

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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HORBERT H. EBEL
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PAUL A. BONACCI,)
) 4:CV91-3037
)
)
 Plaintiff,)
) MEMORANDUM AND ORDER ON
) MOTIONS TO DISMISS BY
 vs.)
) DEFENDANTS FLANAGAN
) AND VAN PELT
)
)
 THE CATHOLIC ARCHBISHOP OF)
 OMAHA, et al.,)
)
)
 Defendants.)

The plaintiff, Paul A. Bonacci, has brought this action against various individuals and entities for deprivation of civil rights, personal injury, and abuse of statutory authority relating to grand juries. As to defendants Van Pelt and Flanagan, Bonacci seeks monetary and equitable relief under 42 U.S.C. § 1983 for their alleged violation of Nebraska state law regulating grand jury procedure. Jurisdiction is claimed under 28 U.S.C. § 1343 for the civil rights claims; pendent and ancillary jurisdiction is claimed for the related state claims.

Pursuant to Fed. R. Civ. P. 12(b) and (e), defendants Van Pelt and Flanagan have moved for dismissal for failure to state a claim upon which relief can be granted and, in the alternative, for a more definite statement. The plaintiff has not responded to the motions.

Pursuant to Rule 12(b)(6), "a motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief." Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). In resolving such motions, allegations in the complaint must be taken as true. In addition, the complaint and "all reasonable inferences arising therefrom" must be construed in favor of the plaintiff. Id. Applying this standard to the amended complaint, I find the plaintiff has failed to state a valid cause of action and shall grant the motions to dismiss.

I. FACTS AND ALLEGATIONS

The allegations contained in the amended complaint present a litany of sexual and physical abuse beginning when the plaintiff was six years old and ending in his own arrest and conviction for child sexual abuse. In 1990, a Douglas County grand jury was empowered to investigate the failure of the Franklin Credit Union in Omaha, Nebraska. This investigation eventually encompassed accusations that prominent Omaha businessmen had operated a child sex ring of which Bonacci had allegedly been a victim. Bonacci testified before this grand jury as to matters relating to his

involvement in this sex ring and was subsequently indicted for perjury.

Defendant Van Pelt was duly appointed as Special Prosecutor of the Franklin Credit Union investigation. The amended complaint alleges Van Pelt, "in taking testimony from witness Mark Coleman knew Coleman was presenting false and perjured testimony . . . Van Pelt further suppressed from the Grand Jury written documents in Van Pelt's possession which clearly established that Coleman's testimony was perjured." (Amended Complaint ¶ 21).

According to the Amended Complaint, defendant Flanagan, the grand jury foreman, made public statements alleging that the grand jury indicted Bonacci because he would not recant his testimony. The plaintiff also alleges Flanagan should not have been grand jury foreman because of accusations of pandering made against him, that Flanagan improperly shared grand jury information with other individuals, and that after release of the grand jury report, Flanagan made improper public disclosures of grand jury proceedings. (Amended Complaint ¶¶ 22, 26-27).

II. PROSECUTORIAL IMMUNITY

The allegations against Van Pelt are not materially different from those made in another case recently dismissed by this court on the basis of absolute immunity. DeCamp v. Douglas County Franklin Grand Jury, CV90-L-345 (D. Neb. Jan. 3, 1991). In that case, I concluded that the grand jurors and the special prosecutor were entitled to absolute immunity from liability under section 1983 so long as the complained of conduct was undertaken pursuant to their judicial authority. Id. at 4-5. See Imbler v. Pachtman, 424 U.S. 409, 423-24 (1976). See also Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978) (prosecutor was absolutely immune from claims that he presented fraudulent and illegal evidence to the grand jury); Rose v. Koch, 465 F. Supp. 1157 (E.D.N.Y. 1979) (absolute prosecutorial immunity applied where prosecutor allegedly presented false evidence to grand jury). Accordingly, the claims against Van Pelt will be dismissed as he is absolutely immune from liability for acts taken within the scope of his prosecutorial role.

IV. GRAND JUROR MISCONDUCT

I shall also dismiss the claims against Flanagan, although for reasons different than those relating to Van Pelt. Absolute immunity is equally applicable to grand jurors, including the jury foreman, for acts taken pursuant to their judicial function. However, the sum of the allegations against Flanagan focus on conduct taken outside his statutorily created role and in violation of the statutes creating and defining that role.

Nevertheless, dismissal is proper because the allegations do not state a claim upon which relief can be granted. First, the allegations regarding Flanagan's improper communications with non-jury members during the grand jury proceedings present a claim that the grand jury process and the resulting indictment were tainted. The same can be said for the claim that Flanagan should not have been permitted to serve as jury foreman. However, even if those allegations are true, they do not state a claim for relief as Flanagan is not the proper party from whom to seek equitable relief and no cause of action for damages has been stated.


Second, the allegation that Flanagan made public statements regarding the grand jury proceedings after the grand jury was dismissed does not state a claim for damages. There is no allegation that these statements caused injury to the plaintiff. At most, such conduct would indicate a violation of the juror's oath, an infraction that does not subject the offender to civil liability.

IT IS THEREFORE ORDERED that:

1. defendant Van Pelt's motion to dismiss, filing 40, is granted; and
2. defendant Flanagan's motion to dismiss, filing 43, is granted.

Dated July 18, 1991.

BY THE COURT


Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT.
DISTRICT OF NEBRASKA

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NORBERT H. EBEL *cb*
CLERK

PAUL A. BONACCI,)

CV 91-3037

Plaintiff,)

v.)

DEFENDANT MICHAEL FLANAGAN'S
MOTION FOR MORE DEFINITE
STATEMENT AND MOTION TO DISMISS

THE CATHOLIC ARCHBISHOP OF)
OMAHA, a non-profit corporation,)
LAWRENCE KING, PETER CITRON,)
ALAN BAER, HAROLD ANDERSON,)
ROBERT WADMAN, MICHAEL HOCH,)
KENNETH BOVASSO, NEBRASKA)
PSYCHOLOGICAL ASSOCIATION,)
INC., f/k/a NEBRASKA PSYCHIATRIC)
INSTITUTE, a non-profit corporation,)
THE CITY OF OMAHA, NEBRASKA, a)
municipal corporation, THE OMAHA)
PUBLIC SCHOOL DISTRICT, OMAHA)
WORLD HERALD COMPANY, a)
corporation, J.L. BRANDEIS AND)
SONS, INC., a corporation, THE)
DOUGLAS COUNTY GRAND JURY,)
MICHAEL FLANAGAN, an individual,)
and SAMUEL VAN PELT, an individual,)

Defendants.)

Pursuant to Fed.R.Civ.P. 12(b) defendant Michael Flanagan moves the court for an order dismissing the above-captioned action on the grounds that:

- (1) The court lacks jurisdiction over the subject matter of this litigation;
- (2) Plaintiff's complaint fails to state a claim upon which relief can be granted as to this defendant;

(3) This court lacks jurisdiction over the defendant Flanagan in any capacity as a member of the Douglas County Grand Jury pursuant to the protection of the Eleventh Amendment; and

(4) The defendant listed in his official and individual capacities is entitled to absolute immunity, or in the alternative, qualified immunity. Thus, this court lacks jurisdiction over said defendant.

In the alternative, pursuant to Fed.R.Civ.P. 12(e), defendant moves the court for an order requiring plaintiff to make his complaint herein more definite on the grounds that:

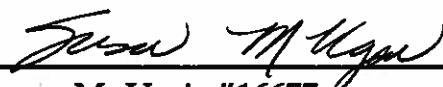
(1) Plaintiff's complaint fails to specifically allege which of his constitutional rights and civil rights have been violated;

(2) Plaintiff's complaint fails to specifically allege how defendant's actions constituted violations of plaintiff's constitutional rights and civil rights; and

(3) Plaintiff's complaint fails to allege facts sufficient to find that defendant was acting outside the scope of his authority as a member of the grand jury.

Dated this 29th day of March, 1991.

MICHAEL FLANAGAN, Defendant,
BY DON STENBERG, #14023
Attorney General


BY 
Susan M. Ugai, #16677
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2682

Attorneys for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for More Definite Statement and Motion to Dismiss upon the plaintiff herein by placing a copy of the same in the United States Mail, first class postage prepaid, addressed to plaintiff's

attorney of record, John W. DeCamp, DeCamp Legal Services, P.C., 300 Executive Building, 521 South 14th Street, Lincoln, Nebraska 68508, and upon defendants herein by placing a copy of the same in the United States Mail, first class postage prepaid addressed to defendant Catholic Archbishop of Omaha's attorneys of record, Edward D. Hotz, Attorney at Law, 10250 Regency Circle, Suite 100, Omaha, Nebraska 68114, and C.E. Heaney, Jr., Attorney at Law, 10306 Regency Parkway Drive, Omaha, Nebraska 68114; Peter Citron's attorney of record, Lyle Koenig, Attorney at Law, 147 N. 4th Street, P.O. Box 48, Hebron, Nebraska 68370; defendants Alan Baer and J.L. Brandeis and Sons, Inc.'s attorneys of record Edward G. Warin, Attorney at Law, 800 Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124-2342, and Steven W. Seline and Tory M. Bishop, Attorneys at Law, 1650 Farnam St., Omaha, Nebraska 68102; defendant Harold Anderson's attorney of record Tyler B. Gaines, Attorney at Law, 10050 Regency Circle, Suite 200, Omaha, Nebraska 68114; defendant Robert Wadman's attorney of record Michael M. O'Brien, Attorney at Law, 318 S. 19th Street, Omaha, Nebraska 68102; defendants Michael Hoch, Kenneth Bovasso, and the City of Omaha, Nebraska's attorneys of record, James E. Fellows, Deputy City Attorney, and Wendy E. Hahn, Assistant City Attorney, 1819 Farnam Street, Suite 804, Omaha, Nebraska 68102; defendant Omaha Public School District's attorney of record, David M. Pedersen, Attorney at Law, 1500 Woodmen Tower, Omaha, Nebraska 68102-2069; and defendant Omaha World Herald Company's attorney of record, Allen E. Daubman, Attorney at Law, One Pacific Place, Suite 800, 1125 S. 103rd Street, Omaha, Nebraska 68124, on this 29th day of March, 1991.



Susan M. Ugai
Assistant Attorney General

27-378

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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NORBERT H. EBEL
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PAUL A. BONACCI,
Plaintiff,

vs.

THE CATHOLIC ARCHBISHOP
OF OMAHA, et al.,
Defendants.

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Case #CV91-3037

PLAINTIFF'S REQUEST FOR ALIAS SUMMONS

COMES NOW Plaintiff and requests issuance of alias summons for the following defendants:

ROBERT WADMAN, c/o Police Department of Aurora
350 N. River, Aurora, Illinois, 60506

LAWRENCE KING, POE Ames Florists, 2526 Cuming,
Omaha, Neb. 68131

DECAMP LEGAL SERVICES, P.C.,

John W. Decamp #19429

JOHN W. DECAMP, #10951
521 S. 14TH, LINCOLN, NE. 68508
477-3974

*3-25-91 Alias summonses
issued - to P's Counsel*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Motion to Dismiss and the accompanying brief were sent on this 4th day of March, 1991, by regular United States mail, postage prepaid, to the following:

Counsel for Plaintiff:

John W. DeCamp
DeCamp Legal Services, P.C.
300 Executive Building
521 South 14th Street
Lincoln, Nebraska 68508

Counsel for Defendants:

Catholic Archbishop of Omaha
Edward D. Hotz
Zwieback, Hotz & Lamberty
10250 Regency Circle
Suite 100
Omaha, Nebraska 68114

C. E. Heaney, Jr.
Kennedy, Holland, Delacy &
Svoboda
10306 Regency Parkway Dr.
Omaha, Nebraska 68114

Omaha World Herald Company
Allen E. Daubman
Koley, Jessen, Daubman &
Rupiper, P.C.
One Pacific Place,
Suite 800
1125 South 103rd Street
Omaha, Nebraska 68124

J. L. Brandeis & Sons, Inc.
Messrs. Steven W. Seline
and Tory M. Bishop
Kutak, Rock & Campbell
1650 Farnam Street
Omaha, Nebraska 68102

Edward G. Warin
Gross & Welch
800 Commercial Federal
Tower
2120 South 72nd Street
Omaha, Nebraska 68124

Defendant Peter Citron
Lyle J. Koenig
Attorney at Law
147 North 4th
Post Office Box 48
Hebron, Nebraska 68370

Defendant Alan Baer
Messrs. Steven W. Seline and
Tory M. Bishop
Kutak, Rock & Campbell
1650 Farnam Street
Omaha, Nebraska 68102

Edward G. Warin
Gross & Welch
800 Commercial Federal Tower
2120 South 72nd Street
Omaha, Nebraska 68124

Douglas County Grand Jury
Susan M. Ugai
Assistant Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509

Defendant Michael Flanagan
Susan M. Ugai
Assistant Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509

Defendant Harold Anderson
Tyler B. Gaines
Gaines, Mullen, Pansing &
Hogan
10050 Regency Circle
Suite 200
Omaha, Nebraska 68114

Defendant Michael Hoch
James E. Fellows
Wendy E. Hahn
City of Omaha Legal
Department
1819 Farnam, Suite 804
Omaha, Nebraska 68102

Defendant City of Omaha, Nebraska
James E. Fellows
Wendy E. Hahn
City of Omaha Legal Department
1819 Farnam, Suite 804
Omaha, Nebraska 68102

Defendant Samuel VanPelt
Susan M. Ugai
Assistant Attorney General
2115 Stat Capitol Building
Lincoln, Nebraska 68509

Defendant Robert Wadman
Michael M. O'Brian
Attorney at Law
318 South 19th Street
Omaha, Nebraska 68102

Defendant Kenneth Bovasso
James E. Fellows
Wendy E. Hahn
City of Omaha Legal Department
1819 Farnam, Suite 804
Omaha, Nebraska 68102



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
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DISTRICT OF NEBRASKA

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CIVIL NO. 4CV:91-200-3037
NORBERT H. EBEL
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PAUL A. BONACCI,)
)
Plaintiff,)
)
vs.)
)
THE CATHOLIC ARCHBISHOP OF)
OMAHA, a Non-Profit Corporation;)
LAWRENCE KING; PETER CITRON;)
ALAN BAER; HAROLD ANDERSON;)
ROBERT WADMAN; MICHAEL HOCH;)
KENNETH BOVASSO; NEBRASKA)
PSYCHOLOGICAL ASSOCIATES, f/k/a)
Nebraska Psychiatric Institute,)
a Non-Profit Corporation; THE)
CITY OF OMAHA, a Municipal)
Corporation; THE OMAHA PUBLIC)
SCHOOL DISTRICT; OMAHA WORLD-)
HERALD COMPANY, a Corporation;)
J.L. BRANDEIS INC. AND SONS,)
INC., a Corporation; THE)
DOUGLAS COUNTY GRAND JURY;)
MICHAEL FLANNAGAN, an)
Individual; and SAMUEL VAN PELT,)
an Individual,)
)
Defendants.)

MOTION TO DISMISS BY DEFENDANT
OMAHA WORLD-HERALD COMPANY

Defendant Omaha World-Herald Company moves the Court to dismiss the First Amended Complaint as to this Defendant, pursuant to Federal Rule of Civil Procedure 12(b)(1), because the Court lacks jurisdiction over the subject matter of the First Amended Complaint with respect to this Defendant and, in the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(6), because the First Amended Complaint fails to state a claim under which relief can be granted against this Defendant.

This Motion is supported by the Brief submitted to the Court on this date.

Dated this 4th day of March, 1991.

OMAHA WORLD-HERALD COMPANY,
Defendant

By Allen E. Daubman

Allen E. Daubman, #15374
KOLEY, JESSEN, DAUBMAN
& RUIPIPER, P.C.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, Nebraska 68124
(402) 390-9500

Attorneys for Defendant
Omaha World-Herald Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was sent by regular United States mail, postage prepaid, this 4th day of March, 1991, to the following:

Counsel for the Plaintiff:

Mr. John W. DeCamp
DeCamp Legal Services, P.C.
521 South 14th Street, Suite 300
Lincoln, NE 68508

Counsel for the Defendants:

Defendant The Catholic Archbishop of Omaha

Mr. Edward D. Hotz
Zweiback, Hotz & Lamberty, P.C.
100 Bozell & Jacobs Plaza
10250 Regency Circle, Suite 300
Omaha, NE 68114

Mr. C. E. Heaney, Jr.
Kennedy, Holland, DeLacy & Svoboda
10306 Regency Parkway Drive
Omaha, NE 68114

Defendant Lawrence King

Counsel unknown at present

Defendant Peter Citron

**Mr. Lyle J. Koenig
Attorney at Law
147 North 4th Street
P.O. Box 48
Hebron, NE 68370**

Defendants Alan Baer and J. L. Brandeis & Sons, Inc.

**Messrs. Steven W. Seline
and Tory M. Bishop
Kutak, Rock & Campbell
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1650 Farnam Street
Omaha, NE 68102**

**Mr. Edward G. Warin
Gross & Welch
800 Commercial Federal Tower
2120 South 72nd Street
Omaha, NE 68124-2342**

Defendant Harold Anderson

**Mr. Tyler B. Gaines
Gaines, Mullen, Pansing, Hogan
10050 Regency Circle
Omaha, NE 68114**

Defendant Robert Wadman

**Mr. Michael M. O'Brien
Cannon, Goodman, O'Brien & Grant, P.C.
318 South 19 Street
Omaha, NE 68102**

**Defendants Michael Hoch, Kenneth Bovasso, and
the City of Omaha**

**Mr. James E. Fellows
Ms. Wendy E. Hahn
City of Omaha
Legal Department
1819 Farnam Street, Suite 804
Omaha, NE 68102**

Defendant Nebraska Psychological Association, Inc.

Counsel unknown at present

Defendant Omaha Public School District

Mr. David M. Pedersen
Baird, Holm, McEachen, Pedersen, Hamann & Strasheim
1500 Woodmen Tower
Omaha, NE 68102-2069

Defendants Douglas County Grand Jury, Michael Flanagan, and
Samual VanPelt

Ms. Susan M. Ugai
Assistant Attorney General
Department of Justice
2115 State Capitol Building
Lincoln, NE 68509-8920


Allen E. Daubman