, the demand and the Order also required Weisberg to provide all the other related

information he had. With regard to one such Item, to which Weisberg returns below, the recordings of the assassination period broadcasts of the Dallas Police Department, in order to be in compliance with both the demand and the Order, in addition to the numerous FBI pages Weisberg had already provided - and the FBI thereafter ignored - he would have been required to search all that he recalled throughout the 10,000,000 published words of the Warren Commission, throughout its 900-page Report and appended 26 volumes of evidence, plus what he had earlier recalled from the Commission's 300 cubic feet of records deposited in the National Archives. It obviously was and is impossible to attest truthfully to having provided what was demanded and ordered, "each and every" fact and document Weisberg has or of which he knows. And when he noted this great excessiveness, the demand was not altered and the Order was not modified in any way. Because of the possibility that if he forgot anything he would have been subject to a charge of perjury is one of the reasons Weisberg declined to comply with the Order. Moreover, it is obvious that "each and every" fact, reason and document is not required in any legitimate discovery demand. A single fact, reason or document is all that is required to establish the existence of the withheld information. Conversely, if a single record or fact established the existence of what is relevant and withheld, there is no possible way in which "discovery" would have enabled the defendant to establish compliance. Only the opposite is possible.

Weisberg also attested, from his knowledge of the FBI's

records and record-keeping systems, that the FBI required no discovery from him. As with all else to whch Weisberg attested, the FBI did not provide any evidence to refute this. Moreover, as Weisberg also attested and established by attaching copies of them, even the irrelevant New Orleans search slips itemized relevant records that were and still, to this very day, remain withheld. (Thus the FBI's need to misrepresent to the appeals court what was actually requested of the New Orleans office.

Weisberg attested that and explained how what was demanded and ordered exceeded his physical capabilities, and without any contrary evidence being offered by the FBI it is unrefuted that his physical condition alone made it impossible to comply with the discovery demanded and ordered. He argued with regard to this and the other reasons he gave that burdensomeness is a proper and accepted reason for opposing even legitimate discovery demands.

To this, but without taint of evidence, decency, honesty or fact, the FBI's counsel claimed that because Weisberg had been able to provide affidavits during the period of time in question - some six months - he would have been able, in the same time, to comply with the discovery demand and Order. In this misrepresentation the FBI's counsel omitted what Weisberg attested to, that he was able to prepare his affidavits without the searches and copying required by the demand and Order, which relate to records in his basement when he is limited in the use of stairs and can stand only briefly before file

cabinets because of his circulatory problems. He also showed that the time required of him for the preparation of those affidavits came to only a few minutes daily over the period of time in question.

And when the FBI's counsel, without regard to Weisberg's age and ill health, with which the FBI has been familiar for more than a decade, made the nastiest kind of slurring and defamatory remarks to pretend that Weisberg was not honest in his representations regarding the poor state of his health, Weisberg provided an additional affidavit to which he attached copies of his hospital bills beginning with the first of his three serious surgeries (the second two emergency operations) and for the period of the discovery demands, copies of the bills of his family doctor. These itemized an additional long series of debilitating, painful and not infrequently dangerous illnesses, ranging from repeated pneumonia and pleurisy to the internal hemorrhaging they caused. (Weisberg has for a decade lived on a high level of anticoagulant, for which it is required that his blood be tested at least twice weekly to be certain that he does not bleed to death. A simple fall or bruise or cut that would be insignificant to another can be fatal to him, as he, without refutation, attested.)

In its Memorandum and Order this court cited what the appeals court said, that Weisberg had refused to provide the information demanded. While the appeals court did so state, it is not correct. Weisberg's position throughout is and has

been what he attested to, without refutation, that he had already provided all the information and documentation of which he is aware, to so great an extent that his copies as he has them filed take up at least two file drawers.

Weisberg had to estimate because he has two full file cabinets, eight full file drawers, of such information and documentation as he had provided it to the defendant. This began with the request of another court, in Weisberg's King assassination litigation, and was continued, with the same appeals officer, at his request, in this litigation. Because FBIHQ records also are involved in the fully stuffed JFK assassination file cabinet of what Weisberg provided, while it is probable that, because most relevant Dallas and New Orleans records were withheld as "previously processed" in the form of the FBIHQ records, Weisberg estimated conservatively that only half are involved in this litigation.

Without refutation, without even the customary slurs of the FBI's counsel, Weisberg attested that making additional xeroxes of what he had already provided, aside from being unnecessary, also is beyond his physical and financial capability. (Since the time of that attestation, his Social Security check, his only regular income, has grown to the munificent sum of $356.)

In addition, and it was not possible for Weisberg to estimate the considerable extent of this, throughout his affidavits in this litigation, Weisberg provided the kind of information included in the defendant's "discovery" subterfuge - only to have it, as without refutation he attested, consistent with

the FBI's long record in this and his other litigation, ignored. Again, the Dallas police broadcasts of the assassination period are illustrative. Weisberg informed the court and the FBI and its counsel where such materials had been stored in the Dallas office - not in the file cabinets but in a special storage chest. His source was records provided in this litigation and thus no discovery from him was required for the FBI to know. In response SA Phillips swore that the FBI never had any such recordings and that obtaining the recordings was the self-starting, personal endeavor of an FBI employee. When Weisberg then provided its own records reflecting that the FBI had transcribed those recordings of the police broadcasts and provided the transcripts to the Warren Commission, which published them, without regard to the obvious inconsistency, Phillips then swore that the FBI had given the recordings to the Commission. However, those recordings are not in the Commission's records and, although everything forwarded from the field offices was covered with a written record and everything delivered to the Commission was hand-delivered and additionally covered by a separate FBI record, the FBI could not supply any record even suggesting that Dallas had forwarded the recordings to FBIHQ or that FBIHQ had given them to the Commission and, as of the time this lawsuit was filed, they were precisely where, without refutation, Weisberg had attested they were in the Dallas office. Then, when the House of Representatives created a committee to investigate the assassination, and the

FBI did not have them in its main assassination file, it retraced what it had done and the Dallas office filed lengthy reports on this, which Weisberg attached to his affidavits. Once he did that, the FBI withheld the remaining relevant records. Nonetheless, Weisberg had informed it of the need for them created by the request of the House and again, consistent with its long record, the FBI failed to look there. This is carried further under "new evidence." It is obvious that there is no earthly effort Weisberg could have made to inform the FBI fully and accurately, if as it did not, it had required any assistance from him, and he did this, under oath and in this litigation, complete with copies of the FBI's own indices and records.

All of this was and to this day remains ignored. And this is but one of countless such illustrations, where he even provided the correct field office file numbers only to be ignored and, along with the courts, only to be imposed upon by the spurious claimed need for "discovery" that in turn was only an additional and unnecessary demand for what he had already provided.

So, regardless of what both the defendant and this court ignored that is without refutation in the case record and, regardless of what the appeals court stated as the end result of persisting misrepresentations by the defendant, the plain and simple truth is that Weisberg had already provided - before discovery was demanded - all that was demanded under discovery.

Despite the total absence of refutation of the numerous reasons Weisberg gave for not complying with the Order and his likewise unrefuted attestation to having provided all that was demanded in any event, and without any "Finding of Fact" by this court, Weisberg was held to be subject to sanctions.

THE NEW EVIDENCE

By "new evidence" Weisberg means relevant and withheld FBI information that the FBI knew it had and withheld from him in this litigation despite its obvious materiality and importance. As will be seen, its existence was known to John Phillips, the FBI's affiant in this litigation, when he executed his affirmations subject to the penalties of perjury. This new evidence now in Weisberg's possession consists of copies and references to of field office records which establish beyond any question the existence of other and relevant records sworn by Phillips not to exist. This is its history.

The House of Representatives established a Select Committee on Assassinations (HSCA). In order to service this committee the FBI collected for its use, in the Records Management Division at FBIHQ, which also handles FOIA requests and where Phillips is a supervisor, FBI records relating to the assassination of President Kennedy. Independently, both Weisberg and a friend, Mark Allen, filed FOIA requests for this information, Allen filed suit (C.A. 81-1206) when it was not provided, and when Allen provided Weisberg with copies of information he believed is of interest to Weisberg, beginning after this case went

up on appeal, Weisberg withdrew his request for that information. Weisberg has a copy of Phillips' January 12, 1982, affidavit identifying himself as supervisor in the Allen case. Weisberg also understands that at least two of the FBI SAs who assisted Phillips in this litigation assisted him in the Allen case. It thus appears that, in addition to others in his Records Management Division and elsewhere in the FBI, including the Dallas and New Orleans field offices, at the very least Phillips and these two assistants have knowledge of what is relevant in Weisberg's litigation and of what they have disclosed in the Allen case. They thus knew of the existence, materiality and importance of this new evidence at the time of Phillips' attestations relating to its alleged nonexistence and with regard to the alleged need of discovery from Weisberg and the alleged purposes of that discovery.

Instead of making detailed response to Weisberg's thoroughly documented attestations to Phillips' untruthfulness, Phillips in the end contented himself with a sworn blanket denial of any untruthfulness.

Whether or not Phillips knew, as Weisberg had written, that Allen was providing copies of what Phillips and his assistants disclosed to Allen and that Weisberg therefore had withdrawn his request, in his above-cited affidavit in the Allen case he attests (in Paragraph 9) to knowing that Weisberg "made a similar request" on December 4, 1979. At the least, therefore, Weisberg believes that Phillips and/or his assistants ought at least have suspected that he was obtaining copies of some

of what they were disclosing to Allen, samples of which are attached hereto. Whether or not they had any reason to believe that Weisberg had or would obtain knowledge or copies of what they were disclosing to Allen, it is apparent that they had personal knowledge of the existence and importance and materiality of this new evidence at the time of Phillips' attestations in this instant cause and ever since then, including at the time this litigation was before the appeals court, which is when Weisberg began to receive copies from Allen.

All of the records of which this evidence is part were physically in the possession of the FBI's responding component in this litigation throughout all the time it has been before the courts.

And what was disclosed to Allen, with Phillips as the FBI's supervisor, includes copies of withheld and relevant field office records as well as innumerable references to what is relevant and is withheld in this litigation. What the FBI disclosed to Allen leaves it without question that Phillips' attestations to the need and purposes of the alleged discovery and all other filings related thereon are and were known to be false and fraudulent.

While many more examples exist, Weisberg here limits himself to a few that are illustrative to establish the fact that the FBI's claimed need of discovery was fraudulent and that Phillips' related attestations were more than merely untruthful - were made when he was in a supervisory role in the very case

in which this new evidence was disclosed.

Recordings of Assassination Broadcasts on Dallas Police Radio

In addition, and this also bears on what the FBI's intent really is in all of Weisberg's litigation, he provides the proof that the Dallas police broadcast recordings, along with relevant records, were located long ago and exactly where Weisberg had indicated under oath, and to this very day remain withheld. No claim to exemption is made and indeed, none can be made when the FBI has already disclosed its source and a supposedly verbatim transcript which it authorized the Commission to publish and it did publish. (Part of the FBI's problem is its omissions in its allegedly verbatim transcription, of which Weisberg is aware from a tape recording of a segment he obtained after the Dallas police let others have it. Another part of the FBI's problem relates to the special panel of experts to study these recordings, convoked by the attorney general during the course of this litigation to study what was provided by the FBI.)

Unless the FBI departed from its standard procedure, Phillips' component has copies of all the related Dallas and other records and, given Phillips' supervisory role, it is reasonable to believe that he had knowledge of the foregoing.

The Department's letter (Exhibit 3) refers only to Weisberg's appeals of four and five years ago which also included this identical information. It makes no reference to this litigation. Here again, consistent with a long record, the appeals had

not been properly processed. There is no doubt of relevance, as Weisberg's response (Exhibit 4) makes clear. His response also illustrates the kind of detailed information he provided only to have it ignored. In this instance, for a half-year in which he has heard nothing further and received nothing at all. Copies of the recording(s) and all located records remain withheld to this very day, and this when no search need be made and no claim to any exemption can be justified or has been made. Although last December those records were being reviewed and a release determination "will be made as soon as possible," there has been no further word.

This new evidence, too, gives the lie to each and every one of the untruthful attestations made with regard to the material in question and based on which both courts ruled. It has been known to the defendant for not less than a half-year and none of the untruthful attestations has been withdrawn or modified in any way.

This new evidence also establishes that no discovery from Weisberg was necessary for the withheld information to be located and that no discovery from him would have enabled the defendant to establish compliance as Phillips attested when it knew it had not complied.

Obviously, the FBI knew that it had these recordings and related records - and had not provided them to Weisberg - when its attestations said the exact opposite, such as that it had <u>never</u> had them.

It also confirms what Weisberg attested with regard to the claimed need for discovery, that the FBI has a long record of ignoring all the information he provided, and he has provided an enormous amount of information and documentation.

Ticklers

When no ticklers were provided from the Dallas and New Orleans records, Weisberg appealed their withholding and raised the matter in this litigation. Weisberg attested that ticklers in cases like the assassination investigations are preserved as long as the case is "open," as the JFK assassination is; that their preservation is required for the efficient operation of the FBI, particularly when large volumes of records are involved; that FBI ticklers more than a decade old had been disclosed to him; and that, because of its great value, he had personal knowledge that when a person who had a tickler he no longer needed, it was transferred, intact, to the FBI's central records. Phillips first engaged in a series of semantical exercises based on knowingly incorrect definitions of ticklers and their form and purposes, was corrected by Weisberg, and he ultimately swore, after qualifying himself. that all FBI ticklers are "routinely" destroyed after a few days. There thus was direct conflict with regard to what is material between Phillips and Weisberg, each having sworn to personal knowledge.

Weisberg has only a small percentage of what the FBI and its supervisor Phillips have to this moment disclosed to Allen, but what has been provided to Weisberg fills two file

drawers and consists entirely of copies of extant FBI ticklers. The FBI's file folders are labeled as ticklers, the records when copied were designated to the appropriate parts of the ticklers, which are elaborate, and without reasonable question all of this was known to Phillips and his assistants when and after he swore that all ticklers are "routinely" destroyed by the FBI. These extant ticklers are more than 20 years old.

There is no discovery from Weisberg which would have enabled the FBI to prove it had complied or that it had made a proper search when it knew it had not and when Phillips knew that, instead of having such a search made in Dallas and New Orleans, he, in Washington, swore to the nonexistence of any JFK assassination ticklers. No discovery from Weisberg was necessary for the FBI to know that it has JFK assassination ticklers, but the fact of their existence and even the names of the agents responsible for their compilation were provided by Weisberg before the FBI and Phillips made false representations with regard to the FBI's alleged need for "discovery."

Here again, long before the FBI's demand for discovery, Weisberg had provided what it requested under "discovery" and it had, consistent with its long record, ignored what Weisberg provided

"Sex Dossiers" on "Critics" of the Assassination Investigations

The Associate Attorney General directed the FBI to process for disclosure its records on the "critics" of the official investigations. Phillips attested that ther FBI had no such

records. Weisberg attested that it had disclosed to him, in this litigation and elsewhere, the existence of field office records on the critics and that he provided copies of some such records, attached to his affidavits and appeals, along with relevant Dallas and New Orleans file numbers. He also attested to the use of seemingly inappropriate file classifications for the hiding of relevant and potentially embarrassing records of this and similar character and provided samples from what the FBI had disclosed.

One of the FBI's ticklers disclosed to Allen, in the form of an outline of what could embarrass the FBI, leaves it beyond question that the FBI and Phillips and his assistants in particular knew it had records on the critics. One page of this tickler, attached as Exhibit 5, under "3. Bureau Relations with Warren Commission," at "C. Related Bureau Actions and Activities," discloses that the FBI has withheld records on them from which it prepared "(7) sex dossiers on critics of probe."

(There is much else in this particular tickler that indicates the existence of pertinent and withheld records and that pinpoints areas of great embarrassment to the FBI in them. This, in turn, suggests motive in the FBI's dishonesties in this litigation. One illustration is the reference to Hosty's destruction of Oswald's threatening letter to him. This tickler states that it was "handled by Bureau Nov 24" or the very day Oswald himself was killed, "and effects in subsequent days" (sic).

This records the fact that at the very least FBIHQ was directly involved, did the "handling," and then undertook to keep the sordid mess secret, from everyone, from the President and his Commission and from the nation. Confirming what Weisberg had attested, that the FBI was hiding the fact that it never investigated the crime itself, and still another area of embarrassment to the FBI, is "Rosen [Assistant Director Alex Rosen, in charge of investigative division] characterization of FBI 'standing around with pockets open awaiting for evidence to drop in.'" Another area of embarrassment is disclosure of the nature of the relationship of Director Hoover and the FBI and the Warren Commission. This tickler discloses that Hoover opposed its formation and then had an "adversary relationship" with it. He actually intruded into its staffing by "blocking Warren's choice for general counsel," a man Hoover disliked, the late, respected Warren Olney, of the Department's Criminal Division. Not content with this the FBI then prepared "dossiers on staff and members," an obvious means of exerting pressure on the members and their staff; and after the Report was out, the FBI prepared additional dossiers on the Commission's staff. That the FBI spent tax money and staff and other resources to prepare itself to blackmail and that it prepared dossiers on such respected and eminent Americans as the chief justice; the former Director of Central Intelligence; Senator Richard B. Russell, who was in charge of Senatorial oversight and was the respected leader of Southern Democrats; Republican Senator

John Sherman Cooper; the respected banker, John J. McCloy, who had a long record of public service; the Congressmen members, Hale Boggs, another leader of Southern Democrats, and Gerald Ford, then Minority leader and later President, is truly shocking and scandalous, highly improper if not also illegal expenditure of public funds, and there is little doubt that if this had been disclosed during the Commission's life or during the controversy following publication of its Report, it would have shaken the nation. The dossiers the FBI prepared on the staff gives it dossiers on file on a number of prominent persons, a large number of prestigious lawyers, at least one judge, the head of a later Presidential Commission and Senator Arlen Specter of Pennsylvania.)

It is standard FBI practice to funnel information to and through its "office of origin," in this case Dallas, with New Orleans, because of Oswald's activity there and because of the investigation of District Attorney Jim Garrison, virtually a second office of origin. Exhibit 6, which Weisberg provided on appeal and attached to an affidavit, illustrates this was done with the "critics." The FBI had its symbol informers covering the meetings of "critics," not fewer than seven of whom are identified by name and file number, with copies sent to both Dallas and New Orleans. The FBI files the "critics" as subversives and its informer was ostensibly assigned to "security" from his FBI identification number. (Here again, the FBI ignored this and other similar documentation Weisberg provided and then demanded it again on discovery, after ignoring

it when he provided it voluntarily.)

That the FBI kept records relating to the "critics" and their books is disclosed in a record processed for Allen (Exhibit 7) which is captioned "Biased Books Re Assassination of President Kennedy." These ticklers have individual folders for individual "critics" and for their books, as is illustrated by Exhibit 8. (The author is Mark Lane, pertaining to whom Weisberg had provided the FBI field offices' file numbers, "subversive," of course. The FBI did not need "discovery" from Weisberg to learn its own file numbers, which are posted on its indices, but Weisberg did provide them and the FBI ignored the information he provided. It thus did not need this information under "discovery" and there is nothing else that the FBI did need under this so-called "discovery.")

Exhibit 6 also discloses that even the Los Angeles FBI field office knew that New Orleans had a 100 or "subversive" file on Jim Garrison and thus not only was no discovery from Weisberg needed for the FBI to be aware of this but Weisberg had provided it and it was ignored, with the file itself withheld as nonexistent rather than as exempt.

Obviously, there is no possibility that any so-called "discovery" from Weisberg would have enabled the FBI to prove that it had complied when it had not and knew it had not and had not even searched and knew it had not and, even more, when Weisberg had already provided it with its own file numbers on these "critics."

Bearing further on the deliberateness of the FBI's false

swearing to the court, the fraud Weisberg believes was perpetrated and on the FBI's means of hiding information by tricky filing, is Exhibit 9. This FBI record on another book on the assassination was designated by the Dallas SAC for an 80 or "Laboratory Research Matters" file when there is nothing relating to the Laboratory or to research matters in the record captioned "Jim Bishop, Author."

(New Orleans also uses the 80 classification for delicate matters entirely unrelated to the Laboratory or its "research matters" but is related to Garrison and his staff, among other things. An example, provided by Weisberg as attachments to an affidavit, is filing information relating to a member of Garrison's staff, who provided confidential Garrison information to the New Orleans FBI, in an 80 file. Even when the search slips recorded the existence of relevant 80 files, the FBI withheld them as irrelevant despite the copies of its own records Weisberg provided.)

With regard to all these matters related to "critics" and their books, Weisberg had already provided all the information he had prior to the demand for discovery. The new evidence makes it apparent that the FBI's attestations to the nonexistence of records on the "critics" were, when made, known not to be truthful and they also indicate fraud. This is still another illustration of the known impossibility of the FBI's sworn-to representations with regard to its alleged need for "discovery" from Weisberg. The FBI - and Phillips and his assistants in particular - knew that no discovery from Weisberg would enable it to prove that it had complied with his requests (and the

Associate Attorney General's direct ive) with regard to "critics." The FBI's possession of and under Phillips its processing of this new evidence makes it apparent that it - and he in particular -needed no help in the form of "discovery" from Weisberg in order to be able to locate and process its information relating to "critics." Likewise, it appears to be obvious that at the very time Phillips swore subject to the penalties of perjury that the "discovery" demanded of Weisberg would have enabled the FBI to prove that it had complied with his request, he had solid documentation in his division and under his control which left it without question that his attestation was false. And at no time subsequent to the disclosure to Allen of these and the other relevant records has Phillips or anyone else in the FBI or its counsel withdrawn or corrected this false swearing and to this very day the FBI has not provided the relevant records in this litigation. Weisberg attributes additional significance to these failures because he did inform the defendant that he did obtain some copies from Allen and he sent explained copies to the FBI's counsel. Knowing these things, the FBI nonetheless persists in its fraud and persists in its efforts to obtain money from Weisberg as part of its fraud upon him and upon the courts. This, Weisberg reemphasizes, <u>after</u> the FBI was <u>ordered</u> by the Associate Attorney General to process all such records for disclosure to him.

Another tickler or new evidence record relating to the FBI's knowledge of its records relating to the "critics" and

their books is Exhibit 10. This is but one of a series of related tickler records on this subject disclosed to Allen having to do with President Johnson's desire to have the FBI Director write a book responding to the "critics." In order to do this it is obvious that the FBI had to have and know it had records relating to the "critics" and their books. With regard to this, it again is obvious that no discovery from Weisberg could possibly have enabled the FBI to establish that it had complied when it knew it had not and that no discovery from Weisberg was necessary for the FBI to retrieve its own records that, still again, were in Phillips' division and under his control.

(The other related records disclosed to Allen reflect the recorded detail and ready retrievability of the FBI's records. With the collaboration of the President's unwilling emissary, Supreme Court Justice Abe Fortas, SA Wick, of the so-called "Crime Records" Division, concocted a substitute for the proposed book by the unwilling Director. It was to have a sycophantic reporter sign a letter to the FBI requesting the kind of information the President wanted to receive extensive attention. When Wick left the FBI for the Washington Star with the approved letter for City Editor Sid Epstein to sign, when he signed it, when Wick left the Star for the White House and when he got there is all dutifully recorded.)

Exhibit 11, from the tickler, records the fact that the FBI was still engaged in preparing assassination-related books

in 1970. "TNG" is SA Goble referred to earlier and he reports that "I am assigned to the book writing detail."

Withheld Field Office Marguerite Oswald File

As Weisberg attested, it is his experience that when the FBI cannot entirely ignore the information he provides it limits itself to the records he reveals knowing exist. Tickler records relating to the mother of the accused assassin, the late Mrs. Marguerite Oswald, confirm this as the FBI's practice in this litigation. After full compliance had been claimed, Weisberg identified an additional Dallas file on Mrs. Oswald. Phillips then attested that the FBI had to withhold the file number and caption in the interest of "national security." Weisberg then provided a disclosed copy with no redactions and with none justified. What Weisberg did not know and what these field offices and PHillips and his assistants did know is disclosed in this new evidence (Exhibit 12), that both offices were directed to establish still another file on her and, as the other records from this tickler disclosed to Allen reflect, both field offices did.

Still again, this new evidence establishes that no discovery could have enabled the FBI to prove that it had complied with Weisberg's request and no discovery from Weisberg was needed by the FBI for it to locate and process these relevant and knowingly withheld files.

Unsearched New Orleans Records Identified in Ticklers Disclosed to Allen

Part of Weisberg's New Orleans request, omitted in what

the FBI represented as full and verbatim quotation of it to the appeals court, includes "all records on or pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation into President Kennedy's assassination." The existence of a number of Clay Shaw ticklers - New Orleans information - is disclosed in the ticklers Allen received from the FBI. In one tickler alone there were two different folders identified as on the jurors in the Shaw trial. A copy of one is attached as Exhibit 13. These records also indicate that the FBI's Garrison Watch was located in Room 818 of the building at Ninth and D Streets, NW, to which copies of records were directed.

Each of a series of "deleted page" sheets in the ticklers disclosed to Allen is identified, with appended numbers, as on "Garrison Witnesses." (Sample attached as Exhibit 14) One particular copy of a list of persons "who figured in" Garrison's investigation is selected because it does not disclose the name of a member of President Johnson's personal staff who, it was suspected, might have had a kind of association with them. (Exhibit 15) Exhibits 14 and 15 relate to New Orleans information. Still again, no discovery from Weisberg could have enabled the FBI to establish that it had complied with this part of Weisberg's New Orleans request and no discovery from him was needed for it to be aable to search its own records.

This sampling of the "new evidence" in the form of FBI ticklers - which the FBI's affiant in this litigation swore under

the penalties of perjury could not and did not exist while it was disclosed to another requester in the lawsuit in which he as the FBI's supervisor provided its affidavit - establish, Weisberg believes, redundantly and overwhelmingly the deliberate misrepresentation, nature and extent of the fraud perpetrated upon him and the courts and the knowingness and deliberateness of the false swearing by which the FBI prevailed before both courts.

Each and every one of the foregoing illustrations of new evidence establishes, Weisberg believes, the deliberate dishonesty of what the FBI and its counsel have done to him in this litigation also establishes the inequity of the situation in which he finds himself.

"'Equitable' and 'inequitable' signify just and unjust." (27 Am Jur 2d, p.517) From the outset of this litigation, what has happened to Weisberg is, from what this new evidence discloses and means, and was intended to be inequitable - unjust. Weisberg believes that this court has both the power and the obligation to rectify this manifest injustice.

CONCLUSION

Weisberg believes that under Rule 60(b) he is entitled to relief from the abuses documented herein and to the protection of the courts from such abuses. He believes that this court should now vacate its judgment against him and reopen the case so that he may obtain justice and relief; that there should be a judicial inquiry into the official fraud and misrepresentation

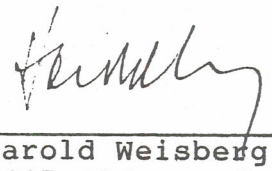
documented herein; that such an inquiry is essential to preserve the integrity and the Constitutional independence of the courts; and that there has been perjury, if not also its subornation, before this court. Weisberg and Phillips both swore to what is material, they swore in contradiction to each other, and Weisberg believes this new evidence establishes that it is Phillips who swore falsely. If Phillips swore falsely and persisted in this, then Weisberg believes he should be charged with the offense and tried. More than the average person an FBI special agent ought be aware of the importance of swearing only truthfully to a court. He ought know a felony when he sees one - and when he commits one. The government's lawyers have no less responsibilities as officers of the court than other lawyers and in this litigation they were not only untruthful, they persist in their untruthfulness after it was with pointedness called to their attention. In violation of the relatively recent notification of the then attorney general, to mark "law day," government lawyers were put on notice that they were to file only what they had reason to believe was true and not what they had any reason to believe might not be true. In this litigation the government's lawyers filed what they had ample and unrefuted reason to believe was not true. This, Weisberg believes, ought not be acceptable to any court and certainly ought not be the basis of sanctions against a private-citizen plaintiff in an FOIA case.

In addition, as a matter of equity, Weisberg believes

he is entitled to the relief he seeks because what the FBI and its counsel have done to him and to the courts is so manifestly unjust. No system of justice can survive such official transgressions as are established by this new evidence and none can survive in any degree if the consciences of the courts do not cry out, as Peter so long ago said the very stones would.

If this new evidence and what Weisberg believes is its clear meaning does not stir the conscience of this court, then Weisberg believes that, particularly with the failure of this court to make the requisite "Findings of Fact," he has a Constitutional right to a trial for any offenses attributed to him by the government, stated with specificity so that he may defend himself, and he herewith requests such a trial.

Respectfully submitted,



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July 10, 1985