

✓ McCright
6296 #314

Assistant Attorney General
Civil Division

May 16, 1978

Assistant Director - Legal Counsel
Federal Bureau of Investigation

~~112~~ Mr. Bassett
Attn: Mr. McCright *MB*
1 - Mr. Mintz
1 - Civil Litigation Unit

JAMES E. RAY v.
UNITED STATES OF AMERICA, et al.
(U.S.D.C., E.D. TENN-E)
CIVIL ACTION NO. 3-78-50

Reference is made to your letter to Director William E. Webster dated April 7, 1978, your reference EAB:JBSmith:dss, 145-12-3589.

From our reading of the Complaint, we believe the plaintiff alleges a conspiracy between the Federal Bureau of Investigation (FBI), United Press International (UPI), and George McMillian. This alleged conspiracy was in the form of a Freedom of Information (FOI) request by UPI to the FBI concerning the FBI's investigation of the death of Dr. Martin Luther King, Jr. Plaintiff alleges the FBI's release of such information violated his constitutional and civil rights. Plaintiff also alleges the FBI, under color of law, in conspiracy with the other two individual defendants in terminating in some manner the investigation of the United States House of Representatives Select Committee on Assassinations.

Plaintiff invokes jurisdiction over the subject matter under Title 28, United States Code (USC), Sections 1331(a), 1343, 1391, and Title 42, USC, Sections 1983 and 1985. Plaintiff also asserts jurisdiction over the subject matter under Tennessee Code Annotated Chapter 240, Section 2, 23-2608 and Walker v. Cahalan, 541 F. 2d 681.

Plaintiff's allegations fail to state a claim against the FBI upon which relief may be granted. If plaintiff is asserting a claim pursuant to 42 USC, Section 1983 against the FBI, it must fail, inasmuch as this section

- 1 - SAC, Washington Field Office (For Information)
- 1 - SAC, Knoxville (For Information)

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provides a cause of action for a constitutional deprivation arising out of actions taken under color of state law only, no claim arises under this section for actions taken under color of Federal law. District of Columbia v. Carter, 409 U.S. 418 (1973). See also McWally v. Pulitzer Publishing Company, 532 F. 2d 69 (8th Cir. 1976), Soldavia v. Secretary of Agriculture, 512 F. 2d 427 (1st Cir. 1975). Robinson v. Wichita Falls and North Texas Con Act Corp., 507 2d 245 (75th Cir. 1975).

With respect to Title 42, USC, Section 1985, a review of the allegations in the Complaint leads us to believe that Sections 1985(1) and (2) have no application in this case. The maintenance of any action under 1985(3) requires a conspiracy based upon a racial or otherwise class-based invidiously discriminatory animus, Griffin v. Breckinridge, 403 U.S. 88 (1971).

The allegations by the plaintiff that the FBI released information under the Freedom of Information Act to the defendants UPI and George McMillan is true. By way of background information concerning the release of documents pertaining to the death of Dr. Martin Luther King, Jr., was initiated October 28, 1976, by plaintiff. Attached is a copy of a letter addressed to former Deputy Attorney General, Harold Tyler, Jr., United States Department of Justice (DOJ), from James H. Lesar, Esq., dated December 23, 1975. Mr. Lesar's letter requested release of documents concerning the death of Dr. Martin Luther King, Jr., to Mr. Harold Weisberg. Mr. Lesar was plaintiff's attorney of record during this period of time. Also attached is a waiver signed by plaintiff dated November 8, 1976, waiving any and all invasion of his privacy which might occur as the result of release of documents to Mr. Weisberg. The FBI released documents periodically until October 26, 1977.

Enclosed is a letter from plaintiff to the FBI dated November 28, 1977, revoking the previous waiver which he granted to Mr. Weisberg. Mr. Weisberg had received all

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of the pertinent documents in the FBI's possession prior to plaintiff's waiver revocation which rendered the issue moot. By letter dated December 13, 1977, a copy of which is attached, the FBI acknowledged receipt of plaintiff's revocation.

The DOJ thereafter considered the assassination documents to be of historical interest due to the volume of inquiries received by the FBI from the public in general. The DOJ waived privacy rights against public interest and decided the documents concerning the death of Dr. Martin Luther King, Jr., should be available to the public. The entire release of documents from the file consisting of 44,873 pages is available to the public at large in the FBI's Reading Room, Washington, D. C. It was determined that defendant UPI received 165 pages of this material January 24-26, 1978, from the FBI. Also defendant George McMillian received 44 pages, March 15, 1978. It should be noted that numerous other persons have reviewed and received the same documents.

The plaintiff is in error concerning an FBI conspiracy with the other two individual defendants in terminating the investigation by the United States House of Representatives Select Committee on Assassinations. Enclosed you will find a copy of the United States House of Representatives Congressional Record dated February 2, 1977, consisting of pages H-790 through H-807. It should be noted that the United States House of Representatives Select Committee on Assassinations was created by the 94th Congress, September 19, 1976, under House Resolution 1540. The 95th Congress continued the United States House of Representatives Select Committee on Assassinations, February 2, 1977, under House Resolution 222 which the attached Congressional Record shows. As of this date, the FBI has been furnishing the United States House of Representatives Select Committee on Assassinations with documents concerning the death of Dr. Martin Luther King, Jr.

In addition, the citation of Tennessee Code Annotated Chapter 240, Section 2, 23-2508, is analogue because it relieves commercial printers and printing establishments

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of liability for libel under certain conditions. With reference to the authority citation for jurisdiction of Walker v. Cahalan, 541 F. 2d 681, is in erratum.

Accordingly, it is recommended that you file a Motion to Dismiss on behalf of the FBI, pursuant to Rule 12(b), Federal Rules of Civil Procedure (FRCP), for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted.

Should an answer to the plaintiff's Complaint become necessary, please contact Special Agent Michael W. Twibell, Civil Litigation Unit, Legal Counsel Division, who can be reached at 324-3601 (PTS).

Enclosures (5)