Oliver Patterson 6 Dec. 1980 James E. Ray

St. Louis, MO.

Oliver,

I received your note a few days ago asking about the suit against Baetz. The court ordered Baetz & the JD to answer more fully & I have enclosed these papers. I don't know how long it will take for the judge to rule.
Also, you mentioned in a prior letter you were having some books sent to me. Yesterday I received 6 hard-cover "Code name zorro"books, they were kind of ragged. They came from "Stand book store" in N.Y. If they are yours let me know what I should write in them, just full name I guess. The local postman here is off for awhile, wife sick, consequently it may be a good idea to hold back until the first of the year if you have any other books since they could be lost under the present set-up.

I see from a Globe-Democrat clipping dated Nov.29-30 that a big drug ring was busted in the St Louis area. The ring had a polygraph man to examine members for "reliability". He was busted too and the paper said he formerly worked for the "select Committee"--maybe a friend of Baetz.

I filed for a pardon but was told to submit more evidence--I just gave them an outline. Now I have a Nashville attorney who will present all of the evidence including some of the material I sent you in the Complaint against Baetz & the JD.

Robert Blakey is cashing in on his "select Committee" position. The Nov. 16th issue of Parade Magazine reviewed a book he had written for a N.Y. "Times" pub. house., the book titled "The plot to kill the president". Blakey also said I wasn't entitled to a "bucket of spit", in an interview with a Nashville newspaper which ask him to comment on the pardon, consequently I am suing him, like Baetz, for libel.

That's about it for now. until later:

J. Ray

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES E. RAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 80-0963 C (4)
	)	
UNITED STATES DEPARTMENT OF JUSTICE, CONRAD BAETZ,	)	
	)	
Defendants.	)	

MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Come now the United States Department of Justice and Conrad Baetz, defendants herein, by Robert D. Kingsland, United States Attorney for the Eastern District of Missouri, and Wesley D. Wedemeyer, Assistant United States Attorney for said District, and move this honorable court to dismiss plaintiff's complaint, or, in the alternative, for an order granting summary judgment, pursuant to Rules 12(b) and 56, F.R.Civ.P., for the reasons that (1) plaintiff's complaint fails to state a claim upon which relief can be granted, (2) the plaintiff's complaint fails to assert this court's subject matter jurisdiction, and (3) the defendants herein are entitled to judgment as a matter of law.

ROBERT D. KINGSLAND
United States Attorney

WESLEY D. WEDEMEYER
Assistant United States Attorney

Copy of the above and foregoing mailed to James E. Ray, Brushy Mountain Prison, Petros, Tennessee 37845, this 24 day of November, 1980.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES E. RAY, Plaintiff,	)	
v.	)	No. 80-0963 C (4)
UNITED STATES DEPARTMENT OF JUSTICE, CONRAD BAETZ, Defendants.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

The plaintiff James Earl Ray brings this action against the United States Department of Justice and Conrad Baetz (who at the time of the events complained of was a staff investigator for the Select Committee on Assassinations, United States House of Representatives) seeking an order from this court requiring the Department of Justice to "specify just what criminal acts, and the evidence to support same, that the Department contends plaintiff committ[ed] prior to his departing the United States of America in April, 1968 -- excepting plaintiff[s] convictions in courts of law." Paragraph 2 of plaintiff's prayer, page 8. From defendant Baetz he seeks $25,000 in actual damages, and, $50,000 in punitive damages, for liable and violation of his civil rights. No libel claim is made against the Department of Justice. Jurisdiction is asserted under diversity of citizenship, federal question, a question under a federal statute (42 U.S.C.A. §1983 and 28 U.S.C. §1343), and the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202. The defendants by their Answer have generally denied the Complaint's allegations, except for those allegations as to which they had no knowledge or which were a matter of public record.

I. The Plaintiff's Complaint

A brief summary of the plaintiff's complaint is helpful in understanding some of the more confused allegations contained therein and his requests for a declaration of his rights at the end of the complaint.

In paragraph 3 Mr. Ray states that shortly after his plea of guilty in state court in 1968 to the murder of Dr. Martin Luther King, Jr., he dismissed his counsel Percy Forman and repudiated his plea as having been obtained through "fraud and coescion [sic]." He has since attempted, unsuccessfully, to set aside that plea. He maintained, and still maintains, that the 1968 plea should have been set aside because when the guilty plea was taken the State of Tennessee offerred no motive for the plaintiff's murder of Dr. King. (This issue has presumbly been presented to the appellate courts of Tennessee which have declined to set aside plaintiff's plea and conviction). In addition, the plaintiff states that "during the period of plaintiff's 1967-1968 fugitivity plaintiff received financing of approximately $9,500; the State, during said plea, offered no explanation as to how plaintiff was financed during the 1967-68 period." (Paragraph 3).

A. Allegations Against Department of Justice

The allegations against the Justice Department, found in paragraphs 4A through 4L and 5 through 8, present what Mr. Ray believes to be a campaign of misinformation on the part of the Federal Bureau of Investigation and other "fronts" of the Justice Department for the purposes of deceiving the public about the true circumstances surrounding Dr. King's murder and denying plaintiff the opportunity of a new trial.

Although he complains that each of the defendants, along with others, has been libeling the plaintiff, his prayer

against the Justice Department does not seek damages for libel (which would not be permitted under the Federal Tort Claims Act), but rather an order requiring the Department to specify what criminal acts it contends the plaintiff committed prior to his leaving the country in April, 1968. The reason for this request, as stated in paragraph 18(4) is that Mr. Ray intends to petition the State of Tennessee Board of Pardon and Parole and that the "published malicious and false accusations" connecting plaintiff with narcotics traffic and bank robberies has an adverse impact upon his chances before the state board which in turn will make its recommendation to the Governor of the State of Tennessee. Therefore, says the plaintiff, he is entitled to be tried on these various drug and bank robbery charges (for which he has never been indicted).

The short answer for Mr. Ray is that matters which are properly considered by the State Board in arriving at their recommendations are determined by the laws of the State of Tennessee. Alternatively, the plaintiff has cited no authority for the proposition that a potential criminal defendant can require the Department of Justice to indict him and bring him to trial. The plaintiff's sincerity in his request has to be questioned.

In examining the complaint, the individual paragraphs taken by themselves are confusing and therefore difficult to respond to. Paragraph 4 and its subparagraphs make reference to a series of communications and publications about the plaintiff before and after the King assassination. Paragraph A references an FBI AIRTEL stating that no identification could be made of Ray connecting him with bank robberies on the basis of certain latent impressions. Exhibit A. Paragraph B asserts that the state prosecutor in the King case told the press that Ray had been involved in narcotics trafficking and bank robberies.

Paragraph C asserts that an author named Gerald Frank published an article which suggested that Ray had financed himself, while a fugitive, by robbing all night conveniences. Another article in Time magazine alleged also that Ray had smuggled drugs.

Ray is denying that there is any truth to these allegations, and inferring that the FBI was the source of this false information. Then he quotes a portion of an FBI memo which stated that the Bureau did know the source of the money which Ray possessed.

Paragraph F complains about an inference that a United States Representative made in 1978 that Ray was involved in a robbery of the Bank of Alton (Illinois) in 1967. Paragraphs G through K reference reports linking plaintiff's brothers to that robbery, as well as reports which would exonerate the Ray brothers.

Paragraphs 4L through 7 relate to a newspaper article in which FBI Director Webster noted certain similarities between the shooting of Dr. King and Vernon Jordan. Mr. Ray disputes that these similarities exist.

The plaintiff concludes that the Justice Department is continuing a strategy of "signaling the courts through false and poisonous allegation in print, that the federal government cannot afford for the courts to order a public trial in the Martin Luther King, Jr. homicide." Paragraph 7.

B. Allegations Against Conrad Baetz

All of plaintiff's allegations against defendant Baetz are contained in paragraphs 9, 10 and 11.

Paragraphs 9 and 10 assert that defendant Baetz directed one Oliver B. Patterson to purloin material from plaintiff's brother, Jerry W. Ray, and that this theft did in fact occur on April 18, 1978, at the "Capital Hill Quality Inn" from Jerry Ray's room. See Exhibit G of plaintiff's

complaint.

However, Jrrry W. Ray is not a party to this lawsuit.

Paragraph 11 asserts that it was the objective of the "Select Committee" and defendant Baetz "to harass under color of law" the plaintiff and other members of his family. Exhibit H of the complaint is an affidavit which makes the same conclusory assertion.

II. The Complaint Fails To State A Claim.

Rule 8(a), F.R.Civ.P., requires that a complaint shall contain a short and plain statement of the claim showing that the pleader is entitled to relief. It also requires a statement of the ground upon which the court's jurisdiction depends. In the present case, the plaintiff has failed to set forth a claim against either defendant.

With regard to defendant United States Department of Justice, the plaintiff does not even attempt to state a claim. The prayer (paragraph 2, page 8) seeks an order requiring the Department to specify what criminal acts the plaintiff committed prior to April, 1968. This is not a recognizable claim upon which relief can be granted. As noted above, the plaintiff's primary concern, as stated in paragraph 18 of his complaint, is that certain misinformation may be considered by the Tennessee State Board of Pardon and Paroles in considering his petitions.

Since no claim has been stated, the issue of this Court's jurisdiction and the immunity of the government to suit in this action will only be dealt with briefly. Because of the plaintiff's failure to state a claim, it is somewhat difficult to come to terms with the jurisdictional issue.

It is axiomatic that the government may not be sued without its consent, and actions against the United

States for the alleged deprivation of civil rights under 28 U.S.C. §1343 will not lie, because the statute does not waive the sovereign immunity of the United States. See Smallwood v. United States, 486 F.2d 1407 (8th Cir. 1973).

The plaintiff claims jurisdiction on the existence of a federal question, and on the existence of a question arising under a particular statute, citing 28 U.S.C. 1343 and 42 U.S.C. 1983. Although a Constitutional violation is alleged in the jurisdictional statement, no allegation of such appears from the complaint. See Butz v. Econumu, 438 U.S. 478 (1978). As noted, 28 U.S.C. 1343 is not a waiver of immunity, see Smallwood, supra.

The plaintiff seems to be seeking a Bivens theory against the United States, although he invokes neither the Federal Tort Claims Act, 28 U.S.C. §1346(b) nor general federal question jurisdiction, 28 U.S.C. §1331. The doctrine of sovereign immunity would nevertheless bar general tort jurisdiction against the United States since (1) Section 1331 is not a waiver of immunity, and (2) the United States can only be sued in tort under the Federal Tort Claims Act. Butz v. Econumu, supra.

The complaint against the United States is mainly one for defamation. It is well established that the doctrine of absolute immunity applies in defamation cases. See Expenditures Unlimited, Etc. v. Smithsonian Institution, 566 F.2d 289 (D.C. Cir. 1977) (en banc), cert. denied, 438 U.S. 915.

With regard to defendant Baetz, this plaintiff has also failed to state a claim since he is seeking to assert a claim on behalf of his brother Jerry W. Ray. The defendant notes also that diversity jurisdiction over defendant Baetz, a resident of Wood River, Illinois, could not be asserted in this district, since plaintiff Ray is presently incarcerated in Tennessee. Paragraphs 9 and 10 state that Baetz directed

one Oliver Patterson to purloin material from Jerry Ray while the latter was staying in a Washington, D. C. hotel. But Jerry Ray is not a party to this lawsuit. Rule 17(a) requires that "Every action shall be prosecuted in the name of the real party in interest." This fundamental requirement requires the plaintiff to demonstrate that he has standing to assert the claim, and that the claim is in fact being asserted by the person harmed by the supposed wrong.

The remaining paragrphs dealing with Baetz assert that he had formed a policy "to harass [the plaintiff and plaintiff's family] under color of law." Such conclusory assertions fail to meet even the minimum requirements of Rule 8(a).

Even if Jerry Ray were added as a party plaintiff to this action, defendant Baetz would be entitled to absolute immunity in this action alleging a common law tort. See Imbler v. Packman, 424 U.S. 409 (1976) and Butz v. Economu, supra, at 421.

For the foregoing reasons, the plaintiff's action should be dismissed with prejudice.

ROBERT D. KINGSLAND
United States Attorney

WESLEY D. WEDEMEYER
Assistant United States Attorney

Copy of the above and foregoing mailed to James E. Ray, Erushy Mountain Prison, Petros, Tennessee 37845, this _____ day of November, 1980.

U.S. Department of Justice

United States Attorney
Eastern District of Missouri

1114 Market Street
St. Louis, Missouri 63101

November 25, 1980

Mr. James E. Ray
Brushy Mountain Prison
Petros, Tennessee 37845

Re: James E. Ray v. United States Department of Justice and Conrad Baetz
No. 80-0963 C (4)

Dear Mr. Ray:

Please find enclosed signed copy of Affidavit of Conrad Baetz, which was inadvertently omitted from the Motion To Dismiss, or, in the Alternative, For Summary Judgment and Memorandum in support mailed to you on November 24, 1980.

Yours very truly,

ROBERT D. KINGSLAND
United States Attorney

By: WESLEY D. WEDEMEYER
Assistant United States Attorney

WDW:bl

Encl.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES E. RAY, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, CONRAD BAETZ, Defendants.	)	No. 80-0963 C (4)

AFFIDAVIT

Comes now Conrad Baetz, defendant in the above cause, and states and declares as follows:

1. I presently reside at 1280 Cedar Drive in Wood River, Illinois, and am a Sheriff's Deputy for Madison County, Illinois.

2. I have read and am familiar with the allegations of the complaint in the above styled cause.

3. From August, 1977, through December, 1978, I was employed as a Staff Investigator by the Select Committee on Assassinations, United States House of Representatives, which Committee was investigating the assassinations of President John F. Kennedy, and the Reverend Martin Luther King, Jr.

4. I am familiar with Oliver Patterson, the affiant of Exhibits G and H attached to plaintiff's complaint.

5. At all times during my employment by the above named Committee I acted within the scope of my employment as a staff investigator.

6. At no time during my acquaintance with Mr. Patterson did I advise him, or suggest to him in any manner,

to search the hotel room of Jerry Ray for documents or letters belonging to Jerry Ray, or to steal or purloin any such documents from the hotel room of Jerry Ray.

CONRAD BAETZ

I, Conrad Baetz, state under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 1980.

Conrad Baetz