

7/18/82

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.

UNOPPOSED MOTION TO STAY COURT'S
ORDER OF JULY 8, 1982, PENDING
SETTLEMENT NEGOTIATIONS BETWEEN
PLAINTIFF AND THE COPYRIGHTHOLDER

On July 8, 1982, the Court entered an order in these consolidated cases directing the defendant to "seek joinder of the copyrightholder(s) of the material sought by plaintiff in these cases from Dallas File No. 89-43-1A81, which is being withheld on the grounds that its release is barred by the Copyright Act, 17 U.S.C. §101 et seq., and Exemption 3 of the Freedom of Information Act, 5 U.S.C. §552." Subsequently, counsel for defendant contacted Mr. Henry Zapruder, an officer of the LMH Company that holds the copyright on the "Zapruder film," to ascertain who was authorized to accept service of process on behalf of the LMH Company.^{*/} During that conversation, Mr. Zapruder requested that defendant's counsel delay seeking joinder until he had an opportunity to talk with plaintiff's counsel about the copyright claims on the "Zapruder film." Subsequently, on August 4, 1982, counsel for the defendant and counsel for plaintiff had a conversation about this matter. Plaintiff's counsel indicated that he indeed had a conversation with Mr. Zapruder and that they were in the process of working out an agreement concerning the copyright claims which

^{*/} Because counsel for defendant was out of town from July 7, 1982 to July 27, 1982, he did not contact Mr. Zapruder until July 29, 1982.

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would make joinder of the LMH Company unnecessary. Plaintiff's counsel recently confirmed this in writing.^{*/}

In light of these developments, counsel for plaintiff and defendant have agreed, subject to the Court's approval, to delay joinder until such time as plaintiff has had an opportunity to review the terms of the proposed agreement between him and the LMH Company. As noted by plaintiff's counsel in his attached letter, such an agreement would settle the copyright claims without further involvement by this Court.^{**/}

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney


BARBARA L. GORDON


HENRY L. LAHAIE

Attorneys, Department of Justice
10th & Pennsylvania Avenue, N.W.
Room 3338, Civil Division
Washington, D.C. 20530
Telephone: (202) 633-4345

Attorneys for Defendants.

^{*/} A copy of plaintiff's counsel's letter is attached to this response as Exhibit B.

^{**/} Because there was some question as to whether the "Zapruder film" was the only copyright claim in these cases, the FBI reviewed its records to determine if there were indeed any other outstanding copyright exemptions. As noted by Special Agent John N. Phillips in his sixth declaration attached hereto, the "Zapruder film" is the only unresolved copyright claim. (See Exhibit A attached to this motion).

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SIXTH DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C. AS I have indicated in the five previous declarations that were filed in these consolidated cases, I am familiar, due to the nature of my official duties, with the procedures followed in processing Freedom of Information Act (FOIA) requests received by the FBI, including plaintiff's requests for records on the assassination of President John F. Kennedy (JFK assassination) contained in the FBI's Dallas and New Orleans Field Offices.

2. In the Court's Order of July 8, 1982, the defendant was directed to seek "joinder of the copyright holder(s) of the materials sought by plaintiff in these cases from Dallas File No. 89-43-1A81."

3. In plaintiff's Reply to Defendant's Response to the Motion for an Order Compelling Defendant to Seek Joinder of Copyright Holders Pursuant to Rule 19 ("Plaintiff's Reply"), plaintiff's counsel stated that he is aware of two other copyright claims and believes there may be more.

4. As a result of the questions raised in Plaintiff's Reply, a review was made of the FBI's inventory worksheets in these cases in an attempt to determine if there were any other copyright


Exhibit A

claims. This review did not locate any material withheld pursuant to copyright claims, other than the Abraham Zapruder film.

5. The two copyright claims mentioned in Plaintiff's Reply are no longer outstanding and thus the materials covered thereby were released to plaintiff.

I have read the foregoing statement consisting of 2 pages and fully understand its contents. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the statement is true and correct.

Dated, this 18 day of August, 1982.



JOHN H. PHILLIPS
Special Agent
Federal Bureau of Investigation
Washington, D.C.

JAMES H. LESAR
ATTORNEY AT LAW
1000 WILSON BLVD., SUITE 900
ARLINGTON, VIRGINIA 22209
TELEPHONE (703) 276-0404

August 4, 1982

Mr. Henry LaHaie
Civil Division, Room 3338
U.S. Department of Justice
Washington, D.C. 20530

Re: Weisberg v. Webster, et al.
Weisberg v. FBI, et al.
Civil Actions 78-0322/420

Dear Henry:

On Friday, July 30th, Mr. Henry Zapruder called me regarding the Court's order that you join the copyright holder of the "Zapruder film" as a party to this litigation. He informed me that he would interpose no objection to release of the FBI's copy of the film to Mr. Weisberg if Mr. Weisberg signed a licensing agreement which requires him to respect the copyright and not to commercially exploit the film.

I told Mr. Zapruder that if Mr. Weisberg had to litigate the issue he would contend that the copyright has been eroded by pervasive unsanctioned use of the film, and that we are aware that charcoal engravings of the film published in a book were determined to constitute "fair use" in Time, Inc. v. Bernard Geis Associates, 293 F. Supp. 130 (S.D.N.Y. 1968). I also told him that we did not want to litigate the issue unless required to do so, and that I believed Mr. Weisberg would be willing to sign the licensing agreement.

I asked Mr. Zapruder to send me the licensing agreement. So far I have not received it. I understand that he is now out of the country.

Mr. Weisberg is willing to sign a licensing agreement along the lines indicated by Mr. Zapruder, subject, of course, to his review of the actual agreement itself.

Because prospects for settling this matter without further litigation look good, I have no objection to your delaying joinder until such time as Mr. Weisberg has had an opportunity to review the terms of the licensing agreement.

Sincerely yours,

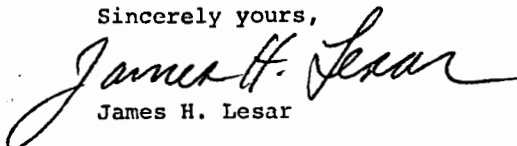

James H. Lesar

Exhibit B

UNITED STATES DISTRICT COURT
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FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

ORDER

Upon consideration of defendant's Unopposed Motion to Stay Court's Order of July 8, 1982, Pending Settlement Negotiations Between Plaintiff and the Copyrightholder, and the entire record herein, it is hereby

ORDERED that defendant's motion is granted.

Dated this _____ day of August, 1982.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 1982, I have served the foregoing defendant's Unopposed Motion To Stay Court's Order of July 8, 1982, Pending Settlement Negotiations Between Plaintiff and the Copyright holder, by first class mail to:

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


HENRY J. LAHAIE