Judge Rules Carter Officials Must Answer Fusion Foundation Charges

Federal Judge William Knox, in a decision printed in full below, has refused to dismiss a suit brought by the Fusion Energy Foundation (FEF) against James Schlesinger, Griffin Bell, Clarence Kelley and FBI Special Agent William Martin for their part in directing disruption of the April 29 Pittsburgh, Pennsylvania energy conference sponsored by the FEF and its collaborators.

The decision means that FEF attorneys can now concentrate on putting Schlesinger, Bell and Kelley under deposition in order to discover precisely how the Americans for Energy Independence, the Brookings Institution, and participants in Schlesinger's Operation Pacesetter, as well as the FBI were deployed in Pittsburgh on orders from the White House to wreck the conference. Twelve of fifteen original conference speakers and sponsors dropped out once the FBI line was spread that the FEF was a "front group" for the NCLC and U.S. Labor Party and that both groups were violence prone and antisemitic.

Judge Knox granted a temporary restraining order against the defendants April 28 and heard testimony for a preliminary injunction before deciding to keep the case in court and open the Administration officials to discovery. Schlesinger, Bell and Kelly were defended by the Justice Department in lengthy legal memoranda which argued that they were not responsible for the actions of their subordinates and that they were immune from prosecution because of their government positions. In addition the government argued that the case was moot since Judge Knox had already granted the TRO and the conference was over.

It is significant that Judge Knox answered these complex arguments very simply; by quoting back in full to the Justice Department the First Amendment to the Constitution of the United States.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FUSION ENERGY FOUNDATION, et al
v.
FEDERAL BUREAU OF INVESTIGATION et al

Civil Action No. 77-479

Dated: May 17, 1977.

MEMORANDUM DENYING IN PART
AND GRANTING IN PART
GOVERNMENT'S MOTION TO DISMISS

The urgency of the situation in this case prevents the court from preparing a more thorough memorandum. The briefs were not completely filed until May 16, 1977 and a pendency of a further hearing on plaintiff's application for preliminary injunction set for May 18, 1977 necessitated a ruling upon the motion without delay.

It appears that the federal court has jurisdiction of this cause of actions against federal officials. See Driver v. Helms, (D.C.R.I. 4177, 45 L Week 4506).

(1) Mootness

The government urges that the matter should be dismissed for mootness. The government's position is that this suit was brought only to protect against interference with a conference set up by plaintiffs for Pittsburgh on April 29. This was protected by a temporary restraining order entered the day before. The conference is now over and therefore it is urged there is no further purpose in the action. This overlooks the fact that the plaintiffs claim they have other conferences coming up and because of the past two years history of what they call harassment, intimidation and interference, other conferences around the country will be interfered with. However, this may be, it also appears that plaintiffs are seeking damages for interference with the conference of April 29 when many speakers and attendees failed to appear. Plaintiffs claim that their failure to appear and a consequent disruption of the conference was caused by spreading of stories, interference by the FBI and others.

It would seem, however, that there is at the present time no immediate need for equitable relief, i.e., for a preliminary injunction. However, the court will consider

that in connection with the application for preliminary injunction.

(2) Cause of action under 42 USC 1983.

No action by state officials is alleged which qualifies for a suit under 1983 and the same will therefore be dismissed.

(3) FBI not a proper defendant.

The Federal Bureau of Investigation (FBI) is but a division of the national government and is not a proper defendant in this case, although individual members of the bureau are. The case will be dismissed against the FBI.

(4) Suit under 42 USC 1985 (3)

This section of the Civil Rights Act requires a conspiracy based upon class or race animus. Nothing like this appears in this case and therefore the action under 1985 (3) must be dismissed. Griffin v. Breckenridge, 403 US 88, 29 L Ed 2d 330 (1971).

The suit however based upon the doctrines of Bivens v. 6 Unknown Agents of the Federal Bureau of Narcotics, 403 US 388 (1971) and 28 USC 1331(a) cannot be dismissed. Plaintiffs allege an interference with their First Amendment rights. The First Amendment to the U.S. Constitution reads as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The facts alleged here would indicate interference with freedom of speech and freedom of assembly by government agents. If this is true, it cannot be tolerated. The First Amendment has been recognized as being one of the focal points in our Constitution and if people can be harrassed and intimidated while trying to hold a peaceable assembly, then the First Amendment means nothing. See Moore v. Koelzer, 457 F 2d 892 (3d cir 1972). Peyton v. LaPrade, 524 F 2d 862 (3d cir 1975) ; Spock v. David, 469 F 2d 1047 (3d cir 1972) and a very similar case now pending in the Eastern District of Michigan, Ghandhi v. Police Department of Detroit, Clarence Kelly, William Saxbe, et al, 66 FRD 385 (E.D.Mich 1975).

The court holds that the complaint contains specific enough allegations to withstand the attack on it as being conclusory.

An appropriate order will be entered.

William W. Knox
U.S.District Judge

CC: Counsel of record.