UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff	:	
v.	:	
UNITED STATES DEPARTMENT OF JUSTICE AND UNITED STATES DEPARTMENT OF STATE, Defendants	:	Civil Action No. 718-70

PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION TO SHOW CAUSE AND MOTION FOR RELIEF

Defendant's response to Plaintiff's Petition and Motion is not responsive and, incredibly, neither claims nor proves to have delivered to Plaintiff all the Attorney General himself said would be made available to Plaintiff and what this Honorable Court ordered to be given Plaintiff within seven days, long since past. Defendant does not make even pro forma denial (as indeed Defendant cannot) of having made entirely unrelieved written false statements to both Plaintiff and to this Honorable Court, as abundantly and carefully documented in Plaintiff's Petition and Motion. Defendant also fails to make even pro forma denial that Defendant's false statements under oath to this Honorable Court constitute perjury, or that Defendant is in contempt of this Honorable Court.

Whether or not embodied in a formal, written order, this Honorable Court did, on August 12, 1970, direct and order Defendant to deliver within a week what this Honorable Court said could be accomplished within minutes, namely, a print of a certain picture, the negative of which is and was in Defendant's possession. At the time this Honorable Court so ordered Defendant, more than three months had elapsed since the Attorney General wrote Plaintiff that this would be done. Defendant incorporated this letter in documents filed in this action several times in several forms.

Defendant fails to deny Plaintiff's charges that Defendant

A) Did not, within the time specified, comply with the order of this Honorable Court;
B) Has not given Plaintiff a copy of the complete picture to this day;
C) Has never given Plaintiff a copy of the reverse side of the picture in question, said reverse side containing relevant information;
D) Made a deliberately indistinct print for Plaintiff, and that not from the negative in question.

Thus, Defendant fails to deny contempt and to this day has failed to comply with the order of this Honorable Court, again with the lapse of more than three months.

Plaintiff believes it is the duty and responsibility of Defendant, in papers filed with and for the information and guidance of this Honorable Court, to be truthful, honest and completely forthright with this Honorable Court and not to deceive it or misrepresent to it. However, as Plaintiff earlier alleged, in this pleading Defendant has again twisted,

distorted and misrepresented, one example, hopefully, being enough to illustrate this. At the top of page 2, Defendant says,

> "There is, however, no order of this Court dated August 12, 1970, and it is clear from plaintiff's pleading itself that he has been given the requested file cover (plaintiff's petition, paragraph 69) and the requested letter of assurance."

Here Defendant pretends two false things:

That the verbal order of a Federal Judge is something other than an order and has no meaning; and

That there was no written order of August 19, 1970.

However, there is such an order of August 19, 1970. Its final paragraph reads:

> ORDERED, ADJUDGED AND DECREED that the defendant Department of Justice produce all documents demanded in Plaintiff's complaint, including all documents which the Court on the 12th day of August, 1970, ordered said Department of Justice to produce within one week. (Emphasis added)

Aside from the deception involved in pretending there was no order of August 12 and no order at all, there is the further imposition upon both this Honorable Court and the Plaintiff in that even the second order was not complied with, as above and in Plaintiff's Petition and Motion specified.

In referring incompletely to Plaintiff's paragraph 69, Defendant is careful to refrain from comment upon or denial of Plaintiff's statement therein, that Defendant described the order of this Honorable Court (the same order Defendant here pretends was never issued) as "bullshit". To Plaintiff, who is not a lawyer, this would seem to be a contemptuous statement. Defendant does not deny saying it because Defendant did say it and because Defendant knows Plaintiff can prove Defendant made this derogatory comment reflecting on this Honorable Court and its decision and order.

Moreover, in alleging and representing that "it is clear from plaintiff's pleading that he has been given the requested file cover", Defendant deliberately distorts the cited paragraph and its purpose, which is clear and was addressed to whether or not Defendant had complied with the said order, which had expired August 18, 1970. What this paragraph actually says of this order and Defendant's failure to comply with it within the specified week, is this? "... not within the week ordered, which expired August 18, but, with all the great rush, August 21." ("Great rush" here refers to Defendant's inspiration by the second order, that of August 19, 1970.) This misused paragraph 69 addresses whether or not in this aspect Defendant is in contempt in not having complied with the order of August 12, something not discernible in any reading or even reading between the lines of Defendant's response herein addressed and quoted from.

The quotation from Defendant's response is further deceptive and deliberately misrepresentative in saying that "it is clear from plaintiff's pleading that he has been given ... the requested (emphasis added) letter of assurance." This is false.

From the first, Plaintiff has requested what he believes to be his right, especially in the light of the previously cited provisions of the Attorney General's Memorandum and from the Attorney General's letter. Plaintiff has requested a meaningful assurance from whoever has the requisite first-hand knowledge and can honestly and legally give such

assurance, that Plaintiff was, in fact, given access to the entire file in question. Paragraph 7A of Plaintiff's Petition and Motion addresses just this point. Therein, Plaintiff sets forth that those who have written him that he has been given access to the entire file, which is what the order of this Honorable Court of August 19, 1970, also directs, have no way of knowing what the entire file contains. Therefore, they cannot give such assurance. In this context, Plaintiff prays this Honorable Court to consider this sentence of the cited paragraph: "Plaintiff likewise submits that the persistent refusal of Defendant to permit any competent person with the requisite knowledge to make such a statement at the very least leads to the suspicion that Plaintiff was not, in fact, given access to the entire file."

(The inference that Plaintiff was not shown the complete file is strengthened by published contemporaneous accounts of a larger number of pages and by the fact that, after existence of the file was twice denied and later the existence of not fewer than three such files in the Department of Justice alone became apparent, the file shown Plaintiff contained other than original documents, such as unsigned affidavits.)

To this, Plaintiff here adds that, when "assurance" is given by those who undeviatingly lied in every document, whether to Plaintiff, to this Court, or to both, what reason is there to credit any "assurance" from them, especially when it is clear they are not in a position to provide such an assurance? Is it prudent to assume that they have suddenly seen the path of trugh and henceforth will follow it? The pleading to which this responds, deceptive and selective as it is, does not so persuade.

When there is a competent person who can make a competent assurance, based upon first-hand knowledge, why, indeed, does Defendant persist in having almost anyone else, in no case anyone in a position to know, make this "assurance" instead of the competent person? Can it be because, were such a competent person to provide such written assurance, that also would be in contempt of this Court by virtue of its being false? If Defendant has complied with the second order of this Court, which is that Plaintiff be given all Plaintiff sought in the Complaint, why should there be any reluctance for such assurance to be provided by competent rather than only incompetent employees? Moreover, Plaintiff believes he may not have been given access to the complete file and here reiterates that he was not given a copy of the reverse side of the picture in question. In itself, this may explain Defendant's reluctance.

Instead, Defendant argues that the "assurance", provided by "an Assistant Attorney General of the United States", is, in Defendant's words, "plainly adequate". With the cited record of undeviating falsehood coming from the same office, some containing that signature also? With the superior of that Assistant Attorney General, the Deputy Attorney General, himself having twice assured Plaintiff that the file did not even exist within the Department of Justice, whereas it did, and in duplicate? Defendant might better have provided the simple and ordinary thing Plaintiff seeks, a meaningful assurance from one who, with the requisite first-hand knowledge, can honestly make it. Or, an explanation of why Defendant refuses to do this, in the light of the August 19, 1970, order of this Honorable Court.

In the context of what Defendant does not deny, that Plaintiff was immediately told by Defendant that Plaintiff would not be given any such assurance, consider what immediately follows in the same paragraph quoted from Defendant's response:

... the supplying of this letter to plaintiff was only a matter of

order earlier alleged not to have been issued by this court?) nor under the terms of the Public Information Section of the Administrative Prodedures Act, 5 U.S.C. 552.

Without such an assurance, how is this Honorable Court to know that its order was honored and fully [redacted]? For what other purpose does a Federal Court issue an order except to have it followed, and that to the letter? Such an assurance, it would seem, is indispensable to proving compliance with this order. With the long and painful history of Defendant's untrue statements, including under oath, in this action - not denied by Defendant - is this especially so.

Contrary to the claim that Plaintiff did not file "points and authorities", and in connection with this point, Plaintiff did cite (paragraph 3[illegible]) what he believes to be the relevant provisions of just this law. Among its requirements are "promptness" and "access". Without such an assurance, how has either any Plaintiff or any Court any way of knowing whether the law or a court order is being complied with?

Moreover, Defendant has issued instructions and interpretations of this law to all government agencies. These certainly apply to Defendant, their author. Language therein used in other contexts is here quite relevant. It is clearly said that "Every effort should be made to avoid encumbering the applicant's oath with procedural obstacles" relating to "essentially internal Government problems" (page 24). That "the burden of proof is placed upon the agency" is quoted from H. Rept. 9 (page 28), for "A private citizen cannot be asked to prove that an agency has withheld information improperly." The Attorney General himself, in his Foreword (page iv), also said the burden of proof rests upon the Government. How, without ssuch an assurance from one competent to make it, can a private citizen know whether or not he has been given access to what he seeks under the law - all of it?

Rather than no more than a "comity", such an assursnce wouddseem to be a requirement of the law, of the applicable regulations, and as part of full response to the order of this Honorable Court. Without it, the private citizen and the courts become the captives of what the experienced and foresighted President, upon signing this law, said shall not and may not dominate, "the desire of public officials".

There is nothing but this "desire of public officials" to prevent such a proper assurance as Plaintiff seeks, from the competent official - with the first-hand knowledge - and now Plaintiff respectfully requests, under oath. There is no reason why it should not be willingly offered if the orders of this Honorable Court were truly met. No reason at all, except arrogance, or the corruptive influence of unchallenged raw power - or the fact that it would not be truthful.

Plaintiff submits that, without such assurance, the order of this and every other Federal Court under this law is without meaning and the law would be as much a nullity as the courts would be impotent to give the law meaning and citizens their rights under it.

For most of Plaintiff's Petition and Motion Defendant has neither time nor words. There is, as earlier stated, no denial of the alleged and proven falsification, misrepresentation, suppression, withholding after both promise and order, or of the fact of or intent to damage Plaintiff and to interfere with his rights oand his writing. There is no reference at all to Plaintiff's Motion for Relief and what is set

forth in it. There is no denial that rights intended to be guaranteed by this law were withheld in violation of the law. There is no denial that what was ordered given Plaintiff was not given him within the time set by this Honorable Court. There is no denial that all of what Plaintiff seeks in this instant action was not given him. There is no denial that Plaintiff, in response to the orders, was given neither a clear picture nor the complete picture. There is no denial Plaintiff was not given the information on the reverse side of this picture. There is no denial that excessive and unnecessary delays and obstacles were, improperly and illegally, placed in Plaintiff's path. There is no denial that such inordinate delays were promised and guaranteed in the copying of the other pictures Plaintiff requested that Plaintiff was, effectively, denied the right to use this public information as he intended.

Most conspicuously, there is no denial of Plaintiff's allegation that contempt was committed, that perjury was committed, that both were intended. This Defendant's"answer" to a Petition to Show Cause why Defendant should not be held in contempt?

For none of these of Plaintiff's allegations did learned and experienced counsel for Defendants have time or space, especially when one of them is alleged to have committed the perjury and, in addition, a colleague and a superior to have lied.

This silence, this economy with words, was not to spare the time of this Honorable Court.

In truth, the effort to answer a lie of two words may require two pages or more. Thus, papers filed by Defendant can be brief, while those required of Plaintiff must be longer.

But there was time for the prejudicial, the putterly irrelevant, immaterial and incompetent, improper, snide comment, a subtlety of poisonous intent.

The second sentence of this "Opposition" to Plaintiff's Petition and Motion begins, "Plaintiff, who files this motion pro se, although he was represented by counsel in this case ..." This is not the only occasion on which the Department of Justice has stooped to exactly this kind of sneaky suggestion, it having done identically the same thing on November 16, 1970, when it was no less irrelevant, immaterial and incompetent and had no less an improper, ulterior purpose.

Further, bearing on Defendant's purposes here is the fact that, although acknowledging former counsel has no connection with the current matter, Defendant also served a copy of the Oppposition to Plaintiff's Petition and Motion on Plaintiff's former counsel. Had a thoughtful courtesy been the intent - without the inherent suggestion, obviously without basis or warrant, of deviousness, if not fraud, by Plaintiff and former counsel - that could have readily and more honestly been accomplished simply by mailing former counsel a copy. It did not require serving the papers on him and so recording in them.

What followed the unkept promise by the Attorney General, pursuant to which Plaintiff, voluntarily, offered to move to dismiss his own action upon compliance, happened only because Defendant did not keep his promise, despite filing it before this Honorable Court. Neither Plaintiff nor his then counsel anticipated that there was so little concern for or fidelity to the pledged word of the Attorney General within his Department, nor that the Department of Justice would so arrogantly ignore the order of a Federal Court. Therefore, as Plaintiff explained to this

Honorable Court (paragraphs 7-9), said counsel offered to devote the time saved for him by the promised compliance in pursuit of other of Plaintiff's interests, therein also specified.

Defendant's needless allusion, as though something untoward were thereby being hidden, to the fact that, whereas Plaintiff was earlier represented by professional counsel, Plaintiff here filed pro se, is particularly disreputable because, in response to a letter to this Honorable Court prior to the filing, Plaintiff was unsolicitedly informed that he might do precisely this. Surely Defendant does not wish to add to his failure to make even formal denial of or any kind of manly protest to Plaintiff's serious charges some elliptical suggestion that, because this Honorable Court, with proper concern for Plaintiff's rights, informed Plaintiff of them, there is some kind of nefarious relationship between this Honorable Court and Plaintiff.

Plaintiff herein acts pro se, simply and not dishonorably, only because he is without means. In the United States a litigant, at least in theory, is not without all his rights because he cannot pay counsel. To hold otherwise is to hold that justice and rights are for the wealthy only.

Furthermore, as Defendant knows but did not disclose to this Honorable Court, thereby seeking to convey a prejudicial impression, Plaintiff also represents himself in other, similar litigation, Civil Action No. 2569-70, and in other dealings with Defendant and agencies represented by and taking counsel with Defendant.

Moreover, prior to those developments subsequent to the orders in this instant action, Plaintiff went far out of his way to inform Defendant, including in letters to the Attorney General himself and to several subordinates. Surely Plaintiff could not have been more open, been more anxious to avoid further litigation in the instant matter, or have done more to enable Defendant to avoid public embarrassment.

Bracketed with this nasty irrelevancy is the claim that Plaintiff "has not supported this pleading by affidavits or otherwise, nor has he filed points and authorities as required by the rules of this Court".

If, in his ignorance of the practices and rules, Plaintiff has erred, he did no more than repeat what Defendant Department of Justice did as counsel in Plaintiff's Civil Action No. 2301-70, where, in a motion, no affidavit was attached on filing. Plaintiff attaches hereto his affidavit attesting to the more basic facts, in simplified form.

If further affidavits are required, Plaintiff will supply them. They will attest to the authenticity of all the quoted false statements written him by Defendants and, if desired, all these written lies, some of which, as Plaintiff's Petition and Motion shows, are already a matter of record in this instant action and are so cited. They will include other proofs of false statement, including false statement under oath, if Defendant is intent upon embarrassing himself further than in inviting Plaintiff to file the Petition and Motion. Plaintiff's purpose is not and has not been to embarrass Defendant. It has been and is to obtain what is Plaintiff's right and to secure respect for and compliance with the law and with the orders of this Honorable Court. Lacking familiarity with the technicalities or the practice of the law, Plaintiff wonders, at this point, in the total absence of any denial of any of Plaintiff's serious allegations, whether, in fact, Defendant does not thereby affirm the authenticity and truthfulness of the said serious allegations. However, whatever relevant affidavits - if any - Defendant wants or feels are his right. Plaintiff will supply.

Unless there is a special meaning to "points and authorities" denied Plaintiff because he lacks skill in the law, this claim by Defendant is false. Plaintiff repeatedly cited the law, 5 U.S.C. 552, and relevant subsections, citing them by their proper identification and quoting them accurately. Plaintiff also cited the Attorney General's Memorandum on this law. Plaintiff's Petition and Motion begins this way (paragraph 2). It contains numerous such specific citations (as in paragraphs 13, 51, 65, and in the closing prayer, on pages 11 and 12 (three times) and on page 13 (twice)). (This does not include reference to Defendant's violations of and misquotations of the law.)

The claim of Defendant's "Opposition" to Plaintiff's Petition for a Show Cause Order and Motion for Relief (the latter being entirely unreferred to therein) is that it is "plainly without merit". Rather is it that Defendant's own avoidances of fact and other evasions of response, and failure to deny Plaintiff's proven allegations and tacit confirmation of them, do, "plainly", establish their "merit".

WHEREFORE, Plaintiff prays this Honorable Court to issue the petitioned Show Cause Order and grant the Motion for Relief.

Respectfully submitted,

Harold Weisberg, pro se

CERTIFICATE OF SERVICE

I hereby certify that I have served two copies of the foregoing Plaintiff's Response to Defendant's Opposition to Petition to Show Cause and Motion for Relief by mailing two copies this 4 day of December 1970 to

Mr. David J. Anderson
Civil Division
U. S. Department of Justice
Washington, D. C.

Harold Weisberg

A F F I D A V I T

District of Columbia)
) SS
City of Washington)

Harold Weisberg, being duly sworn, deposes and says:

His address is Route 8, Frederick, Maryland 21701. He is the Plaintiff in Civil Action No. 718-70 in the United States Court for the District of Columbia.

He did not have a copy of the envelope of the file sought in the instant action delivered to him by David J. Anderson on August 12, 1970, or at any other time, or by anyone else on or prior to that date. Plaintiff never met or spoke to Mr. Anderson at any other time or place.

Defendant Department of Justice first and long ignored Plaintiff's proper requests for access to the file in question; then, following correspondence from Plaintiff's former counsel, further delayed responding; then wrote what was known to be false, that the said Department of Justice had no such file; then repeated this falsehood; then, after promising to give Plaintiff access to the said file, immediately prior to a scheduled hearing in this action, further delayed that and the copying of what Plaintiff requested and paid for, not delivering any part until more than a year after Plaintiff's request and withholding the copies of the said file envelope and the said picture until after ordered to do so by Judge Curran, and then not within the time ordered. All of this contrived delay, the known false statements and other devices, whether or not so designed, had the effect of seriously interfering with and delaying Plaintiff's topical writing and caused Plaintiff to waste much time and what for him is considerable cost. Defendant Department of Justice, in Plaintiff's belief, deliberately violated the law, deliberately denied Plaintiff his rights under the law, in order to impede and interfere with Plaintiff's writing, which is critical of Defendants, and in order to damage Plaintiff the better to accomplish this improper purpose.

_____
Harold Weisberg

I, _____, Notary Public in and for the District of Columbia, do hereby certify that Harold Weisberg personally appeared before me in said District of Columbia on the _____ day of December 1970, the said Harold Weisberg being personally well known to me as the person who executed the said affidavit and acknowledged the same to be his act and deed.

Given under my hand and seal this 4 day of December 1970.

_____
Notary Public