

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JUN 21 1982

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| HAROLD WEISBERG, | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | JAMES F. DAVEY, Clerk |
| | : | Civil Action No. 78-0322 |
| | : | |
| WILLIAM H. WEBSTER, ET AL., | : | |
| | : | |
| and | : | |
| | : | |
| FEDERAL BUREAU OF INVESTIGATION, | : | Civil Action No. 78-0420 |
| ET AL., | : | |
| | : | (Consolidated) |
| Defendants | : | |

PLAINTIFF'S RESPONSE TO DEFENDANTS' MEMORANDUM
ADVISING THE COURT OF RELATED CASE IN THIS DISTRICT

Defendants have filed a memorandum advising this Court of the existence of what they contend is a related case, J. Gary Shaw v. Federal Bureau of Investigation, Civil Action No. 82-0756. However, it is apparent from the papers attached to defendants' memorandum that the Shaw case cannot now be said to be related to this consolidated action for the simple reason that Mr. Weisberg has withdrawn his Freedom of Information Act request insofar as it pertains to the records sought by Mr. Shaw in Civil Action No. 82-0756.

On May 13, 1982, the date of the first status hearing in the Shaw case, counsel for the FBI made an 11th hour attempt to have Judge Harold Greene, to whom the Shaw is assigned, transfer it to this Court. Although counsel for the FBI claimed only to have learned the night before that the photographs at issue in the Shaw case were also at issue in this case, she subsequently filed a memorandum in that case accusing the undersigned attorney of having failed his obligation to advise the court at the time the case was filed that it was related to this case. That this reckless accusation was utterly without basis is shown by the affidavit which the undersigned counsel executed and filed in the Shaw case. That af-

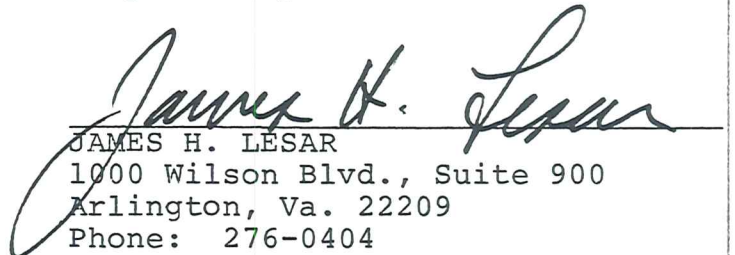
fidavit states: (1) that the undersigned counsel did not know at the time he filed the Shaw case that the album of photographs sought in it was also at issue in Civil Action No. 78-0322, Mr. Weisberg's suit for the FBI's Dallas Field Office files on the assassination of President Kennedy; and (2) that had the undersigned counsel contemplated whether the records sought by Shaw might also be at issue in this case, he probably would have concluded on the basis of the available evidence that they would be, that the photographs would be located not in Dallas but in Headquarters files. (See Lesar Affidavit, ¶¶3-6, a copy of which is attached to Defendants' Memorandum Advising the Court of Related Case in This District.)

Counsel for the FBI have now brought their contentions concerning this issue to the attention of two different courts. Several factors suggest that this display of zeal is founded in judge-shopping rather than adherence to principle and Local Rule 3-4(c). These include: (1) the making of reckless and untrue accusations against the undersigned to the effect that he should have noted the Shaw case as related to this one at the time he filed the former, when in fact the FBI, which already has the documents and thus the means (as well as the obligation) of determining which actions they are related to purportedly did not know this fact until nearly two months after the Shaw case was filed; (2) the 11th hour nature of the attempt to shunt the Shaw case from Judge Greene to this Court; (3) presenting the matter to this Court after having first presented it to Judge Greene without success; (4) persisting in trying to get the Shaw case transferred even after Weisberg's withdrawal of his request for the same records mooted the issue and eliminated the possibility "inconsistent adjudications" cited by defendants; and (5) failure to act consistently with the principle they proclaim by seeking transfer of Shaw v. Central Intelligence, Civil Action No. 82-0757, from this Court to Judge William B. Bryant, who has the case of Shaw v. Federal Bureau of Investigation,

Civil Action No. 82-0755. (For further details on this, see page 3 of Plaintiff's Reply to Defendants' Response to Plaintiff's Memorandum to the Court filed in Shaw v. FBI, Civil Action No. 82-0756, a copy of which is appended to Defendants' Memorandum Advising the Court of Related Case in This District.)

Given the facts and circumstances set forth above, no action regarding this matter should be taken by this Court. If any decision is required, it should be made by Judge Harold Greene, the judge to whom counsel for the FBI first directed their efforts. If, however, this Court does determine that some action by it is warranted, it should not seek the transfer of the Shaw case. The Shaw case is no longer related to this case in any way; there was no intention on the part of the undersigned counsel to thwart Local Rule 3-4(c), and the policies sought to be promoted by this Rule (judicial economy and avoidance of inconsistent rulings) will not be advanced one whit. Moreover, such a transfer would reward what appears to be a blatant example of judge-shopping.

Respectfully submitted,


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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of June, 1982, mailed a copy of the foregoing Plaintiff's Response to Defendants' Memorandum Advising the Court of Related Case in This District to Mr. Henry LaHaie, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.


 JAMES H. LESAR