

abuse to gain protection, leverage,  
UN report evidence?

abuse of process by governments?

Focus of UN's work - check

its ad. inst. substance

*request*

Did Weisberg "more information" of OPIA than is included in his requests, as is represented on page 3?

Were there "many searches" by the FBI, were there "several additional requests and searches during a period of approximately four years" as stated on page 3?

Are many of the documents involved in this litigation included in the  
"more than 200,000 pages of documents (released) to plaintiff"/relevant in this  
litigation

referred to on page 3



Does the decision (on page 4) accurately and fairly reflect what transpired when the district court wanted "the parties to reach an agreement among themselves?"

Is a demand for "each and every fact

Is a demand for "'each and every fact' and 'each and every document'"  
essential to or even proper in a discovery request the alleged sole purpose of  
which was to ~~address~~ reflect "the inadequacy of the FBI's search?" (page 4)

Is it a fair, complete and accurate representation of Weisberg's opposition to the discovery demanded to represent (on page 4) that he alleged and alleged only

a) "that there is no need for a government agency to take discovery from a FOIA plaintiff...;"

b) that it would be "burdensome" to Weisberg only "because ~~ixxxxxxxx~~ of a serious illness which would be exacerbated by responding to" the demanded discovery; and

c) that Weisberg represented only that he had ~~provided~~ "already provided most of the information sought in his detailed appeals to OPIA?" (not most, inc aff's.)

Is the reflection of what transpired after Weisberg's counsel asked for two  
about discovery  
weeks in which to consult with him (pages 5 and 6) a fair and complete representation  
of the case record with regard to Weisberg's counsel?



Did the district court's "refusal to certify interlocutory appeal" on the question of discovery and failure to hold a hearing on anything related to discovery deny Weisberg due process? (Page 6)

The only evidence in the case record is Weisberg's unrefuted attestations, which were ignored by the district court and by this court.

Is the awarding of "the judgement to assess expenses against Weisberg's counsel also" (page 6) lawful; and could the district court properly do this without making any findings of fact?

Did the district court err in awarding judgement gainst Weisberg's counsel when that award is based on no evidence at all and is directly contradicted by the only evidence in the case record, provided by Weisberg and unrefuted?

Did this court err in stating <sup>suggesting</sup> that Weisberg's <sup>and his</sup> counsel <sup>were</sup> was tried on and against Weisberg "the assessment of expenses against him personally" (page 6) when in fact there was no live testimony taken and the only testimony at all is Weisberg's attestations which are entirely exculpatory of his counsel?

("Weisberg's counsel, at trial")

Did this court misrepresent the record in stating that of the information requested under discover discovery "Weisberg had already furnished much" only "of that material" and in limiting the means by which Weisberg furnished material to "his administrative appeals?" (pages 6 and 7) Oalso later add cites)

Given the length of this litigation and the fact that the Act "vests the district courts with equitable jurisdiction to enjoin wrongful withholding," did the district court err in ignoring all of Weisberg's unrefuted, lengthy, detailed and documented proofs of withholding without doing anything to "enjoin wrongful withholding" unrefutedly proved long before the government demanded discovery to obtain what it had for years ignored in those very affidavits? (Page 8)

Is Martin v Neuschel, quoted on page 8 as granting the defendant "the right to plead whatever defense he may have" on the merits of the case when in an FOIA case the defendant has not provided any attestation to searches in compliance with the actual FOIA request? And is the requester denied the "due process" referred to when at the outset of any controversy "on the merits" the district court does not require such an attestation from the government?

Did this court misstate Weisberg's position in representing that he argued that he argued that under any and all conditions discovery is denied the government in FOIA cases when his brief is specific in stating that he argued only that under the conditions existing ~~in~~ in this case, on which the district court held no hearings and made no findings of fact, discovery was inappropriate? (Page 9)

Could this court properly state that the government "will (not) be permitted to use discovery to frustrate the purposes of FOIA" when the case record is clear and undisputed on the fact that Wieberg from the very outset, in detailed and documents appeals and affidavits specified the existence of clearly relevant information not searched for as well as clearly relevant information identified on prior searches and not processed for disclosure to him? (page 9) And with such proof in the case record, did the district court err in making no findings of fact?

Could this court properly state in the absence of any evidence before it on the point and did it err in stating (pages 9 and 10) that "(i)n this particular case it is entirely possible that the individual members of the agency are not as astute or as knowledgeable as to what they have in their files as the plaintiff-requester" a) when, as the case record does reflect, the agency alone has and has access to ~~the~~ all its indices; ( b) had and has case agents and supervisors in the two field offices who are subject experts with access to all indices and ~~not~~ unindexed materials as well as having called back from retirement the original Dallas case expert for just such purposes as the decision refers to; and c) without question Weisberg provided an enormous amount of materials, consisting of lengthy appeals and affidavits, thoroughly documented with the agency's own records, only to have all of this completely almost completely ignored by both the agency and the district court?

In this regard, given the fact that without ~~dispute~~ refutation Weisberg had already done this, could this court properly say that he had not in stating that "(t)he government- defendant may ~~be~~ properly draw on that (i.e., Weisberg's) expertise to respond to plaintiff's FOIA request."

Does this not amount to a finding of fact that is 100 percent in error, that Weisberg had not, as he attested without refutation, provided all the information of which he was aware in both his affidavits and appeals?



on the question of search (on page 10), how could this court state that "fairness required that the agency be allowed access to any documents which go to the adequacy of the search...." thus stating that such documents were ~~denied~~ withheld from the government by Weisberg, when it is unrefuted, as Weisberg attested repeatedly, that a) he had provided not fewer than two full file drawers of such material and b) was not aware of any other relevant information he possessed?

Does this court misstate what Weisberg stated with regard to the exceptional burdensomeness of the g discovery demands in limiting its representation to "serious circulatory problems" which require that he "not stand still" and sit with his legs elevated and then walk around every 20 minutes" while omitting what Weisberg attested to, without refutation, that he is able to use the stairs to his basement only a few times a day and the files in question are in the basement?

Does this represent ~~bias~~ prejudice and partiality by this court when it is aware and states (on page 4) that the discovery demanded was not limited to what relevant this court implies, learning whether it had withheld information of which Weisberg knew but rather demanded "each "each and every fact'" and "'each and every document'" bearing on this, especially when, in this court's language at the same point, "the FBI had released more than 200,000 pages of documents to plaintiff?"

Was this court justified in citing and depending exclusively on unsworn representations by the agency's counsel, which in effect labelled Weisberg as a perjurer, in suggesting that Weisberg had the physical capability of complying with the actual discovery demanded because he was allegedly "filing voluminous, detailed affidavits with the (district) court while ignoring Weisberg's entirely unrefuted attestation to the time those in question required of him over the long period of time in which they were filed, which time requirement was actually only minutes a day? (page 10)

Was this court's citation of Voltaire instead of the unrefuted case record appropriate and proper, when it found, without citation of any evidence, none existing in the case record, that "it is clear that Weisberg has some system of <sup>his</sup> for determining what is in the files."(Page 11) In this regard, was it proper and correct for this court to ignore Weisberg's entirely unrefuted attestations that ~~ixix~~ when he prepared his appeals, which was years esrlieer, he had a part-time assistant who left him before the first of his surgeries and their consequences, and that in prepai preparing affidavits subsequent to her departure and his almost entirely illnesses he was/limited to a) his memoery and b) the documentation attached to the appeals the government already had and c) the few and clearly described and limited searches he made for documentation not in the appeals or affidavits and which he did provide?

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Could this court properly find, in the absence of any evidence at all and in the presence of clearly opposite evidence in the case record that "(w)ith Weisberg's ~~assassinat~~ assistance and direction it was feasible for Lesar (Weisberg's trial attorney) to respond to the FBI's interrogatories?"

In this regard, could this court properly omit the fact that Lesar is separated from Weisberg by 50 miles and that this would have required Weisberg's unpaid counsel to drive a hundred miles a day for as many days as would be required to provide "each and every" document and fact from what this court referred to as more than 200,000 pages as well as many thousands more of the captioned appeals and affidavits which the government already had?

Also in this regard

Also in this regard, and in the absence of any evidence, could this court properly decide that with his record of refusing to comply with the discovery request and his unrefuted attestation in the case record that he had already provided all the information of which he was aware, that at his advanced age and seriously impaired health and with his regular income limited to his social Security check of less than \$350 a month, Weisberg was going to "assist" Lesar and bear the extraordinary expense of providing still another set of xeroxes of what, without question, he had already provided?

Further in this regard, and again contrary to the evidence in the case record, was this court justified in stating that in connection with Weisberg's ~~conjured~~ assistance "conjured by this court that "(a)pparently Lesar himself felt that such a course was possible" when in fact, without judicial mind-reading, the record is clear that Lesar had gone to visit Weisberg in an effort to talk him into less than compliance with the discovery actually demanded and Weisberg had refused to either duplicate what he had already provided or subject himself to punishment for perjury by swearing to what would not have complied with the discovery actually demanded (each and every fact and document).

Again in this regard, could this court properly state that when Weisberg ~~stated~~

and not Lesar had those 200,000 doc pages of FBI documents, Lesar "apparently felt capable of preparing a draft response by himself."

But if the court is correct in this, because all that Lesar had to draw upon is his copies of the very appeals and affidavits Weisberg had provided to the government does this not constitute the court's acknowledgement that, as Weisberg without dispute attested, that he had already provided all the relevant information of which he was aware?

With further regard to what consists of conjecture and mind-reading only with regard to Weisberg's and Lesar's capabilities relating to discovery, can this court properly decide on the basis of the fact that the District Court #had the oppor<sup>before</sup> opportunity to consider these argeuments(sic), which in fact were never ~~considered~~ by the District Court, as the case record discloses, without basing this court's finding on fact, without stating that the District Court had in fact ~~considered~~ done more than have "the opportunity" of which it did not avail itself?

Could this court properly extend the District Court's alleged "opportunity into what follows immediately, "(w)ith ample evidence ~~before~~ to support its decision," without citing any such evidence, when the District Court did not hold any hearing to take any testimony, and when in fact the only evidence before the District Court's was Weisberg's unrefuted affidavits?

Has not this court effectively rewritten FOIA, has it not converted itself into a legislative rather than a judicial body?

Questions:

Has this court converted itself into a political an activist political body,  
into a legislature?

Were there "additional searches" and were there, in fact any searches to  
comply with Weisberg's FOIA requests?

Can this - or any other court - merely make up what is congenial to a  
preconception and regard its creation as evidence?



When under the heading "The Propriety of Dismissal as a Sanction," this court states (page 12) that

the Black Panther cases<sup>are</sup> not in point because they involved "constitutional privilege," is not Weisberg entitled to the constitutional right to a trial, to have charges filed and evidence presented for him to confront?

And in this regard, when it is undisputed that Weisberg had already given the government all the information relevant information of which he was aware, had he not met the Black Panther standard quoted on page 13, of "a good faith effort to provide full and complete answers" even before they questions were propounded?

~~Wasn't~~ Had Weisberg, in fact, not exceeded it when after ~~the~~ oral argument in this litigation the Department of Justice wrote him that it had never, ever, received as much information from anyone?

Did this court err in this regard in its total disregard of Weisberg's evidence before the District Court in which the agency admitted receipt of this material and did not even question that he had provided all the material of which he was aware, two full file drawers of it?

Is dismissal as a sanction in an FOIA appropriate when the government did not make the initial searches required by its own regulations and by the Act?

Is dismissal appropriate as a sanction in this litigation when the Dallas office did not do any searching until long after complete compliance had been claimed and the New Orleans office swore that search slips dated a year before Weisberg filed his request are the original search slips in this litigation?

Are not the two preceding questions a matter concerning which the District Court was required to make a finding of fact at the very least prior to dismissal?

~~How can there be~~ Can there be any relevance at all in the case law cited on page 13 reflecting that ~~the~~ sanctions can serve the purpose of of compelling Weisberg to "comply promptly with future discovery orders of the district court" when it is undisputed that he had already provided all the material of which he is aware?

Given the unrefuted facts in this case cited above, can sanctions have the

quoted further on page 14, of acting as a "deterrent?"

Can this courts decision act as any kind of deterrent other than ~~xxxx~~ to deter those who seek public information to serve the public good?

Can this court properly state (on page 15) that "(t)here is no argument in this case that appellant's noncompliance with court orders was anything other than willful" when there is more then mere argument, there is unquestioned testimony that Weisberg had already provided all the relevant material of which he is aware?

Did this court correctly cite Societe Internationale (pages 14-15) as meaning that appellant is not under "under that part which disallows dismissal for inability to comply with discovery order" when the only evidence in the case record, where it is not refuted and where no refutation was even attempted, is that the actual demands ma discovery demands "Each and every" fact and document) is beyond Weisberg's capability and even the attempt to comply might take the rest of his life?

Given the actual evidence in the case recor, t at Weisberg had provided all the information of which he is aware and that compliance with the greatly excesssive discpvery demanded was impossible, was this court u fair to Weisberg in suggesting on page 15 that he "flouted" his obligations?"

Did Weisberg not meet his obligations when he informed the District Court that he had in fact provided all the relevant material of which he is aware, that the agency had acknowledged this in the case record, and of the undisputed conditions which made compliance with the discovery order an actual impossibility for him?

Is G-K Properties, cited on page 16, relevant in this case when it involves " acourt order to produce documents" when it is undisputed that in this case Wsi Weisberg had priveded those documents prior to issuance of the corder?

Was this court correct is supporting both parts of the "bifurcation," search and exemption claims, without reference to the undisputed case record with regard to both parts when before the district court the agency admitted receipt of the information *from Weisberg*

it claimed to need to prove compliance and more, when his many detailed and commented appeals dating to 1978 had not been acted upon and even more, when only after oral argument in this appeal the Department notified him in writing that it was only in an unspecified time in the allegedly near future going to act on them?

Given the unrefuted evidence Weisberg produced before the District Court and the ~~absence of any evidence at all~~ failure to of the agency to produce any relevant evidence at all on these points in question, was it fair for this court to describe the aged and seriously ill Weisberg as "recalcitrant" and "obstreperous?"

Was this court correct in stating that "(t)he District Court was particularly close to the proceedings" when the District Court made no finding of fact, took no testimony, required no evidence of either party and totally ignored Weisberg's evidence, particularly of prior compliance?" Can this situation be fairly described as a judicial "proceeding?"

Can it properly be said that the District Court was "close" to anything ~~things~~ "proceedings" when Weisberg repeated and under penalty of perjury alleged false swearing to the agency with regard to both parts of the bifurcated case, when the District Court ignored his attestations asked that it make a finding of fact with regard to agency false swearing and the District Court refused?

Confronted with sworn allegation of false swearing by the agency with regard to the very questions invoked in the discovery demand and orders, could the District Court properly reach any decision without resolving the question of false swearing and can this court properly reach any determination with such serious allegations unresolved?

Ought not this court have remanded for determination of whether or not the agency proved provided false and as Weisberg also alleged, otherwise defective attestations and does not its failure to do so and its decision against the victim of the alleged false swearing reward official false swearing? (Add a footnote citing the reference to Phillips in the "Mark Allen case.")

4

If the District Court and this court believe severe sanctions

If the government and both courts believed severe sanctions against Weisberg were required, why was he not cited for contempt or for swearing falsely to the material before the District Court?

When the agency threatened Weisberg with a contempt citation and he responded by daring it to take him to trial on contempt, it is not probably that the failure of the agency to make the request and the District Court to issue such an order is not the most likely explanation the fact that neither dared risk a public trial? With further regard to untruthfulness by the agency, when it alleged to this court that the District Court had "closely observed" alleged misconduct on Weisberg's part when that was both knowingly false and entirely impossible because he was unable to be present before the District Court, and Weisberg informed this court that this representation was false and impossible, ought this court have ignored this official dishonesty entirely, can the courts uphold their constitutional independence when they are lied to and accept those lies, and with undisputed allegation of deliberate lying to this court by the agency, can it justify accepting any representation from it without resolving this serious matter?

Could the District Court properly assess duplicating expenses against Weisberg's counsel, Lesar, and this court agree, without any proceeding to determine whether or not Lesar was required in the District of Columbia to pursue Weisberg's "lawful" desires, under the Stanton case?

Was not Weisberg's declared purpose, of litigating the propriety of the discovery demanded in this litigation, a "lawful" purpose under Stanton?

If Lesar had refused to do as Weisberg desired, under Stanton was he not subject to sanction up to and including loss of license to practise law?

Has not the District Court and this court by its agreement created a situation extremely hazardous to all lawyers who meet their obligations to their clients to pursue lawful desires?

5

Can a District Court create and can an appeals court support any situation in which no matter what a lawyer does he is subject to sanctions, and if they can, is any lawyer ever free and can any client expect justice from the courts?

If the government had not had wrongful and ulterior purposes and was not misusing the processes of the court to avoid compliance with the law, why did it oppose Weisberg's efforts to take the question of discovery in this case up on appeal separately and promptly? (Transfer this higher up)

In its remand, ought not this court have directed the District Court to determine whether or not it had created a Catch-22 for law all lawyers and whether it was within the power of Weisberg's counsel to compel Weisberg to do what Weisberg, for the many unrefuted reasons he attested to, refused to do?

Even if Lesar were not subject to sanctions whatever he did or did not do, unless it is within his power to compel Weisberg to do what Weisberg refused to do, how can Lesar be properly punished by any court - more so when as the unrefuted case record establishes he drove 100 miles and spent most of a day in trying to persuade Weisberg into some ~~for~~ kind of at least pro forma compliance?

Does not this decision by this court effective diminish and in some cases eliminate the constitutional right to representation by counsel?

Does not this decision deny Weisberg of his right to ~~be~~ a public trial prior to judicial punishment and castigation and reflections on his character?

Does not this decision deny Weisberg his constitutional right to confront charges against him and deny him of his right to redress if those charges are frivolous, untrue, defamatory or in any way unjustified?

Does not this decision deny Weisberg his constitutional right to publicly confront publicly made charges against him and of his right to redress if those charges are frivolous, untrue, defamatory, made for wrongful and ulterior purpose or in any way unjustified?