

McDermott Lawyers Help Uncover Hoover-Era 'Sex Deviate' Files

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Government documents related to former FBI Director J. Edgar Hoover's purge of gay and lesbian federal government employees will be released after McDermott Will & Emery attorneys scored a pro bono win.

The Mattachine Society of Washington, D.C., sought documents relating to an executive order, signed by President Dwight D. Eisenhower in 1953, that allegedly allowed then-FBI director Hoover to purge the government of gay and lesbian employees—an event that has come to be known as the “lavender scare.”

Executive Order 10450 authorized the firing of LGBT federal government employees for what it called “sexual perversion.”

These files are relevant today because “those who forget history are doomed to repeat it,” Lisa A. Linsky, a McDermott attorney involved in the case, told Bloomberg BNA, quoting philosopher George Santayana. McDermott has represented the Mattachine Society since 2012 to help with its mission of “archive activism,” Linsky, one of more than 16 attorneys at the firm that work on pro bono projects for the society, said.

The Mattachine Society's mission is to “conduct original archival research and educational programs that focus on gay and lesbian legal, political, and policy history—often hidden or destroyed,” according to its website.

Court's Ruling

The society filed suit against the government in 2016 after its Freedom of Information of Act request for documents relevant to the executive order wasn't fulfilled.

It asked the U.S. District Court for the District of Columbia to order the FBI to release all the materials it requested pertaining to Executive Order 10450.

The FBI claimed not to have found any documents relating to then-Assistant Attorney General Warren E. Burger, who enforced the order.

"Respectfully, this strains credulity," the court said in its July 2017 opinion. "The court finds its nearly impossible to believe that a search for every permutation of the name of the man who was charged with carrying out EO 10450, a robust federal mandate that built upon an established FBI initiative, yielded zero responsive documents," it said.

The court granted the society's motion for summary judgment in part, finding that the FBI didn't "demonstrate that their search was reasonably calculated to uncover all relevant documents."

The court further found that some documents were properly withheld or redacted under a FOIA exemption for confidential sources.

The next step will be to meet with DOJ attorneys to discuss proposed expanded search terms, Linsky said.

The Department of Justice declined to comment on the case.

'Dream' Relationship

McDermott's relationship with the Mattachine Society began five years ago and is "a pro bono dream," Linsky said.

During the firm's annual pride program in June 2012, Linsky met the society's president, Charles Francis. He asked Linsky, the firm's first partner-in-charge of Lesbian, Gay, Bisexual and Transgender Diversity and Inclusion, for help with FOIA requests.

Francis found "that the government agencies to which he was sending the FOIA requests were not responding," Linsky said.

Since then, the firm has submitted more than 100 FOIA requests on behalf of the society. McDermott's team meets every Friday morning to discuss its work, she said.

Ongoing projects include getting information from the Centers for Disease Control and Prevention and other agencies on the Reagan administration's AIDS policy, sending document requests to the William J. Clinton Presidential Library and Museum for information about the Defense of Marriage Act, and gathering information for a white paper the Mattachine Society is writing on conversion therapy.

The McDermott/Mattachine relationship is so great because it's a long-term project that involves a very engaged client and a team of attorneys dedicated to the work, Linsky said.

The work is "challenging," "requires creativity" and provides "a unique opportunity for junior attorneys and summer associates to roll up their sleeves and jump into work that permits the development of investigation, research, writing, and litigation skills," she said.

McDermott is very supportive of the project, she said.

Recent History

It doesn't appear that pro bono work in the area of LGBT rights will be slowing down.

There's been an expansion of civil rights for the LGBT community over the past decade, but "a huge step backwards" in the past several months, Linsky said.

High-profile cases are working their way through the courts.

One such case involves a Colorado baker who refused to make a cake for a same-sex wedding on religious grounds. The baker will get to challenge the state's anti-discrimination law at the U.S. Supreme Court, after it granted review June 26.

Other prominent cases will continue to define the boundaries of the right to same-sex marriage laid out in Obergefell v. Hodges, and decide whether LGBT individuals are protected from workplace discrimination under federal law.

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