

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JUN 22 1982

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

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

MEMORANDUM OPINION

This action is before the Court on plaintiff's motion to amend orders of December 1, 1981 and January 5, 1982 by dismissing this action "without prejudice."

The basis for this motion is a memorandum dated March 27, 1980 from Quinlan J. Shea, the former director of the Federal Bureau of Investigation's (FBI) Office of Information and Policy Appeals. Plaintiff's counsel received this memorandum in another action, Allen v. Department of Justice, No. 81-1206 (D.D.C. filed May 22, 1981). Mr. Shea wrote: "I do not agree that the FBI has searched adequately for 'King' records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the FBI has ever conducted a 'search' at all, in the sense I (and, I believe the Freedom of Information Act) use that word." Plaintiff argues that the memorandum is new evidence "which makes it clear that plaintiff and the Court and Congress have all been the victims of fraudulent misrepresentations by the FBI."

The Court disagrees with plaintiff's conclusion. Mr. Shea clearly did not share the FBI's interpretation of the scope of plaintiff's numerous administrative requests. But his comments do not indicate disagreement with the scope of

this action. Neither do they indicate that the FBI deliberately deceived plaintiff, the Court or Congress by withholding information. Mr. Shea made these comments in opposing the withdrawal of a fee waiver by the FBI for plaintiff's administrative requests under the Freedom of Information Act.

Only two specific issues relevant to this action are raised by Mr. Shea's memorandum. First, Mr. Shea refers to the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. This issue was determined by the Court in Weisberg v. Department of Justice, No. 75-1996 (D.D.C. December 1, 1981) (memorandum opinion at 4). Mr. Shea's memorandum does not shed new light on this matter. Second, Mr. Shea questions the extent to which the FBI had changed its initial position that only the main files and the files on the principal "players" were relevant to the King and Kennedy cases. The Court upheld the FBI's scope of search twice. Ibid (D.D.C. February 26, 1980) (order granting defendant partial summary judgment on the scope of search for all items responsive to plaintiff's request in FBI's headquarters Murkins file and in all files of the FBI field offices, with one exception); Ibid (D.D.C. December 1, 1981) (memorandum opinion at 3). Mr. Shea's memorandum presents no new evidence on this issue. Even if Mr. Shea is correct that numerous records exist which are relevant to the King assassination but "have not yet been located and processed," dismissal of this seven-year action without prejudice is unwarranted. If plaintiff's assertions of physical and financial inability to pursue his quest for documents on the King assassination are to be believed, there will be no res

judicata or collateral estoppel effects from the dismissal of this action. Both doctrines apply ordinarily only where the same parties or their privies bring a new action. See 1B Moore's Federal Practice ¶0.401 at 11-12 and 16-17; ¶0.412(1). The application of stare decisis will depend upon the similarity of fact situations between this action and future lawsuits. Ibid at 13. It would be highly speculative and doubtful to assume that future requests for records on the King assassination will be controlled by the precedent of this action.

In summary, plaintiff has failed to present new evidence to justify a dismissal of this action without prejudice. Even accepting Mr. Shea's memorandum of March 27, 1980 as new evidence, the absence of a future res judicata or collateral estoppel bar persuades the Court not to change the dismissal to one without prejudice. Plaintiff's motion is accordingly denied.

An appropriate order accompanies this opinion.

  
JUNE L. GREEN  
U. S. DISTRICT JUDGE

June 22, 1982

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FOR THE DISTRICT OF COLUMBIA

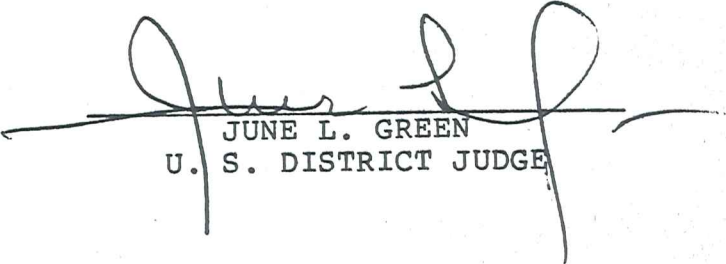
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O R D E R

Upon consideration of plaintiff's motion to amend orders of December 1, 1981 and January 5, 1982, defendant's opposition, and the entire record in this action, for the reasons expressed in the accompanying memorandum opinion, it is by the Court this 22nd day of June 1982,

ORDERED that plaintiff's motion to amend orders of December 1, 1981 and January 5, 1982 is denied.

  
JUNE L. GREEN  
U. S. DISTRICT JUDGE