

214 Va 314

IN THE  
SUPREME COURT OF APPEALS  
OF VIRGINIA  
AT RICHMOND

-----

RECORD NO. 8220

-----

JOHN F. BELLAMY, JR.,  
Appellant

v.

ERNEST P. GATES

and

EDWARD P. GILL

Appellees

A P P E N D I X

IVY P. BLUE, JR.  
ATTORNEY AT LAW  
HANOVER LAW BUILDING  
HANOVER, VIRGINIA 23069

Counsel for Appellant

TABLE OF CONTENTS

	Page
Complaint -----	3-8
Demurrer -----	8
Order -----	9
Amended Bill of Complaint -----	10-14
Demurrer to Amended Complaint -----	14
Memorandum of Judge -----	15
Order -----	14
Assignments of Error -----	16-17

**BILL OF COMPLAINT AND FOR RELIEF**

1. The jurisdiction of this Court over this cause arises under the statutes of Virginia and Chesterfield County and under the Constitutions of Virginia and the United States.

2. The defendant Ernest P. Gates is the Senior Judge of the Circuit Court of Chesterfield County and the defendant, Edward P. Gill is the Chief of Police of Chesterfield County.

3. The events over which this cause is instituted occurred in Chesterfield County, Virginia.

4. On or about November 15, 1965, the plaintiff was hired as a dispatcher for the Chesterfield County Police; that in August 1967, he was made a patrolman on the police force and was assigned to the canine corps; that he remained a patrolman assigned to the canine corps until he was forced to resign on January 5, 1971, that during his employment by the Police Department he apparently did a satisfactory job, as evidenced by the defendant, Ernest P. Gates reappointing him each year; and was never disciplined for conduct unbecoming a policeman.

5. That on or just prior to January 5, 1971, a member of the plaintiff's family was contacted by the two defendants who at that time told the family member to contact the plaintiff

and tell him that he had to do one of three things or be fired from the Chesterfield County Police force, to-wit: (1) The plaintiff had to resign from the United Klans of America, Inc. (2) Or in the alternative remain a member of the United Klans of America, Inc., and become an informer for the Federal Bureau of Investigation. (3) Or that he had to resign from the Chesterfield Police Force. In addition the family member was told that Federal Bureau of Investigation Agents had talked to the defendant, Edward P. Gill and that the Federal Government was ready to indict the plaintiff on some criminal charge.

6. When the plaintiff was informed of this contact with his family by the person who had been contacted he immediately went to see the defendant, Edward P. Gill and at that time the plaintiff was given an ultimatum by the defendant, Edward P. Gill, to-wit: (1) That the plaintiff had to resign from the United Klans of America, Inc., and renounce the organization publicly, as well as, renounce its members and never knowingly associate with any of them again. (2) In the alternative the plaintiff could remain in the United Klans of America, Inc., and become an informer for the FBI on Klan Activities and its members. (3) Or he could resign from the Chesterfield County Police Force and if he did not he would be fired.

7. Agents of the FBI actually did make contact with certain parties, in addition to the two defendants named herein, and each case the plaintiff suffered a deprivation of his constitutional rights.

8. That the plaintiff did not want to resign from the Chesterfield County Police Force but due to the direct actions of the defendants in invading his right of privacy as given by the 1st and 14th Amendment of the Constitution of the United States by using members of his family to pressure him in some desired course of action caused the plaintiff much mental anguish, emotional involvement and in addition, precipitated his mother into a very severe emotional state and in general damaged the plaintiff with his fellow officers and under the circumstances the plaintiff was forced to resign from the Chesterfield County Police Force until he could conduct an investigation to decide why he had been singled out for persecution.

9. By demanding the plaintiff's resignation from the United Klans of America, and at the same time requiring him to denounce the organization and its members or in the alternative to spy on the organization for the FBI, abridged his rights

to free speech and association under the 1st amendment of the United States Constitution.

10. The terms and conditions forced upon the plaintiff as set forth above in this complaint constituted a conspiracy to deprive the plaintiff of the protection of the laws or of equal privileges and immunities under the laws of the United States in violation of his constitutional rights under the United States and Virginia Constitutions.

11. Because the plaintiff is a white man or a member of the caucasian race and because he became a member of an organization which keeps its membership secret and is publicly known to cater to members of the caucasian race the plaintiff has been discriminated against in violation of the Civil Rights Act passed by the United States Congress in 1964 known as the Civil Rights act of 1964, because the plaintiff is being discriminated against because of his race and color.

12. The plaintiff is entitled to equal protection under the laws of the United States of America and to be free from discrimination because of his race, creed, color, sex or religion and the acts of the defendants have abridged his constitutional rights guaranteed to him under the United States and Virginia Constitutions.

13. As a direct and consequential result of the actions of the defendants the plaintiff has suffered as follows: (1) He has had a loss in income (2) He has suffered mental anguish and emotional strain (3) he has been embarrassed, humiliated and criticized to his fellow officers on the Chesterfield County Police Force (4) His family has been embarrassed, humiliated and criticized.

14. That the plaintiff has sort reinstatement through proper administrative channels and to this date has been denied his request for reinstatement and at this time by reason of the actions of the defendants the plaintiff has been and is suffering immediate and irreparable injury and has no adequate remedy at law.

15. The defendants have continued to use their official powers and offices to deprive the plaintiff of the basic elements of due process of law particularly as related to favorable consideration of his request for reinstatement.

WHEREFORE, the plaintiff prays for relief as follows:

(1) That the plaintiff be awarded a temporary restraining order or preliminary injunction to be made permanent upon reasonable notice and hearing:

(a) Enjoining and restraining the defendants from refusing to reinstate the plaintiff as a patrolman on the Chesterfield County

Police Department.

(2) Order defendants to reinstate the plaintiff on the Chesterfield County Police Force together with all loss wages retroactive to January 5, 1971.

(3) That the Court declare the acts of the defendant to be in violation of the Constitutions of the United States and of Virginia and laws of these political entities as set forth above.

(4) That the plaintiff be awarded compensatory damages in the amount of Twenty Five Thousand Dollars (\$25,000.00) together with interest and costs against the defendants jointly and severly.

(5) That the plaintiff be awarded exemplary damages in the amount of One Hundred Thousand Dollars (\$100,000.00) together with interest against the defendants jointly and severly.

(6) That the plaintiff be awarded reasonable attorneys fees.

(7) That the plaintiff be granted such further relief as may be necessary in this cause.

#### DEMURRER

This day come the defendants, Ernest P. Gates and Edgar P. Gill, jointly and severally, by counsel, and demur to the Bill of Complaint filed herein on the following grounds:

1. The said Bill of Complaint in its entirety fails to state a cause of action against either defendant.



ORDER

This cause came on the 19th day of November, 1971, to be heard on the demurrer of the defendants and the plaintiff's motions for reinstatement and leave to amend, the parties appearing in person and by counsel and it was argued by counsel.

Upon Consideration Whereof, the Court doth sustain the demurrer as to the defendant, Edward P. Gill, provided, however, the plaintiff is granted leave to amend his Bill of Complaint and For Relief to which action the plaintiff duly objects for reasons stated in his argument.

The Court doth take under advisement its decision on the demurrer as to the defendant Ernest P. Gates until such time as counsel furnishes the Court with a Memorandum concerning judicial immunity.

The motion of the plaintiff for temporary reinstatement is denied to which action the plaintiff duly objects.

The plaintiff is also granted leave to file an Amended Bill of Complaint and For Relief and it is Ordered that such amendment be filed within 5 days after the entry of this Order and the defendants are directed to plead to the Amended Bill of Complaint and For Relief within 21 days after it is filed in the Clerk's Office of the Circuit Court of Chesterfield.

ENTER / /

/s/ GLYN R. PHILLIPS  
JUDGE

AMENDED BILL OF COMPLAINT AND FOR RELIEF

Pursuant to leave of Court the plaintiff files this Amended Bill of Complaint and for Relief and represents as follows:

1. He refers to and incorporates herein by such reference paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 12, 13, 14 and 15 of the Bill of Complaint and For Relief.

2. He strikes out paragraph 6 of the Bill of Complaint and For Relief and substitutes therefor the paragraph setforth in this paragraph and designated as Amended paragraph 6:

"Amended Paragraph 6:

When the plaintiff was informed of this contact with his family by the person who had been contacted, he immediately went to see the defendant, Edward P. Gill, and at that time the plaintiff was given an ultimatum by the defendant, Edward P. Gill, to-wit: (1) That the plaintiff had to resign from the United Klans of America, Inc., and renounce the organization publicly, as well as, renounce its members and never knowingly associate with any of them again. (2) In the alternative the plaintiff could remain in the United Klans of America, Inc., and become an informer for the FBI on Klan activities and its members. (3) Or he could resign from the Chesterfield County Police Force and if he did not he would be fired. Further, the defendant, Edward P. Gill, told the plaintiff

that whatever he (the defendant Gill) recommended the defendant Ernest P. Gates would approve and the plaintiff knew this was true because in Chesterfield County in January of 1971, the Senior Judge acted on the Police Chief's recommendations without regard to the approval of the Board of Supervisors in-so-far as the hiring and firing of Police Officers was concerned"

3. He strikes out paragraph 9 of the Bill of Complaint and For Relief and substitutes therefor the paragraph setforth in this paragraph and designated as Amended Paragraph 9:

"AMENDED PARAGRAPH 9:

That the plaintiff did not want to resign from the Chesterfield County Police Force and would not have done so if he had not been the victim of a conspiracy concocted by agents of the Federal Bureau of Investigation and the two defendants in this cause. The actions of the defendants herein by conspiring together with the Agents of the Federal Bureau of Investigation were arbitrary, capricious, wilful and intentional and constituted an invasion of the plaintiff's right to privacy and the overt acts constituting a conspiracy were as follows:

1. The agents of the F.B.I. by investigation learned that the plaintiff was a member of the United Klans of America.
2. Upon being advised of the information about his membership

in the United Klans of America by the F. B. I. Agents, the defendants then conspired with the agents of the F. B. I. to make the plaintiff a tool of the F. B. I., to-wit: to get the plaintiff to become an informer for the F. B. I.

3. The defendants then decided that the plaintiff should be terminated from the Chesterfield Police Force without a hearing or investigation if he did not agree to become an informer for the F. B. I.

4. The defendants then contacted a member of the plaintiff's family to deliver the ultimatum setforth in paragraph (5) incorporated herein.

5. When the plaintiff reacted to the contact with a member of his family the defendants crystalized the conspiracy by threatening to fire the plaintiff if he did not do their bidding.

6. At no time was the plaintiff offered any choice except the terms of the ultimatum; he was offered no hearing or other form of due process of law.

7. Under these circumstances the defendants forced the plaintiff to resign from the Chesterfield County Police Force thereby carrying there conspiracy into effect to-wit: either inform on the United Klans of America for the F. B. I. or be fired or resign from the Chesterfield County Police Force.

4. He strikes out paragraph 11 of the Bill of Complaint and For Relief and substitutes therefor the paragraph setforth in this paragraph and designated as Amended Paragraph 11:

"Amended Paragraph 11:

As a result of the actions of the defendants in conspiring with the F. B. I. the plaintiff was deprived of the protection of the laws and of equal privileges and immunities under the laws of the United States and the Commonwealth of Virginia in violation of their respective Constitutions."

5. He strikes out paragraph 16 of the Bill of Complaint and For Relief and substitutes therefor the paragraph setforth in this paragraph and designated as Amended Paragraph 16:

"Amended Paragraph 16:

That the Acts of Assembly (H-74) of Virginia, 1944, Chapter 21, approved February 15, 1944, to the contrary notwithstanding, in fact Chesterfield County Police Chief Edward P. Gill makes recommendations to the Senior Circuit Judge Ernest P. Gates, both defendants in this case, and the Chief Circuit Judge acts upon the Police Chief's recommendations without consulting with the Board of Supervisors in regard to hiring and firing Police Officers. That the defendant Gill in his actions to conspire against the plaintiff as alleged

previously was acting independently without reservation and not as an administrative agent and the defendant Gates acted knowingly and outside of the scope of any Judicial Immunity that may be afforded him as the Chief Circuit Judge of Chesterfield County, Virginia."

WHEREFORE, the plaintiff moves the Court to grant the prayer of his Bill of Complaint and For Relief.

DEMURRER

This day come the defendants, Ernest P. Gates and Edward P. Gill, jointly and severally, by counsel, and demur to the Amended Bill of Complaint filed herein on the following grounds:

1. That the said Amended Bill of Complaint in its entirety fails to state a cause of action against either defendant.

O R D E R

This cause came again to be heard on the 7th day of April, 1972, upon the authorities submitted by counsel for the plaintiff and defendants and the argument of counsel.

UPON CONSIDERATION WHEREOF, the Court doth sustain the Demurrer to the Amended Bill of Complaint as to the defendants, Ernest P. Gates and Edward P. Gill, and dismisses said Bill of Complaint.

ENTER: May 18, 1972

/s/ Glyn R. Phillips  
Judge

Seen and Objected To:  
/a/ Ivy P. Blue, Jr.

## MEMORANDUM OF JUDGE

The Court has considered the various authorities submitted by counsel and after due deliberation as to the issues involved the Court is of the opinion that the demurrer filed should be sustained as to all defendants in both the original and amended bill of complaint.

As all of you know the Court sustained a demurrer to the original bill on November 19, 1971 as to the defendant, Edward P. Gill, as this defendant in his capacity as Chesterfield County Police Chief was merely an administrative officer lacking the power to hire or fire personnel. The Court again sustains the demurrer to the amended bill of complaint for the same reasons.

The Court now sustains the demurrer as to the defendant Ernest P. Gates, both on the original and amended bills of complaint on the grounds of judicial immunity afforded a trial Judge. The Chesterfield Police Department was created by an act of the General Assembly in 1944 and members of the police force are appointed by the Circuit Court Judge upon the recommendation of the Board of Supervisors of Chesterfield County.

Therefore, this appointive power of the Circuit Court Judge is a Judicial duty or act which must be performed by said Judge, for which performance there exists Judicial immunity.

An Appropriate Order sustaining the demurrer in this matter may be forwarded to the Court for signature and entry.

/s/ Glyn R. Phillips, Judge  
Twenty-Seventh Judicial Circuit  
of Virginia

#### ASSIGNMENTS OF ERROR

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, dated March 1, 1972, plaintiff assigns the following error to the trial court's disposition of this case:

1. The Court erred in sustaining the demurrer of the defendants to the original Bill of Complaint.
2. The Court erred in sustaining the demurrer of the defendants to the Amended Bill of Complaint.
3. The Court erred in not temporarily reinstating the plaintiff until the cause could be fully heard.
4. The Court erred in depriving the plaintiff of his constitutional rights under the Virginia and United States



Constitutions by not allowing this cause to be determined by due process of law.

5. The Court erred in depriving the plaintiff of his constitutional rights to the equal protection of the laws in violation of the Virginia and United States Constitutions.

6. The Court erred in clothing the judiciary of the Virginia Court system with an immunity which in effect deprived the plaintiff of rights guaranteed to him in the Virginia and United States Constitutions.