

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

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Dear Harold,

Enclosed is the reprint of the speech by Warren.

Ron Plesser suggested two names to present oral argument to the Supreme Court on Weisberg. One is Alan Morrison, who is associated with Nader, I believe. The other is Vic Kramer, now at Georgetown University, a member of the anti-trust bar and of Arnold and Porter. Described as highly respected and familiar with the Freedom of Information Act. I believe he also referred to a third possibility but didn't name him.

The case Plesser argued before the panel a few weeks back was Schuck b. Butts. The panel was Bazelon, Robertson, and ~~Skafar~~ Levantahl. The case is not directly an FOI case but one in which discovery of documents under Rule 34 was attempted and then resisted by the Government on the grounds that the FOI act foreclosed it.

According to Plesser, Levantahl first raised the question of Weisberg. Plesser argued that "we don't know completely what Weisberg means" and asserted that until Weisberg was upheld or rejected by the Supreme Court, leeway ought to be allowed in discovery cases. Levantahl rejoined with a remark, "Mr. Plesser, do you take a 9-1 decision of this court so lightly?" Bazelon then interjected that Weisberg ~~was~~ did not discuss the prior precedents of this court "on the grounds that what you don't see goes away." According to Plesser, Levantahl was upset, angry, with Bazelon's remark.

Best regards and happy hollidays,

Jim



Dear Jim, relet 21, Flesser, Bazelon and spectro decision, I think it is clear that Bazelon was chiding Levanthal because the court had, in fact, decided to rewrite the law and could not face its prior decisions and still do this. We discussed this in discussing the basis for petitioning for a rehearing under the rules and I am now of the belief that we were correct. The reason is not clear, but I think fear is one, fear of shock to the country at this juncture another, etc. Flesser's case is another in which the law for disclosure is interpreted as a law for suppression even where it is not the law involved in the litigation. This persuades me even more that I am correct in believing our moves must include the frontal, head on. I hope others come to agree because I think it is the only chance of winning. HW 12/24/73