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United States District Court, N.D. Illinois, Eastern
Division.

ALLIANCE TO END REPRESSION, et al.,
Plaintiffs,
v.
CHICAGO CISPES, et al., Defendants.

No. 74 C 3268. | June 25, 1991.

Opinion

MEMORANDUM OPINION AND ORDER

ANN C. WILLIAMS, District Judge.

*1 On February 4, 1991, Magistrate Judge Lefkow issued an order denying the respondent FBI's motion to strike certain exhibits offered in support of plaintiff CISPES's motion for summary judgment. For the foregoing reasons, the court affirms the Magistrate Judge's order.

The Brady Affidavit

Respondent FBI moved to strike the affidavit of CISPES member Sheila Brady. The FBI contends that Brady's mere membership in CISPES since a certain date does not make her competent to testify as to how long CISPES has resided in Chicago. The FBI contends that in light of the Supreme Court's ruling in *Lujan v. National Wildlife Federation*, 110 S.Ct. 3177 (1990), the affidavit is not admissible. This court disagrees.

First, *Lujan* was a fairly fact specific case. The Court found that given the amount and type of evidence contained in the affidavits at issue, the affidavits were not strong enough to defeat the defendant's motion for summary judgment. In the instant case, the evidence presented in Ms. Brady's affidavit indicates that she is competent to testify about how long CISPES has resided in Chicago. In her affidavit, Ms. Brady stated that she had been a member of Chicago CISPES since 1980. Further, in her supplemental affidavit, dated December, 1989, Ms. Brady explained that she has been a member of CISPES since no later than the summer of 1980, and that CISPES has been located at 3411 West Diversy since that date. Ms. Brady stated that throughout the period of her membership she has visited the CISPES office, received publications and literature from Chicago CISPES, and has

telephoned Chicago CISPES.

Rule 56(e) states that affidavits offered in support of a motion for summary judgment "shall be made with personal knowledge, shall set forth facts such as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." The court finds that the facts presented are enough to establish Ms. Brady's personal knowledge that CISPES has resided in Chicago since the summer of 1980, and that the affidavit should not be stricken.

Further, since the court finds that the affidavit should not be stricken, we need not consider the FBI's argument for reconsideration of the court's February 20, 1990, ruling denying the FBI's motion for summary judgment.

The 1976 Senate Report

The FBI moved to strike petitioner's Exhibits H and I, which are extracts from Book II of the *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the United States Senate*, S.Rep. No. 94-775, 94th Cong., 2d Sess. (1976). The FBI argues that the exhibits are irrelevant to the present proceedings because the report was issued seven years before the CISPES investigation and does not refer to the activities of the FBI's field office after the date of the decree.

The Magistrate Judge determined, and the court agrees, that even through the report contains no reference to CISPES, it does tend to show that prior to 1976, it was routine practice of the FBI to investigate political dissenters, and that it tends to counter the argument that the CISPES investigation was a unique occurrence that could not happen again.

*2 The Magistrate Judge found that the exhibits were admissible under Fed.R.Evid. 404(b) and 406, and denied the motion to strike. The court agrees that the Exhibits are admissible under Rule 404(b). The evidence was admitted to show proof of motive, intent, plan, knowledge, or absence of mistake with respect to the CISPES investigation. The court agrees that evidence of the FBI's behavior prior to the entry of the consent decree has some relevance to this proceeding, since it is more likely that the FBI engaged in certain activity after 1981, if the activity was routine before 1981.

The FBI's argues that in light of its new practices and regulations, the Senate Reports says nothing about the FBI's "routine practice" that is pertinent to this proceeding. This argument goes to the weight to be given to the pre-1976 activity, not to its admissibility. The

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Magistrate did not find that the evidence proved a pattern of non-compliance with the consent agreement, she simply found that it was relevant.

Deletion Code

The FBI also moves to strike petitioner's Exhibit T, which is a list of letters used by the FBI to code deletions from documents produced in discovery and their meanings. Paragraph 32 of CISPES' statement of material facts claims, with the use of exhibit T, that a large amount of the information collected by the FBI was collected through the use of informants. The FBI maintains that the list is irrelevant because it does not show that the FBI violated the consent decree, nor does it show whether the gathering of certain information, the disclosure of which might invade a third person's privacy, was inconsistent with the provisions of the Agreement. Finally, the FBI argued that if CISPES was dissatisfied with the deletions, they should have objected to the list under Local Rule 12(k).

CISPES maintains that the code shows that the FBI gathered information, the disclosure of which would be an unwarranted invasion of the privacy of the individuals

involved, and that the exhibit goes to the FBI's claims that its investigations were not overly intrusive. Finally, CISPES contends that the FBI's 12(k) argument is irrelevant since CISPES did not seek production of the deleted information.¹

The Magistrate denied the motion to strike, concluding that the FBI's objections to the admission of the exhibit really concerned the weight of the evidence, not to its admissibility. The Magistrate determined that the deletion code was relevant, in that it provided some information on the amount of intrusion involved in the FBI's investigation of CISPES. The court agrees with these findings, as well.

Conclusion

For the foregoing reasons, the court affirms the Magistrate Judge's order.

Footnotes

¹ The FBI dropped the 12(k) argument in their objections to the Magistrate's order, but raises the relevance argument once more.