UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. WILLIAM H. WEBSTER, ET AL., and FEDERAL BUREAU OF INVESTIGATION, ET AL., Defendants	:	Civil Action No. 78-322 Civil Action No. 78-420 (Conolidated)

PLAINTIFF"S MOTION FOR RECONSIDERATION OF THIS COURT'S ORDERS ISSUED ON THE 15TH DAY OF NOVEMBER, 1984, AND THE 8TH DAY OF OCTOBER, 1985

Comes now the plaintiff, Mr. Harold Weisberg, and moves this Court to reconsider and vacate its Orders issued on the 15th day of November 1984, and October 8, 1985. This motion is made pursuant to Rules 52(b), 59(e) and 60(b) of the Federal Rules of Civil Procedure.

In support of this motion, plaintiff submits herewith a Memorandum of Points and Authorities and a proposed Order.

Respectfully submitted,

HAROLD WEISBERG
7627 Old Receiver Road
Frederick, MD 21701
Plaintiff pro se

CERTIFICATE OF SERVICE

I hereby certify that I have this 14 day of October, 1985, mailed a copy of the foregoing Motion for Reconsideration to Renee Wohlenhaus, Attorney, U.S. Department of Justice, Washington, D.C., 20530.

HAROLD WEISBERG

MEMORANDUM OF POINTS AND AUTHORITIES

This Court's Order reads in full, "Upon consideration of plaintiff's Rule 60(b) motion to vacate judgment, defendant's response, and the entire record herein, it is by the Court this 8th day of October, 1985, ORDERED that plaintiff's motion to vacate judgment is denied."

That this Order is based upon consideration of "the entire record herein" which does not include a Finding of Fact is either a serious error or a mockery of any system of or pretense to justice because the defendant not only did not refute what plaintiff alleged but did not even make a pretense of any refutation and thus the only evidence before this Court is that produced by the plaintiff. Plaintiff attributed felonious misconduct to the defendant. These serious charges are not only unrefuted - there is not even a pro forma denial of them. Thus, "the entire record herein" is one in which it is undenied that the plaintiff has been the victim of defendant's fraud, misrepresentation and perjury. "The entire record herein" is an undenied account of criminal actions before this Court that this Court not only accepts and tolerates but in fact rewards. In this the very Constitutional independence of the judiciary is undermined by both the government's undenied criminal actions and this Court's acceptance and rewarding of them.

This is not justice - it is the opposite of justice, and when it is the practice of any court that court itself mocks justice and our system of justice.

It is beyond belief that in the United States of America the executive branch does not even deny committing felonies; it is even

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further beyond belief that any American court would sanction and reward undenied felonies. If this Order is not reconsidered and vacated, there remains only a difference of degree between our nation and detested dictatorships.

In his Rule 60(b) Motion for relief from the judgment imposed upon him, Weisberg alleges fraud, misrepresentation and false swearing by the defendant. He supported his Motion with the new evidence required by that Rule. The defendant was provided a full opportunity to attempt to refute Weisberg's factual and documented allegations but defendant's Opposition did not even pretend refutation. Instead, it ignored all Weisberg's factual illustrations of fraud, misrepresentation and false swearing save one, and in addressing that single one the defendant again engaged in both misrepresentation and new untruthfulness.

Weisberg argued, in addition, that equity requires that he be granted the relief from this Court's judgment that he seeks. This argument also was entirely ignored in the Opposition and thus is not even opposed.

Weisberg also alleged that the FBI's affiant supervisor in this litigation, SA John N. Phillips, was and is simultaneously the FBI's supervisor in Allen v. FBI and that while Phillips was swearing to the claimed need for discovery from Weisberg and to the claimed nonexistence of relevant records requested and also ordered by the Associate Attorney General to be processed for Weisberg in this litigation, Phillips and the FBI were simultaneously processing and disclosing to Allen the proof of this false swearing. If Weisberg's attribution of this serious misconduct was not fully accurate and

truthful, Phillips and the FBI could and should have provided an attested-to refutation with their Opposition. Phillips and the FBI are silent on this. They do not even make a pro forma denial of this very serious misconduct attributed to them.

Thus, the FBI not only does not make any effort to refute Weisberg's allegation of fraud, misrepresentation and false swearing - it does not even make an unsupported denial of these offenses, committed to obtain the wrongful judgment from which Weisberg seeks relief.

Failure to attempt to disprove Weisberg's allegations amounts to confirmation of them and, indeed, the documentation of this new evidence, from the FBI's own records disclosed to Allen, cannot be refuted.

The only evidence before this Court relating to Weisberg's allegations of fraud, misrepresentation and false swearing by the FBI and those acting for it is this new, unquestioned and unquestionable evidence Weisberg provided and there is no other evidence relating to these serious charges before the Court on which it can act and decide.

No system of justice, Weisberg believes, can survive official fraud, misrepresentation and false swearing. These offenses undermine the Constitutional independence of the judiciary, make the courts the vassals of errant officialdom and represent contempt of the courts which are by them demeaned and mocked.

While persisting in its efforts to defraud the aging and ill Weisberg of what amounts to three months of his Social Security checks and neither refuting his serious charges nor apologizing to the courts for imposing upon their trust, the FBI flaunts its

insulting attitude toward the courts in the flagrant expectation of having the courts rubber-stamp anything it asks, regardless of the evidence, the seriousness of the unrefuted charges, morality, decency and honesty.

Justice and the integrity of the courts and their self-respect require that Weisberg's Rule 60(b) Motion for relief from the judgment procured by undenied fraud, misrepresentation and false swearing be granted.

Equity also requires that Weisberg's Motion be granted, as Weisberg stated in his Motion and as defendant does not address.1/

1/ "It is a maxim of equity that it regards substance rather than form." (27 Am Jur 2d, S 2, p. 518)

ARGUMENT - GENERAL

In his Rule 60(b) Motion Weisberg alleged, on the basis of the new evidence the FBI withheld from him and the courts while disclosing it to Allen, that the FBI had perpetrated fraud upon him and the Court; had sworn falsely, he believes perjuriously; and had misrepresented to the courts, under oath and through Department of Justice counsel. These are serious allegations, yet the FBI and its counsel are silent, making no effort to refute them.

Weisberg also argued that equity, too, requires that he be granted the relief from the judgment he seeks; that the judgment is inequitable; and that "'equitable' and 'inequitable' signify just and unjust." (27 Am Jur 2d S 1, p. 517)

With regard to the FBI's demand for what it styled "discovery," through statements under oath and made by its counsel - and this gets to the basis of the judgment from which Weisberg seeks relief - Weisberg stated in his Motion that the two basic claims made by the FBI are and were when made known to be false and, in fact, completely impossible. These, too, are very serious charges, yet the FBI and its counsel are totally silent about them in their Opposition. They not only failed to make any effort to refute what Weisberg stated, they entirely ignored these additional and serious charges.

Weisberg stated that the FBI's affiant and supervisor in this litigation is simultaneously supervisor in the Allen case in which this new evidence was disclosed - <u>after</u> the case record in

this case was closed and the case was on appeal. Weisberg also stated that Phillips has the same assistants in both lawsuits. Weisberg then stated that at the very time Phillips was persisting in false affirmations to this Court (and not in any way relieving them while this case was on appeal or after remand), he was simultaneously in charge of the disclosure to Allen of the new evidence that proves his attestations to this Court were false. Phillips, who has a long and clear record of swearing to anything at all in this litigation, without as well as with personal knowledge, has not made even a pro forma denial of Weisberg's allegation of false swearing about what is most material to both the "discovery" demands and the judgment based upon them from which Weisberg seeks relief.

No attestation from anyone - from Phillips or any other FBI SA or from any of the Department of Justice lawyers who have represented the FBI in this matter - is attached to defendant's Opposition.

Defendant's two basic untruths made to procure the discovery Order and the judgment are, Weisberg stated, that this "discovery" would enable the FBI to prove that it had complied with his requests and that the FBI required the "discovery" from Weisberg because of his subject-matter expertise.

The samples of this "new evidence" Weisberg included in his Motion prove the exact opposite of Phillips' attestations and FBI counsel's representations with regard to the "discovery" and the judgment based on that Order. This new evidence proves

beyond question that the FBI knew - and Phillips and his crew in particular knew - that the FBI has and withholds field office information relevant in this litigation. It thus is completely impossible that any "discovery" from Weisberg would or could enable the FBI to prove that it had complied or that any assistance from Weisberg was required for the FBI to be aware of its possession of this relevant and withheld information.

If Phillips or anyone else in the FBI or if any of the Department lawyers who have represented the FBI in this litigation believe they could disprove Weisberg's statements, it is obvious that they would, at the very least, have made an effort to do so. It likewise is obvious that if they thought for a minute they could safely make even a pro forma denial, without evidentiary support, they would have done so because Weisberg attributed the most serious offenses to them. The plain and simple truth is that they do not dare make even an unsupported and pro forma denial because they dare not do a single thing that will focus any attention at all to the truths Weisberg stated or the most basic untruths they provided to procure the discovery Order and the judgment.2/

This is to say that they dare not in any way address what Weisberg characterizes as the fraud, false swearing and misrepresentations by means of which - and by means of them alone - they

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2/ In this the FBI and those acting for it appear to assume that the courts will ignore all they ignore. This reflects on the courts and presumes they will rubber-stamp anything the FBI desires, regardless of right or wrong.

procured the discovery Order and the judgment against Weisberg based on that Order.

Instead of making any effort to confront this new evidence and the meaning Weisberg attributed to it, the Opposition contents itself with dishonest reference to only one of Weisberg's factual representations. This relates to the existence of FBI ticklers. Phillips swore that the FBI destroys them "routinely" after only a few days, but the enormous FBI ticklers he disclosed to Allen are as much as more than two decades old. Because there is no way in which the existence of these multitudinous and ancient ticklers can now be denied, the Opposition resorts to a cheap, semantical trick and, instead of referring to ticklers, refers to and denies the existence of FBI "tickler systems." In this, as Weisberg stated in his Response, the Opposition merely lied all over again because Phillips himself attested in this litigation to the existence of FBI field office "tickler systems."

Thus, save for a cheap-shot trick to tell still another lie, the Opposition and the FBI for which it was filed and the Department lawyers who filed it are entirely silent in the face of this factual new evidence and his serious and, Weisberg believes, criminal charges he has made.

This official silence is and must be taken as confirmation of these serious charges. If the FBI or anyone acting for it could make even a pretense of undermining if not refuting them, it is obvious that an effort to raise at least some doubt in the record and in the Court's mind would have been made.

Whether or not this Court agrees that the silence of the FBI and its counsel constitutes confirmation of Weisberg's factual representations and allegation of these serious charges, it is obvious that they are unrefuted, that no effort was made to refute them, and that there is nothing before this Court to contradict Weisberg in any way.

This leaves a record in which fraud, false swearing and misrepresentation are charged and unrefuted when it is by means of these serious offenses that the FBI procured the judgment.

No judgment procured by fraud, misrepresentation and false swearing ought be allowed to stand, Weisberg believes.

He likewise believes and has stated that if the FBI and the Department believe otherwise and if this Court agrees with them, he is entitled to be tried on charges made with specificity so that he may defend himself against them or, conversely, that those he alleged perpetrated the fraud, false swearing and misrepresentation ought be tried, if only because he and the FBI, particularly its supervisor, Phillips, have sworn in direct contradiction about what is most material to this judgment and the Order on which it is based, and thus one side is guilty of perjury.

No court ought tolerate the existence of any real question of perjury and no court ought vest its reputation, now and in history, in what is alleged to it is perjurious.

No system of justice can survive perjury or its tolerance and acceptance. Nor, for that matter, undenied allegations of fraud and misrepresentation.

For these reasons and for what follows, Weisberg moves reconsideration and with it renews his request for a full and proper judicial determination of fact, preferably in the form of a trial, so that in the end no question of any misconduct, criminal or otherwise, will linger and deny him or taint justice and the reputation of the courts.

Justice and these unrefuted and serious charges cannot coexist.

ARGUMENT ON APPLICABILITY OF THE RULES

The Defendant Misrepresents in Pretending There is an Inflexible One-Year Time Limitation Under Rule 60(b)

Weisberg argues, among other things, that as a basic principle of law one may not benefit from one's own misdeeds; that the judgment is inequitable and for that reason he is entitled to have it vacated; and that Rule 60(b) provides for the relief he seeks.

In his new evidence (which he was specific in stating is merely illustrative and does not include all such new evidence the defendant had and knew it had and disclosed to Allen) Weisberg attributed to the defendant item after item of fraud, false swearing he believes is perjurious and misrepresentation so basic that it even knowingly misrepresents his request as well as many other misrepresentations. (See 27 Am Jur 2d, Equity,pp.673-4, and note, p. 7 4)

With regard to FBI misconduct, Weisberg stated that its supervisor in this case, Phillips, is also supervisor in the Allen case and that in it he was and is responsible for the processing and disclosing of this new evidence; that he knew from this that the FBI has relevant records withheld from Weisberg; that from this new evidence, prior to its disclosure to Allen (if not, indeed, by other means), Phillips and the FBI knew that their representations in this litigation upon which the judgment is based are fraudulent and false; that they nonetheless did not withdraw the false swearing and other untruths or apologise to the courts and to Weisberg for them; and that without this false swearing and other untruths the entire basis for the judgment vaporizes. These serious charges also are undenied, Weisberg repeats, for emphasis and for context in what follows.

In response the defendant ignores all these allegations documented with the new evidence save one and with regard to it makes an additional misrepresentation, misrepresenting "ticklers" as "tickler systems." This Weisberg addresses separately. Aside from semantical shenanigans the defendant's sole response - and it is conspicuous that there is not even a pro forma denial of the serious allegations Weisberg makes - is that under Rule 60(b) there is an absolute and inflexible limitation of one year from the time of judgment. Rule 60(b) has other provisions, including provisions specifically intended to make the Rule applicable after a year has passed. Whether the FBI and its counsel would have made so grave a misrepresentation to this Court if Weisberg were a lawyer, which he is not, he has no way of knowing, but he does state that the misrepresentation of the Rule is so gross that he believes it cannot be accidental. In addition, he believes that the defendant makes an additional misrepresentation, of the time the claimed year-limitation begins to run.

Weisberg believes that he is entitled to the relief he seeks under Rules 52, 59 and 60(b), which state:

> Rule 52. Findings by the Court. (a) Effect. In all actions tried upon the facts without a jury ... the court shall find the facts specifically and state separately its conclusions of the law thereon ...
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> Upon motion of a party made not later than 10 days after entry of judgment the court may amend its finding or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

> Rule 59. New Trials: Amendment of Judgments. (a) Grounds. A new trial may be granted to all or any of the parties ... (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions...
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> Rule 60. Relief from Judgment or Order. (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake ... excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment ... is no longer equitable ... or (6) any other reason justifying relief from the operation of the judgment.

With regard to Rule 52, Weisberg notes that this Court did not make the required Findings of Fact.

With regard to Rule 60(b), Weisberg notes that the one-year limitation applies only to the first three of its six clauses.

Even if Weisberg had law training, his present circumstances, which are well known and well documented in this litigation, preclude his making any effort to search relevant case law. Instead, he relies upon and cites an authoritative source, "Federal Practice and Procedure," by Charles Alan Wright and Arthur H. Miller, Volume II ("Federal Rules of Civil Procedure Rules 58 to 65.1"), pages 157-234, which relate to Rule 60(b) under the subtitle "C. Relief Under Subdivision (b)." He believes that what these authorities state, as he quotes it below, is within the comprehension of those who have no legal training - and most certainly is within the

comprehension of those who have legal training and civil trial experience.

Time Has Not Run on Granting Relief Because of Fraud and Other Undenied Offenses:

> ... However, Rule 60(b) also states that it does not limit the power of a court to entertain an independent action to relieve a party from a judgment or to set aside a judgment for fraud upon the court. Those avenues may be open to obtain redress from a judgment obtained by fraud that is not discovered in time to bring a motion under Rule 60(b)(3)... The principles that govern the motion were well stated by the Eighth Circuit ...
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> > The proceeding by motion to vacate a judgment is not an independent suit in equity but a legal remedy in a court of law; yet the relief is equitable in character and must be administered upon equitable principles. Fraud and circumvention in obtaining a judgment are ordinarily sufficient grounds for vacating a judgment, particularly if the party was prevented from presenting the merits of his case. (page 188, emphasis added)

The appeals court, however, was foreclosed from considering fraud when this case was before it, and Weisberg's only recourse begins at this juncture before this Court, according to these authorities at the same point (page 188): "Because Rule 60(b) does provide these procedures for raising a question of fraud in the trial court, the question cannot be asserted for the first time on appeal from the judgment allegedly obtained by fraud."

In Throckmorton the Supreme Court "recognized that relief can be given for 'frauds extrinsic or collateral, to the matter tried by the first court' but said 'In all these cases, and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court."

Thirteen years later the Supreme Court "held that equity could enjoin the enforcement of a judgment at law obtained by the use of a forged instrument and false testimony if the falsity was not discovered until after the judgment had been rendered ... declared it to be 'settled doctrine!' that relief would lie whenever it is 'against conscience to execute a judgment' and the party seeking relief is without fault." (page 193)

Weisberg is entirely without fault because the FBI withheld this new evidence from him and from this Court and it and its agents, not he, perpetrated the undenied offenses.

These authorities address "Time for Motion" (pages 227 ff) and in this they go into "(w)hat constitutes reasonable time," saying that "it must of necessity depend upon the facts in each individual case." The courts "consider whether the moving party had some good reason for his failure to take appropriate action sooner." (pages 228-9) Obviously, Weisberg was entirely unable to do <u>anything</u> sooner because the FBI and it alone had the new evidence, was aware of its relevance, and withheld it in the Allen case until this case was on appeal.

When the time limit of one year in clauses (1), (2) and (3) begins also is discussed. (pages 233-4) It "runs from the date the judgment was entered in the district court." But "if the appeal should result in a substantive change," then the time runs "from the entry of the new judgment entered on mandate of the appellate court." Substantive change did result and thus the year limit has not been exceeded and Weisberg did file his motion at the first possible moment, within a matter of a few days, after

the new judgment was issued.

In addressing what is a "reasonable time" at this point these authorities also state that "the fact that an appeal has been pending may be considered in determining whether a motion was made in a reasonable time." (page 233)

> Other Reasons Justifying Relief: Clause (6) of Rule 60(b) ... has significance in two different ways. Clearly it broadens the grounds for relief from a judgment set out in the five preceding clauses. It gives the courts ample power to vacate judgments whenever that action is appropriate to accomplish justice. In addition, there is no time limit, save that the motion be made within a reasonable time, on motions under clause (6). Thus, to the extent it is applicable, clause (6) does offer a means of escape from the one-year limit that applies to motions under clauses (1), (2) and (3). (pages 211-2) ... In general, relief is given under clause (6) in cases in which the judgment was obtained by the improper conduct of the party in whose favor it was rendered or the judgment resulted from excusable default of the party against whom it was directed ... The court then considers whether relief under clause (6) will further justice ... (page 213, emphasis added)

A moving party is entitled to avail himself of the rights granted in clause (6), according to the Supreme Court, if there was "an extraordinary situation which cannot fairly or logically be classified as mere 'neglect' on his part. Since the party [in that case, who was in jail] has set up 'far more' than the 'mere allegations of "excusable neglect" that would suffice under clause (1), he was entitled to proceed under clause (6), and thus to avoid the one-year time limit." (page 216, emphasis added) In this instant cause the new evidence was withheld by the defendant, and then disclosed only to another litigant, not Weisberg, until after this case was on appeal and thus there was no "neglect" on Weisberg"s part and he qualifies for protection of clause (6) under "excusable neglect."

These authorities add that "if the facts are compelling enough the courts are ready to find that 'something more' than one of the grounds stated in the first five clauses is present, and that relief is available under clause (6)." (page 220). Weisberg believes that the offenses he attributes to the defendant and the defendant's failure to deny them are "compelling enough" and "something more."

Inequitability Is Undenied; Entitlement to a Trial:

> Equitable principles may be taken into account by a court in the exercise of its discretion under Rule 60(b). A number of cases say that discretion ordinarily should incline toward granting rather than denying relief, especially if no intervening rights have attached in reliance upon the judgment and no actual injustice will ensue. (page 158)
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> It certainly is true that it is the policy of the law to favor a hearing of a litigant's claim on the merits. (page 159)
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> There is much more reason for liberality in reopening a judgment when the merits of the case have never been considered than there is when the judgment comes after a full trial on the merits. (page 160)

In their commentary under "No Longer Equitable" these authorities state that if a judgment "has been revised ... or it is no longer equitable that the judgment should have prospective application," then "Rule 60(b)(5) allows relief" from it. And, "The one-year limit applicable to some of the grounds for relief in Rule 60(b) does not apply to Rule 60(b)(5)." (page 202, emphasis added) "The significant portion of Rule 60(b)(5) is the final ground, allowing relief if it is no longer equitable ..." (page 204, emphasis added)

> Relief from a judgment on the ground that it is no longer equitable should come from the court that gave the judgment. (page 211)

The defendant has not disputed Weisberg's claim that this judgment is no longer equitable. It therefore is undenied that the judgment is inequitable and on that is ample basis, Weisberg believes, for vacating it.

Void Judgment: Weisberg believes this Court ought regard its judgment as void for a number of reasons, ranging from having based it exclusively upon defendant's representations that are undeniedly fraudulent and untruthful to the constitutional question of due process, because Weisberg has not been granted a trial and the Court did not make a Finding of Fact. (If "inconsistent with due process" is on pages 198-200.) The quoted authorities state that "there is no time limit on an attack on a judgment as void." (page 197) Moreover, "the court on its own motion may set aside a void judgment provided notice has been given of its contemplated action and the party adversely affected has been given an opportunity to be heard." (page 198)

That the defendant misrepresents the meaning and intent of Rule 60(b) is apparent. Its provisions mean what Weisberg represented, that he is entitled to the relief he seeks, and that several of its clauses entitle him to this relief. The defendant's claim that there is no applicability of Rule 60(b) because there is an absolute and inflexible time limit of one year under it is not truthful, as is the claim that more than a year has expired since the judgment from which relief is sought was issued.

Note: While this concept appears in various formulations throughout the lengthy section on Equity (pp.516-675), it is specific and unequivocal on pp.673-4 in stating that one "will not be permitted to take advantage of his own wrong or claim the benefit of his own fraud."

THE FBI'S OFFENSES ARE NOT ACCIDENTAL - THEY ARE DELIBERATE

The Opposition fails to deny that Phillips was and is to this day simultaneously the FBI's supervisor in this and in the Allen litigation in which he disclosed the new evidence that is the basis of Weisberg's Rule 60(b) Motion. It is undenied that the FBI knew and Phillips and his assistants should have known that false swearing was provided in this litigation and persisted in while they had and knew they had the new evidence that proves the FBI's attestations are false. The Allen case is ongoing and the FBI employees involved in this case were engaged in it before the judgment from which Weisberg seeks relief was procured.

It is no secret from the FBI or from Phillips that Allen is a friend of Weisberg's and that Weisberg's former counsel in this litigation was and is counsel to Allen. Delay in the disclosure of this new evidence to Allen (required by that court) until after this case was on appeal thus does not appear to be accidental.

But even if this were not true, it is beyond question that in the processing of this new evidence for Allen the FBI had to be aware (as without question it was earlier aware by other means) while this case was on appeal and after remand of the existence of relevant and withheld field office records and that the existence of this information establishes the serious offenses Weisberg attributes to the FBI. Yet not to the appeals court and to now not to this Court has the FBI made any retraction or apology; instead, it persists in continuing to be the beneficiary of its own fraud, false swearing and misrepresentation. If, as is not possible to anyone who knows anything about the FBI's records-

keeping systems and its practices, these were accidental offenses, then normal concepts of honesty and decency required the FBI to retract and apologize to the courts and to Weisberg. That it and its counsel have not and that they persist in being the beneficiary of their serious offenses confirms what Weisberg stated earlier, that for years and in this litigation they have been out to "get" him and to "stop" him and his writing, which has been critical of the FBI, and that there is nothing they will not do in pursuing these improper objectives that also offend the Constitution.3/

That none of this can be regarded as accidental error also is established by the earlier case record and by what the Court as well as the FBI and its counsel have ignored, the great amount of information and documentation from the files of the FBI itself that Weisberg provided before "discovery" was demanded of him.

Taking the semantical trickery of the FBI's Opposition as an illustration (of the many, many illustrations that are available and a number of which are included in Weisberg's Rule 60(b) Motion), the matter of FBI ticklers, Phillips swore of claimed personal knowledge that the FBI destroys them "routinely" after a few days and thus no search was made for them in the field offices because, allegedly, they simply could not exist. Weisberg had attested that this was not true; that he had seen and knew of FBI ticklers that are quite old; and to the FBI's need to preserve its ticklers as long as a case is active, as the JFK assassination

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3/ If honest confession is to be good for a soul there must be a soul to begin with.

investigation is and will be, according to the testimony of Director J. Edgar Hoover himself. Weisberg also provided FBI records indicating the existence of ticklers in both field offices. Nonetheless, based on the fiction of his own creation, an attestation that no experienced FBI agent ought not have known was untruthful - that the FBI's ticklers are "routinely" destroyed after a few days - Phillips did not cause a search to be made in the field offices. He did not ask them if they have any relevant ticklers, did not communicate to them the information Weisberg provided, and he pointedly did not make inquiry of the case agents and supervisors in the field offices identified by Weisberg as having had the responsibility for compiling and using these ticklers.

This - and it is typical rather than in any way exceptional - bears heavily on the FBI's intent not to comply with Weisberg's request and to defraud him and the courts. (And, in a real sense, the people of the nation because an FOIA requester is, in effect, acting on their behalf and the information disclosed to him is not for him alone but is for everyone.) Based on a false representation that any experienced FBI agent must know is not true, Phillips and those associated with him simply ignored all the accurate information Weisberg had provided, some under oath. In this the FBI confirms one of Weisberg's reasons for declining to comply with the unjust, unjustified and inequitable discovery Order, the FBI's clear and almost entirely undeviating record of ignoring all the great amount of information and documents he had provided - <u>two full file cabinets</u> of it in two lawsuits and one unlitigated request.

With this background, and with it in the case record, it simply is not possible that Phillips and his associate were not aware of the significance of the really enormous and still-existing JFK assassination FBIHQ ticklers disclosed to Allen. Thus it cannot be believed that Phillips and the others involved in processing the records disclosed to Allen were not aware of their bearing on whether or not Phillips swore falsely about the existence of relevant field office records withheld in this litigation and about the discovery demand on which the judgment is based.

Another similar example from Weisberg's Motion is records relating to those known as "critics" of the assassination investigation. The Associate Attorney General directed the FBI to process all such records for Weisberg in this litigation. Phillips swore that no such records exist or were retrievable and he persisted in this false posture even after Weisberg provided copies of the FBI's own records in which even the field office file identifications of some are included. (An example is included in Weisberg's Motion.) No search was made after Weisberg provided this information and Phillips and the FBI continue to persist in their falsehood, that no such records exist. Now Weisberg's Motion and new evidence include the fact that the FBI compiled various dossiers, including "sex dossiers" on these "critics,"[4/] and this is of information that both comes from and

4/ Because of its content and because of the FBI's behavior with and misuse of some of this material, including photographs, Weisberg made no reference to what the field offices and FBIHQ did with some of this, but he knows from those who had it displayed to them that the FBI made copies available to the press. The Clay Shaw defense in New Orleans had copies. The FBI also made copies available to the House Select Committee on Assassinations. The FBI's information to it was handled by Phillips' own component.

is sent to the field offices. Still no search is made, no apology or retraction provided. This, too, is simply ignored in the Opposition.

Another example from Weisberg's Motion and again a matter to which Phillips repeatedly swore only falsely and even in self-contradiction, in all instances without even asking for a search and in all instances ignoring Weisberg's correct and FBI information relating to it, is the matter of the assassination-period recordings of the Dallas police broadcasts. As cannot be contradicted and is not and as Weisberg's new evidence establishes, this and related other information was, ultimately and by accident rather than by FBI search, found precisely where Weisberg, attaching the FBI's own records, indicated they would be found. His Motion included the Department's letter acknowledging that they had been found - many months ago - and they remain withheld - without retraction of the false swearing, without apology to the courts or to Weisberg, without claim to any exemption, which is impossible in any event - and without a word about when they will be processed and provided. The FBI's intent here is transparent.

Here again, as in all instances, if the FBI had not ignored all the accurate information Weisberg had already provided at great length and great cost to him in time, effort and xeroxing while falsely representing to this Court that it required his "discovery" assistance to locate unlocated records and that it would use this "discovery" to prove what it knew is impossible, that it had complied with his requests, this litigation would have ended years ago

and there would not have been any basis for or usefulness in the fraud, false swearing and misrepresentation by which it obtained first the "discovery" Order and then the judgment based on it.

If the FBI and its counsel had clean hands, at the very least the relevant information still withheld and known to exist and the existence of which is left beyond any question in this new evidence, would have been processed and provided.

That contrary to its popular image the FBI's hands are not always clean is set forth in rather modest language by the appeals court in Stern v. FBI, No. 83-1861, decided June 15, 1984, beginning on page 3 of the slip opinion. What the appeals court goes into is persistent FBI lying, some of it on the direct orders of FBIHQ.

In this instant cause the FBI is so certain that it will not be called to account for any of its transgressions it does not even bother to try to refute Weisberg's allegations and documentation of its lying under oath or the other offenses he attributes to it.

CONCLUSION

It is, Weisberg believes, a basic tenet of American law and concepts of law and justice that one may not be the beneficiary of his own misdeeds. Thus, the beneficiary of an insurance policy is not entitled to the insurance money if he killed the insured to get it. Thus, too, the FBI ought not be able in this litigation to be or to claim to be the beneficiary of its serious offenses of fraud, false swearing and misrepresentation. It also, Weisberg believes, ought not be able to claim the running of the time to which it claims a new evidence motion is limited when it and it alone had this new evidence and withheld it until it could claim time had expired.

This new evidence also establishes that the dismissal of Weisberg's case was procured by fraud, misrepresentation and false swearing and, because it now remains unrefuted, although time for him to move reconsideration of that has expired, this Court ought not permit the FBI to benefit in that way from its serious offenses and ought, on its own, withdraw its earlier dismissal because it was obtained by these serious offenses and by them alone. Justice and the integrity and Constitutional independence of the judicial system itself and respect for it require this and no less, whether or not, as Weisberg believes, they in fact require much more.

Some of the greatest legal minds this nation has produced have addressed what Weisberg and the courts now face in this and related matters.

Mr. Justice Brandeis said that "(d)ecency, security and

liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperiled if it fails to observe the law. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example."

"I have no patience," Mr. Justice Stone stated, "with the complaint that criticism of judicial action involves any lack of respect for its courts. Where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment on it."

Our system of justice is built upon the certainty that the most exalted among us, the judges on whom the freedom of us all and the sanctity of our institutions depend, will err. Thus, provision for appeals. And, as Mr. Justice Stone said, the only protection we have against unwise decisions is careful scrutiny of and fearless comment on them. How the institutions of government performed or failed to perform at the time of and after that most subversive of crimes, the assassination of a President, are "great public questions" of the kind of which Mr. Justice Stone spoke. His words apply to this litigation. The Attorney General himself found that the subject-matter of this litigation is of exceptional historical importance. It not only the considerations of "decency, security and liberty" of which Mr. Justice Brandeis spoke that are now involved in this litigation. There is also the "peril" of which he spoke to the government itself "if it fails to observe the law."

Weisberg alleges that the government has not observed the law but has violated it. The government, as stated above, has failed to refute his allegations of its serious offenses when it had ample opportunity and one would ordinarily believe more than ample motive to do so.

From the time of the Ten Commandments civilized peoples have been enjoined against bearing false witness. In neither the Ten Commandments nor our coded laws is there any immunity for government officials. They, as Mr. Justice Brandeis put it, are subject to the same punishment to which private citizens are subject. And whenever this is not so the government itself is imperiled, the living words of this Justice warn us.

Plaintiff understands perjury to be false swearing to what is material. At this point in the litigation, with the judgment based on this Court's Order based on the government's alleged need of the discovery, little if anything is more material than what was sworn to in order to obtain the discovery Order from this Court. It then follows, like the day the night, to invoke what Shakespeare said about truth, that if there is false swearing to obtain the Order, that false swearing is the felony of perjury. In a government of laws, government officials like Phillips and others are not immune from punishment for felonies. If the government and its officials fail to observe the law, then as this Justice also warned, the government itself will be imperiled.

Weisberg claims no immunity for himself. In seeking to persuade this Court to protect itself and all courts and the

government itself from official criminality that in the Justice's words is subversive, he has claimed from the first that either he or government officials engaged in criminal activity and he has steadfastly sought a trial to establish who is the criminal.

Throughout this and all his other FOIA litigation, Weisberg has made himself subject to the penalties of perjury if he ever misinformed any court. With all the motive the government has for placing charges against him - and earlier in this litigation it sought to intimidate him by threatening to seek a contempt citation, which he then dared it to do - and with all the many hundreds of pages of information he has sworn to before a number of courts, the government has not once even suggested that he has sworn falsely. Plaintiff has been truthful to this and to the other courts, and he has, as the case records reflect, at considerable cost and effort to himself, without regard to health, weariness or cost, undertaken to inform the courts both honestly and fully, so that the courts may perform their assigned functions in a government of laws.

If in this matter the government believes that Weisberg has been other than truthful in anything he has represented to this Court, then the government has the obligation of charging him and trying him. As he dares it to do! Because he has not been untruthful and has not misrepresented in any way.

And because what is a command to the plaintiff is a rule for the government, Weisberg formally and in writing called the attention of the United States Attorney for the District of Columbia to the commission of perjury within his jurisdiction and to his

obligation to uphold and enforce the laws.[5/] Without response.

Firm in the belief that there has been a crime before this Court and secure in the certainty of his own innocence of any crime, Weisberg has sought a trial to establish who is the criminal and, if this Court rejects that, trial of himself on charges stated with specificity so that he may defend himself.

It is not an act of contempt but as his assumption of the responsibility of citizenship and in his quest for justice and a trial that he has not chosen what he immediately recognized as the easier and less costly option when he faces the enormous power and unhidden determination of government to "get" him and simply paid the judgment. Taking the easier way, he believes, would make him party to this serious and subversive wrongdoing. Because he is not Merlin and cannot remember the future and because he is not a lawyer and is without counsel, he does not know what the future may hold. But he believes that he has a Constitutional right to a trial and he believes that, because he is a citizen of Maryland, any effort to collect the judgment from him must be made in the Maryland courts if he is not charged and tried in the District of Columbia.

The mere thought of punishment without trial ought be as abhorrent to any judge as it is to Weisberg.

[5/] Typifying the government's careless disregard for truth in any form in this litigation, the name of this official as it appears in the government's Opposition is actually that of one who is publicly known as the United States Attorney in Boston, not the District of Columbia.

It is characteristic of authoritarian and totalitarian societies.

So also are the now undenied official abuses Weisberg alleges.

They ought not be copied and they certainly ought not be tolerated in the United States.

They mean tyranny.

Weisberg, a first-generation American born into freedom because his people fled a vicious foreign tyranny, is ill, enfeebled and without resources but he seeks to meet his citizen's obligations in opposing this tyranny. He may not be able to validate what Andrew Jackson said about one determined man, but he can try. And he is only too conscious of what Lord Acton said, that power corrupts and absolute power corrupts absolutely.

When our basic institutions fail, the security of the nation is involved and endangered.

The government, as Mr. Justice Brandeis said, "teaches the whole people by its example."

This nation ought not be taught to engage in fraud, false swearing and misrepresentation or that the government is immune in these or in any other offenses, but this is what will be taught to "the people as a whole" by not granting Weisberg's Motion and by ignoring the serious abuses he, he emphasizes again, without refutation, attributes to the government.

He files his Motion to Reconsider in the hope that, with reflection and further thought, this Court will agree with the quoted Justices and grant his Motion.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
	:	
Plaintiff,	:	
	:	
V.	:	
	:	
WILLIAM H. WEBSTER, ET AL.,	:	Civil Action No. 78-322
	:	
and	:	
	:	
FEDERAL BUREAU OF INVESTIGATION; ET AL.,	;	Civil Action No. 78-420 (Consolidated)
	:	
Defendants	:	

O R D E R

Upon considerations of plaintiff's motion for reconsideration, defendant's opposition thereto, and the entire record herein, it is by this Court this _____ day of _____, 1985. hereby

ORDERED, that this Court's orders issued on November 15, 1984, and October 8, 1985, hereby are VACATED.

_____
UNITED STATES DISTRICT JUDGE