

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER,)
et al.,)
)
Plaintiffs,)
)
v.) Civil No. 96-2123
) 97-1288
) (RCL)
FEDERAL BUREAU OF)
INVESTIGATION, et al.,)
)
Defendants.)
_____)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion [613] for Leave to Depose Bruce Lindsey; Defendant Executive Office of the President's (EOP) Motion [621] for an Extension of Time to Respond to Plaintiffs' Motion for Leave to Depose Bruce Lindsey; Defendant EOP's Motion [626] for a Protective Order; and Defendant EOP's Unopposed Motion [663] for an Extension of Time. Upon consideration of these motions and the applicable oppositions and replies thereto, the court will DENY Plaintiffs' Motion [613] for Leave to Depose Bruce Lindsey; GRANT nunc pro tunc Defendant EOP's Motion [621] for an Extension of Time to Respond to Plaintiffs' Motion for Leave to Depose Bruce Lindsey; GRANT Defendant EOP's Motion [626] for a Protective Order; and GRANT nunc pro tunc Defendant EOP's Unopposed Motion [663] for an Extension of Time.

Plaintiffs need leave of court to depose further witnesses because they have exhausted the number of depositions presumptively

set by this court. Therefore, they must show good cause to exceed this presumptive limit. Defendant EOP, on the other hand, asks for a protective order precluding the deposition of Lindsey. As such, defendant EOP also bears the burden of making a good-cause showing for the entry of a protective order. See FED. R. CIV. P. 26(c).

The current person plaintiffs seek leave to depose is Bruce Lindsey, Deputy White House Counsel and Assistant to the President. The position of Deputy White House Counsel is the highest rank of government official employed at the White House, except for the Chief of Staff. Lindsey is compensated at Executive Schedule Level III and, pursuant to 3 U.S.C. § 105, is eligible for compensation at Level II. Thus, Lindsey is a high-level government official.

Plaintiffs' theory of good cause is based entirely upon testimony given by Linda Tripp during her deposition. This basis is predicated upon two conversations that Tripp claims to have had with Lindsey. First, Tripp stated that she told Lindsey that she had a feeling that some of the White House's enemies were in danger of "information coming out" against them at the behest of the government. Tripp Depo. at 803-804. According to Tripp, Lindsey responded that "talk like that will get you destroyed." Id. at 804. Second, Tripp testified that she told Lindsey that she saw the FBI file of Billy Dale in a White House Counsel's office and that she saw Betsy Pond entering data onto a database from files that might have been FBI files. According to Tripp, these statements did not appear to surprise Lindsey. Id. at 826.

For the reasons given below, the court finds that plaintiffs' arguments do not create a sufficient basis to grant them leave to depose Lindsey. Moreover, the court finds that defendant EOP has shown good cause for the entry of a protective order preventing the deposition of Lindsey. Therefore, plaintiffs' motion for leave will be denied and defendant EOP's motion for a protective order will be granted.

The court has already addressed substantially similar issues in ruling upon defendant EOP's Motion for Protective Order Regarding the Depositions of Rahm Emanuel, Ann Lewis, Sidney Blumenthal, and Michael McCurry. See Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order (D.D.C. Apr. 13, 1998). In that instance, the court granted all of those witnesses protective orders preventing their depositions from being taken until plaintiffs could establish that they had some knowledge of relevant facts that could not be otherwise obtained. Each of those officials was of the same executive level as Lindsey. The same reasons given in connection with that motion are determinative of the current motion, as well.

Litigants should ordinarily be required to depose those individuals with the most knowledge of the relevant facts before taking the depositions of high-ranking government officials. Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order at 2 (D.D.C. Mar. 2, 1998). In this case, plaintiffs have not even deposed Craig Livingstone or Anthony Marceca, two of the defendants

that are central figures to plaintiffs' case, according to their allegations.

Moreover, as the court has already stated in a previous opinion, "[t]here is substantial case law standing for the proposition that high ranking government officials are generally not subject to depositions unless they have some personal knowledge about the matter and the party seeking the deposition makes a showing that the information cannot be obtained elsewhere." See Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order at 5 (D.D.C. Apr. 13, 1998) (citing In re FDIC, 58 F.3d 1055, 1060 (5th Cir. 1995); Simplex Time Recorder Co. v. Secretary of Labor, 766 F.2d 575, 586-87 (D.C. Cir. 1985); National Foods Ass'n v. FDA, 491 F.2d 1141, 1144-46 (2d Cir. 1974); Kyle Engineering Co. v. Kleppe, 600 F.2d 226, 231 (9th Cir. 1979); Peoples v. United States Dep't of Agriculture, 427 F.2d 561, 567 (D.C. Cir. 1970); Church of Scientology v. IRS, 138 F.R.D. 9, 12 (D. Mass. 1990)). Although this rationale usually arises in the context of agency heads, it should apply equally to Lindsey. Given Lindsey's position as Deputy White House Counsel and Assistant to the President, there is a substantial likelihood that his deposition would significantly interfere with his ability to perform his governmental duties. Thus, absent some showing of relevant personal knowledge warranting interference with this high-ranking government official's job, plaintiffs' motion for leave must be denied and defendant EOP's motion for a protective order granted.

As was the case with Emanuel, Lewis, Blumenthal, and McCurry, however, it appears that Lindsey has no knowledge of relevant facts; he certainly has no such knowledge that would warrant a deposition. According to the declaration filed by Lindsey, aside from information that is in the public domain, he has no knowledge of anyone inside or outside the White House acquiring or misusing FBI background information for any improper purpose. Lindsey Decl. ¶ 9. In particular, Lindsey states under oath that he has no knowledge of "(i) the use or acquisition of Billy Dale's or anyone else's FBI file in connection with the termination in 1993 of persons employed by the White House Travel Office; (ii) the presence of such files in Vince Foster's office, or in any safe maintained by the White House Counsel's Office; (iii) FBI files located in William Kennedy's office; or (iv) the entry of information from FBI files into a database." Id. ¶ 6. In short, Lindsey has no knowledge of relevant facts as to any plausible basis of relevant inquiry.¹

In summary, plaintiffs have failed to show good cause for Lindsey's deposition to be taken, even if he were not a high-

¹The court has often stated in this case that declarations are generally not a suitable substitute for live testimony because of the lack of opportunity for cross-examination. The analysis in the context of high-level government officials is different, however, because they are entitled to heightened protection from unnecessary and burdensome inquiries that might interfere with their governmental functions, absent some identifiable basis of knowledge of relevant facts that cannot be obtained elsewhere.

ranking government official. Tripp's testimony about her conversations with Lindsey does not warrant Lindsey's deposition. When combined with the heightened showing required when seeking leave to depose a high-level government official, leave to depose Lindsey cannot be granted. Given the interference with Lindsey's duties that his deposition would pose and the lack of a relevant basis for such a deposition, the court will grant defendant EOP a protective order preventing plaintiffs from deposing Lindsey. Should a more suitable factual basis be laid in the future for Lindsey's deposition, plaintiffs may ask the court for leave to depose him at that time.

For these reasons, the court HEREBY ORDERS that:

1. Plaintiffs' Motion [613] for Leave to Depose Bruce Lindsey is DENIED.

2. Defendant Executive Office of the President's Motion [621] for an Extension of Time to Respond to Plaintiffs' Motion for Leave to Depose Bruce Lindsey is GRANTED nunc pro tunc.

3. Defendant Executive Office of the President's Motion [626] for a Protective Order is GRANTED.

4. Defendant Executive Office of the President's Unopposed Motion [663] for an Extension of Time is GRANTED nunc pro tunc.

SO ORDERED.

Date:

Royce C. Lamberth
United States District Court