

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

HAROLD WEISBERG,  
Plaintiff,

v.

WILLIAM H. WEBSTER, ET AL.,  
Defendants

Civil Action No. 78-0322

HAROLD WEISBERG,  
Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,  
ET AL.,  
Defendants

Civil Action No. 78-0420

(Consolidated)

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION  
MOTION FOR A STAY OF PLAINTIFF'S DISCOVERY

On April 25 and May 4, 1983, plaintiff served defendants with a Second Request for Production of Documents and a Second Set of Interrogatories, respectively. Defendants' response to the document request was due on or before May 31, 1983, while their answers to interrogatories are due on or before June 6, 1983. May 20, 1983, defendants moved to stay this discovery on the ground that it had just filed a motion to dismiss this case, and that, therefore, the Court should exercise its discretion to stay discovery pending the resolution of this motion.

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Plaintiff opposes defendants' motion for a stay. First, during the course of a pretext phone call from defendants' counsel to plaintiff's counsel late on the afternoon of May 12, 1983,<sup>1/</sup> defendants' counsel stated that the FBI is not going to provide plaintiff with any information on Ronnie Caire. If the FBI adheres to this position, it could place defendants in contempt of court because two of plaintiff's second set of interrogatories ask whether Ronnie Caire is indexed in the Dallas and New Orleans General Indices. The Court should allow plaintiff's discovery to go forward without further delay. Defendants' willingness to comply with plaintiff's discovery requests and any order of this Court compelling such disclosure sought by plaintiff should be clearly established before this Court rules on their motion to dismiss.

Second, defendant's motion to dismiss is not appropriate, nor is there any other sanction which is. Assuming, however, that this Court should determine that some sanction is appropriate, the severe sanction of dismissal most certainly should not be employed. Defendant's most recent version of its reason for seeking discovery is that it is "merely designed to ascertain the facts and/or documents which a plaintiff claims exist and which allegedly

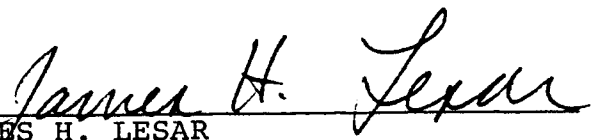
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<sup>1/</sup> The pretext was wanting to "keep channels open" and to tell Weisberg where to send his check for the attorney fees which this Court has awarded defendants. Although plaintiff's counsel informed defendants' counsel that he was working on a deadline to complete a brief, he persisted in making argumentative conversation during which he threatened to have Weisberg held in contempt of court and "thrown in jail." When reminded of Weisberg's age and ill-health, he scoffed at Weisberg's health problems.

demonstrate that the agency's search was not adequate."<sup>2/</sup> Defendant's Memorandum of Points and Authorities in Support of Its Motion for Dismissal of These Consolidated Actions, at 2. But even if this Court were to apply a somewhat less severe, but still totally unwarranted sanction and refuse to allow plaintiff to put before the Court any documents or facts which he has not already provided defendants, plaintiff would still be able to move for a further search based on his discovery on defendants. Defendants cannot possibly object to plaintiff's being allowed to make a motion for a further search based on the very evidence provided by them on discovery, since this would not deprive them of a "full and fair opportunity to prepare [their] case," which is the stated justification for their motion to dismiss. See Defendant's Memorandum of Points and Authorities in Support of Its Motion for Dismissal of These Consolidated Actions at 4.

For these reasons no further delay in defendants' response to plaintiff's discovery should be countenanced.

Respectfully submitted,

  
 JAMES H. LESAR  
 1000 Wilson Blvd., Suite 900  
 Arlington, Va. 22209  
 Phone: 276-0404

Attorney for Plaintiff

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<sup>2/</sup> Previously defendants had not asserted that plaintiff had not provided documents and facts to support his claims, they simply sought to require him to produce a definitive list or compilation of those he relies upon to challenge the adequacy of their search. The latest version of why defen-

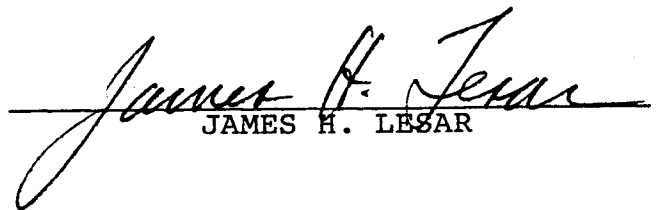
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2/ (continued)

dants are seeking discovery from plaintiff now calls into question even the existence of the materials Weisberg has provided them. There is, of course, no bona fide issue as to whether the documents and facts Weisberg relies upon to challenge the adquacy of the search exist. He has repetitively provided defendants both facts and documents precisely articulating (and documenting) his claims regarding the FBI's failure to conduct a proper search. This has been accomplished both through his administrative appeals and through the affidavits he has filed in these cases.

CERTIFICATE OF SERVICE

I hereby certify that I have this 6<sup>09</sup> day of June, 1983, mailed a copy of the foregoing Plaintiff's Opposition to Defendants' Motion for a Stay of Plaintiff's Discovery to Mr. Henry LaHaie, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR

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HAROLD WEISBERG, :  
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 FEDERAL BUREAU OF INVESTIGATION, : (Consolidated)  
 ET AL., :  
 :  
 Defendants :

O R D E R

Upon consideration of defendants' motion for a stay of plaintiff's discovery, plaintiff's opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1983, hereby

ORDERED, that defendants' motion for a stay of plaintiff's discovery be, and the same hereby is, DENIED; and it is further

ORDERED, that defendants' shall answer plaintiff's second set of interrogatories and respond to plaintiff's second request for production of documents within \_\_\_\_\_ days of the date of this order.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE