UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION TO RECONSIDER

In plaintiff Harold Weisberg's Motions under Rule 60(b) and to Reconsider, he attributed serious offenses to the defendant and to defendant's counsel, offenses that include the crimes of fraud and perjury. He also stated that without the belief that the FBI has this Court and the appeals court in its pocket, neither the FBI nor its counsel would dare engage in such serious and culpable misconduct. If the FBI and its counsel had undertaken to leave it without doubt that they invariably engage in such abuses in plaintiff's litigation and are determined to persist in them, even after plaintiff made these abuses the central issue, they would have been hard put to make this more obvious in their Opposition to Weisberg's Motion to Reconsider. And, as if to underscore this intent and this additional denigration of the courts, their Opposition is attested to.

One basic misrepresentation is that Weisberg "alleged that he had new evidence of defendant's fraudulent allegations regarding the original search for records pursuant to plaintiff's FOIA request." (Emphasis added) This is worse than a misrepresentation, serious as misrepresentation to a court of law is. It is an out-and-out, deliberate lie. Weisberg's cited Motions are, explicitly, limited

to his effort to vacate this Court's judgment and there is no possibility of misunderstanding this. This is the purpose of a Rule 60(b) motion. That this is not an accidental lie is established not only by the purpose of the Rule, it is explicit in this Court's Order, "consideration of plaintiff's Rule 60(b) motion to vacate judgment", as quoted in the Opposition. (Emphasis added) Without such misrepresentation the FBI would have no Opposition because it is, in its entirety, all misrepresentation.

Another, repeated from an earlier filing by the FBI and corrected by Weisberg with direct quotation of the Rule, is that Weisberg's motion "is a frivolous attempt to reopen settled matters beyond the time allowed by the Federal Rules for such a challenge." (Emphasis added) This, too, is fairly characterized as not only a deliberate lie but another flaunting of the belief that there is no way in which this Court or the appeals court or any member thereof will not tolerate official lying. The plain and simple truth is that the Rule, as quoted by Weisberg in his Motion to Reconsider, has three clauses specifically intended to toll the year limitation of its earlier three clauses. Surely there is no question in the minds of the FBI or its counsel about the courts' familiarity with the provisions of the Rules. Yet they again, after being corrected, base their Opposition on another deliberate lie that demeans and ought to offend the courts. (There is the separate question of the applicability of the year limitation when the FBI alone had and knowingly withheld thhis new evidence until after the year had passed and whether the undenied offenses, undenied felonies, offset this time limitation which, Weisberg reemphasizes, applies in any

event to only the first three of Rule 60(b)'s six clauses.)

It likewise is untrue that "(w)ithout further argument" Weisberg's Motion to Reconsider merely repeats his Motion to Vacate. The "further argument" that the Opposition misrepresents Weisberg's Motion is "without" includes citation of the most eminent American historical and legal authorities, The Federalist Papers, Alexander Hamilton and Justices of the Supreme Court. Their words are included in the characterization of "vituperative prose" made by the FBI and its counsel. Hamilton and the Papers are cited as cautioning that the people have cause to fear from government, which can jeopardize their rights, as Weisberg alleges his rights have been trampled upon; and Justice Cardoza observed that, for good or ill, the government is the teacher of us all. This is "vituperative prose" to those who would teach that the crimes of fraud and perjury are the right way, the way to live and the way to prevail before the courts. The allegations of these crimes, allegations that to this day are undenied, are, perhaps naturally to those who do not even claim innocence, "vituperative prose."

Those who lack enough self-respect to make even pro forma denial of their guilt argue that, despite their failure to deny these allegations, "(t)here is no reason for the Court to entertain" what it describes as "plaintiff's latest attempt to rehash old and disreputed arguments long after the allowable time to raise valid arguments has passed." Aside from the baseless rhetoric substituted for fact and law, what is there in this argument? Naturally and consistently, not a word of truth.

Where did the FBI or its counsel "disrepute" anything alleged

by Weisberg?

Did they even deny that FBI Special Agent Phillips was simultaneously the FBI's supervisor in this litigation and in the Allen case, when in this case he swore to the exact opposite of the undenied meaning of the new evidence he disclosed to Allen? Wherein did the FBI or its counsel or Phillips even deny, leave alone "disrepute," Weisberg's allegation that he knowingly and deliberately swore falsely in this litigation with regard to the claimed need for the discovery, which is the entire basis for the judgment Weisberg seeks to have vacated? This, also naturally, for there is nothing truthful they can state, is to the FBI and its counsel a "rehash." Where and when did they deny fraud or misrepresentation to procure this judgment, more of that "rehash?"

It is no less a deliberate lie to represent that Weisberg did not file his Rule 60(b) Motion until "long after the allowable time to raise valid arguments has passed" than it is a lie in the other formulation, as "a frivolous attempt to reopen settled matters beyond the time allowed by the Federal Rules." Without question and without denial, when some form of denial or disproof clearly is called for in and is entirely absent from this Opposition, the Rules cited do establish that the allowable time had not run. (Weisberg cited three Rules, not only the one mentioned in the Opposition, which claims he has nothing new in his Motion to Reconsider, apparently assuming that either this Court would not read Weisberg's Motion to Reconsider or would rubberstamp anything the FBI and its counsel file.)

The Opposition lacks specificity, except when it lies. Thus it is a reasonable interpretation that what is "frivolous" to the

FBI and its counsel are undenied allegations of fraud, perjury and misrepresentation way them, matters not in any way frivolous to others; and it likewise is "frivolous" to allege that this Court erred in not making any Finding of Fact, as the Rule Weisberg invoked requires. (Neither the absence of any Finding of Fact nor its requirement under the Rule is denied, even mentioned, in the Opposition.)

"The Court should reject plaintiff's latest motion," according to the FBI and its counsel, allegedly "because it is an attempt to harrass (sic) the defendant." To state and to prove to the point where not even pro forma denial is dared that the FBI and its counsel are guilty of fraud, perjury and misrepresentation is to "harass" them? To state, without contradiction, that this Court erred in not making any Finding of Fact (aka "rehashing" in the Opposition) - is that, too, "to harass the defendant?" And making and proving entirely undenied charges of criminal miaconduct by and on behalf of the defendant is "in violation of Rule 11 of the Federal Rules of Civil Procedure," which the Opposition does represent?

It is not denied that, as without any question the case record shows, the FBI fabricated the most vicious defamations of Weisberg and his wife and distributed them widely throughout the government, including to the White House, the Senate and to those representing the government in Weisberg's litigation, from attorneys general down. This is not harassment, but Weisberg's perfectly proper and entirely unrefuted Motion is harassment? It is undenied that as far back as 1967 the FBI, up to and including the director, decided to "stop" Weisberg and his writing by tying him up in frivolous litigation (and the FBI stalled this case and blamed Weisberg for

its stonewalling) and he is harassing the FBI?

Weisberg is aware that circumlocutions and euphemisms are preferred over the accurate - and undenied - characterization of lying, but these offenses, repeated and repeated and unrepented, are magnified by repetition in the Opposition. They are a great subversion as they are a defrauding of the courts and of Weisberg. As Ecclesiastes says, there is a time and a place for everything. For years these undenied abuses have been the government's practice in Weisberg's FOIA litigation and the courts have been influenced and misled by them. Before this Court and in this litigation the offenders are more uninhibited and, as the case record reflects, for this reason Weisberg undertook to establish the untruthfulness in each of defendant's filings. So this, to Weisberg, is the time when a spade is not called a digging instrument, when the official dishonesties are characterized for what they are, knowing and deliberate lies that are and were uttered for wrongful purposes, including in particular to hurt him. There is no innocence in any of them and there is no possible justification for repeating them after they have been proven to be untruths. This the FBI and its counsel do in their Opposition. They repeat the lie that the time has run under Rule 60(b), for example, when it has not under the last three clauses of that Rule, as without refutation Weisberg's Motion to Reconsider reflects by quotation of the entire Rule. This is much worse than a mere reckless disregard of the facts. It is deliberate lying, and that to the courts, which makes the serious offense much more serious. That this is the consistent and deliberate practice of the government, the government that Justice Cardoza cautioned, the government Madison saw as a potential danger to the rights and

freedoms of citizens, in its litigation with Weisberg, cannot be dismissed as no more than adversarial zeal. It is criminal activity, undenied criminal activity, and Weisberg ought not be victimized by it, others ought not be victimized by the precedents established by it, and it should be punished, as such crimes by private citizens are punished by the very government which has not even denied that it has committed these crimes.

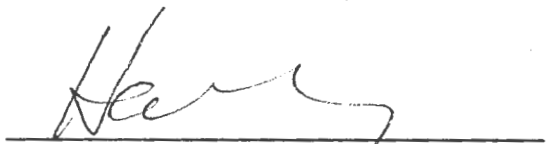
Perhaps in the Department headed by the man who lectures the Supreme Court on the Constitution, who was qualified because his dubious financial arrantements were held not to be criminal, these crimes are acceptable; but they ought not be accepted by the courts, particularly not when they are central to what is before the courts. Indeed, in this case, to now these official crimes have been rewarded. No system of justice can survive this. Weisberg's Motion ought be granted and there should be a judicial determination of fact, with the guilty punished. Weisberg and the FBI's representatives, now including even its counsel, have sworn in direct contradiction about what is now most material in this litigation, both have personal knowledge, and there thus is, without question, a crime before this Court. The record is clear, unrefuted, even undenied - it is the representatives of the FBI who have crossed the line, who have committed fraud and perjury and who have misrepresented. Weisberg's Motion to Reconsider is a means by which he can be granted and he believes this Court should grant him relief from these unconscionable abuses, abuses that subvert the American system and undermine the Constitutional independence of the judiciary, abuses that characterize hated foreign systems but are not, at least in theory, the American way.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I certify that I have this 2nd day of November 1985 mailed a copy of the foregoing Plaintiff's Response to Defendant's Opposition to Plaintiff's Motion to Reconsider to Renee Wohlenhaus, Attorney, U.S. Department of Justice, Washington, D.C., 20530.



HAROLD WEISBERG