on page 3 what I actually swore to was FBI/Ghidney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff -v- UNITED STATES DEPARTMENT OF JUSTICE, et al., Defendants	Civil Action No. 75-226

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTIONS TO STRIKE, TO COMPEL ANSWERS TO INTERROGATORIES, FOR PRODUCTION OF DOCUMENTS, AND RESPONSE TO MOTION TO POSTPONE CALENDAR CALL AND STAY ALL FURTHER PROCEEDINGS

On February 19, 1975, plaintiff filed this suit under the Freedom of Information Act, as amended, 5 U.S.C. 552, seeking disclosure of the spectrographic analyses and other tests made by the F.B.I. for the Warren Commission in connection with the investigation into the assassination of President John F. Kennedy, as well as any tests made by the Atomic Energy Commission in connection with said investigation.

On March 14, 1975, plaintiff and his attorney met with representatives of the F.B.I. for the purpose of specifically identifying the scope of plaintiff's request.*/ Defendants attach

*/ Plaintiff's attorney was advised by correspondence prior to filing of this action that the Atomic Energy Commission (now Energy Research and Development Administration) provided technical assistance to the F.B.I. at AEC's Oak Ridge National Laboratory (now Hollfield National Laboratory) in performing paraffin casts taken from Lee Harvey Oswald and neutron activation analyses of bullet fragments. Plaintiff's attorney was further advised that neither AEC nor its laboratory at Oak Ridge prepared any report on the results of these analyses, and was referred to the F.B.I. for any further information. (plaintiff's Exhibit E to the complaint; attachment to plaintiff interrogatories to ERDA).

hereto the affidavit of Special F.B.I. Agent John W. Kilty, assigned to the F.B.I.'s laboratory in a supervisory capacity, who was present at that meeting. (Government Ex. 1) As established by Special Agent Kilty's affidavit, Mr. Weisberg requested certain specific categories of information which were subsequently given to him on March 31, 1975. Thereafter, when plaintiff's attorney advised the F.B.I.'s Freedom of Information Act unit that plaintiff had also intended his request to include certain other data, the F.B.I. also provided this information to plaintiff on April 15, 1975. Mr. Kilty's affidavit, sworn on May 13, 1975, concludes that F.B.I. files do not to the best of his knowledge contain other information responsive to plaintiff's request.

Defendants also attach hereto the affidavit of Bertram H. Schur, Associate General Counsel of the United States Energy Research and Development Administration (ERDA), formerly the AEC, which establishes that the AEC did provide technical assistance to the F.B.I. at AEC's Oak Ridge National Laboratory (now Holifield National Laboratory) in performing analyses of paraffin casts taken from Lee Harvey Oswald and neutron activation analyses of bullet fragments, that neither AEC nor its laboratory prepared any report on the results of these analyses, and that no other tests were performed by or for the AEC on behalf of the Warren Commission (Government Exhibit 2).

At calendar call held in this matter on May 21, 1975, counsel for defendants provided plaintiff with a copy of Special F.B.I. Agent Kilty's affidavit and indicated an expectation that an affidavit indicating ERDA's compliance with plaintiff's request would be forthcoming shortly, and that these affidavits would be used to support a brief motion to dismiss on grounds of mootness since all information requested of which defendants are aware would have been provided to plaintiff. At that time, plaintiff's

counsel indicated dissatisfaction with the Kilty affidavit and contested the fact that all information had been provided. The Court also suggested that a reasonable way to proceed would be for plaintiff to specify what documents he contended had not been given and to thereby resolve the matter amicably.

Subsequent to the calendar call, counsel for defendants was served with plaintiff's motion to strike the Kilty affidavit on grounds, inter alia, of bad faith, and other discovery-related motions calculated to probe behind defendants' assertions of good faith compliance with plaintiff's Freedom of Information Act request. Plaintiff alleges in his motion to strike and attached affidavit that the Kilty affidavit is deliberately deceptive, not based upon personal knowledge, and should have been made by Special Agent Robert A. Frazier who plaintiff believes is still an active agent with the F.B.I. Laboratory. Defendants respectfully inform counsel and the Court, however, that Special Agent Robert A. Frazier retired from the F.B.I. on April 11, 1975 after thirty-three years, ten months and three days service, and that supervisory Special Agent Kilty is the most knowledgeable active service Special Agent to give this testimony on behalf of the F.B.I.

In the motion to strike (pp. 2-3), plaintiff also alleges the existence of certain documents which he claims have not been provided by the F.B.I. In a sense, plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I. However, in a final attempt to comply in good faith with plaintiff's request, a still