

IN THE UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 12-61735-Civ-Zloch

BROWARD BULLDOG, INC., a Florida
corporation not for profit, and DAN
CHRISTENSEN, founder, operator and editor
of the BrowardBulldog.com website,

Plaintiffs,

vs.

U.S. DEPARTMENT OF JUSTICE and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

**THE MIAMI HERALD'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF & SUPPORTING MEMORANDUM OF LAW**

Miami Herald Media Company, d/b/a the *Miami Herald* (the "Herald"), moves for leave to file an amicus curiae brief in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. If permitted, the Herald will jointly file an amicus curiae brief with the *Sarasota Herald-Tribune*, whose motion for leave is currently pending before this Court.

This matter involves access to Federal Bureau of Investigation ("FBI" or "Bureau") records related to that agency's investigation of possible terrorist activity in the months leading up to the national tragedy of September 11, 2001. That investigation, handled by the Tampa field office, included activities occurring in Florida. The Herald has covered, and will continue to cover, connections between 9/11 and Florida. Several of the 9/11 hijackers had links to South Florida, the Herald's core coverage area. The paper can offer the Court an additional perspective on the relevant facts and law. Grounds for this motion appear in the following memorandum.

Memorandum of Law

This Court has the inherent authority to allow an amicus curiae to participate and assist the Court. Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500 (S.D. Fla. 1991) (citations omitted). The Herald's proposed brief will provide useful assistance to this Court in the midst of ongoing litigation, which has not yet been scheduled for trial. Cf. News & Sun-Sentinel Co. v. Cox, 700 F. Supp. 30, 31 (S.D. Fla. 1988) (denying motion for leave to file amicus brief, where motion was filed two weeks after completion of trial). The Herald respectfully requests that this Court grant leave for its amicus curiae brief to be filed within 20 days.

The Herald is a daily newspaper of general circulation in South Florida. It has won 20 Pulitzer Prizes for its reporting. The Herald has a special interest in the release of FBI documents concerning investigations in Florida. The Herald has grave concerns about the connections between the 9/11 hijackers and the State of Florida, including what relationship former Sarasota residents may have had with two 9/11 terrorists. More importantly, the Herald would like to examine the thoroughness and outcome of the FBI's investigation, as well as determine whether the FBI misrepresented its findings to Congress or the public.

Although the Herald's interests are similar to Plaintiffs', the Herald has its own, independent newsgathering interest in access to the FBI records and wishes to present arguments that are not duplicative of those advanced by Plaintiffs. Of particular concern to the Herald is the FBI's assertion of privacy interests under 5 USC §§ 552(b)(6) and (b)(7)(C). The Herald can assist the Court by providing perspective on the substantial public interest outweighing any privacy interests the FBI has asserted.

When faced with an assertion that 5 USC §§ 552(b)(7)(C) applies, “the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.” Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 174 (2004). The Herald shares Plaintiffs’ reasonable belief that Government impropriety might have occurred and will provide additional support for Plaintiffs’ argument on this front.

This alleged impropriety, of course, is at the heart of the public interest in this matter and simply outweighs the privacy interests the FBI asserts via both 5 USC §§ 552(b)(6) and (b)(7)(C). The public interest inquiry focuses on whether disclosure would shed light on the operations or activities of government. See Bibles v. Or. Natural Desert Ass’n, 519 U.S. 355, 355 (1997); Dobronski v. FCC, 17 F.3d 275, 278-80 (9th Cir. 1994) (finding public interest in uncovering corruption in government agency outweighed minimal privacy interest in employee sick leave records); cf. Fed. Labor Relations Auth. v. U.S. Dep’t of Def., 977 F.2d 545, 548 (11th Cir. 1992) (finding government properly invoked Exemption 6 to withhold from union federal government employees’ home addresses because union did not allege public interest that would shed light on government activities).

Former Florida Governor and U.S. Senator Bob Graham, a South Florida resident, has long expressed concern about the pre-9/11 activities occurring in Florida. Senator Graham has alleged that the FBI made false statements to the public about the results of its Sarasota investigation related to those pre-9/11 activities. The results of that investigation were not reported to Congress or mentioned in the 9/11 Commission Report. Documents released in the course of this litigation have revealed information that directly contradicts the FBI’s prior public statements asserting that no connections between the Sarasota property and 9/11 exist. The

Herald has a strong interest in ascertaining which FBI statements to the public are accurate. “There may be an explanation without connection to al Qaida, but after 10 years the public deserves answers.” See 9/11’s Lingering Questions, Miami Herald, September 16, 2011 (attached). South Florida residents are invested in understanding the results of the FBI’s investigation and in scrutinizing the FBI’s actions.

Seeking and reporting the truth about this investigation and the FBI’s conduct related to it remain the core duty of the Herald as a newspaper. The constitutional guarantee of a free press was intended “to create a fourth institution outside the Government as an additional check on the three official branches.” Justice Potter Stewart, “or of the Press”, 26 Hastings L. J. 631 (1975), reprinted in 50 Hastings L.J. 705, 708 (1999). Even if the FBI investigation concluded no links existed between the Sarasota property and 9/11, this finding would not diminish the public’s right to scrutinize the adequacy of the government’s investigation and subsequent actions to determine for itself the propriety of its government’s behavior. See Nat’l Ass’n. of Atomic Veterans v. Dir., Def. Nuclear Tech., 583 F. Supp. 1483, 1487 (D.D.C. 1984) (duplication of government’s prior investigation does not diminish FOIA’s goal of allowing public to “decide *for itself* whether government action is proper”). That is the very purpose of FOIA. The Herald’s interest in and perspective on this matter justify the exercise of the Court’s inherent authority to permit amicus participation.

WHEREFORE, the Herald respectfully requests this Court grant it leave to file, within 20 days of this Court’s order on this issue, an amicus curiae brief in support of the Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment.

LOCAL RULE 7.1 CERTIFICATE OF GOOD FAITH

The undersigned contacted all parties via telephone or email in a good faith effort to resolve the issues raised in the motion. Plaintiffs Broward Bulldog, Inc., and Dan Christensen consent to the granting of this motion and the filing of an amicus curiae brief by the Herald. The Herald has been unable to resolve the issues raised with Defendants U.S. Department of Justice and Federal Bureau of Investigation; they do not agree to this motion.

Respectfully submitted,

THOMAS & LOCICERO PL

s/ Carol Jean LoCicero

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 27, 2013, I electronically filed with the Clerk of Court using CM/ECF The Sarasota Herald Tribune's Motion For Leave To File Amicus Curiae Brief & Supporting Memorandum Of Law. I also certify that the same document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Carol Jean LoCicero
Attorney

Miami Herald

Posted on Fri, Sep. 16, 2011

9/11's lingering questions

Reports of a previously unknown Saudi connection to the events of 9/11 in Florida cry out for a full airing. There are simply too many troubling questions surrounding the mystery of a hastily-abandoned house in Sarasota days before the attacks to sweep this matter under the rug.

The three-bedroom home in an upscale, gated residential compound was owned by a Saudi financier whose daughter, son-in-law and two young children lived there. They left a few days before 19 terrorists - 15 of whom were Saudis - carried out the plot to attack targets in this country. They left behind three cars, rooms of expensive furniture, food supplies, and other evidence of an abrupt exit, including clothes hanging in the closets, dirty diapers, mail left on the table and so forth.

More worrisome, they also had ties to the al Qaida terrorists. FBI agents, acting on a tip from a neighbor weeks later, found gate logs of vehicle tags showing that a car owned by hijacker Mohamed Atta had visited the compound. More information indicated that he and Ziad Jarrah, another hijacker, were in the car. Agents reportedly linked phone calls from the house to the Saudi attackers.

On Thursday, the FBI issued a statement saying it had followed up the information on the Sarasota house and "there was no connection found to the 9/11 plot." The bureau said it had informed Congress and the 9/11 Commission about its investigation.

That should not be the end of it, however. If there was an investigation, when did it end and what did they find? Who did they tell? What about the visits and phone calls? What was the nature of the connection between the hijackers and those who owned the house and lived there? There may be an explanation without connection to al Qaida, but after 10 years the public deserves answers.

Former Florida Sen. Bob Graham, who chaired the congressional investigation into the hijackings, emphatically disputes the assertion that the FBI informed Congress. That, too, should be cleared up. U.S. Rep. Kathy Castor, whose district includes Sarasota, has asked the chairman of the House Intelligence Committee to investigate, and Mr. Graham has asked President Obama's counterterrorism advisor to pursue the matter. Both of those requests should be honored in order to get a public accounting of what this all means.

The Saudi connection to the events of 9/11 has always been a matter of speculation and controversy. Over the years, the Saudi kingdom has itself come under attack by al Qaida terrorists. Its authorities have worked to diminish the influence of Islamic extremism, reportedly updating the scholastic curriculum to eliminate textbook references to jihad,

slaying infidels and so forth, and hosting conferences of Islamic scholars to denounce terrorism.

That's progress. Unfortunately, some prominent Saudi officials still don't seem to get it. In an opinion article in The New York Times earlier this week, Prince Turki al-Faisal, a former Saudi ambassador to the United States and former director of its intelligence services, bluntly warned that U.S. failure to support the Palestinian bid for statehood at the United Nations would be a mistake. The headline: "Veto a state, lose an ally."

A proper regard for the lingering pain of Americans would dictate that the Saudis, of all people, should know better than to issue threats to this country on the anniversary of 9/11.

Ten years later, much about the Saudi connection remains unknown. An investigation prompted by the Sarasota connection would help to clarify matters.

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