UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant	:	Civil Action No. 75-1996

MOTION TO AMEND ORDERS OF DECEMBER 1, 1981, AND JANUARY 5, 1982

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court to amend its orders of December 1, 1981, and January 5, 1982, by ruling that this action is dismissed without prejudice.

This motion is based on new evidence which makes it clear that plaintiff and the Court and Congress have all been the victims of fraudulent representations by the Federal Bureau of Investigation. This new evidence, which consists of a previously withheld memorandum by Mr. Quinlan J. Shea, Jr., former Director, Office of Information and Privacy Appeals, is attached hereto and is discussed in more detail in the Memorandum of Points and Authorities submitted herewith.

A proposed Order is also attached hereto.

Respectfully submitted,

James H. Lesar

JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Virginia 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of January, 1982, mailed a copy of the foregoing Motion to Amend Orders of December 1, 1981, and January 5, 1982, to Mr. William G. Cole, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
Plaintiff,	:	
v.	:	Civil Action No. 75-1996
U.S. DEPARTMENT OF JUSTICE,	:	
Defendant	:	

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff has long and repeatedly asserted that defendant was litigating this action in bad faith, that numerous misrepresentations had been made by defendant to him and the Court, and that defendant was engaging in tactics to drive up the cost of this litigation and grind him and his counsel down without ever conducting a search for records responsive to his request. Plaintiff has now obtained confirmation of this in the form of a memorandum by Mr. Quinlan J. Shea, Jr., formerly Director, Office of Information and Privacy Appeals, a high Justice Department official intimately familiar with the FBI's conduct in this case.

Mr. Shea's memorandum is dated March 27, 1980. A copy of it is appended hereto as Attachment 1. The memorandum was obtained by plaintiff's counsel when it was served on him at his home on the evening of January 12, 1982, as part of a Government pleading filed in Mark A. Allen v. U.S. Department of Justice, et al., Civil Action No. 81-1206, a case in which the undersigned counsel also represents the plaintiff. Counsel mailed a copy to Mr. Weisberg, who on January 15th confirmed that he had not been provided its content before, although he had previously received copies of the document from the FBI and the Civil Division with the content totally excised under an Exemption 5 claim. (A copy of one of the excised versions is found at Attachment 2.)

The Shea memorandum, written in the context of an FBI effort to rescind a fee waiver which the Justice Department had given plaintiff Harold Weisberg for King and Kennedy assassination records, thoroughly indicts the conduct of the FBI.

In his memorandum, Mr. Shea writes that he does not agree that the FBI has searched adequately for "King" records within the scope of Mr. Weisberg's FOIA requests. He adds, "In fact, I am not sure that the Bureau has ever conducted a 'search' at all, in the sense I (and, I believe, the FOIA) use that word." He further adds that he is personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed--largely because the Bureau has 'declined' to search for them."

Regarding the FBI's attempt to get the Freedom of Information Committee to approve its rescission of Weisberg's fee waiver, Mr. Shea writes that this would result in a "very real blot on the Department's escutcheon," and that "I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Abourezk Subcommittee . . . ."

The Shea revelations would justify reopening this case. They expose the horrid FBI dishonesty which has been so rampant in this case, and which has permitted the FBI to avoid its obligations under the Freedom of Information Act.

However, the FBI has succeeded in its purpose. It has withheld significant amounts of information which it would have to produce were it required to make a thorough search, and it has run an aging and ailing plaintiff and his unpaid counsel into the ground. Plaintiff and his counsel can no longer afford to fight against the FBI's disreputable tactics.

Yet others may someday be able to continue the fight to obtain King assassination records which remained withheld or unsearched for. It is important that they be able to do so without the Government being able to argue, however unjustifiably, that their efforts are precluded because this action was dismissed with prejudice. For that reason plaintiff requests that the Court amend its previous orders and order this case dismissed without prejudice.

If this Court is to maintain the respect and honor which is due it as a court of law and justice, it really has no other choice. Dismissal with prejudice under the circumstances revealed in the Shea memorandum will leave not only a blot on the FBI's eschutcheon, but an indelible stain on the honor, integrity, and fairness of this Court. It would be tantamount to the Court's sanctioning the unjustifiable conduct to which both it and plaintiff have been subjected during the course of this case.

Respectfully submitted,

James H. Lesar

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1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant	:	Civil Action No. 75-1996

O R D E R

Upon consideration of plaintiff's motion to amend the Court's orders of December 1, 1981, and January 5, 1982, defendant's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1982, hereby

ORDERED, that insofar as the Court's orders of December 1, 1981, and January 5, 1982, award summary judgment to defendant and dismiss this case with prejudice, said orders are VACATED; and it is further

ORDERED, that the Court's order of January 5, 1982, is amended by adding the words "without prejudice" to the end of the last sentence thereof, so that the last sentence reads: "ORDERED that this action be dismissed without prejudice."

_____
UNITED STATES DISTRICT JUDGE

Attachment 1 Civil Action No. 75-1996

United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

MEMORANDUM March 27, 1980

TO: Robert L. Saloschin, Director
Office of Information Law and Policy

FROM: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

I have no strong objection to placing this subject on the agenda of the Freedom of Information Committee, although I see no real need to do so. I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense I (and, I believe, the FOIA) use that word. It is confusing two totally different matters -- the scope of his requests administratively and the scope of a single lawsuit which we claim is considerably narrower than his administrative requests. Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. The Bureau has rejected -- still informally, but very emphatically -- the position I espouse (and with which you agreed in your informal comments on my earlier memorandum to you). Lastly, but very important, is the matter of the scope of the fee waiver granted to Mr. Weisberg. In my view (and as intended by me at the time it was granted), the waiver extends to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the "security investigation" on Dr. King, and about the

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Bureau's dealings with and attitudes towards its "friends" and its "critics" as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records. Although the Bureau has departed from its initial position in both the King and Kennedy cases (that the only relevant records are those filed by the FBI in the main files on those cases and/or the very principal "players"), it has done so very reluctantly and to a very limited, factual extent. I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed -- largely because the Bureau has "declined" to search for them.

It is perhaps unfortunate that Mr. Weisberg is the principal requester for King and Kennedy records. He has heaped so much vilification on the FBI and the Civil Division -- a considerable part of which has been inaccurate and some of which has been unfair -- that the processing of his efforts to obtain these records has almost become an "us" against "him" exercise. My view has always been that the two cases are too important to the recent history of this country for that attitude to have any permissible operation.

The problem I have is that, although I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Abourezk Subcommittee, I do not have the time to carry out the extensive research that would be required for me adequately to represent Mr. Weisberg's interests before the Committee, in an effort to avoid the very real blot on the Department's escutcheon which would result from the approval of the Bureau's position. Accordingly, if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions.

cc: Vincent Garvey, Esq.
Civil Division

Inspector Flanders
Federal Bureau of Investigation

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United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

MEMORANDUM March 27, 1980

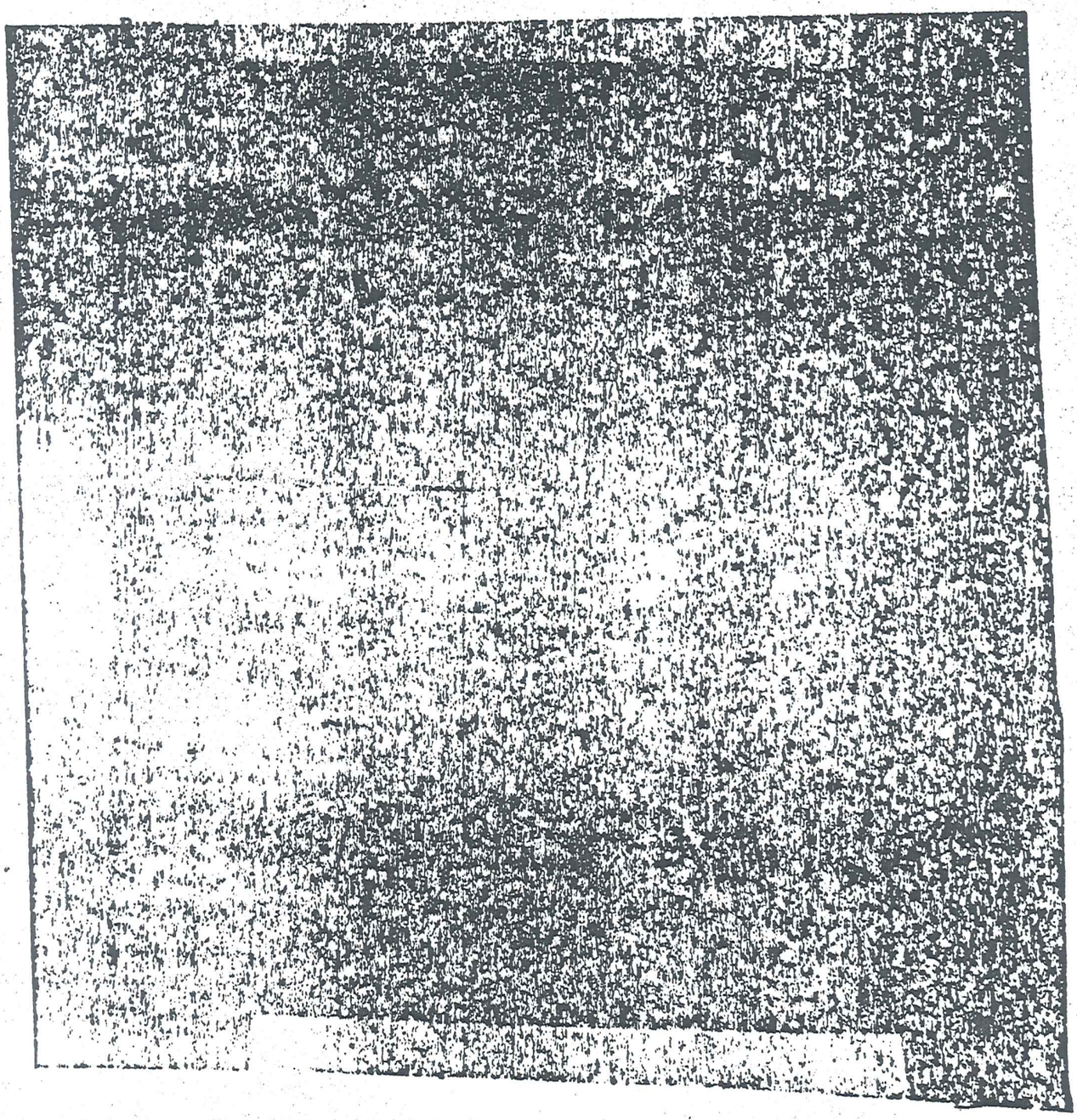
TO: Robert L. Saloschin, Director
Office of Information Law and Policy

FROM: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

[redacted]



cc: Vincent Garvey, Esq.
Civil Division

✓ Inspector Flanders
Federal Bureau of Investigation