Weisberg SHOULD BE GRANTED RELIEF FROM THE JUDGEMENT BECAUSE IT IS NOT EQUITABLE

In stating what Weisberg represented as requiring that he be granted relief from its judgement against him, the district court makes no mention of the lengthy citation of authorities and the ~~facts~~ undisputed facts making the judgement inequitable (pages 5 and 6) and perhaps to mask the fact that the Memorandum does not address the evidence of perjury filed by Weisberg and remains entirely undenied, it also avoids that dirty word.

Weisberg stated, and it remains without any dispute at all - was never mentioned by the defendants or the court in any way - that even if the ~~judgement has no~~ alleged discovery demanded had been proper and justified, which he denied with evidence that also remains undenied and is the only evide ce on this point in the case record, the government having produced none of its own and none in attempted fe refutations of his evidence, - that the discovery demanded was excessive and not merely burdensome, a recognized basis for not providing demanded discovery, it was by its nature excessive. Weisberg, without refutation, also alleged that the discovery demanded was so excessive that it would not be possible for him to attest to its completeness under oath.

The wording of the demanded and granted discovery required that Weisberg attest to each and "each and every" reason for claiming that his requests had not been complied with and "each and every" document he has that relates to this in any way. The two basic reasons advanced for demanding discovery are, on the one hand, that it would enable the defendants to prove compliance with his requests and on the other, that in the event it had not, Weisberg's unique subject-matter expertise was required for that information to be located and processed.

Weisberg stated, and it remains unrefuted, that because the required initial searches had never been made, any discovery, at the least, was premature. (Dallas as will be seen, never made any searches to comply with Weisberg's requests and when years after claiming compliance was directed by the appeals office to make a few searches, they were inadequate, knowingly incomplete, and even a blank search slip was provided as both autehtnic and reflecting all the existing pertinent records.

New Orleans, instead of making searches to comply with the request, used instead handwritten copies of an entirely different request made about a year before Weisberg filed his. One of the u perjuries not mentioned by the district, which, in fact, mentions not a single one of them, was by the "ew Orleans FBI SA who swore that the year-earlier search was ~~xxx~~ not that but the search made for Weisberg. His own dating of what was provided is in itself abundant, but far from the only proof of his perjury.) Weisberg also stated, and this also remains without dispute, that if the actual purposes weee as stated, ~~xfax~~ and not the usual FBI harassment of an aged and ill man who, along with it his writing, it does not like, all it needed was any reason to indicate existence of the information not processed and any document supporting that reason. For example, the FBI's copies of the recorded broadcasts of the Dallas police for the time of the assassination. Weisberg ~~xxxx~~ had already presented the FBI's own records showing that without question the Dallas FBI ~~xhtaixxd~~ made its own duplicates of those recofds and transcribed them for the Warren Commission, which published these transcripts if full. He then presented the FBI's own records, ~~afxgxxxxbxxkxfxxx~~ generated after SA John N. Phillips had blithely sworn to a series of untruths, new fabrications each time in an affidavit Weisberg proved the earlier attestions to be false, of how it continued to hide the fact that it had assassination-investigation period tapes and went back to the Dallas police to get still another version. No use was ever made of any of the simply enormous amount of information Weisberg provided, uncontestedly two files drawers and extensively documented of it at the least and a vast amount in and attached to his numerous/affidavits. With regards to the two recordings obtained by the Dallas FBI office, Weisberg, from the FBI's own records, identified exactly where they were stored outside the main file cabinets and with regard to the second. he provided the FBI's own records relating to when and how they were obtained and for what purpose,-which reflected where they should have bee located after they were sent to Washington. This information was also provided in Weisberg's (also ignored) appeals. The, forgetting Weisberg's appeal

but remembering his request, and without any search ever having been made in compliance with his requests or after he provided all this information that the FBI never needed in any event, in exultation the appeals office notified Weisberg, in December 1984 - of finding the second recording exactly where Weisberg had indicated it should be. Pertinent records were also admitted then located. In response, Weisberg immediately wrote and said that the records are not subject to any exemption, which is undenied, and that if he were set a copy of them he could provide additional assistance in locating the recordings not identified in that letter. He also asked to be notified of the cost of a second duplicate of the located recording so he could provide it to others for their research.

A years and a half has passed since, admitted, the recording and the related records were located. To this day Weisberg has had no response to his letter and subsequent reminders of it), no word on the cost he would remit for the second duplicate, and not a single page of the nonexempt and relevant records was been processed for him.

This, certainly, gives the lie to the defendants' claim of needing any discovery, of their claim to prompt compliance, and it is but another of the thousands of illustrations - by thousands Weisberg is not resorting to a figure of speech - of the defendants' steadfast refusal to make any use of the extraordinary amount of information and documentation he provided - more than anyone else, ever, according the the to the epartment itself - and thus his allegation that if he provided discovery, defendants' the undeviating record is of not making any use of that information and documentation.

footnote ! Aside from the problems the defendants may have seen in disclosing to Weisberg what Phillips had sworn so often did not exist (there was no prblem for the district court, to which full information was provided and it did and said nothing), there is another and perhaps to the FBI and more serious problem. The second recording was by the FBI presented to the special panel convoked by the National Academy of Sciences by the Department (that body because, as disclosed records reflect, it is not within FOIA) as the original recording. There is internal evidence, evidence on that recording itself, that what the FBI represented as the original and was analyzed by these

scientists as t e original when it is not the original. end fnote

The defendants' admission of the belated discovery of the recording Phillips had so often and so often in immune self-contraction of himself sworn ~~did not exist~~ the FBI did not have was after the record clsoed in the district court and is included in the new evidence where, along with all the other and not inf requently raunchy new evidence the district court entirely ignored it. Numeous other and similar illustrations are in the case record and also remain ignored.

If as it never did the FBI needed any discovery from Weisberg relating to these his important recordings that without question are within the request, it needed no more than s single relevant document or a single relevant reason, not "each and every" reason and record to know what it knew in any event, that it had the recordings in question. However, Weisberg's information and documentation on this was so extensive he even told the FBI the make of the tape recorder on which it made the first duplicates of the records - from its own and thoroughly indexed records, which were never searched.

"Each and every" included in the granted discovery is clearly excessive and clearly very burdensome.

On burdensomeness Weisberg stated under oath and subjectbto the penalties of perjury that using his files to comply with so intendedly excessive a request is a physical impossibility for him, was then and for as long as he lives would be. He stated the medical and physical reasons for this. In the rare instance of defendants undertaking any kind of response, and being careful to avoid any evidence of any attestion, which would, as was only too well known, lead to his charging perjury, defendantd' counsel filed slurring, conclusory and entirely baseless claims that what was demanded was well within Weisberg's capabulities. Counsel undeftook to "prove" this by citing the number of pages of affidavits Weisberg had filed, the "proof" consisting of crooked calculations and unjustified opinions. Weisberg replied promptly, with the actual arithmetic, which established that for the period in question the actual time required for his drafting of those affidavits

was only a few minutes a day. So that there might remain no reasonable question, he also filed a complete set of the records of his hospitalizations including even every cent bills, every item, every detail he possessed. And because for the period of the demanded discovery he suffered numerous other illneses, some quite debilitating and not infequently painful (like repeated pneumonia and pleurisy) Weisberg provided copies of each and every bill from his family physician. Also under aoth, he detailed his history of circulatory illnesses and swore to exactly how the defendants were aware of this beginning not later than a decade ago, when they then saw in conferences on other matters and in the courtroom in other litigation that he had to keep his legs elevated when sitting, may not stand still, and even that he was sometimes so enfeebled that to confer with him, as directed by another court, it had to park his counsel's car inside the J.Ddgad Hoover Building. They knew also that for he has not been able to drive to Washington for what is now a decade and hasn't, and that to confer, as requested by the other court and the defendants, he had to hire a car and have a then assistant drive him to Washington and back.

Weisberg explained - and all of this was under oath and subject to the penalties of perjury - that in addition to not being able to stand still long enough to search his files, most of them are in the basement of his home and stairs are difficult for him at any time and can be dangerous enough to cost his life if he falls. He explained that when he usees them he is required to use the handrail and that in taking files from the basement to his office there is a limit to the number of folders he can carry and the number of times a day he can make the effort. In support of this he detailed his history of serious circulatory ailments, beginning with 1975 hospitalization for acute thrombophlebitis in both legs and thigh, discovery of arterial impairments in his chest in 1977, and 1980 surgery for the implantation of a teflon artery to bypass the obstructed left femoral artery. This was followed by serious complications and emergency surgery twice, the first time when blood clots broke loose and the second when there was a total obstuction of circulation on the left side, a condition not uncommonly fatal and over which one of his surgeons, who operated from about nine at night until two the next morning, expressed

both surprise and satisfaction that Weisberg had survived at all.

Althoughtthe initial arterial surgery was successful the post-operative complications, bith which necessitated his being rushed by ambulance from Frederick to Washington, resulted in serious and permanent limitatmons on what he is able to do, what he may attemt to do without hazard to himself and possibly others, and the amount of time required for ~~takixgx~~ fo.lowing his doctors' instructions. He also attested to the potential danger from some of his medications, particularly the anticoagulent, which he requires ~~fmx~~ at a higher than average level and on which he has survived for the past decade. A simple fall can cause internal bleeding that can cause his death.

As of the ~~p~~eriod of the demanded discovery, at his doctors' directions, he spent, as he has since the emergency surgery, three hours every day at a neaby mall, where he walks until he feels what is lmown as a claudication pain, when he is to sit and elevate his left leg until it disappears, when he again resumes walking. His doctors sent him to this mall bdcause there is no ~~raffic~~ vehicular traffic for him to avpid, no hill to go up or down, places where he can elevate the leg every 75 feet or so, and a controlled environment because he is not to be out in heat and humidity or when it is cold. This mall permits him entry before it opens for business and becayse even a running child striking his foot can be disasterous, Weisberg has genrerally complete his three daily hours of therapy before the mall opens for business. His twice-weekly blood tests, to determine and carefully monitor the prothombin time or clotting of his blood, required that ~~f~~requently bec.use he has hemorrhaged from this dangerous anticoagulent, preceed this daily therapy. Thus, for the period of th. demanded discovery, aside from the additional limitatjons imposed by those other docuemnted and uncontested illnessees, a large part of ~~a~~e every working day was taken up by this therapy, which is essential to his survival.

Subsequently, beginning with prostate surgery this January, Weisberg is, as he states in his request for an extension of time in which to file this brief, he is still further limited in what he is able to do because of additional venous thrombosis

which followed this recent surgery. He is further enfeebled by it, cannot stand even still long enough to put toothpaste on the brush without his left foot and leg engorging with blood that cannot return to his heart or for other normal purposes, is less able to walk and use stairs, and was directed by his cardiovascular surgeon to spend two hours a day flat on his back with his legs elevated.)

From 19 Beginning in 1976, Weisberg has not been supposed to sit still more than 20 minutes at a time, typing or doing anything else. If he does, his circulation return is impaired. This interrupts concentration as well as typing. And to be able to type with his legs elevated, he has to type with the typewriter to one side, not facing it directly. The restriction on his driving is up to about 20 minutes and sometimes that is too much. He has not driven his car, which he bought in 1964, out of Frederick since early 1977.

Obviously, with these serious and permanent limitations, complying with even reasonable discovery would have been extraordinarily burdensome and burdensomeness is a recognized reason for not providing discovery. But the deliberately excessive demand itself and the rubberstamp order was a physical impossibility and any attestationt to having provided "each and every" reason and document could not be made by an honest man. At no time after Weisberg provided this extensive detail and explanation did the defendants modify their demand for so-called discovery and at no time did the defendats offer any evidence of any kind at all to refute Weisberg's attestations. The information he provided included the identification of his doctors, hospitals, surgeries, illnesses and medications. If the defendants had had any question at all about Weisberg's truthfulness they could have taken this information to their own doctors and undertaken a rebuttal, if not a perjury charge against him. That they did not and that the excessive nature of the demanded discovery was never changed, Weisberg believes, leaves it beyond question that the so-called discovery was not intended to obtain information but was designed to harass him and prolong the litigation and thus waste more of what remains of his life.

Bearing on this, Weisberg introduced the FBI's own records stating that in an

effort to "stop" him and his writing, the word of two different special agents, the filing of a psurious lawsuit against him was approved up to and including Director Hoover. But when push came to shove, the special agent who was to front for the FBI chickened out and instead, it has stonewalled him in all his FOIA ,itigation. To force him to litigate it does not respond to his requests. The case record contains illustrations and proof, even the refusal of the Department to justify to the Congress the FBI's abuses of him. (There then were some 25 simple requests the FBI had ignored for up to eight years. Some were for but a single record, they were that simple. This is what forced him to file inclusive requests, otherwise he would have had to file a lawsuit for a single piece of paper and to file many lawsuits for what it just refused to comply with the lae by processing.

Whatever may account for the memorandum stating Weisberg's suppsoed reasons for seeking relief from the judgement without any mention of equity, particularly when the district court had every reason to believe that Weisberg would appeal, the uncontested and uncontestible facts are that the district court did not question Weisberg about thiso raise any questions about what he filed, state in any way that what he filed is not adeqiate to established inequitability or even pay any attention to what he filed. On its part, the defendants sought no proceeding on the facts and, with having been equipped by Weisberg with more than enough to challenge his representations, provided not a single word of evidence in rebuttal.

Perhaps a court is entitled empowered to ignore 100 percent of the evidence on unrefuted a matter that is before it but Weisberg questions whether it can with justice and impartiality charged to the courts. He questions also whether this kind of deliberate abuse of an aging and unwell man who is engaged in a pro bono research of great magnitude, albeit unpoular with the defendants, for trickery and harassment by the defendants, is in and of itself other than grossly inequitable.