UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defendant.	)	
	)	
	)	

DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF AN AWARD OF ATTORNEYS' FEES PURSUANT TO RULE 37 OF THE FEDERAL RULES OF CIVIL PROCEDURE

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TABLE OF AUTHORITIES

* Authorities primarily relied upon are denoted by an asterisk.

Cases: Page(s)

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INTRODUCTION

On November 18, 1983, this Court dismissed plaintiff's action pursuant to the Freedom of Information Act ("FOIA") for the "willful and repeated" failure of the plaintiff and his counsel to comply with the court's orders to respond to interrogatories propounded by the defendant. In addition, in two separate orders, this Court awarded defendant attorneys' fees incurred in prosecuting the motion to compel responses and later in prosecuting the motion to dismiss for failure to comply with the Court's earlier order compelling responses. The plaintiff was ordered to pay the defendant's attorneys' fees of $684.50 pursuant to the first order; the second order established joint and severable liability with respect to the plaintiff, Mr. Weisberg, and his attorney, Mr. Lesar, for the defendant's attorneys' fees in the amount of $1053.55.

The plaintiff appealed the dismissal of the action and the award of attorneys' fees. In a December 7, 1984 opinion, the United States Court of Appeals for the District of Columbia affirmed this Court's order dismissing the action with prejudice based on plaintiff's refusal to obey the Court's discovery orders and affirmed the assessment of attorneys' fees costs against Mr. Weisberg. The Court of Appeals remanded the action to this Court for determination of:

> (1) Whether the documentation submitted and to be submitted by the government to support its request for attorneys fees satisfies [the] test in Concerned Veterans, and
>
> (2) The proper division of responsibility between lawyer and client for the conduct which led to the award of expenses, with findings by the District Court which apportion their liability.

This memorandum addresses the two issues to be decided on remand. For reasons more fully discussed below, it is clear that the documentation submitted by the government to support its request for attorneys fees satisfies the test in National Assoc. of Concerned Veterans, et al. v. Secretary of Defense, et al., 675 F.2d 1319 (D.C. Cir. 1982). Moreover, it is clear that both Mr. Weisberg and his attorney, Mr. Lazar, share liability for attorneys' fees in this case.

I. DOCUMENTATION SUBMITTED BY THE GOVERNMENT TO SUPPORT ITS REQUEST FOR ATTORNEYS' FEES SATISFIES THE "CONCERNED VETERANS" TEST

The initial task in determining an appropriate fee award is to establish the "lodestar:" the number of hours reasonably

expended on the case multiplied by a reasonable rate. National Assoc. of Concerned Veterans, supra, at 1323.[1]

A. THE PER HOUR RATE SOUGHT BY THE DEFENDANT WAS EVEN LESS THAN THE PREVAILING COMMUNITY RATE.

The key issue in establishing the proper "lodestar" is to determine the reasonable hourly rate "prevailing in the community for similar work." National Assoc. of Concerned Veterans, supra, at 1324. Specific evidence of the prevailing community rate for the type of work is required to justify the award of fees. Recent fees to attorneys of comparable reputation performing similar work satisfies the requirement, id. at 1325.

In Weisberg v. U.S. Department of Justice, C.A. 75-1996 (D.D.C.), a similar FOIA case also filed by plaintiff, the district court awarded attorneys' fees at a $75 per hour rate with a fifty percent premium on the lodestar award. Upon appeal, the Court of Appeals for the District of Columbia remanded for further consideration of the appropriateness of the premium; however, the Court of Appeals did not specifically question the per hour rate. See, Weisberg v. U.S. Department of

[1] The plaintiff has not thus far sought an evidentiary hearing on the issue of attorneys' fees, but should such a motion be made, the defendant would oppose it. A hearing is unnecessary where the "adversary papers filed by the plaintiff and the defendant...adequately illuminate the factual predicate for a reasonable fee." Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1980)(en banc).

Justice, 745 F.2d 1476, 1495 (D.C. Cir. 1984)[2] Based upon this recent opinion from the Court of Appeals, the $53 per hour rate sought by the defendant is significantly lower than the prevailing community rate for similar work in a FOIA case in this circuit.[3] Moreover, it is substantially lower than the hourly rate approved by the district court in Weisberg v. U.S. Department of Justice, supra.

Obviously, the $53 per hour rate is far less than the current prevailing market rate for similar work. In addition, over two years have elapsed since the district court awarded Mr. Lazar $75 per hour in his case against the Department of Justice. As the Court of Appeals has noted, "Sharp inflation has made even more difficult the judicial task of determining

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[2] The District of Columbia Court of Appeals is revisiting that case regarding jurisdiction questions.

[3] In Defendant's Application For Expenses Incurred In Obtaining The Order Compelling The Plaintiff To Answer Its Discovery Requests, filed April 25, 1983, Mr. LaHaie requested $53 per hour for 12.5 hours of work. As noted in that application:

> Although the 'prevailing rate' in this area is much higher for an attorney with Mr. LaHaie's experience, defendant seeks the $53 amount because the Office of Management and Budget has preliminarily calculated that that is what it costs the government for legal representation by its attorneys, and it is that amount that OMB anticipates incorporating into legislative proposals for a cap on the fees that the government will pay to private counsel.

See, Defendant's Application For Expenses, April 25, 1983, p. 3.

the prevailing rate since inflation perforce induces rapid change in billing practices." National Assoc. of Concerned Veterans, supra, at 1325. In spite of higher prevailing rates in the community, the defendant only seeks $53 per hour in attorneys' fees for the government's cost of prosecuting these motions, and does not, therefore, seek a higher per hour rate on remand than was earlier awarded by this Court -- a rate substantially lower than the current prevailing rate.

B. GOVERNMENT COUNSEL'S SUMMARY OF HOURS BILLED SATISFIES THE REQUIREMENTS FOR AN AWARD OF FEES.

An applicant for attorneys' fees is only entitled to an award for time reasonably expended. Thus the fee application must contain sufficiently detailed information to permit the District Court to make an independent determination whether or not the hours are justified. National Assoc. of Concerned Veterans, supra, at 1327. In Concerned Veterans, the Court of Appeals was not creating an inflexible rule requiring absolutes in every detail of an attorneys' fees application. Rather, the court described the ends of the spectrum: "...it is insufficient to provide the District Court with very broad summaries of work done..." but "the application need not present the exact number of minutes spent nor the precise activity to which each hour was devoted..." id. at 1327.

It is true, as the counsel to Mr. Weisberg and Mr. Lazar pointed out in their appellate memoranda, that Concerned Veterans included the language, "attorneys who anticipate making

a fee application must maintain contemporaneous, complete, and standardized time records which accurately reflect the work done by each attorney." id., at 1327[4] (emphasis added.) The "contemporaneous" language from Concerned Veterans has been interpreted in other cases in this district since its original publication.

For example, in Blitz v. Donovan, 569 F. Supp. 58, 61 (D.D.C. 1983), this District Court found that "reconstructed" records "at best...would reduce an award--not eliminate it," id., citing Hensley v. Eckerhart, 103 S. Ct. 1933, 1939

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[4] Many courts have taken exception to the requirements of contemporaneous billing for attorneys who are not in the regular practice of billing clients on the basis of an hourly billing system. Legal aid attorneys have been held to a less strict standard, in part because of their non-profit practice of law. Harkless v. Sweeney Ind. School Dist., 608 F.2d 594, 597 (5th Cir. 1979). Other attorneys have been allowed to reconstruct records when there was no intent to apply for fees earlier in the litigation, but circumstances of the litigation changed giving cause to apply for fees after the fact. New York Ass'n For Retarded Children v. Corey, 711 F.2d 1136, 1147 (2nd Cir. 1983).

At oral argument before the Court of Appeals the question was raised by the court as to whether federal government attorneys ought to be held to the "contemporaneous" standard for billing records given the nature of their work. It is not necessary for the Court to reach the question here because Mr. LaHaie and Ms. Whittaker have provided sufficient documentation to meet the Concerned Veterans requirement. However, the defendant respectfully suggests that a reasonable interpretation of the "contemporaneous" requirement for government counsel would be more deferential to reconstructed records, because the Department of Justice does not bill its clients for time spent on cases. It is only in exceptional cases, such as this one, where the plaintiff and opposing counsel egregiously violated court orders and federal rules, that the government has cause to seek fees.

(1983). The Blitz Court explained the "contemporaneous" language, stating that "the purpose of such time records is to enable the trial court to make a just determination and provide adequate and sufficient information to consider the validity of the claim." id., at 61. The Court awarded fees finding that "while the letter of Concerned Veterans has not been complied with in counsel's submissions the spirit has certainly been fulfilled" id., at 61.[5] In this case, the defendant's attorneys' fees application was based on contemporaneous records, but even if this Court were to find that Mr. LaHaie's records did not satisfy the letter of Concerned Veterans, the fee applications which were based on calendars, notations, filing dates, and recent recollections satisfy the spirit of the law and justify the award of fees.

Unquestionably, Mr. LaHaie's applications for fees meet the requirements of Concerned Veterans. They were not "casual after-the-fact estimates" which were disallowed in Concerned

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[5] In another case in this district involving the crash of an American military jet carrying Vietnamese children from Saigon, a Washington, D.C. law firm acting as guardian to the children was awarded fees even after repeatedly failing to provide time sheets or contemporaneous records. After reprimanding the guardian several times while continuing to award interim attorneys' fees, the Court wrote, "From this date forward, therefore, the guardian will be paid only for time that is clearly supported by time sheets, preferably contemporaneous..." Friends For All Children v. Lockheed Aircraft Corp., 567 F. Supp. 790, 800 (D.D.C. 1983). Clearly, the Court did not view the "contemporaneous" language in Concerned Veterans as mandatory to the award of fees.

Veterans; rather, they were affidavits based on a contemporaneous calendar indicating dates and times of court appearances and moot court preparation. See Declaration of Henry I. LaHaie, Exhibit A, ¶ 3. Conversations with plaintiff's counsel were based on contemporaneous records of calls. id., ¶4. Preparation of pleadings was established by the filing dates and counsel submitted extremely modest times for such items. id., ¶3. Moreover, the affidavits were submitted soon after the argument on the motions and not at the end of lengthy litigation. For instance, the April 25, 1983 declaration was submitted barely two weeks after the District Court argument on the motion on April 8, 1983. id., ¶3. This Court should easily be able to determine that the application is justified given the billing judgment exercised limiting the number of hours for which Mr. LaHaie billed and the detailed affidavits and calendars supplied as documentation. See, Declaration of Henry I. LaHaie, Exhibit A and attachments; Declaration of Henry I. LaHaie of April 25, 1983, Exhibit B; and Declaration of Henry I. LaHaie of November 30, 1984, Exhibit C.

In addition to Mr. LaHaie's hours, the defendant now seeks reimbursement for the time spent on the appeal of the order dismissing the case and awarding fees. The appeal was primarily litigated by Ms. Christine R. Whittaker of the United States

Department of Justice Civil Division, Appellate Staff.[6] See, Declaration of Christine R. Whittaker, Exhibit D. An award of appellate expenses may be proper when a party has been forced to defend a district court's discovery order on appeal. Tamari v. Bache & Co., 729 F.2d 469, 475 (7th Cir. 1984). As the Seventh Circuit noted in Tamari,

> Important policy consideration weighs heavily in favor of awarding appellate expenses ... Requiring a party to bear the costs would offset substantially the very award that the party has obtained. This would create a disincentive for seeking sanctions in the first place and thus undermine the purposes behind Rule 37(b). id.

This Court should evaluate the application for Ms. Whittaker's fees just as it has Mr. LaHaie's. Both attorneys' applications satisfy the Concerned Veterans requirements and neither were "casual after-the-fact estimates." Ms. Whittaker's declaration and supporting documentation show that she kept daily time records, and that her records show she spent 136 hours preparing the appellate brief for the government. See, Declaration of Christine R. Whittaker, Exhibit D, ¶¶3-4. That does not include time spent in conversation with opposing counsel or with the trial attorney, Mr. LaHaie. id., ¶4. In preparation for the oral argument, Ms. Whittaker spent 59 hours reviewing the trial court record, discussing factual allegations

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[6] The government is not billing for the time spent by Ms. Wittaker's reviewers who had an important part in the preparation of the appeal.

with agency counsel raised in apppellants' reply briefs, preparing for moot court, and presentation of the argument, id., ¶5.

As the Court is well aware, this is complex and lengthy litigation with a voluminous record and many factual issues involved. Because of the preference for a specialized and independent appellate staff, appellate attorneys often take over cases which were handled by the Department of Justice Civil Division attorneys in trial court. One obvious result of that practice is some duplication of time in reviewing casefiles. Therefore, the government has exercised billing judgment in this application for fees and seeks reimbursement only for those hours spent on activities other than review of the files for preparation of the brief. That reduces the total hours billed by Ms. Whittaker from 195 to 161.[7] All other hours would reasonably have been spent by any attorney, including the trial attorney, in preparation for the appeal of this important issue. Obviously, given the paucity of caselaw on the question of discovery violations and sanctions, this appeal was very important and required extensive preparation.

II. MR. WEISBERG AND MR. LAZAR SHARE LIABILITY FOR DEFENDANT'S ATTORNEYS' FEES IN THIS CASE.

Rule 37(b) of the Federal Rules of Civil Procedure provides:

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[7] The government seeks the same $53 per hour rate for Ms. Whittaker as for Mr. LaHaie for the same reasons. See, Part I-A, supra.

> ...In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that circumstances make an award of expenses unjust. (Emphasis added).

The advisory committee notes to this provision, which were part of the 1970 amendments, make clear that the new rule is "amplified to provide for payment or reasonable expenses caused by the failure to obey the order." Fed. R. Civ. P. 37(b) Advisory Committee Note. The comments go on to explain that the provision places the burden on the disobedient party to avoid expenses by showing that his failure is justified or that special circumstances make an award unjust.[8]

The United States Supreme Court has considered the requirements of Rule 37 and penalties for its violation and has held:

> Both parties and counsel may be held personally liable for expenses 'including attorney's fees,' caused by the failure to comply with discovery orders. Rule 37 must

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[8] Similarly, subdivision (d) of the rule provides that if a party fails to serve answers to interrogatories or to respond to a request for inspection, the court "may make such orders in regard to the failure as are just," including any action authorized by subdivision (b). The court also has the option of imposing reasonable expenses on the party failing to act, or his attorney, unless the court finds the failure to be "substantially justified." The 1970 amendment to subdivision (d) deleted the word "willful" from the text of the rule. Significantly, the Advisory Committee Notes state that "even a negligent failure should come within Rule 37(d)." 48 F.R.D. 485, 541-42.

> be applied diligently both to 'penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent.' citing, National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 643 (1975).

Roadway Express, Inc. v. Piper, 447 U.S. 752, 763-764 (1979).

In Roadway, supra, the Supreme Court cited a Second Circuit case with favor in which the trial court found a defendant and his attorney "jointly and severally liable" for attorneys' fees because the special master had found that the attorney "contributed significantly to the pattern of delay and defiance" in the litigation. Chesa Int'l. Ltd. v. Fashion Associates, Inc., 428 F. Supp. 234, 238 (S.D.N.Y. 1977); aff'd 573 F.2d 1288 (2d Cir. 1977). That finding parallels the language in this Court's January 21, 1983 order, and supports the assessment of joint liability for attorneys' fees in this case.[9]

The sanction of assessment of attorneys' fees has been characterized as the least harsh sanction a court may impose for violation of Rule 37(b). United States v. Sumitomo Marine & Fire Ins. Co., 617 F.2d 1365, 1369 (9th Cir. 1980)(Attorneys' fees assessed against a federal government attorney personally for

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[9] See also United States of America v. Phoenix Petroleum Co., 727 F.2d 1579 (TECA, 1984), "Double costs and $3,000 in attorneys' fees are hereby assessed against Phoenix Petroleum Co. and the attorneys prosecuting this appeal on its behalf, jointly and severally, since the attorneys and their client are in the best position to determine who among them were responsible . . . and in what degrees."

violation of Rule 37 even when such sanctions against the government were precluded by statute), citing, Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062, 1066 (2d Cir. 1979). Many other courts have found the attorneys solely liable for expenses when violations of Rule 37 occur. Stanziale v. First Nat'l City Bank, 74 F.R.D. 557, 601 (S.D.N.Y. 1977)("Since it was the duty of the counsel to convey such information to the plaintiff, and his duty as an officer of the court to comply with an order of the court, counsel should bear the expenses of the motion brought by the defendant."); Butler v. Pearson, 636 F.2d 526, 531 (D.C. Cir. 1980)(Dismissal of the action for failure to respond to interrogatories in a timely fashion was vacated but attorneys' fees were assessed against negligent counsel.); Stillman v. Edmund Scientific Co., 522 F.2d 798, 800-801 (4th Cir. 1975)(Attorneys' fees assessed against counsel were not authorized under the statute cited by the trial court, but the case was remanded for assessment of Rule 37 attorneys' fees sanctions against the attorney.)

In appellate argument, counsel for Mr. Lesar pressed a theory that "proportionality" is called for in meting out sanctions as between the litigant and the attorney in this case. See, Brief for Appellant James H. Lesar, p. 11, filed May 17, 1984. It may be true that responsibility for sanctions should be carefully measured as between client and attorney when innocent clients may lose their cause of action based on acts of

counsel. See, e.g., Butler v. Pearson, supra. However, the attorney is in a position to prevent his or her participation in sanctionable activity. In fact, a lawyer is permitted to withdraw from the representation of a client without regard to the effect on the client if "his client (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification or reversal of existing law; (b) personally seeks to pursue an illegal course of conduct..." D.R. 2-110(C), Code of Professional Responsibility. Mr. Lesar had options available to him and the kind of "proportionality" arguments that may be necessary to protect non-lawyer clients are not necessary to protect members of the bar. In this case there were violations of the rules of discovery and Mr. Lesar as an attorney was obligated to abide by court orders, the Federal Rules, and the Code of Professional Responsibility.

According to Mr. Lesar's appellate memorandum, Mr. Lesar "counseled Weisberg to answer the discovery request." citing, 8 April 1983 tr. at 40-41. Brief for Appellant James H. Lesar, p. 12, filed 17 May 1984. The April 8, 1983 transcript reads:

> Mr. Lesar: I requested and asked for an order--a response to the interrogatories to defendant's discovery.
>
> I requested an extension of time and in that, I recited--I think this was February 20th or 22nd, some time in that period, and I requested a two-week extension of time because I needed to consult with Mr. Weisberg and to prepare an affidavit with him. I had consulted with him already. I felt that we

would be submitting a draft response. That was my intention, to submit a draft response.

See, Exhibit E.

Based on the transcript, it is difficult to tell precisely what Mr. Lesar told Mr. Weisberg. It is clear, however, that rather than filing a response to the interrogatories, counsel to the plaintiff filed blanket objections based on arguments that had recently been rejected by the Court in this case. It is at this point, at least, that Mr. Lesar had the opportunity, indeed the obligation as an officer of the court, to avoid abusing the process of the Court. By filing blanket objections, Mr. Lesar was an instrument in the type of activity prohibited by Rule 37 of the Federal Rules of Civil Procedure and was obstructing rather than expediting the litigation process. If no other avenue was available, Mr. Lesar should have removed himself from the case based upon his client's refusal to comply with a court order. D.R. 2-110(C), Code of Professional Respnsibility.

Mr. Lesar continued the prosecution of the case, however, opposing the motion to dismiss for failure to comply with discovery orders. Contrary to this Court's findings, he continued to argue that discovery against Mr. Weisberg was inappropriate and that it was impossible for Mr. Weisberg to produce the discovery responses, due to his age and ill health. Yet, during the pendency of the motion to dismiss the case, Mr. Lesar filed seven affidavits drafted by Mr. Weisberg

totalling 238 pages.[10] The affidavits undeniably show that Mr. Weisberg's ill health and age were not a genuine impediment to his complying with the Court's discovery orders. Plaintiff's defense that it was impossible for him to respond to discovery lacks merit and should not serve to establish that the failure to comply with the Court's orders was "substantially justified" under Rule 37(b)(2) of the Federal Rules of Civil Procedure.

Unquestionably, Mr. Lesar shares liability for the violations of Rule 37, and should be held jointly or severally liable for the defendant's attorneys' fees in prosecuting motions to compel discovery. The sanction should run against Mr. Lesar "not merely to penalize [him for] conduct...deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." National Hockey League v. Met. Hockey League, supra. 427 U.S. at 643.

On remand, the Court of Appeals has ordered this Court to "apportion" liability between Mr. Lesar and Mr. Weisberg. The defendant respectfully suggests that the costs for opposing the protective order and the motion to compel are attributable to Mr. Weisberg's insistence on the presentation of his defense to the discovery. Therefore, the costs of defending against the

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[10] Most of the material was unrelated to specific pleadings and was filed by Mr. Lesar under cover of a notice of filing. At the least, Mr. Lesar could have exercised control of the litigation and prevented such abusive and repetitious affidavits from being filed, thereby preventing waste of the Court's time as well as the defendant's.

protective motion and in prosecuting the motion to compel, $684.50, should be assessed solely to Mr. Weisberg. Continuing a defense which the Court has already rejected, however, is contrary to the Federal Rules of Civil Procedure and the Code of Professional Responsibility, and Mr. Lesar should rightfully share equally with plaintiff Weisberg in the sanction for $1046.75 and for appellate fees of $8533.00.

Mr. LaHaie's application for $1046.75 has already been approved by this Court. Adding Ms. Whittaker's application for $8533.00, the attorneys' fees application for prosecuting the motion to dismiss and the defending the appeal of these motions totals $9579.75. The defendant respectfully suggests that Mr. Lesar and Mr. Weisberg are jointly liable for that sanction. In light of the Court of Appeals' instruction to apportion the liability, the $9579.75 sanction should be assessed equally between the attorney and his client. Should the plaintiff and his attorney satisfy the Court that some other division of liability is more appropriate, the defendant would not necessarily object. Obviously, only Mr. Lesar and Mr. Weisberg can accurately detail what happened between them during the course of this litigation. The defendant maintains, however, that under no circumstances should Mr. Lesar be allowed to shirk the responsibility for his actions as an officer of the Court. However apportioned, the sanction must be an appropriate penalty and a deterrent to similar obstructive behavior in the future.

CONCLUSION

For the reasons stated above, the defendant respectfully suggests that the Court apportion liability for attorneys' fees in the amount of $5474.37 against the plaintiff ($684.50 for attorneys' fees to defend against the motion for a protective order, and to compel discovery plus $4,789.87 for costs of prosecuting the motion to dismiss and the costs of appeal) and in the amount of $4789.88 against his attorney based on the documentation submitted by the defendant.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, et al.,

Defendants.

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

DECLARATION OF HENRY I. LaHAIE

I, Henry I. LaHaie make the following declaration:

1. I am currently the Attorney/Advisor to the Executive Officer of the Civil Division of the United States Department of Justice, having assumed that position in February, 1985. Prior to assuming that position, I was a trial attorney in the Federal Programs Branch of the Civil Division for approximately five and a half (5 1/2) years.

2. As a trial attorney in the Federal Programs Branch, I was responsible for representing various government agencies in a wide variety of civil litigation, including the Federal Bureau of Investigation, et al., in these consolidated FOIA cases from October, 1981 to February, 1985. As the attorney assigned to these cases during that period of time, I am the one who prepared and filed the defendants' motions to compel and for dismissal (and the accompanying supporting memoranda), the prosecution for which this Court awarded the defendants their costs, including attorneys fees. In making application for such fees, I requested compensation of 12.5 and 19.75 hours, respectively, for my work on

EXHIBIT A

those motions. In that regard, I filed declarations stating that those requests were "based on a reconstruction of the time I spent in preparing the motion[s] and the memoranda in support, and arguing the motion[s] before the Court." (See Declaration of Henry I. LaHaie of April 25, 1983, filed in support of Defendants' Application For Expenses Incurred In Obtaining The Order Compelling Plaintiff To Answer Its Discovery Requests; and, Declaration of Henry I. LaHaie of November 30, 1984, filed in support of Defendants' Application For Expenses Incurred In Prosecuting Its Dismissal Motion Under Rule 37(b)(2)).

3. When I stated that my time records were a "reconstruction" I did not mean to indicate that they were guesses or estimates of when and what tasks I performed in relation to the motions in question. Instead, since I--similar to many other Justice Department attorneys--have never kept detailed hourly billing records of my time such as private law firms use to bill paying clients, I reviewed my scheduling calendar containing contemporaneous notations to determine such things as when pleadings were due as well as the dates and times of "moot court" preparation and court appearances. For instance, the contemporaneous notations on my April 1983 calendar (which is attached, along with the other pertinent parts of my 1983 scheduling calendar, as Attachment A to this Declaration) indicate--as did my earlier declaration of April 25, 1983--that a "moot court" regarding the defendants' motion to compel took place on April 7, 1983, whereas the hearing on that motion before this Court was held on April 8, 1983.

Inasmuch as I submitted my April 25, 1983 declaration shortly after the occurrence of those events, I easily remembered how long each had lasted. Moreover, for each of those events, I requested, as a matter of billing judgment, less time than what I had actually had spent; for example, the transcript of the April 8 hearing clearly reflects that the hearing began at 9:30 am and lasted well past 11:30 am (see page 37 of that transcript), yet I only requested a total of two hours in my April 25 declaration. Likewise, I have a vivid recollection that I spent the better part of April 7 preparing and participating in the "moot court" yet I only claimed a total of 3.5 hours.

4. In addition to consulting my scheduling calendar, I also reviewed the certificates of service of plaintiffs' pleadings to determine when I had received and discussed them with my supervisors and agency counsel. I also reviewed the Court's file stamps on the defendants' pleadings to determine exactly when I had prepared and filed them. Once again, because of the short time span between when the pleadings were prepared and filed and when I submitted my declarations, I had no difficulty recalling how many hours I had expended. And once again, I claimed far less time than I had actually had spent.[1]

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[1] In this regard, it should be noted that I claimed only eight (8) hours to research and two and a half (2.5) hours to draft the dismissal motion and the brief in support. That these are extremely modest time requests is underscored by the thoroughness of the research on a rather unusual issue as well as by the fact

(CONTINUED)

5. Furthermore, the pleadings themselves frequently referenced exactly when events had taken place. For example, during a telephone conversation on May 12, 1984 (i.e., the day before the second date that the Court had established for the plaintiff to respond to the discovery), Mr. Lesar stated to me that his client was not going to comply with the Court' orders. That statement precipated my filing the defendants' dismissal motion on May 18, 1984, which, in turn, specifically referenced my conversation of May 12 with Mr. Lesar. In my subsequent declaration, I requested only 15 minutes for the time expended during that conversation even though, as I can still very clearly recall, it lasted much longer. Never once in plaintiffs' papers nor during the subsequent hearing did Mr. Lesar ever challenge the fact or the substance of that conversation as summarized in the defendants' motion.[2]

6. In sum, when I stated in my previous declarations that I spent time on a certain date engaged in a specified task, such was

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[1] (FOOTNOTE CONTINUED)

that plaintiff's counsel sought and received (without objection from the defendants) additional time to respond to the dismissal motion because, inter alia, he considered "it necessary to research several questions which he has not previously had to deal with in any of his cases ... includ[ing] the question of Rule 37 sanctions...." (Plaintiff's Motion For Extensions Of Time Within Which To Oppose Defendants' Motions For A Stay Of Plaintiff's Discovery And For Dismissal Of These Actions, served on May 30, 1983.

[2] Indeed, plaintiff's counsel acknowledged that the conversation occurred in the June 6, 1983 Plaintiff's Opposition To Defendant's Motion For A Stay Of Plaintiff's Discovery, p. 1.

based on either contemporaneous calendar entries, contemporaneous notations as reflected in the pleadings themselves, or upon the exact dates that the hearings took place or that the various pleadings were prepared and filed. I indicated in my earlier declarations that those time itemizations were "reconstructions" merely because they were not based on billing records -- that is, the usual types of records upon which attorney fees are billed which I did not keep in these consolidated cases nor have I ever kept as a government attorney.

In accordance with 28 U.S.C.§ 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 24th day of April, 1985

Henry J. LaHaie

HENRY J. LaHAIE

March 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
FEBRUARY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	APRIL S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	1	2	3 11:15 am meeting w/ Holz, [illegible] & Blankenstein	4 White [illegible] meet to make by [illegible]	5
6	7	8	9	10	11	12
13	14 Call Willie at [illegible] New Moon	15	16	17 9:30 [illegible] hearing in Wesley Acorn - meeting w/ [illegible] 12:30 St. Patrick's Day	18	19
20	21	22	23	24	25 11am meeting w/ Holz	26
27 Palm Sunday	28 Full Moon	29 Wesley Response due Passover Begins	30 [illegible] Response due	31 [illegible]	Police on horseback couldn't stop ACORN members from taking their message to the Democrats in Philadelphia.	

ATTACHMENT A

April 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
MARCH S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	MAY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31		ACORN took its demands to the White House gates.		1 Good Friday	2
3 Easter Sunday	4 Foley's [illegible] Wesley Op	5 Foley [illegible] Wesley Reply	6 →	7 [illegible] [illegible] for Wesley Hearing	8 Wesley Hearing at 9:30	9
10	11	12	13 New Moon	14	15 [illegible] in [illegible]	16
17	18	19	20 [illegible] AD BD	21 SJ due in Baye Mahle at 1:30pm in Federal Triangle Bldg Rm 846	22 [illegible] in Baye	23
24	25 Response due to HUD's motion for Bane	26	27 [illegible] response due Full Moon	28 [illegible]	29	30

May 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8 Mother's Day	9	10 Bergen pretrial due	11	12 New Moon	13 Answers to interr. 12(c), 32, 33 are due. HUD's answers due also	14
15	16	17	18	19	20	21
22 Answers	23	24	25	26 Full Moon	27 Bayer's response is due	28
29	30 Memorial Day	31 HUD's Opp to Dismissal Motion is Due. Answers due to HUD's Req for Prod.				

ACORN set up a tent city behind the White House on June 23, 1982, demanding action on the nation's housing crisis.

APRIL

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

JUNE

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

June 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
MAY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 (27) 28 29 30 31 1 Day	JULY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	HW's response due	1	2 HW's Response to Stay Motion is due	3	4
5	*6 Answers due to HW's interr	7	8	9	10 Reply to Barga's Response is due	11 New Moon
12	13	14 Meeting w/ HH 5:30 Stokes (a) 1:30 Flag Day	15	16	17 Lang	18 →
19 Father's Day	*20	21	22	23 Hearing on HW's Motion to reinstate and our motion to dismiss and to stay	24	25 Full Moon
26	27 HW's check for $684.50 is due Stokes' Answers are due	28	29 Pick up Airline Tickets to Chicago	30	ACORN members blocked a squatter's eviction in Fort Worth, Texas.	

July 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
JUNE S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	AUGUST S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	ACORN members marched to the Democratic Party's mid-term conference in Philadelphia.			1	2
3	*4 Independence Day	5	6	7	8	9
10 New Moon	11	12	13	14	15	16
17	*18	19	20	21	22	23
24 Full Moon 31	25	26	27	28	29	30

August 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
JULY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1 Stokes' answers are due	2	3	4	5	6
7	8 [illegible] New Moon	9 Bayer reply due	10	11	12	13
14	15	16	17	18 9:30 Am meeting w/ HHS there	19	20
21	22 Call HUSH in SF	23 10:30 meeting w/ HHS Full Moon	24	25 [illegible] see [illegible] to 9/1/83	26	27 Eileen [illegible] wedding
28 Start depos in Stokes	29	30 Whitaker info due to claimants	31	Stokes w/ suppl. answers & fee complain- ACORN fights for housing rights in Dallas, Texas.		SEPTEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

September 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
AUGUST S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	OCTOBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	ACORN's 1982 convention told the Democrats, "Draw the Line!"		1 Stokes supplemental answers & file complaint	2 Sub info due to Clement	3
4	5 Make Rev — for SRI Syracuse Labor Day	6 3:30 pm eval meeting w/ Hodge & Dolbow	7 ~~[illegible]~~ New Moon	8 Rosh Hashanah	9 ~~[illegible]~~	10
11	12 Wolfson Appeal is Due 3:30 pm – Phase 4 demo; Rm 900 Todd	13	14	15	16 Stokes' submission re discovery & settlement due	17 Yom Kippur
18	19 Response to Stokes' Amended Complaint is Due	20	21 1:30 PM Sherry Turpanoff or her staff to discuss arb.	22 Full Moon	23	24
25	26	27 [illegible]	28	29 [illegible]	30 Kass appeal is due	

October 1983

ACORN

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
SEPTEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	NOVEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30		On June 24, 1982, ACORN members packed a Congressional hearing on our housing demands.			1
2 AD's party for baby 3pm 5pm	3 Little Rock for orb.	4 9:30 - Gill 1:30 Coakley	5 9:30 Scott	6 New Moon	7	8
9	10 Columbus Day (Observed) Thanksgiving Day (Canada)	11	12 Columbus Day	13	14	15
16	17	18 KT's B'day	19	20	21 1pm - Amicus training 11am Lotis training Full Moon	22
23 / 30	24 United Nations Day Syracuse orb at 1:30 Halloween 31	25 9:15 -	26 9:30	27	28 Schedule a Meet CI for Wendy	29

November 1983

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
OCTOBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	DECEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1	2	3	4 Discovery cut off in [illegible] Stokes New Moon	5
6	7 ~~Meet Chamberlain~~	8 1:30 pm - Meet Court [illegible] Election Day	9 10:30 Hearing 2:00 Conference w/ Brian Call to Mary [illegible]	10 Answer due in Chamberlain v. FBI	11 Veteran's Day	12
13	14	15	16	17 Pretrial Order must be filed in Stokes	18 10am meeting w/ FBI John Hartigan, [illegible] & Eric	19
20 Full Moon	21 [illegible] volumes from Tyler 9:30 meeting w/ Tom [illegible]	22 Pretrial Conf in St →	23 →	24 Thanksgiving Day	25 Answer due in Kass	26
27	28 Tr begins in Stokes 9:30 - Status Conf w/ [illegible]	29	30 3pm Dentist appt	In Tulsa, Oklahoma, ACORN claimed abandoned houses for squatters.		

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

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

DECLARATION OF HENRY I. LaHAIE

I, Henry I. LaHaie, make the following declaration:

1. I have been a trial attorney in the Civil Division of the United States Department of Justice since September 29, 1979. Prior to coming to the Justice Department, I was in private practice with the law firm of Lavey & Harmon for almost a year, and before that, I was a law clerk to the late Terry L. Shell, United States District Judge for the Eastern and Western Districts of Arkansas. I commenced that clerkship upon graduating with honors from the University of Arkansas at Little Rock School of Law in May, 1977.

2. As a trial attorney with the Justice Department, I am responsible for representing various government agencies in a wide variety of civil litigation. I have been responsible for representing the Federal Bureau of Investigation in these consolidated FOIA cases since October, 1981. As the attorney assigned to these cases, I am the one who prepared and filed defendant's motion to compel, along with the memoranda and the exhibit in support of that motion.

EXHIBIT B

3. A statement of the time I spent prosecuting defendant's motion to compel is attached hereto as Exhibit 1. The periods of time listed in that statement are based on a reconstruction of the time I spent preparing the motion and the two memoranda in support, and arguing the motion before the Court. Upon knowledge and belief, it is an accurate reflection of the time expended on the motion and the hearing. I therefore request attorney fees of $53 per hour for the 12.5 hours I spent prosecuting the motion for an order compelling plaintiff to answer defendant's discovery requests.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of April, 1983.

Henry I. LaHaie

HENRY I. LaHAIE
Trial Attorney
Civil Division
United States Department of
Justice

EXHIBIT 1: Time Expended By Henry I. LaHaie On Defendant's Motion To Compel

DATE	ACTIVITY	TIME SPENT
3/11/83	Review of plaintiff's objections to defendant's interrogatories and request for production of documents, including the fourteen page affidavit of Harold Weisberg dated February 20, 1983, filed in support of those objections.	.5 hr.
3/14/83	Consultation with the FBI counsel and the FBI analyst	.25 hr.
3/14/83	Initial drafting of motion to compel and the memorandum in support	1.5 hr.
3/15/83	Consultation with Supervising Attorney Barbara L. Gordon about the substance of the motion and memorandum	.25 hr.
3/15/83	Final drafting of the motion and memorandum and filing them with the Court	.5 hr.
3/31/83	Review of plaintiff's opposition to defendant's motion to compel	.25 hr.
4/05/83	Initial drafting of defendant's reply to plaintiff's opposition	2 hrs.
4/05/83	Review of Court of Appeal's decision in Weisberg v. U.S. Department of Justice, No. 82-1072 (April 5, 1983)	1 hr.
4/06/83	Consultation with Supervising Attorney Barbara L. Gordon about the substance of the defendant's reply memorandum	.25 hr.

DATE	ACTIVITY	TIME SPENT
4/06/83	Final drafting of reply memorandum, including reference to the Court of Appeals' decision in Weisberg, supra, and attaching a copy of the opinion to defendant's reply memorandum	.5 hr.
4/07/83	Preparation for moot court and the next day's hearing	2 hrs.
4/07/83	Moot court in preparation of the next day's hearing	1.5 hrs.
4/08/83	Hearing on the Motion to Compel	2 hrs.
	TOTAL:	12.5 hrs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION, Defendant.	)	Civil Action Nos. 78-322 and 78-420 (Consolidated)

DECLARATION OF HENRY I. LaHAIE

I, Henry I. LaHaie, make the following declaration:

1. I have been a trial attorney in the Civil Division of the United States Department of Justice since September 29, 1979. Prior to coming to the Justice Department, I was in private practice with the law firm of Lavey & Harmon for almost a year, and before that, I was a law clerk to the late Terry L. Shell, United States District Judge for the Eastern and Western Districts of Arkansas. I commenced that clerkship upon graduating with honors from the University of Arkansas at Little Rock School of Law in May, 1977.

2. As a trial attorney with the Justice Department, I am responsible for representing various government agencies in a wide variety of civil litigation. I have been responsible for representing the Federal Bureau of Investigation in these consolidated FOIA cases since October, 1981. As the attorney assigned to these cases, I am the one who prepared and filed defendant's motion for dismissal under Rule 37(b), along with the memoranda in support of that motion.

EXHIBIT C

3. A statement of the time I spent prosecuting defendant's dismissal motion is attached hereto as Exhibit 1. The periods of time listed in that statement are based on a reconstruction of the time I spent preparing the motion and the two memoranda in support, and arguing the motion before the Court. Upon knowledge and belief, it is an accurate reflection of the time expended on the motion and the hearing. I therefore request attorney fees of $53 per hour for the 9.75 hours I spent prosecuting defendant's Rule 37(b) motion.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 30th day of November, 1983.

Henry J. LaHaie

HENRY J. LaHAIE
Trial Attorney
Civil Division
United States Department of Justice

EXHIBIT 1: Time Expended By Henry I. LaHaie On Defendant's Motion For Dismissal Under Rule 37(b)

DATE	ACTIVITY	TIME SPENT
5/12/83	Conversation with James Lesar concerning, inter alia, plaintiff's compliance with the Court's Order of April 13, 1983.	.25 hr.
5/13/83	Consultation with Supervising Attorneys Barbara Gordon and David Anderson concerning future course of action given Mr. Lesar's indication that plaintiff would not comply with the Court's discovery orders.	.25 hr.
5/13/83	Consultation with FBI officials concerning future course of action.	.25 hrs.
5/13/83	Research on sanctions allowed under Rule 37(b)(2), F.R.Civ.P.	5 hrs.
5/16/83	Further research on the dismissal sanction under Rule 37(b)(2).	3 hrs.
5/16/83	Initial drafting of defendant's motion and memoranda for dismissal.	2 hrs.
5/16/83	Telephone call to the Clerk of the Court to ascertain whether plaintiff had filed any answers to defendant's discovery requests.	.125 hr.
5/17/83	Conference with Supervising Attorney Gordon concerning substance of defendant's motion and memorandum.	.25 hr.
5/17/83	Final drafting of defendant's motion and memorandum.	.5 hr.
5/18/83	Telephone call to the Clerk of the Court to ascertain whether plaintiff had still failed to file answers to defendant's discovery requests.	.125 hr

DATE	ACTIVITY	TIME SPENT
6/06/83	Review of plaintiff's opposition to defendant's Rule 37(b) motion.	.25 hr.
6/15/83	Initial research and drafting of defendant's reply to plaintiff's opposition.	3 hrs
6/17/83	Consultation with Supervising Attorney Gordon about the substance of defendant's reply memorandum.	.25 hr.
6/20/83	Final drafting of reply memorandum.	.5 hr
11/ 3/83	Preparation for moot court and the next day's hearing.	2 hrs.
11/08/83	Moot court in anticipation of the next day's hearing.	1 hr.
11/09/83	Hearing on the defendant's Rule 37(b) Motion.	1 hr.
	TOTAL:	19.75

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff,	)	
v.	)	Civil Action Nos. 78-322 and 78-420
FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.	)	(consolidated)

DECLARATION OF CHRISTINE R. WHITTAKER

I, Christine R. Whittaker, make the following declaration:

1. I have been an attorney on the Appellate Staff of the Civil Division of the United States Department of Justice since May 1983. Before that, I was for five years an associate with the firm of Donovan Leisure Newton & Irvine in the Washington, D.C. office. I received my J.D. degree from Georgetown University Law Center in 1977.

2. As an attorney on the Appellate Staff, I am responsible for representing various government agencies in a wide variety of appellate litigation. I was assigned to represent the Federal Bureau of Investigation in these consolidated Freedom of Information Act cases, beginning in March, 1984. As the attorney assigned to these cases, I was responsible for researching and writing the brief for the defendants-appellees, preparing for and presenting the oral argument on behalf of the defendants, and generally representing defendants in all matters concerning the appeal.

3. It is my practice to keep a daily record of the amount of time I spend on each case assigned to me. In this record, I

note the caption of each case I have worked on during the day and the amount of time I have spent on that case. Usually, I make this entry at the end of the day or in the morning of the following day. This record also serves as the basis for completing time records required of Appellate Staff attorneys which contain similar information. These time records are used to produce print-outs listing the total amount of time spent on each case during each month.

4. My records show that during the period from June 11 through July 2, 1984, I spent a total of 136 hours on preparation of the brief for appellees. These hours included reviewing the extensive record of trial court proceedings, researching the issues on appeal, including several issues of first impression, drafting and re-drafting the brief, and supervising production of the brief and appendix. Defendants had to undertake production of the appendix because plaintiffs refused to consent to inclusion in the appendix of several of Mr. Weisberg's affidavits. I have not included in this total the hours spent prior to this time in telephone conversations with counsel for plaintiffs nor in discussions with the Department of Justice trial attorney, Mr. LaHaie.

5. My records also show that during the period October 15 through October 25, 1984, I spent a total of 59 hours preparing for oral argument of this appeal. These hours included a review of the trial court record, discussion with agency counsel regarding factual allegations raised or alluded to in plaintiffs' reply brief, legal research concerning issues raised in plaintiffs' reply brief, a moot court, and preparation and

presentation of my argument.

In accordance with 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 29th day of April, 1985.

Christine R. Whittaker

CHRISTINE R. WHITTAKER

ATTACHMENT TO DECLARATION OF
CHRISTINE R. WHITTAKER

DATE	EXPLANATION	HOURS
6/11/84	review of trial court record and discussions with trial attorney	6
6/12/84	review of trial court record	8
6/13/84	review of trial court record	8
6/14/84	review of trial court record	4
6/15/84	review of trial court record; legal research	8
6/18/84	legal research and drafting of brief	8
6/19/84	legal research and drafting of brief	8
6/20/84	legal research and drafting of brief	8
6/21/84	legal research and drafting of brief	8
6/22/84	legal research and drafting of brief	8
6/23/84	legal research and drafting of brief	5
6/25/84	legal research and drafting of brief	8
6/26/84	legal research and drafting of brief	10
6/27/84	legal research and drafting of brief; preparation of appendix	8
6/28/84	redrafting and review of brief; preparation of appendix	8
6/29/84	redrafting and review of brief	8
6/30/84	redrafting and review of brief	5
7/2/84	preparation of brief and appendix	11

10/15/84	preparation for oral argument	8
10/16/84	preparation for oral argument	8
10/19/84	preparation for oral argument	4
10/20/84	preparation for oral argument	4
10/23/84	preparation for oral argument	10
10/24/84	preparation for oral argument including moot court	12
10/25/84	preparation for and presentation of oral argument	5

YOU REQUESTED A DELAY TO RESPOND AND THEN CAME THROUGH WITH A MOTION FOR A PROTECTIVE ORDER.

MR. LESAR: YOUR HONOR, I GUESS THE NUT -- THE MOST IMPORTANT THING TO SAY --

THE COURT: IS THAT AN ACCEPTED PROCEDURE?

MR. LESAR: YOU MEAN -- WHAT DO YOU MEAN?

THE COURT: THAT YOU REQUEST A CONTINUANCE FOR ONE REASON AND THEN COME THROUGH WITH AN ENTIRELY DIFFERENT MOTION.

MR. LESAR: YOUR HONOR, I DON'T THINK I DID THAT.

LET ME EXPLAIN THE CIRCUMSTANCES. AT THE TIME THAT I MADE THE REQUEST -- I THINK THERE ARE TWO DIFFERENT THINGS HERE. WHICH ONE --

THE COURT: THERE ARE MORE THAN TWO DIFFERENT THINGS HERE.

MR. LESAR: I REQUESTED AND ASKED FOR AN ORDER -- A RESPONSE TO THE INTERROGATORIES TO DEFENDANT'S DISCOVERY.

I REQUESTED AN EXTENSION OF TIME AND IN THAT, I RECITED -- I THINK THIS WAS FEBRUARY 20TH OR THE 22ND, SOME TIME IN THAT PERIOD, AND I REQUESTED A TWO-WEEK EXTENSION OF TIME BECAUSE I NEEDED TO CONSULT WITH MR. WEISBERG AND TO PREPARE AN AFFIDAVIT WITH HIM. I HAD CONSULTED WITH HIM ALREADY. I FELT THAT WE WOULD BE SUBMITTING A DRAFT RESPONSE. THAT WAS MY INTENTION, TO SUBMIT A DRAFT RESPONSE.

NOW, AS IT ULTIMATELY TURNED OUT, WE DID NOT FILE

ANY ANSWERS TO INTERROGATORIES. INSTEAD WE OBJECTED TO ALL OF THEM. THIS GETS INTO AN AREA OF SOME TENSION BETWEEN MYSELF AND MR. WEISBERG OVER WHAT TACK WE SHOULD TAKE.

ULTIMATELY MR. WEISBERG DECIDED FLATLY THAT WE SHOULD TAKE THE POSITION THAT AS A MATTER OF PRINCIPLE, DISCOVERY IS UNWARRANTED -- DISCOVERY BY THE GOVERNMENT IS UNWARRANTED IN A CASE OF THIS NATURE.

AT THAT POINT I THEN FOLLOWED WHAT I THINK IS THE REQUIRMENT OF RULE 33.

THE COURT HAD ORDERED US TO ANSWER THE INTERROGATORIES. RULE 33 PROVIDES THAT EACH INTERROGATORY SHALL BE ANSWERED SEPARATELY AND OBJECTED TO SEPARATELY.

THE LOCAL RULES PROVIDE THE SAME. THAT IS MY READING OF THE RULES.

IF I AM WRONG, I AM WRONG. THAT IS WHAT I DID, YOUR HONOR.

IT SEEMS TO ME THAT THAT IS THE REQUIREMENT OF THE RULES BECAUSE AS LONG AS THERE ARE OBJECTIONS TO PARTICULAR INTERROGATORIES, THE VALIDITY OF THOSE OBJECTIONS MAY VARY FROM INTERROGATORY TO INTERROGATORY.

SO I THINK I DID WHAT I AM REQUIRED TO DO UNDER THE RULES.

NOW, TO RETURN TO THE QUESTION OF THE DELAYS, THERE WERE VERY LONG INITIAL DELAYS IN THIS CASE BY THE GOVERNMENT. MR. WEISBERG DID NOT OBJECT TO THOSE DELAYS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	78-322 & 78-420
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	(Consolidated)
	)	
Defendant.	)	
	)	
	)	

ORDER

Upon consideration of the record before me upon remand of this action from the United States Court of Appeals For The District of Columbia, and the Federal Defendant's Supplemental Memorandum Of Points And Authorities In Support Of Award Of Attorneys' Fees Pursuant To Rule 37 Of the Federal Rules Of Civil Procedure, and the arguments of the parties, it appearing to the Court that good cause having been shown therefore, it is hereby

ORDERED, that the defendant's documentation for award of attorneys' fees satisfies the requirements of National Assoc. of Concerned Veterans, et al v. Secretary of Defense, et al., 675 F.2d 1319 (D.C. Cir. 1982), and it is further

ORDERED, that the plaintiff and his attorney are jointly and severably liable for the cost to the defendant of defending against plaintiff's motion for a protective order, and for prosecuting motions to compel discovery and to dismiss for failure to comply with discovery orders, as well as for the cost

of defending the appeal of such orders, and it is further

ORDERED, that the plaintiff, Mr. Harold Weisberg, is to pay the defendant's attorneys' fees in the amount of $5474.37, and the plaintiff's attorney, Mr. Lesar, is to pay the defendant's attorneys' fees in the amount of $4789.88.

DATED: _____

_____

UNITED STATES DISTRICT JUDGE