Clerk
U.S. Court of Appeals
U.S. Courthouse
Washington, D.C. 20001

Harold Weisberg
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Frederick, Md. 21701
2/17/88

Dear Sir,

After I filed my Motion for an Extension of Time on January 26, 1988, I wrote you on February 11 about a decision I'd heard about and not seen.

I am the pro se appellant in Nos. 86-5289 and 5290.

The case I referred to is The Washington Post Co. v the United States Department of Justice, No. 84-5604. I believe the language of that decision and the authorities quoted in it on pages 6,7 and 8 completely support me and that the per curiam Order is in sharp contradiction with it.

That Order granted an out of order and untimely Motion for Summary Affirmance that without contradiction I stated in my Opposition was not in accord with the facts. That order also states it is based on the district court's Order of March 4, 1986.

My brief was never addressed by the appellee and was not considered by this Court. In my undisputed brief I stated that in its Order the district court, among other things, erred and abused its discretion by refusing me both an evidentiary hearing and a trial on the facts. These facts, entirely undisputed, include that by means of "new evidence" I showed that the money judgement against me, for the first time in FOIA litigation, was obtained exclusively by fraud, perjury and misrepresentation.

I emphasize that before this court and the district court these facts are not refuted, not even the subject of a pro forma denial.

In No. 84-5604, filed February 5, 1988, this court states that when there is " a factual dispute going to the very heart of the case. . . (t)hat issue could properly be resolved only by trial." (page 7) It quotes Sears, Roebuck & Co. v GSA, saying that when material facts are in dispute that "calls for some kind of adversarial procedure." Quoting itself in National Ass'n of Gov't Employees v. Campbell it states that the district court "cannot substitute for full-bodied proof. . . (t)he litigant is entitled to a fair opportunity to establish it (a fact)to a hearing of his evidence before the fact is judically assessed. The factual issues on competitive loss thus posed

... accordingly warrant full evidentiary trial." (page 7)

No. 84-5604 states (page 8) that "(c)ourts are forbidden (to) deprive litigants of their right to an evidentiary hearing on issues of fact. ...(w)e think there is a right to confrontation... and so the parties should have the right to examine affiants ...in open court...(T)he case should be tried like any other adversary proceeding.... a court's judgement "rests upon an adversarial system of testing for truth when critical facts are subjects of a contest...It is no wonder, then, that we have recognized 'the advantages of adversary procedures for testing...(and)declared that (t)he importance of maximizing adversary procedures ... cannot be gainsaid."

I am sorry that, not being a lawyer and having been denied the services of my former lawyer when the appellee contrived a conflict of interest, I am not aware of proper form.

I emphasize also that it is undisputed that I did request both an evidentiary hearing and trail before the district court and was denied both.

Respectfully submitted

Harold Weisberg, pro se.