

8/26/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

EIGHTH DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C. As I have indicated in the seven previous declarations that were filed in these consolidated cases, I am familiar, due to the nature of my official duties, with the procedures followed in processing Freedom of Information Act (FOIA) requests received by the FBI, including plaintiff's requests for records on the assassination of President John F. Kennedy (JFK assassination) contained in the FBI's Dallas and New Orleans Field Offices.

2. Government counsel asked that I read Plaintiff's Amended Statement of Genuine Issues of Material Fact in Dispute. Having read that pleading, I make the following statements in response to the fourteen issues of fact which plaintiff claims are in dispute in these cases.

(a) Whether the Dallas and New Orleans Field Offices maintain "ticklers."

In paragraph 4 of my fifth declaration filed on July 2, 1982, in support of the Defendant's Reply to the Plaintiff's Opposition to the Motion for Partial Summary Judgment, I explained that "ticklers" -- as that term is used to refer to potentially retrievable records -- are photostatic or carbon copies of documents and that these copies are prepared for the information and temporary use of individuals who need to follow the progress

Exhibit A

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(f) Whether the FBI searched for all records
"pertaining to persons and organizations who figured in the
investigation of President Kennedy's murder," as well as for New
Orleans records "pertaining to Clay Shaw, David Ferrie and any
other person or organization who figured in District Attorney Jim
Garrison's investigation into President Kennedy's assassination."

As I spelled out in great detail in my fourth declaration and reiterated in paragraph 6 of my fifth declaration, all records on or pertaining to organizations or persons who figured in the FBI's investigation of the Kennedy assassination -- as far as those records related to that investigation -- were processed and, where appropriate, released to plaintiff. With respect to New Orleans records on David Ferrie, Clay Shaw or Jim Garrison's investigation, the FBI could find no main files or material on those subjects other than what was merged into the main files on the Bureau's investigation of the assassination. Those files, in turn, were processed and the nonexempt material was furnished to plaintiff.

As I indicated in my fifth declaration, the FBI was not involved in or connected with Mr. Garrison's investigation of the JFK assassination and thus maintained no main files on his investigation. Rather, as I explained above, any information or documents concerning Mr. Garrison's investigation was channelled into the New Orleans main files on the assassination. Notwithstanding this fact, plaintiff apparently believes that the FBI should have reviewed the documents in its Kennedy files which pertained to Mr. Garrison's investigation and then conducted new searches on the organizations and persons whose names appeared in those documents. According to plaintiff's counsel, those persons and organizations "include[d] but [are] are not limited to the following: the Free Cuba Committee, Double Check, Alpha 66, DRE, JURE, MNR, Sylvia Odio, Carlos Bringuier, Ronnie Caire, Dean Andrews, and Perry Russo."

The FBI acknowledges that it did not undertake new and independent searches on the organizations and persons whose names appeared in those Kennedy records which pertained in some

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fashion to Jim Garrison or his investigation. The FBI believes that it was and is not required under the FOIA to do so. As Mr. Quinlan Shea, the former director of the Justice Department's Office of Privacy and Information and Appeals (OPIA), indicated to plaintiff's counsel, the FOIA does not contemplate "an open-ended, never-ending process of search, locate, review and then search again based on what is contained in the reviewed records."^{*} This is precisely what plaintiff desires of the FBI in this case. If plaintiff wants a search conducted for records on the above detailed persons and organizations, he can file new FOIA requests with the agency and pay for any search and copying fees associated with the search for that material.

(g) Whether the FBI searched for files on "critics" or "criticism" of its assassination investigation.

In passing on plaintiff's administrative appeals in these cases, former Associate Attorney General John Shenefield decided that, "as a matter of agency discretion, the Bureau will conduct all-reference searches on George DeMohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any other official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on 'critics' or 'criticism' of the FBI's assassination investigation." Per this directive, the FBI conducted a search for files on "critics" or "criticism" of its investigation. It did not attempt, however, to search for names of unspecified individuals. At no time did the Associate Attorney General or his staff in OPIA indicate to the FBI that it should search for records on any individuals, including those

^{*}/ Letter of June 16, 1980, from Quinlan J. Shea to James H. Lesar, attached as Exhibit A(2) to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982.

^{**}/ See page 3 of Associate Attorney General Shenefield's decision of December 16, 1980, which is attached as Exhibit A(3) to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982.

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listed by plaintiff in his Amended Statement of Genuine Issues of Material Fact in Dispute. Rather, by putting the words critics and criticism in quotes, it seems clear that former Associate Attorney General Shenefield meant that those were the topics for which the FBI was to search. This conclusion is buttressed by the fact that in the same paragraph of his decision Mr. Shenefield specifically listed the names of several individuals on whom he wanted new searches conducted. Thus, if the Associate Attorney General wanted the FBI to search for records on specific individuals who were critical of the assassination investigation, it seems apparent that he would have listed their names in his decision.

(h) Whether the FBI searched for records referenced in Exhibit 4 attached to Weisberg's Affidavit.

Apparently, by this question, plaintiff is asking whether the FBI searched for the documents which Raymond Comstock provided to Special Agent Regis L. Kennedy. The answer is no. Inasmuch as these documents per se do not fall within plaintiff's FOIA requests in these cases, the FBI did not conduct an independent search for the material. As explained in paragraph 2(f) above, the FBI does not believe that the FOIA requires an agency to make additional searches based on what is contained in the records located as a result of the search conducted in response to a FOIA request. If plaintiff desires the "Comstock" records, he can file a new FOIA request and pay the fees associated with the search for that material.

(i) Whether the FBI searched for the record quoted in Exhibit 6 attached to Weisberg's Affidavit.

Although it is uncertain which record in Exhibit 6 plaintiff is referring to, the FBI acknowledges that it did not conduct an independent search for any of the records referenced in Exhibit 6 of Weisberg's Affidavit. Again, the reason is that none of those records per se fall within plaintiff's FOIA requests in these cases.

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3. In conclusion, I would like to note that the FBI's search in these cases was exhaustive. The agency not only undertook a systematic approach to locating records directly responsive to plaintiff's FOIA request, it also conducted, pursuant to the discretion exercised by former Associate Attorney General John Shenefield, a search for records on subjects which were, at best, remotely related to plaintiff's requests. As a result of the FBI multi-tiered search in these cases, nearly 12,000 documents and 53,000 index cards, together consisting of over 100,000 pages, were processed and the releasable information furnished to plaintiff.

I have read the foregoing statement consisting of 10 pages and fully understand its contents. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26 day of August, 1982.

John N. Phillips
JOHN N. PHILLIPS
Special Agent
Federal Bureau of Investigation
Washington, D.C.