

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
)	CRIMINAL CASE NO. 1:05CR225
v.)	
)	The Honorable T.S. Ellis, III
STEVEN J. ROSEN, and)	
KEITH WEISSMAN,)	
Defendants.)	

J. WILLIAM LEONARD’S MOTION TO QUASH DEFENDANTS’ SUBPOENA

J. William Leonard (“Mr. Leonard”), by and through his undersigned counsel, respectfully submits this Motion to Quash Defendants’ subpoena to testify as an expert witness in the criminal proceedings of *United States v. Rosen & Weissman*, No. 1:05CR225 (E.D. Va.). A trial in this matter is currently scheduled to begin on October 28, 2008.

Mr. Leonard has willingly agreed to testify on behalf of the Defendants as an expert witness at trial. He has personally reviewed the Government’s expert notices and related briefing. Based on his years of federal experience adjudicating and establishing classification determinations and policies at the Department of Defense, service with the Interagency Security Classification Appeals Panel and as Director of the Information Security Oversight Office (“ISOO”), Mr. Leonard’s expert opinion is the government has not and will not be able to satisfy its burden to prove that the information disclosed to or by Defendants was classified national defense information. Mr. Leonard believes that his testimony will provide necessary education and assistance to the Court and jury and is in the public interest. Indeed, his participation is arguably fundamental to enable the Defendants to mount an adequate defense. Mr. Leonard furthermore asserts he has an independent First Amendment right to appear as a defense witness in this case.

As a former government employee, Mr. Leonard consulted with the National Archives and Records Administration's Ethics Officer with respect to his anticipated testimony (ISOO is a component and under the jurisdiction of the National Archives). The Ethics Officer advised that Mr. Leonard should seek an explicit order from this Court authorizing his testimony in order to ensure his participation falls within the appropriate ethical parameters. A copy of the ethics memo is attached at Exhibit "1".

On March 19, 2008, Defendants moved for an Order permitting Mr. Leonard's expert testimony pursuant to the provision in the Ethics in Government Act, 18 U.S.C. § 207(j), which authorizes this Court to issue such an Order. In an implicit, if not explicit, effort of intimidation designed to prevent or at least dissuade Mr. Leonard from testifying for the defense, the Government suggested that his testimony could constitute a criminal violation of 18 U.S.C. § 207. The Government additionally argued that, as a matter of procedure, the issue was not ripe for the Court's adjudication.

Although the Defendants argued that the matter was ripe even without the formal issuance of a subpoena, it is understood that the Court indicated that it would prefer to rule on this issue when presented with a defense subpoena followed by Mr. Leonard's filing of a Motion to Quash. At that point, the issue would be ripe for action by the Court.

Accordingly, on August 21, 2008, Defendants served Mr. Leonard with a subpoena compelling his trial testimony. A copy of the subpoena is attached as Exhibit "2". Although Mr. Leonard is willing to testify and believes that neither Section 207 nor the ethics regulations preclude his testimony,¹ in light of the Ethics Officer's opinion and the veiled threats by the

¹ Mr. Leonard hereby incorporates by reference the arguments made by the Defendants in arguing that the Court should rule that there is no impediment to Mr. Leonard's testimony, or, in the alternative, that the Court should issue an Order requiring his testimony.

government Mr. Leonard views it necessary to move to quash the subpoena. In filing this Motion to Quash, Mr. Leonard seeks either a ruling from the Court that there is no impediment to his testifying or, alternatively, a Court Order requiring that he testify. Without one or the other action, Mr. Leonard will be forced to reconsider whether he can testify for the Defendants.

Date: August 28, 2008

Respectfully submitted,

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