

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA



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 HAROLD WEISBERG, :  
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 Plaintiff, :  
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 v. : Civil Action No. 78-0249  
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 CLARENCE M. KELLEY, et al., :  
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 Defendants :  
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REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR RECONSIDERATION AND CLARIFICATION

On February 26, 1979, Plaintiff filed a motion for reconsideration and clarification of the Court's February 15, 1979 Order granting defendants' summary judgment in this case. This motion was accompanied by three affidavits by Mr. Harold Weisberg, which showed, inter alia, that: (A) plaintiff has not been provided with at least two other sets of worksheets which vary from the one which has provided to him and which are undeniably within the scope of his request; (B) affidavits submitted by the FBI in this case concealed from plaintiff and the Court the fact that the worksheets were not classified at the time of origination as required by executive order; and (C) information on the worksheets which was excised because it is allegedly classified has already been made public.

Although defendants sought an extension of time to respond to plaintiff's motion, purportedly so their counsel could meet with representatives of the FBI "to discuss the appropriate response to plaintiff's motion," defendants' Opposition makes no attempt whatsoever to deny or otherwise respond to the specific charges made my plaintiff.

Not to respond to the specific charges made by plaintiff betrays a contempt for the independence and integrity of this Court. Apparently defendants assume that this Court will rubber-stamp its assertions regardless of whether they are true or false.

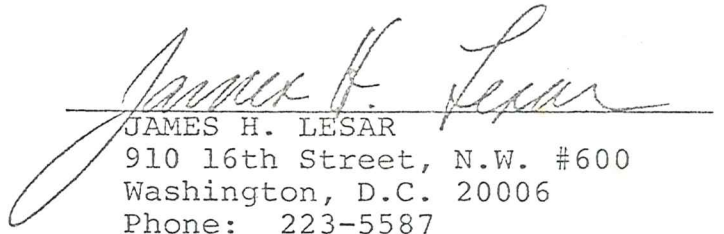
Plaintiff has advised his counsel by phone that subsequent to the filing of his motion for reconsideration he has discovered additional materials which show the falsity of the FBI's affidavits. Because he presently has other obligations which must be met, plaintiff would request a period of thirty days within which to submit this material to the Court in proper form.

In light of the government's refusal to come clean before this Court and address the specific factual allegations made by plaintiff, plaintiff strongly urges the Court to lift its ban on discovery in this case. Not to do so is to reward the defendants for having concealed relevant information from the Court and for submitting false and misleading affidavits. Plaintiff has requested this by separate motion. The failure of defendants to respond forthrightly to plaintiff's specific allegations makes discovery all the more necessary.

Finally, plaintiff notes that in their Opposition the defendants' do not contend that plaintiff's motion for reconsideration does not qualify under Rules 52(b) and 59 of the Federal Rules of Civil Procedure. Rather the Opposition devotes virtually all of its discussion to Schwartz v. Internal Revenue Service, 511 F. 2d 1303 (1975), which was but one of the bases for plaintiff's motion. Moreover, Schwartz is applicable to the present circumstances. Plaintiff has now shown the facts to be other than the FBI led this Court to believe they were. This necessary<sup>ly</sup> requires that this Court amend both its findings of fact and the legal conclusions derived from them.

For the reasons stated above, the Court should vacate its previous summary judgment award in this case and, after allowing plaintiff a suitable period of time within which to conduct discovery, it should also amend its findings of facts and conclusions of law as specified in plaintiff's motion.

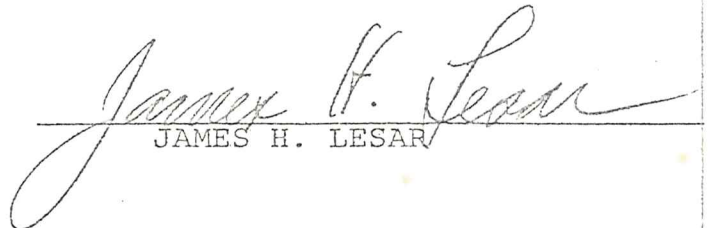
Respectfully submitted,

  
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 1979, mailed a copy of the foregoing Reply to Defendants' Opposition to Plaintiff's Motion for Reconsideration and Clarification to Mr. Emory J. Bailey, Attorney, Civil Division, Commercial Litigation Section, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR