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JUN 12 1990

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

ANDREW WILSON,)	
)	
Plaintiff,)	
)	
vs.)	No. 86 C 2360
)	
CITY OF CHICAGO, et al.,)	Judge Brian Barnett Duff
)	
Defendants.)	

NOTICE OF FILING

To: James P. McCarthy	William Kunkle, Jr.
Asst. Corporation Counsel	Jeffrey Rubin
General Litigation Divn.	David Greene
180 N. LaSalle, Suite 1408	Phelan, Pope & John, Ltd.
Chicago, IL 60601	180 N. Wacker Dr., Suite 500
	Chicago, IL 60606

PLEASE TAKE NOTICE that this 12th day of June, 1990, I filed with the Clerk of the U.S. District Court for the Northern District of Illinois, Eastern Division, Chicago, IL the attached Plaintiff's Response to Defendants' Joint Motion to Strike.

G. FLINT TAYLOR
343 South Dearborn, #1607
Chicago, Illinois 60604
312 663-5046

One of Plaintiff's Attorneys

CERTIFICATE OF SERVICE

I, G. Flint Taylor, an attorney, hereby certify that on June 12, 1990, I served a copy of the foregoing notice and attached document(s) on the above-named parties at the above addresses by causing same to be hand delivered by 5 p.m.

ATTORNEY AT LAW

EXHIBIT A

RECEIVED

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PLAINTIFF'S RESPONSE TO DEFENDANTS'
JOINT MOTION TO STRIKE

On or about February 3, 1989, plaintiff's counsel received an anonymous letter, postmarked February 2, 1989, in which certain assertions were made concerning the Andrew Wilson case. These assertions included that:

1. Several police defendants had "previously been accused of using torture machines (in) complaints given to O.P.S. and in motions filed in criminal trials."

2. "The [torture] device was destroyed by throwing it off Lt. Burge's boat."

3. "Several witnesses, including the Whites" [i.e.: Donald White and his brothers] "were severely beaten at 1121 S. State St. in front of the Chief of Detectives, the Superintendent of Police, and the State's Attorneys."

4. "Mayor Byrne and State's Attorney Daley ordered that the numerous complaints filed against the police as a result of [the investigation of] this crime not be investigated," [Anony-

mous Letter of 2/2/89, attached hereto in Appendix A, Docs. #1 and #2] The letter further demanded secrecy and said "if you want more information, place an ad in the Southtown Economist." [App. A, doc. #1]

In response, Plaintiff's counsel placed an ad in the Southtown Economist for the week of February 5, 1989, but received no response until March 7 or 8, 1989, when they received a second anonymous letter, appearing to be typed on the same typewriter by the same source, and enclosed in an official police department envelope postmarked March 6, 1989. [App. A, doc. #3] The source asserted in this letter that,

I believe that I have learned something that will blow the lid off this case. You should check for other cases [in] which Lt. Burge was accused (sic) of using this devices. (sic) I believe that he started right after becoming a detective many years ago. I will not give any specifics until I am assured that these letters are not going to be used ever... You must remember that they all know as did the State's Attorneys and many judges and attorneys in private practice."

[App. A, doc. #3] The letter went on to name Area II associates of Burge, including Defendant Yucaitis and Fred Hill, whom the source termed as "Burge's asskickers," and also asserted that defendants O'Hara and McKenna were not involved. The source also instructed plaintiff's counsel to place another ad in the Economist, addressed to "Ty" and promising secrecy, if counsel desired more specific information. [App. A, doc. #3]

Counsel placed an ad in the Economist which ran during the week of March 13, 1989. [App. A, Doc. #4] On March 16, 1989,

the very day that defendant Burge finished his testimony in the first trial, plaintiff's counsel Taylor picked up his phone messages from the previous day. These messages included one from "Ty" which said "Melvin Jones is at Cook County Jail - you should check the dates." [App. A, doc. #6] Contemporaneously, counsel received another anonymous letter, also in an official police department envelope, postmarked March 15, 1989, from "Ty", in which the source stated:

I advise you to immediately interview a Melvin Jones who is in the Cook County Jail on a murder charge. He is being re-tried in Markham. When you speak with him compare the dates from 1982 and you will see why it is important. You will also find that the State's Attorney knew that he was complaining and that is why his charges were dropped then. That decision was made in the top levels at 26th and California.

[App. A, doc. #5, pp.1,2] "Ty" again sought secrecy, stating:

As I have said previously I do not want to be involved in this affair. That is why I asked for the reassurance that these letters would be kept private. I do not wish to be shunned like Officer Laverty has been since he cooperated with you.

[App. A, doc. #5, p.1]

On the basis of this information, counsel tracked down Melvin Jones and his lawyer, learned that Jones had previously testified that he was electroshocked by Burge at Area 2 only nine days before the plaintiff, and brought this startling new information to the Court's attention by motion on March 24, 1989. At the in camera hearing on the motion that day, counsel informed the Court and opposing counsel of the anonymous source and his phone communication concerning Melvin Jones, [Tr.

3/24/89]. Defense counsel, as well as the Court, raised questions concerning the credibility of counsel's representations. The Court subsequently ruled that the Jones evidence would not be admitted at the first trial.

On May 19, 1989, during an argument concerning the admissibility of the Melvin Jones evidence at the upcoming second trial, the question of "due diligence" in plaintiff's counsel's discovery of the Jones evidence was again raised by the defendants and argued by the parties. At this time, plaintiff's counsel set forth in more detail the history of the communications from "Ty", including the placing of the ads, and the receipt of the anonymous letters in response. [Tr. 5/19/89, pp.65-67, 70, 85-88] [App. B] The Court and the defendants again articulated sceptism concerning counsel's representations. [Tr. 5/19/89, pp.86-7] At the end of the day, the Court barred the Jones evidence from admission at the second trial. [Tr. 5/19/89] None of defendant's counsel orally requested production of these letters at this hearing, nor did they make a subsequent oral or written request before July 13, 1989. Moreover, the defendants had no prior discovery request on file which could be construed to cover these letters.

On or about June 19, 1989, plaintiff received a fourth letter from "Ty" enclosed in a police department envelope postmarked June 16, 1989, in which this source discussed Area 2 personnel who were involved with Burge and those who were "non beaters." The source further claimed that Burge "used to

brag about everyone he beat," and that,

The common cord is Burge. He was always present, the machines and the plastic bags were his and he is the person who encouraged their use. You will find that the people with him were either weak and easily led or sadists. He probably did this because it was easier than spending the time and the effort talking people into confessing.

[App. A, doc. #7, pp.1, 2]

On Thursday, July 13, 1989 during the adverse examination of defendant Burge, plaintiff's counsel asked him whether he had "disposed of [the black box] by throwing it off [his] boat into Lake Michigan?" [Tr. 7/13/79, Vol. 22, p.3692] [App. C] Mr. Kunkle objected before the jury, and asked that "the jury and counsel be admonished." A side bar was held, where the Court requested the basis for the question and plaintiff's counsel responded that it was the anonymous letter. The Court said "let me see" the letter, then after counsel said he did not have it in Court, ordered it produced "in 24 hours." Mr. Kunkle, who like all the other defense counsel, had never previously requested the letters, either orally or in writing, said "I would sure like to see [the letter] because I would like to compare it to some of the people's handwriting." [Tr. 7/13/89, Vol. 22, p.3694]. The Court then told plaintiff's counsel that it did "not believe" his representation, said that "on the basis of the record, as everybody understands it now, you have just behaved unethically and improper behavior (sic) before this jury," and then instructed the jury that they were "instructed to disregard the last question because it suggests

a matter or basis of fact that there was no proof anywhere, and it is to be disregarded totally." [Id. p.3694-5]

On Monday, July 17, 1989, during an argument concerning the testimony of Donald White, the question of notice and due diligence concerning White was again raised by the defendants and the Court, and plaintiff's counsel again referred to the letters, as the source had also mentioned White as another victim of torture by Burge and his co-defendants. [Tr. 7/17/89, Vol. 24, pp.4057, 4046-47] [App. D]

After Mr. Kunkle raised the Court's prior order, the Court stated, "Do you have a copy of that anonymous letter that I can see yet?" [Tr. Vol. 24, p.4068] Plaintiff's counsel responded that he had a copy of the letter and would tender "all the letters" in camera to the Court but did not wish to produce it in open Court because "Mr. Kunkle made a threat that he was going to have it analyzed --obviously to try to find out who in the police department it was"-- and because the source has said "that he was afraid that he was going to be treated like Lavery was, that he was going to be driven out of the police department." [Id. at 4069] After Mr. Kunkle misstated his prior statement or "threat", by saying that he only wanted to analyze the date the letter was written [Id. at 4070], the Court said that plaintiff's request for an in camera filing was "premature" and "anticipatory" and directed that the request be deferred until after the transcript of the July 13th proceedings was obtained, the issue was "discussed further," and the

Court further examined the question of whether Mr. Kunkle's statement could be "perceived by the recipient" as a threat. [Id. 4076, 4074-6] The issue was never discussed again; and the Court issued no further orders on this issue.

On May 2, 1990 plaintiff filed copies of the letters received from the anonymous source, together with the envelopes they arrived in, the ads placed in the Southtown Economist, and the phone message received from the anonymous source on March 16, 1989. [Plaintiff's Supplemental Filing of May 2, 1990] Plaintiff made this filing in order to comply with the Court's order of July 13, 1989. In preparing this response, plaintiff's counsel discovered that one letter had inadvertently been attached twice in the filing, once properly as document #1, p.1, and once mistakenly as document #5, p.1; while the actual letter received in the envelope postmarked March 15, 1989 and received on the 16th or 17th of March, and which should have been submitted as Document #5, p.1, was mistakenly omitted from this filing. On June 12, 1990, the proper Document #5, p.1 was substituted for the misfiled one in plaintiff's "Corrected Supplemental Filing," attached hereto as Appendix A.

The filing and service of these documents withdrew plaintiff's pending request for an in camera filing of these documents, and was in compliance with the Court's July 13, 1989 order. It is clear from the Court's statements of the 13th and 17th, that the order was to file the letters with the Court.

[Tr. p.3693, p.4068] Moreover, the filing is relevant to several issues which are implicated on appeal, including: 1) due diligence concerning the discovery of key witnesses Melvin Jones and Donald White; 2) the propriety of the Court's prejudicial admonishment to the jury concerning plaintiff's question to Burge; 3) whether the Court was prejudiced against plaintiff's counsel and his case; and 4) whether the plaintiff received a fair trial. As significantly, it permits plaintiff's counsel to defend against the Court's charges of unethical and improper conduct, and to establish that his representation should have been believed.


As to jurisdiction, it is plaintiff's position that the Court has jurisdiction because it still has not entered a proper final judgment. This issue is presently pending before the Court of Appeals. Apart from that, however, the Supplemental Filing was filed well before plaintiff filed his May 30, 1990 Notice of Appeal, which was filed in response to the Court's minute order of May 1, 1990. Moreover, plaintiff would point out that if, as the defendants argue, the District Court did not have jurisdiction to accept plaintiff's May 2nd filing, it certainly does not have jurisdiction to decide defendants' subsequently filed Joint Motion to Strike.

For all the above reasons, Defendants' Motion to Strike

should be denied.

Respectfully submitted,

Dated: June 12, 1990




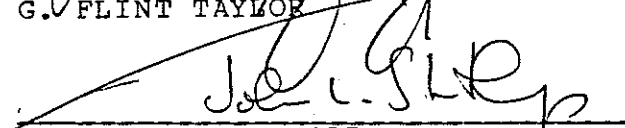
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Attorneys for Plaintiff

VERIFICATION

G. FLINT TAYLOR and JOHN L. STAINTHORP, being duly sworn,
hereby verify that they have read the foregoing and that the
facts contained therein are true and accurate.



G. FLINT TAYLOR


JOHN L. STAINTHORP

SUBSCRIBED AND SWORN TO
before me this 12th day
of June, 1990.



NOTARY PUBLIC

