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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 AUDREY PARKS SHABBAS, et al.,)	NO. 951031
12 Plaintiffs,)	
13 v.)	<u>PLAINTIFFS' STATUS</u>
14 ANTI-DEFAMATION LEAGUE OF B'NAI)	<u>CONFERENCE STATEMENT</u>
15 B'RITH, et al.,)	Date: August 19, 1993
16 Defendants.)	Time: 8:30 a.m.
)	Dept: 14

17 BACKGROUND

18 This class action for invasion of privacy has been
19 filed by nineteen named Plaintiffs, each of whom have been
20 advised by the San Francisco Police Department (SFPD) that
21 personal information about them has been found in the files of
22 Defendants: (1) Officer TOM GERARD, (2) the ANTI-DEFAMATION
23 LEAGUE OF B'NAI B'RITH (ADL) and/or (3) an ADL employee, ROY
24 BULLOCK, who has stated he acted under the direction of
25 Defendant RICHARD HIRSCHHAUT, the Director of ADL's San
26 Francisco regional office.

27 The SFPD's information had been obtained in the
28 investigation of Officer GERARD from consensual searches or by

1 search warrant of the homes of GERARD and BULLOCK, and the ADL
2 offices in San Francisco and Los Angeles.

3 The GERARD investigation has resulted in a series of
4 proceedings before the Honorable Lenard D. Louie in Department
5 25 of this Court entitled In the Matter of Tom Gerard and
6 Search Warrants #1, #2 and #3 Served on December 10, 1992, or
7 on occasion, Municipal Court Search Warrant No. 1423873 (for
8 simplicity, Action No. 1423873)

9 ACTION NO. 1423873

10 In Action No. 1423873, the San Francisco City
11 Attorney's office, through Deputy City Attorney Miriam M.
12 Morley and James A. Quadra, representing the San Francisco
13 Police Commission, has sought to establish procedures for the
14 release of the information about Plaintiffs in this action and
15 over 10,000 persons similarly situated. The City Attorney has
16 represented to the Court, supported by affidavit of SFPD
17 Captain John Willett, that many members of the Bay Area Arab-
18 American community are in fear of their safety, particularly
19 in traveling abroad, because of the publicly-disclosed
20 information that GERARD, BULLOCK and/or the ADL have
21 communicated information about them to the governments of
22 Israel and South Africa.

23 In March, 1993, the SFPD made public the affidavit
24 of SFPD Inspector Ron Roth filed in Action No. 1423873 in
25 which Inspector Roth stated, inter alia:

26 "I have been conducting an investigation
27 into the misuse of confidential government
28 information and the invasion of privacy of
over 1,000 persons."

1 "Based on the evidence, exhibits and facts
2 in this affidavit, I believe that Roy
3 Bullock and ADL had numerous peace
officers supplying them with confidential
criminal and DMV information."

4 (With respect to Bullock's computer)
5 "I also reviewed a document from the same
6 computer, titled "EVESDROP DOX". This
7 document is quoted as saying: "With
8 information supplied by an official friend
9 we are now able to listen to all messages
10 left on the war hotline (541-5688).
11 Starting on the weekend of November 3rd, I
12 have monitored the phone number on a
13 continual basis."

14 "With my interview of former Los Angeles
15 ADL employee David Gurvitz, I knew that
16 when ADL employees refer to "official
17 friend", they are referring to friends in
18 law enforcement."

19 "The fourth document found in the S.F. -
20 ADL folder file labeled "OPERATION
21 EVESDROP" is dated May 21, 22, 1991 ...
22 this document is similar to the rest and
23 stapled to it is an ADL piece of notepaper
24 imprinted with the ADL logo and the words"
25 "From the desk of Richard S. Hirschhaut."

26 "From reviewing the documents seized from
27 the San Francisco and Los Angeles, ADL I
28 know that it is common for ADL reports to
be routed to different ADL offices across
the country."

"On several occasions, Bullock told me, he
personally discussed "OPERATION EVESDROP"
with Hirschhaut and handed him the
reports."

"After numerous interviews and analysis of
the documents seized in eight searches as
well as examination of Bullock and
Gerard's computer files I know that it is
common for the ADL to keep and file
information on groups such as the Arab-
American Anti-Discrimination Committee.
It is believed that if located, these
files will show that inquiries were made
to DMV vehicle registration and driver's
license numbers of members listed at a
ratio of approximately 10-15% of the total
membership. For each DMV inquiry by the

1 ADL, through a law enforcement officer, a
2 felony of 182 P.C. conspiracy could be
3 applied."

4 Among the exhibits attached to Inspector Roth's
5 affidavit in Action No. 1423873 are summaries of SFPD and FBI
6 interviews with Defendant ROY BULLOCK indicating that BULLOCK
7 had been a paid investigator for ADL for over 30 years, that
8 he had been paid surreptitiously by an ADL attorney in Los
9 Angeles, that he always furnished ADL with written reports,
10 that if his reports incorporated information received from the
11 police he referred to the source as "official friends," that
12 the ADL furnished Officer GERARD and a number of other law
13 enforcement officers with an all-expenses-paid trip to Israel
14 in 1991, and that between 1987 and 1991, BULLOCK and GERARD
15 were paid approximately \$16,000 by the South Africans for
16 developing and delivering information to the Government of
17 South Africa on individuals and/or groups in the San Francisco
18 Bay Area who had expressed opposition to apartheid.

19 Also among the exhibits to the Roth affidavit is a
20 transcript of an SFPD interview with former ADL employee David
21 Gurvitz in which Mr. Gurvitz stated he was aware that (1)
22 BULLOCK was obtaining information from police officers or
23 "official friends," (2) ADL had a common practice of paying
24 informants, (3) BULLOCK had told him he was furnishing
25 information on San Francisco Bay Area anti-apartheid groups to
26 a man from South Africa, on "who holds which P. O. Box, that
27 sort of thing," (4) on occasion he asked BULLOCK to obtain a
28 personal driver's license number on which he would then open
an ADL file, and (5) he had seen a confidential FBI report

1 entitled "The Nation of Islam" in the Los Angeles ADL office
2 which an ADL employee had received from "a highly influential
3 law enforcement contact."

4 Another exhibit to Inspector Roth's affidavit is a
5 summary of an FBI interview with Mr. Gurvitz on March 3, 1993
6 in which Mr. Gurvitz stated he had personally transmitted
7 information directly to the Government of Israel which the ADL
8 had obtained from a law enforcement official about an Arab-
9 American about to travel to Israel.

10 Among the organizations appearing on Defendant
11 BULLOCK's list of those he "investigated" appear the Arab-
12 American Anti-Discrimination Committee, Mills College and
13 Station KQED.

14 JOFTES v. KAUFMAN, U.S. DISTRICT COURT FOR
15 THE DISTRICT OF COLUMBIA, CIVIL ACTION NO. 3271-67

16 In this federal case, a July 7, 1961 letter from
17 Benjamin Epstein, the then National Director of the ADL, to
18 Saul Joftes, the then-Executive Secretary of the International
19 Council of B'nai B'rith was attached as evidence to a
20 deposition. In pertinent part, Mr. Epstein wrote under the
21 ADL letterhead about information collected by ADL on, among
22 others, Arab students in the United States:

23 "Our information, in addition to being
24 essential for our own operations, has been
25 of great value and service to both the
26 United States State Department and the
27 Israeli Government. All data have been
28 made available to both countries with full
knowledge that we are the source."

27 A copy of this letter is attached as Tab "A" hereto.

28 In an affidavit filed in that action Mr. Joftes

1 stated, inter alia:

2 "I went to work for B'nai B'rith in 1945."

3 "My title was later changed to Secretary-
4 General. I held this office until March
5 22, 1967."

6 "B'nai B'rith ... has become an
7 international organization engaged, by
8 Rabbi Kaufman's admission, in other things
9 besides charitable religious and
10 educational activities. It is no longer
11 non-profit. It engages in international
12 politics and more often than not does the
13 bidding of the Government of Israel. Its
14 leaders make frequent trips to Israel for
15 indoctrination and instructions. I had
16 tried to prevent this change. That is why
17 rabbi Kaufman tried to fire me."

18 "He was making B'nai B'rith a servant of
19 the Israeli Government."

20 In Action No. 1423873, the ADL, represented by
21 attorney Jerrold M. Ladar, has argued that ADL's files, seized
22 by the SFPD and presently in the custody of Deputy District
23 Attorney John Dwyer, are protected by the First Amendment's
24 free press and free association guarantees, citing NAACP v.
25 Alabama, 375 U.S. 449 (1959) and Dawson v. Delaware, 503 U.S.
26 _____, 117 L.Ed.2d 309, 316-318 (1992).

27 Mr. Ladar argues:

28 "ADL's mission is to educate the public
about anti-Semitic, extremist and hate
groups by learning the activities of such
groups and publicizing them through ADL's
writings, press releases and speeches.
ADL's ability to carry out the mission is
dependent upon the information it receives
from both public and private sources.
Many individuals who have provided
information to ADL have done so with the
understanding that their identity be kept
confidential because their personal safety
might be in jeopardy. The disclosure of
ADL documents would violate ADL's privacy
rights, chill its right of association and

1 potentially even threaten the safety of
2 individuals with whom it associates."

3 ADL's Opposition to Motion of
4 City Attorney for Limited
5 Disclosure of Sealed Evidence,
6 February 10, 1993; Action No. 1423873

7 A motion by the City Attorney is presently set for
8 hearing before Judge Louie on September 10, 1993 at 10:00 a.m.

9 STATUS OF THE PLEADINGS IN THIS ACTION

10 Plaintiffs' action was filed on April 14, 1993, by
11 nineteen Plaintiffs, each of whom had expressed views critical
12 of certain policies of Israel or of apartheid in South Africa.
13 Plaintiffs are not members of anti-Semitic, extremist or hate
14 groups; many of them are Arab-American and some are Jewish.
15 None of the Plaintiffs are public figures. They sue on behalf
16 of themselves and others similarly-situated and seek damages
17 for the invasion of their privacy by Defendants ADL, BULLOCK,
18 GERARD, HIRSCHHAUT and DOES under the California Constitution
19 and the California Information Practices Act, particularly
20 Section 1798.53 which reads as follows:

21 "Any person, other than an employee of the
22 state or of a local government agency
23 acting solely in his or her official
24 capacity, who intentionally discloses
25 information, not otherwise public, which
26 they know or should reasonably know was
27 obtained from personal information
28 maintained by a state agency or from
"records" within a "system of records" (as
these terms are defined in the Federal
Privacy Act of 1974 (P.L. 93-579; 5 U.S.C.
552a¹)) maintained by a federal government
agency, shall be subject to a civil
action, for invasion of privacy, by the
individual to whom the information
pertains.

In any successful action brought under
this section, the complainant, in addition

1 to any special or general damages awarded,
2 shall be awarded a minimum of two thousand
3 five hundred dollars (\$25,000) in
4 exemplary damages as well as attorney's
5 fees and other litigation costs reasonably
6 incurred in the suit.

7 The right, remedy and cause of action set
8 forth in this section shall be
9 nonexclusive and is in addition to all
10 other rights, remedies, and causes of
11 action for invasion of privacy, inherent
12 in Section 1 of Article I of the
13 California Constitution."

14 Answers have been filed by all named Defendants, the
15 last being by Defendant BULLOCK on July 30, 1993 after his
16 General and Special Demurrers were overruled by this Court,
17 the Honorable William Cahill presiding.

18 THE DISCOVERY ISSUES

19 A broad Document Request asking for the BULLOCK-
20 GERARD-ADL communications and files relating to Plaintiffs and
21 others was submitted to Defendant ADL on June 10; ADL's
22 Objections and Responses refusing to produce any documents
23 save ADL's public publications, were returned on July 15. For
24 ease of reference, the key language of ADL's Objections and
25 Responses to Plaintiffs' Document Request is attached as Tab
26 "B" hereto.

27 ADL's Objections and Responses, similar to its
28 position in Action No. 1423873, are based on constitutional
29 grounds of free press, free speech and association, as well as
30 ADL's alleged protection by California's "Newsman's Shield
31 Act," Evidence Code §1070, for sources of information and the
32 qualified privileged communication provisions of Civil Code
33 §§47(c)(1)-(3) and 47(e).

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The primary cases cited by Defendant ADL appear to be:

NAACP v. Alabama, 357 U.S. 449 (1959)
Dawson v. Delaware, 503 U.S. 117 L.Ed.2d 309; 316-318 (1992)
Mitchell v. Superior Court, (1984) 37 Cal.3d 268
Alim v. Superior Court, 185 Cal.App.3d 144.

In essence, ADL contends that inasmuch as ADL publishes some information on occasion, the rights of privacy of individuals about whom ADL solicits and obtains information from government agencies in violation of California public policy and privately discloses to third parties, including foreign governments, are overcome by ADL's constitutional rights of a free press, the "Newsman's Shield" right of declining to identify sources and the privileged communication's statute which protects communications, without malice, to persons interested therein from persons also interested or who have requested the information.

Plaintiffs contend that the original praiseworthy purpose of ADL to learn about and expose anti-Semitism and bigotry has been transformed into a conscious effort, acting on behalf of the State of Israel and its ally, South Africa, to chill debate and suppress expression of criticism of Israel and South Africa in the United States; that the purpose of the ADL Defendants has not been to publish the information obtained about the Plaintiffs to the public in the manner of a newspaper, but rather to privately disclose such information to its network around the world (including, where appropriate, to the Governments of Israel and South Africa) in order to discredit Plaintiffs in their employment, economic sufficiency

1 and reputation.

2 Plaintiffs contend that these activities of ADL are
3 not those of a newspaper; that Defendants' arguments seek to
4 turn shields into swords, and indeed to subvert the very
5 freedom of expression which the Constitution, statutes and
6 case law cited by Defendants seek to protect.

7 Whoever may be ultimately adjudged correct in this
8 balancing of constitutional principles, it seems clear that
9 effective discovery in this case cannot go forward until the
10 threshold objections raised in ADL's Objections and Responses
11 (Tab "B") are resolved by this Court.

12 RESPONSE TO THIS COURT'S ORDER OF JULY 30, 1993

13 Counsel for Defendants ADL, HIRSCHHAUT, BULLOCK and
14 Plaintiff have met and conferred, as a result of which
15 Plaintiffs suggest the following action on the points raised
16 in the Court's July 30 Order:

17 1. Plaintiffs and ADL have agreed that ADL will
18 file on August 23, 1993 its brief in support of its objections
19 to Plaintiffs' document request. Plaintiffs will defer their
20 Motion to Compel until receiving ADL's brief and upon receipt
21 will work out a mutually-convenient briefing schedule with
22 ADL, seeking to present the specific discovery issues to the
23 Court for determination at the earliest possible date.

24 2. All further discovery against ADL and its
25 employees which is affected by ADL's constitutional and
26 statutory claims should be deferred pending the Court's
27 ruling, save that the nineteen named Plaintiffs seek leave to
28 have their attorney view, with the Court in camera, their

1 individual files and communications relating to them in the
2 District Attorney's possession under appropriate protective
3 order. Plaintiffs also ask for this Court to order that none
4 of the materials now in the possession of the District
5 attorney be returned to Defendants save upon Court order after
6 noticed hearing before this Court as well as before Judge
7 Louie.

8 3. The determining of the class action issues
9 should be deferred pending completion of initial discovery.

10 4. No reference to a Referee is necessary at this
11 point.

12 5. Some accommodation between this Court and Judge
13 Louie would be helpful with regard to the documents presently
14 in the custody of Deputy District Attorney John Dwyer and held
15 under seal by the prior orders of Judge Louie. Mr. Dwyer has
16 indicated he has no objection to permitting inspection of said
17 records by Plaintiffs or Defendants provided that there is a
18 suitable protective order which will insure the privacy rights
19 of the individuals and organizations named therein.
20 Consolidation of the two actions would seem appropriate.

21 6. It would not seem appropriate to designate a
22 trial date at this time in view of the probability that
23 Defendants have indicated that any Order of this Court
24 permitting discovery may well be tested by application for a
25 Writ.

26 7. Possible bifurcation of issues cannot yet be
27 foreseen.

28 8. Mediation is not yet appropriate, given the
substantial constitutional rights at issue.

