

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am plaintiff/appellant in Nos. 84-5054, 84-5058, 84-5201 and 84-5202. I have read and in this affidavit I address one of the untruthful statements in the Department of Justice's brief that was filed July 2, 1984.

1. The Department's brief states that the district court judge personally "closely" observed my alleged relations with my counsel, James H. Lesar, throughout all of the five years that the case was in district court. This alleged relationship is referred to as my using him as my "mouthpiece" and my allegedly dominating him for improper, wrongful, even actionable, purposes. It suggests that "remedial action should be taken." (See page 47).

2. To my personal knowledge (~~not~~ in this litigation) this same Department of Justice has also, when it had other purposes in mind, given the exactly opposite version of this alleged relationship, that my counsel was misusing me for his purposes. Neither version is true.

3. To the Department's certain knowledge it is not true and it is not even possible for the district court judge to have observed my relationship with my counsel throughout all of this five-year period because for those five years there was not a single occasion on which I even sat with my counsel in that litigation before him and because, as the Department and its counsel are well aware, for all but the first calendar call in that litigation, it was impossible for me to have been in that (or any other) courtroom.

4. It also is not possible for any of the Department's lawyers whose names are on this brief to have had any personal knowledge, even if it had not been impossible for me to have been in the courtroom. I have never met or, to the best

of my knowledge, ever seen any of those lawyers or Henry LaHaie, who represented the Department before the district court, and I have every reason to believe that none of these signatory Department lawyers ever saw me or were in that courtroom the one time I was.

5. If any were there when I was not, then the offense is even greater because as officers of the court they have stated to this court what they of personal knowledge knew was not true.

6. I state without reservation or qualification of any kind that the above-cited statement is a lie.

7. Because it is a lie, none of the Department's signatory lawyers could have had any knowledge on which to base any such statement. Their own copies of the unrefuted case record, particularly what they refer to in this brief, proves it to be a lie. It is a lie that was fabricated despite this knowledge of the case record, as is revealed by misuse of that very part of the case record in this brief. This fabrication and lie are misused for defamatory, hurtful and prejudicial purposes in this brief.

8. I do not depend on recollection in this attestation, although my recollection is completely accurate. I have diaries and I have checked them and my medical records are in the case record.

9. I attended and in fact was able to attend only one, the first calendar call in this litigation. I recall clearly that, in advance of it, then Department counsel, ~~Daniel~~ Metcalfe, asked Mr. Lesar to give the FBI additional time to process the records, to which I agreed, and Mr. Lesar's telling me that the proceeding would be cut-and-dried because of this prior agreement. I have another means of recalling it: It was anything but cut-and-dried. On his own the district judge was about to dismiss my C.A. 78-0420, which seeks the relevant records of the New Orleans

FBI field office, for the sole reason that I had also requested the records of the Dallas field office.

10. My diary reflects the fact that in this 1978 litigation the first calendar call was not for about two years, not until March 25, 1980. It thus is apparent that for the first two of the five years of this litigation the district court could not have "observed" my alleged relationship with my counsel, "closely" or in any other way.

11. There also was no possibility that the district court "observed" this alleged relationship "closely" or in any other way at the one calendar call I attended because, there being no need, I had not sat with my counsel but sat with a friend in the audience.

12. My diary and the hospital records in the case record establish that shortly after additional arterial blockages were detected at Georgetown University Hospital on September 2, 1980, and were determined to be operable, I was operated on; and that the day I was discharged blood clots broke loose and I was returned to the hospital by ambulance for emergency surgery. I was discharged from the hospital Tuesday, September 30, returned the next day, October 1, and remained hospitalized until Thursday, October 16, 1980, without leaving it or being able to leave it in the interim.

13. When I left the hospital October 16, 1980, the permanent damage from this first post-surgical complication left me able to walk only about five minutes before oxygen starvation in the left leg caused sharp pain and required that I rest and elevate that leg before trying to walk again. As a result of these additional circulatory blockages, I have been and will forever be under medical injunction not to stand still for even the briefest period of time if I can avoid it, not to sit with my left leg down if I can avoid that, and, when driving my car, not to keep that leg down for more than 20 minutes at a time. As a result I have not driven

out of Frederick since then and I am not able to use the only public transportation, Greyhound bus, to go to Washington or anywhere else.

14. I was again rushed back to Georgetown hospital in April 1981 after a total and not uncommonly fatal arterial blockage of the left side. I left even more severely limited in what I am able or permitted to do.

15. After the Department requested exhaustive discovery, which also is seriously misrepresented in the Department's brief, I informed the district court that compliance with the actual demands was physically impossible for me, and I stated the medical reasons truthfully. The Department then made sneering, insulting and entirely baseless representations that questioned my truthfulness and integrity. I then presented a detailed affidavit to which are attached copies of all of the hospital bills and, for the time of the filing of the Department's discovery requests and for about six months thereafter, a long series of copies of doctors' bills reflecting the fact that, among other new illnesses, I then had and continued to suffer pneumonia and pleurisy with a recurrence, ecchymosis (a form of internal hemorrhaging) and new circulatory insufficiencies. Despite making no effort to refute what was obviously, entirely irrefutable, the Department thereafter continued its sneering and insulting innuendos in a continuing and false unhidden assault on my integrity and truthfulness.

16. The undisputed and undisputable case record, particularly these medical records, leave it beyond question that the Department's counsel knew beyond question that from the time of the first of these three surgeries it was and it continued to be impossible for me to have been at any calendar call and that, in fact, I was not at any calendar call. They also knew, for example, that when the district court asked that we seek to compromise the case, I was not present and my counsel then phoned me, after which he resumed negotiating with them. (I offered to dismiss and not refile the litigation and to waive a Vaughn indexing just to bring this litigation

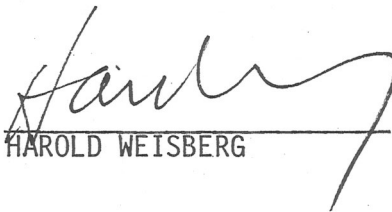
to an end and the Department's and FBI's representatives, without consulting with higher authority, refused to let me end this case and stated that they insisted on filing a partial Vaughn index, which they have not done.) It thus is apparent that the Department knew beyond question that I was not and could not have been at the calendar calls at which they now tell this court the district court "observed" my alleged association with my counsel "closely."

17. As the undisputed case record also reflects, this is not by any means the first or the only time the Department has spread complete fabrications to defame me and prejudice others against me. My affidavits and their attachments of and citations to FBI records have not been refuted or even addressed in any way.

18. The Department's fabrication that is the subject of this affidavit serves the obvious purposes, at the minimum, of defaming my counsel and me, of its obtaining money from my counsel and me, and of denying me my rights under the law and before the courts. It appears to be an unhidden prelude to seeking severe sanctions against my counsel, Mr. Lesar. It also serves to further stonewall this litigation by the Department that now seeks to blame me for its stonewalling. (It has yet to attest that it has searched to comply with my actual requests, which it seriously misrepresents on page 2 of the brief to exclude most of the Dallas request. The first two of the three quoted paragraphs of the New Orleans request that the brief states are not in the Dallas request, are, in fact, the Dallas request itself. Only the third paragraph is an addendum to the New Orleans request.)

19. I believe that the foregoing Paragraphs of this affidavit establish and, based on the personal knowledge referred to in them, I believe and state that the Department's defamatory allegations against my counsel and me referred to in those Paragraphs are deliberate lies and fabrications that were known to be lies and fabrications when the Department's lawyers put them on paper and as officers of

this court presented them to this court.


HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 12th day of July 1984 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1986.





NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND