

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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	:	<u>ORDER</u>
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In re MOTION FOR CIVIL CONTEMPT by	:	12-mc-557 (BMC)
JOHN DOE.	:	
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COGAN, District Judge.

This case is before me pursuant to an Order of then-Chief Judge Dearie of this Court in United States of America v. John Doe, No. 98 Cr. 1101 (ILG), in turn entered pursuant to a Summary Order of the United States Court of Appeals for the Second Circuit dated February 14, 2011, assigning the case to me “for the limited purpose of implementing and overseeing compliance with the orders of the Circuit and the orders previously entered by Judge Glasser relating to documents placed under seal.” The civil contempt motion before me alleges disclosure of various sealed and otherwise confidential information, in violation of several such court orders, by respondents Richard Roe and Richard E. Lerner, who are both attorneys.

For the reasons stated on the record on June 30, 2015, the allegations raised to date in this matter are hereby referred to the United States Attorney’s Office for the Eastern District of New York (“USAO”), for the purpose of allowing the USAO to consider, in the exercise of its prosecutorial discretion, whether proceedings should be commenced against respondents for criminal contempt of court. This referral shall be understood to encompass any violation of an injunction or order issued in this or the related criminal or civil proceedings, alleged to date or subsequently discovered, concerning the disclosure of information damaging to movant.

This referral is made because it appears, if the civil contempt allegations before me are true, that respondents have engaged in conduct that may constitute criminal contempt of court. This Order does not constitute a charging instrument pursuant to Fed. R. Crim. P. 42, and the Court has no view on whether a criminal proceeding should result from whatever investigation the USAO chooses to undertake.

It is hereby ORDERED that:

- (1) The Clerk of the Court shall serve a copy of this order on the USAO; and
- (2) The Clerk shall make the docket in this matter, 12-mc-557, and all underlying documents available to the United States Attorney or his designee as a case participant; and
- (3) The Clerk shall forward the following documents to the United States Attorney's

Office:

(a) Sealed motion for order to show cause by John Doe, dated March 20, 2015, with attachments 1-26 (ECF No. 97);

(b) Memorandum in opposition to order to show cause by respondent Richard E. Lerner, dated June 23, 2015 (ECF No. 110);

(c) Memorandum in opposition to order to show cause by respondent Frederick M. Oberlander, dated June 23, 2015 (ECF No. 111); and

(d) Affidavit/Declaration of Robert S. Wolf in support of order to show cause, dated June 29, 2015, with attachments 1-16 (ECF No. 112).

The USAO is further ORDERED to inform this Court at such time as it elects not to initiate or elects to discontinue criminal proceedings, or otherwise declines the referral made herein, or terminates any investigation conducted in connection herewith. Given the length of

time the civil proceedings have been pending, the Court requests that the United States Attorney's Office proceed with its determination as promptly as possible.

SO ORDERED.

Digitally signed by Brian M.
Cogan 

U.S.D.J.

Dated: Brooklyn, New York
July 16, 2015