

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DIANE BOND,)	
)	
Plaintiff,)	
)	No. 04 C 2617
v.)	
)	Judge Lefkow
CHICAGO POLICE OFFICER)	
EDWIN UTRERAS, et al.,)	
)	
Defendants.)	

**THE INDIVIDUAL DEFENDANTS’ MOTION TO RECONSIDER
THIS COURT’S ORDER OF JUNE 27, 2006**

Defendant Police Officers Edwin Utreras, Christ Savickas, Joseph Seinitz Robert Stegmiller and Andrew Schoeff (“the Individual Defendants”), by and through their attorney, Mary S. McDonald, move this Honorable Court to reconsider that portion of its Memorandum Opinion and Order of June 27, 2006, which denied Defendants’ petition for a rule to show cause and to compel production of documents sought in the subpoena as well as deposition answers. In support of said motion Defendants state as follows:

1. On June 27, 2006, this Court issued its Memorandum Opinion and Order on the Individual Defendants’ motions to compel the deposition testimony of Mr. Kalven, and their petition for the issuance of a rule to show cause and to compel production of any and all documents sought in the subpoena.

2. The Court granted the Individual Defendants’ petition for the issuance of a rule to show cause only “as to questions and documents reflecting conversations Mr. Kalven had with Ms. Bond herself.” (Memorandum Opinion and Order p. 15, ¶ 1). However, the Court denied the

motion as to the remaining subjects listed in the subpoena, including most importantly the Defendant Officers Andrew Schoeff, Christ Savickas, Joseph Seinitz and Robert Stegmiller.

3. Motions to reconsider interlocutory orders are left entirely to the discretion of the court rendering them and should be granted only when it is consistent with justice and equity. *Herman v. Central States Southeast and Southwest Areas Pension Fund*, 2003 U.S. Dist. LEXIS, 14688 (2003)(Judge Conlon). Such motions are narrowly tailored for the purpose of correcting clear errors of law or fact or to present recently discovered evidence. *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264 (7th Cir. 1996). A motion to reconsider should not be used as a forum for reintroducing previously rejected arguments or for making arguments that could have been included in the previous motion. *Caisse Nationale de Credit Agricole*, 90 F.3d at 1270 (1996).

4. **The Subpoena Request is Not Overbroad in Light of the Wide Ranging Allegations Made by Plaintiff in her Amended Complaint and by Kalven in “Kicking the Pigeon”**

Applying the reasonableness standard used in the *McKevitt* case, (*McKevitt v. Pallasch*, 339 F.3e 530 (7th Cir. 2003), this Court found that the materials requested by defendants’ subpoena was overbroad, in part because:

As worded, the subpoena would require Mr. Kalven to produce documents relating to 24 specifically identified people, some of whom may not have anything to do with the allegations of Ms. Bond’s complaint or with any issue in this case, plus an unknown universe of people who could potentially be covered by the catch all phrase at the end of the request.

(*Bond v. Utreras*, 04 C 2617, Docket #156 Order of June 27, 2006 at p. 10).

While Defendants acknowledge the Court’s concern, it is critical to note that Plaintiff *has* put these witnesses and the unknown universe of person at issues through the wide ranging

allegations of her Amended Complaint. At paragraph 70 of the Amended Complaint, Plaintiff alleges that the City of Chicago has an unconstitutional policy, custom and practice of failing to supervise, monitor, discipline and otherwise control its police officers (Plaintiff's Amended Comp. ¶ 70). At paragraph 72 of the Amended Complaint, Plaintiff alleges that the Individual Defendants "knew" that the City's deficient disciplinary, supervisory and monitoring practices rarely imposed "meaningful" discipline on police officers charged with abuse of civilians. (Plaintiff's Amended Comp. ¶ 72). At paragraph 78 of the Amended Complaint, Plaintiff alleges that Defendants knew that the City's above stated deficient disciplinary practices allowed unspecified officers who engage in patterns of abuse to continue to abuse with impunity. (Plaintiff's Amended Comp. ¶ 78). Plaintiff concludes that these policies and practices of "turning a blind eye" as to other named and un-named police officers "caused" the named Defendants to abuse Plaintiff, knowing they would not be disciplined. (Amended Comp. ¶¶ 78-83). These same allegations about a host of un-named, unspecified events against former or current named or unnamed officers extend throughout paragraphs 84-108. (Amended Comp. ¶¶ 78-83). The gist of these lengthy allegations is that Plaintiff intends to prove that many officers, including the Individual Defendants, over an extended period of years have been constantly abusing residents of Stateway Gardens and other public housing projects, and that because of the City's failure or intent not to stop these alleged abuses, Defendants have continued these alleged practices.

Jamie Kalven's articles about Stateway in "Kicking the Pigeon," plus the statements of witnesses in this case, (e.g. Clyde Johnson, Andre Williams) make it plain that Kalven is committed to publishing the complaints of Plaintiff and others against a wide range of police

officers and covering a large span of time. In “Kicking the Pigeon,” Kalven relates public housing residents’ allegations of routine widespread abuse and corruption by a host of unknown or unnamed police officers as undisputed facts. (“Up Under the Building” and “The CHA Plan and Public Safety” from “Kicking the Pigeon” pp. 16-20). Throughout the article, Kalven provides opinions of himself and persons he has talked to about officers who are members of a so-called “skull cap” crew (Police Officers other than Defendants in this case) and other officers who allegedly continue to abuse Plaintiff and others in public housing. “Kicking the Pigeon” pp. 21-46. The article is a blanket indictment of virtually all police officers who have ever worked in public housing either before or since alleged occurrences of Diane Bond, and provides the blueprint for Plaintiff’s lawsuit against the five Individual Defendants and the City of Chicago.

The witnesses listed in the subpoena to Kalven are persons whom Plaintiff or Kalven have influenced or have been asked to come forward as persons with knowledge of Plaintiff’s case as well as other allegations of police abuse. Willie Murphy, Plaintiff’s son, Mike Fuller, Demetrius Miller, Robert Travis, Barbara White, Ben Harris, Billie Johnson, Clyde Johnson, Dorothy Oliver Princess Streeter, Andre Williams, Vera Miles and Seferta Showers and Lorel Greene have all been listed as witnesses to one or more of the occurrences alleged by Plaintiff in this lawsuit. Additionally, in January and February, 2006, Plaintiff brought two motions for Temporary Restraining Order arguing that the Defendants have continued to harass Plaintiff and other building residents, including Willie Murphy and other witnesses who were not known of at the time the subpoena was first issued.¹ Geri Williams, a witness named in the subpoena, was

¹ The first motion for Temporary Restraining Order (February 3, 2003, Docket # 102), was withdrawn until a second motion (March 1, 2006, Docket # 115), was filed several weeks later. After both sides were prepared to go forward at an evidentiary hearing, Judge Lefkow

under arrest by some of the Defendant Officers at the time of the more recent allegations of harassment set forth in the Temporary Restraining Order Motion of February, 2006.

Andre Williams (a former lead plaintiff in a class action suit against the City of Chicago police department, *Williams v. Brown*, 01 C 3228 (N.D. Ill) (Judge Bucklo) and Clyde Johnson, among others, have said they and others have spoken with Kalven about alleged police abuse and related matters. Plaintiff and Jamie Kalven have, therefore, put the “universe” of police officers committing these alleged abuses as well as the complaining witnesses at issue in this case. Thus, the subpoena is not over broad in the context of the Plaintiff’s allegations and Kalven’s involvement in making or attempting to document the police abuse allegations at issue in this case.

To alleviate the court’s stated concern over the broad nature of the subpoena request, Defendants are willing to narrow the scope of the subpoena to request Kalven to produce any notes or materials produced in any media or form of interviews with Diane Bond, any of the defendants including Edwin Utreras, Joseph Seinitz, Andrew Schoef, Robert Stegmiller or Christ Savickas or of any witnesses to the occurrences alleged by plaintiff in her lawsuit including Willie Murphy, plaintiff’s son, Mike Fuller, Demetrius Miller, Robert Travis, Barbara White, Ben Harris, Billie Johnson, Clyde Johnson, Dorothy Oliver Princess Streeter, Andre Williams and plaintiff’s physician, Dr. Lorel Greene.

asked defendants to request the CHA to help plaintiff find suitable housing outside of Stateway Gardens. Defendants agreed to do so and followed up with the general counsel of the CHA to expedite plaintiff’s housing relocation request. The second TRO was denied dismissed in April, 2006. (April 25, 2005 Docket #132). Defendants have been advised, that Plaintiff remains a resident of Stateway Gardens.

5. Kalven has Not Shown Any Undue Burden

In balancing the interests between Defendants and Kalven, the Court ruled that the burden on Kalven outweighed the interests of Defendants in acquiring Kalven notes and materials of witness interviews. The court reasoned that Defendants had not made a sufficient showing that the information they seek could not be obtained through alternative means. Citing the testimony of Mike Fuller as an example, the Court concluded that the Individual Defendants had only established “nit-picky” inconsistencies with respect to the witnesses testimony. (Memorandum Opinion, p. 12). However, after Mr. Fuller was deposed the Plaintiff’s counsel submitted an affidavit (Exhibit A, attached) which makes substantive changes to his sworn oral testimony. Defendants have a right to explore whether the “notes” kept by Kalven of his interview with Fuller were used to prepare the affidavit, or whether Fuller gave Kalven a different version of events than he stated orally under oath at his deposition or in the affidavit. (See Mr. Fuller’s deposition transcript attached as Exhibit B and his affidavit is attached Exhibit A). Fuller’s inconsistencies however, may only be the tip of the iceberg. Without an examination of Kalven’s notes, it is unknown if other witnesses have also given multiple or inconsistent versions of the events of Plaintiff’s own incidents or those of the other individuals who claim similar abuse by these Defendants or other Police Officers.

The Court in its Memorandum Opinion and Order did not order Mr. Kalven to produce any notes, documents, recordings, etc. which might involve the Individual Defendants, also parties to this lawsuit. Mr. Kalven has been listed pursuant to Fed. R. Civ. P. 26(a)(1)(E) as a party likely to have discoverable information that the Plaintiff may use to support its claims or defenses. Just as Mr. Kalven has been ordered to turn over all documents to the extent they exist

as to Plaintiff, he should be ordered to turn over all documents with respect to the Individual Defendants. They too are parties to this lawsuit, just like Ms. Bond, and under Rules 26(a)(1) and 37, Defendants are entitled to discover all evidence for purposes of properly defending themselves.

6. As Mr. Sullivan represented to the Court yesterday **all** of Mr. Kalven's notes have **not** been produced with respect to Ms. Bond. This is no surprise given the limited deposition testimony of Mr. Kalven and his failure to respond to Defendants' subpoena. For example, Ms. Bond in her deposition testified that Mr. Kalven's wife took a videotape of Ms. Bond with her injured arm in the Kalven's home. (Exhibit C, Deposition of Diane Bond, pp. 463-464). To date, this tape has not been produced and Plaintiff's counsel claims that he is unaware of a videotape. However, when reading Ms. Bond's testimony one can't help but conclude that a videotape is out there someplace, especially in light of the fact that Mr. Kalven has been listed as a damages witness in Ms. Bond's 26(a)(1) disclosures.

7. Counsel for the Defendants has the same concerns with respect to disclosure of all information regarding their clients. The fact that Mr. Kalven claims to be a journalist does not give him the right to withhold evidence relevant to this case. Such conduct violates Rules 26 and 27.

8. Wherefore, the Individual Defendants pray that this Court reconsider its Order of June 27, 2006 and order Mr. Kalven to turn over any and all documents, notes, recordings, which relate to the witnesses in the subpoena. If the Court would like a narrower subpoena issued the Defendants will reissue the subpoena as previously discussed in this motion. In the alternative, the Individual Defendants respectfully request that this Court enter an order barring Mr. Kalven

from testifying as to any other matters not disclosed at his deposition or produced in discovery.

Respectfully Submitted,

/s/ Mary S. McDonald

Mary S. McDonald

Assistant Corporation Counsel

Attorney for Defendant Officers

Edwin Utreras, Christ Savickas, Joseph

Seinitz Robert Stegmiller and Andrew

Schoeff

30 N. LaSalle St. #1400

Chicago, IL. 60602

(312) 744-8307