Rough, unused, prepared before I learned of the limitation to 15pp in all. There are some errors, one that suddenly struck me later, referring to Voltaire instead of Swift. I had to forget this and start all over again. What I filed is the retyped rough draft. I was ill, bronchitis, and feared that if I didn't file something speedily I might not be able to.

HW 1/12/85

11AE

Plaintiff-Appellant Harold Weisberg is a septegenarian first-generation American, first if his family born free, possible because both parents twice escaped holocaust, by escaping pogroms and thereby not living in the Ukraine and Bess rabia to be slaughtered by Hitler. From this heritage Weisberg has strong beliefs about citizen responsibility, representative society. and the importance to justice of freedom from oppression for lawyers and the contitutional independence of the judiciary,

Weisberg has been a reporter, an investigative reporter, a Senate editor and investigator and an intelligence analyst. His exposes of Nazi cartels were praised by the White House, cabinet members, members of both Houses of the Congress and many others, including FBI Director H J. Edgar Hoover. For his services in the Office of Strategic Services he received an honor from General William Donovan, its director.

He has publish sixed books on the assassination of President Kennedy and its official investigations and is widely regard as the pre-eminent authority in the field. Beginning with the 1974 amending of the Freedom of Information ACT (FOIA), need for
the/amending of the investigatory files exemption of which the legislative history attributes to his persistence and opposition to a decision against him by this court, he has cast himself in a public role, which he conceives to be his responsibility under FOIA, and makes the information he obtaine available to all. He estimates that he had made in excess of 50,000 copies of his FOIA records available to others and all of th his records, of any and all sources, will be a permanent, public archive. He has served all elements of all the media, here and abroad, as well as other authors and both Houses of the Congress. He has done this when his only regular income was Social Security. His largest monthly check is $345.00.

Weisberg's first information request of the FBI was on May 25, 1966. It recommended and Director Hoover approved that his request be ignored. Since then

ignoring his requests has been FBI policy. FBI internal records disclosed to him and in the case record disclose FBI legal "legal" opinions that it need not respond to his requests because it does not like him and his writing and that this is provided for by FOIA and that the FBI must "stop" him and his writing. As the case record also reflects, pursuant to this fixed policy if ignoring his requests, some 25 going back to January 1,1969 were ignored ~~and [illegible]~~ by 1976. These were relatively simple requests, some for a few records only. When other informed the Senate FOIS subcommittee of this, the Department official representatives informed that committee that he requests were would taken care of. In practise this meant they would continue to be ignored.

As a result of ~~[illegible]~~ this fixed policy and the ignoring of his requests he filed inclusive requests because it was difficult for him to sue at all when he could not pay counsel and ~~[illegible]~~ thus suit for a few pages could not be justified and because it wa apparent that there was no other way in which he could expect to obtain disclosure of any significant number of FBI documents.

Despite the depth and bredth of his writing, no significant error has been found it it, in his books or in his numerous detailed and documented affidavits filed in FOIA litigation.

Weisberg is alone among those whose writings are not in accord with the official solution to the assassination of President John F. Kennedy in not being and in opposing conspiracy theorists. His work is a major study of the functioning of all the institutions of our society in time of great stress and thereafter. Because his work cannot be faulted on fact it is embarrassing to the government.

and because he does not weave cobspiracy theories

Among these embarrassing records in the case record are those reflecting the FBI's decision the day of the assassination -before Oswald "ee "arvey Oswald was even charged with that crime - to investigate no other suspect and not to inves igate the possibility of a conspiracy and its decision that photographs which show the

President being assassinted were of no value because they could not be used to identify Oswald. From both the FBI and thr Department he obtained the Department's policy determination, made by the Acting Attorney General when Oswlad ha was himself killed and would not be tried, that "the public must be satisfied that Oswald was before meaningful investigation was possible, the assassin, that he did not have confederates who are still at large, and that the evidence was such that he would have been convicted at trial."

Other FBI records obtained in this litigation and in the case record record serious ~~fx~~ FBI factual error, for example, its statement that a motion picture made available to it immediately was of no value because it did not show the building from which the FBI claims all shots were fired. In fact that motion picture contains almost 100 indifidual frames not only of that building but of the very window from which the FBI claims that Oswald fired the shots, and he is not in it, although it was taken only moments before the shots were fired. And, obviously, the entire film consisted of crime-scene pictures, but the FBI had no interest in them and evaluated any possible evidence as valueless.

After Weisbger obtained this record and the film was located by fir friends of his the Congress asked the Attorney General to have the FBI have it enahnced and studies by the FBI, the Attorney General agreed, and after five years this has not been done. Any attention to it is certain the m embarrass the FBI.

~~Mr~~ Weisberg's examination of the FBIHQ general disclosures of Kennedy assassination records disclosed major gaps in them, so he filed inclusive requests of the Dallas filed office, known as the "Office of Origin," because all investigative records were funnelled to and through it, and of the New Orleans field office, because of Oswald's activity in New Orleans and because of the so-called "probe" by New Orleans District Attorney Jim Garrison.

On the day of the first scheduled calendar call before the District Court Weisberg and his counsel conferred with defendant-appelle's counsel, Daniel Metcalfe. Just before they were to leave together for the calendar call, Mr. Metcalfe was informed that

Judge Oberdorfer had recused himself. During this conference Mr. Metcalfe informed Weisberg and his counsel that the FBI would process the few companion field office files of those to which the general FBIHQ release had been limited. Weisberg then informed Mr. Metcalfe that this ~~limitation~~ would not comply with his requests. ~~NeitherxthenxnorxatxanyxotherxtimexhasxthexFBIxorxitsxcounsel~~ ~~xxxxxxxxxxxxx~~ At no time since then has the FBI asked Weisberg why. Instead it proceeded to process those few main files only and then dumped them on him not in reasonable sgements as processed by by but by so many large cartons that in order to deliver them the post office had to violate regulations.

On the day that Weisberg conferred with Mr. Metcalfe he also conferred with Quinlan J. Shea, Jr., then head of what is now the Department's Office of Information and Privacy. Weisberg first met Mr. Shea when the judge in his FOIA litigation for C.A. 75-1996, records on the assassination of Dr. Martin Luther King, Jr., asked Weisberg to cooperate with him. Wiebberg's cooperation is represented by ~~hisxownxcopiesxof~~ his copies of which appeals, memorandum and xeroxes of records, mostly the FBI's, ~~that~~ take up a full file cabinet. As the FBI's own witness in that lasuit Mr. Shea paid unstinting praise to Weisberg's cooperation. At this conference Mr. Shea asked Mr. Weisberg to inform him about the quality of the FBI's processing of the Kennedy assassination records, because of Weusberg's expertise and because the Attorney General had determined that it is an important historical case. Because of his prior experiences with FBI processing ~~in~~ which Mr. Shea testified in several lawsuits required that it be overruled more than 50 percent of the time, he requested that the FBI process not more than 5,000 pages and permit him to review them so that errors in processing not permeat the entire release in this historical case. Instead the FBI withheld all the records it disclosed initially in this litigation until the last was processed. This confronted the appeals office with an impossible situation because of the number of pages involved and made it impossible for Mr. Weisberg to report improper withholding until after the FBI claimed full compliance. The only records provided to Weisberg by the FBI thereafter were those it was directed to disclose by the appeals office.

The FBI thus, and deliberately created a problem that need not have existed and one rectification of which would be costly and time-consuming.

The disclosed counterpart field office files did not include most of what the field offices have. Copies of all records sent to FBIHQ were automatically withheld as "previously processed" th in the general FBIHQ earlier disclosures. The the additional information
BI FBI did this without any checking and regardless of xkxx the field office copies not uncommonly have, annotatoons of additional information not included in the FBIHQ copies. The FBI also made an error of about 3,000 pages in this procedure because when it was compeoled to check, after claiming complete compliance, it turned out that more than 3,000 pages were missing from the FBIHQ files.

The FBI made no searches in the field offices to comply with Weisberg's requests. Not only did it not whe after Weisberg informed its counsel priotr to any processing that this could not comply with his requests but the Dallas office was precluded from making any search by an FBIHQ decision, made by SA Thomas Bresson of its FOIPA section, to restrict disclosure, without any search at all, to the counte part main files. In New Orleans no search was made to comply with Weisberg's request. Instead it imposed the same limitation on the main files it sent to FBIHQ for processing and disclosure and when pressed to provide copies of the original search slips in this case, as the case record reflects, substituted recopied copies of search slips responsive to an earlier and non-identical request. Those earlier and non-responsive search slips nonetheless record the existence of many records that are responsive to Weisberg's request and they remain withheld.

When Dallas was compelled to produce search slips, it provided very few and the earliest was dated more than a year after full compliance was claimed. They are searches made only because the appeals office directed them and they relate to only a few of the public figures involved in the investigation and whose involvement was a matter of public record.One, supposed representing a search, under the name of the Oswald case agent, is compoetely blank, although there are thousands of pages

relating to him because of the several major scandals in which he was involved and because he was, as is public disciplined. He had received and he testified he was ordered to destroy a threatening note from Oswald prior to the assassination. He had received a threatening letter from Oswald prior toe assassination and as he later testified, was ordered to destroy to after the assassination and to make no mention of it to the Warren Commission. Yet the entirely blank Hosty search slip, attested to as genuine in this litigation, allegedly represents a Hosty search. When the Dallas FVI was directed to make a search under the name of the late mother of the aslleged assassin, Mrs. Marguerity Oswald, its search slip does not include an known, relevant and existing file both offices were direfted to start by FBIHQ whose records, disclosed to another a ter the record in this litigation was closed. The existence of this file, withheld in the FBIHQ general disc,osures, thus was known to it and to both field offices. These are fair samples of the search slips that reflect the total absence of any search ever to comply with Weisberg's requests. To this date no search has been made in either field office to comply with his requests. The New Orleans slips provided are obviously phony and the Dallas slips, like those of New Orleans, are obviouslt incomplete and are limited to delibertly incomplete searches after adarches were ordered by the appeals office.

All of this and considerably more information was provided by Weisberg long before any claim demand for discovery to enable the FBI, allegedly, to prove it had complied was made and then and since has been ignored by the FBI.

Most by far of the 200,000 pages referred to in this court's decision were not dusclosed in response to any FOIA lawsuit, not one o Weisberg's and not anyone elses. Those disclosures are the FBI's selection in an obvious attempt to forestall litigation that could require disclosure of additional and relevant records. To this day the extensive and obviously improper withholdings in them have never been justified. Thus, with regard to by far most of the records disclosed in incomplete response to Weusberg's field office requests have

The FBI's attestations are incompetent and untruthful

Despite Weisberg's repeated complaints that the FBI's affiant, SA John Phillips, had no personal knowledge while others in the FBI had personal knowledge, and despite Weisberg's repeated attestations that what Phillips attested to was evasive, misleading, misrepresentative and incorrect, until it had no alternative the FBI persisted in using only Phillips as a affiant. When the FBI was forced to use Dallas and New Orelans employees as affiants, Weisberg attested to the untruthfulness of their attestations. He also requested the District Court to determine whether or not the FBI was provided with false swearing or perjury. The District Court declined. The unrefuted alleagtions of false swearing and perjury are ignored also and instead, with this case record, it accepts the FBI's word on each and every question of fact in its decision. Weisberg believes that no system of justice can survive dependence upon tainted evidence, that dependence upon it without resolution of the existing questions of fact denied justice, and that this court is in direct contradictio n with its Londrigan and Allen's decision, in which it required first-person sttestations and acknowledged the dubiousness of other Phillips attestations. (Add direct Allen quote)

It is Phillips who swore that non-existing seafches in this litigation are "multi-tiered searches."

Weisberg's attestation that the alleged search slips themselves are phony is unrefuted. Indeed, SA _____Anderson swore New Orleans that searches made a year before Weisberg's request are the search slips in this litigation.

This court accpet accepted prejudicial, inflamatory and knowing untruthfulness by FBI counsel

Throughout this litigation before the District Court Weisberg, under oath and with documentation, alleged that FBI counsel was deliberately untruthful, without refutation and without himself being charged with perjury, a charge to which he deliberately exposed himself in part in defense of the Constitutional independence of the judiciary and in part to bring the litigation to an end as, ultimately, heo offered to do if without prejudice to the rights of others, only to have that very fair offer rejected out-of-hand, without consultation with the FBI or the Department. It is knowingly untruthful and basic for FBI counsel to state to this court that the entire text of the actual Dallas request is not within that request and to tell this court, after Weisberg refuted it under oath, that compliance was no burdensome because he ~~xxxxxxxxxx~~ prepared affidavits after under oath and without refutation he swore to the opposite, It is deliberate, knowing and inflamatory, "multi-tiered" and then tell it that he made new requests, based on this deliberate untruthfulness, and

untruthfulness of FBI counsel to state to this court that "(t)he district court had closely observed plaintiff's counsel's relations with plaintiff in this litigation for more than five years" (page44) and on the basis of this alleged conspiratorial misbeahvior ~~xxxxx~~ to the face of the district court seek "remedial action" (page 47), sanctions against Weisberg's counsel knowing full well that this not only had not happened but was a physical impossibility. After Weisberg's brief exposed this (page 16), there was no retraction, aplogy or explanation filed with this court. The turh is that in this litigation Weisberg was in the courtroom only one time and

then was not with his counsel but sat with a friend in the audience, that for four of these five years thereafter the case was dormant at the FBI's request, and that ~~for all of those four~~ shortly after his one appearance in the court room, as the case record reflects, without contradiction, it was physically impossible for him to have been there.

Weisberg believes that when courts accept untruth, sworn or unsworn and more after untruthfulness is established, they make justice illusory and impossible and surrender their constotutional independence and become the creatues of errant officialdom.

This also rewards the mos reprehensible official misconduct.

This decision is a direct threat to lawyers and their clients and to the Act

In departing from the case record and in effect acting as FBI counsel to state that "it was feasible" for Weisberg's counsel to "to respond to the FBI's interrogatories,"(page 11) and thus holding the him, in additiona to Weisberg, liable for costs claimed, and in this totally ignoring both Weisberg's refusal to conply and his refusal to make the pro forma reply urged upon him by his counsel and without reference to the unimaginable cost in time and money for Lesar to cummute 50 n 100 miles daily and then try to work his way through 200,000 pages and some 60 file cabinets, this court places every lawyer faced with a client's refusal to take his advice in jeopardy. This jeopardy is greatly magnified in the District of Columbia, whose courts have held in Stanton (Use cire and direct quotes) that any lawyer who refuses to pursue his client's lawful desires is subject to sanctions, including, as happened to Stanton, loss of his licence to practise law. Between them, the FBI and this court have created an impossible situation for lawyers, one in which whatever they do they are subject to severe sanctions. This does more than jeopardize lawyers. It jeapardizes their clients and it undermine and can eliminate justice.

Given the total absence of any evidence presented by the defendant/appellee in the case record and the abundance of relevant and unrefuted evidence presented by Weisberg and ignored by both courts, he and Lesar have been condemned and penalized
and without any finding of fact by the district court,
and condemned without trial. This is contrary to the basic American belief, that everyone is entitled to a trial and to conformt evidence. The district court erred in no making a finding of fact and in ignoring 100 percent of the evidence before it and this court erred in not remanding for a judicial finding of fact, within the rules of evidence, and in rubber-stamping the district court's error, without even mentioning the absence of any finding of fact.

No searches were ever made to respond to Weisberg's requests

No searches were ever made to respond to Weisberg's requests . Both sets of alleged work slips are phonies. Those of New Orleans are dated almost a year before Weisberg filed the requests and are not responsive to his requests. ahtough they include relevant information that remains withheld, without claim to exemption to withhold it. There was not even the pretense of a search in Dallas until the long after full compliance was claimed, second year after Weisberg filed his request/and then one of the * so-called search slips is entirely blank and another deliberately withholds recitation of a main file known to exist, its existence disclosed to another requester. Instead of making any search, Dallas meremy forwarded the request to FBIHQ, where SA Tom Bresson, as in a moment of abberational honesty the FBI itself attested, without search and without search being possible for him, arbitrarily and capticiously decided to limit Weisberg to the counterparts of the FBIHQ JFK assassination records included in its earlier general releases. There simply is no discovery from Weisberg that could have enabled the FBI to prove that it had complied, the claim made to support the demanded discovery, when the FBI knew and the case record proves it still has not made the requisite searches to comply with Weisberg's requests. In order to obscure and misrepresent this, the FBI's brief, knowingly and deliberately, informed this court falsely about the Dallas request, actually eliminating every word of it. This brief (page 2) states falsely that the two paragraphs that constitute FBI's the Dallas request are not in it. By its nature and the urgent need for it this is not an accidental false statement to this court, and any possible doubt of deliberateness and intent is removed by the FBI's failure to correct its falsehood after Weisberg noted it in his brief (on oage 15). (If there is space add at * (although there are thousands of pages, including those relating to two very large and publicly disclosed scandals

Weisberg did, undisputedly, provide all the material of which he was aware

It is undisputed that Weisberg had and had attested that he had provided all the information of which he was aware long before discovery was demanded. He did this in about two full file drawers of appeals and the his many detailed and documented affidavits. That he had provided this information was admitted by the FBI long before any discovery was demanded, The discovery demand thus was obviously (and to now successfully) and stonewalling harassment because there simply was no other material he could provide. and the FBI and its counsel knew this, as did both courts.(His estimate of two full file drawers may be very conservat ive because most of the rl relevant records were withheld as "previously processed" in the earlier FBIHQ general releases, which were not disclosed in FOIA litigation, the subject thus are probably more than half of the appeals which still have not been acted upon. Not until 24 days before the panel's decision did the Dxpartment inform Weisberg that it was about to get to those appeals going back to 1978. It then alsoinformed him that nobody had ever provided "the amount of material that you have."In all, Weisberg's copies of the material he provided in the JFK and King assassinations jampack two file cabinets, eight full drawers, which represents an enormous amount of time, effort and money and certainly the utmost in cooperativeness and the exact opposite of "onstreperousness." or "recalcitrance.")

This court did not r
The District Court did not make findings of fact for this court to review and this court made up it own instead

Weisberg understands that this court is limited to reviewing findings of fact by the District Court, which did not make them. Instead of remanding for finds of fact to be made this court made its own up; and instead of considering Weisberg's entirely unrefuted attestations to extreme burdensomeness, xkx in response to which the FBI presented no evidence at all, this court stated that "it is clear that Weisberg has some system for determining what is in his files, i.e. "the Sixty file cabinets in his basement," to which Weisberg attested he can make only a few trips a day because of his impaired health and limitations. In making this uo this court ignored the case record, which reflects that he filed his appeals prior to suffering serious post-surgical complications and when he had a part-time files assistant. This court also ignored his attestation that his affidavits are based on his appeals and his only xxxxx "system," his memory. At the same point, anf flying into the face of the evidence, that for stated reasons Weisberg had already refused his "assistance and direction" to Counsel James Lesar,"it was feasible for Lesar to respond to the interrogatories." Assuming that Lesar, his practice, family and other clients could afford it, this xxxxx court would be requiring him to xxxxxxxxxx drive 100 miles a day for a great number of days so great they cannot be estimated to read the contents of all those file cabinets to be able to respond and to make the required copies of records -all of which Weisberg, undisputedly, had already provided in any event. What this means not only to Lesar but to all lawyers is, to Weisberg, simply incredible. Weisberg believes and alleges that the District Court from the first preconceived its ultimate disposition of t is litigation and that when the case record could not support it merely ignored findings of fact directly contrary to the case record.

(on page 11)

This Court and the District Court Ignored Weisberg's Attestations to burdensomeness

Without any FBI evidence disputing it and with untruthful statements by FBI counsel pretending to contradict him, Weisberg attested that compliance with the discovery demanded, "each and every" fact and document, was a physical impossibility for him, was intendedly excessive and burdensome, unnecessary (both because he had already provided the material and because "each and every" fact and document were not required for the alleged purposes of the discovery; and that even his rexoring the appeals in which and affidavits he had already provided all relevant material was impossible for him. Instead of attempting to refute Weisberg's attestations, its counsel misled the District Court by claiming that because he was able to file what this court referred to as "voluminous, detailed affidavits" (page 10) complying with the demanded discovery would not be burdensome forhim. The case record holds Weisberg's unrefuted attestation that drafting all the affidavits for the period i n question actually came to only a few minutes of work at his desk a day, hardly what this court represents and the FBI concocted as a substitute for evidence. This court was reminded of the truth in Weisberg's brief (page 12) and merely ignored it. Instead it invented the theory not in the case record, that Lesar could have complied for Weisberg. This has nothing to do with burdensomeness for Weisberg, the question before this court on which the District Court made no finding of fact and is not a basis for even suggesting that there was no burdensomeness for Weisberg. That there was in the unrefuted case record, the only evidence on the question before this court.

extensive withholdings that have not been justified and cannot be. ~~[illegible]~~was

Pursuant to Mr. Shea's request and in his own and the public interest Weisberg filed ~~[illegible]~~ extensively documented appeals that as a matter of fact, because of the FBI's wihholdings as "previously processed" in this litigation, cannit be separated from appeals relating to them in the FBIHQ general disclosures of prior to Weisberg's litigated requests. ~~[illegible]~~ These appeals go back to 1978 but have never been acted upon.

Although Weisberh had been pressing the appeals office for years to act on these appeals so very much older than the claimed backlog, it was not until the month after oral argument before this court, not until November 13, 1984 that the appeals office reported to him that it would be getting to them.

At the same time it informed him that it had a record of only three other appeals whereas there are many more, for example, those 25 the Department assured the Senate committee would soon be taken care of back in 1977. They remain ignored,

On November 17, 1984, Weisberg notified the appeals office of the inadequacy of its list of his appeal, on December 7, 1084 he reminded it again, and he has had no response.

For a brief period of time that coincided with his filing of these appeals Weisberg had the part-time assistance of a graduate student. She, however, left the area to care for her aged and ill grandparents before the first of Weisberg's surgeries and he had no one to make searches for him that he was not able to make himself. It is she who had greatest familiarity with where what files were because she established those files for him in his basement. From the time of his first aurgery the first emergency consequesne of which limited him permanently, Weisberg has had no assistance and as his affidavits attest, along with unrefuted explanations, he has not been able to make additional searches to any extent and their documentation is from his copies of the appeals copies of which the Department has. the original

Because many if not most of the appeals relating to FBIHQ records are relevant in this litigation because those records were withheld as "previously processed," it is possible that Weisberg's testimate of their extent, two file drawers, may be conservative. There is some duplication where appeals relate to more than one topic, but the total of Weisberg's JFK assassination appeals overflow a jammed file cabinet.

The many detailed and documented affidavits Weisberg filed, not only his many documented and detailed appeals, remain almost entirely ignored. He has attested, without even a pretense of refutation, that they include all the information and all the documentation of which he is aware that would be responsive to the discovery demanded. He has attested, also without even unsworn contradiction, that in advance of the demand for discovery he had, to the extent possible, already complied by providing precisely that information voluntarily. He has also attested, again without even unswirn contradiction, that the only way in which he could comply with the discovery demand is by rexeroxing a full file cabinet of information that includes nothing he had not already provided. And that in his financial circumstances that is impossible for him. Joreover, he could not remove this file cabinet for commerical xeroxing and he and his wife together could not begin to make that many copies if they could afford it and if their copier could hold up to it. In addition, this would require moving the entire file cabinet into his office, which has no sapce for it, or his living room, where it would be burdensome, for quite possibly as long as he can expect to live. He certainly could not have accomplished this if he had made any effort to duplicate what he had already provided, within the time to which he was limited, as the case record also leaves untriedly undisputed.

Throughout this litigation the FBI's attestations were almost entirely by SA John N. Phillips, who was assigned to the FBIHQ FOIPA section and neither had nor claimed first-person knowledge. Throughout also Weisberg not only attested to this but also identified those in the two field offices with first-person knowledge.

The District Court accepted attestayoons by one who neither had not claimed first-person knowledge and ignored the accurate identification of those who did. Throughout also Weisberg attested to the evasiveness, nonresponsiveness and not uncommonly untruthfulness of Phillips attestations. Not until the very end of the litigation before the District Court did Phillips make even pro forma denial, all he ever made. When it became essential for both field offices to provde attestations, Weisberg attested, without refutation, that they, too, were evasive, nonresponsive, misleading and untruthful. When the District Court permitted this unresolved conflict to exist Weisberg sought to have him determine whether or not the FBI provided untruthful attestations. With the allegation of perjury the District Faced Court refused to make a judicial determination. Nor did he of the FBI allege that Weisberg swore falsely in these attestations. ~~XXXXXX~~ This matter existed before the District Court and was not resolved by it long before the FBI demanded discovery. Thus, Weisberg believes, the record before this court made by the agency consists of unfaithful attestations and the substitution of unsworn statements by agency counsel for sworn evidence.

Before seeking discovery and apprently before it was thought of the FBI acknowledged to the District Court that Weisberg had, in fact provided all the information and documentation he states he had provided, which he beoieves is all he has and eliminates any possible need for any discovery.

Weisberg also attested, without refutation, that no discovery from him could overcome the crippling liability of not making the searches required by his request and by the absences of any such attestation.

The agency also made no effort to refute Weisberg's detailed and documented attestation to extraordinary burdensomeness of the demand for "each and every" docu,ent and fact and the agency made no effort to refute or even deny through counsel that "each and Every" fact and dioument was required to establisb noncompliance. Weibger attested that this demand was designed to fru stonewall and frustrate the Act and that any proof of the existence of any withheld material satisfied the

alleged need. This, too, was unrefited and also was ignored by the District Court.

This decision is political and it legislates, a function denied t e courts

Anyone familiar with the case record, particularly the ext ensive unrefuted evidence provided by to Weisberg, under penalty of perjury, cannot avoid concluding that this court, in ignoring that relevant evidence entirely, except where it theorized outside the case record to refute dispute it for the FBI, which failed to do so, began with a preconception and to decide as it did regardless of the evidence of the case record and the unrefuted arguments by Weisberg's counsel. When this court, ignores as it did, Weisberg's attestation that he had already provided all the material of which he was aware and that in the case record the FBI acknowledged this; when it orders discovery in an FOIA case in which the initial searches required still hafe not been made; when it confirms the discovery order when attestations of extreme burdersomeness and impossibility are not refuted; when it even accepts that there can be discovery required before the required initial searches are made and properly attested to, this court acts as the legislature and rewrites and to a large degree nullifies)on other than constitutional grounds) the Act of Congress. Wit this decision, it is no more than window-dressing for the decision to state that under it " courts will guard against the use of discovery as an instrument of abuse." (page 9) This decision is in itself such an abuse when the court issues it in total disregard of the case record and its unrefuted attestations to having already provided all the ~~information~~ material in question and the FBI's acknowledgement of this; the unrefuted evidence of the excessiveness of the discovery demanded; the unrefuted evidence of the great and impossible burdensomness to the aged, seriously ill and greatly handicapped Weisberg; and when it ignores the fact that even after Weisberg attested to the greatly excessive nature of the discovery demanded, the FBI did not limit its demand to anything reasonable.