2 It simply is not true, as here represented, that the first quoted paragraph of my requests is not included in the Dallas request but is limited to New Orleans only. The two requests are identical except for the last of the three here quoted paragraphs, which pertained exclusively to New Orleans information, "persons or organizations who figured in" the Garrison investigation.

Comment: I do not regard this as an accidental error because it is the one means by which the FBI can claim to have complied with my request without searching and by limiting response to the few provided main files only. By this serious and basic misrepresentation the FBI now pretends that my Dallas request does not include "records . . . that are not contained within the file(s) on that assassination, as well as those that are." (Emphasis added)

X 4, lines 3 ff. AAG Shenefield did not decide with regard to by far most of my appeals, although this language represents that he decided with regard to all of them. By far most remain ignored as of today.

The representation in the first full paragraph, that both Oswalds, Jack Ruby and the Warren Commission searches "was not required by the original request" is not true and, in fact, is even contradicted by the fact referred to on page 3, first three sentences and footnote, becuae those are the very files included in the release referred to on page three. There is no doubt that all are within both requests.

The last paragraph, relating to New Orleans, states thst I was to have been provided with main files and portions of other files relating to Ferrie, Garrison and Ruby. With regard to Ferrie and Garrison, the New Orleans search slips - that are not ~~the~~ search slips prepared for this case in any event - list a number of existing records that remain withheld, without any claim for exemption, and in addution I have identified (and provided the identifications of) other Ferrie records that have not been searched for and processed.

Comment: It will be safe to assume that everything I state herein is in the case record and undisputed in it. I will indicate any exceptions I recall.

5 Without describing them, the brief admits that "various files and tapes relating to the JFK assassination" would be processed. Actually, no search for tapes has been made and, as with the very significant tapes of the police broadcast, search has been refused even when I identified files in which they should be included and even a special place in which they and films were stored in the Dallas office. No such search has even been claimed to have been made. Instead, with regard to these particular tapes, Phillips provided a series of conclusory opinions each and every one of which

I proved was not truthful in a series of response affidavits. (If as I strongly believe, excerpts from my affidavits should be quoted, I think these are quite pertinent in reflecting that search was not made and was refused and that untruthfulness characterizes the FBI's representations.) (Phillips had no first-person knowledge.

5 With regard to the alleged "critics" search after the Shenefeld letter, the FBI does not file by subject and it knows it does not file by subject. So, instead of searching under the "critics" by name, which was intended by Shea, who knew and told me that the FBI does not file by subject, the FBI engaged in a charade and searched for indices on "critics", an entry it knew did not exist in its general indices. Moreover, my appeals included the actual file numbers of some in both Dallas and New Orleans, numbers disclosed on other disclosed records, no search for even those correctly and specifically identified records has ever been made, and these appeals are among the majority of appeals that remain entirely ignored.

6, lines 8-12: While I cannot state it with certainty, I am pretty confident that "six films and eights tapes" were not provided. Moreover, to this day a correctly identified film, meaning movie film, which also was the subject of a separate request I filed 1/1/69, remains withheld. Another of the movies remained withheld long after my appeal and was not provided until after I informed the FBI that it had provided this to another and later requester, who had informed me of it. To this day no search for all films and tapes has not been attested to. The only references to claimed search is to what was within the main files in those offices and with regard to both offices the requests are specific in including what is not in those main files. For example, in C.A. 75-1996 I was provided with the transcript of an excerpt of a tape of wiretapping of Jim Garrison but it has not been either searched for or provided in this case and I did provide proper identification of it to the FBI and on appeal. (It also is included in my affidavits.)

6, lines 14 ff; Citing D.E. 8 the brief alleges that in this case "the FBI reviewed 35,775 documents, consisting of 148,196 pages," of which "23,969 documents had already been processed." Those 23,969 documents, which are far and away most of the 148,196 pages, were <u>not</u> "reviewed" in this case. They had been disclosed <u>before</u> this suit was filed, <u>before</u> my requests were made. The footnote to this misrepresentation states that "Many FBI Headquarters documents are duplicates of field office documents" and thus "were not processed again." But the truth is that because there was no review and because it was assumed that everything sent to FBIHQ was disclosed when it had not been, an additional 3,500 pages ultimately were disclosed when I pressed the FBI and appeals office on this. The disclosures were thus not voluntary at all and required this litigation for their disclosure. This comment applies also to a large percentage of the

documents next referred to as disclosed, 11,806. As my uncontested affidavits make clear, compliance was claimed with the initial processing and I had to press for the subssquent disclosures. many thousands/page

7 The indices, compliance was claimed before these were disclosed. ~~[illegible]~~ I had to prove they existed to obtain them and thus, again, without this litigation they would not have been disclosed. They may well be the most important of the disclosed records for scholars

7 "records relating to the Garrison investigation:" All search slips are claimed to have been provided and there are no such search slips. Moreover, this language, consistent with the FBI's misrepresentation throughout this litigation, entirely misrepresents my actual request, which was not as stated here in the brief but was for "all records on or pertaining to . . . persons or organizations who figured in District Attorney Jim Garrison's investigation." Instead of searching to comply with this request the FBI merely stated that it had no separate file on the Garrison investigation. However, the phony New Orleans search slips list many pertinent Garrison and other records not processed and withheld without claim to exemption, with the spurious claim that they are not relevant.

8 last graf, "In the absences of any complaint from plaintiff..." There were many complaints in the form of appeals that were and remain ignored. There also were in the form of my affidavits (IGNORED), which documented these "complaints."

8 bottom, the proposed Vaughn index: This proposal completely ignored the complaints I had already made with regard to the withholdings, complaints that had little prospect of being included in the 1/100 proposal and which remain ignored.

9 bottom, the alleged "refutation" of my allegation that my appeals had not been acted upon. The brief holds no citation and no truthful citation is possible because most of my appeals remain ignored.

10, lines 3 ff. This is a bobtailed and unfaithful account. When counsel left to confer and my counsel phoned me I offered to settle the case and not refile it if the FBI would make a search under the critics and this would have obviated the need for any costly Vaughn. The FBI and DJ refused outright, without consultation with any higher authority, to either make the directed search for the records on the critics or to waive a Vaughn. They actually insisted that they wanted to do a Vaughn, regardless of cost. With regard to the allegation about the 31 persons and organizations Wwho had never been mentioned or identified," the fact is that such lists existed and I attached several from official files to my appeals, still ignored. All are, in fact, "mentioned" in the disclosed FBI files and in the form of lists prepared

by the government when the Garrison investigation was current. In addition, as indicated above, the file numbrs of some had been disclosed, without search being made, and they are indeed more than merely "mentioned" in both my appeals and affidavits. (For the most part the FBI obliterated the file numbers when it disclosed records on or about the critics, but in some instances it did not and thus I was able to provide them, and did.)

11 The so-called "multi-tiered search" in Phillips 5/3/82 affidavit. I believe that this is the affidavit in which he actually admitted that Dallas, instead of making any search at all, sent my request to FBIHq where, without making any search or any being possible for him, SA Thomas Bresson decided to limit compliance to the field office companion files of the FBIHQ files disclosed earlier. Moreover, Phillips, in FBIHQ, was not able to provide a first-hand Dallas search affidavit.

11,12 It simply is not true, ~~XXXX~~ whether or not this is material, that the items mentioned by my counsel "had never before been raised by plaintiff." All were included in my appeals and affidavits. And ignored.

12, middle This is not a fair representation of the defendant's discovery demands. What they actually demanded is each and every reason I had and each and every relevant documents. Because of the issue I've made of this they give any entirely unfaithful representation here to make it appear to be at least superficially not unreasonable whereas for all practical purposes it was impossible for me. As they continue onto 13 they omit my allegation that I had also provided this information and documentation in affidavits, and I think, based on what Lesar told me about what the brief says about those affidavits, that includes at least selections of these points would be important. (For example, Ronnie Caire, who was very definitely within ~~with~~ the Garrison item of the NewOrleans request and had been the subject of an earlier request to which a false response was then sent me. I included the records referred to internally in response to my earlier request and I was written that the FBI had no records on him at all. It does In fact, Oswald had applied to him for a job, the one known job application the FBI never investigated, and Caire was the registered agent for a CIA-supported anti-Castro group whose New Orleans address Oswald used on literature he distributed. As the case record, i.e.my uncontested affidavits show, the FBI simply refused to provide a sample of Oswald's literature in which he used this address to the Warren Commission, and in the end it had to obtain a copy from the Secret Service. This, in greater detail, is illustrative of what I had long before this date already provided, with complete documentation.)

13 With regard to my statement that "the discovery would be 'extraordinarily burdensome for plaintiff to provide, particularly given his age and ill-health,'"

the brief continues, "but he did not give any other information or attach any affidavits concerning this claim.(sic)" In fact the FBI was well aware of my age and ill health, particularly its FOIA section, and in fact I had provided an affidavit so attesting. It is only after a sneering and insulting reference to this, inferring that I was lying, that I provided still another and fully detailed and documented affidavit regarding my medical history, going back, as I recall, to discovery of acute venous thrombosis in 1975 and in greater detail for the period beginning in 1980 and in still greater detail, complete with a long serioes of bills, for the period of the discovery demands. With regard to the blatant lie that I did not provide information relating to burdensomeness, I did this also in great detail. With regard to harassment, I also provided detail and documentation on this. There never was any response to any of this by the FBI and it was never addressed in any attestation it provided. The record in the court below is clear, elaborate, detailed and undisputed, so this is, whether or not semantics I do not detect are employed, a gross lie. Jim told me that you have a copy of the longer or longest (I may well have made other references in other ignored affidavits) of these medical affidavits and in the light of the magnitude and potential significance of this misrepresentation hope you will agree that at least a summary of it should be presented to the appeals court.

With regard to the FBI and DJ knowledge of my medical condition and limitatuons, and I'm certain that this also is in the case record, in all my cases filed under the amended Act a large number of FBI FOIA personnel were in court and in conferences with me, as were a large number of Civil Division and USA attorneys. From the last quarter of 1975 on I have been required to keep my legs elevated when sitting and they not only knew and observed this, and even made arrangements for it on occasion, but were also present when this need was explained to each and every court at the outset of each case. Both the FBI FOIA unit and DJ lawyers were aware, beginning in late 1977, of the arterial blockages and the weakness I then suffered because they had to park Cesar's car inside the FBI building for me to be able to confer with them. This is to say that both the FBI and Civil Division had all the required knowledge without my having to provide the affidavits I in fact did provide.

14 At the top they admit the filing of the last affidavit only. But they do not refer to any effort, by affidavit or unsupported allegation by counsel, to dispute my claim to extreme burdensomeness. Obviously they could not refute my representations regarding my health. So, to this ~~day my~~ district court attestations are undisputed. Only ignored. The brief to this point refers to no refutation. There is none in the case record.

In this recounting, perhaps to make Jim appear to be contemptuous, the brief ignores what he reported to the court and FBI counsel, that he had tried to get me to comply with the discovery demands and I had refused. I believe this is clear in

the transcripts. If there is no later mention, it is unequivocal in my affidaits. It also was the subject of conversatuons Jim reported to me when LaHaie phoned him to threaten me. I cannot date this but I am certain that it was prior to the date mentioned, May 12, 1983, ~~with~~ a mention limited to official notification of the court. (beginning line 5 up) (I provided a separate affidavit on this.)

15,16 quotations from my April and May 1983 affidavits: the fact is that these merely repeat some of what I had earlier attested to and the fact is that these and my earlier affidavits remain ignored. While ~~the~~ selection may appear to be extreme to the court, in fact ~~they are~~ all of this is well ~~documented~~. This is one of the reasons, ~~my belief~~ I believe that they would ~~engage~~ now engage again in this kind of thing, ~~for asking~~ you to include the DJ testimony with regard to how the FBI treated me and my requests from the Senate FOIA hearings. It is in the case record. The fact is that the FBI has not made even pro forma denial and however they may quote it the case record is without refutation and in fact is undisputed with regard to all these allegations.

16 "June" records, beginning five lines up: It would not have been possible for each and every one of my appeals to have been provided in the litigation and I'm sure the judge would have complained if I had. But there is nothing new in anything we filed in this time frame and "June" is in my earlier appeals and my earlier affidavits. In fact, long before this date, the FBI was required to disclose one of the Dallas JUNE records to me, the "admat" JUNE file on the Marina Oswald surveillances. It is not true that "plaintiff had not mentioned earlier in the litigation" such things as the unsearched JUNE records. (top of 17) I prevailed on appeal before this date on the Marin. "June" record

The "Statement of the Case" is largely misrepresentation of the case record and is sometimes untruthful.

SUMMARY OF ARGUMENT (pp 18-22)

Whether or no it is mentioned in this section, the brief in the first section does not refer to any contradiction of my allegations of burdensomeness and in fact there is no contradiction of it in the case record. My affidavits are the only evidence in the case record relating to burdensomeness.

I forgot above, with regard to ticklers. That also was not a new claim, as this brief represents. I raised the failure to search for any ticklers with the FBI and the appeals office, they are the subject of ignored appeals, and in my affidavits I even told the FBI who to ask about them and where to look for them. One of the areas of refusal to search, with no first-person affidavit provided, and of the significance of my undisputed but ignored affidavits, is ticklers, pertaining to which Phillips misrepresented, evaded and did not even ask for any Dallas or New Orleans searches. Ticklers have been relevant and the subject of controversy in all my FOIA cases and

the FBI always refuses to search for them and claims they do not exist or cannot be found. The reason is apparent when they are forced to disclose: the content of these ticklers, in the subject-matter of my interest, is largely political and they contain what is relevant and is not in the main files. The FBI pretends that all relevant information is always in the main files.

18 "Defendant's served interrogatories and a document production request upon plaintiff in order to discover the bases for plaintiff's claims that the FBI had not conducted an adequate search in response to his FOIA request." This is palpably false because I had already provided all the information I had in my affidavits and appeals and all that had been ignored. The FBI has not even offered the suspicion that I could provide more information or documentation. (Here again I think a few samples like Ronnie Caire, ticklers and the Dallas police tapes will be impressive to the court. In fact my Ronnie Caire affidavit includes at least one thoroughly detailed and documented appeal, both remaining entirely ignored.) At home

18 "Plaintiff had claimed that unspecified information and documents in his possession supposedly substantiated his claims." This also is false because my appeals and affidavits may be longer than the government preferred but they are specific, detailed, documented - and ignored. Having entirely ignored those several file drawers of documented appeals and all my many affidavits, the FBI now represents that this alleged discovery "was the only means of finding out the basis for plaintiff's allegations." Here again a few samples will make it clear that this is simply untruthful.

19 In admitting that I had filed these appeals that held the requested information the brief ignores the affidavits. (Lines 3 ff) It then states what is not in the case record and is quite untruthful, that "Plaintiff's administrative appeals, however, while replete with allegations of the supposed existence of files (sic) not searched, fail to supply the claimed support for these allegations." I provided thousands of pages of xeroxes of mostly the FBI's own records with these appeals. This is followed by another lie, "Frequently, plaintiff ~~xxxxxx~~ simply cites a sequence of other appeals which end in a reference to additional information which he choses not to provide." There was but one instance of this in several file drawers, and the reason I refused to let the FBI know what I knew was quite specific, that if it knew in that instance it would limit its search to what I specified. (This was based on prior experience with the FBI.) As a result, as the brief does not acknowledge, the FBI was forced to provide what it had withheld, even to the extent of making a spurious claim to exemption to withhold a reference to it, the Marina Oswald "JUNE" or surveillances files. (Another similar illustration is the withheld Marguerite Oswald files. I identified one and in the end I got one. Later, to another litigant, and Jim has this, it was disclosed that FBIHQ ordered Dallas to set up still another Marguerite Oswald file. It remains unsearched for or not reported on any

When we discussed your brief I read you and excerpt from one of their pleadings in which they admitted that I had agreed to provide this and had in fact provided it long before they filed for discovery. This is one of the reasons for believing that their discovery was no more than a deliberate Cointelpro operation. I think it should be included now and hope you will agree.

search slip and even after Marguerite Oswald compliance is claimed in this litigation, it is still withheld, without claim to any exemption. It without doubt is indicated.

However, with regard to this one misrepresented instance, described falsely as a "frequent" occurence, neither the appeals office nor the FBI ever asked me for any more information and it is quite obvious that none was nexessary. It is all in the indices and the FBI knew this if it had made any search at all. It did not need any information from me, which is the basic claim of this part of the argument. All it needed was to be honest. (See below at *)

20 The brief claims that the affidavits I provided "belie" my claim of burdensomeness. This unsupported argument was made in district court, refuted under oath, and no effort was made to dispute what I stated. I accounted for the time required by those affidavits and pointed out that all they required was that I sit and type. They did not require the enormous searches demanded in discovery nor the frequent trips to the basement where all those records are when steps are at best a serious problem to me and I can use them only a few times a day without danger due to my medical condition. Or, at this point, where at the district court level the government made no effort to refute what I stated under oath, they are being less than honest and imposing on the trust of the appeals court to make this false and entirely unsuppoerted claim after it was compeletely refuted. (See ** below.)

20 The brief admits that I argued "that defendants did not ~~require~~ really require this (ie, the discovery) information" before the district court. The brief does not cite any ~~ref~~ evidence the government presented to the district court in refutation. There is no refutation of this before the district court. If what I stated under ~~with~~ oath was to be disputed, was the government not required to dispute it with evidence before the district court, instead of substituting unsupported argument about it before the appeals court?

* Here again I believe that actual excerpts from the affidavits and my affidavit on this very point, in the case record, might be cited or quoted effectively because this is the one effort to address my appeals and affidavits and it is unfaithful. 84 here

** This is enlarged upon on 21, line 10 following,"It would have taken no more effort, and likely less, to answer defendant's discovery, which simply required a good faith, reasonable effort at providing answers." This is knowingly false, in what it states and what it misrepresents of the case record. What was demanded of me is each and every reason and each and every document, with at least 40 file cabinets of records involved, not merely any reasonnto believe that the withheld records exist. Also, there is no government evidence in the case record on the time and nature of the effort required, thus there here is no reference to the case record. The exact opposite of this representation is the only and entirely undisputed evidence in the case record in which I did in detail address the excessive and extraordinarily

The sole purpose of providing that incomplete appeal was to reflect the fact that I had filed JUNE appeals. There then was no point in providing anything else. However, as is obvious, I did later provide the identification and as a result the FBI was forced to disclose what it knew it had, what was embarrassing to it, and what it had asserted improper claims to exemption to withhold identification of it from me. This thus is first entirely out of context, next is false because it is the one time I temporarily withheld identification, and it is not an accidental offense becauss I provided an affidavit addressing this entire matter that remains unrefuted.

burdensome nature of the demanded discovery.

21 Lines 14-15 There is this misrepresentative sentence with regard to the discovery demands, "Plaintiff, however, did not even attempt to answer." This does not say that I did not answer the questions, it says I made no answer at all. I did not ignore the court, I did answer with my undisputed affidavits to the burdensomeness and lack of need of the discovery. They and what my counsel did with them are an answer.

21 With regard to Lesar, lines 4 up ff, "for his counsel had failed to fulfil (sic) his responsibilities as an officer of the court, to assist in controlling the course of the litigation." This and what follows is false and the case record shows that it is false. Lesar came up here and spent most of a day trying to talk me into at least making a gesture at doing what the government demanded. This is quite explicit in the case record. What follows at the top of 22, that all we did was repeat blanket objections that we had made before, also is not true. Thus again no citation of the case record.

22, lines 3-5 It is alleged that my counsel "acted simply as a mouthpiece" for me, filing my "affidavits without regard to their relevance or appropriateness." While I do wish he had made more use of them, I know that frequently he just did not have the time and I have no doubt that he had been worn down by the FBI and DJ. However, with regard to any claim or even suggestion that my affidavits were not relevant or appropriate, is not the place for that before the district court, where I then would be able to respond? And where they would then be the focus of attention? This was never done. Their relevance is not disputed in any FBI evidence nor is their appropriateness. (The same few samples would be illuminating)

ARGUMENT (22-49)

23 The misrepresentation of limited and simple discovery is repeated, that in the interrogatories and document production demanded "defendants simply attempted to discover the bases for plaintiff's claims that the FBI had not conducted an adequate search." If this had been the purpose the FBI would not have had any need to demand each and every reason and each and every document. This is persistently misrepresented in this brief. It did not ask me merely to establish something, not that it was necessary, and my allegation that it wasn't is undisputed. It deliberately went farthur and demanded everything about anything and everything, which under any circumstances is knowingly excessive. Moreover, even after I pointed this out before the district court it refused to make ~~the requested~~ simple requests.

23, line 7 ff "Defendant's did not, however, undertake discovery to relieve themselves of the burden of proving that the FBI's discovery was adequate." This is

directly the opposite of the reason given to the district court for demanding the discovery, that it alone would enable the FBI to prove that it had made an adequate search. Jim should be able to provide this or I will, if you do not have a copy of it. And I do think very much that the more we can show them saying two contradictory things the better all around.

This is followed by another [illegible] direct contradiction of what they told the district court, "Nor could defendant's discovery have accomplished this."

Comment: The obvious purpose this deliberate misrepresentation serves is an effort to refute my allegation (page 23, lines 7-8) "that defendants were trying to shift the burden of proof in a FOIA case."

23. lines 9 up ff, the representation that I did not specify what was withheld,

First they pretend that I had not provided this in detail earlier, as I had in the appeals and affidavits and as they admitted in the pleading I cited to you by phone before you filed your brief, and then they say the exact opposite of the representation that their discovery demands were simple by pointing out that the FBI had released "more than 200,000 pages of documents" to me. Any search of them by me, particularly when I do not have FBIHQ's indices (and most are FBIHQ records) is obviously no simple matter under the best of circumstances. This is followed by an obvious untruth, that "defendant's only means of discovering the bases for plaintiff's claims was to serve discovery requests." It is not only that I had already provided this information, it is that in what I refer to above they admitted this before they filed their discovery demands. Also, I had specified under oath how they had failed to search and they did not refute me.

Following this, of all the multitudinous ignored appeals, they again refer to the one about the JUNE files referred to above, again ignoring the case record subsequent to this misrepresentation in it, that if I told the FBI it would limit its search. It is, I think quite significant that after they were corrected about this under oath in the district court they continue to deceive and misrepresent. It then states that "There was no 'enclosed appeal attached to' my affidavit. It was not necessary to the purposes of that affidavit. It was, however, provided initially to the appeals office, from which or from me if it had wanted it, the FBI could have obtained a copy by merely asking for it. It also is not truthful to state, as in contradiction to the case record the brief states, that without my providing the specification the FBI already had and didn't need, "defendant's could not directly respond to whatever evidence plaintiff intended." (Later I did provide the information to Shea.) What the brief does not state is that the FBI made any search at all after my appeal or after my affidavit and the plain and simple truth is that it didn't.

What actually happend, and the case record is quite explicit on this, what the FBI withheld from its Dallas inventory all references to the files on the bugging and wiretapping of Marina Oswald, under b2 and of all things, 7D claims. But I obtained that information ~~outside this case~~ elsewhere and thus knew what it was withholding. When there was no alternative, when the FBI merely refused to search, and Shea asked me for the proof, I provided it and the FBI then disclosed the withheld records of which it knew in this case without additional search because it was listed in the inventory and the FOIA unit withheld it from that inventory. The expurgated and the unexpurgated copies are ~~in the case record~~ attached to my affidavit. So is my specification of all of this before the district court. This misrepresentation, therefore, cannot be accidental.

Thus this was not in any way any kind of "difficulty" for the FBI (line 2 up), and there is no specification of what also is not truthful, that it had "similar difficulties" with regard to all the other points. This is the only specification of any difficulty, it is the only claimed need for information from me to search or prove an adequate search, and it was all false, witness the fact that the withheld records were listed on the Marina Oswald index cards in Dallas and FBIHQ, without any search made or attested to, and it was also listed in the inventory that FBIHQ made spurious exemption claims to withheld from me. also on Dallas search slip of 1980.

All of the foregoing and more is in the case record and is entirely undisputed. I therefore believe that this misrepresentation is deliberate and not accidental or from ignorance. It is all in my affidavits responding to the similar misrepresentation to the district court.

29, lines ~~29~~ 14 ff. This misrepresentation of what I filed and what it means is refuted in an affidavit I filed exclusively on this allegation. Even the arithmetic is untrue as I recall and repeated here after I showed it not to be correct. The last three lines are particularly untrue because I stated and explained the exact opposite in that affidavit. The documentation I attached was at hand and required no search for me at all. If I remember correctly, I also state in the affidavits themselves that I was not able to make additional searches to attach additional documentation. I actually prepared and attested that I prepared those affidavits from my knowledge, without the effort required by their all-inclusive discovery demands. That affidavit even includes the amount of time required of me and that it was spread over a 10-month period. 9A here

30 The misrepresentation of the nature of the interrogatories and total omission of the documents demanded (lines 1 ff) is significant, as is the misrepresentation that it would have required less time and effort to provide the discovery, again refuted with the refutation uncontested in the case record. They acknowledge receipt of this (lines ~~10~~ 7 ff), and follow this with a nonsequetur that also is not true, "Plaintiff attempted to claim that the affidavits did not require much new research

I do not know that you will need this but I would like you to understand better what this refers to. In my small office I have 8 four-drawer file cabinets, four two-drawer cabinets and four two-drawer legal-sized cabinets. My desk has a desk organizer which right now has fewer files on it but has 19 working files in it. Aside from stacks of material I expect to be pertinent. I also have a three-drawer subject file in the office. In the basement I have two four-drawer file cabinets of JFK assassination subject-filed duplicate copies and two cabinets of King and JFK appeals. All of this is entirely separate from the 200,000 pages from which entirely falsely and in contradiction to the only evidence in the case record the brief alleges I actually searched for those affidavits. All the cabinets I refer to above are of name and subject files and they contain no original records disclosed to me by the agencies. They do include duplicates of the originals that I made for this subject filing. The originals are preserved exactly as I received them. The foregoing reflects what is "at hand" and required no search. The searches I made in those 200,000 pages are very few and when I made them this is reflected in the affidavits themselves. For example, the affidavits on the Dallas police radio tapes. And that search was simple because I used the Dallas index, which immediately reflected that the FBI had kept all of that information out of the main assassination files.

There is absolutely nothing in the case record to justify the language of the brief, "These affidavits clearly required significant effort to research and write since they reference specific documents from among the 200,000 pages," This is a lie and before it was uttered it was proven in the case record to be a lie. No effort was made to refute my affidavit, which, typically, was entirely ignored.

However, the language I quote is an entirely different description of my appeals (sans of documentation refused) and does constitute acknowledgement of receipt of "significant" research and documentation long before discovery was sought.

(See page 7 above re brief pages 18 and 19.)

and that answers to the interrogatories would have done so." (Again, no reference to the document demands) Apparently the language used is used to pretend that the cited La Chemise case is relevant to what I alleged "But all that was required..." 10A There is no contradiction either here or in the case record of the enormous effort that would have been required of me to comply with the actual rather than the consistently misrepresented discovery demands.

"a reasonable good faith effort," apparently the La Chemise language, would have required the enormous effort to which I attested, with my attestation uncontradicted at the district court.

(It is not true that they are limited to what is in the district court record? None of this is for the obvious reason that it would have been false. This claim, that in the same or less time I could have complied, is proven to be false in the district couft record, where my attestations are undisputed.)

I do not recall whether I spelled out exactly how I proceeded, but for your understanding what I did is address each things in any pleading or FBI affidavit in the order in which it appeared, from what was in my head. Or, exactly as I am doing now. I haven't consulted a record, haven't searched for one, and I've made notes of only a couple I think you should have. Of these few, all are in my office, so I do not have to use the stairs. They are all attached to my affidavits, which are in my office. I also had all the case records in my office, so on the rare uses I made of what had been filed, they were all at hand. Any examination of my affidavits make it clear that this was my undeviating method, attesting in response page by page, without any effort at reorganization, alas one of the reasons for some of the length. But there was no other practical method for me and it took remarkably little time.

This also permits me, except when I forget, and when I forget I can regret it, to get up and move around every 20 minutes or so, doctors' orders. Prolonged sitting also further impairs my already impaired circulation and that means potentially serious problems.

While I do not have total recall and while my memory is not as good as it was, that is what I am limited to. And I have worked this fast: I once did the draft of a book on a weekend. I used the same method because it was about another book.

Each of these affidavits was in response to something the government filed. During the entire period I had walking therapy six mornings a week, three hours daily. I walked for a few minutes inside a mall then sat and rested the leg, and when I rested I read and annotated the filings to which I responded, so the time required of me at my desk was even less. And, of course, I could not make searches in my basement when I was at the mall reading their filings.

I think that they got carried away with their lies here and made a significant mistake in the last part of the sentence that begins, "But all that was required," which is, ~~I~~ "was a reasonable good faith effort at providing answers without significant new research." There is but one way in which this could have been possible, and that is by duplicating what I had already done and provided, by ~~making new~~ additional copies of the appeals and the affidavits and their attached documentation.

Of course this language is entirely different than the actual language of the discovery demands but it defines what the government now says would have satisfied it and all my alleged obligations and it acknowledges all over again that I had already done this, which is precisely what I stated.

There is not any way I can think of that would enable the government to state that its discovery demands did not require any "significant new research" other than from knowledge of my existing research, and the only means by which it could obtain this knowledge is from that research itself as I provided it.

I think this alone kills their case and destroys their integrity and exposes what they are really up to in all of this, including abuse of process, I think it is called.

33 , footnote 16, refutes the text, which represents that I did nothing for a long time, stated nothing, etc. In fact my counsel and I in my affidavits repeated my basic objection and my intent to take the issue up on appeal.

What concerns me about ignoring most of what they go into is that still another judicial defamation of me will result. The persisting misrepresentations of the FBI and DJ did lead the court in the case cited into serious factual errors that do defame me. I did not expand my request in that litigation and I have not in this litigation. They merely misrepresent my request and what I did and did not do. And say. This has other than personal significance because of the importance of the subject matter of my work and its uniqueness in that field. (I also am the only one who is not a concpiracy theorist and whose extensive published work as well as my court affidavits have no serious error.) This is and has been seriously hurtful to FOIA and what it means and represents.

36 Footnote 17 is the kind of thing I had in mind when I read to you Shea's and other DJ testimony to the Senate FOIA subcommittee. It is in the case record and I hope you will now include it because this kind of thing can be poisonous and has been in the past. The record also reflects that as disclosed to me this document had the entire text withheld, after which it was disclosed to another, Mark Allen. When I saw what Shea had written, clearly to preserve his own precarious position, which nonetheless did not survive it, I wrote him and told him that if you would tell me where I had been unfair to or in any way vilified anyone in the FBI I would immediately forward a written apology. He never responded and it just isn't true. But again, this kind of thing, ~~accepted~~ if not refuted by counsel, is very hurtful to the client.

With regard to the delays attributed to me, I think Jim can document that the opposite is the truth. I did no single thing to delay the litigation.

37 The false claim that drafting those affidavits took more time than complying with the discovery demands is repeated, again without reference to what was actually demanded, again without citation of the case record and again the exact opposite of what my uncontested affidavit attested to. Are they not limited to what is in the case record? I can see (and Mr. Lesar does) this kind of falsification being very hurtful before some judges, especially those who have been influenced by previous mendacities.

Comment: I think it is necessary to quote the exact language of the all-inclusive discovery demands as well as my uncontested reply affidavit when, not on evidence but as unsupported argument by counsel, the similar claim was made to the district court.

39 At the bottom, repeated allegation that I was able to produce "lengthy references to documents on other matters," I think this also can be hurtful because it is a deliberate misrepresentation. There are relatively few attachments to those affidavits, as compared with my earlier affidavits in all cases, and virtually no

searching was required because most of what I used was at hand in my office. I am pretty certain that the affidavits themselves explain the absence of additional attachments. I am also certain that this is addressed in the response affidavit I refer to above. In no case do I remember any real search. As with Caire, all that was required was one trip to the basement to remove one record from the Caire appeals file and that was it. The only "lengthy references" I recall are to the search slips and they were in my office because of their importance. I made duplicate copies of them for this purpose when I received them. Moreover, most of what I used was already in the case record, my copies of which are in my office, and required no searching at all. This whole thing is contrived, without basis in the case record, and simply is not true.

40 middle of page, "Plaintiff has failed to demonstrate any extenuating circumstances..."(Emphasis added) While they pretend, without any evidence, that my health did not qualify as an extenuating circumstance, and never once cite their own language or their own demands, they have not even bothered to deny that I had, as without contradiction I had attested, already provided all the information and documentation of which I knew. Not "any?" Isn't this actually another lie?

40 award of fees against Lesar, I do not know if you or Hitchcock will respond to this but early on in the hassle I provided an affidavit in which I attested that he had come here, spent much of a day attempting to persuade me to make at least a gesture toward compliance, and I refused. He did not have to remind me of the possibility of a contempt citation but he may have and I know we discussed it then and later. He even contrived a situation in court that might have been intended to coerce me or lead me to believe that thereafter I had no alternative, and in his continuing effort to get me to do as he counselled he even failed initially to tell the court then that I had refused, although he did not long thereafter. There simply is no basis at all for any effort against him and the case record is clear on this. I think, in the interest of all attorneys, the response to all of this and what follows ought be vigorous. It is outright fabfication to intimidate all attorneys willing to take cases for those who cannot pay them as well as, in some circumstances, attorneys with well-off and corporate clients.

41 Third graf,"Plaintiff and his attorney have failed to show any reason who expenses should not be awarded against them." This is a plain lie, more grevous with regard to Jim. With regard to the second sentence, it claims that because Jim pursued my legitimate objective, a perfectly lawful thing, that he is subject to sanctions. This gets to the Stanton case again, and in the interest of all attorneys, not just Jim, I do hope it will be cited. He was without question subject to severe sanctions if he failed to pursue my lawful objectives.

It also is not true to say that "Plaintiff opposed the discovery on the basis that the government should ~~not~~ never be allowed discovery on the search issue." This Says ~~says~~ that I had no other "basis," which is false. It likewise is untrue that I knew, simply because the judge had ruled against me, that my "continued refusal to answer defendant's discovery was unjustified." I knew that he had held against me but I also knew that what I had filed was true and relevant, and I certainly knew that I had the right - I regarded it as the obligation - to take the issue up on appeal. That I intended this was well and clearly known to the government and the judge. I even asked Jim to ask the judge to expedite it, and Jim did and was refused.

Their misrepresentation is compounded at the bottom of the page, continuing on the next, when they first say I'd "shown no special circumstances that would make an award unjust" and then limit their supposed proof to their misrepresentation of what I did do in that time period and then limit this to a) a misrepresentation of what they asked in their interrogatories, not once quoted, and b) ignore their demand for "each and every" document. (The meaning of their actual discovery demands is in the case record and is unrefuted. I did respond to this misrepresentation under oath and they here misrepresent it, having produced no evidence of their own at district court on the question.

Comment: Based on extensive prior experience, I am seriously concerned about the cumulative effect of such extensive and deliberate misrepresentation, so extensive that there simply is no possibility of refuting all of it. I think this makes some strong refutation of as much as possible essential. If you knew the truth behind the ~~Ag~~ spectro decision they cite you'd better understand what I mean by my actual experiences when courts are overwhelmed by an accumulation of these kinds of misrepresentations, with some members perhaps welcoming them. But my major fear is for the nullification of the Act, for practical purposes, and the hazard to attorneys, that can result.

44 It simply is not true to allege that Lesar did not "demonstrate that it was an abuse of discretion to order the award against him..." (lines 8-9) The concluding sentence of this paragraph makes Stanton more essential, I think.

The next paragraph is a concatination of fabrications. First, Jim is not in any way responsible, their word, and he did not act "jointly" with me. He went, I think, a bit too far in the opposite direction, and the record is clear on that, too. Then begins a serious of outright lies, beginning four lines up: "The district court had closely observed plaintiff's ~~could's~~ counsel's relations ~~to~~ with plaintiff in this litigation for more than five years." This didn't happen even a single time and there was no possibility of it having happened. No could any of the dig motives have had any personal knowledge.

Of course there is nothing in the case record on this and I understand they are limited to what is in the case record. But in those years I kept a rudimentary diary. It shows that if there was a status call in 1978 I did not attend it. I went there for one April 6 but abruptly that afternoon Judge Oberdorfer recused himself.

I did not attend any status call, if there was one, in 1979.

In 1980 I was there 3/25. As I remember it, Dan Metcalfe and Lesar agreed in advance to give the FBI more time, I sat in the audience, not with Jim, and Metcalfe blocked Judge Smith's efforts to throw the New Orleans case out simply because I'd asked for the Dallas records! (The additional arterial obstructions were diagnosed 9/2, I was operated on 9/16, discharged 9/30, rushed back 10/1 for emergency arterial surgery, discharged 10/16)

I have not been able to get to any calendar call or anything else in Washington since, except that I have medical transportation for my regular (every six weeks) surgical checkup. (additional more serious emergency surgery 4/81)

So, the one chance Smith had to "observe" me I was not even with Lesar and there was no reason for me to be with him then and there was no other possibility.

There is no reason to believe that Smith "observed" me, leave alone "closely," and there was not, on that one occasion, any possibility of anything that could be interpreted as "closely observed plaintiff's counsel's relations with plaintiff ...for more than five years."

On that one occasion in 1980, Dan Metcalfe represented the government, not any of those on this brief, or LaHaie. To the best of my knowledge not one of them, including LaHaie, has ever seen me and I am confident I have never seen any of them, anywhere.

This is a complete and total fabrication, manufactured to be damaging and and to deceive and mislead the court. It is anything but justification for the fabrication that follows and is based on it alone, that it provided a basis for the court's "discretion to decide that plaintiff's counsel shared responsibility for refusing to comply with discovery..."

If the situation were reversed the government would regard such an offense as actionable. I think that it is necessary to move to expunge and that this is much more important than any delay that would ensue in oral argument. This and the deliberate lie about the Dallas request, which is essential to the claim that there was any Dallas search, are enough basis for moving to expunge but I believe there are other bases. It is, I believe, important in my personal interest, in Lesar's, and possibly most of all, in the interest of lawyers and FOIA, which are and have been my primary concerns. It would go a long way to resolving this case in an acceptable

manner, which I've sought for years, to mitigating the libels these miserable creatures have laid on me to the courts (and I have every reason to believe elsewhere), and it just might reduce similar abuses that if my experiences are at all typical, taint every FOIA case. They do taint all of mine.

Checking my diaries reminds me that they've lied also about the delays. I not only was not responsible for them - I could not have been. They alone were, until the time they moved for discovery. Perhaps there may be something I do not recall between Lesar and them, but if so it could not have been an appreciable part of those four years, which are 80% of the time in question. Yet they repeat throughout that I have caused all the delays. Their own schedule of the production of records will come close to establishing this by itself. Their falsehoods about the delays appears to me to be a major part of their case, especially in the allegations against Lesar, for them hold him responsible, even for not "controlling" me when I responded under oath to their persisting misrepresentations that often are much more serious than simple misrepresentations, as my uncontested affidavits state.

45 the business about Lesar's asking for two weeks 2/22/83 because he intended
15A to draft responses to the interrogatories. They represent that he was not truthful. He was truthful. He had been here, I had refused, he asked me to tell him what could be said, and briefly I did. He had every reason to believe that another draft might have been required because he knew I opposed even what he had in mind. What I saw and he did not, quite aside from principled objections to entirely unnecessary dixcovery in an FOIA case when it would only have further delayed that case and is, I believe, wrong under the law, is that it could have subjected me to new charges because it would not and could not have complied with their actual discovery demands, even if limited, as their demands were not limited, to interrogatories. In the end, for both reasons, principle and personal hazard, I refused. So, he was completely truthful and I am confident that the actual case record, rather than this deliberate corruption of it, will leave this without doubt. In even their representation, "Plaintiff's counsel claims that he had expected plaintiff to respond but was unable to persuade him to do so," Jim was truthful. While I might question "expected" I do not doubt that Leadr hoped I would agree, if only ~~for~~ from his fear of correctly anticipating what has ensued.

and "respond" here.

That all of this is contrived to defame Lesar becomes apparent in what follows, the charge that he had "forgotten entirely his duties as an officer of the court." There is no other basis for this assault upon his integrity and professionalism, and in order to strengthen this purpose there follows another misrepresentation of the record, limited entirely to what is in the brief, which I presume means your ~~Hitchcock~~ Hitchens brief, "Indeed, nowhere in his brief on appeal is there any acknowledgement of his

Response is not limited to giving them the answers they demanded, as they try to make the court believe with this formulation and what follows. They here attempt to deceive and mislead and, I believe, they do msirepresent.

duty to assist the court in bringing this litigation to a resolution." But in the case record there is very much of what he did do to facilitate just this, beginning with my offer of a major compromise, to dismiss and not refile the case, which they turned down while insisting upon the Vaughn index I also agreed to waive. He ~~proposed~~ proposed other courses, including, as my request, asking to be enabled to take the questions at issue directly to the appeals court. on Hitchcocks

Another lie, perhaps less so if reference to your brief only is intended, is, "There is no suggestion that plaintiff's counsel advised plaintiff of his obligation to comply with the orders of the court." On this the case record is overflowing and is exactly the opposite of what the government represents, including at least one affidavit from me that, typically, is entirely unrefuted. (No effort made.)

46 While my recollection now is not certain, I believe that it is false to represent that all we filed "was merely a repetition of the very same blanket objections the court had just denied." I also think this is established in the case record after they made those charges at district court.

The more I read this the more I fear that those dreadful people expect to take additional steps against Jim based on these ~~fraudulent~~ fabrication and this, in turn, makes me believe even stronger that they require vigorous and definitve response.

46 He had the "obligation" to "control" me? If there was anything wrong with those affidavits, the place to do something was in district court. They made a gesture against only one and even Smith denied that. They ignored all the others simply because they are in point, are factual and are irrefutable. They waived any basis for objecting to those affidavits by not responding to them and leaving them entirely uncontradicted. And, once again, it is a lie to state that these affidavits "belie" my claims with regard to what their actual rather than their misrepresented discovery demands required of me. Once again, I filed an affidavit and they did not dispute it in any way, leave alone attempt to refute it. (Even after all the medical records and bills I filed they refer only to my "claimed" medical condition and limitations, in an effort to accomplish improperly what they could not do properly, and to plant the idea that I lied.

It simply is not true and it is their standard boilerplate for what they cannot address in any other way for them to claim that what I filed was irrelevant and virtually incomprehensible and maligned the FBI and its employees. And, obviously, if there was any factual error the place to address it was at district court, not with this kind of entirely unsupported slander that is immune because it is before a court. In each and every instance, I am confident, each of those affidavits begins with a statement of my qualifications and is followed by a precise statement ~~of the~~

of the government's filing it addresses. Again, I believe a few samples would be illuminating to the court, and the business about maligning makes more relevant those few pages from the Senate subcommittee's DJ testimony, where Shea and the Civil Division people stated that the FBI's behavior toward me was indefensible.

While I, too, would have preferred that Lesar present more than a "notice of filing," I know he didn't have time then (I'm sure there are long delays after he received my affidavits, as the dates will establish) and he may well have believed that because each of these affidavirsm rather than being irrelevant, begins with a precise statement of what it responds to, when he had no time there was no real need to file anything else with them at that time.

It slanders both of us to state that he "viewed himself solely as plaintiff's mouthpiece" and in fact he did not file all the affidavits [1] provided. This, interesting, is the exact opposite of another charge they laid on him earlier, that he was merely using me for his own ends. I believe he can provide it. I recall responding in an affidavit.

This is followed with the same fabrication documented above, "The district court had observed counsel's behavior during the five years since the action was filed," when nothing at all transpired before the court for most of that time, and the charge that

47 The judge "saw the delays caused hy plaintiff and his counsel's acquiescence and encouragement of plaintiff's interminable demands for an ever-increasing search." This is the precise lie they were able to con the court in in the spectro case. I did not in any way enlarge on my requests. The problem is that to this day they have never searched to comply with my actual requests. (Thus their big lie on page 2)

Comment: Whether or not this, too, is intended to be the basis for an action against Lesar, I think it makes much more important their deliberate lie about my Dallas request, what it really asked for, which is the basis and purpose of their lie on page 2.

In any event, they attribute delays to us but do not specify a single one at this point and no relevant one elsewhere, other than the two weeks in which Jim tried without success to convince me. Two weeks in five years is insignificant.

And again, this untruth is not in the case record and thus is not cited to it. Throughout you will find that what is not cited to it is not in it and is just made up for purposes of this brief, which makes no reference to yours that I remember to this point. Or to Hitchcock's.

Citation of Gullo v Hirst is not specific, but it appears to be based on the false representation that Lesar rather than they caused the delays. It appears to

represent that my announced intention to appeal the discovery is improper: "harassing...recklessly invoking court action in frivolous causes by foot dragging and delaying in order to deny or postpone the enjoyment of unquestioned rights." The refer to what they imply is Lesar's obligation in this citation,"not to indulge in any of these practise" and thus imply that he did, and the conclusion of the quote fortifies my belief that they are up to something against him, "(W)hen the responsibility can be fixed remedial action should be taken."

I believe that failure to make vigorous and appropriate response, meaning really definitive exposure, will merely encourage them to make such an effort, and that, certainly, aside from the harm to him, will take infinitely more time that making that response now and making it unequivocal and definitive.

Is there any doubt in your mind that if you or Lesar or Hitchcock would do as they have done they would seek sanctions against you?