

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

CIVIL ACTION NO.

DEPARTMENT OF Justice,
et al.

77-0692

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION UNDER VAUGHN V. ROSEN TO REQUIRE
DETAILED JUSTIFICATION, ITEMIZATION AND
INDEXING WITHIN THIRTY DAYS

Defendants and their counsel have recently been engaged in lengthy and time-consuming discussions with plaintiff and Mr. Harold Weisberg, whom plaintiff represents in other related pending Freedom of Information Act litigation in an attempt to resolve many outstanding issues of disagreement among these parties. On November 21, 1977, during a conference in Judge June Green's chambers, the Court determined that the next stage of activity in matters pending before her in Harold Weisberg v. U.S. Department of Justice, Civil Action No. 75-1996 (D. D.C.), would be for Mr. Weisberg to produce a list of specific deletions he contests in 45,000 pages of FBI documents previously released to him. This determination effectively ended the negotiation which had been taking place which had, inter alia, concerned narrowing the disagreement among

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parties as to the Government's invocation of Exemption 7(C) in the Weisberg case and in the present action. Had there been a narrowing of these issues, the preparation of the index in the present matter would have been significantly effected.

Defendants have undertaken to produce a detailed index and list of justifications for their withholding in the present case. However, because of the fact that the documents in the custody of the Office of Professional Responsibility are in large part based on highly sensitive FBI documents which need to be reviewed by the FBI, and many of the underlying FBI documents may be duplicates of documents which Judge John Lewis Smith has ordered placed under seal in the National Archives (see Beckwith Affidavit, paras. 7 and 8), it is not possible for defendants to complete preparation of the index and justification in the thirtyday period which plaintiff seeks. Defendants believe the task can be completed in sixty days.

Respectfully submitted,

Barbara Allen Babcock
BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

Linne K. Zusan
LINNE K. ZUSMAN
Attorney, Department of Justice
Washington, D. C. 20530
Tel: 739-2617

Attorney for Defendants

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

CIVIL ACTION NO.

DEPARTMENT OF Justice,
et al.

77-0692

Defendants.

ORDER

This matter having come before the Court on Plaintiff's Motion under Vaughn v. Rosen to Require Detailed Justification, Itemization and Indexing, and upon consideration of Defendants' Opposition and the Affidavit of Horace Beckwith submitted herewith, it is this ___ day of _____, 1977

ORDERED, that plaintiff's motion should be, and hereby is, denied, and

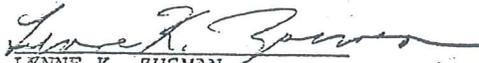
FURTHER ORDERED, that defendants file with the Court and serve upon plaintiff no later than sixty days from this date, a detailed index and justification of documents withheld which are the subject of plaintiff's pending Vaughn v. Rosen motion.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of
December, 1977 served a copy of the foregoing Memorandum
and supporting papers, postage prepaid, upon:

James H. Lesar, Esquire
1231 4th Street, S.W.
Washington, D. C. 20024


LYNNE K. ZUSMAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff

Civil Action No.
77-0692

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants

AFFIDAVIT OF HORACE P. BECKWITH

I, Horace P. Beckwith, being duly sworn, depose
and say as follows:

(1) I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) assigned in a supervisory capacity as a Unit Chief in the Freedom of Information-Privacy Acts (FOIPA) Branch of the Records Management Division at FBI Headquarters (FBIHQ), Washington, D. C. I have been in this capacity for the past eleven months. Prior to this time, I was engaged in investigative work both at FBIHQ and various field offices for approximately 16 years. In connection with my responsibilities as an FOIPA Unit Chief, I supervise the activities of three SA Supervisors, 26 Research Analysts, and two clerical personnel. The following statement is made upon personal knowledge and information made available to me in my official capacity as a Unit Chief of the FBI.

(2) I, and other representatives of the FBI, have had contact with plaintiff in connection with his representation of Mr. Harold Weisberg in the matter styled Harold Weisberg v. U. S. Department of Justice (U.S.D.C., D.C.) Civil Action No. 75-1996. This action involves material requested by Mr. Weisberg from the FBI and other components of the Justice Department under the Freedom of Information Act (FOIA) pertaining to the assassination of Dr. Martin Luther King, Jr.

(3) During conferences and negotiations with plaintiff and attorneys for the Department of Justice (DOJ) involved in Mr. Weisberg's civil action, I learned that plaintiff, on behalf of himself, has also filed a civil action under the FOI Act for material pertaining to Dr. King's assassination. Plaintiff's FOIA request was not for FBI documents, but was directed to the Civil Rights Division, DOJ, and the Office of Professional Responsibility (OPR), DOJ.

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OPR?*

(4) On November 29, 1977, the OPR contacted the FOIPA Branch of the FBI and requested assistance in complying with plaintiff's request. Plaintiff's request was for the appendices to the "Report of the Department of Justice Task Force to Review the F.B.I. Martin Luther King, Jr. Security and Assassination Investigations."

At the request of OPR the FBI had maintained custody of 12 volumes of Appendix C of the Task Force material.

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The FBI was asked to store this material because it contained classified information up to and including "Top Secret" material. OPR requested that the FBI review the material in its custody before it was released to plaintiff.

(5) The 12 volumes of Appendix C, referred to above as in the custody of the FBI, consist of brief one or two sentence summaries of FBI and DOJ documents reviewed by the Task Force. These summaries refer specifically to documents in FBI files. The volumes in Appendix C which pertain to the FBI's assassination investigation will match previously released documents in connection with Mr. Weisberg's request. The FBI has released approximately 45,000 pages of material on the assassination to Mr. Weisberg. The remaining summary statements in Appendix C match documents which relate to the FBI security investigation of Dr. King, associates of Dr. King, and organizations affiliated with Dr. King. The original FBI documents in this category have not been processed under the FOIA although they are also the subject of a request by Mr. Weisberg and have been discussed with the plaintiff.

what does this mean?

not accurate

"certain information" from that decision, under "order" in ExA, is limited to type stop. This time was not required by that decision.

(6) The volumes of Appendix C in custody of the FBI have recently been reviewed for classified material and the current classification of certain portions of the material is deemed warranted.

(7) The processing of FBI documents pertaining to the security investigation of Dr. King, certain of his associates, and organizations affiliated with Dr. King (see paragraph 5 above) has been delayed because of a court order in the cases entitled Bernard S. Lee v. Clarence M. Kelley, et al., (U.S.D.C., D.C.) Civil Action No. 76-1185 and Southern Christian Leadership Conference v. Clarence M. Kelley, et al., (U.S.D.C., D.C.) Civil Action No. 76-1186. This order filed January 31, 1977, required the FBI to purge its files of certain information pertaining to Dr. King. The amount of information to be purged was extensive and the burden of complying with the court order required the Government to request two 90 day extensions of the original 90 day court deadline. To date the FBI has sent more than 3,300 documents to the National Archives to be sealed for 50 years pursuant to the court order of January 31, 1977. The document count does not include numerous tapes, transcripts, and logs which were also submitted to the National Archives pursuant to the court order.

are these really
the records in
question? They
are not those
of his 45 as it
relates to my
request.

(A copy of the above court order filed 1/31/77 is attached hereto as Exhibit A)

12/1/77

Not done in 10 months & will court order? Request order to do by 1/15/78

(8) The eleven volumes of Appendix C of the Task Force Report contain summaries of documents the originals of which were deemed to have come under the above court order and are now sealed in the National Archives. A review must be conducted of these Appendix C summaries to determine if any portion of the summaries is covered by the court order before their contents can be released.

(9) When the considerations of the above court order are completed, the volumes of Appendix C in the custody of the FBI will be processed according to the FOIPA. The material in the Appendix C which pertains to the assassination investigation will be given priority consideration in the processing for release. Under this priority approach plaintiff will receive the summaries which can be matched with previously released documents before he receives summaries which may be difficult to interpret because the original documents have not yet been released (see paragraph 5 above).

Horace P. Beckwith
HORACE P. BECKWITH
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 1st day of December, 1977.

Michael M. Lester
Notary Public

My Commission expires My Commission Expires September 14, 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 31 1977

BERNARD S. LEE,

Plaintiff

JAMES F. DAVEY, Clerk
Civil Action

No. 76 - 1185

CLARENCE M. KELLEY, et al.,

Defendants

SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE,

Plaintiff

Civil Action

No. 76 - 1186

CLARENCE M. KELLEY, et al.,

Defendants

MEMORANDUM OPINION AND ORDER

Bernard Lee, former assistant to Dr. Martin Luther King, and the Southern Christian Leadership Conference (SCLC), headed by Dr. King until his death in 1968, are suing Clarence Kelley, Cartha DeLoach, William Sullivan, John Mohr (executor of the estate of Clyde Tolson), and two unknown (and unserved) FBI agents for violation of rights guaranteed them under the First, Fourth, and Fifth Amendments to the Constitution of the United States. Specifically, Lee alleges that defendants surreptitiously tape-recorded his conversations in a room at the Willard Hotel in 1963 and that a copy of the tape was sent to Mrs. King in 1964. He further contends that other of his conversations have unlawfully been recorded since that time,

EXHIBIT A

including some after the enactment, in 1968, of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§2510-2520. SCLC complains that, "beginning in 1963 and ending in the Fall of 1968", defendants eavesdropped on the conversations of the organization's employees. It too contends that recordings of these conversations have been made available to the news media and others outside the FBI. Both plaintiffs seek money damages and request that all records of the monitored conversations be destroyed or impounded.

Defendants' Motions to Dismiss, now before the Court, raise several substantial defenses. However, in view of the fact that the Court now finds the damage claims to be barred by the statute of limitations, consideration of the other defenses is pretermitted.

When suing either under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), or under Title III, plaintiffs are governed by the most analogous statute of limitations of the state in which the Court sits. Holmberg v. Armbrrecht, 327 U.S. 392, 395 (1946); Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975); Ernst & Ernst v. Hochfelder, 44 U.S.L.W. 4451-4459n.29 (1976); Forrestal Village, Inc. v. Graham, No. 76-1314 (D.C.Cir. January 13, 1977). In this case, the three-year District of Columbia statute controls. Pub.L. 89-241, 77 Stat. 509, 12 D.C. Code §301(8). The statute began to run when plaintiffs actually discovered, or in the exercise of due diligence should have discovered, the operative facts of the cause of action. See Lewis v. Denison, 2 App.D.C.

387 (1894); Holmberg v. Armbrecht, supra.

Starting in the mid-1960s and reaching a peak in 1968 and 1969, at the time of former Attorney General Robert Kennedy's campaign for the Presidency and thereafter, the nation's leading newspapers were rife with accounts of buggings of Dr. King. See Exhibit A to Federal Defendants' Motion to Dismiss. Under these circumstances, plaintiffs' avowal that they had no knowledge of the source of the tapes until the 1975 report by the Senate Select Committee on the FBI is not well taken. Accordingly, the motions to dismiss the amended complaints are granted.

With reference to the custody of the intercepted conversations, an inventory of all such records shall be presented to the Court, and the records themselves shall be turned over, under seal, to the Archivist of the United States. See 44 U.S.C. §2101 et seq.

Therefore, it is by the Court this 3/2nd day of January 1977.

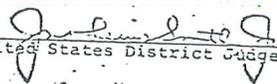
ORDERED that the Motions by defendants Clarence M. Kelley, Cartha DeLoach, William C. Sullivan and John P. Mohr to dismiss the Amended Complaints be, and the same hereby are, granted; and it is further

ORDERED that, within ninety (90) days of the date of the entry of this Order, the Federal Bureau of Investigation shall assemble at its headquarters in Washington, D.C., all known copies of the recorded tapes, and transcripts thereof, resulting from the FBI's microphonic surveillance, between 1963 and 1968, of the plaintiffs' former president, Martin

Luther King, Jr.; and all known copies of the tapes, transcripts and logs resulting from the FBI's telephone wire-tapping, between 1963 and 1968, of the plaintiffs' offices in Atlanta, Georgia and New York, New York, the home of Martin Luther King, Jr., and places of public accommodation occupied by Martin Luther King, Jr.; and it is further

ORDERED that at the expiration of the said ninety (90) day period, the Federal Bureau of Investigation shall deliver to this Court under seal an inventory of said tapes and documents and shall deliver said tapes and documents to the custody of the National Archives and Records Service, to be maintained by the Archivist of the United States under seal for a period of fifty (50) years; and it is further

ORDERED that the Archivist of the United States shall take such actions as are necessary to the preservation of said tapes and documents but shall not disclose the tapes or documents, or their contents, except pursuant to a specific Order from a court of competent jurisdiction requiring disclosure.


United States District Judge