BRIEF FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 86-5289

HAROLD WEISBERG,

Appellant,

v.

WILLIAM H. WEBSTER, et al.,

Appellees

No. 86-5290

HAROLD WEISBERG,

Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION, et al.,

Appellees

On Appeal from the United States District Court for the District of Columbia, Hon. John Lewis Smith, Judge

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Pro Se

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Pro se appellant is not a lawyer and thus cannot make the requested evaluations. He therefore places an asterisk before each case.

CERTIFICATE OF SERVICE

Appellant Harold Weisberg certifies that on this 8th day of November 1986 he served a copy of this brief and appendix upon Ms. Renee Wohlenhaus, Civil Division, Department of Justice, Washington, D.C. 20530, by mail.

HAROLD WEISBERG

III

ISSUES PRESENTED

In a Rule 60(b) case, can a court properly ignore undisputed claims to pertinence of its last three clauses, particularly inequitability, and state that there is an "ironclad" time limit of one year under all six clauses of that rule?

Is there an "ironclad" time limit of one year to all six clauses?

Are there exceptions to the one-year limit to the first three clauses?

When a court has only ex parte attestations and statements by counsel before it from one party, when these are undeniedly perjurious, fraudulent and misrepresentative, and when there are material facts in dispute involving integrity, can a court properly refuse the taking of oral testimony and cross-examination?

In the absence of oral testimony and cross-examination, particularly when a court twice refuses this, does intrinsic fraud, especially when fraud is undenied, constitute fraud upon the court?

When one party presents nothing but undenied perjury, fraud and misrepresentation to obtain an order, can a court properly claim it was not defrauded?

When there is undenied perjury, fraud and misrepresentation, can the party presenting this to a court be entitled to benefit from it and do the rules and case law permit this?

Can a court which is aware of them properly ignore Supreme Court decisons addressing these questions?

Can a court whose Order describes a proceeding as "oral arguments" properly claim that proceeding was a hearing, suggesting

the taking of "extensive" testimony?

Can a court which lacks the most basic knowledge of what is before it, does not know who is being sued or for what and, in FOIA litigation, what is produced, properly claim to have made repeated and "exhaustive" review of the case record?

When an order has been procured by undenied perjury, fraud and misrepresentation, when a court refuses the taking of oral testimony and cross-examination, and when a court manifests a lack of knowledge of the case before it extending to who is being sued and for what, can it be said that the judicial machinery performed in the usual manner its task of adjudicating the matter that was presented to it for adjudication?

When the government, in FOIA litigation, is the sole possessor of information that proves it obtained a money judgment by means of undenied perjury, fraud and misrepresentation, and it withholds that information until after the case record before the district court is closed, claim that the other party may not properly use it after remand because one year has passed?

Is the foregoing kind of situation appropriate to claim for relief under Rule 60(b)(6), "any other reason" or "excusable neglect," especially when the other party is pro se and a nonlawyer who is aging, seriously ill and handicapped and has no access to any law library?

Is it acceptable or culpable for a government affiant in FOIA litigation to attest to a claimed need for discovery while having and withholding documents establishing beyond question that his attestations were not truthful; and is it acceptable or cul-

pable when, after this new evidence is used, for the government and its representatives not to withdraw their false representations or apologize for them and insist upon enforcing a money judgment based exclusively on this undenied misconduct?

When a party seeking relief from a judgment on the claim that enforcing it is no longer equitable; when this is not disputed by the party in whose favor the judgment was ordered; when the court so completely ignores the equitability argument that its Order and attached Memorandum make no reference to it; when the party seeking relief also claims to be entitled to it under clause (6), "any other reason," and again is not disputed by the party in whose favor the judgment was ordered and again the court completely ignores this argument and makes no mention at all of it; and when that court states that there is an "ironclad" one-year time limit to all of Rule 60(b) when that limit does not apply and is intended not to apply to its last three clauses, can it be said that the court intended fairness and impartiality, intended that justice be done?

Do the foregoing issues justify the granting of the relief from judgment sought?

Is it a "substantial substantive" change to amend a judgment on remand to remove from it a lawyer against whom a judgment had been assessed because his client refused to take his advice and because he pursued his client's lawful and proper desire to appeal?

This case was previously before this court under the same names as Nos. 84-5058, 84-5201, 84-5054 and 84-5202.

BACKGROUND AND STATEMENT OF THE CASE

The new evidence presented by appellant Harold Weisberg in his Rule 60(b) motion for relief from judgment includes some of the most scandalous records in our history. A President is assassinated and the FBI, instead of investigating that most subversive of crimes, in the words of its Assistant Director, Alex Rosen, who headed the General Investigative Division, was "standing around with pockets open waiting for evidence to drop in." A Presidential Commission is appointed over FBI Director J. Edgar Hoover's "opposition." This results in the FBI having an "adversary relationship" with that Commission. This included "Hoover blocking [Chairman Earl] Warren's choice for general counsel" and in the FBI's "preparation of dossiers on the [Commission's] staff and members" and later, in the "preparation of dossiers on WC (Warren Commission) staff after the Report was out." (FBI's emphasis. There was mild criticism of the FBI in the Report.)) Hoover issued "instructions to agents not to volunteer info. to WC." To further frustrate the Presidential Commission, the FBI got together with the CIA for "prearranging of answers to Commission questions." Hoover had decided immediately that "Oswald alone did it" and that "Bureau 'must convince the public Oswald is the real assassin.'" Having solved the crime by intuition and without investigation, two days later Hoover issued instructions to "wrap" it "up." The FBI had had contact with Oswald's assassin, Jack Ruby, "for use as informer," repeated as "Use of Ruby as informant on Dallas criminal element" and hid this from the Commission, to which (along with Weisberg in this litigation)

it never did make full disclosure. It admits what in its euphemism is "Delay in sending information to Commission regarding Bureau's past contacts with Ruby," resulting in the omission of this "information" from the Commission's Report. The FBI sought to misuse this terrible crime for its own political rather than police ends, as in its "secret plan to distribute Oswald-Marxist posters in Bureau plan [sic] to discredit Communist Party." And, when writers criticized the FBI's conclusions and failures, it ordered "preparation of sex dossiers on critics of probe."

In its efforts to cover up its failures and, if the official solution is believed, the FBI's direct responsibility for both the assassination of the President and of his alleged assassin, FBIHQ "handled" that problem by ordering the "destruction" of that evidence almost immediately, the very day Oswald was killed - and kept that, too, totally secret. As without contradiction the case record reflects, the Dallas FBI's Oswald case agent, James Patrick Hosty, Jr., received a letter from Oswald threatening the extreme violence of bombing. He was instructed to and did destroy this "note" and he then testified to the Commission that the FBI had no reason to believe Oswald capable of any violence. There are three references to Hosty's destruction of Oswald's threat in one short section of these enormous ticklers which - after 22 years - still exist. This is contrary to SA John N. Phillips' attestations in this litigation in appellees' successful effort to avoid searching for and disclosing them, that all FBI ticklers are "routinely" destroyed within a matter of days. Appellees' chief affiant in this litigation, Phillips,

is its supervisor in this case and in Mark Allen's. He thus swore to the nonexistence of records in this case while simultaneously disclosing to Allen proof that his attestations, which are basic and material, are false and constitute a fraud against both Weisberg and the court. The court believed and acted upon his and appellees' other attestations and nothing else other than the misrepresentations of appellees' counsel.

While not every part of each document of the new evidence - evidence withheld by the FBI in Allen's litigation until, under compulsion of that court, it was disclosed after this case was first up on appeal - is relevant to the Rule 60(b) motion, this and the other documents are relevant and constitute undenied proof that appellees procured this judgment by perjury, fraud and misrepresentation.

The quoted tickler establishes the existence of withheld field office records appellees attested - again without search - do not exist. FBIHQ does not conduct investigations, the field offices do, and it is FBI practice to route the results of investigations not originated by them to the field offices.

It cannot be doubted that when Phillips attested to his falsehoods, which are the basis of the judgment against Weisberg, he knew he was swearing falsely. There is no doubt at all that appellees' counsel were aware of this, if not earlier, when they received copies of this new evidence. Yet to this day none of these false and fraudulent representations have been withdrawn or apologized for in any way. Instead, appellees misrepresent the rule and argue that the courts are powerless to correct this

wrong.

From the first, from the Presidential Commission and since then from independent researchers and writers, and thus from the nation, appellees have sought to control and limit what could be known. In this litigation it has not made even pro forma denial that to limit and control what is known it engaged in felonious misconduct and seeks vengeance against the senior and most productive of these critics. Appellees first threatened a contempt citation against Weisberg and when he dared them to, knowing they would not risk a trial on the facts, shifted to seeking the money judgment from which he seeks relief. While relief from this judgment is the question before this court, it will also be deciding whether one, in this instance the government, can be the beneficiary of its own misdeeds, and whether by these misdeeds it can get away with the withholding of nonexempt information that can be seriously embarrassing to it relating to that most subversive of crimes, the assassination of a President. It will also be deciding whether the government can by these misdeeds misuse the courts and the Act intended to let the nation know what our government does. Indirectly it will be deciding whether the government can fail to make the required searches under the Act; refuse to make any use of information provided by plaintiff/requesters and then demand that this information be provided all over again; and whether, in the absence of the required searches, it can turn the Act around and place the burden of proof on plaintiffs.

Weisberg is a former reporter, investigative reporter, Senate investigator and (decorated) World War II intelligence analyst.

He is the author of six books on the investigation of the assassination of President John F. Kennedy and one on that of Dr. Martin Luther King, Jr. Unlike the others known as "critics" of the investigations of these momentous crimes, he is alone in not being a conspiracy theorist, in debunking the various and often wild and irresponsible conspiracy "solutions" and in defending from these attacks the government agencies which regard and treat him as an "enemy." Beginning with his first book, which is the first book on the JFK assassination, his work has been a study of the functioning or malfunctioning of the basic institutions of our society. The standard bibliography on the JFK assassination (by Drs. Guth and Wrone, Greenwood Press) evaluates Weisberg as the preeminent "critic" whose work has withstood the testing of time. He is not aware of a single significant error in any of these books. Government records disclosed to him reveal that his work has been analyzed by federal agencies, including the FBI, and those disclosed records do not include any significant error by him. In his Freedom of Information Act (FOIA) lawsuits he has filed lengthy, detailed and exhaustively documented affidavits, making himself from the outset subject to the penalties of perjury, and there is no significant error in any of them. His books are and have been used as college texts in history, political science and criminalistics courses. He filed these since-combined lawsuits, for all the relevant records of the FBI's Dallas and New Orleans field offices, on perceiving that the FBI, in an apparent damage-control effort, was disclosing only its headquarters so-called "main" assassination files, those from which it provided

the information to which it limited the Warren Commission.[1] These December 1977 and January 1978 FBIHQ releases, not made under FOIA but to frustrate requests under the Act, were an engineered media event in which the press, confronted by a close and pressing deadline, was suddenly given access to a small number of sets of about 40,000 pages, was unable to examine and assimilate that vast volume of information and thus was limited to the little it could blunder into or to which it was directed by the FBI.

From his prior study of these FBI main files given to the Commission and of some of the investigators' reports and comments on which they were based, Weisberg knew that information was withheld from those main files and that there were major factual differences and even contradictions. He had interviewed witnesses in both Dallas and New Orleans who were interviewed by the FBI and was aware of significant information it did not provide to the Commission. From years of long and detailed study he knew that the field offices are the originators and repositories of the underlying information, frequently information not in these FBIHQ main files, and that the field offices long has been known as the FBI's "memory hole."

Between these two media-event releases on December 25, 1977,

1/ Although it is not generally known, both the FBI and the CIA deliberately did not provide the Commission with all the relevant information they had. This is confirmed by the new evidence. The FBI instructed its witnesses not to offer any information not requested by the Commission. Ticklers Weisberg received from Allen after filing under Rule 60(b) reveal that the FBI praised SA James P. Hosty, Jr., its Dallas Oswald case agent, for withholding from and misleading the Commission. Actually, he lied to the Commission.

of the four FBIHQ main files, Weisberg filed his requests for the described information of the Dallas (office of origin) and New Orleans (virtually a second office of origin because of Oswald's activities there) field offices. These requests are identical except for the inclusion of an extra paragraph in the New Orleans request relating to District Attorney Jim Garrison's investigation, the two deceased central figures in it, Clay Shaw and David Ferrie, and other persons and organizations who figured in Garrison's investigation. (Exhibit 2. Exhibit 1 is the docket entries.) These all-inclusive requests are specific in including what is not in these main files. That the FBI understood this is reflected in Phillips' Fourth Declaration, of April 29, 1982, page 3. (Exhibit 3) There also, in a moment of aberrational honsty, Phillips attested that the FBI did not search - that instead of making the required search to comply owith the request, the Dallas office sent it to FBIHQ, where no search was possible or made and where since-promoted SA Thomas H. Bresson decided to substitute records of the FBI's choosing, the field office counterparts of the four disclosed FBIHQ files and nothing else. This despite the request's specification that it is not limited to these four files.

More in character, Phillips swore falsely in stating that the FBIHQ JFK assassination disclosures "had been previously processed pursuant to a separate FOIA request by plaintiff for" them. This is completely false. They were not processed for Weisberg or in response to his request as the FBI and its counsel knew very well. Stating that these four files are "responsive to" the request is deceptive and misleading because they - alone -

do not comply with the requests which, as quoted by Phillips, include records that "are not contained within" them.

Based on the processing of these four files and without ever making any search to comply with the requests, the FBI claimed full compliance. It has not since made any searches to comply with these requests although later, at the direction of the appeals office, it made a few inadequate searches.2/ The case record is clear: the FBI never intended to comply with the actual requests, never did, and it undertook to deceive and mislead the court with regard to its deliberate noncompliance.

Long before appellees filed this Phillips declaration, on the very day that Judge Oberdorfer canceled the first scheduled call and recused himself, appellees' then counsel disclosed to Weisberg that once again the FBI was making unauthorized substitution for his requests (Bresson himself had done this in earlier litigation, thus prolonging it) and that these four files only were to be processed. Weisberg notified appellees' counsel that

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2/ Aside from appellees' deliberate false swearing in attesting that records the existence of which Weisberg attested to, illustrations of which follow below, do not exist, these few searches represent that records Weisberg had not identified do not exist when they do exist and are indexed. Weisberg identified by its correct number a Dallas "subversive" file on the alleged assassin's mother, Mrs. Marguerite Oswald, deceased. The so-called search produced it and it only. However, Document 32 in one of the massive ticklers disclosed to Allen by Phillips instructs both offices to open an additional separate file on her. Each did. Copies of the new evidence are attached to Weisberg's previous filings, which are in the Appendix. It is beyond his capacity to make precise citations in each instance for the reasons set forth in his motions for extensions of time, reasons since magnified with regard to his health and that of his wife.

this would not comply with his requests.[3/]

On that day Weisberg also conferred with Quinlan J. Shea, then director of appeals. At Shea's request, because after Weisberg's lawsuits relating to this and the King assassination were filed, the attorneys general had declared both to be historical cases, Weisberg agreed to and did provide appellees with detailed and thoroughly documented appeals. In both cases Weisberg's copies take up two file cabinets, half on each assassination. What is relevant in this instant case takes up two full file drawers. This, in the recent past, was described by appellees' present appeals office as much more information and documentation than anyone has ever provided. Thus - and this also is undenied - before appellees cooked up their "discovery" stonewalling scheme, Weisberg had provided all the requested information and

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3/ Consistent with this intent to deceive and mislead the courts and to hide from this court the fact that there was not even a pretense of a search in Dallas, in appellees' brief on first appeal (page 2) they once again rewrote Weisberg's Dallas request to eliminate almost all of it. They represent that the entire request is half of its introductory sentence only and that the actual request, the two paragraphs that follow, does not exist. This deception makes the FBI's unauthorized substitution for the request appear to comply with it. It is the basis of appellees' deliberate untruth to this court on first appeal (page 47), that when Weisberg asked that his actual request be complied with, he was making "interminable demands for an ever-increasing search." By similar misrepresentation this court was deceived in No. 82-1072 into believing that there also Weisberg sought to enlarge upon his request, in that case the alleged enlargement being the results of the testing of President Kennedy's clothing. That is a specific item of his original request. The FBI's legal counsel's memorandum (File 62-109060-7118) says it is for "records concerning the results of spectrographic analyses of bullets, bullet fragments, garments and other objects." (Emphasis added) In crediting the FBI's misrepresentations, that panel issued what forever will be used to defame Weisberg and misrepresent his work and efforts, and it was so used by the district court in this litigation.

documentation of which he is aware. He did provide the "discovery" before it was requested and thus did not refuse it or not comply with the discovery order, except for appellees' typical misrepresentations.

Weisberg complied with the Department's request, which cost him a simply enormous amount of time and effort. He had no regular income until 1978, when he began receiving modest Social Security checks, but he nonetheless also bore the cost of making and mailing this considerable volume of xeroxes and memos. Most of this was prior to his September 1980 arterial surgery. He was asked no question to which he did not respond, with documentation and full explanations. And, with rare exceptions, it then and to this day is entirely ignored. Even after the two post-operative emergency surgeries, the second not uncommonly fatal and both severely limiting what he is able to do, he continued this, after compliance was claimed, with a large volume of detailed and documented affidavits. They, too, are almost entirely ignored. When on rare occasions the FBI did respond, it either misrepresented or it was - under oath - untruthful. It provided nothing other than a small fraction of what it had been directed by the appeals office to provide. When there was no doubt about the existence and relevance of withheld information, it still neither searched for nor provided it. And nothing embarrassed it. Throughout, without refutation, Weisberg stated that no discovery from him was necessary for compliance, one of two claims made to procure the discovery order. All that was needed was an honest search. An illustration, one of many Weisberg cited in his allegation that the discovery demanded was a stonewalling

trick, has to do with the late Ronnie Caire, a New Orleanian to whom, the FBI told the Commission, Oswald had applied for a job. Earlier, Weisberg had made a separate request for all Caire information. In response he was told that the FBI had no information on Caire. Afterward, however, there was an internal investigation the results of which were disclosed outside this litigation. New Orleans not only had such information, its records show that Caire had registered as a foreign agent, for anti-Castro Cubans, germane in all investigations. New Orleans has this information in at least one still withheld file holding other such relevant Cuban information, including on the late David Ferrie. All the Ferrie information, a specific item in his request, not in these four media-event files is unsearched and withheld, in common with very much more known to the FBI to exist, and is indexed by it.

The district court was undisturbed at the evidence: a President is assassinated, in the appellees' account, by a man who, they reported, applied to a registered foreign agent for employment, a Presidential commission is appointed to investigate that crime, and appellees, having and knowing they have this information, hide it from the Commission and the nation, lie to Weisberg when he seeks that information under FOIA and then, having, if unintentionally, disclosed that they do have this information and lied about it, have the gall to lie all over again to the courts and to claim that they require "discovery" from Weisberg - to prove that they complied with his request that includes it or need this "discovery" to find it.

The untroubled district court continued to remain untroubled

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on reading the FBI's tickler with quotation of which this brief begins - if it read that tickler or anything else provided by Weisberg. In that outline, under "2. Structure and Methods of the Bureau Investigation" there is "D. Investigation of Potential Cuban Aspects." There more than a third of the subject subdivisions are withheld as "Secret."

Obviously, no discovery from Weisberg was necessary in this and in countless other such instances and in all these instances, no discovery from him could have enabled appellees to, as claimed in demanding discovery, prove that they had complied when they had not and knew they had not. There are innumerable illustrations of persisting New Orleans noncompliance after Weisberg provided unquestionable proof of the existence of withheld, relevant and nonexempt information. A number of these instances are included in the new evidence.

One of the also innumerable Dallas instances is the continued withholding of the recordings of the assassination period police broadcasts, obviously of great importance and relevance and potentially even more so. The FBI obtained these recordings twice, once to transcribe them for the Warren Commission, which the Dallas office did, and once when the House Select Committee on Assassinations referred that matter to the Attorney General for further investigation. Both recordings were withheld in this litigation. Weisberg informed the FBI exactly where the first set was stored in Dallas - not in the regular files but in a special cabinet. (The FBI had disclosed that outside this litigation.) Appellees filed a series of attested to and seemingly expedient falsehoods

by Phillips. Each time that Weisberg, himself under oath and subject to the penalties of perjury, disproved this series of Phillips' improvisations, each attested to without ever making any search for the recordings, Phillips merely invented another to which to attest. These recordings remain withheld. Then Weisberg provided the FBI's own records reflecting its having the second set,[4/] indicating exactly where they were then. This also was ignored and they, too, remain withheld. However, with the wholesale untruth that characterizes this litigation, appellees can't keep track of all of it and thus the new evidence includes their December 31, 1984, acknowledgment of finding "the original dictabelt" as well as "working copies of portions of that tape" plus "related documents." They were found exactly where Weisberg had indicated they would be found. (This is one of the almost innumerable instances of what Weisberg had without denial stated in response to the discovery request, that appellees have a long history of ignoring all the great amount of information he provided.) By return mail Weisberg asked for copies of these documents, clearly nonexempt, so he could be of assistance. He also asked to be informed of the price of making a second copy of the

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4/ Appellees, gloating that it was outside FOIA, bucked the investigation of those recordings to the National Academy of Science. It appointed a panel to study the second set, which the FBI assured it was the original dictabelt. Records disclosed to Weisberg in this litigation and therefore reviewed by appellees indicate that in fact this is not the original recording and that the FBI may have deceived and misled the NAS panel. Aside from appellees' traditional stonewalling, there is no other immediately apparent motive for continued withholding so long after these recordings were blundered into where they would have been found earlier had there been any search at all.

recordings so he could provide them to others specializing in research based on them. Almost two years have passed, two years in which much transpired in this litigation, and he has received nothing - no copies of documents or recordings, not even a response to his letter. (These communications are Exhibits 3 and 4 attached to Weisberg's Rule 60(b) motion.)

The district court, before the first appeal, and without making any effort to resolve the stark credibility and factual questions, accepted and credited what appellees said over what Weisberg said. Despite its citations from Moore's Federal Practice on Rule 60(b), it erred in prejudice against Weisberg and in denial of his rights. Moore states (at 60.28[3]), "(w)here relief hinges upon a factual issue and credibility is involved, the taking of oral testimony will ordinarily be desirable." The district court failed and erred twice, before the first appeal and after it received this entirely unrefuted new evidence. It should, each time, have sought to resolve the factual and credibility questions by taking oral testimony - which Weisberg, pro se, did request. Earlier, on March 8, 1983, he moved for an evidentiary hearing with regard to both fact and credibility. (Denied April 26, 1983.)

Although nothing exists to indicate that the district court read all of Weisberg's affidavits, at the calendar call of March 25, 1982, the court requested counsel to adjourn and see if they could reach a settlement. Weisberg's then counsel, James H. Lesar, phoned Weisberg who said he would dismiss the case with prejudice against himself, to negotiate terms, and that he was

ready to compromise on everything except the rights of others to seek information not searched for and processed in response to his requests. Without consulting higher authority, the FBI and its counsel rejected this offer and, on returning to the courtroom, announced they insisted on making a totally unnecessary and costly Vaughn index. Phillips' March 2, 1982, declaration states that a full Vaughn would require 126,000 man hours and a 1/100 Vaughn would require 1300 manhours. Lesar formalized his offer on April 5, 1982. Appellees opposed it and on May 3, 1982, moved for summary judgment on search. In the subsequent filings of both sides were a number of additional affidavits by Weisberg. In denying this motion on October 27, 1982, the court stated that the FBI's search was inadequate with regard to both scope and its effectiveness in retrieving particular documents. Ignoring all the enormous amoung of information and documentation Weisberg had provided and even pretending not to have it, appellees sought discovery on December 6, 1982. Alleging that they had provided false information to the court, Weisberg asked for an evidentiary hearing on March 8, 1983. Appellees opposed this on March 29, 1983, and on April 26, 1983, the court refused to hold an evidentiary hearing and thus, in Moore's words, refused "the taking of oral testimony" when there was "a factual issue" with "credibility involved."

Weisberg believes that with regard to an evidentiary hearing or a trial, and he requested both, the court erred and denied him a right, as it also did in failing to seek to implement Weisberg's offer to dismiss, pursuant to the court's suggestion, particularly

because of his seriously impaired health and resultant handicaps and limitations.

Weisberg did not, as the court represents, flaunt contempt for its discovery order and he was not guilty of "willful and repeated refusals to comply." (In a Freudian slip the court here (page 3) refers to Weisberg as the defendant.) Weisberg stated under oath that he had already complied and this remains entirely undenied because those two file drawers and all those detailed and documented affidavits of precisely this information cannot be denied. He also, again making himself subject to the penalties of perjury, stated other reasons, in response to none of which did appellees provide any attestations at all. These include:

> that a demand for "each and every" document and reason was and was intended to be burdensome; was unnecessary; that in this case discovery was inappropriate (it had been provided and the required searches had not been made); that it was beyond his physical capabilities; that consistent with a long past, what he had provided had been ignored; that for the period in question he had suffered a series of other debilitating and limiting illnesses, including (twice) pneumonia and pleurisy; that the FBI had refused to search and was seeking to place its burden of proof on him; that it never made any search to comply with his requests and made its own unauthorized substitutions for them.

Again Weisberg stated everything under oath and himself subject to the penalties of perjury. Appellees provided no evidence at all to refute him. Instead, they presented knowingly untruthful arguments by counsel, such as in their Reply of March 15, 1983, "that its discovery requests could not possibly be burdensome" when no more was demanded than "that he provide the defendant with each and every fact and comment" relating to search - which undeniedly he had already done. How could doing this all over again "possibly be burdensome" when it only required searches

through more than 50 file cabines mostly of FBI records to which it alone has indexes! How could it possibly be burdensome to an aging, ill and severely handicapped man who attested he cannot stand still in front of file cabinets, most of which are in his basement; when he has difficulty with stairs and cannot use them often on any day; and when he has to use one hand on the handrail and cannot carry many records in his other hand up the stairs to his copying machine - if he could search for and locate those records, which undeniedly, he could not? Appellees' counsel also did some tricky and imaginative arithmetic to make it appear that the enormous and impossible burden imposed by the discovery demanded was easily within Weisberg's capabilities because during the period in question he had filed affidavits. As Weisberg attested in response, those affidavits state the documentation is perforce limited to what Weisberg had at hand in his office, without search. When appellees' counsel's imaginative calculations of time were computed correctly, it turned out that drafting those affidavits required less than ten minutes a day of Weisberg's time for the period of time in question and thus could not be equated with what was demanded of him as "discovery."

Appellees' counsel then told Lesar that he was considering seeking a contempt citation. Weisberg told Lesar to respond by stating Weisberg's belief that appellees would not dare risk a trial on the facts. Instead of seeking a contempt citation, appellees sought and got a money judgment for claimed counsel fees. This was so much an afterthought that there are no time records to support the claim. When Weisberg, who then sought to be en-

abled to take this discovery question up on appeal and was refused by the court, did not pay the judgment, seeking again to force a trial, appellees then moved that Lesar, too, be required to pay these claimed fees. It asked to be paid for twice the amount of its unsupporoted claimed costs. Weisberg then attested that Lesar had driven up to Frederick to see him and to try to persuade him to mmake some kind of pro forma gesture at compliance and that he had refused, for the reasons he provided the court under oath and because he could not honestly swear to providing "each and every" fact and document from so many file cabinets of records. Then, with no evidence at all offered by appellees and with the only evidence before it Weisberg's attestation, that Lesar had made strong and time-consuming efforts to get Weisberg to change his mind, the court ignored the only evidence before it and amended the judgment against Weisberg to include Lesar.

The judgment against Lesar and related matters created a conflict of interest between Weisberg and Lesar. On appeal they were represented by separate pro bono counsel, Weisberg by Mark Lynch, then of the ACLU Foundation.

From the time appellees sought to amend the judgment to include Lesar until Lynch agreed to represent Weisberg, on appeal only, Weisberg was without counsel, as he has been since. (He has never met Lynch.) It was not until after the case was on appeal that Phillips and the FBI began to disclose to Allen what includes the new evidence Weisberg uses in his effort to obtain relief from judgment under Rules 59 and 60(b). (Pro se Weisberg's first effort to use this new evidence was on January 19, 1985, before this court, Exhibit 5.)

On May 26, 1985, Weisberg sent copies of the new evidence he had up to then received to Lynch, requesting that Lynch make a motion under the rules having to do with new evidence, then unknown to Weisberg. Lynch replied that he would do this before the district court but did not. With Weisberg's agreement he filed a motion to be permitted to withdraw on July 1, 1985.

On remand, without Weisberg's participation and without having consulted him, Lynch appeared. Within ten days of the issuance of the amended judgment that followed, Weisberg did file a Rule 59 motion and a Rule 60(b) motion. The court rejected these motions on October 8, 1985, and on March 4, 1986, rejected Weisberg's motion to reconsider on which it had heard oral arguments on December 10, 1985. The Memorandum accompanying its March 4 Order argues for appellees what they did not bother to argue or even research; reflects bias in their favor in other ways; makes no mention of much of what, without any opposition from appellees, Weisberg argued, such as that enforcement of the judgment is not equitable; denies what even appellees did not deny, that they are guilty of fraud upon the court and procured the judgment only by means of fraud, perjury and misrepresentation and presented nothing else to the court to get the discovery order on which the judgment is based; and, with the constitutional independence of the judiciary and the ability of the court to render impartial justice, consistent with the court's record throughout this litigation, in which it refused to take oral testimony to resolve those questions, makes no effort to resolve the factual and credibility questions before it.

In seeking to force the court to resolve these questions, Weisberg argued that with regard to what then was most material before it, he and appellees having sworn opposite each other, he or they are perjurers. The untroubled court remained untroubled and makes no mention of this.

Perhaps what to a nonlawyer appears to be unreasonable is today's accepted practice, that a court can properly ignore 100 percent of the evidence before it and still render justice; can with justice reward undenied felonious misconduct to inflict punishment without trial even after trial was requested of it; can properly ignore failure to deny such serious allegations or make even a gesture at producing evidence despite the widespread belief that if one is innocent he at least claims to be.

The district court did, however, lay claim to compassion for the aging and ill pro se plaintiff before it although it had arranged that he be without counsel by assuring the conflict of interest between plaintiff and his counsel: "(o)ut of deference to the plaintiff's pro se status this Court has once again [sic] undertaken a review of the records in this case and has conducted an extensive hearing into the evidence supporting plaintiff's arguments." (page 8) By the time the court claimed for the third time to review of the case record, it is magnified into "an exhaustive review of the records in this case" (concluding paragraph).

That "extensive hearing" lasted less than a half-hour and it was oral argument only. Weisberg had not been informed that the court intended anything else. He cannot afford to pay for a transcript from his monthly $368 Social Security check so he cannot

quote the transcript but he recalls no questioning by the court relating to the evidence, certainly no "extensive" questioning about it. If, indeed, the court expressed even casual interest in it. The court asked appellees' counsel nothing at all about the evidence appellees had not denied in any way and on that occasion did not refute or deny. The oral argument was shortened because in its intent to "conduct" this "extensive hearing" it would not let Weisberg read the statement he had prepared. Instead, the court stated that it would sound better if not read and that Weisberg should just ad lib, and that his prepared statement would in the case record. (Exhibit 4) Weisberg had prepared and timed (at 20 minutes) his statement because he is tired by this trip of less than 50 miles, which he makes every six weeks, driven by a professional driver, for examination by his cardiovascular surgeon. The outer limit on his own driving with safety is but 20 minutes and he has not driven to Washington in a decade. He is not a lawyer, is not accustomed to addressing a court, has only a layman's understanding of legal matters, and he wanted to avoid rambling and digressing and thus imposing on the time of the court. So this compassionate court listened to him while from his wheelchair, without notes and, under the stress, without remembering much of his argument, he talked. Appellees had no questions to ask, produced no evidence and instead argued that there is an ironclad time limit of a year under Rule 60(b). This is not true and Weisberg then cited his briefing and authorities on that point without any expression of interest or disagreement or any question from the court.

The court liked that "ironclad" notion and adopted it, stating that there is "the ironclad one-year time requirement imposed by Rule 60(b)," which is not true. How "exhaustive" the court's "review of the records" in this case was is reflected by its failure to mention the authorities Weisberg cited stating that this limit applies only to the first three of that rule's six clauses and that the last three clauses are intended and were added to toll that year limitation. In this the court is consistent, having mentioned nothing about Weisberg's undenied claim to applicability of Clause 5, to the unchallenged and undenied inequitability of giving force to the judgment from which he seeks relief.

The Memorandum reflects how much the court learned about the litigation over which it presided; how beneficial to it, to Weisberg and to justice those repeated reviews of the evidence were; how firm its grasp of the basic facts, how determined it was that, "though the heavens fall; let justice be done." The Memorandum also reflects how closely the court studied and applied the case law it cited, as when the pro se nonlawyer plaintiff argued that it is a basic principle of American law and justice that one may not be the beneficiary of his own misdeeds. The Memorandum cites Pickford v. Talbott in which this is stated, yet makes no mention of it.

This lawsuit, the court states three times, first in the first paragraph, is for documents pertaining to the assassination of Dr. Martin Luther King, Jr. This is not true.

Also repeatedly, first in its first paragraph, the court states that this lawsuit is for such records maintained by the

FBI's New Haven field office. This, too, is not true."

No King assassination, no New Haven field office records are involved in this litigation.

"... the FBI conducted countless searches of the agency's files and released over 200,000 pages of documents ..." (page 2) No searches were ever made to respond to Weisberg's requests and of the few searches - after compliance was claimed - directed as the result of administrative appeals, only a few were made. The FBI itself attested that it did not intend or make any search at all in Dallas, as quoted above, and instead substituted records of its own choice over Weisberg's stated objections. In New Orleans it substituted search slips of a different request, made about a year before Weisberg filed his request. (The search slips, attested by the FBI to be authentic and complete, are twice in the case record, the second time attached to Weisberg's declaration of April 29, 1983.)

In this reference to searches in which no searches become "uncountable" the court contradicts itself. In response to Weisberg's offer to dismiss this lawsuit, appellees moved for summary judgment on May 3, 1982. On October 27, 1982, the court denied this motion, citing the exact language of the requests pursuant to which no searches at all were even claimed to have been made, found that "substantial and material facts are in dispute," that "neither the description of the search, the search method, or the results are adequate" and that "(t)he search undertaken by the FBI was inadequate both with regard to its scope" and in "its effectiveness ... As he had done in previous FOIA cases, Weisberg

has produced specific evidence ... which casts substantial doubt on the caliber of the agency's search endeavors." (pages 2, 3) It then lists 14 of the specific items where Weisberg had shown records exist and were not processed, and a list of "contested factual issues." Instead of then belatedly conducting the required searches, the FBI sought and the court granted the discovery that is the basis of the judgment. It did not make or claim to make these required searches. The search slips, attested to as complete, leave no question on this score. Neither does the case record. The simple truth is that, aside from the field office companion files of the previously disclosed FBIHQ four main "media event" files, the field office files substituted for Weisberg's actual request, which could not be more specific in stating that it is not limited to them, the FBI disclosed nothing at all when it claimed compliance and an insignificantly small percentage of the total number of pages disclosed in this litigation thereafter. Most of those additional pages, more than 3,000 pages, were disclosed as the result of Weisberg's catching the FBI in untruthfulness in claiming that they had been disclosed earlier - and these 3,000 plus pages, too, are from those four main files.

When it was apparent that on appeal there would be no question, that substantial and material facts were in dispute, the court held that the searches were in all respects inadequate and incomplete. The FBI has not made additional searches, years have passed and now the same court states the exact opposite of what it stated in 1982, when the evidence was before it, in deny- appellees' motion for summary judgment on search.

Those 14 matters itemized by the court remain unsearched and more, as is now beyond question and is not disputed, the new evidence establishes both the existence and relevance of information within those 14 points. It also provided abundant notice for the FBI's refusal to disclose the existing, relevant and nonexempt information, so much of which could be seriously embarrassing to it.

Moreover, the disclosed search slips, phony or not, do establish the existence of relevant records that were withheld without claim to exemption. They also establish that after Weisberg filed his requests the FBI destroyed relevant records. Included, exactly as Weisberg attested, is tricky filing to hide potentially embarrassing records from search, records about which the FBI had been untruthful and records holding information it had withheld from the Commission. With regard to Clay Shaw, a specific item of the New Orleans request, the FBI wound up in an unseemly public dispute with the attorney general and it denied having told him what he had said publicly it had told hm with regard to Shaw.5/

5/ Homosexuality figured in the Commission's, the FBI's and Jim Garrison's investigations, Garrison's and Shaw being specific items of Weisberg's request. Shaw died before the request was filed. At the time of the attorney general's confirmation hearing, which was a few weeks after Garrison's investigation became the subject of extensive and intensive public attention, the FBI prepared a memorandum (62-109060-4720) on Shaw, based on still withheld New Orleans information. It states that in the early days of the Commission's investigation one of the FBI's sources informed it "that he has had relations of a homosexual nature with Clay Shaw," who is "given to sadism and masochism." The memo adds that the FBI "received information from two other sources that led them to believe that Clay Shaw had homosexual tendencies." Reportedly Shaw, using the alias Clay Bertrand, sought to engage counsel to defend Oswald as soon as Oswald was arrested. Weisberg has read every word of the New Orleans records disclosed to him

The court's figure of 200,000 pages of documents released is not in the evidence. The court cribbed that from appellees' counsel's March 15, 1983, Reply, page 3. The actual number, stated in the FBI's March 2, 1982, declaration is less than 25 percent of the court's, 48,754 pages of documents plus copies of two indices.

The FBI had, the court states on page 2, "extensive discussions with the plaintiff." This also is not true. The FBI never had any discussion with Weisberg in this litigation. When the appeals office suggested a conference and Weisberg requested that a record of what was discussed and agreed on be made and kept, the FBI refused to make and keep such a record and then refused to attend the only conference ever proposed to Weisberg.

"In support of this motion [to reconsider], plaintiff again alleges that the newly discovered evidence requires that this court reverse its earlier order dismissing the plaintiff's

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in this litigation and every relevant word in the Commission's copies of what the FBI provided to it, and there is no mention in them of these three New Orleans reports of Shaw's homosexuality. Those records are relevant, did exist, the FBI knew it had them, and no discovery from Weisberg could have enabled the FBI to prove it had complied. It had not and it knew it had not. This and innumerable examples in the two file drawers of information Weisberg provided appellees and in his many affidavits give the lie to appellees' counsel's statements to the court like that in its March 15, 1983, Reply, that the "information" the FBI claimed to require "reposes solely with the plaintiff," a basis of the granting of discovery. In Weisberg's personal investigations in New Orleans he interviewed witnesses interviewed by the FBI. Information they provided it remains withheld. One of Shaw's friends and a fellow official of the New Orleans International Trade Mart informed Weisberg that the FBI, particularly an SA who had a major role in its investigation, was in regular contact with Shaw because of the importance of the information he could provide the FBI in pursuance of its responsibilities.

case[6/] in the light of the FBI's failure to conduct a good-faith search." (pp. 4-5)

The question is not of the FBI's failure to conduct good-faith searches and Weisberg has no interest in reopening the underlying case, which he earlier sought to dismiss because of his impaired health. He then was opposed by appellees and denied this by the court. The actual question and Weisberg's clearly stated objective, the title of Rule 60(b), is "Relief from Judgment or Order." Except that in the hope the court would want its skirts to be as clean as those of Caesar's wife and punish anyone who soiled them, Weisberg sought nothing else and he addresses nothing else. His actual claim is limited to entitlement to relief from the judgment because it was procured only on the basis of undenied fraud, perjury and misrepresentation. (The court does mention fraud but it substitutes "delay," which Weisberg did not argue, for "perjury" on page 5.)

Beginning on the first page and thereafter the court refers to "plaintiff's repeated failure to comply with the lawful discovery orders of this Court." (quoted from pages 7 and 8) How in all those reviews could the court fail to observed that it is undenied that Weisberg had already provided all the documentation and information of which he was aware, two file drawers of it and a very large additional volume of it in thoroughly documented affidavits? He stated this under oath and subject to the penalties of perjury and it is not disputed in any way. Appellees acknowl-

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6/ Whether or not correctly, Weisberg states the exact opposite of this in his Motion to Reconsider (page 25) that the "time for him to move reconsideration of that has expired."

edge that this is more information than anyone has ever provided in FOIA litigation.

Where the court refers to Weisberg's undenied allegation of fraud, it dismisses the new evidence as "merely cumulative," a defense even appellees shunned and a remarkable excuse for so serious an offense, if excuse it is. The court then states that this fraud "at most, reflects merely upon the adequacy of the FBI's original search effort." (page 8) This is not correct and is not how Weisberg used this new evidence. But can it be that the court, after all its reviews of the case record, was not aware that one of the alleged needs for this "discovery" was so it could prove that the FBI had complied with that "original search effort" and the other was to enable it to locate and process any relevant and withheld information? Or, as appellees argued in their March 15, 1983, Reply (page 3), only Weisberg - not they - had the information they needed.

Apparently the court describes and dismisses the undenied fraud as "merely cumulative" to be able to invoke Goland v. CIA. How this entirely new evidence is "merely cumulative" the court does not state. This is because it cannot so state and that is because the new evidence is not in any sense "merely cumulative." It is entirely new in every sense, in content as well as in form. This new evidence even reports appellees' finding what, after two years, is still withheld: those police broadcast recordings sworn not to exist and for which the "discovery" was allegedly needed. That is "cumulative?" If so, words have no meaning.

Weisberg does, however, meet the Rule 60(b) test as quoted

from Goland by the court: "he must show that the new evidence was not and could not by due diligence have been discovered in time to produce it at trial." (page 8) It is beyond question that appellees and only appellees possessed this new evidence until, under the compulsion of another court in the Allen case, they disclosed the records that include this new evidence. Disclosure to Allen began after judgment was entered in this case. There is no way in the world that Weisberg could have obtained it in time to use it prior to appeal and, as the court fuzzes over, the FBI's chief affiant attested in this case to its nonexistence while he was processing it for disclosure to Allen. Phillips and the FBI knew from this new evidence alone that they had defrauded Weisberg and the court, had perjured and misrepresented, and to this day they remain silent, entirely unapologetic.

"The alleged misrepresentation occurred, if at all, between the two parties," the court states (pages 9 and 10). There is no citation to the case record and none can be made to it. The government's attestations were not made to Weisberg, they were made to the court; and the government's counsel's representations to procure both the discovery order and the judgment based on it were made to the court, not to Weisberg. (Addressed further below.)

There likewise is nothing in the case record, as after all those reviews of it the court ought to have known, to support the court's statement that there was no fraud upon the court. It says that "the plaintiff has advanced no grounds upon which to conclude that this fraud was directed at the court." (pages 8 and 9) Weisberg did state, as he has from the first pro se, that appellees

provided nothing to the court that is not perjury, fraud or misrepresentation to get the discovery order, this is undenied, and certainly that is "grounds" that Weisberg did "advance" to show "that this fraud was directed at the court." How could it be otherwise when without it there is no basis for the discovery order and thus no judgment at all?

How often must it be repeated: There was nothing else for the court to act on - nothing but this fraud, perjury and misrepresentation. How often must it be repeated: This is entirely undenied and cannot be denied!

How can this not be fraud upon the court?

For what purpose did the court make all those boasted-of reviews of the case record and the evidence other than to make out a prosecution-type case against Weisberg, even referring to him as the defendant; when it still, after all these years and reviews, does not know who is being sued and what is being sued for; when it does not know even the volume of records involved, does not know what is alleged before it and why (or worse, knows and misrepresents); when it does not know what it acted upon in ordering discovery and the judgment based upon it?

Can this reflect the court's reasons for its beginning by stating that "an extensive discussion of the factual background of this case is unwarranted?" (page 2)

Can this also be part of an explanation for the total absence of any reference to the content and meaning of the new evidence? Particularly when appellees uttered not a word to dispute its clear meaning - that they had knowingly and deliberately sworn falsely and misrepresented and as a consequence defrauded both

the tolerant if not overtly biased court and Weisberg? Ought not the absence of any effort to refute this new evidence and dispute its obvious meaning have caused an unbiased court to at least make a pretense of examining and evaluating it?

When a court is confronted with allegations of criminal activity that involve its integrity and its ability to render impartial judgment and does not examine and evaluate the evidence of such wrongful, really subversive, conduct, is it not an abuse of more, much more than that court's discretion? Can the courts have their constitutional independence, basic to our system of government, if the executive branch engages in this kind of undenied criminal activity and, instead of taking oral testimony, ignores the evidence of it and then rewards those charged with it, the executive branch?

Whether or not in its opinion "an extensive discussion of the factual background of this case is unwarranted," can a court fairly and honestly claim to have made any factual review of a case based entirely on new evidence without a word, not a single word, about its content and meaning?

If the district court had confronted this new evidence, it could not have ordered the judgment ifrom which relief is sought. There simply is not and cannot be any question about the fact, the fact that the government engaged in perjury, fraud and misrepresentation and even when caught in the act was and remains without apology to the courts whose trust was abused. The evidence is so overwhelming it cannot be denied. Moreover, any denial could require assessment and judgment, whether or not oral testimony and

cross-examination. Whatever the district court did or did not do would be subject to review, with an appeal certain if that court decided against Weisberg, and then its evaluation of the new evidence and its content would have been reviewed and assessed by this court which, without oral testimony, could have remanded so that Wigmore's machine could work.

One of the problems with which this new evidence confronted the court is that it is at once irrefutable and simple and comprehensible.

Whatever their motive, and the new evidence itself indicates motive, to procure the unjustified stonewalling discovery order in the face of evidence in the case record establishing beyond reasonable question that it was not necessary and not justified, appellees had to and did represent a need for it. They represented that one need was that it would prove compliance when appellees knew very well that compliance was never intended and that there was deliberate noncompliance, to which Phillips actually attested. Another is that if there were any relevant and withheld records, Weisberg's unique knowledge was required for it to be located. Indeed, appellees' counsel, as quoted above, stated to the court that Weisberg only (the word "solely" was used) had that knowledge. The new evidence, without question, proves that these were deliberate lies, uttered to a federal court for the perpetration of a wrongful act, if not also for other ulterior and wrongful ends.

Perhaps in a long view, gypping an aging and ill writer who is disliked because of his writing out of three months of his only

income, Social Security, is the least of appellees' wrongful acts.

Throughout this litigation appellees, under penalties of perjury, attested that information within the request did not exist. In response, Weisberg, himself subject to the penalties of perjury, swore that it did exist, basing his oath on both personal knowledge and FBI documents, which he attached. Instead of making an effort to resolve the factual questions that are basis in this litigation - and Weisberg did request an evidentiary hearing which was denied - the court chose to believe appellees' attestations Weisberg swore were false, deceptive, misleading and misrepresentative, and it is on this basis that it ordered both the discovery and the judgment. Then, as stated above, under the compulsion of another court, appellees were forced to end their traditional stonewalling in the Allen case and disclosed to him many records from which Weisberg selected what he regards as ample proof of the charges he makes.7/ By the time Weisberg received the first selection of some of what appellees provided to Allen, this case was on appeal and then Weisberg was without counsel. Not knowing the law, he sought to use the new evidence before this court. After remand he was as prompt as the situation permitted in his efforts to use the new evidence before the district court. He filed his Rule 60(b) motion less than ten days after that court entered its amended judgment. The nature and meaning of the

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7/ Weisberg earlier had made a more inclusive request for information than his friend Allen later filed. As usual, Weisberg's request was ignored. When he began to receive some of what was disclosed to Allen, he wrote appellees and abandoned the part of that request pursuant to which Allen was receiving records. The other part of Weisberg's request remains ignored to this day.

amended judgment are addressed below.

Weisberg submitted a suggestion for an en banc review on January 9, 1985. Ten days later he sought to amend this with some of the newly acquired evidence. (Exhibit 5) All of these documents were from an FBI tickler more than two decades old. Phillips had sworn that all FBI ticklers are "routinely" destroyed, after a matter of days only, yet here he was supervising appellees' disclosure of a simply massive tickler more than two decades old.

On remand Lynch appeared for Weisberg after having said that he would represented Weisberg for the appeal only. As soon as Lynch notified Weisberg he was asking leave to withdraw, Weisberg filed his Rule 60(b) motion, on July 12, 1985. (Exhibit 6) Ten days later appellees filed their Opposition and on August 6 Weisberg filed his Response. One of these three filings clearly the court did review because it is the erroneous content of appellees' Opposition that, even after its misrepresentations were corrected in Weisberg's Response, the court presented as its own thoughts and conclusions. This Opposition is the court's source of its "ironclad" revision of Rule 60(b), limitation of the time under it to one year; of its representation that Weisberg's motion was "redundant," a modification of appellees' "regurgitating;" that he seeks to relitigate the underlying case; and that his motion is addressed to the adequacy of the FBI's search, none true and all corrected in the Response (pages 8-14 attached as Exhibit 7).

With this evidence that the court did read appellees' Opposition, if not the Response, then the court knew that appellees did not address any of the new evidence. They did have a straw man,

also corrected in the Response, substituting for "ticklers," of which dictionary definitions are in the case record to refute appellees' earlier misrepresentations and redefiniations of them, "tickler systems," which do not exist and are not referred to in anything Weisberg filed. To deny that appellees do not have what does not exist is to deny nothing and they made no other denial.

If the court's repeated reviews did include less than five pages of appellees' misrepresentations and misstatements that, it happens, were also actually attested to by counsel, what is not included in its reviews? The new evidence itself! There is not any kind of description or evaluation of it or its content that does not come from the misrepresentations of this discredited attestation of appellees' counsel.

What did not require even a review by the court is Weisberg's statement prepared to be read to it on December 10, 1985. After the court had him ad lib this statement instead of reading it, with the assurance that the court would read it and incorporate it in the record, Weisberg presented copies to the court, the clerk and appellees' counsel, with coded-in copies of the new evidence. The court did hear that part of it Weisberg was able to recall despite the tensions he was then under, just added to by the court in not permitting him to read. So although this is only a selection of the new evidence, because the court was aware of it - and ignored it and its meaning in its Memorandum and Order - Weisberg here cites that of which the court was aware without any question.

Ticklers: Phillips attested and counsel repeated that they do not exist after a few days but the massive ticklers disclosed

to Allen then were more than two decades old and still preserved and readily retrievable. They refer to the existence of still other ancient ticklers and they disclose the existence of known and relevant field office records sworn not to exist.

With regard to this and all the other new evidence, the claimed need for discovery in all instances is that either it would prove that appellees had complied or that Weisberg's (allegedly sole) knowledge was required to locate it. The new evidence proves this to be false.

Phillips had also attested on July 2, 1982, that "the Dallas and New Orleans Field Offices do not produce or maintain ticklers." Weisberg has other new evidence, received only about a month earlier and included, "the joint FBI-Archives study reported to Judge Greene" (of this district) which states that "the records of the Dallas field office, among others, were examined, including those relating to the assassination of President Kennedy. That report refers to the existence of ticklers as 'maintained for the purpose of having all information regarding a specific matter immediately available without the necessity of reviewing numerous case files.'"

Recordings (of the Dallas police broadcasts for the assassination period): Phillips had sworn that the FBI never had them and a variety of other improvised untruths. The information Weisberg provided was never used in any effort to locate them, common practice with the FBI and one of the reasons Weisberg advanced for not providing what he had already provided with its name changed to "discovery." He attached appellees' December 31, 1984, letter acknowledging that these recordings had been found, as it happens, exactly where, from records disclosed to him in this

litigation and ignored by appellees, he had indicated they would be found. To this day, after almost two years, they remain withheld without claim to exemption and his prompt response and offer to help is without even acknowledgment.

Critics (of the investigation): Phillips had sworn that the FBI has no such records after disclosure of them was directed by the Associate Attorney General. FBIHQ conducts no investigations. Information is provided to it by the field offices, copies to the offices of origin, and information from it goes to the field offices, including offices of origin. The tickler quoted at the beginning of this brief ("preparation of sex dossiers on critics of probe") establishes the existence of field office records on the critics. This is entirely undenied, as is all the new evidence and the meaning attributed to it by Weisberg.

All Relevant Records Are Not in Main Files: Phillips, pages from whose declarations are included, had attested that all the relevant information is in the main files. The ticklers list other files with pertinent information. Included, among others, in the files the FBI refused to search are its 94 classification, titled "Research Matters." Weisberg attested, without dispute, that the field offices use "80. Laboratory Research Matters" for similar purposes, hiding such things as press relations and disclosures.

Other Untruths About Records and Indices: Phillips had attested and counsel had stated that all FBI information can be retrieved by search of its "general indices." The FBI's joint report, with the Archives, reports the existence of "a variety

of other indices" and it reports that "records are maintained separately from the related case files." Other methods of hiding information from search but keeping it readily available are also in this report. What in this litigation the FBI attested does not exist in the FBI's field offices does exist, according to its own coauthored report to Judge Greene.

This and other new evidence in the statement prepared to be read in court is in greater detail in the Rule 60(b) Motion, although this statement does include additional new FBI records that had not been disclosed at the time Weisberg filed this motion and thus, with regard to such evidence in particular, clause (6), "any other reason," is appropriate because the FBI had and withheld this information and because Weisberg was not able to use it earlier because appellees hid it.

First in his Motion is what the new evidence discloses about Dallas Hosty information that remains withheld after great effort and the providing of great detail by Weisberg. Of the several great Hosty scandals, particularly embarrassing to the FBI because they became public, is the tickler statement that Oswald's note to Hosty in which he threatened the (to Hosty under oath nonviolent) bombing was "handled" the moment Oswald was killed. This requires Dallas information because it was in Dallas that Hosty destroyed it pursuant to FBIHQ orders, among other undenied reasons. (The Hosty search slip is entirely blank, despite the disclosed existence of multitudinous records, and that "search" was not even requested until long after full compliance was claimed.)

The "campaign" against Weisberg, which the court said did

not exist, is then illustrated in this Motion beginning with an account of the fabricated defamation, that an annual religious gathering at a farm the Weisbergs then owned was their alleged annual celebration of the Russian revolution. (Distribution of this fabrication was from the White House down and included the Congress, attorneys general and their assistants and the lawyers who defend against his FOIA litigation.) Other such defamatory fabrications follow in the Motion.

In addition to the "sex dossier" information on critics, this Motion refers to and includes tickler records establishing that there is and is withheld field office information on the critics' books, FBIHQ caption, "Biased books re: Assassination of President Kennedy."

With Jim Garrison a specific item of the New Orleans request and with him a "critic," there is an unsearched and undisclosed New Orleans "subversive" file on that former district attorney, now a state supreme court judge. The existence of this and other pertinent and withheld files is known to other FBI field offices. They sent New Orleans information for those files.

Withheld Field Office Marguerite Oswald File: As stated earlier, both field offices had and knew they had Marguerite Oswald files that are pertinent and did not provide them. This portion of the brief adds that Phillips had earlier sworn falsely that the one such file Weisberg could identify had to be withheld under "national security," even its title. Weisberg then provided a disclosed FBI record in which the title and text were not withheld. Its content had nothing at all to do with "national security,"

except as a stonewalling claim. Document 32 in one of the ticklers disclosed to Allen, which Weisberg received much later, is the FBIHQ directive to both offices instructing them to open still another Marguerite Oswald file. Other records disclosed in that tickler report that both offices did. Their numbers also are disclosed. Thus the new evidence discloses the existence of pertinent information within the requests still knowingly withheld while appellees were attesting that "discovery" from Weiberg would enable them to prove compliance and that if there were withheld records, discovery was needed because Weisberg and "solely" Weisberg could provide the information appellees claimed to require. In this instance, with this and similar "new evidence" documents from the FBI itself as proof, Phillips, knowing better, lied to the court and counsel misrepresented, with that misrepresentation basic to the granting of the discovery order and basic to the judgment. With all the time that has passed, neither Phillips nor counsel have withdrawn their basis and material untruths. This is by no means exceptional,it is appellees' record throughout.

It was not possible for either field office to make any Marguerite Oswald search without the indices informing them of these withheld files. This is still another of the many illustrations in the case record of the fact that once compliance is claimed without the required searches and Weisberg identifies withheld information, if anything else is provided, it is only what Weisberg proved did exist, and nothing else.

Unsearched New Orleans Records Identified in Ticklers Disclosed to Allen: Phillips also disclosed to Allen FBIHQ records

based on New Orleans office information, including Clay Shaw, Jim Garrison, the jurors in the Shaw case and Garrison's witnesses, clearly within that item of the New Orleans request. Still again, no discovery from Weisberg could have enabled iappellees to prove they had complied when they knew they had not and never intended to, as the undisputed case record makes clear, and no discovery from him was necessary for these and other pertinent records to be located. As with the other such new evidence disclosed under the compulsion of another court, Phillips himself was responsible for appellees' disclosure of it. Yet there has been no retraction or apology to any court.

This section of that brief concludes with one of Weisberg's claims to relief because of inequitability: "'Equitable' and 'inequitable' signify just and unjust." (27 Am Jur 2d, p.517) In its boasted of review of the case record the district court managed to ignore this claim to relief from the judgment. At this point also Weisberg is specific about his only interest in any reopening of the case, misrepresented by appellees and their misrepresentation adopted by the court as its own conclusion. His stated purpose is only to "obtain justice and relief." (quoted from page 32) He points out that the courts need to protect their integrity and that both he and Phillips swore in contradiction about what is material and thus one or the other is guilty of a crime and that appellees' counsel, officers of the court, have committed offenses. (quoted from page 36)

Exhibit 6 to that motion reflects that FBI field offices have knowledge of the existence of files in other field offices and

that the FBI's interest in the "critics" was so great that its Los Angeles office covered their gatherings with "symbol" or official FBI informers. The Los Angeles office knew that New Orleans had a "subversive" file on Jim Garrison and that Dallas had a "subversive" file on the late Roger Craig. Now if all the way out in Los Angeles the FBI knew it, can it be believed that the Dallas and New Orleans offices did not know that they had these files, neither disclosed in response to the requests in which they are pertinent, no claim to exemption made to withhold them, and still again, proof that the representations made to the court were knowingly dishonest and felonious and are basic and material. (Examples of other improprieties with regard to the critics follow in the motion's appendix. They indicate appellees' considerable interest in and investigation of this nonpolice matter. The file folder is one of many illustrating that the FBI had separate files on the critics and their books with, as usual, FBIHQ not conducting the investigations that only its field offices conduct.)

Exhibit 9 to the motion establishes Weisberg's accuracy in attesting that the field offices use the "80" classification files for other than their official subject, "Laboratory Research Matters," and that they are pertinent in this case. (Lab reports are filed in the field office case records in which they are pertinent.) In preparing this file memo on his having talked a hotel into giving elaborate and free accommodations to a writer whose writing is favorable to the FBI - actually is sycophantic - the Dallas special agent in charge designated it for two such "80" files.

Other motion exhibits establish that the FBI needed no discovery to obtain the names of others in New Orleans records within Weisberg's requests. These are merely one "new evidence" set of such names.

Before the compelled disclosure of these FBI records to Allen while they were withheld from Weisberg, who made a request for them before Allen did, when the district court was confronted with contradictory representations from appellees and Weisberg, it chose not to believe truthful Weisberg and believed untruthful appellees. This situation changed radically once it was not Weisberg's word against that of appellees. The new evidence consists entirely of appellees' records, previously hidden successfully. They leave it without question that Weisberg's allegations in seeking relief from the judgment are truthful and that appellees' representations to obtain the discovery order and the judgment based on it are knowingly untruthful. They make it clear that appellees' counsel's representation to the district court, that only Weisberg possessed the information the FBI required to locate its records, is a serious and basic misrepresentation, with little doubt about the knowingness of the misrepresentation.

Once the district court had this new evidence, it was obligated to give careful consideration to Weisberg's claim for relief based on it. When appellees had ample opportunity to refute and deny the meaning of this new evidence and did not, did not make even a self-serving, pro forma denial of any dishonesty, then the obligation of any court with any interest in justice, any interest in its own integrity, any court making even a pretense of

impartiality, was at the very least to reflect its evaluation of and conclusions of fact based on that new evidence. This court entirely ignored it while pretending to careful, "exhaustive" review of the case record. Weisberg asked, as he should not have had to, for a trial on the facts, exactly what the authorities cited by that court state is required under such circumstances; and with evidence of undenied felonies committed before it and with it undenied that appellees presented nothing else but perjury, fraud and misrepresentation to obtain the discovery order and thus the judgment from which relief is sought, instead of ordering a trial the court pretended that none of this exists before it and issued a Memorandum based on the wholesale cribbing of further misrepresentations by appellees, the untruthful, deceptive and misrepresentative character of which was clear in the case record.

This, at the very least, represents abuse of discretion; and to the fair-minded and impartial ought, at the very least, represent bias in favor of errant officialdom and prejudice against their victim who is further victimized by the district court in refusing to grant relief from the unjustified judgment.

SUMMARY OF ARGUMENT

The district court, displaying bias and prejudice and abusing discretion in these and other ways, boasted of repeated reviews of the case record ("exhaustive") while knowing so little that it does not know and misstates who is being sued or for what or what was disclosed; proclaimed that its concern for appellant's pro se status prompted an "extensive" hearing that was no more than brief oral argument; ignored, indeed, rewarded appellees' undenied perjury, fraud and misrepresentation; denied appellant an evidentiary hearing and a trial when the very authorities it cites state that allegations of fraud are to be resolved through "adversary proceedings" and that there should be oral testimony and cross-examination when the court is confronted with material facts in dispute, especially with credibility involved; took clauses and sentences out of context from the cases it cites and altered quotations from them; ignored what supports appellant in these cases; made a "substantial substantive" change involving precedent in the judgment, pretending to the contrary, and thus claimed that appellant's time had run under all of Rule 60(b), which is not true; pretended appellant did not claim inequitability and ignored that entirely undisputed argument; and even when confronted with diametrically opposite attestations to what is material refused to act as a trier of facts to determine truth and whether crimes were committed before it, as by one party or the other they were.

Under Rule 60(b) appellant is entitled to the relief he seeks, according to the authorities cited by the court itself, because

the newly discovered evidence, which establishes appellees' serious misconduct, was known to exist and was withheld by appellees, who alone possessed it (one of two bases for "excusable neglect") when it established their untruthfulness to procure the judgment; because enforcing the judgment undeniedly is not equitable; because undeniedly appellees committed serious violations to procure the judgment; and because the Supreme Court says that one may not be the beneficiary of his own misdeeds; that "the material questions of fact raised by the charges of fraud could (not) be finally determined on ex parte affidavits without examination and cross-examination of witnesses" and thus this is one of those "situations which demand equitable intervention ... to accord all the relief necessary to correct the particular injustices involved."

ARGUMENT

The Memorandum acknowledges that in his Motion to Reconsider Weisberg proceeded "upon additional grounds" (page 4) but makes no mention of them. It also states that Weisberg is not able to invoke Rule 59 because he did not file within 10 days. (page 10) It states that there is an "ironclad" time limit for invoking Rule 60(b) that had expired. (pages 5, 6) It states that he also is barred from resort to Rule 52 (pages 10, 11)

With regard to Rule 59, the judgment was entered October 9, 1985. Weisberg's Motion to Reconsider was filed only a week later. His Rule 60(b) Motion was filed before the amended judgment, on July 10, 1985.

Most of appellees' two-page Opposition is its summary of court actions. It then states what is not true, that Weisberg's Argument does nothing else, only repeats, and that, emphasis added, "(w)ithout further argument, and nothing more than vituperative prose, Mr. Weisberg once again seeks relief in this case. There is no reason for the Court to entertain plaintiff's latest attempt to rehash old and disreputed arguments ... raises no new issues ...frivolous ... an attempt to harass the defendant and the Court ..."

In part because the court entirely ignored admittedly "additional grounds," in part because with characteristic dishonesty appellees state the exact opposite and nothing in attempted refutation or disproof, and in part because of his serious limitations and problems in preparing this brief, Weisberg here includes his Argument that the court ignored and appellees entirely misrep-

resent in his brief instead of the appendix. This court can then decide whether the district court, as Weisberg believes, ought not have entirely ignored this Argument and whether appelless are truthful in their description of it.

This not only is not in anything else he filed, it could not have been because earlier he did not have that upon which it is based. For years he has had no access to any law library and is dependent upon what others can find time to xerox and send him:

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.)

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 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 ...
>
> 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 ...
>
> 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 Ru les 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 opoen 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 ...
>
> > The processing 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 anything 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 very 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 inexcusable 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)
>
> 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)
>
> 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 if 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 it based 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."

For the same reasons stated in introducing the Argument of his Motion, Weisberg includes its conclusion. Because of appellees' deliberate untruthfulness, faithfully parroted by the district court, that he wants to reopen and relitigate the case, he draws particular attention to the second paragraph. It says not only the exact opposite, it states his belief that he is precluded from it. What he cites from those he regards as among our nation's great required no search. These are selections he had at hand in his office from the days when he addressed collegiate audiences, when he faced the problem of relieving the bleak portrayal of some government acts to the impressionable minds of young adults. He told them that governments are made up of men, that men err and therefore governments err; but that our system, for all its errors, remains the best form of government man has yet devised and that it makes provision for the correction of error. He noted that we have no official secrets act, as other major powers do, that we presume innocence, that in the USSR he might well have been confined to an insane asylum and that in other lands he might have suffered worse fate. While he now believes he then may have been somewhat optimistic, he stands on what he then said as he does on what he quotes below, recognizing that in incorporating it here it may appear to be somewhat anti-climactic:

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 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[s] 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 <u>ever</u> misinformed <u>any</u> 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 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 <u>not</u> been untruthful and has <u>not</u> misrepresented in <u>any</u> 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. Without response. (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.)

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.

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.

There remains the district court's citation and interpretation of authorities. Weisberg is limited to those of these citations copies of which he obtained by mail, copied by others when

they could find time. From them the court selected and in some instances altered brief portions to quote, in all instances omitting what in them is favorable to Weisberg and thus pretending that all are without exception unfavorable to him. None of the citations to which Weisberg had access parallels the facts in this litigation.

Of these perhaps the most significant in addressing the attitude, biases and prejudices of the court, is what the Supreme Court says in Pickford v. Talbott (October term, 1911, 225 U.S., page 659), that one "ought not in equity and good conscience be permitted to collect (damages) because he would thereby be taking his advantage of his own wrong ... the (lower) court held it would be unconscionable for Talbott to enforce his judgment." This is a parallel and it is not in what the district court cites from that decision.

In holding that time under Rule 60(b) had expired the court represents that on remand it did not make any "substantive change" in the judgment, citing Federal Trade Commission v. Minneapolis-Honeywell (page 6). And at the same point, in its uncritical adoption as its own of appellees' misrepresentation of the time provisions of Rule 60(6), that "ironclad" improvement upon the actual rule, it states, citing Goland v. Central Intelligence Agency (607 F .2d 339, 372 D.C.Cir. 1978) "that all motions based on newly discovered evidence be brought within one year from the date the judgment was entered." (Emphasis added) This simply is not true because it is explicit that this limit does not and is not intended to apply to the last three clauses of that rule.

The remand was specific in directing the court to reexamine its judgment against Weisberg's then counsel, Lesar. On remand it amended the judgment to exclude Lesar.

The same claimed counsel fees were assessed against both Lesar and Weisberg, or the award was twice the claimed costs. No evidence against Lesar was presented. The actuality, of which the Memorandum makes no mention, is that sanctions were laid on Lesar because his client refused to take his advice and for no other reason and without any evidence at all. On appeal appellees sought to magnify this by their previously quoted deliberate fabrication, that the district court had "closely observed" Weisberg's alleged Svengali-like influence on Lesar "throughout the five years of this litigation" when in fact Weisberg was never with his lawyer before that court and when, in fact, it not only was impossible, the case transcripts establish that he was never there. Based on this malevolent fabrication, appellees strongly suggested that Lesar be disbarred.

As Weisberg, without contradiction or dispute of any kind, attested, Lesar had taken time to drive up to Frederick and spent an appreciable part of a day trying to talk him into some kind of pro forma gesture. Because Weisberg would have to swear to providing "each and every" reason and document from many file cabinets of documents, from all his affidavits, the 10,000,000 published words of the Warren Commission and the large part of its 300 cubic feet of records at the National Archives he had examined, he could not in good conscience, or without fear of facing charges, swear to what could not possibly be true, that

"each and every" excess, and appellees by their excesses made that certain. In addition to the other reasons he then gave Lesar, that he seek to take this "discovery" matter, admittedly never before attempted under FOIA, up on appeal promptly. After a short delay, Lesar made that effort.

In seeking the judgment against Lesar appellees created a Catch-22, putting him and through him all lawyers in a sure-to-lose situation. Under the Stanton decision in the District of Columbia, which is in the case record, if Lesar refused to do Weisberg's legal and proper bidding he was subject to sanctions. (Stanton's license was lifted.) There is absolutely nothing wrong with trying to take an issue up on appeal. In this instance, the court prevented it. So, for trying to do what his client asked of him, what is required of him, the court laid sanctions upon Lesar. But if he had not done what Weisberg asked, he could have been subject to severe sanctions. Either way, he was a dead duck.

If after remand for the express purpose of reconsidering the judgment against Lesar the district court had not backed off and amended its judgment to eliminate him, it would have created absolute chaos in the legal profession because if at any time any client refused to take his lawyer's advice the innocent lawyer would be subject to sanctions.

With such a decision, such a precedent, who could afford to practice law and where could a lawyer possibly get insurance?

On this basis alone, the amending of the judgment to eliminate Lesar, there is "a substantial substantive change" in the judgment and that tolls the running of time to the date the judg-

ment was amended. In turn, this means that Weisberg's Rule 60(b) motion was timely with regard to all six clauses of that rule.

The FTC case had nothing to do with new evidence or Rule 60(b). It relates to the timeliness of filing a petition certiorari before the Supreme Court. None of the conditions or facts parallel this case. The commission made some changes in its decrees. The Supreme Court stated that "the Commission sought no alteration of the judgment," the exact opposite of the situation in this case. Other quotations the exact opposite of the situation in this case are: in FTC the judgment had been "revised in an immaterial way." This is the sentence preceding the clause quoted by the district court. The sentence following the one partially quoted by the district court states that the "question" is whether the second judgment "disturbed or revised rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." Certainly this says and means the exact opposite of what the district court says in this case because, prior to appeal and remand, it had "settled with finality" the judgment against Lesar and it then "revised" and "disturbed" legal rights and obligations, Lesar's obligations in particular.

In eliminating Lesar the court did make a "material" change in the judgment and eliminating him was certainly a "matter of substance."

The FTC decision is cited in Transit Casualty Co. v. Security Trust Co., (441 F .2d 788 (5th Cir. 1971)), which is cited in the Memorandum as saying that "(a) change in the liability of

attorneys' fees is not a substantial substantive change sufficient to renew the plaintiff's right to bring a Rule 60(b) motion." The Memorandum, in assuming incorrectly that there is that "ironclad" one-year limit, makes no direct quotation from the Transit decision. The reason is obvious: it does not serve the court's intent and purposes. In Transit "the point for review is narrow" (page 789), from "dismissal with prejudice to dismissal without prejudice" (page 791), in "a typical case is mistake and no more" (page 792). The also unquoted last paragraph states what Weisberg argues and the court pretended he did not argue, Clause (6) "could be invoked to prevent extreme hardship or injustice." What Transit actually says is that if there is a "substantive change, then the time would run from the substantially modified order," exactly duplicating this case in which the amending of the judgment to eliminate Lesar is a "substantial change." Moreover, Transit had a different basis, "an alleged misunderstanding of the import" of an order and "deals exclusively with the alleged error under clause (1)."

The district court's language makes substantial changes in the Transit decision. This court states, "a change in the liability of attorneys' fees occasioned by remand from the appellate court is not a substantial substantive change sufficient to renew the plaintiff's right to bring a Rule 60(b) motion. Cf. Transit," etc. As this appears in Transit it reads, "changing a dismissal with prejudice to a dismissal without prejudice is not such a substantial substantive change as to renew the rights of plaintiffs to bring a motion for relief under Rule 60(b)." (page 791)

These are hardly the same and the change after remand in this case is not merely a change in the "form of dismissal."

The district court cites Pickford v. Talbott (225 U.S. 651, 658 (1912)) in arguing "that Rule 60(b) contains a savings clause which provide that the one-year time limit 'does not limit the power of a court to entertain an independent action to relieve a party from a judgment ...'" This was not before the court and this version of the savings clauses is contrary to the language and intent of that rule. "The remedy (Rule 60(b)) is not available to those parties who themselves are at fault. Pickford v. Talbott," etc., the Memorandum says (page 7).

Weisberg was specific in stating his awareness of the independent action option he did not exercise and insofar as "fault" is concerned, the district court refused him both an evidentiary hearing and a trial and the undenied evidence is that Weisberg had already provided all the information demanded on discovery. He was not at fault in any way. Nor is it a fault to seek to take a precedental matter up on appeal. Perhaps the court sought a peg on which to hang attributing fault to Weisberg. Whatever the reason, the fault in Pickford is entirely different. In that 1902 libel suit, which predated present Rule 60(b), the plaintiff had what he claimed was new evidence and "had deliberately refrained from defending by justification of charges." (page 654) (Or, "the complainants believed it to be true" but did not plead truth.)

Having twice refused to take oral testimony and thereby refused cross-examination, the court quotes Pickford's paraphrase

rather than what it paraphrases and pretends that the paraphrase fits Weisberg in this litigation: "Resort to an independent action (which was not before the court) based on newly discovered evidence may be had only under 'stringent' circumstances rendering it 'manifestly unconscionable that a judgment be given effect." (page 7) The inside quotes only are from Pickford (page 657). What follows immediately, direct quotation of Chief Justice Marshall, which the district court avoided, supports Weisberg: "it may safely be said that any fact which clearly proves it to be against conscience to execute a judgment and of which the injured party could not have availed himself in a court of law; or which he might have availed himself at law, but was prevented by fraud or accident unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery." (page 658) This precisely fits the actualities in this litigation. The paraphrase of a paraphrase is misused and eliminates what is favorable to Weisberg. The conditions in this litigation, undenied felonious misconduct, do make it "against conscience to execute" this judgment. In this context the court did avoid Pickford's statement of the legal philosophy that one may not benefit from his own wrong.

The Memorandum, in boasting of its repeated reviews of the case evidence (page 8), found "no attempt to mislead the plaintiff and the Court. Proof of such fraud must be supported by clear and substantial evidence. See Bulloch v. United States, 721 F .2d 713, 719 (10th Cir. 1983)." The Orwellian quality of this interpretation of the undisputed case record is enhanced if one

does "see Bulloch." The court's paraphrase and reversal of what it refers to in Bulloch serves to suggest that undenied and thoroughly documented evidence is not "clear and substantial." Bulloch's language is, "Relief under the rule may be granted when the application is clearly substantiated by adequate proof." Bulloch attributes the same error to the court that Weisberg does, "It is beyond question that a federal court may investigate a question as to whether there was fraud in the procurement of a judgment ... This is to be done in adversary proceedings," cited to several other decisions the court cites and in which this language, in all instances, is ignored by it. Moreover, that and this case could not be more different. The Bulloch plaintiffs waited 25 years before invoking Rule 60(b), and even then "had available and used the same basic data used by the government ... (a)ll the information ... was available to the plaintiffs." The actualities in Bulloch are exactly opposite this case. There the government withheld nothing, here it withheld all the new evidence, which it alone had. (Bulloch also states the doctrine of laches does not apply in cases of fraud.)

One of these other decisions is footnoted (page 8), Cf. Hazel-Atlas Co. v. Hartford-Empire Co., 322 U.S. 238 (1948) to language verbatim from Lockwood v. Bowles (46 F.R.D. 625,631 (D. D.C. 1969)) but without quotation marks and with the underscored word added by the court, "Examples of such fraud include ... the involvement of an attorney (as an officer of the court) in the perpetration of the fraud." In Hazel-Atlas the Supreme Court states what the district court should have done and refused to

do when Weisberg twice requested it, act as the trier of facts: "(w)e do not hold, and would not hold, that material questions of fact raised by the charges be finally determined on ex parte affidavits without cross-examination of witnesses." (page 249) It says also that "(e)quitable relief against fraudulent judgments is ... a judicial remedy fashioned to relieve hardships ... this equitable procedure has always been characterized by flexibility which enables it to ... accord all the relief necessary to correct the particular injustices ..." (pages 247-8) It says that under equity "relief will be granted against judgment regardless of the term of their entry" under circumstances, one of which is "after-discovered fraud ... to fulfill a universally recognized need for correcting injustices." (page 244)

What the court omits from Hazel-Atlas supports Weisberg.

The Memorandum alters and quotes Lockwood selectively and so incompletely that its thrust is distorted. Basing its assertion that there was no fraud upon it, the district court, which undeniedly acted upon nothing else, states that "(f)raud inter parties, without more [is not] a fraud upon the court." What Lockwood actually states it states for a purpose: "... without more, should not be a fraud upon the court." (emphasis added) Only the court knows why it made absolutely inflexible what in Lockwood is conditional. In discussing extrinsic and intrinsic fraud (page 630) Lockwood states the general belief "is that intrinsic fraud is discoverable through the ordinary processes of the trial itself, such as the right to cross-examine." Also, "a witness testifying falsely is always a risk ... but there are safeguards ... (t)he most basic of these is the cross-examination

of witnesses, a right which defendants waived." (page 633) In Lockwood that basic right was "forfeited by defendants" but in this case it was twice denied by the court which then made the quoted significant alteration in its language within quotation marks.

In Lockwood there were no new facts and there was a fourteen-year delay during which they "slept" on their claimed new evidence. Another difference, in the paragraph from which the first quotation was altered, is that none of those things that can constitute fraud upon the court were alleged, whereas they were and are unrefuted and ignored in this case.

CONCLUSION

It is not easy to believe that the district court intended justice. The record reflects its bias and prejudice and its adamant refusal to consider what Weisberg filed even when that is undisputed, like his undisputed Rule 60(b)(5) argument that enforcing the judgment is not equitable, which it pretends he did not make. While boasting of its diligence in repeatedly reviewing the case record ("exhaustive"), it does not know such basic things as who was sued, for what and what was disclosed, all misstated in its Memorandum. Confronted with undenied and documented charges of appellees' perjury, fraud and misrepresentation, allegations appellees neither attempted to refute or even deny, it twice refused to take the required testimony and permit cross-examination, even though the most material facts were in dispute, along with the most substantial involvement of credibility. The court even disputes itself, claiming in its Memorandum to having held an "extensive hearing" when it not only did not, it even states in its Order that it held only "oral arguments," and a brief one at that in which it would not permit the aging, ill and enfeebled nonlawyer pro se plaintiff to read the 20-minute statement he had prepared to be able to say what he wanted to say.

The district court misrepresents the rule and the cases it cites, with the research appellees did not even bother to do. It states that there is an "ironclad" one-year limit to all of Rule 60(b), which is not true. It altered some of its short quotations from cited cases, even within quotation marks, and omits all the considerable amount of what supports appellant Weisberg in those

very cases. It thus pretends that what supports Weisberg is not in that case law and doctrine. Earlier it ordered a judgment against Weisberg's former counsel, in the face of all the evidence (appellees produced no evidence), to make lawyers subject to sanctions if their clients do not take their advice. It then pretends that, when directed to consider this on remand, it withdrew the sanctions against counsel, that major change is insubstantial and without substance. Without amending the judgment on remand there would have been absolute chaos in the legal community. This misrepresentation of its own action is indispensable to the court's misrepresentation of the rule, attributing that nonexisting "ironclad" one-year limit to all of it.

The judgment is based entirely on the discovery order that undeniedly as obtained only by means of perjury, fraud and misrepresentation because appellees presented nothing else on which the court could act.

Faced with diametrically opposite attestations the court refused Weisberg both an evidentiary hearing and a trial. In this it failed to meet its obligations and the responsibilities imposed upon it by the very authorities it cites. It became a partisan, not a dispenser of justice.

Appellees do not dispute that they have engaged in a long campaign against Weisberg who, without contradiction, documented this before the court, including their widely distributed, evil fabrication to defame him, stating that an annual religious gathering at a farm he then owned was celebration of the Russian revolution. Appellees' long history of stonewalling and misrepre-

senting Weisberg's FOIA requests is in the case record and is not refuted, but the court, on the basis of no contrary evidence at all, says it isn't so.

In order to procure the discovery order which is basic to the judgment and without which there would be no judgment, appellees knowingly and deliberately - and they do not even bother to deny this - attested falsely and misrepresented in other material ways, with even counsel attesting to a deceptive and misrepresentative filing relating to the judgment. While appellees' major affiant in this litigation was attesting to the nonexistence of information sought, he was simultaneously disclosing to another requester the FBI's own records that give the lie to all his attestations. (This is the new evidence.) To this day appellees and this affiant are unrepentant, unapologetic and without the common decency of withdrawing their proven knowingly false representations to the courts. It is without question that all involved knew when uttering that with which they prevailed that they were untruthful and it is without question that the new evidence was solely in their possession, withheld from Weisberg, who had requested it years earlier. It thus is without question that appellees intended the fraud against both Weisberg and the court, which had nothing else from them before it on which it could act.

The case law cited by both the court and Weisberg supports Weisberg's claims to relief under the rules and to the pertinence of the first three clauses of Rule 60(b) as well as the last three which he did invoke and the court represents that he did not.

Appellees charge Weisberg with violating Rule 11. The exact

opposite is true. There is nothing frivolous in documenting undenied felonies to the court to defraud it and Weisberg. It is not frivolous to seek justice and the protection of judicial integrity, even if the district court displays no such concerns. To describe undenied official felonies as merely frivolous is to praise them. It is appellees who persist in violation of Rule 11.

It is a settled principle, a basic tenet, of American law and justice, that one may not benefit from his own misdeeds. The wrongdoing appellees, who are so untroubled by their serious misconduct and what that means that they do not bother to make even pro forma denial, ought not be permitted to benefit from what they charge as crimes when done by others. Weisberg is entitled to relief from the judgment he seeks, and if this requires a remand, the remand should include instructions to the court that it recuse itself.

Respectfully submitted,

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