

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

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

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR AN ORDER COMPELLING THE
DEFENDANT TO SEEK JOINDER OF COPY-
RIGHT HOLDERS PURSUANT TO RULE 19(a)

On June 14, 1982, plaintiff moved the Court for an order compelling the defendant to seek joinder, pursuant to Rule 19(a) of the Federal Rules of Civil Procedure, of the copyright holders of materials which have been withheld in these cases on the ground that the Copyright Act, 17 U.S.C. § 101 et seq., and, in turn, exemption 3 of the FOIA bar their release. Specifically, plaintiff wants this Court to order the defendant to seek joinder of the copyright holder of the film located in Dallas File No. 89-43-1A81. (See Declaration of John N. Phillips, filed on April 15, 1982, ¶ 3(g)). The current copyright holder of that film is the LMH Company.*/

In support of this motion, plaintiff cites Weisberg v. Department of Justice, 631 F.2d 824 (D.C. Cir. 1980), as holding that copyrighted materials may constitute agency records under the FOIA and, if they do, the joinder of the copyright holder should be sought. However, nothing in that opinion suggests that a court has the authority to order a defendant to seek joinder of another party. Instead, after noting that neither party in that case sought to bring the copyright holder before the court, id. at 827, the Court of Appeals held that "the district court should have sought the presence of the alleged copyright holder. . . ." Id. at 829. See also Id. at 830. The court also recognized that

*/ An officer of the LMH Company is Henry Zapruder, an attorney with the law firm of Cohen & Uretz, 1775 K Street, N.W., Washington, D.C.

Rule 19 "puts the burden on existing parties and the court to bring in those whose presence is necessary or desirable. . . ." Id. at 830 n. 40.

In light of those directives, the defendant submits that, in the first instance, it is the plaintiff's responsibility to join the copyright holder of the film in question, should he really desire a copy of that film. If plaintiff fails or refuses to do so, then it may be incumbent upon the Court to seek joinder. The defendant, however, finds nothing in the Weisberg decision that requires it to invoke procedures to include the copyright holder in this litigation. Accordingly, the plaintiff's efforts to have the Court compel the defendant to do so should be denied.

CONCLUSION

For the reasons set forth above, the defendant respectfully requests the Court to deny the plaintiff's motion for an order compelling it to seek joinder of copyright holders.

Respectfully submitted,

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ORDER

Upon consideration of plaintiff's motion for an order compelling defendants to seek the joinder of copyright holders, defendants' opposition thereto, and the entire record herein, it is hereby

ORDERED, that plaintiff's motion be, and the same hereby is DENIED.

Dated this ____ day of June, 1982.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 1982, I have served the foregoing Defendant's Response To Plaintiff's Motion For An Order Compelling The Defendant To Seek Joinder Of Copyright Holders Pursuant To Rule 19(a) by mailing a copy, postage prepaid, to:

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


HENRY J. LAHAIE