

Dear Jim,

7/24/83

A week or so ago you sent me a list of my affidavits the upper part of which was typed and listed the affidavits you'd filed and lower part of which was written and headed "unfiled affidavits." You not only did not tell me anything of significance that I did not know and what I think is at least exaggerated, you have guaranteed the confusion I thought I'd eliminated when I learned that you had not filed the 1/10/83 affidavit, which we did discuss and you did agree to take steps to at the very least reduce the enormous confusion that has resulted from your not filing a third of the affidavits I sent you and not letting me know why.

So you won't have to look anything up, and with your handwritten notation not look for what you may not have, this handwritten list, I repeat it.

5/17/82 (filed as 5/31/82 affidavit) I811 just assume this, whether or not the two are identical.

There is no notation after 1/10/83 and 4/15/83 so I take it this means that you did not file them and you did not incorporate any of their content.

This notation is bracketed after the following dates: "Most of these were incorporated in other affidavits that were filed:" (all 1983)

32, 3/4, 3/24, 4/1, 4/10, ~~4/15~~

As I kept telling you long ago, before I sent you the 3/2 affidavit at least, there is no earthly way I can now know what I attested to that is in the case record. I do not believe that either these affidavits were incorporated in other affidavits or that most of their content was.

After 1/10 I followed a different practice. I kept my security copy separate, in a colored folder on my desk, until I received a copy of what was filed, when I added it to my copy of the case record. The reason for this was dual - so I would have some way of knowing which were not filed and so that I would not include an unfiled copy in the case record.

After our discussion of your not filing the 1/10, ~~xxxx~~ you agreed to let me know with each what you were not using and why. The why is important for me to know, as I explained and you agreed. I remember that one thing I suggested represented no real work for you, merely xing out what you did not use when you rewrote. And I pretty sure you agreed, otherwise I'd not have been content.

(Ia also have no way of knowing which exhibits you censored - or why.)

It had been my plan to go over those affidavits and see if I could learn for myself what you would not file and why. That, clearly, is impossible because you did not give me any means of doing this.

Aside from the fact that this represents simply an enormous amount of wasted work for me and denies me knowledge of what is in the case record (so I don't want to hear anything about repetition, which it guarantees), we may face potentially serious problems from the omission of what I believe should be in the case record.

I remember a bit about the 1/10 affidavit because you did inform me of what is objectionable in it, an example, my reference to ~~regurgitation~~ of Phillips' rancid out. I asked you to x out what you did not want in regurgitation and send it back to me to do over. I then had a friend who was able to do some typing. I've skimmed that affidavit. I see things in it that should be in the case record. You annotation does not state that any of it is incorporated in any other affidavit. I therefore assume that unless I repeated none is. I can conceive of no reason for me to have repeated what I said about their interrogatories, which I believe the judge ordered me to respond to, so I assume that all that I said about them is not

in the case record. Great situation with this judge about to rule!

And with me liable to a contempt citation or other sanction.

You are now two of three weeks late on telling me what your review of the case record reflects. I kept sending you affidavits you have not filed and as of our last conversation had not read and you kept saying you were reading chronologically. I believe you finally agreed that this reversed cart and horse, but I'm not sure. In any event, it makes major problems for me if you want any changes. Or if I was doing the kind of thing you did not want done only because you did not inform me.

For the most part, except for the few more recent ones, we discussed in advance what I would do and you agreed.

Among the other things you have ignored is the letter I wrote Lehaie that I agreed not to send him directly on your promise that you would forward it or return it to me for any changes you might want. It is dated 3/13. Are you that scared of him? On April 17 I sent you various documents addressing their dishonesties pertaining to the claims. I have not had a word from you on this. It includes what should be in the case record and would have been appropriate to several recent affidavits. (There is much that happened during that period when I was in poorer than usual health and intermittently feverish that I just do not remember and assuming that I would hear from you I made no effort to remember that and didn't.)

Not counting 1/10 I am looking at a stack of typed work that compresses into an inch. For me at any time and particularly at this juncture in my life and work (and health) that represent a simply enormous amount of wasted time and work. If I'd had it without interruption I'd have drafted most of a book. And during all of that time I was not well at all, so it was a greater effort.

On a number of occasions we discussed the use of these affidavits. This included providing you with a basis for making stark allegations they would support. Almost entirely this has not been done and the affidavits are largely free-standing. Simple summarization or outlining in pleadings would have made a stronger case record and one least subject to ignoring.

As a practical matter I do not see anything we can now do about this. Neither of us could hope if either could take the time, to in any way determine what is and is not in the case record. There is only one possible solution, and that is for you to go over these things when you get them and get back to me if there is something wrong. From your own more recent accounts, in recent weeks you could have done this but opted not to. So, I now will not have any independent recollection if you ever get around to doing it. Not with all I've written. Even if my memory were better than it now is.

You keep on telling me you will do things and then you do not do them. If you intended to when you said you would. This accomplishes nothing and you can see what it has contributed to if it did not in fact cause.

One of the things I suggested and think you agreed to is simple. When you get an affidavit copy before you read it, mark up the xerox and make a copy so we can then both have it and I'll have some means of knowing what you object to, if not why, and what you regard as improper. I do not wonder why you have not done this because I have a strange belief about the reason. I wish you would make an effort to think this through not in terms of justification but in an effort to detect if there is something you do not want to face. I think it could be quite helpful to you.

One of the things I resent about your not keeping your word with regard to my letter to Haile is that he calls me a liar and you guarantee that it will not be challenged. You appear not to have learned from the Alger Kiss self-created disaster,

magnified by his prestigious counsel then and later. Or from the disaster for the Rosenbergs created by their counsel. There are some things you just must fight and some things that absolutely require response. HeHale's calling me a liar is to me one of these things. I am certain that I have addressed this in recent affidavits you have not filed and have not spoken or written to me about. I cannot and will not accept his doing that without ~~making~~ challenge. So, I want to know when you will file those affidavits or some very good reason for not filing them. Other than being afraid of HeHale. If you were not you'd have challenged him without inspiration from me. And we are running out of time when we did for a change have time. The judge can be back next month. We talked about this several times and I insisted I wanted everything filed when it would provide him ample time for response, so he could not pretend he did not have time and get away with ignoring it that way.

Much of this would not have existed if you had not created it by the entirely inadequate statement of material facts in disputed and you would not have been as likely to have made that kind of blunder if you had made minimal effort to use the affidavits I had by then provided.

I think I have given you every option you could possibly want, yet I look back on an enormity of ~~my~~ wasted time and effort and look ahead to possible needs that cannot be met because neither of us will be able to know what is and is not in the case record. This can be quite serious, other than academic, for me, as you know.

So, I would like to hear from you about your review, a copy of which you said you'd sent, and with regard to the affidavits I sent you going back almost three months. The last one you filed I executed May 5. So far this month five I have on my desk, going back to the 6th or almost three weeks ago.

By and large I'm okay, just more tired than usual. The protime was above the range at which I did not have to phone the doctor today, 23.8 seconds (base 10) but he wants me to continue on the same higher-the-ever dosage of coumadin until the next test, Thursday. (17.5 two days then 15.0 mg daily.) If I brush a door-jamb in walls I bleed internally now. So, I try to be careful.

Best,

Plaintiff's Affidavits

March 11, 1982 Weisberg Affidavit [3/15/82]  
March 15, 1982 Lesar Affidavit [3/15/82]  
May 31, 1982 Weisberg Affidavit [6/4/82]  
June 3, 1982 Lesar Affidavit [6/4/82]  
July 21, 1982 Weisberg Affidavit [6/23/82]  
October 1, 1982 Weisberg Affidavit [10/12/82]  
October 4, 1982 Weisberg Affidavit [10/12/82]  
October 7, 1982 Supplement to 10/4/82 Weisberg Affidavit  
[10/12/82]  
February 20, 1983 Weisberg Affidavit [3/8/83]  
March 1, 1983 Weisberg Affidavit [3/8/83]  
April 10, 1983 Weisberg Affidavit [4/12/83]  
April 29, 1983 Weisberg Declaration [6/6/83]  
May 5, 1983 Weisberg Affidavit [6/6/83]

unfiled Affidavits

5/17/82 (filed as 5/31/82 affidavit)

- 1/10/83
- ✓ 3/2/83
- ✓ 3/4/83
- ✓ 3/24/83
- ✓ 4/11/83
- ✓ 4/10/83
- ✓ 4/15/83
- ~~4/15/83~~

} most of these  
were incorporated  
in other affidavits that  
were filed

Civil Action Nos. 78-0322/0420

Status Calls and Hearings

March 22, 1979	status call
March 25, 1980	status call
October 14, 1980	status call
January 7, 1981	status call
February 17, 1981	status call
May 27, 1981	status call
December 10, 1981	status call
March 10, 1982	status call
March 25, 1982	hearing
October 5, 1982	hearing
April 8, 1982	hearing