

11/5/71

Mr. Daniel M. Cathey, Clerk Deputy
U.S. Court of Appeals for the
District of Columbia
Washington, D.C. 20001

Misc 3063- Markold Weisberg V. US G.S.A and U.S.
National Archives

Dear Mr. Cathey,

In your letter of the 2nd in response to mine of October 23 to Judge Bazelon you say you are not answering because I did not proceed as specified in Rule 27. I mean nothing personal, but this is the ultimate futility to an indigent who is not a lawyer, is forced to act as his own, and who has written a letter asking why his motion to proceed in forma pauperis was denied. The whole purpose of everything I have done in your court has been to get legal help. Does not this entire matter frustrate the intent of the law, that it produce justice? Have we reached that state where justice consists in those unable to know the rules being the victims of their ignorance, poverty and the errors of others?

Your letter says that my letter to the judge was referred to your office for reply. It does not say it reached the judge. I am aware that he must be a busy man. But if he did not, personally, make the decision not to respond himself, I ask that this letter and the one addressed to him be given to him because I have formed an opinion of him from reading the papers that leads me to believe he conceives the processes of the court as a means of achieving an equitable end, not as sterile formalities.

There is nothing that I have done in this matter that I have not done after kindly-motivated phone calls from you and Mr. Paulson, there is nothing I have done that is not consistent with them and the correspondence, I am, quite literally, a pauper, can I can't even find out why, when I have no income and my indebtedness exceeds the value of my property, I have been ^{not been} permitted to proceed in forma pauperis?

I pursue this matter in my own interest, but I also believe larger interests are involved. I hope you can understand that a long letter is more of a burden to him who writes it than to him who gets you. You work a normal working day and get paid for it. I get paid for nothing and I am starting this letter at 5 a.m. so that I can write it and do other work I feel an obligation to do, work that others will not do it I do not and I think must be done.

= In the court below I was the victim of deceptions, misrepresentations and outright perjury, all charged and not denied, all ignored by the judge. My situation there was impossible. The judge cut me off in the middle of addressing the point on which I ruled to ask me to find a certain letter in the case. While I was going through files to find what he wanted he heard the U.S. Attorney, whose presentation was unfaithful, and I had to listen to and prepare to answer that and find what the judge asked of me. When I returned to the podium to give him what he asked, he banged the gavel, never let me present the rules and regulations that were the basis of his ruling - I couldn't even hear some of what he was saying, and he wouldn't even repeat that, telling me only that my remedies before him were exhausted and that, because I am without means, your court would help me proceed in forma pauperis.

I immediately wrote the Clerk of your court a letter. He replied by phone telling me that the judge had erred, that I must file in forma pauperis in the court below, and that if and when I was turned down there, your office would help me. I did as he said. I was turned down, without explanation. I then filed in your court. The rejection was not only unexplained

but it was so incomprehensible to me that I thought it had been approved. When I wrote to this effect, you responded under date of August 6 telling me otherwise. On the one hand, Mr. Paulson, when he phoned, said that if I were turned down in the court below, his office would help me and on the other you said in this letter you could do nothing. I am in the middle. Perhaps you were both well intentioned, perhaps both correct.

Now you say one of the reasons is because the ^{does not show} docket that a notice of appeal had been filed. It was. On June 28 Mr. Miller sent me the forms and I did file them, with a covering letter date June 30 or by return mail. Thus I conclude that the basis of your letter of August is erroneous. If you want me to provide copies, I will, but in my circumstances this slight cost is a burden. You should have these papers because I did file them. In any event, I wrote you on August 10, you phoned me on the 11th and pursuant to that conversation immediately, as best I could, prepared the papers you told me to file, a Motion In Forma Pauperis. You agreed that I could duplicate what I had filed in the court below. I dropped everything and did it that very day. I used as a form that of the court below, having no practical alternative because your court had never sent me any forms, although I began with a request to your court for them, having been so instructed by Judge Gesell in his court. To this point I did everything I was told to do and that promptly.

So, I was again rejected by Judges Wright and McLowen, and I wrote to ask why. No reason was given. If it is an error in your court, am I not entitled to ask it? I cannot conceive that I do not meet any meaningful interpretation of legal pauper. My financial situation is worse than the affidavit shows. I have just had to ask my bank for an extension of time in a payment on my indebtedness, and I think it is literally true that my financial condition is worse than that of a District welfare recipient. Thus I hope you can understand why I wrote to ask and to explain. And why I think that if there has been error not my fault I am the victim of something outside my control. For example, if the ruling was based on my alleged failure to file notice of appeal, which I did file.

Obviously, all these matters are strange to me. Were I competent in this field I'd not be asking for the appointment of counsel to help me, would I?

Let me see if I can be more specific. I am asking why my Motion in Forma Pauperis was denied and what, if anything, I can still do. If this requires that I abide by certain rules, and I can understand that the orderly process of a court require rules, can you please send them to me?

In my letter to Judge Bazelon I made serious charges against the government. I would hope that at some point some judge would have enough concern to determine whether there is validity to them. If I am correct, as I believe I am, I report a condition that should not exist in any kind of decent society, a condition that, were the rôles reversed, would find me in jail. I raise the old question, who watches the watchman, who prosecutes the prosecutor? Can the government deny a citizen his rights under the law by deception, misrepresentation and perjury - and this with impunity? I would hope not.

Thank you for anything you can do to help me. I regret this imposition on your time, but unless I am to forget an enormous amount of work I have done in this matter and, as I see it, abdicate my responsibilities as a concerned citizen, I see no practical alternative to writing a letter like this and the one preceding it.

Sincerely,

Harold Weisberg