

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Division No. 94-1



APPENDIX OF COMMENTS OR FACTUAL
INFORMATION SUBMITTED UNDER
28 U.S.C. § 594(h)(2)

FINAL REPORT OF THE INDEPENDENT COUNSEL
(IN RE: MADISON GUARANTY SAVINGS &
LOAN ASSOCIATION)

IN RE: ANTHONY MARCECA

Robert W. Ray
Independent Counsel

July 28, 2000
Washington, D.C.

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5. Comments submitted on behalf of Anthony B. Marceca

ATTACHMENT 1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

FILED JUN 13 2000

In Re Filegate Investigation

Special Division

**Notice of Filing of Comments
of Lewis Merletti, John Libonati,
and Jeffrey Undercoffer to the Filegate
Report of the Office of Independent
Counsel Under 28 USC § 594(h)(2)**

No. 94-1

To This Honorable Court:

The undersigned represents the Honorable Lewis Merletti, former Director of the United States Secret Service and former Special Agents Jeffrey L. Undercoffer and John Libonati.

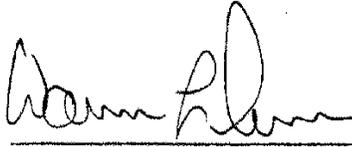
On May 31, 2000, to assist in determining whether it was necessary to make this filing, the attached letter was sent to the Office of Independent Counsel ("OIC") for the purpose of bringing to the attention of that Office certain factual inaccuracies identified in those portions of the Filegate Report made available for our clients' review. (Exhibit A)

The OIC replied to the attached letter by indicating that the Independent Counsel statute "does not contemplate" a procedure whereby the OIC considers or corrects factual inaccuracies brought to its attention after its report is filed. (Letter of June 12, 2000 from J. Keith Ausbrook, Senior Counsel, Office of Independent Counsel.) Accordingly, the OIC suggested that this information be brought to the attention of this Court. (Exhibit B)

Our clients respectfully request that the matters identified in the attached letter to the OIC regarding factually inaccurate aspects of the Filegate Report be considered by this Court for such

further action as it deems appropriate and that this submission be appended to the Report when the Report is publicly released.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Warren L. Dennis", written over a horizontal line.

Warren L. Dennis
DC Bar No: 206052
PROSKAUER ROSE LLP
1233 Twentieth Street, N.W.
Suite 800
Washington, D.C. 20036

Counsel for: Lewis Merletti, John Libonati,
and Jeffrey Undercoffer

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2000, I caused a copy of the foregoing to be served by hand delivery on the following counsel at the address indicated:

J. Keith Ausbrook
Office of The Independent Counsel
1001 Pennsylvania Ave., N.W.
Room 490-N
Washington, D.C. 20004

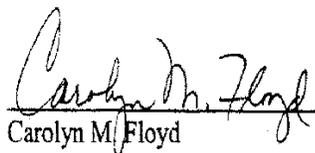

Carolyn M. Floyd

EXHIBIT A

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May 31, 2000

CONFIDENTIAL
DISCUSSES MATERIAL UNDER SEAL

Robert Ray, Esq.
Office of Independent Counsel
1001 Pennsylvania Ave., N.W., Rm .490-N
Washington, D.C. 20004

Re: Filegate Report

Dear Mr. Ray:

I represent Lewis Merletti, former Director of the United States Secret Service and former Special Agents John Libonati and Jeffrey Undercoffer, the Special Agents whose Congressional testimonies and OIC interviews were relied upon, in part, in preparation of the OIC's Sealed Report to the Court of Appeals regarding the so-called "Filegate" controversy.

As counsel to these individuals, we were provided an opportunity to review certain selected and redacted portions of the Report filed by your office under seal, as they pertained to our clients.

We note at the outset that Mr. Merletti was not named in any of the pages given to us to review, even though his name is used as the "keyword" for accessing portions of the Report. Mr. Merletti was not the Director of the Secret Service in any pertinent time period, either when the incipient events occurred in 1993 or when testimony was provided by the Secret Service in 1996. He has no connection to any of the Filegate issues and is not appropriately included as an individual who provided information regarding this investigation. Kindly correct the record in this regard.

Messrs. Undercoffer and Libonati, on the other hand, have asked us to provide this submission to you in order to avoid the need for public correction by your Office on account of several material factual inaccuracies in the Report regarding the information provided by the United States Secret Service ("USSS"). We realize that there was a large amount of testimony and material compiled prior to your appointment and, possibly, by attorneys and investigators who predated preparation of the Report. It is easy to see how some of the most critical technical information and

Robert Ray, Esq.
May 31, 2000
Page 2

contextual facts could have been overlooked in forming conclusions that are incorrect, or are stated with a degree of emphasis and certitude that lack a reasonable factual foundation. We are bringing these matters to your attention prior to considering whether a separate submission is appropriately made, independently, to the Court of Appeals.

This problem is especially acute as it pertains to Messrs. Libonati and Undercoffer who were falsely subjected to a purported criminal investigation by the Inspector General of the Treasury Department because of their presentation of truthful testimony regarding operation of the Secret Service Computer System. (It is important to note that neither Mr. Libonati nor Mr. Undercoffer had any involvement with the events of 1993. Neither worked in the White House Access Control Branch at the time. Their testimony, in 1996, was entirely at the direction of the Secret Service as spokespersons in response to a Congressional request for background technical information on how the White House pass system operated. Mr. Libonati, at the time, was in charge of Congressional Relations for the Secret Service. Mr. Undercoffer, who has degrees in computer science, then worked with the pass system.)

This bogus criminal investigation, which was leaked to the press, was determined to have been baseless. The Inspector General, Valerie Lau, resigned her position in disgrace after publicly apologizing to Messrs. Libonati and Undercoffer. Based on extensive testimony by members of Congress and representatives of a wide variety of law enforcement organizations, Congress enacted special legislation to compensate these highly decorated Secret Service Agents for their personal legal expenses, incurred in the course of their Secret Service duties. Their personal integrity is beyond being questioned.

This unfortunate history makes it especially important, we submit, for you to personally review the substance and tone of the OIC Report in light of the matters described below, not only to avoid embarrassment to the OIC for failing to take into account the full record but to assure that the OIC Report does not, inadvertently, create any unfounded basis to reintroduce controversy into the lives of these two public servants. That would be manifestly unfair in these circumstances.

I respectfully request the opportunity to meet with you personally to discuss these important matters.

THE OIC REPORT IS IN ERROR .

This submission is made primarily for the purpose of correcting several materially inaccurate statements in the portions of the redacted Report of the OIC made available recently in connection with the sealed Grand Jury proceedings in In re Marceca .

The Report contains two conclusions which, based upon the extensive record, are not supportable and are inconsistent with the USSS-supplied information upon which the report states it relies.

First, the assertion is made, incorrectly, that the USSS had taken the position that it was “impossible” for its computer system to produce a list that either failed to identify each inactive name by placing an “I” next to the name or explicitly labeling the lists as containing both “active” or “inactive” names. This observation underlies the ultimate, but faulty, conclusion reached in the report that the USSS provided a list that “did not differentiate between active and inactive passholders” (at 31) and was “over-inclusive and unlabeled” (at 13 and 81), and therefore, was contrary to the information supplied by the Secret Service about how its lists operate.

Second, the Report points to the existence of a portion of a list, dated June 10, 1993, containing sections “Op” through “Yz”, as well as a “reconstructed” Secret Service list, which purportedly demonstrate “conclusively” that Mr. Marceca was, in fact, provided an “unlabeled and over-inclusive list” by the Secret Service itself and used such a list unwittingly “without knowing that any particular individual was an active or inactive passholder.” [at 82]

These observations, and the conclusions which are drawn from them are materially in error for the following reasons:

1. The Secret Service did not, in its explanations, advise the OIC or take the position publicly before committees of Congress that it was “impossible” for the USSS computers to produce a list that contained both active and inactive passholders without being so demarcated. In fact, the USSS testimony was precisely to the opposite effect in many hours of testimony, Congressional briefings, depositions and interviews. One or two public statements, taken out of context, are not representative.

The “routine” lists produced on a regular basis by the USSS routinely differentiated active versus inactive passholders, but — and this is a critical distinction — it was made clear that representatives of the White House “oftentimes” requested that a special list be prepared in which the requester gave the specific parameters of the information that was desired and the information that was not to be included and that the USSS would produce such a list on request. These special requests for special or custom-tailored lists were made routinely. That is what the USSS testified to. Thus, the premise of the conclusion about the position attributed to the Secret Service is demonstrably not true.

2. The discovery of one partial list ("Op" through "Yz") from June 10, 1993 does not in any way demonstrate that the USSS did anything other than prepare a special, custom list for that date, which conformed to the parameters requested at the time that the list was produced.

Neither the USSS nor the OIC has been able to determine the basis of the specific request for the June 10th list cited as the list used by Mr. Marceca. Accordingly, the record is that Ms. Nancy Gemmell, the person in the White House supposedly making the request, recalls only that she requested a list containing "active only passholders" while the USSS individual who actually prepared the list in response to the request, we understand, has no memory at all as to whether he was asked to prepare a list of "active" only or "active or inactive" passholders. Ms. Gemmell states that the list she requested was, indeed, a "custom list." This is hardly a factual record that supports the strongly worded conclusions of the Report regarding the Secret Service Computer System.

3. Significantly, the partial lists that have been discovered, although this is not mentioned in the sections of the Report provided to us, includes not just individuals who worked in the White House Office of Personnel ("WHOP") but also the cognate lists of that date (June 10, 1993) from numerous other agencies such as the GSA, CIA, FBI, etc. Each of those lists also contained active and inactive passholders. Because of dates and other indicators on those lists, it is apparent that the list provided for June 10, 1993 was, indeed, a custom list and not a "routine list." Moreover, the combined composite list that was produced in response to the request that led to the report of June 10, 1993 must have been, at a minimum, the size of two Manhattan telephone books and weighed many pounds, precisely because it involved both active and inactive passholders. At the same time, if a list of "active only" passholders had actually been requested and expected, the list delivered would have been a fraction of that size and weight. This would have been obvious to anyone familiar with these lists. Ms. Gemmell, who had been handling these lists for more than 20 years would have instantly recognized an error if she had, in fact, received a list that should have included only active passholders; it would have looked vastly different. She would have instantaneously realized that the list provided contained both active and inactive passholders. It is impossible for her not to have recognized this from the sheer size of the full list of active and inactive passholders on June 10, 1993.

4. Importantly, the few pages of the Redacted report reviewed for purposes of our analysis make no reference to critically important additional facts that also reflect upon the validity, and certainly the tone, of the conclusions reached by the OIC.

For instance, as noted, Ms. Gemmell states that the list she asked for was, in fact, a "custom" list, and not a routine list. This fact contradicts the conclusion asserted in the Report about the Secret Service lists because, clearly custom such lists were never described as "impossible" to create.

Just the opposite. While Ms. Gemmell "believes" that she ordered only active passholders, it is equally, if not more plausible that the question of this particular distinction did not come up, or was communicated unclearly so that the individual at the USSS preparing the custom list was unaware of this parameter. Because it was a custom list, it would not have been necessarily labeled as containing inactive passholders, precisely as the Secret Service stated.

Similarly, the discovery of a partial list ("Op" - "Yz") for one date, June 10, 1993, does not provide a reasonable basis to draw the conclusions set forth in the OIC Report so vigorously. As the USSS explained in considerable depth, the reports for Project Update were ordered over a several month period from January 19, 1993 through May of 1994. It was not a static "one-shot" project. Thus, the discovery of this one partial list, from one date, cannot reasonably be relied upon as an explanation for all lists that were used for Project Update throughout this process. This omission is a major flaw of the Report.

Moreover, two witnesses, Mr. Livingstone and Mr. Wetzel, testified that they placed the lists that had been used for Project Update in the "burn bag" and were certain that they had been discarded. Accordingly, this one "snapshot" partial list (regardless of circumstances of its late discovery, after other proffered lists and explanations were proven to be impossible), cannot be considered dispositive of what list actually was used. In fact, many different custom lists from different times would have been ordered and used for this project over a ten-month period. An "error" could have occurred anywhere. The Secret Service description of the process was perfectly accurate.

Of equal significance, Ms. Mari Anderson who worked for Mr. Livingstone, was deposed. She was shown a copy of the June 10, 1993 list. When shown this June 10 list, and asked whether this was the list that she used for Project Update, she stated that it was not. Instead, she identified another list, set forth in a different format, using an exemplar from July 8, 1993 as the kind of list she used for Project Update. Significantly, the list identified by Mrs. Mari Anderson was a routine USSS list, provided to the White House on a regular basis, which contained active passholders only.

This suggests strongly that someone, at some time, whether inadvertently or deliberately, ordered custom lists including active and inactive passholders, and that the June 10, 1993 list which Mr. Marceca claims to have used, is an example of such a custom-ordered list.

5. In addition to the custom lists produced at the request of the White House Office of Personnel Security, the USSS produced various standard lists on a monthly, bi-weekly, and weekly basis and delivered those lists to the White House Office of Personnel Security. These lists also could include: all active and inactive passholders in alphabetical order, all active and

inactive passholders in social security number order, all active passholders ordered by employer and alphabetical within each employer category, all active passholders in alphabetical order, and all passholders holding temporary passes that were about to expire. Without the cover pages of such lists, where the parameters would be described, the discovery of a "partial" list is not particularly probative. Nor is the synthesized "recreation" of a hypothetical list particularly helpful, since there is no question that combined lists were able to be produced.

6. On 10/22/96, the USSS briefed the staff of Senator Charles Grassley on the significance of a WAVES printout entitled "Employer Listing — White House, OEOB, and NEOB" and dated 8/01/93. That printout was a standard USSS printout routinely provided to the White House Office of Personnel Security. The significance of the list is that it was annotated either by the Staff of the White House Office of Personnel Security with instructions to the USSS or was annotated by the USSS based upon instructions from the Staff of the White House Office of Personnel Security. The instructions directed the USSS to change the status of numerous persons on that list from Active to Inactive. Consequently, the subsequent ordering of any FBI background file of a person so annotated cannot be attributed to the 6/10/93 list and, at a minimum, is the result of the failure to communicate within the White House Office of Personnel Security. We assume that OIC is aware of that list and its annotations. There were, similarly other such lists identified by the Secret Service.

7. Unfortunately, when investigators for the OIC interviewed Secret Service personnel, after the USSS provided testimony to Congress, the OIC declined the invitation of the Secret Service agents to allow them to make a full presentation of their understanding of the operations and processes at issue. Instead, the OIC personnel foreshortened the presentation and insisted, primarily on asking questions, many of which were off-point. Efforts to interject an explanation or clarification were abruptly cut short by OIC personnel. Moreover, the June 10, 1993 list was never mentioned or shown to the Secret Service Agents at any time. The OIC simply repeated the statement that "You don't know what we have" and appeared uninterested in obtaining a factual explanation to support or negate their observations and conclusions. Thus, the Report criticizes the Secret Service "explanation" regarding the June 10, 1993 list when those making the explanation were never made aware of the supposedly critical June 10, 1993 list.

While the true facts and circumstances of the "Filegate" controversy may never be reasonably capable of resolution, it is manifestly incorrect to state, as the conclusion of the OIC's Report does, that "Secret Service provided critically erroneous information that confused the issue and caused Congress and the public to leap to some understandable but ultimately unsupported conclusions. . ." or that the explanatory statements made repeatedly by the USSS were inaccurate.

Robert Ray, Esq.
May 31, 2000
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This conclusion should be removed from the Report because it is manifestly and demonstrably untrue and unfair.

Neither the Secret Service nor our clients have taken any position with respect to what lists were actually ordered and by whom, or what use was made of such lists, and by whom. It is simply not factual, however, to mischaracterize the analysis provided by the U SSS, which, contrary to the conclusions of the Report, made clear that the USSS could, and frequently did, prepare custom and modified lists according to the parameters requested from the White House, and that Ms. Gemmell testified that she ordered a custom list. The testimony provided by the Secret Service was 100% accurate.

There are other salient factors of which my clients are aware which representatives of the OIC may not know, because they never asked.

I am reasonably confident that you would not want the current report to be released without assuring that all of the critical facts are known; nor would we be acting responsibly if, in the event the Report is prematurely released without revision, we failed to protect the reputations of Messrs. Undercoffer and Libonati in all appropriate ways.

As stated, we will await your timely response prior to deciding how best to proceed.

I look forward to meeting with you soon.

Sincerely,


Warren L. Dennis

WLD/cmf

EXHIBIT B



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 314-8668
Fax (202) 514-8802

June 12, 2000

BY TELECOPIER AND FIRST CLASS MAIL

Warren L. Dennis, Esq.
Proskauer Rose LLP
1233 Twentieth Street NW
Suite 800
Washington, DC 20036

**CONFIDENTIAL/
DISCUSSES MATTERS
UNDER SEAL**

Dear Mr. Dennis:

Thank you for your May 31, 2000 letter concerning matters related to your clients who are named persons in the Final Report of the Independent Counsel, In re: Anthony Marceca ("Report"). Your letter states that you provided it to this Office "primarily for the purpose of correcting severally materially inaccurate statements" in the portion of the Report relating to your clients.

As you are aware, on April 14, 2000, the Division for the Purpose of Appointing Independent Counsels of the U.S. Court of Appeals for the District of Columbia Circuit ("Special Division") issued an order authorizing your clients or you "to examine the portions of the Report in which [your clients are] mentioned . . ." April 17, 2000 Letter from Mark J. Langer, Clerk. That letter also advised that your clients "ha[ve] a right to submit any comments or factual information for possible inclusion in an appendix to the Report."

The filing of comments and factual information is authorized under 28 U.S.C. § 594(h)(2), which provides that "the division of the court may make any portion of a final report . . . available to any individual named in such report for the purpose of receiving . . . any comments or factual information that such individual may submit." That same provision also authorizes that "[s]uch comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report."

While I appreciate your offer to allow this Office the opportunity to respond to your information, the Court's order and the statute do not contemplate the procedure that you suggest. Rather, individuals who are named in a final report filed by an independent counsel may address any comments or factual information to the court for inclusion in an appendix. Therefore, I

Warren L. Dennis, Esq.
June 12, 2000
Page 2 of 2

suggest that your clients submit their comments or factual information in accordance with the Court's order and the statute.

Thank you again for bringing these matters to our attention.

Sincerely,



J. Keith Ausbrook
Senior Counsel

ATTACHMENT 2

PATTON BOGGS LLP
ATTORNEYS AT LAW

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For the District of Columbia Circuit

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FILED JUN 21 2000

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Special Division

June 19, 2000

Gregory S. Walden
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Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

SUBMITTED UNDER SEAL

Comments on Independent Counsel Final Report

Dear Ms. Sargent:

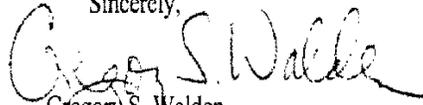
I represent Jane M. Dannenhauer in connection with her review of the Final Report of Independent Counsel Ray in Division No. 94-1, *In re: Madison Guaranty Savings & Loan Association* (In re: Anthony Marceca) ("Final Report"). At Ms. Dannenhauer's request, on June 13, 2000 I reviewed portions of the Final Report. By this letter, Ms. Dannenhauer submits comments and factual information for inclusion in an appendix to the Final Report.

1. In the portion of the Final Report named "In re: Nussbaum," the report refers to a memorandum from Craig Livingston to Cheryl Mills, dated February 8, 1993, in which Mr. Livingston explained that Jane Dannenhauer would remain as an advisor to Mr. Livingston until he received his security clearance. Ms. Dannenhauer's recollection from discussions with Mr. Livingston is that she agreed to remain until a replacement came on board and that when she left the White House at the end of February 1993 Mr. Livingston, to her knowledge, had not obtained his security clearance.

2. In two places, Michael Dannenhauer is identified as Jane Dannenhauer's husband. Michael Dannenhauer is in fact Jane Dannenhauer's nephew.

Thank you for the opportunity to provide comments on the Final Report.

Sincerely,



Gregory S. Walden
Counsel for Jane M. Dannenhauer

ATTACHMENT 3

STATEMENT OF MAURICE CRAFT
United States Secret Service Uniformed Division
(Retired)

During my tenure as a supervisor in the Secret Service Waves Center, I provided customized White House passholder reports to the White House Office of Personnel Security (OPS) upon their request. This was a routine and normal occurrence. These passholder reports would contain data fields from the Secret Service Waves database. However, these customized passholder reports were not the regular form passholder reports provided to the White House by the Secret Service.

My recollection is that OPS would specify the particular data fields they wanted to appear in a customized passholder report. In addition, certain data filters could be employed to generate certain types of reports at the request of OPS. I was always very careful to ask the specific fields and data the White House required. If there was no request to filter out certain information, for example the pass status of "A" for active passholder or "I" for inactive passholder, then all the data in that "status" field would be included in a passholder report. Therefore, if a request from OPS for a passholder report requested data fields like "Last Name," "First Name," "Date of Birth," "Social Security Number," or other personal descriptors, but did not specify "Active" or "Inactive" status only, then I would provide a report containing all passholders, both active and inactive.

In 1993, a printout of all White House passholders, both active and inactive, in hardcopy report form would have generated a voluminous list and the actual hardcopy report would, based on my best recollection, exceed four or more inches of lined computer printout paper. In 1993, a passholder report containing only active passholders, based upon my best recollection, would have generated a relatively short list of passholders and would have been about an inch thick hardcopy report. This difference in hardcopy report thickness, weight and the volume of passholders contained in the report would, in my opinion, be immediately recognizable. I believe experienced personnel in OPS would have immediately recognized the difference in hardcopy report size between a passholder list containing only "Active" passholders, and a report containing "Active and Inactive" passholders.

I have no specific recollection of being asked to generate the June 10, 1993 WAVES passholder hardcopy report which is the subject of the Independent Counsel's investigation. However, based upon my nine years of experience working in the Secret Service's WAVES Center, I believe that if OPS requested the June 10, 1993 report from me, and if I generated this report, then I provided an "Active and Inactive" passholder report containing no specific "status" column because that is what OPS wanted. In my opinion if I generated an "Active and Inactive" passholder report contrary to OPS instructions, instead of an "Active" only passholder report, both experienced OPS personnel and I would have immediately recognized the error and corrected it.

Dated: 6/5/00


Maurice Craft

ATTACHMENT 4

IRWIN GREEN & DEXTER, L.L.P.
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United States Court of Appeals
For the District of Columbia Circuit

FILED JUL 17 2000

Special Division

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DAVID B. IRWIN
ROBERT B. GREEN
VICKI L. DEXTER
JOSEPH MURTHA

July 17, 2000
UNDER SEAL

HAND DELIVERED

Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Ave., N.W., 5th Floor
Washington, D.C. 20001

RE: In Re: Madison Guaranty Savings & Loan Association
(In Re: Anthony Marceca)

Dear Mr. Langer:

Pursuant to Title 28 U.S.C. § 594(h)(2) please accept this correspondence filed on behalf of Linda R. Tripp, an individual named in the above-captioned report, as her submission to the Clerk of the Court written comments and factual information that she requests be included in an appendix to the Final Report.

In accordance with the Court's authorization I, as Linda R. Tripp's authorized representative, reviewed the relevant portions of the report which referenced Mrs. Tripp. A review of the relevant portions of the report revealed that the Office of the Independent Counsel ("OIC") concluded that Mrs. Tripp's deposition testimony in the matter of Alexander v. Federal Bureau of Investigation, et al was internally inconsistent. In support of its conclusion that there were apparent inconsistencies in Mrs. Tripp's testimony the OIC refers to selected pages of the deposition testimony. Mrs. Tripp takes exception to the conclusion drawn by the OIC.

Throughout Mrs. Tripp's deposition testimony in the matter of Alexander v. Federal Bureau of Investigation, et al she makes it very clear that she did not possess first-hand knowledge that certain files she observed in the White House were actually FBI files. Rather, Mrs. Tripp made it clear from the outset of her testimony that she based her conclusion that certain individuals working in the White House were in possession of FBI files because of information provided to her by Betsy Pond.

Mrs. Tripp's testimony in the Alexander deposition is not internally inconsistent. Mrs.

RECEIVED
JUL 17 2000
U.S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CLERK'S OFFICE

Clerk of the Court
July 17, 2000
Page 2

Tripp was consistent throughout her deposition by testifying that she formed the belief that certain kinds of files relating to individuals which were observed by her in William Kennedy's office, and in the safe of Vincent Foster, as well as being observed on the desk of Mr. Foster, were FBI files. See Tripp 12/14/98 Alexander deposition at 33, 36, 42-43, 46-47 and 83-84.

Throughout Mrs. Tripp's entire deposition testimony she was very clear that she did not have first-hand knowledge that the files she observed were, in fact, "FBI files." However, based on what Mrs. Tripp was told by another employee who worked in the White House Counsel's office, Mrs. Tripp formed the belief that the observed files were "FBI files."

Mrs. Tripp's testimony was succinct and direct. Because Mrs. Tripp testified that she was told that certain files she had observed were "FBI files" she was not inconsistent in her testimony when she testified that she did not "have a vision of what an FBI file would look like." In fact, Mrs. Tripp made it clear in the portion of her deposition testimony relied upon by the OIC that "I've made no effort to try to determine to this date what FBI files look like, if there is any commonality to them at all. I can only tell you what I saw." See Tripp 12/14/98 Alexander deposition at 441. Further, Mrs. Tripp testified in the same deposition that she "did not know" if the stacks of files in Mr. Kennedy's office were "in fact FBI files." See Tripp 12/14/98 Alexander deposition at 447. Such statements are not inconsistent. The selective recitation by the OIC of separate and distinct portions of the deposition testimony were utilized to create the allusion of inconsistency, rather than separate and distinct statements which were mutually compatible.

Mrs. Tripp testified that she formed the belief that the observed files were "FBI files" based on her recollection of her observations of the files, the information provided to her by Betsy Pond, and the fact that she observed paper in the files that originated from the Department of Justice. See Tripp 12/14/98 Alexander deposition at 447.

For the foregoing reasons Mrs. Tripp respectfully requests that this correspondence be filed as a written comment and factual information to be included in an appendix to the Final Report.

Thank you for your consideration and assistance in the filing of the referenced information.

Sincerely,


Joseph Murtha
Counsel for Linda R. Tripp

cc: Mrs. Linda R. Tripp
JM4716

ATTACHMENT 5

United States Court of Appeals
For the District of Columbia Circuit

LAW OFFICES

STEIN, MITCHELL & MEZINES **FILED JUL 17 2000**
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July 17, 2000

UNDER SEAL

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D. C. 20001

Re: FBI Files Investigation
(In re: Marceca)

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2), we submit this comment, on behalf of Anthony B. Marceca, to be included with the Final Report of the Office of Independent Counsel (OIC). Our purposes in filing this comment are, primarily, to endorse the main conclusions of the Report, and secondarily, to provide a brief substantive response to certain findings of the Report.

The allegations of criminal and other legal wrongdoing directed against Mr. Marceca and others at the White House in connection with this matter were first raised in a highly charged political context and with very little concrete information. Although Mr. Marceca clearly was not the political object of many of those who encouraged and publicized the allegations, he nonetheless was the subject of harsh, partisan and public attacks speculating that he was an integral player in a political conspiracy and calling into question his character.

In response to these allegations, the OIC conducted a thorough investigation of the matter that examined the issues on the basis of reliable evidence, not unfounded rumors and innuendo. On the principal investigative issue that resulted in appointment of an independent counsel with respect to this matter, the OIC has properly terminated its investigation with the following observation:

“The Independent Counsel concluded that neither Anthony Marceca nor any senior White House official, or First Lady Hillary Rodham Clinton, engaged in criminal conduct to obtain through fraudulent means derogatory information about former White House staff.”

In explaining OIC's decision not to pursue allegations against Mr. Marceca and others, the Report provides a factual analysis that goes a long way in adding clarity and dispelling speculation on the matter. A central point of the analysis is that erroneous information, in particular erroneous information provided by the Secret Service, created confusion and caused members of Congress and the public to reach misguided conclusions about the White House's handling of FBI files. Mr. Marceca and others were needlessly pulled into

a political controversy because misleading information was given to the Congress and other investigatory bodies.

The core allegations as to Mr. Marceca are that he requested confidential FBI background reports with knowledge that the White House Office of Personnel Security did not need those reports, with knowledge that the information set forth in his requests for the reports was false, and with knowledge that the reports were being sought for an improper purpose. The Report correctly concludes that these allegations are baseless, in particular noting: "Mr. Marceca did not knowingly make false statements to the FBI when he requested the background reports of former White House staff who no longer required access."

As the Report details, the basis for these allegations and other speculations on the subject was a critical representation made by the Secret Service during the early phase of the investigation of this matter. Mr. Marceca explained to the authorities and in public that the overinclusiveness of the requests for FBI background reports resulted from his reliance on a Secret Service list. The Secret Service disputed Mr. Marceca's position and his testimony concerning the list. Based on its thorough reconstruction of the crucial facts pertinent to this dispute, the OIC has been able to conclusively establish that "Mr. Marceca . . . was right. The Secret Service . . . was wrong." The OIC's full explanation of the bases for its conclusions should put to rest the speculation that the erroneous Secret Service statements set in motion.

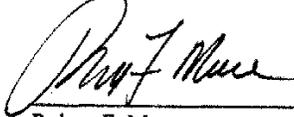
The Report also addresses Mr. Marceca's testimony and statements to Congressional investigators and law enforcement authorities. The OIC appropriately has

concluded that Mr. Marceca provided accurate testimony on the central issue, namely, whether he or other White House personnel had requested FBI files for improper purposes. While inconsistencies in his statements are noted – most often those inconsistencies are a product of the confusion in the purport of the questions between Mr. Marceca and his questioners – the Report's thorough canvassing of Mr. Marceca's testimony effectively rules out a conclusion that Mr. Marceca acted with any deceitful design.

Conclusion

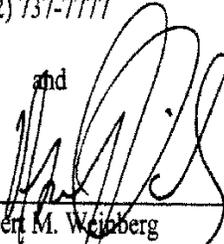
Mr. Marceca is pleased that the OIC has brought the matter to a conclusion. He firmly concurs in its decision that no criminal prosecution is warranted.

Respectfully Submitted,



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