

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
Appellant/Cross-Appellant,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
)
Appellee/Cross-Appellant.)
_____)

DEFENDANT-APPELLEE/CROSS-APPELLANT'S MOTION FOR
PERMISSION TO FILE A SUPPLEMENTAL BRIEF

Defendant-appellee/cross-appellant Department of Justice hereby moves the Court for permission to file a supplemental brief in the above-captioned case concerning the issue of whether the Freedom of Information Act, 5 U.S.C. 552, requires the FBI to search for records of third parties who have not waived their rights under the Privacy Act, 5 U.S.C. 552a, absent a showing of public interest in the information sought by the requester. In support of its motion, the Department states the following:

1. At oral argument, held on May 8, 1984, the Court asked a number of questions concerning this issue which has major significance. In light of the Court's questions, and because the Seventh Circuit's decision in Antonelli v. Department of Justice, 721 F.2d 615 (D.C. Cir. 1983), pet. for cert. pending, S. Ct. No. 83-6312, the only court of appeals opinion on this subject, was not issued until after parties had filed their briefs on this point, the Department wishes to clarify its position in a supplemental brief.

2. Moreover, at oral argument, plaintiff's counsel contended, for the first time on appeal, that under Antonelli plaintiff in this case had in fact demonstrated an adequate public interest in the material in question. Counsel based tjos assertion on two affidavits which he had not placed in the joint appendix or referred to in his appellate briefs. Furthermore, he made this assertion on rebuttal. The Department therefore had no opportunity to respond to plaintiff's public interest claim.

For the foregoing reasons, defendant-appellee/cross-appellant Department of Justice moves the Court for permission to file a supplemental brief concerning the issue discussed above. Copies of our proposed supplemental brief are simultaneously being lodged with the Clerk of the Court.

Respectfully submitted,

 /JSK

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 1984, I served the foregoing Defendant-Appellee/Cross-Appellant's Motion for Permission to File a Supplemental Brief by causing a copy to be mailed, postage prepaid, to:

James H. Lesar, Esquire
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JOHN S. KOPPEL, Attorney