

revelations about to occur in the *Ghandhi* case create the context for the watergating of Jimmy Carter.”

Judge Keith's decision brings to an end over two years of joint FBI-Detroit Police Department efforts to thwart discovery and full litigation of the *Ghandhi* case. The suit charges the FBI with violating the civil rights of the U.S. Labor Party and NCLC in its infiltration of explosives expert Vernon M. Higgins into the party and Higgins' subsequent role as a 1974 USLP candidate in Michigan while still employed by the FBI. The Labor Party and NCLC are seeking a permanent injunction against future FBI infiltration as well as damages.

According to the limited discovery taken in the case, Higgins, who previously worked with the Michigan Ku Klux Klan in the Justice Department-run Pontiac Bus Bombings and as an operative in the Bay of Pigs invasion, was sent into the USLP to provide the FBI with

detailed information on “how explosives could be planted and how assassinations could take place.”

Judge Keith was singularly unimpressed by the Griffin Bell pedigree on the Fifth Circuit decision which FBI attorney Elizabeth Whittaker used to fight her case. Keith rebutted, “This is not the Fifth Circuit, this is my Circuit.”

The Labor Party will move from the production of documents immediately into a full schedule of depositions of the defendants in the case, the party's attorney David Wenger informed Keith yesterday. Vernon M. Higgins has been noticed for a deposition March 28 by the party's attorneys. Judge Keith also took under advisement yesterday a motion for summary judgment filed against the Detroit Police Department. The motion charges that the Detroit police have tailgated the FBI in defending themselves in the case and have yet to respond to a single discovery request.

History Of The Detroit FBI Case

July 3, 1974 — Complaint filed by 14 members of the National Caucus of Labor Committees and the U.S. Labor Party individually and as members of the NCLC-U.S. Labor Party against the Detroit Police Department, Phillip Tannian, Commissioner of the Police, 10 individual Detroit Police Department officers who participated on a police raid on the Detroit USLP offices and Attorney General William Saxbe, FBI Director Clarence Kelley, 8 individual agents of the FBI and Vernon M. Higgins. Complaint includes motion for preliminary injunction and-or temporary restraining order.

July 24, 1974 — Motion for preliminary injunction and TRO denied by Judge Damon Keith.

October 9, 1974-March 11, 1975 — FBI files motion to dismiss, Detroit Police Department files motion to dismiss. Judge Keith grants motion to dismiss for FBI on basis of sovereign immunity, refuses to dismiss all individual Federal defendants including Kelley and Saxbe and refuses to dismiss complaint against Detroit Police Department.

March 11, 1975-October 15, 1975 — FBI files two motions for reconsideration on Keith order and a motion for rehearing — all of which require extensive responses by plaintiffs. Keith denies these attempts to stall the litigation. Clarence Kelley files an affidavit saying that Vernon Higgins has not been served properly. Detroit Police file protective orders against discovery arguing that all information on the NCLC is privileged.

October 15, 1975-March 22, 1976 — Plaintiffs attempt discovery, including interrogatories and request for production of documents to Detroit Police and FBI. FBI answers by refusing to answer any and all substantial questions and by serving separate sets of interrogatories numbering 40 pages each on each of the plaintiffs. FBI files second motion to dismiss when plaintiffs cannot answer on time. Detroit police refuse to answer any questions. Defendant Higgins

shoots at process servers as they attempt to serve him with complaint; Higgins pleads guilty to “reckless discharge of a weapon,” in subsequent court hearing.

March 22, 1976-July 20, 1976 — Depositions taken of FBI Agents Ball, Mercado, Fayette, Robinson. On instructions from Assistant General Richard Thornburgh, FBI agents refuse to answer any questions about the NCLC or U.S. Labor Party, any questions covering a time span beyond April 1974- August 1974, and any questions about the activities of the FBI. Deposition of Detroit Police Agent Tidderington. Tidderington adopts the same tactics as the FBI. FBI files third motion to dismiss the lawsuit. FBI files objection to plaintiffs' request to produce documents. FBI and Justice Department decide to defend Vernon M. Higgins. Higgins answers original complaint, 2 years after complaint is served.

July 20, 1976-November 9, 1976 — Plaintiffs file extensive motion to compel answers by the FBI to all questions in depositions and discovery and similar motion against Detroit Police Department. FBI takes depositions of 7 individual NCLC plaintiffs in collaboration with Detroit Police Department.

November 9, 1976-December 7, 1976 — Judge Keith grants plaintiffs' discovery motions in all substantial parts. Judge Keith remonstrates the FBI and Detroit Police at subsequent pretrial conference for “dilatatory tactics” in the case and threatens to call the “Attorney General” when FBI counsel again objects to request on production of documents. Depositions completed by FBI and Detroit Police Department of all NCLC plaintiffs. FBI files another motion to dismiss and a motion for reconsideration of Judge Keith's November 9, 1976 order. Keith denies both motions.

December 17, 1976-February 1, 1977 — FBI begins responding to first set of discovery interrogatories by plaintiffs. FBI serves motion to compel answers

on production of documents asked of plaintiffs. NCLC serves subpoena duces tecum for production of all documents from 1968-1974 on NCLC and USLP as granted in Judge Keith's November 9, 1976 order. FBI files motion to quash subpoena. Detroit Police file motion to quash subpoena.

March 7, 1977 — Judge Keith in pretrial conference orders substantial production of documents by FBI.

Plaintiffs notify Vernon Higgins for deposition on March 28; FBI asks for protective order on production of documents to prevent disclosure to "the New York Times or New Solidarity." Plaintiffs file motion for court sanctions against Detroit Police Department who have not answered any discovery requests and have not even answered the original complaint in the suit.

FBI Discovery Questions to NCLC

The following are 7 of 107 FBI interrogatories to the NCLC:

Interrogatory No. 101. Describe all publications, local, state or national, which the Party disseminates, either by subscription fee or free of charge, which discuss Party platforms, issues, goals, objectives or aims.

Interrogatory No. 102. Describe the Michigan Party organization, including names of the state leadership.

Interrogatory No. 103. Describe the National Party organization, including names of the National leadership.

Interrogatory No. 104. State whether the Party advocates the violent overthrow of the United States Government.

Interrogatory No. 105. Give a physical description of each "Unknown Agent of the Federal Bureau of Investigation" you allege to have been involved in this litigation and the actions which he took for which you claim injury or damage.

Interrogatory No. 106. State whether the United States Labor or the National Caucus of Labor Committees has initiated any campaign(s) intended to harass or intimidate the Federal Bureau of Investigation or made any other efforts to interfere with the performance of its lawful duties.

Interrogatory No. 107. State the names of all lawsuits presently pending in which the United State Labor Party or the National Caucus of Labor Committees is a plaintiff and the Federal Bureau of Investigation or one of its Special Agents is a defendant. Describe the nature of each such lawsuit.

Respectfully submitted,

RICHARD L. THORNBURGH

Assistant Attorney General

Judge Keith's Discovery Decision

The following is an excerpt of Judge Damon Keith's discovery decision ordering the FBI to produce all documents relating to its investigation of the U.S. Labor Party and the NCLC from 1968-74:

IT IS HEREBY ORDERED that defendants Clarence Kelly and William Saxbe respond to the best of their

knowledge to those questions in plaintiffs' interrogatories concerning investigations of the plaintiffs, the National Caucus of Labor Committees, and the United States Labor Party from 1968 to June 20, 1974, or for a more limited time period if such is specified in the question, and

IT IS FURTHER ORDERED that defendants Phillip Mercado, Edward Ball, Thomas J. Robinson, John Minogue, and Jerry Fayette respond to the plaintiffs' request for documents and respond to the best of their knowledge to questions put to them by the plaintiffs at depositions or in interrogatories concerning their investigation of the National Caucus of Labor Committees and the United States Labor Party, and their work with Vernon Michael Higgins concerning the above organizations from 1968 to June 20, 1974, or for a more limited time period if such is specified in the question, including those question already propounded to them about their squad assignments and activities; about the informant policy of the Federal Bureau of Investigation regarding the National Caucus of Labor Committees and the United States Labor Party; about conversations had with, or directions received from, their supervisors as to the National Caucus of Labor Committees and the United State Labor Party; and about the interaction between the Federal Bureau of Investigation and the Police Department of the City of Detroit concerning the plaintiffs, the National Caucus of Labor Committees, and the United States Labor Party. This order does not extend to questions concerning the Federal Bureau of Investigation's chain of command, nor does it extend to questions about congressional findings concerning Federal Bureau of Investigation practices unless they specifically relate to plaintiffs, the National Caucus of Labor Committees, or the United States Labor Party, nor does it extend to the production of documents which are within the exclusive possession, custody, or control of the Federal Bureau of Investigation absent service of a valid *subpoena duces tecum* for the production of said documents, and

IT IS FURTHER ORDERED that the parties shall appear before this Court on Tuesday, December 7, 1976, at 4:45 P.M., to give a Status Report as to the discovery completed up to that time.

List of Materials Subpoenaed From FBI

1. All files, documents, and other materials relating to the U.S. Labor Party and the National Caucus of Labor Committees from 1968 to June 20, 1974.

2. All files, documents, and other materials relating to the following individuals:

- (a) Khushro Ghandhi
- (b) Peter Signorelli
- (c) Barbara Gettle
- (d) Randolph Wedler
- (e) Matthew Moriarty
- (f) Elizabeth Moriarty
- (g) Stuart Elliot Bernsen
- (h) Richard S. Magraw
- (i) Steven Romm
- (j) Donaphin Mullins
- (k) Jackquiline Cotton
- (l) Kenneth J. Dalto
- (m) Christopher Martinson
- (n) Andrew Rotstein

3. Any and all recordings made, photographs taken, and documents and materials taken by the Federal Bureau of Investigation, by agents and-or employees of the Federal Bureau of Investigation, or individuals otherwise working on behalf of or in conjunction with the Federal Bureau of Investigation, taken during a search of the offices of the U. S. Labor Party and the National Caucus of Labor Committees at 8242 Woodward Avenue in the City of Detroit, Michigan, on June 20, 1974.

4. All reports filed by informants of the Federal Bureau of Investigation relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters from 1968 to June 20, 1974.

5. All documents, lists, written and-or published materials and all other materials taken from the offices, homes, public and-or private meetings, of the U.S. Labor Party the National Caucus of Labor Committees, their members, supporters and contacts from 1968 to June 20, 1974.

6. All reports and other materials filed by employees of the Federal Bureau of Investigation relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters from 1968 to June 20, 1974.

7. All communications, whether written, electronically transcribed, or otherwise, between the Federal Bureau of Investigation and the Police Department of the City of Detroit, Michigan relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters, from 1968 to June 20, 1974

8. All communications, whether written, electronically transcribed, or otherwise, between the Federal Bureau of Investigation and the Police Department of the City of Pontiac, Michigan relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters, from 1968 to June 20, 1974.

9. Any and all policy statements, directives and memoranda by the Federal Bureau of Investigation rela-

ting to informants relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters from 1968 to June 20, 1974.

10. With respect to the February 24, 1976 Report to the House Committee on the Judiciary, by the Comptroller General of the United States (Elmer Staats) and the Government Accounting Offices, on *FBI Domestic Intelligence Operations*, all documents, reports, records, and materials produced by the FBI or used in any way in the preparation of said report, relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters.

11. All Federal Bureau of Investigation directives, guidelines, and other memoranda relating to investigative techniques and methods used in relation to the electoral campaigns of the U.S. Labor Party, the National Caucus of Labor Committees, their candidates and electoral Campaigns from 1968 to June 20, 1974.

12. Any and all documents relating the planning, arrangements, and travel of Vernon Higgins to New York in May, 1974 to attend the national conference of the National Caucus of Labor Committees.

13. Any and all guidelines and policy statements relating to the classification by the Federal Bureau of Investigation of the National Caucus of Labor Committees as a "subversive group", from 1968 to June 20, 1974.

14. Any and all files, documents and other materials relating to Vernon Higgins and relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters from 1968 to June 20, 1974.

15. All communications, documents, memoranda and other materials obtained from or transmitted to William Saxbe and the office of the U.S. Attorney General, relating to the activities of the U.S. Labor Party, the National Caucus of Labor Committees, their members, from 1968 to June 20, 1974.

16. All reports filed by Special Agents Mercado, Ball, Fayette, Minogue, and Robinson relating to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters, from 1968 to June 20, 1974.

17. All reports, records and documents relating to meetings between employees of the Federal Bureau of Investigation and Vernon Higgins, wherein the subject of the discussion referred or related to the U.S. Labor Party, the National Caucus of Labor Committees, their members, contacts and supporters from 1968 to June 20, 1974.

18. Any and all directives, guidelines, policy statements, memoranda, etc. relating to members of the National Caucus of Labor Committees, the U.S. Labor Party, their members, contacts and supporters from 1968 to June 20, 1974.

NCLC Can Sue FBI's Kelley and Saxbe

The following is Judge Damon Keith's April 11, 1975 decision denying the FBI motion to dismiss the Ghandhi v. Detroit Police and FBI:

According to the facts as alleged in the original complaint, defendant Higgins, as part of a prearranged plan, informed the Federal Bureau of Investigation that plaintiffs were holding him against his will. A search warrant, a copy of which is attached to both plaintiffs' complaint as well as to defendant Police Officers' brief, was allegedly obtained for the purpose of seizing defendant Higgins at the Detroit offices of the USLP. The complaint further states that on June 20, 1974, a number of the defendants (both Detroit policepersons and F.B.I. agents) appeared at the USLP offices, but contrary to the scope and purpose of the warrant, the defendants seized numerous items which were neither contraband, evidence of a crime, or listed in the warrant. Plaintiffs allege that these acts were committed with direct or constructive knowledge of other defendants and pursuant to a conspiracy.

In their motion to dismiss or for summary judgment, defendant Police Officers, et al., admit they assisted in the search of the USLP Headquarters but claim that what they did was on the authority of a search warrant. Defendants, as the moving party, bear the burden of showing the absence of any genuine issue as to all material facts. In that defendants have failed to submit any affidavits supporting their contention that their activities were lawful and within the scope of a valid warrant, they have done nothing to rebut the allegations in plaintiffs' complaint. Whether defendants seized property belong-

ing to the plaintiffs, or whether defendants were at all times acting within the scope of a valid search warrant are both questions to which each side appears to assert different answers. Defendants, therefore, have failed to convince this Court that there is no genuine issue of material fact and that, as a matter of law, they should prevail simply on the basis of the information presently before the Court.

Similarly, with regard to the motion on behalf of defendant Saxbe, et al., the defendants have failed to meet their burden of showing that the acts complained of were committed in good faith and within the scope of their authority. *Sparrow v. Goodman*, 361 F. Supp. 566, 585-587 (W.D.N.C. 1973). It would, therefore, be premature for this Court to rule on the question of immunity for the actions of either the individual F.B.I. agents or of the other government officials named as defendants. Nevertheless, this Court of the opinion that plaintiffs' suit against the Federal Bureau of Investigation is barred under the doctrine of sovereign immunity. The Court is, therefore, prepared to grant defendants' motion to dismiss or in the alternative for summary judgment with regard to this one defendant.

It is hereby ordered that the motion of defendant Police Officer, et al., be denied and that the motion of defendant Saxbe, et al., be denied in part and granted as to the defendant FBI in accordance with this Memorandum Opinion.

Damon J. Keith
District Judge

DATED: April 11, 1975

Motions for Sanctions

The following is excerpted from the affidavit by the lawyer for the plaintiffs (Ghandi et al.) submitted in February, 1977, for consolidated discovery and for sanctions against the Detroit Police Department:

DAVID K. WENGER, being duly sworn, deposes and says:

1. I am attorney for plaintiffs in the above-captioned action and submit this affidavit in support of plaintiffs motion for consolidated discovery and-or for sanctions.

2. As demonstrated below, I have been totally frustrated in my efforts to obtain discovery from the state defendants. On numerous occasions, plaintiffs have attempted discovery of the state defendants through interrogatories, requests to produce, subpoena duces tecum, deposition, by letter and telephone communication. Despite these attempts, and despite the clear directions of this Court by its Memorandum, Opinion and Order of November 9, 1976 and statements at the Status Report of December 7, 1976 the state defendants have

continued to fail to produce and respond to any and all of plaintiffs discovery requests.

3. This motion is brought on by the receipt of the state defendants' Status Letter of February 10, 1977, in which counsel for the state defendants only states, "The City of Detroit and related defendants represented by this office have completed their discovery."

4. Prior to this Status Letter, by their "Response and Objections to Subpoena for Production of Documents" dated January 31, 1977, the state defendants had refused to comply with the plaintiffs' latest attempt to obtain discovery.

On January 17, 1977 plaintiffs had served the state defendants with a Subpoena duces tecum carefully drawn to comply with this Court's Order of November 9, 1977. (See Exhibit A).

By their response of January 31, 1977, the state defendants provided a sweeping and general denial to the subpoena which did not address any particulars and which exhibited a total lack of awareness of the present status of this case and of the recent Order and statements of this Court.