

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

MEMORANDUM ADVISING THE COURT
OF RELATED CASE IN THIS DISTRICT

The defendants, by their undersigned counsel, hereby advise the Court of a related case filed in this jurisdiction for this Court's consideration as to consolidation with these actions.

On March 16, 1982, a FOIA suit was filed in this judicial district on behalf of J. Gary Shaw seeking access to certain copies of photographs contained in the FBI's files on the assassination of President Kennedy. Mr. Shaw is represented by, among others, James H. Lesar, counsel for Harold Weisberg in the instant cases. The Shaw suit was assigned to Judge Harold H. Greene. At that time, Mr. Lesar did not advise the Court, pursuant to Local Rule 3-4(c), that the records at issue in the Shaw case are totally encompassed in the instant litigation.

On May 13, 1982, counsel for the government in Shaw wrote Judge Greene, pursuant to Local Rule 3-4(c), informing him of the relation between the Shaw and Weisberg cases. (See Exhibit A attached hereto.) During a status call on that same day, Mr. Lesar acknowledged that these cases may be related.^{1/}

^{1/} Mr. Lesar also pointed out during the status conference that the Shaw request may be encompassed in a third case, Allen v. FBI, CA No. 81-0206. Counsel for the government in both Shaw and Weisberg have, as of this date, been unable to verify whether the Shaw records are at issue in Allen. However, even assuming that such overlap does exist with the Allen case, it does not affect the defendants' request that the Shaw case be transferred to this Court since the instant cases have the lower document numbers.

However, later that afternoon, Mr. Lesar wrote a letter on behalf of Mr. Weisberg to James K. Hall, Chief of the FBI's Freedom of Information/Privacy Acts Section, in which he purported to withdraw Mr. Weisberg's FOIA requests but only to the extent that they include the records sought by Mr. Shaw. (See Exhibit B attached hereto.)^{2/} Mr. Lesar so informed Judge Greene of his letter to Mr. Hall by way of a "Memorandum To The Court" dated May 14, 1982. (See Exhibit C attached hereto.)

On May 21, 1982, counsel for the government in Shaw filed a response to Mr. Lesar's memorandum to the court in which they essentially argue that Mr. Lesar's letter of May 13, 1982, is "nothing other than a clear circumvention of . . . Local Rule 3-4, the purpose of which is to foster economy and consistency in the adjudication of cases which are related by parties or subject matter by having such cases brought before the same judge." (See Exhibit D attached hereto.)

Notwithstanding Mr. Lesar's recent assertions that he did not initially know of the relation between the Shaw and Weisberg cases (see Exhibit E attached hereto), the design and effect of his May 13, 1982, letter is still one of circumvention of Local Rule 3-4. Such should be not countenanced by the Court. If it is, the potential for forum shopping, especially vis-a-vis this litigation, is great. Indeed, after four years of preparation, these cases could easily become segregated into many parts being handled by several different judges, thereby presenting the very real risk of inconsistent adjudications.

In light of these considerations, counsel for the defendants in the instant actions request that the Shaw case be transferred to this Court for further handling.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

^{2/} The defendants take exception with Mr. Lesar's inaccurate and self serving comments in that letter concerning his efforts to settle these actions and the FBI's alleged "war of attrition" against Mr. Weisberg.

Barbara L. Gordan / dl
BARBARA L. GORDAN

Henry J. LaHaie
HENRY J. LAHAIE

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

Attorneys for Defendants.

CERTIFICATE OF SERVICE

I hereby certify on this 7th day of June, 1982, I have served the foregoing Memorandum Advising The Court Of Related Case In This District by first class mail to:

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


HENRY J. LAHAIE



U.S. Department of Justice
Office of Legal Policy

Washington, D.C. 20530

May 13, 1982

Honorable Harold Greene
United States District Court
United States Courthouse
Washington, D. C. 20001

Re: J. Gary Shaw v. Federal Bureau of Investigation
Civil Action No. 82-0756

Dear Judge Greene:

Pursuant to local Rule 3-4(c), I wish to advise you that it has just come to my attention that all of the records at issue in the above-captioned lawsuit are encompassed in a case pending before Judge John Lewis Smith. The latter case is Harold Weisberg v. William Webster, et al., Civil Action Nos. 78-0322 and 78-0420 (consolidated).

Sincerely,

Miriam M. Nisbet
Attorney for Defendant

cc: Judge John Lewis Smith
James H. Lesar, Esq.

Exhibit A

JAMES H. LESAR
ATTORNEY AT LAW
1000 WILSON BLVD., SUITE 900
ARLINGTON, VIRGINIA 22209
TELEPHONE (703) 278-0404

May 13, 1982

Mr. James K. Hall, Chief
Freedom of Information/Privacy Acts
Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Re: Weisberg v. Webster, Weisberg . Federal
Bureau of Investigation, Civil
Action Nos. 78-322, 78-420 (consolidated)

Dear Mr. Hall:

As an employee of Fensterwald & Associates, for whom I work half-time, I represent the plaintiff in J. Gary Shaw v. Federal Bureau of Investigation, Civil Action No. 82-0756, a Freedom of Information Act suit in which Mr. Shaw seeks an album of photographs of participants in the "Quebec-Washington-Guantanamo Walk for Peace".

At a status call in the Shaw case this morning, I was handed a copy of a letter from defendant's counsel, Miriam Nisbet, to Judge Harold Greene advising him that it had just come to her attention that all of the records sought by Mr. Shaw in said action are encompassed in the above-captioned Weisberg case which is pending before Judge John Lewis Smith, Jr. (A copy of Ms. Nisbet's letter to Judge Greene is attached hereto.)

As you are aware, I also represent Mr. Harold Weisberg in the above-captioned FOIA suit for records of the FBI's Dallas and New Orleans field offices pertaining to the assassination of President John F. Kennedy. Because of his age, ill-health and lack of financial resources, Mr. Weisberg has sought to settle that case. The FBI, however, has refused to settle the case and instead insists on engaging in a costly and time-consuming Vaughn sampling of these voluminous files.

In offering to forego a Vaughn showing and settle this case, Mr. Weisberg has been concerned that his inability to cope with the FBI's "war of attrition" (Jaffe v. Central Intelligence Agency, 516 F. Supp. 576, 587-588 (D.D.C. 1981)) should not prejudice the rights of other FOIA requesters who may wish to litigate the status of the materials which remain withheld. Because of this concern I write to advise you that to the extent that the photographs sought by Mr. Shaw are within the purview of Mr. Weisberg's requests for Dallas and New Orleans field office records, Mr. Weisberg hereby withdraws his request for said photographs.

Exhibit B

2

Sincerely yours,

James H. Lesar

James H. Lesar

Rec'd 5/18/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 82-0756
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 :
 Defendant :

MEMORANDUM TO THE COURT

At the status call held in this case on May 13, 1982, counsel for defendant raised a question as to whether this case may be related to another case, Harold Weisberg v. William Webster, et al, Civil Action Nos. 78-0322 and 78-0420 (consolidated) because all of the records involved in this case are also encompassed in the latter. Counsel for plaintiff pointed out that the same records might also be at issue in a third case, Mark A. Allen v. Federal Bureau of Investigation, et al., Civil Action No. 81-1206.

By letters to Mr. James K. Hall, Chief, Freedom of Information/Privacy Acts Section, Records Management Division, Federal Bureau of Investigation, Washington, D.C. 20535, the plaintiffs in the other two cases have withdrawn their requests to the extent that they include the records sought by Mr. Shaw in this case. (See attached letters of May 13, 1982, from Mr. James H. Lesar, attorney for Mr. Harold Weisberg and Mr. Mark A. Allen, to Mr. Hall.)

Accordingly, the issue of whether this case is related to either or both of the other two cases is now moot.

Respectfully submitted,

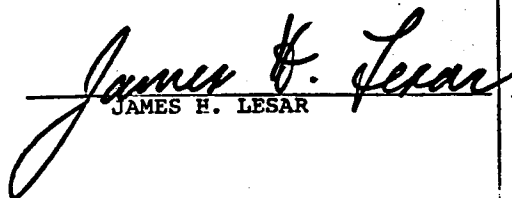
James H. Lesar
JAMES H. LESAR
 Fensterwald & Associates
 1000 Wilson Blvd., Suite 900
 Arlington, Virginia 22209
 Phone: 276-9297

Attorney for Plaintiff

Exhibit C

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of May, 1982,
mailed a copy of the foregoing Memorandum to the Court to Ms.
Miriam Nisbet, Attorney-Advisor, Office of Information and Privacy,
United States Department of Justice, 550 11th Street, N.W.,
9th Floor, Washington, D.C. 20530.


JAMES H. LESAR

JAMES H. LESAR
ATTORNEY AT LAW
1000 WILSON BLVD., SUITE 900
ARLINGTON, VIRGINIA 22209
TELEPHONE (703) 278-0404

May 13, 1982

Mr. James K. Hall, Chief
Freedom of Information/Privacy Acts
Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Re: Weisberg v. Webster, Weisberg . Fed-
eral Bureau of Investigation, Civil
Action Nos. 78-322, 78-420 (consolidated)

Dear Mr. Hall:

As an employee of Fensterwald & Associates, for whom I work half-time, I represent the plaintiff in J. Gary Shaw v. Federal Bureau of Investigation, Civil Action No. 82-0756, a Freedom of Information Act suit in which Mr. Shaw seeks an album of photographs of participants in the "Quebec-Washington-Guantanamo Walk for Peace".

At a status call in the Shaw case this morning, I was handed a copy of a letter from defendant's counsel, Miriam Nisbet, to Judge Harold Greene advising him that it had just come to her attention that all of the records sought by Mr. Shaw in said action are encompassed in the above-captioned Weisberg case which is pending before Judge John Lewis Smith, Jr. (A copy of Ms. Nisbet's letter to Judge Greene is attached hereto.)

As you are aware, I also represent Mr. Harold Weisberg in the above-captioned FOIA suit for records of the FBI's Dallas and New Orleans field offices pertaining to the assassination of President John F. Kennedy. Because of his age, ill-health and lack of financial resources, Mr. Weisberg has sought to settle that case. The FBI, however, has refused to settle the case and instead insists on engaging in a costly and time-consuming Vaughn sampling of these voluminous files.

In offering to forego a Vaughn showing and settle this case, Mr. Weisberg has been concerned that his inability to cope with the FBI's "war of attrition" (Jaffe v. Central Intelligence Agency, 516 F. Supp. 576, 587-588 (D.D.C. 1981)) should not prejudice the rights of other FOIA requesters who may wish to litigate the status of the materials which remain withheld. Because of this concern I write to advise you that to the extent that the photographs sought by Mr. Shaw are within the purview of Mr. Weisberg's requests for Dallas and New Orleans field office records, Mr. Weisberg hereby withdraws his request for said photographs.

2

Sincerely yours,

James H. Lesar

James H. Lesar

JAMES H. LESAR
ATTORNEY AT LAW
1000 WILSON BLVD., SUITE 900
ARLINGTON, VIRGINIA 22209
TELEPHONE (703) 278-0404

May 13, 1982

Mr. James K. Hall, Chief
Freedom of Information/Privacy Acts
Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Re: Allen v. Federal Bureau of Investi-
gation, et al., C.A. No. 81-1206

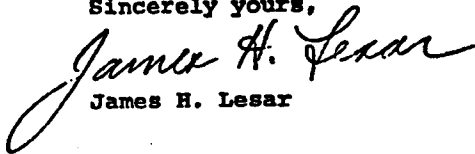
Dear Mr. Hall:

As you are aware, I represent Mr. Mark A. Allen in the above Freedom of Information Act lawsuit for records pertaining to the assassination of President John F. Kennedy which were made available to the House Select Committee on Assassinations.

This is to advise you that to the extent that Mr. Allen's FOIA requests in the captioned lawsuit include the album of photographs of participants in the Quebec-Washington-Guantanamo Walk for Peace which is attached to Warren Commission Document 729, his request for these records is hereby withdrawn.

I have been advised by Miriam Nisbet, Attorney-Adviser, Office of Information and Privacy, U.S. Department of Justice, that these six photographs are a bulky enclosure contained in FBI file No. 100-10461-1A(328).

Sincerely yours,


James H. Lesar

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 82-0756
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 :
 Defendant :
 :

DEFENDANT'S RESPONSE TO PLAINTIFF'S
MEMORANDUM TO THE COURT

Counsel for plaintiff has taken the position in his Memorandum To The Court of May 14, 1982, that the above-captioned case is not related to two other cases pending in the United States District Court for the District of Columbia: Harold Weisberg v. William Webster, et al., Civil Action Nos. 78-0322 and 78-0420 (consolidated), and Mark A. Allen v. Federal Bureau of Investigation, et al., Civil Action No. 81-1206. The bases for plaintiff's position are Mr. Lesar's letters of May 13, 1982, to the Federal Bureau of Investigation, advising that the plaintiffs in those two actions, Messrs. Weisberg and Allen, both also clients of Mr. Lesar's, abruptly "have withdrawn their [FOIA] requests to the extent that they include the records sought by Mr. Shaw in this case." Plaintiff's Memorandum To The Court at 1.

The documents which are the subject of plaintiff J. Gary Shaw's FOIA request and the subject of this lawsuit are unquestionably also encompassed in the records at issue in Weisberg v. Webster, supra, a consolidated civil action which has been pending for four years before Judge John Lewis Smith.* It

* Counsel for defendant has been unable to verify, as of this date, whether the documents at issue in this case are also at issue in Allen v. Federal Bureau of Investigation, supra. However, Mr. Lesar advised the Court at the status hearing held in this case on May 13, 1982, that this might be so.

Exhibit D

was this fact which led counsel for defendant, pursuant to Local Rule 3-4(c), to advise the Court on May 12, 1982, that this civil action was related to the consolidated Weisberg civil action.** According to the express requirement of Local Rule 3-4, this is an obligation that plaintiff's counsel, particularly as he is also counsel for the plaintiffs in the related cases, should have discharged at the time of the filing of this lawsuit. See Local Rule 3-4(b)(2).

Defendant respectfully submits that the position now taken by plaintiff should not be sustained. While plaintiffs Weisberg and Allen may freely limit the scope of their requests under the Freedom of Information Act (and thereby purport to limit the scope of the lawsuits on the records responsive to those requests), defendant questions whether Mr. Lesar's mere notification of this fact to the FBI is sufficient to do so, especially where, as here, such action appears plainly calculated to remove the records in question from the jurisdiction of Judge Smith. Such action can be viewed as nothing other than a clear circumvention of both the letter and the spirit of Local Rule 3-4, the purpose of which is to foster economy and consistency in the adjudication of cases which are related by parties or subject matter by having such cases brought before the same judge.

Plaintiff's counsel, having failed in his duty to notify the Court of the relation between these pending cases at the outset of this action (a step which, by operation of Local Rule 3-4, would have automatically placed this case in the docket of the judge with the lower numbered related case), should not be permitted to achieve a different result through later steps taken by his clients. Such a result could open the door to

** Counsel for defendant learned of the relation between the cases only late in the day on May 11, 1982.

direct violations of Local Rule 3-4 through manipulations readily possible in FOIA cases. Indeed, if the course of conduct followed by plaintiff and his counsel in this case were to be permitted, any FOIA plaintiff dissatisfied with the progress of his lawsuit before a particular judge could arrange for another forum for his claim almost at will.


Accordingly, in the interests of the full and fair adjudication of litigation, and to fulfill the mandate of Local Rule 3-4, defendant submits that this action should be referred consideration by Judge John Lewis Smith.

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

Dated: May 21, 1982


MIRIAM M. NISBET
Attorney-Advisor
Office of Information and Privacy
United States Department of Justice
550 11th Street, N.W., 9th Floor
Washington, D.C. 20530
202/724-7400

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Defendant's Response To Plaintiff's Memorandum To The Court was served upon plaintiff by deposit of a copy thereof in the U.S. mail, postage prepaid, first class mail, addressed to:

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

on this 21st day of May 1982.



DANIEL J. METCALFE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW,)
)
 Plaintiff,)
)
 v.) Civil Action No. 82-0756
)
 FEDERAL BUREAU OF INVESTIGATION,)
)
 Defendant.)
)
)

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE
TO PLAINTIFF'S MEMORANDUM TO THE COURT

In its Response to Plaintiff's Memorandum to the Court, defendant asserts that "(t)he documents which are the subject of plaintiff J. Gary Shaw's FOIA request and . . . of this lawsuit are unquestionably also encompassed in the records at issue" in Weisberg v. Webster and Weisberg v. Federal Bureau of Investigation, Civil Actions 78-0322 and 78-0420.^{1/} Inasmuch as Mr. Weisberg has withdrawn his request insofar as it pertains to the records sought by Mr. Shaw, this is incorrect.

^{1/} These two actions were originally assigned to Judge Louis Oberdorfer and Judge Aubrey Robinson, respectively. On April 4, 1978, defendants' counsel, Mr. Daniel Metcalfe, wrote a letter to the Clerk of the Court suggesting that there was a "sufficient relationship" between the two cases that the later-numbered case should be transferred (to Judge Oberdorfer). Two hours prior to a scheduled April 6, 1978, status call in Civil Action No. 78-0322, Judge Oberdorfer recused himself. The same day Judge Oberdorfer also recused himself in Weisberg v. Kelley, Civil Action No. 78-0249. All three cases were then assigned to Judge John Lewis Smith, apparently on the erroneous supposition that they were related. However, Weisberg was never notified that this was the basis for reassigning Civil Actions 78-0322 and 78-0420 to Judge Smith. A year later when Weisberg's counsel was alerted to check the records on these cases maintained in the District Court file room, he discovered a Notice of Assignment form in the jacket which he had never received.

Exhibit E

Defendant next accuses plaintiff's counsel of having violated the requirements of Local Rule 3-4 by failing to note that this case is related to Weisberg, supra. This reckless charge of misconduct on the part of plaintiff's counsel is utterly without basis. At the time the instant lawsuit was filed, plaintiff's counsel did not in fact know that the records sought by Mr. Shaw were at issue in the Weisberg case. See attached Affidavit of James H. Lesar. Counsel for defendant should have known that there was no basis for the charge they have hurled against plaintiff's counsel, since they purport not to have learned of the related cases until nearly two months after the filing of the Shaw complaint. Yet it is their client who has the documents and the duty to locate them. If they and the FBI did not know of the relatedness of the cases until the day before the status call, how could they expect plaintiff's counsel to know sooner?

From the foregoing alone it is apparent that defendant's position relies on a false premise and must therefore be rejected.

Defendant's other arguments are equally without merit. Although defendant concedes that Messrs. Allen and Weisberg may freely limit the scope of their requests under the Freedom of Information, it "questions whether Mr. Lesar's mere notification of this fact to the FBI is sufficient to do so" No authority for this anomalous proposition is cited, nor does defendant state what action it would consider "sufficient" to effect a withdrawal of a FOIA request. The claim that this action is "circumventing the letter and the letter and spirit of Local Rule 3-4, the purpose of which is to foster economy and consistency in the adjudication of cases which are related by parties or subject matter" is untenable. First, there is no economy whatsoever to be gained by consolidating this case with another which is so gargantuan as to be unmanageable and which has been pending in District Court for over four years. The merger of this case with the Weisberg case would be certain to have the effect of delaying a determination of the releasability of the album of photographs sought by Mr. Shaw. Thus, merger would violate both the spirit and the letter of FOIA's emphasis on the right to speedy access

to disclosable information.

Second, inasmuch as the records sought here are no longer at issue in the Weisberg case, there is no danger of inconsistent adjudications.

The circumstances suggest that defendant desires very much to have this case transferred to Judge Smith, and that in order to achieve this result it has not only made baseless charges against plaintiff's counsel, but that it may well have contrived to achieve this result by calling the issue to the attention of the Court at the last-possible moment and without advance notice to counsel for plaintiff. The statement that defendant's counsel did not learn of the relation between this case and the Weisberg case until two days before the status call^{2/} is beside the point. The relevant date is when the FBI learned of it. It seems highly unlikely, if not indeed impossible, that the FBI did not learn that the same records were involved in both cases until nearly two months after the Shaw suit was filed.

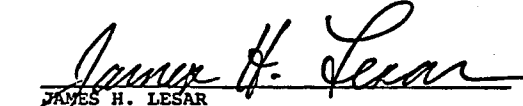
It also should be pointed out that the same day he filed this lawsuit, Shaw filed two others. Civil Action No. 82-0755, Shaw v. Federal Bureau of Investigation, was assigned to Judge William B. Bryant; Civil Action No. 82-0757, Shaw v. Central Intelligence Agency, was assigned to Judge John Lewis Smith. Both cases involve requests for each agency's copies of "six photographs of six persons one of which could be Oswald" which the FBI brought to Dallas, as well as for the identities of the six persons if they were ever determined. The counsel for defendants in both these cases is the same as counsel for defendant in this case. Despite the passage of more than two months, defendants' counsel has made no suggestion that the case assigned to Judge Smith be transferred to Judge Bryant, who has the lower-numbered case.

^{2/} The date given by defendant is apparently in error. See attached Affidavit of James H. Lesar. paragraph 7.

CONCLUSION

The issue of whether this case should be transferred to Judge John Lewis Smith because the Weisberg case encompassed the same records sought here is now moot because Mr. Weisberg has withdrawn his FOIA request for such records. Defendant's charge that plaintiff's counsel knew of the relatedness of the cases at the time he filed them is simply untrue. Moreover, the circumstances suggest that defendant is unhappy with the luck of the draw in this particular case and is therefore trying to get the case changed. For these reasons, the case should not be transferred.

Respectfully submitted,

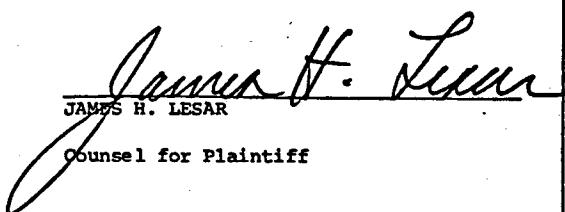

JAMES H. LESAR
Fensterwald & Associates
1000 Wilson Boulevard, Suite 900
Arlington, Virginia 22209
703-276-9297

Counsel for Plaintiff

Dated: May 26, 1982

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Reply to Defendant's Response to Plaintiff's Memorandum to the Court was mailed this 27th day of May, 1982, to Ms. Miriam M. Nisbet, Office of Information and Privacy, United States Department of Justice, 550 11th Street, N.W., 9th Floor, Washington, D.C. 20530.


JAMES H. LESAR

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 82-0756
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 :
 Defendant :

AFFIDAVIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and say as follows:

1. I am counsel for the plaintiff in the above-entitled case.
2. I have read Defendant's Response to Plaintiff's Memorandum to the Court.
3. Defendant charges that at the time this case was filed plaintiff's counsel failed in his duty to notify the Court of the relationship between this case and the consolidated case of Weisberg v. Webster, et al., Civil Action No. 78-0322, and Weisberg v. Federal Bureau of Investigation, et al., Civil Action No. 78-0420 (hereafter referred to as "the Weisberg case").
4. I filed this lawsuit on March 26, 1982. At the time I filed it, I was unaware that the documents sought by Mr. Shaw were at issue in any other lawsuit. I did not draft the complaint in this lawsuit, nor did I consult with either Mr. Bernard Fensterwald, Jr., the attorney who did draft the complaint, or Mr. Shaw.
5. Had I done so, I still would not have known that the records sought by Mr. Shaw in this case were also at issue in the Weisberg case. Although this suit involves only a single album of photographs attached to Warren Commission Document 729, the Weisberg case involves more than a hundred thousand pages of

records in the FBI's Dallas and New Orleans field offices. Had I given any thought to where this album might be filed, which I did not, I probably would have concluded that it would be in the FBI's Headquarters files. The basis for this would have been my knowledge that when an FOIA request is submitted to FBI Headquarters for records which are contained in field offices files, the FBI invariably tells the requester that he must submit a new request to the FBI field office (without informing him which FBI field office has the records he wants). In this case Shaw was not told that the album of photographs was in a field office file, hence I might well have concluded that they were in a Headquarters file.

6. I first learned that the album of photographs sought in this case might also be at issue in the Weisberg case when I arrived at the Courthouse on May 13, 1982, just minutes prior to the status call held in this case on that date. At that time I was handed a copy of a letter from Ms. Miriam Nisbet, counsel for defendant, to Judge Harold Greene. In her May 13, 1982, letter Ms. Nisbet asserted that it had just come to her attention that all of the records in the instant Shaw case were encompassed in the Weisberg case. I was somewhat surprised to be confronted with this issue on such short notice, since I had called Ms. Nisbet late in the afternoon of the preceding day, May 12th, to inquire what defendant's position was with respect to the continued withholding of this album of photographs, and at that time she did not indicate any intention to raise the "related case" issue at the status call the next day. However, when she handed me her May 13th letter just prior to the status call, she informed me that she had tried to reach me at my office after our conversation to tell me of this, but I had left already.

7. I note that the facts set forth in the preceding paragraph are not consistent with some of the facts recited in defen-

dant's Response to Plaintiff's Memorandum to the Court. For example, the Response asserts in a footnote on page two that "Counsel for defendant learned of the relation between the cases only late in the day on May 11, 1982." If this is true, then Ms. Nisbet's remarks to me prior to the status call on May 13th were false. I make no such accusation, however. I assume the date given in the Response is either a typographical error or the mistake of Mr. Daniel Metcalfe, the attorney who signed the pleading in Ms. Nisbet's name. In this regard, I note that the Response also gives what appears to be an incorrect date when it states that on May 12, 1982, counsel for defendant advised the Court that this case was related to the Weisberg case. The date on the copy of the letter given to plaintiff's counsel is May 13, 1982, not May 12, 1982. (Plaintiff's copy of Ms. Nisbet's letter is attached to his Memorandum to the Court.)

8. Mr. Weisberg and Mr. Shaw have not been in contact with each other regarding the records which Mr. Shaw seeks in this action, either directly or indirectly. Consolidation of this case with the Weisberg case would not foster judicial efficiency and would seriously damage Mr. Shaw's right under the Freedom of Information Act to seek a speedy determination of the releasability of the records he wants. Although the Weisberg case has been pending for four years, in my judgment it is at least several months away from resolution in the District Court, and the FBI's refusal to settle the case and its insistence upon undertaking a costly Vaughn sampling make an appeal inevitable.

9. In this regard, I note that the whole history of the FBI's conduct in response to requests for information pertaining to the assassination of President Kennedy has been absolutely in contradiction to the spirit and meaning of the Freedom of Information Act. Although Warren Commission critics have been trying to

secure the release of all records pertaining to the Kennedy assassination for the past 15 years, thousands of pages remain withheld. Indeed, a recent memorandum by Mr. Quinlan J. Shea, Jr., formerly Director of the Office of Privacy and Information Appeals, states:

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.

In the same memorandum Mr. Shea also stated that the FBI's attempt to revoke Mr. Weisberg's fee waiver for copies of King and Kennedy assassination records "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 Aboureszk Subcommittee" (The full text of Mr. Shea's memorandum is attached hereto as Exhibit 1. This copy was obtained when the Department of Justice placed in the record, perhaps inadvertently, in Allen v. Department of Justice, Civil Action No. 81-1206. The almost totally expurgated copy released to Mr. Weisberg by the FBI in response to a Freedom of Information Act request is attached hereto as Exhibit 2.) Given this background, which is but the tip of the iceberg, any attempt by the FBI to shunt a case from one judge to another on the pretext of "judicial economy" should be viewed with greatest skepticism, and particularly so when made at the last possible moment before the first status call in the case for which a transfer is sought.


 JAMES H. LESAR

ARLINGTON COUNTY, VIRGINIA

Subscribed and sworn to before me this 25th day of May, 1982.

J. H. Kilgus
NOTARY PUBLIC IN AND FOR THE
STATE OF VIRGINIA

My commission expires 9/30/85



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: *QJA* Quinlan J. Shea, Jr., Director
QJA 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 us 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 Aboureszk 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 Loefer, 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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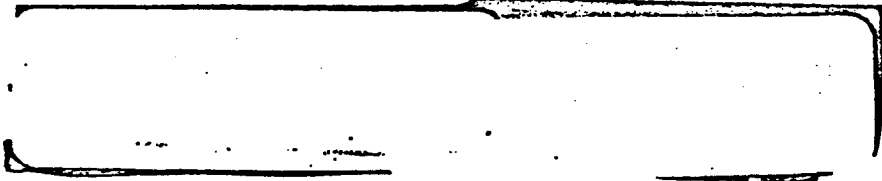
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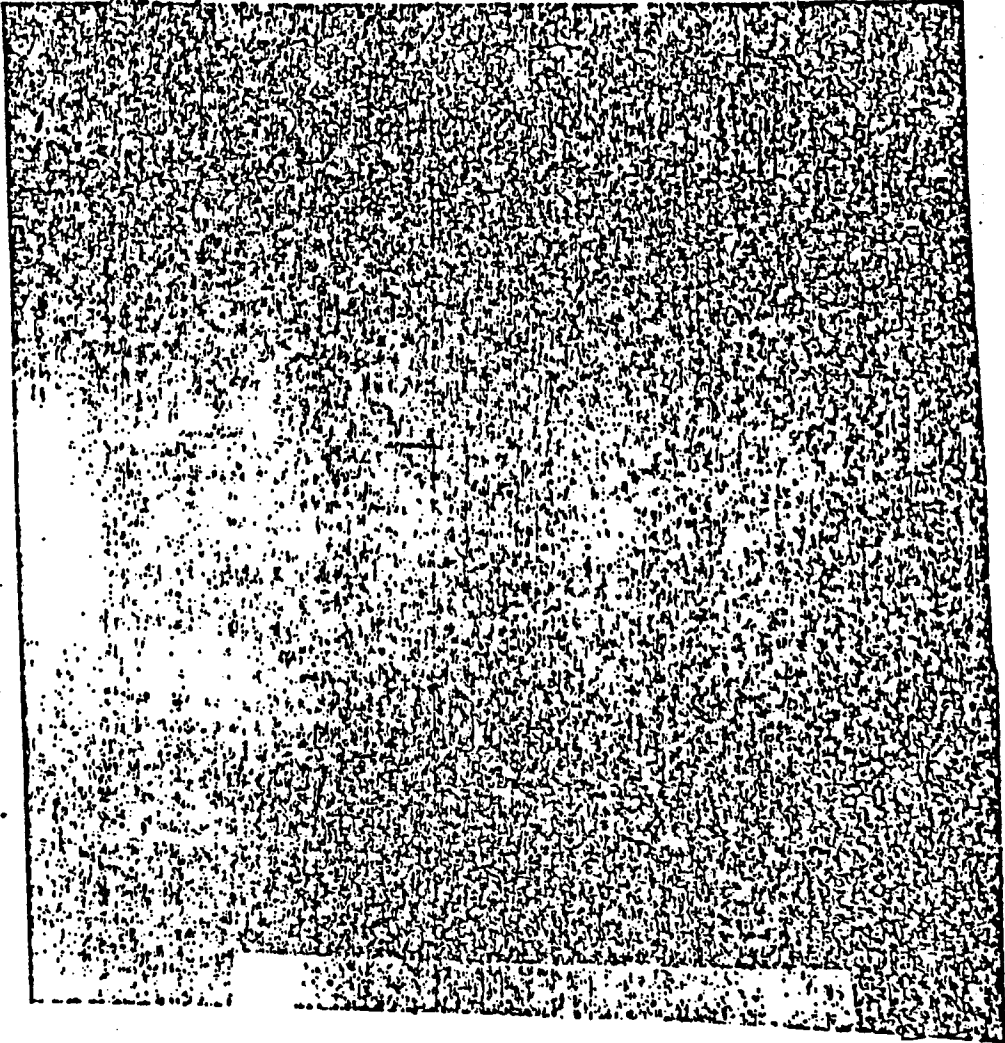
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✓ Inspector Flanders
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