

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



HAROLD WEISBERG, :
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 Plaintiff, :
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 v. : Civil Action No. 78-0322
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 WILLIAM H. WEBSTER, ET AL., :
 :
 Defendants :
 :

HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 78-0420
 :
 FEDERAL BUREAU OF INVESTIGATION, : (Consolidated)
 ET AL., :
 :
 Defendants :
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PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS

All twelve items of defendants' request for production of documents are keyed to the interrogatories which defendants' have addressed to plaintiff. Plaintiff objects to the individual items of the request for production for the same reasons set forth in his objections to the corresponding interrogatories.

Two objections to the request for production are stressed in particular. First, defendants already have the documents they are requested, hence there is no need to obtain them from plaintiff. Second, the burden imposed upon plaintiff by defendants request is not only undue and oppressive, it is so extreme as to be impossible of fulfillment by plaintiff, especially given the

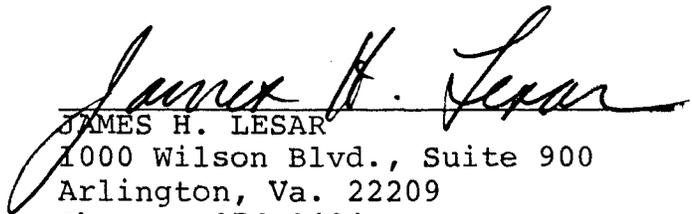
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severe limitations placed upon him by his physical and medical condition. Mr. Weisberg's February 20, 1983 affidavit describing these limitations is attached hereto and incorporated herein as part of his objections to the discovery sought to be exercised by defendants. Many of the facts set forth in this affidavit have long been known to defendants; in view of this, plaintiff considers defendants' attempt to exercise oppressively broad and unnecessary discovery to be a deliberate tactic of harassment engaged in by defendants as part of their continuing efforts to grind him down and wear him out while at the same time running up the costs of litigation and delaying and obstructing his access to records to which he is entitled.

After executing his February 20 affidavit, Mr. Weisberg became ill with bronchitis, pneumonia and pluerisy. (A tentative diagnosis of congestive heart failure has apparently been ruled out.) He has recently hemmorrhaged internally in the diaphragm area due to coughing and the synergistic effect of an anti-biotic and coumadin, the anti-coagulant drug which he must take daily.

Under these circumstances the discovery which defendants wish to take is not only legally untenable, it is morally repugnant.

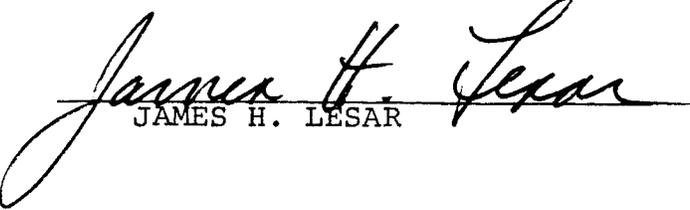
Respectfully submitted,


JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 1983, mailed a copy of the foregoing Plaintiff's Response to Defendants' First Request for Production of Documents to Mr. Henry LaHaie, Room 3338, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.


JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :
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 Plaintiff, :
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 v. : C.A. Nos. 78-322 and 78-420
 : (Consolidated)
 FEDERAL BUREAU OF INVESTIGATION et al., :
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 Defendants. :
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AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff in C.A. 78-0322 / 0420 combined. In prior affidavits in this case I have attested to my professional and FOIA experiences and expertise and to my medical and physical limitations. In this affidavit I update and expand upon my medical and physical limitations to indicate that the defendant's discovery demands upon me are at the least extraordinarily burdensome. Full compliance with them is a practical impossibility because at the very least, it would require a year of my time and that when I am nearing my 70th birthday. (I will be 70 on April 8th of this year .)

1. In October 1975 I was hospitalized at George Washington University Hospital for acute thrombophlebitis in both legs and thighs. My doctors then informed me that the damage to the veins in both legs and both thighs was permanent and irremedial. The damage to the left leg and thigh was more severe. All the main

veins on my left side were blocked permanently. I required a heavy dosage of anticoagulant (15 mg. coumadin daily). Because of the danger of hemorrhaging, this must be monitored carefully, with regular laboratory tests of the prothrombin time or the time it takes the blood to clot. At the end of six months my doctors of that period informed me that I had been on this dangerous drug as long as was considered safe. I also was instructed not to stand still, to sit only with my legs elevated, and not to sit for more than 20 minutes at a time without getting up and walking around.

2. From then on, and this means forever, I am not able to type in the usual manner. I also am not able to write or correct my typing by sitting with my legs under my desk, except for brief periods. I have had to have special, heavily-padded footrests made for use at my desk and wherever I sit at home. I have had to design a special typewriter table, a pedestal rather than a four-legged table, and I have to type sideways. This is awkward and makes for typing errors that require correction. In making corrections I use a clipboard rather than my desk - I hold the clipboard with ^(my left) ~~my~~ hand and write with the right hand. This, too, is awkward. It also makes an almost illegible handwriting more difficult to read when my corrected drafts are retyped.

3. In 1977 arterial blockages were detected by my family doctor. He sent me to a well-known surgeon at Georgetown University Hospital, who made additional tests and identified some of these blockages. My family doctor also told me that I have atherosclerosis, that the circulation to my head is impaired and that this could not be corrected surgically. At Georgetown it was determined that my arteries are partially blocked under the shoulder-blades. Because of these circulatory impairments I may move my head only slowly. I may lie down or get up only in stages and at each stage not move my head for about 20 seconds. If I

do, circulation is impaired and I get extremely dizzy. If I rise from a sitting position without exercising this kind of care, I can fall from dizziness.

4. Since August 1, 1977 this is more serious because since then, despite the danger of hemorrhaging, I have required a higher level of anticoagulant. I have been given the strictest cautions against falling, cutting or bruising myself, and I have been told that a relatively minor accident can be fatal.

5. I can and I have passed out following what had been only nominal physical activity for me. This does not happen at the time of the exertion. It comes some time after it, when the circulation of blood cannot meet the demands of my body. Because loss of consciousness can lead to falling and that can cause me to bleed to death, I must be careful.

6. The FBI and the Civil Division of the Department of Justice have been well aware of my physical and medical limitations since the summer of 1977. That summer, when the FBI wanted to confer with me following a calendar call in C.A. 75-1996, my ability to walk was so limited that SA . John Hartingh, FOIA supervisor, arranged to park my counsel's car inside the J. Edgar Hoover FBI Building. In the same litigation the then head of the Civil Division's FOIA litigation section testified to their knowledge of my medical and physical limitations.

7. By August 1, 1977, I was not able to walk from my home to the end of my lane and back up the two steps into my home without getting dizzy and weak. (The lane is about 400 feet long.) After medication with the anticoagulant my family doctor prescribed walking therapy, carefully monitored, under which I was able to increase my walking capability slowly but dramatically; but by 1980 this capability had decreased and I was able to walk only slowly. My family doctor, finding no pulse at all in my left foot, sent me back to the Georgetown surgeon. He located

two new arterial blockages in the left thigh with non-invasive tests and then, with an invasive test that required brief hospitalization, decided they were correctable by surgery. Shortly after Labor Day of that year, he performed a successful arterial bypass from my groin to my left knee, by implanting a plastic artery between those points.

8. The first post-surgical complication was an additional venous thrombosis. Then, the day I was discharged from the hospital, blood clots broke loose. By the time I could get an ambulance and return to the hospital and emergency surgery was performed, there was additional and permanent damage. All of the clots could not be reached and only some could be removed. The result is additional and serious circulatory impairment on the left side. There also was serious muscle damage and destruction from oxygen starvation from the lack of blood.

9. From that time on my ability to walk has been seriously impaired and diminished, as are other physical activities. I cannot walk to my mailbox and back without pain from oxygen insufficiency in the leg and thigh muscles.

10. In April 1981 I began to feel ill at supper. The local doctor covering for my family doctor had me rushed back to Georgetown by ambulance. He told me that if I were to be treated locally at the very least I'd lose my left leg and thigh. The Georgetown surgeon and his staff performed emergency surgery from about 10 o'clock that night until 2 in the morning. There had been a total blockage on the left side and I was told that I was lucky to have survived it at all. That blockage was removed and the cause repaired, but there apparently was additional damage from additional oxygen starvation. My counsel, Mr. Lesar, probably knows more about what happened in and was diagnosed in the emergency room than I do because he was there, having been notified by my wife, but I was by then drifting in and out of consciousness and was not conscious most of the time. I know that the surgery

was so rushed that when I later came to, my undershorts were still around my ankles. The doctors and nurses did not take time to remove them.

11. During this hospitalization I was told by the chief of podiatry not even to try to trim my toenails myself and that I should be seen by a local foot specialist regularly. Since then I have been under the care of three doctors; my surgeon, who examines me every six weeks, my family doctor, who does not examine me regularly (although he has examined me as much as twice a week, last on February 2 and 5) and every four weeks by the local podiatrist (who is also a surgeon).

12. There has been muscle atrophy in the left foot and particularly the toes, in addition to the deformities from oxygen starvation. Following the most recent of what is known as a Doppler examination about two months ago the podiatrist informed me that, while the course of walking therapy I have been on has been beneficial, there is not enough circulation in the left foot for surgery to be considered. The deformities, which cause serious problems, thus are not correctable.

13. For about two years I have been under the strictest medical injunction against any breaking of the skin on the left foot in any way. As recently as February 2 of this year my family doctor warned me that if the skin breaks at the heel, which has been irritated and inflamed for some months, the consequences can be serious and that until it heals, something I understand is not certain, I'll be flat on my back, with my feet elevated. This irritation to the heel has required that I keep it protected with large sterile surgical pads for about six months. Because I am required to keep my feet elevated when I'm not walking this has become an additional and serious problem. Resting that heel on four inches of foam is not enough to eliminate the pain and the irritation the consequences of which can be so serious for me. The need to protect this heel is so urgent I have been directed to sleep with it in a lamb's wool boot.

14. An additional consequence of the impaired circulation is a fluid-retention problem in the left foot, leg and thigh, which are always swollen. This is sometimes painful, usually restricts my ability to move even more and requires a diuretic three times a day.

15. My family doctor, with the hearty approval of my other doctors, has me go to a particular local mall every morning because there I can sit about every hundred feet and when I feel a particular kind of pain, referred to as a claudication pain, I am to sit as soon as possible and keep the leg elevated until what circulation I still have is restored. As I was building up my walking capability after the last surgery, this therapy was gradually extended until I was spending four and a half hours a day at it. This has now been reduced to three hours. It takes me that long to walk three miles, which is what my doctors want. This therapy consumes every morning of my time six days a week. I can usually walk about a sixth of a mile before I am required to stop and elevate the left leg. As the morning therapy progresses, I am sometimes able to walk a little more without stopping and resting but on January 26 of this year the surgeon and a week later my family doctor directed me not to press to lengthen the short distance I am able to walk without having to rest and raise the leg. In addition, my family doctor told me not to stand, even briefly, to speak to friends when I meet them, particularly at the mall, but to ask them to accompany me to where I can sit and hold the leg up while we talk.

16. If I stand still, even momentarily, my legs and thighs, particularly the left, begin to swell immediately from the blood that gets down and cannot get back up to the heart. I have to sit to wash, shave, brush my teeth and for other functions. (If I sit without the leg and foot elevated, the same thing happens, but not as rapidly.)

17. Foot, leg and thigh exercises have been prescribed and these take time. My

wife does not drive, so I also drive her to her medical appointments . Usually I have two weekly medical interruptions in what time remains for work. In one recent week I had six such medical interruptions. The weekly testing of the clotting rate of my blood requires, in all, almost two hours because I must await the results before I can safely take the anticoagulant that day and this, too, reduces the time I have for work. If the prothombin time is not within a certain range, I must consult my family doctor before taking the medication, and that takes more time.

18. My family doctor and the surgeon want my blood to take about twice its normal rate to clot, but that makes me prone to hemorrhaging. If the back of my hand brushes a chair when I walk past, or if it comes into contact with a door when I open it, I usually hemorrhage at the point of contact. I have bled internally from this medication and I have had an abdominal hemorrhage that swelled to the size of a large goose egg. This indicates the care I must exercise in every action, no matter how minor.

19. From the time of the first surgery I have not been able to squat to use the lower drawers of the file cabinets. Even with a stool the lowest drawers present such problems for me that I have had to empty all the lowest drawers of the file cabinets in my office. I also have had to empty the four two-drawer file cabinets I had in my office for FOIA requests and appeals. The contents of those file drawers are now in regular file cabinets in my basement. I also keep all the records I receive under FOIA in my basement because I have no other place for them. In all I have about 60 file cabinets, all pretty well filled.

20. However, my use of stairs is limited. The day of the first scheduled calendar call in this case, long before the surgeries and their complications, the day Judge Oberdorfer rescued himself, when I tried to walk up two flights of stairs in the Department of Justice main building, going from Mr. Shea's office to that of

defendant's then counsel, Daniel Metcalfe, I almost passed out. Walking down stairs is more awkward and difficult for me, but I am not able to carry much up stairs, even for one flight, in part from physical limitations now and in part because I must use the handrail. This limits my access to my own files.

21. I am not able to stand at any cabinet except very briefly. I am not able to squat at them at all. I am not able to work at any file cabinet because I must keep my ^{left} leg, in particular, elevated. It is time-consuming to move chairs from cabinet to cabinet and it is a practical impossibility for me to keep a leg elevated while I work and search at any cabinet. In practice I am required to locate records in the basement, take them up to my office, use them there, then take them back to the basement and refile them. This is time-consuming, awkward, sometimes painful and not infrequently somewhat hazardous. There is a limit to the number of times I can safely use the stairs any one day.

22. Locating some of the records pertinent in this litigation requires the use of two indices which, necessarily, are in different locations. This is much more time-consuming for me than it is for others. If I identify a record by the Dallas index, I may find on going over that Section of Dallas records that it was withheld as "previously processed" in the FBIHQ general JFK assassination disclosure. This is true of most Dallas and New Orleans records. Then I must search the bulky cross-references provided in substitution for these withheld "previously processed" records to identify the FBIHQ record said to duplicate it. Even then I may find that it was withheld under claim to exemption. For me this also is much more time-consuming than for others. No index was provided of New Orleans or FBIHQ records and I have no index to my own records, my affidavits and my appeals. Searching in all these records is enormously time-consuming.

23. My medical and physical limitations and injunctions are such that for years

I have not been able to go to a movie, a concert, a play or lecture. I have not been able to drive outside of Frederick safely since 1977. I am driven to see my surgeon in Washington, but that trip tires me and has since the first surgery. This weariness sometimes continues for a day or more. As a result I never go to Washington for any other purpose and I have not gone anyplace else outside of Frederick for any reason or purpose since then.

24. I have other medical problems and may face the need for other serious surgery, but only one of these other medical conditions causes any kind of significant problem in searching for and using records. I have, since birth, had impaired vision in both eyes. I have little use of my left eye. I also have cataracts on both eyes, but they are not yet ripe for surgery. They do, however, further impair my vision.

25. I have other medical needs that take additional time. Since my first thrombosis or for eight years I have had to wear venous or surgical supports around the clock. They completely encase my thighs, legs and feet. They create a dry-skin problem and that can lead to infection, which can be quite serious because of my impaired circulation. To combat this, my doctor has me air my thighs, feet and legs for about an hour a day. I also have to soak my feet. I am prohibited from using a towel between my left toes, so I must keep them spread until they are air dry, then apply a lotion and let it be absorbed by the skin before putting these supports on again. Even though I do all these things at the same time they require time I am not able to spend working.

26. All of these factors seriously impair and limit the efficiency with which I can work in the fraction of a day I can now devote to work. Merely having to stop work and get up and walk around every 20 minutes is in itself a serious interruption in concentration. When I get involved in work and forget to walk around, my circulation is further impaired and with it my efficiency in working is additionally impaired.

27. It is not possible for anyone else to respond to the defendant's discovery demands for me. I have no help and no one else has my knowledge.

28. At the age of 70 the time that remains for the work I have undertaken is not predictable and appears not to be great because of my age and impaired health. I have undertaken a very large study. I know of no other study of its magnitude. If the information I have obtained and of which I can make unique uses because of my knowledge and expertise is to be made available to the people, which I understand to be a purpose of FOIA, then I must have time to write. I have little enough time for that now. As a practical matter this would be entirely eliminated for a long period of time, perhaps forever, if I were to be required to respond to the defendant's discovery demands that I believe to be entirely unnecessary if not also inappropriate. And as I have already attested, without denial, since 1967, this defendant has had the purpose stated in FBI records I obtained outside of this instant cause of "stopping" me and my writing.

29. While they have not known of my medical and physical limitations in the detail set forth in this affidavit, the FBI and the Department of Justice have been well aware of them and in more than adequate detail for more than five years. In addition, I have stated them repeatedly in affidavits.

30. Both therefore knew that these discovery demands would at the very least be extraordinarily burdensome for me. Both also knew that if I am required to do what is demanded it would effectively, to use the FBI's word, "stop" me and my writing for at the least a long period of time and perhaps forever.

31. Moreover, the FBI does not now require the information demanded of me and has not even claimed it does. Quite aside from the fact that it is no substitute for a search and the fact that most of it is in the records the defendant has provided to me, I have already provided the information pretendedly needed. I have provided it in detailed and documented appeals that take up about two file drawers

and in many detailed affidavits in this instant cause. I have not received a single letter from the FBI or the Department of Justice claiming that any of my appeals was not understood or did not provide adequate information and I have not been asked for any information in addition to what is in them and my affidavits. My appeals contain thousands of pages of attachments, almost entirely of the FBI's own records. I have taken a considerable amount of time to assist the appeals office and its head, Mr. Shea. As the FBI's own witness in C.A. 75-1996, he went out of his way to volunteer that my assistance was invaluable. I was always available to the FBI, if it had desired any additional information. It has neither phoned nor written me, as it has others and is required to do by its own regulations- if it had ever had any genuine question. On a number of occasions, even though it required a rental car and someone to drive it, I did go to meet with Mr. Shea and his staff. I took the additional time, particularly in the appeals, to provide detailed explanations. Not until now, when it provides a means for further stonewalling, avoidances of the required ^{searches} and running life's time clock on me, has the FBI even pretended to need any additional information. And even now the demand is not merely for any information on any point but for all information and all pertinent documents. Based on my own knowledge and experience, I state that there is not and cannot be any need for "all" the information and documents on which my knowledge and allegations are based. Moreover, when the information and extensive documentation I have already provided has been meaningless, I have no reason to believe that duplicating it again would serve any purpose at all except to prolong this case and further burden the Court, my counsel and me.

32. I illustrate this with an FBI record already in the case record. FBIHQ asked all field offices to provide it with a description of certain of their JFK investigation main files. (The New Orleans response is still withheld, I have

alleged this without response, and no further information is required of me for it to be searched for and located at both New Orleans and FBIHQ). The Dallas response refers to the two indices that were initially withheld, to the Marina Oswald electronic surveillance files also initially withheld, and to a secure storage area for films of various kinds, tapes and similar evidence. (The latter still has not been searched and again no further information is required of me for this search to be made.) These indices, films and tapes and the Marina Oswald surveillance records clearly are within my requests, yet the FBI, claiming full compliance, withheld them until Mr. Shea required their disclosure.

33. This pre-existing Dallas partial inventory reflects the FBI's intent not to search and not to comply with my requests. Particularly because in the JFK investigation New Orleans was virtually a second office of origin and because I have already identified withheld records pertinent to the Garrison portion of my request, there is a high probability that if this pertinent New Orleans inventory is provided it also will reflect the FBI's intent not to comply and not to make a good faith search.

34. A similar New Orleans illustration is the case of Ronnie Caire, about whom I had made a separate FOIA request in 1969. (This is one of the 25 very old requests the Department promised the Senate would be complied with - in 1976. They have not been complied with.) When that request was rejected on the claim that there were no Caire records and I complained that the response was untruthful, that caused an internal investigation. The internal investigation disclosed that there are Ronnie Caire records. No additional information was ever required of me - not then and not now- and because I provided all the information I have on appeal in this case there simply is no other information I can provide. In addition, the FBI did not need me to tell it that Caire is involved in its, the Warren Commission's

and the Secret Service's investigations.

35. Yet now, with regard to Caire (Interrogatory 21), the defendant responded that he is "indexed in Dallas 3x5 Special Index. These cards and the corresponding documents were process(sic) in response to plaintiff's FOIA request." Caire is of New Orleans, not Dallas, and the Dallas index, as the FBI knows, does not and cannot index the New Orleans records. Moreover, this special Dallas index is limited to the few main files from which FBIHQ provided records to the Warren Commission. My request, specifically, is not so limited. It is, specifically, for information not so filed and limited. No information from me can possibly be needed for the FBI to stop rewriting and wrongly limiting and deliberately misinterpreting my requests, or for it to end its evasiveness and non-responsiveness.

36. With regard to other matters, like those referred to as "critics" of the official investigations, the FBI now admits, in its response to Interrogatory, No. 23, that it "recognizes most of the names" of those I provided in an unsuccessful effort to compromise this case and end the litigation last year. Recognition of the names indicates that the FBI knows it has pertinent records still not searched for and processed. Moreover, as it has not denied, the FBI has and withheld similar lists of names compiled by the Department. I provided them with the ignored appeals.

37. I have been using indices for more than 50 years, all kinds of indices, and I have a good idea of how much time is required to use index cards. I am without any doubt at all that making the belated searches now would have required considerably less time and cost than trying to exercise entirely unnecessary discovery on me - which leaves the searches still un-made. However, if the FBI ever made a good faith search with due diligence, it could not continue to withhold the pertinent information it does have and is embarrassing to it; could not continue to "stop"

me and my writing by wasting as much as it can of what remains of my life and work; and could not continue to waste taxpayers' time and money in its relentless campaign to frustrate the Act and to have artificial statistics of its own creation to present to the Congress in its effort to negate the Act. In the course of all of this the FBI and the Department also burden and weary the courts, as I have observed (and some courts have complained) in all my cases.

38. It is not merely that the FBI and the Department know that these discovery demands are extraordinarily burdensome, particularly because of my age and impaired health. I know and I state that this discovery is entirely unnecessary. It is a simple and inexpensive matter for the FBI to have its clerks determine whether or not there is undisclosed information within my requests. Only if a genuine search fails to disclose the information I have stated exists might there be any need for any further information from me. Such searches have not been made. I therefore believe and state that the purpose of this effort to exercise discovery on me is to be burdensome to the Court, my counsel and me.

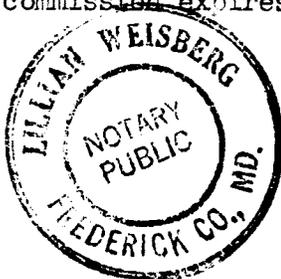


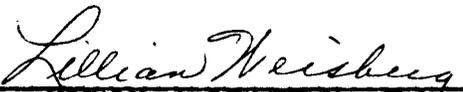
HAROLD WEISBERG

COUNTY OF FREDERICK, MARYLAND

Before me this 20th day of February 1983 Depoⁿt Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1986.





NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND