

THE LIE ABOUT THE DALLAS REQUEST AND THE NEED FOR LYING

(See also under affidavits.)

The brief misrepresents that its introductory sentence is the entire Dallas request even though earlier defendant's submissions quote the other portions of it. Because there never, ever, was any search to comply with my actual requests (by either office) it is obvious that until such searches were made there could not possibly be any need for discovery. The lie also is necessary because if there is a remand and counsel fees and costs are claimed for the lie to be represented as the truth is essential to any claim that the litigation itself was not productive.

Moreover, there is no Dallas search slip of any kind until the year after full compliance was claimed.

On May 10, 1979 the FBI claimed full compliance and Issar filed an appeal disputing this and giving reasons under date of June 5, 1979. The attached copy is a copy of the FBI's file copy, which was attached to one of its submissions I came across. (It had earlier claimed full compliance while withholding the indices referred to.) I attach only the first page. Their use of this as my only appeal when it was not is the only way they can claim to have acted upon my appeals. Most of the enormous amount of detail and documentation I provided as acknowledged appeals addressed Items 1-3 and thus is clearly what they pretended they needed and had not provided, thus their explanation for and justification of their discovery demands.

To indicate how much more was ultimately provided I attach the first two pages of the 3/2/82 Phillips declaration. Still more was provided later. (This Phillips listing still seeks to hide the fact that the FBI files its surveillances as "administrative matters" by not identifying the numbers of the surveillances files on Marina Oswald, which are listed on the second page, even though Phillips does provide the number of one of these, 6601313A on the first page. The other is 1313.)

Phillips also lies in stating that the FBI had "reviewed" in this litigation

*See p. 2 of attached pages of Phillips' declaration
Statement of Material Facts at 4. (bottom)*

The Lies-2

whereas ~~only~~ the second set of numbers, representing most of the total, were not reviewed because they were already disclosed. When I was able to force a review later they had to disclose an additional 3,500 pages that had been withheld as allegedly previous processed and disclosed *when they had not been.*

This also bears on the need to sue and the productiveness of the litigation.

Without so intending, as a Phillips declaration also disclosed without so intending, the defendants admitted that they never made a Dallas search to comply with my request of that office, *(in a statement of material facts the first four pages of which are attached.)*

The second page bears of the knowingness and deliberateness of the very big lie in the brief. It also discloses the deliberateness in never searching to comply with the clearly understood requests.

Page 2, at 3., reports the standard FBI field office FOIA practise. Neither ~~here~~ nor at any other place does the FBI state that this practise was followed in this litigation - because without question it was not. Yet still pretending that it was, in tacit admission that it was not - and in abundant confirmation of my misrepresented affidavit on pages 15 and 16 of the brief - the unauthorized substitution for search is clear on page 3 at 5. . Instead of any search at the field office, where the records and the indices are, my request was sent to FBIHQ, where SA *Thomas* Bresson decided without search what would be disclosed. Not surprisingly he limited what would be disclosed to the companion files of those ^{*already disclosed*} in the FBIHQ general releases of 12/77 and 1/78. This does not even claim any search. ¹ It claims only a "determination" at FBIHQ, without search and where search was impossible.

What follow at ~~this~~ this point is not true. Those HQ files were not disclosed to me or processed for me but are the general releases, of which I obtained one of the sets of copies. They are not involved in any litigation and none of my appeals have been acknowledged that I can recall save for one, disclosure of the bulkies of these main files.

The files that were later disclosed were not disclosed voluntarily by the FBI as a result of the review of the two named SAs. They were disclosed because I was able to correctly identify them, after full compliance was claimed. (FYI-they used Beckwith as an FOIA supervisor and provider of affidavits while he was an unindicted coconspirator in the Pat Gray case and very vulnerable. He swore to anything, did perjure himself and even provided what I proved to be phony records as the real things in C.A. 75-1996. *The judge banished him.*)

That the lie is deliberate and that the FBI correctly understood the request and simply refused to comply with it is established at the bottom of page 2 ^{at} ~~and~~ 4., where it is explicit in stating that the request was not limited to these main files.

At no point here or anywhere else that I can recall, and I'm certain I'd recall, is there any claim to have made any search to comply with the request for records outside the main files. Hence the need to lie on appeal and, I think, part of the reason for seeking to settle now to moot the case before the appeals court can act - or receive anything else from me.

Page 4 at 8. also is untruthful. The FBI did not disclose the indices to me merely because I asked for them. I got them by appeal, which Shea and I handled and negotiated. Because this index was to the four main files there was no way of claiming it was not within the scope when they had decided that the only request was for these main files. (For your better ~~and~~ understanding of the FBI in such matters, the sole purpose of the enormous labor and cost involved in this index was to enable the FBI to know what the Warren Commission knew. The same information was already indexed in the general Dallas indices. This index is limited to what was funneled through Dallas to FBIHQ for FBIHQ to consider forwarding to the Commission. The name of the FBI's game is control, even of Presidential commissions.)

FILE

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June 5, 1979

Mr. Quinlan J. Shea, Jr., Director
Office of Information and Privacy Appeals
Office of the Associate Attorney General
United States Department of Justice
Washington, D.C. 20530.

Re: Weisberg v. Webster, et al., Civil
Action No. 78-322; Weisberg v. Fed-
eral Bureau of Investigation, et al.,
Civil Action No. 78-420 (Consolidated)

Dear Mr. Shea:

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used*
By letter dated May 10, 1979, Mr. Thomas H. Bresson, Acting Chief, Freedom of Information-Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised me that the FBI has processed and released to Mr. Weisberg "all records within the scope of his requests" in the above cases, "with the exception of the 3 X 5 index cards, referrals from the Headquarters files and a portion of the referrals from the Dallas and New Orleans Field Office files." (A copy of Mr. Bresson's letter is attached hereto)

Mr. Weisberg hereby appeals from the FBI's processing of his requests in the above cases on the following points:

1. The scope of his requests. Mr. Weisberg maintains that the FBI has interpreted his requests in an unduly restrictive manner, thus denying him records that are within the scope of these requests.
2. The adequacy of the search. Mr. Weisberg asserts that the FBI has not located and processed all records which should have been located and processed. He has previously furnished the identity of relevant files which have not been searched in compliance with his requests.
3. Wrongful excisions and withholdings. Mr. Weisberg has advised me that the records which have been released to him contain wrongful excisions, and that other records have been wrongfully withheld in their entirety.
4. "Previously processed" records. The FBI has withheld voluminous records from the files of these two field offices on

*Exhibit A
Attachment 1*

3/2/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	78-322 & 78-420
FEDERAL BUREAU OF)	
INVESTIGATION,)	(Consolidated)
)	
Defendants.)	
)	

DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C.

2. Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received at FBIHQ, including plaintiff's request for records on the assassination of President John F. Kennedy (JFK Assassination) contained in the Dallas (DL) and New Orleans (NO) Field Offices of the FBI.

3. The following files and Special Indices representing all the files responsive to plaintiff's FOIA request were searched and processed:

- (1) Dallas (DL) file 89-43
- (2) DL file 100-10461
- (3) DL file 44-1639
- (4) DL file 105-1435
- (5) DL file 67-425
- (6) DL file 105-632
- (7) DL file 66-1313A
- (8) DL file 9-1984

- (9) DL file on technical surveillance of Marina Oswald
- (10) DL file on technical surveillance of Marina Oswald (logs)
- (11) DL file on technical surveillance of Marina Oswald (transcripts)
- (12) DL file on microphone surveillance of Marina Oswald
- (13) DL file on microphone surveillance of Marina Oswald (logs)
- (14) DL file on microphone surveillance of Marina Oswald (transcripts)
- (15) DL file 62-3588
- (16) DL file on allegations of William Walter
- (17) DL miscellaneous references
- (18) DL search slips
- (19) New Orleans (NO) file 89-69
- (20) NO file 100-16601
- (21) NO file 44-2064
- (22) NO file 62-3702
- (23) NO miscellaneous references
- (24) NO search slips
- (25) DL 3x5 Special Index
- (26) DL 5x8 Special Index

*FB originally planned to limit to exp no DL - need to include others
 But it originally planned to expand try to cover more than half of these*

4. The FBI's processing of plaintiff's FOIA request involved the review of 35,775 documents, consisting of 148,196 pages. Of this total, 23,969 documents, consisting of 94,964 pages, were not processed inasmuch as they were duplicative of other documents processed for plaintiff's FOIA request for DL and NO records on the JFK Assassination, or had been furnished to FBIHQ and processed pursuant to plaintiff's separate FOIA request for FBIHQ documents on the JFK Assassination. A total

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 1-9(h), the defendants submit, in support of their motion for partial summary judgment, the following statement of material facts as to which they contend there is no genuine issue.

I. GENERAL PROCEDURES UTILIZED TO SEARCH
A FIELD OFFICE'S CENTRAL RECORDS SYSTEM
IN RESPONDING TO FOIA REQUESTS.

1. The central records system of a field office of the Federal Bureau of Investigation (FBI) contains administrative, applicant, personnel, and investigative material compiled for law enforcement purposes. Consisting of files in numerical sequence and broken down according to subject matter, the record system enables a field office to maintain information which was acquired in the course of carrying out its responsibilities and which is deemed worthy of retention. The subject matter of a file, in turn, may relate to an individual, organization, company, publication or activity. See Declaration of John N. Phillips, April 29, 1982, attached to the Defendants' Motion for Partial Summary Judgment ("Phillips' Fourth Declaration"), ¶3.

2. Access to the central records system is afforded by the field office's general indices, arranged in alphabetical order, consisting of index cards on various subject matters, including names of individuals. The decision to index is made by the investigative agent and the supervising agent, except for the names of subject(s), suspect(s) or victim(s) carried in the case caption which are automatically indexed. The index cards in the general indices fall into two general categories: "main" index cards and "see" index cards (i.e., cross references). A "main" index card contains the name of an individual, organization, activity, etc., which is the subject of a file contained in the records system. A "see" index card bears the name of an individual, organization, activity, etc., other than the main subject, but such name is referenced in a file maintained in the system. The FBI indexes neither all names of individuals contacted nor all information received during an investigation. Only those names and that information which is considered pertinent, relevant and necessary for future retrieval are indexed. Id.

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3. When a Freedom of Information Act (FOIA) request is received at a field office, the general indices are searched to determine if there is any material located by name or other identifier in the records system which may be responsive to the request. If the indices search locates potentially responsive material, the actual files or documents are reviewed and, if pertinent to the request, processed. The requester is then advised of the results of the search and furnished any releasable material. Id.

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II. PROCEDURES UNDERTAKEN BY THE DALLAS
FIELD OFFICE IN RESPONSE TO PLAIN-
TIF'S FOIA REQUEST

4. By letter to the Dallas Field Office dated December 25, 1977, plaintiff's attorney requested "all records on or pertaining to the assassination of President John F. Kennedy," including "all records on or pertaining to persons or organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that assassination, as well as

those that are." Also requested were "all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination." See plaintiff's complaint, Case No. 78-322, ¶7.

5. Because many of the Dallas documents had been previously processed pursuant to a separate FOIA request by plaintiff for FBI Headquarters (FBIHQ) records on the Kennedy assassination, plaintiff's request was forwarded to FBIHQ. Upon review of this latest request by plaintiff, Special Agent Thomas H. Bresson, then Assistant Chief of the Freedom of Information-Privacy Acts (FOIPA) Branch, determined that four "main" files in the Dallas Field Office were responsive to plaintiff's FOIA request:

without search to avoid that this alone was impossible

- 89-43 - "Assassination of President John F. Kennedy, November 22, 1963." This file consists generally of allegations about individuals (other than Lee Harvey Oswald and Jack Ruby) or groups involved in the assassination, and other miscellaneous information.
- 100-10461 - "Lee Harvey Oswald." This file consists of information developed about Lee Harvey Oswald before and after the assassination.
- 44-1639 - "Jack Ruby, Lee Harvey Oswald-Victim." This file concerns the killing of Oswald by Ruby.
- 62-3588 - "President's Commission on the Assassination of President Kennedy." This file consists of material about the Warren Commission and the report it issued.

not what Phillips says he says they were processed for the day when we got material from

These four Dallas files corresponded to the four FBIHQ files which had been previously processed under the FOIA for plaintiff. See Phillips' Fourth Declaration, ¶6.

6. As a result of an onsite review of Dallas records by Special Agents Horace P. Beckwith and John H. Hawkes of the FOIPA Branch, a fifth "main" file and a Special Index were determined to be responsive to plaintiff's FOIA request:

- 105-1435 - "Marina Oswald." This file consists of investigative material on Marina Oswald.
- 5x8 Special Index - This index was prepared as an administrative aid by the Dallas Field Office to track documents placed in files 89-43; 100-10461 and 44-1639.

Id. at ¶7; see also Declaration of John N. Phillips, March 2, 1982, attached to Defendants' Motion Concerning the Adjudication of Certain Exemption Claims ("Phillips' First Declaration"), ¶6.

7. The five Dallas "main" files and the 5x8 Special Index were sent to FBIHQ and processed by the FOIPA Section. The releasable material was furnished to the plaintiff free of charge pursuant to a fee waiver granted plaintiff by Benjamin R. Civiletti, Acting Deputy Attorney General, on March 31, 1978, for material related to the assassination of President Kennedy (hereafter JFK fee waiver). See Phillips' Fourth Declaration, ¶8.

8. Pursuant to a request by plaintiff's attorney in October 1978, the FBI agreed to include within the scope of plaintiff's FOIA request a 3x5 Special Index which related to "see" references in the Dallas files. This Special Index was prepared by the Dallas Field Office as an investigative aid and was constructed and used in much the same way as the Dallas Field Office's general indices. The 3x5 Index afforded access to the four "main" files on the JFK assassination maintained by the Dallas Field Office: 89-43, 100-10461, 44-1639, 62-3588. This index was processed and the releasable material was furnished to plaintiff free of charge pursuant to the JFK fee waiver. Id. at ¶9; see also Phillips' First Declaration, ¶7.

9. In August 1980, the FBI further agreed, pursuant to a request by plaintiff, to search for any "lead cards" in Dallas which related to the JFK assassination. "Lead cards" are prepared by a Supervising Agent to maintain administrative control over the investigative activities of agents assigned to assist the Case Agent in an investigation. In September 1980, James A. Abbott, Special Agent in Charge of the Dallas Field Office, advised that any lead cards related to the JFK assassination had been destroyed in accordance with FBI regulations. Plaintiff, in turn, was so informed by Special Agent Bresson in October 1980. See Phillips' Fourth Declaration, ¶10.