

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

WILLIAM C. BLOOMQUIST,)	
)	
Plaintiff,)	
)	
v.)	CIVIL No. 03-276-P-S
)	
JUSTICE PAMELA ALBEE, et al.,))	
)	
Defendants.)	

**ORDER ON MOTION TO CLARIFY OR AMEND THE COURT’S ORDER
GRANTING THE MOTION FOR PARTIAL JUDGMENT**

Before the Court is Defendants’ Joint Motion to Clarify or Amend the Court’s Order Granting the Motion for Partial Judgment on the Pleadings (Docket # 114) (the “Motion to Clarify”). The Motion was filed by Portland Press Herald, WGME, Inc., Pacific and Southern Company d/b/a WCSH-TV and WMTW Broadcast Group, LLC (together, the “Selected Media Defendants”). The Motion asks this Court to amend its December 21, 2004 Order Affirming in Part the Recommended Decision of the Magistrate Judge (Docket # 111) to include Counts 35 and 36 among the Counts for which judgment on the pleadings is entered on behalf of the Selected Media Defendants. As briefly explained below, the Court finds this Motion to be procedurally improper and, on that basis, DENIES the Motion.

The Selected Media Defendants’ Motion to Clarify asserts that they are entitled to judgment on Counts 35 and 36 for the same reasons they were granted judgment on Counts 13, 15 and 16. In the original Recommended Decision (Docket # 102), the Magistrate Judge recommended a sua

sponte dismissal of Counts 13, 15 and 16, finding that these claims arose under 42 U.S.C. § 1983 and could not be asserted against defendants who were not state actors. (See Recommended Decision (Docket # 102) at 2.) After finding Plaintiff's objections to this portion of the Recommended Decision to be meritless, the Court ordered that judgment on the pleadings be entered for the Media Defendants on Counts 13, 15 and 16. (See Order (Docket # 111) at 2 & 6.)

In essence, the Selected Media Defendants apparently now seek dismissal of Counts 35 and 36 on the grounds that these counts are, in fact, similar to Counts 13, 15 and 16. However, Defendants never sought dismissal of Counts 35 and 36 in any of the memoranda that were filed in connection with the Recommended Decision (Docket # 102) or this Court's Order Affirming in Part the Recommended Decision of the Magistrate Judge (Docket # 111). Thus, the Court's alleged "failure to include Counts 35 and 36" was not an "oversight" by the Court. (Mot. to Clarify (Docket # 114) at 4.) In short, a defendant is not entitled to an order dismissing any count that it has not moved to dismiss.

The Motion to Clarify does not cite to any Federal Rule of Civil Procedure that contemplates the Court amending a previous ruling in order to enter judgment on additional claims that have not been the focus of previous briefing by the parties or discussion by the Court. And, frankly, the Court does not believe that the Federal Rules of Civil Procedure grant this Court authority to engage in such "clarifications."

If, upon reading the rulings in this case, the Selected Media Defendants have reason to believe that there are additional counts that fail to state a proper claim against them, the appropriate course is to move for dismissal or summary judgment on those counts. By utilizing this procedural mechanism, the Selected Media Defendants would give Plaintiff due notice that they are moving for

judgment on additional counts, not just seeking a clarification.

Because the Court finds that the Motion to Clarify is procedurally improper, the Motion is DENIED.

SO ORDERED.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 28th day of January 2005.

WILLIAM C BLOOMQUIST
STEPHANIE ANDERSON
*individually and in her
official capacity as
District Attorney*

represented by **WILLIAM C BLOOMQUIST**
represented by **THOMAS A. KNOWLTON**
DEPT. OF ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, ME 04333
ATTORNEY TO BE NOTICED

WILL BERRY
*individually and in his
official capacity as
Assistant District Attorney*

represented by **THOMAS A. KNOWLTON**
(See above for address)
ATTORNEY TO BE NOTICED

ANN BERLIND
*individually and in her
official capacity as
Assistant District Attorney*

represented by **THOMAS A. KNOWLTON**
(See above for address)
ATTORNEY TO BE NOTICED

ROBERT RUFFNER
*individually and in his
official capacity as
Attorney*

represented by **JAMES M. BOWIE**
THOMPSON & BOWIE
3 CANAL PLAZA
P.O. BOX 4630
PORTLAND, ME 4112
774-2500
ATTORNEY TO BE NOTICED

ROBERT J. RUFFNER
VINCENT, KANTZ & RUFFNER
80 EXCHANGE STREET
SUITE 32

PORTLAND, ME 4101-6630
(207)761-1914
ATTORNEY TO BE NOTICED

MARK DION
*individually and in his
official capacity as
Sheriff*

represented by **JOHN J. WALL, III**
MONAGHAN LEAHY, LLP
P. O. BOX 7046 DTS
PORTLAND, ME 4112-7046
774-3906
ATTORNEY TO BE NOTICED

KEVIN JOYCE
*individually and in his
official capacity as Police
Captain*

represented by **JOHN J. WALL, III**
(See above for address)
ATTORNEY TO BE NOTICED

DAN DOWNS
*individually and in his
official capacity as
Detective*

represented by **JOHN J. WALL, III**
(See above for address)
ATTORNEY TO BE NOTICED

**KENNEBEC JOURNAL ONLINE
MORNING SENTINEL**

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

DAVID CONNERTY-MARIN

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

WGME TV

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

WMTW-TV

represented by **JONATHAN S. PIPER**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

WCSH-TV

represented by **JOHN M.R. PATERSON**
BERNSTEIN, SHUR, SAWYER, &
NELSON
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029
207-774-1200
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

DAVID HENCH
*individually and in his
official capacity as Police
Reporter for the Portland
Press Herald*

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

SUSAN BAXTER BENFIELD

SCOTT D FLOCCHER

CINDY MCKEOWN

ROXANNE HAGERMANN
d/b/a Roxy's Haircut

represented by **ROXANNE HAGERMANN**
C/O ROXY'S HAIRPORT
21 MAIN ST
BRIDGTON, ME 04009
PRO SE

CUMBERLAND COUNTY, MAINE

represented by **JOHN J. WALL, III**

(See above for address)
ATTORNEY TO BE NOTICED

**BLETHEN MAINE NEWSPAPERS,
INC**

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

PORTLAND PRESS HERALD

represented by **JONATHAN S. PIPER**
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED