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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

CIVIL NO. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant.

MOTION TO STRIKE

Defendant, by its undersigned attorneys, hereby moves the Court to strike, from the Official Transcript of the hearing held on September 14, 1978, before the Honorable June L. Green, page 8, lines 5 through 18, inclusive, and any related portions of the transcript deemed inappropriate by the Court which resulted from plaintiff's counsel's remarks on the grounds that these portions of the transcript are impertinent, scandalous, and immaterial.

In support of this motion, the Court is respectfully referred to defendant's Memorandum In Support Of Its Motion To Strike, attached hereto.

Respectfully submitted,

Barbara Allen Babcock

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Assistant Attorney General

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UNITED STATES DISTRICT COURT
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U.S. DEPARTMENT OF JUSTICE,

Defendant.

DEFENDANT'S MEMORANDUM IN SUPPORT
OF ITS MOTION TO STRIKE

Defendant now moves the Court to strike, from the Official Transcript of a hearing held on September 14, 1978, in connection with this litigation, certain statements made by plaintiff's counsel. To the extent that these statements constitute a personal attack on one of defendant FBI's agents, the remarks were inappropriate and misleading. The agent in question has performed his tasks in connection with this litigation in a professional, diligent, and upstanding manner. Therefore, the remarks of plaintiff's counsel, at lines 5 through 18, inclusive, on page 8 of the transcript and any other related comments which the Court deems inappropriate should be struck from the record.

Moreover, plaintiff's counsel complained, at the September 14 hearing, about alleged misrepresentations in Government affidavits (Tr., p.5). Specifically, the questions of erasures on Federal Bureau of Investigation worksheets and the excision of the name "Willie Somerset" were raised. The discussion which follows will show that plaintiff's counsel's contentions are without merit.

In a highly unusual departure from their regular practice, the Federal Bureau of Investigation agreed, in this litigation, to provide plaintiff with the inventory worksheets prepared during the processing of documents. Such worksheets are internal aids, compiled by the individual who processes a given document to describe the document and to note the exemption claimed, if any. The worksheets are then utilized by the individual who reviews the processor's work to insure accuracy and completeness. During this process, the reviewer may correct or amend the data on the worksheets, resulting in erasures on them.

The first set of worksheets provided to plaintiff were prepared by Federal Bureau of Investigation Special Agents who were part of "Project Onslaught." When plaintiff complained that he could not read certain worksheets provided to him, they were re-written and this second set forwarded to plaintiff. At this time, the first set of worksheets was apparently destroyed.

Thus, any erasures which may have occurred on the first set of worksheets were not the result of deviousness or intrigue, but rather were the result of ordinary, course-of-business corrections to insure accuracy. For example, an Onslaught Agent may have jotted down an incorrect exemption number, or even a note to himself to double-check a document. The reviewer would have corrected the exemption in the first instance, and erased the note in the second.

The second issue raised by plaintiff's counsel at the September 14 hearing was the withholding of the name "Willie Somerset" from FBI Serial 4859 (Tr., p.6). This serial was released to plaintiff on May 27, 1977. Subsequently, another requester asked for documents from the Somerset file. Upon being told that files on one indivi-

dual cannot be released to another without a notarized waiver from the subject of the file, the second requester produced Mr. Somerset's death certificate, which negated any privacy right remaining with Somerset. Therefore, Serial 4859, with Somerset's unexcised name, was released to the second requester on May 5, 1978. ^{1/}

When Serial 4859 was released to plaintiff, there was no indication in the Federal Bureau of Investigation files that he was deceased, if indeed he was in May 1977. Surely, the FBI is not required to research the question of whether each individual whose name appears in a document in its files, is alive or dead at the time the files are processed.

Respectfully submitted,

Barbara Allen Babcock

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

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Attorneys for Defendant

1/ Attached hereto as Appendix A is a copy of Serial 4859. The brackets indicate those portions of the memo withheld from plaintiff when it was released to him in May 1977. The entire memo, with the exception of the informant symbol used by the FBI to identify Mr. Somerset, was released to the second requester in May 1978.

were withheld

Date: 7/15/68

Transmit the following in _____

(Type in plaintext or code)

AIRTEL

(Priority)

TO: DIRECTOR, FBI (44-38861)
FROM: SAC, MIAMI (44-1854) (P)
SUBJECT: MURKIN

[WILLIAM SOMERSETT, formerly [redacted] who is no longer being contacted by the Miami Office and who is characterized as having furnished reliable information in the past, and in addition has furnished information which cannot be verified or corroborated,] telephonically advised on 7/12/68 as follows:

Since the assassination of Dr. MARTIN LUTHER KING, JR., he has made trips to Atlanta, Ga. and Memphis, Tenn. at the request and expense of the Florida State Attorney's Office and the Miami, Florida Police Department. He indicated the purpose of these trips was to try and develop information relative to the assassination of Doctor KING and other information relating to the National States Rights Party. He did not elaborate on his assignments nor did he indicate he had developed any unusual or pertinent information. He reportedly was in contact with witnesses involved in the KING case and based on information heard on the "street," it was said that the chauffeur of Doctor KING was suspected of "setting up Doctor KING for" the assassination. [SOMERSETT] was unable to identify source of this information.

It is not known why the Florida State Attorney's Office or the Miami Police Department would have [SOMERSETT]

- 3 - Bureau (1 - 66-16453) (SOMERSETT) SD
 - 2 - Memphis (44-1987)
 - 1 - Atlanta (44-2386) (Info)
 - 2 - Miami (1 - 170-1)
- LCP:vva
(9)

15 JUL 17 1968

ORIGINAL FILED IN 44-38861-4859

Approved: [Signature] Special Agent in Charge Sent _____ M Per _____

1 JUL 25 1968

make trips to Atlanta, Ga. and Memphis, Tenn. except for possibly some sensational information that would afford them nationwide publicity.

The above is being furnished to the Bureau, Atlanta and Memphis for information and to be aware of the fact that SOMERSETT has been in Atlanta and Memphis regarding the KING case.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike and supporting memorandum has been served upon plaintiff's counsel, postage prepaid, this 20 day of October, 1978 as follows:

James Lesar, Esquire
910 16th Street, N.W.
Suite 600
Washington, D.C. 20006

Betsy Ginsberg
BETSY GINSBERG, Attorney

UNITED STATES DISTRICT COURT
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U.S. DEPARTMENT OF JUSTICE,

Defendant.

ORDER

This action having come before the Court on defendant's Motion to Strike, the entire record herein, the representations of counsel, and for good cause shown, it is this _____ day of _____, 1978 hereby

ORDERED, that defendant's Motion should and hereby is granted; and it is

FURTHER ORDERED, that the following be stricken from the official transcript of the hearing held on September 14, 1978: page 8, lines 5 through 18, inclusive, and those other portions of the transcript which resulted from plaintiff's counsel's remarks.

UNITED STATES DISTRICT JUDGE