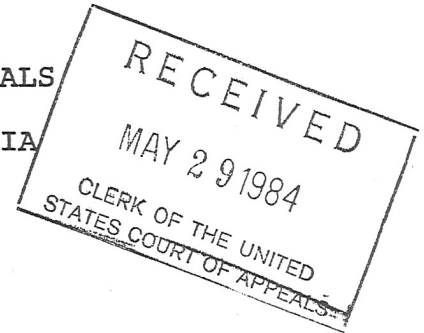


IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA



HAROLD WEISBERG, :
 :
 Appellant/Cross-Appellee :
 :
 v. :
 :
 U.S. DEPARTMENT OF JUSTICE :
 :
 Appellee/Cross-Appellant :

Case Nos. 82-1229, et al.
(Consolidated)

APPELLANT/CROSS-APPELLEE'S QUALIFIED NON-OPPOSITION
TO APPELLEE/CROSS-APPELLANT'S MOTION FOR PERMISSION
TO FILE SUPPLEMENTAL BRIEF

Appellee/cross-appellant Department of Justice has moved the Court for permission to file a supplemental brief concerning the issue of whether the Freedom of Information Act "requires the FBI to search for records of third parties who have not waived their rights under the Privacy Act, 5 U.S.C. 552a, absent a showing of public interest in the information sought by the requester." Although Appellant/Cross-Appellee Weisberg has good grounds for opposing this motion, he does not do so if the Court will permit him to file a response to the Department's supplemental brief.

In stating his qualified non-opposition to the Department's motion, Weisberg notes that in its motion the Department states:

... at oral argument, plaintiff's counsel contended, for the first time on appeal, that under Antonelli plaintiff in this case had in fact demonstrated an adequate public interest in the material in question. Counsel based tjos (sic) assertion on two affidavits which he had not placed in the joint appendix or referred

to in his appellate briefs. Furthermore, he made this assertion on rebuttal. The Department therefore had no opportunity to respond to plaintiff's public interest claim.

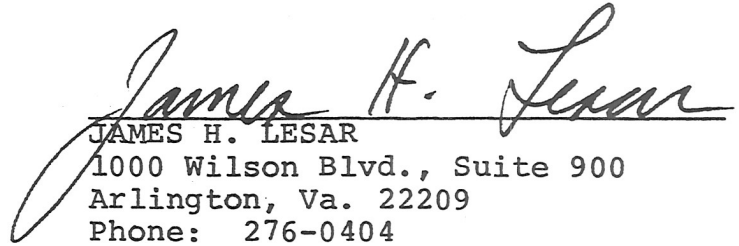
Department's motion, ¶2. Weisberg's counsel did not mention Antonelli at oral argument. His comments regarding the public interest showing made by Weisberg in the District Court were precipitated by Department counsel's misrepresentation of what the case record contained. Specifically, a member of the panel asked the Department's counsel if it was the Department's position that providing a list of names, without more, is insufficient to require a search of FBI files. Department counsel replied affirmatively. The panel member then asked if it was the Department's position that that was all that was done in this case, that "there's no supplementation so as to demonstrate any nexus at all?" Again the Department's counsel replied in the affirmative.* It is this misrepresentation of the case record which caused Weisberg's counsel to call the Court's attention to the fact that Weisberg had in fact made such a showing.

In stating his qualified non-opposition to the Department's motion, Weisberg in no way concedes the accuracy or appropriateness of the Department's latest supplemental brief. In fact, that brief contains serious factual misrepresentations and omissions which will be fully addressed in the brief-in-response which Weisberg's

*These representations as to what transpired at oral argument are based on Weisberg's counsel's review, on May 25, 1984, of the *tape of the* oral argument in this case held on May 8, 1984.

counsel is now preparing.

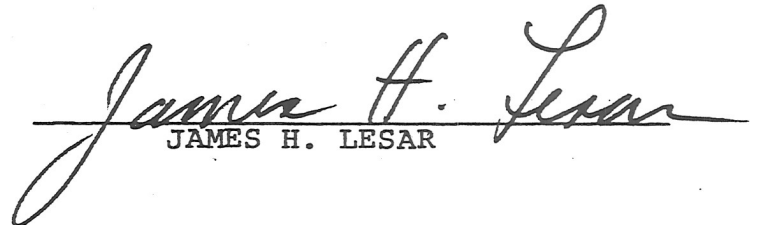
Respectfully submitted,


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Attorney for Weisberg

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of May, 1984, mailed a copy of the foregoing Appellant/Cross-Appellee's Qualified Non-Opposition to Appellee/Cross-Appellant's Motion for Permission to File Supplemental Brief to Mr. John S. Koppel, Attorney, Appellate Staff, Civil Division, Room 3633, U.S. Department of Justice, Washington, D.C. 20530.


JAMES H. LESAR