

6/23/83

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF  
INVESTIGATION,

Defendant

---

Civil Action Nos.  
78-322 and 78-420  
(Consolidated)

DEFENDANT'S REPLY TO PLAINTIFF'S  
OPPOSITION TO ITS MOTION FOR A  
STAY OF PLAINTIFF'S DISCOVERY

Plaintiff's Opposition to Defendant's Motion for a Stay of Discovery ("Pl. Opp.") is replete with inaccurate statements some of which warrant brief replies by the FBI.

First, defendant's counsel did not state to counsel for plaintiff that the FBI was never going to provide Mr. Weisberg with any information on Ronnie Caire, the subject of two of the interrogatories in plaintiff's second set of interrogatories. Instead, during the course of counsel's conversation on May 12, 1983, Mr. Lesar brought up the subject of plaintiff's second set of interrogatories at which point defense counsel mentioned that the FBI had problems with some of the interrogatories and would have to interpose objections to them. Counsel for the defendant cited as an example the interrogatories inquiring whether Ronnie Caire is indexed in the Dallas and New Orleans Field Offices' general indices. At no time did counsel indicate that if the defendant's objections were overruled by the Court the FBI would

refuse to answer the objected to interrogatories, including those on Mr. Caire.<sup>1/</sup>

Second, Mr. Lesar also inaccurately relates the balance of the May 12, 1983 conversation with counsel for the defendant. Notwithstanding Mr. Lesar assertions, defense counsel never "persisted in making argumentative conversation," nor did he "threaten to have Weisberg held in contempt of court and 'thrown in jail,'" nor did he "scoff at Weisberg's [alleged] health problems." (Pl. Opp. at 2 n.1). Rather, when Mr. Lesar stated that plaintiff had no intention of complying with the Court's discovery order of April 13, 1983, counsel simply indicated that the defendant would have no choice but to pursue sanctions under Rule 37(b)(2), F.R.Civ.P., and that such could include a motion to show cause why plaintiff should not be held in contempt.<sup>2/</sup>

<sup>1/</sup> Unlike plaintiff, the defendant has consistently complied with this Court's orders. That was the case, for example, when the Court issued its order of April 13, 1983, overruling the defendant's objections to interrogatories nos. 32 and 33 of plaintiff's first set of interrogatories and directing the defendant to file responsive answers to those interrogatories. (See defendant's Dallas and New Orleans Field Offices' answers filed on May 13 and 16, 1983, respectively). It is indeed ironic, given plaintiff's contumacy of that same April 13th order, that he would now argue that his second set of discovery should be allowed "to go forward" so as to establish defendant's "willingness to comply with plaintiff's discovery requests and any order of this Court compelling such disclosure sought by plaintiff...." (Pl. Opp. at 2). As noted above, the defendant has repeatedly established its willingness to comply with the Court's orders. It is only fair that Mr. Weisberg do the same before he is allowed to conduct further discovery of the defendant.

<sup>2/</sup> As noted in defendant's memorandum in support of its dismissal motion (see footnote 1 of that memorandum), the FBI decided to seek only dismissal as a sanction even though plaintiff's persistent refusal to comply with the Court's discovery orders amounted to contempt.

Third, there is no truth to plaintiff's rather confusing claim that the defendant has not previously "asserted that plaintiff had not provided documents and facts to support his claims, [but rather] simply sought to require him to produce a definitive list or compilation of those he relies upon to challenge the adequacy of the search." (Pl. Opp. at 3 n.2). As the defendant has demonstrated before,<sup>3/</sup> the procedural history of these cases establish that the defendant has attempted repeatedly to get plaintiff to articulate all the factual bases for all his complaints about the FBI's search. Plaintiff, on the other hand, has repeatedly attempted to avoid such an articulation, preferring instead to reveal his complaints and their alleged factual underpinnings in an ever-expanding piecemeal fashion. For example, during the first four years of this litigation, plaintiff never alleged that the FBI's search failed to encompass "June" files. When he was finally forced -- because of the dictates of Local Rule 1-9(h) -- to list all the material facts about the search which he contends are in dispute and to provide references to the record which support his contentions, plaintiff cited the FBI's alleged failure to include "June" files within its search. To support that contention, plaintiff referenced paragraph 9 of his affidavit of July 21, 1982, which states:

I note that in my March 4, 1979 [administrative] appeal (Exhibit 3), I called attention to "the existence of an undisclosed Dallas 'June' file and noncompliance with regard to those records."

<sup>3/</sup> See Defendant's Opposition to Plaintiff's Motion for a Protective Order, filed on January 27, 1983.

The "administrative appeal" attached to plaintiff's affidavit as Exhibit 3, however, offers no further evidence or enlightenment on this subject for the pertinent part of that exhibit merely states:

In this connection I also call to your attention the existence of an undisclosed Dallas "June" file and noncompliance with regard to those records. While I have additional identifying information I do not now provide it for reasons stated in an enclosed appeal.

The defendant has no idea what other "appeal" plaintiff is referencing here. Accordingly, it is impossible not only to respond to the reasons for plaintiff's non-disclosure of the so-called "additional identifying information," but also to the broader allegation that the FBI's search did not include all "June" files. And this allegation about "June" files is typical of Mr. Weisberg's other complaints about the FBI's search.<sup>4/</sup>

Given this ever-expanding yet unsubstantiated approach by plaintiff, the Court either should continue to require plaintiff to answer defendant's limited discovery requests or, if he persists in his refusal to do so, should dismiss these actions with prejudice.

Fourth, plaintiff is incorrect when he asserts that the defendant "cannot possibly object" to him moving for a further search in these cases. (Pl. Opp. at 3). Notwithstanding Mr. Weisberg's conclusory claims, there is absolutely no evidence

<sup>4/</sup> The lack of specificity underlying plaintiff's "June" file allegation, as well as his other allegations about the adequacy of the FBI's search, belies Mr. Weisberg's newly devised claim that he "has repetitively provided the defendant with both facts and documents precisely articulating (and documenting) his claims regarding the FBI's failure to conduct a proper search." (Pl. Opp. at 4 n.2).

in these cases that indicates that a further search is warranted.  
Moreover, the defendant would be able to demonstrate beyond any question that its original search was adequate if only plaintiff would comply with the Court discovery orders and provide responsive answers to the FBI's discovery requests. Until plaintiff does so, any further discovery by him should be stayed.


In sum, the plaintiff has failed to articulate any meritorious reason why his second set of discovery should not be stayed. Given that failure and in light of the grounds set forth in defendant's memorandum in support of its motion for a stay, defendant's motion should be granted.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

  
BARBARA L. GORDON

  
HENRY A. LAHAIE

Attorneys, Department of Justice  
Civil Division, Room 3338  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: 633-4345

Attorneys for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 1983, I have served the foregoing Defendant's Reply to Plaintiff's Opposition to its Motion for a Stay of Plaintiff's Discovery, and a proposed Order, by first class mail, postage pre-paid to:

James H. Lesar, Esq.  
Suite 900  
1000 Wilson Boulevard  
Arlington, Virginia 22209

  
HENRY J. LAHAIE