SHIFTING THE BURDEN OF PROOF IN FOIA LITIGATION

I've been trying to find what I think is in the case record, a directly opposite statement on the purposes of defendant's discovery, to which I refer on pages 9 and 9A of my first memo to you on this brief. I will continue my searches and may find their earlier statement that my providing discovery was indispensible to their proving a good-faith search. I have found and below I quate what I also attach, statements approximating this. The language of the brief is subject to the interpretation I've given it because, at the top of p. 23, they state that their purpose in discovery was the bases of the allegation that they had not conducted an adequate search. Unless they prove that they did, without question, then in even this formulation they are attempting to shift the burden of proof on search. All of their search affidavits are rebutted and the rebuttals are unrebutted, so this is the only way they can avoid the fact of dispute over material facts. The words of the brief are that their discovery was not intended to reverse the burden of proof and "nor could defendant's discovery have accomplished this."

The Statement of Material Facts attached to defendants' motion to dismiss gives as the alleged purpose of discovery learning what "allegedly demonstrates that the agency's search was not adequate." This is, first, a reversal of proof and second, utterly false. They are asking me to prove that their search was not adequate, which I had in fact done repetitiously in any event, instead of them proving that their search was adequate.

The gets to the importance of the affidavits, which I think you may have omitted in your brief, as distinguished from the appeals, about which I've found language in which they admit they ignored them. In my affidavits I did go into this at length, addressing their lies and proving they were lies. (Inompetent lies at that because theirs were non-first person attestations.)

On page 4 they allege that my failure to provide the discovery material deprived them "of a full and fair opportunity to prepare its case..." Again, they are shifting the burden of proof in FOIA litigation.

Their representation on page 5 is that my failure to provide the discovery demanded deprived them "of a meaningful opportunity to demonstrate that plaintiff's assertions about the adequacy of the FBI's search are baseless." This amounts to an admission that they demand the discovery to prove their case or that they are trying to place their burden of proof on me. If they have met their obligation under the law they do not need discovery for this stated purpose.

In their Opposition to my motion for a protective order, while here limiting themselves to the "JUNE" question, they state (p. 14) that unless I "lists the facts and documents upon which he bases that dispute the defendant will be unable to adequately address the assertion that the FBI's search did not include 'June' files." They also state that this is true with regard to Hosty and William Walter.

They actually say that they need this disocvery to establish that they did make these searches, or they try to reverse the burden of proof.

But in fact, as I've indicated earlier, in this they picked and misused a bad example. I proved that they had "JUNE" material on Marina and all they provided, although they have more, is the Marina "June" material. They knew they had it and that it was relevant when they withheld it and did not make any claim to exemption to withhold it. 24 here

They have JUNE material on Garrison. They disclosed some from New Orleans to me in C.A. 75-1996 and DJ released a vast volume of transcripts when DJ indicted him, a case they lost. They disclosed the identity of their informer who agreed to the wiretapping and carried their body recording equipment and his full history in the witness protection program, which he claimed they ran so badly he was better off and safer without the marshals, so even that is public domain. 28 here

For your understanding, they can't, as they say they make JUNE searches, making the other searches under the names they have refused to search under, hence, again, the need for the very large lie at the opening of the brief and not making any search at all in Dallas before claiming full compliance. (The 1980 search was responsive

2A

This and so much like it, which are keyed to the deliberate lie with which the brief opens, about what the Dallas request was really for, underscores what I regard as the urgency for filing a motion to expunge as false.

2B None of this is admitted by the New Orleans office and it is specific in my appeals and affidavits.

to only a few of the matters Shea raised with them and did not even include Marguerite Oswald, the mother, who is a major part of the investigation, including over her allegations against the FBI.) 3+ here

With regard to SA Hosty, the same is true. I told them where they had pertinent information hidden and they later were forced to provide it, without proving that this was all. And it isn't all.

With regard to Walter, the only other thing they mention here, I provided even their cover-the-ass memo in which they detail how a report was to be hidden from search and where it was hidden.

This gets to the importance of what you omitted from your brief after I asked you to include it, their admission that outside discovery I had already provided all this information and documentation and at this point in their Opposition they underscore its importance and make the misrepresentation of which I earlier informed you, misrepresenting by characterizing all I provided as identical with their misrepresentation of what I said about only a single JUNE appeal. They represent that I provided no additional information about this also, which is a lie. I gave even the file numbers. Yet it is clear from the language they quote (on p. 16) that all I alleged is that "I called attention to 'the existence of an undisclosed Dallas 'June' file and noncompliance with regard to those records." My sole purpose was and was stated to be the fact that I had done this, which was true. The fact is that they were forced to produce this material later, and they knew it all along, without my appeal or any discovery. It is indexed.

See their own Marina search typo & inventory proof

Here, and in other language that is even more dishonest, they admit receiving and being aware of all the enormous amount of information and documentation I had provided. "Having obtained such input from Mr. Weisberg," page 4, and acknowledgement of receipt of "mounds of paper." Here they refer only to the exceptional and only appeals record of its sort, and it is a reference to the appeal, not the appeal itself, as "typical," which is a gross and deliberate lie. They claim that they were "impossible to decipher, much less respond to." (Thus again I urge attachment of

This claim relating to how they can make JUNE searches also is not true. They have and have disclosed in other litigation, not fewer than three indexes, a) subject, b) heards and c) overheards. So on electronic surveillance there are not fewer than three indexes no sarch of which is attested to or made. It is obvious that if they had made any such searches, at the very least they'd have turned up Marina in Dallas and Garrison and others (the overheards, which in all likelihood include me) in New Orleans.)

some of the appeals and/or affidavits (Caire affidavit is both), including the Dallas police tapes, ticklers, etc.

In the absence of citation, and a complete and deliberate fabrication cannot be cited to anything, they actually admit that they decided to ignore all my detailed appeals and their documentation and instead to regard Lesar's earlier and incomplete generalized appeal that contains no documentation as my only appeal. His was what Shea described as a "protective" appeal, no more

There is not a single letter or memo of a phone call or any affidavit or declaration in which they claimed they could not understand any appeal or affidavit and there is none that was returned to me for any clarification, not even of typographical errors. 4A here

My original book on the Warren Commission was the first and is the only one still in print. It went through more than 10 printings and is still used in college courses, as others also are. There has never been any question about comprehensibility, a word they use about this elsewhere. Even kids understand it and write me about it.

Meanwhile, they also do not even attempt to explain how appeals made after the 6/5/69 protective appeal are included in it and, obviously, none of my ignored appeals have been considered, except for the few, like Marina Oswald surveillance, the index and a few others listed in the Phillips affidavit of which I provided pages to reflect the importance of the litigation in even their terms.

Shea's letter in which he unsuccessfully undertook to cover his own ass, cited at the end of the footnote on p. 16, underscores what they ignore and I fear you omitted, the affidavits I filed in court. He passed the buck.

With further regard to this discovery, the brief admits that I did argue that they did not require discovery (p. 20) but at no point do they cite any refutation in the case record of present it here. does not and it cannot exist.) Likewise, they admit that I argued extreme burdensomenes, but at no point do they cite any refutation or even attempt at refutation before the district court. They made no effort to refute my evidence with any contradictory evidence because there is none and cannot be. They intended burdensomeness.

The deliberateness of this fabrication is underscored by the fact that when they made it at district court level I responded in full, including [redacted] citation of their own regulations, which require them not only to consult me but even to provide rewriting assistance if desired. Obviously there is no response because they have lied about everything throughout this long litigation and without lies are utterly naked and exposed.