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Sculimbrene Case

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Act. No. 1:99CV02010 (RCL)
	)	
JANET RENO, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

ANSWER ON BEHALF OF THE EXECUTIVE OFFICE OF THE PRESIDENT

The Executive Office of the President ("EOP") answers
Plaintiff's complaint as follows:

First Defense

Plaintiff fails to state a claim on which relief can be
granted.

Second Defense

The EOP answers the numbered paragraphs of Plaintiff's
complaint as follows:

1. Defendant lacks sufficient information upon which to
admit or deny the allegation in this paragraph.

2. Admit.

3. Admit, except to deny that the EOP is "an agency of the
Executive Branch of the United States Government."

4.-7. Defendant lacks sufficient information upon which to
admit or deny the allegations in these paragraphs.

8.-9. Admit.

10-14. Defendant lacks sufficient information upon which to
admit or deny the allegations in these paragraphs.

15. Deny, except to admit that Clinton took office in

#12 admit except to date
#13 admit

January of 1993 after having been elected in November of 1992.

Admit the second sentence.

16-17. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

18. Deny, to the extent that this paragraph avers that the Privacy Act is applicable to the EOP. Defendant otherwise lacks sufficient information upon which to admit or deny the allegation in this paragraph.

19. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph.

20. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph, except to admit that David Craig Livingstone was appointed Director of the White House Office of Personnel Security, ~~and~~

21. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph.

22. Deny.

23. Defendant lacks sufficient information upon which to admit or deny the allegations in the first two sentences of this paragraph. To the extent that it avers that an insert located in Livingstone's background investigation file contained the language quoted by Plaintiff, Defendant admits the allegation in the third sentence of this paragraph.

24-26. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

except to admit that...

(Anything re Dinwiddie?)

27. Admit.

28. This paragraph contains a characterization to which no response is required, but to the extent that a response is deemed necessary, deny.

29. Without adopting Plaintiff's characterization of the matters averred in this paragraph, Defendant admits that the firing of persons employed at the White House Travel Office was the subject of congressional hearings and a report by the House of Representatives Government Reform and Oversight Committee.

30. Without adopting Plaintiff's use of the term "Travelgate," Defendant admits that Independent Counsel Kenneth W. Starr investigated matters relating to the firing of the White House Travel Office staff.

31-32. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

33. Admit, except to deny that the Office of Personnel Security ("OPS") received the stated materials on August 9, 1993.

34-51. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

52. Without adopting Plaintiff's use of the term "Travelgate," admit the first sentence to the extent that it avers a continuing congressional investigation into matters relating to the White House Travel Office. Admit the second sentence.

53-56. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

57. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph, except to admit that Patsy Thomasson served as Deputy Director of Presidential Personnel in September 1995 and that Plaintiff submitted his name as a candidate for Inspector General of the Department of Veterans Affairs in a letter dated October 28, 1995.

58-60. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

61. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph or the accuracy of Plaintiff's characterization of the newspaper articles he identifies.

62. Admit.

63-69. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

70. Defendant lacks sufficient information upon which to admit or deny the allegations in the first two sentences of this paragraph or the accuracy of Plaintiff's characterization of the newspaper articles he identifies. Defendant lacks sufficient information upon which to admit or deny the allegation in the last sentence of this paragraph.

71-101. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

102. Deny.

103. Admit that the White House learned in June 1996 that *Anthony*
had obtained FBI background summary reports on a number of *maruca*

individuals who no longer worked at the White House and who were former Reagan and Bush administration employees and appointees. Defendant lacks sufficient knowledge upon which to admit or deny the remaining allegations in this paragraph.

104. Admit, without adopting Plaintiff's characterization of the subject of these congressional inquiries.

105. Without adopting Plaintiff's use of the term "Filegate," Defendant admits that Independent Counsel Kenneth W. Starr investigated matters relating to the events described in paragraph 103 of this answer.

106. Admit, except that Defendant has insufficient knowledge to admit or deny Plaintiff's allegation that the interview was "unsworn" or Plaintiff's characterization that the interview was given to Committee "investigators."

107-111. These paragraphs contain characterizations of the interview, and require no response as the transcript of the interview speaks for itself.

112. Defendant lacks sufficient information upon which to admit or deny the allegations in this paragraph or the accuracy of Plaintiff's characterization of these newspaper articles.

113. Deny the first sentence, except to admit that Plaintiff's White House pass was placed on temporary suspension on June 28, 1996. Defendant lacks sufficient information upon which to admit or deny the remaining allegations in this paragraph.

114. Defendant lacks sufficient information upon which to

admit or deny the allegation in this paragraph.

115. Admit that Plaintiff gave a deposition to the Committee on Government Reform and Oversight of the House of Representatives. The remainder of this paragraph states a characterization of the deposition, and requires no response as the deposition transcript speaks for itself.

116. Deny, except to admit that on July 15, 1996, former FBI General Counsel Howard Shapiro advised the White House that the FBI would be providing the staff of a congressional committee with an FBI investigative insert containing the language set forth in paragraph 23 of the complaint.

117-125. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

admit letter was sent
126. To the extent that the paragraph avers that the referenced letter makes false and/or wrongful statements, the Defendant lacks sufficient information upon which to admit or deny the allegation. The remainder of the paragraph sets forth a characterization of the transcript excerpt that follows, and does not require an answer as the excerpt speaks for itself.

(123) - except to admit wasn't appropriate

127-128. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

129. Deny Plaintiff's characterization of the contents of the letter referenced in this paragraph. Defendant otherwise lacks sufficient information upon which to admit or deny the remaining allegations in this paragraph.

130. Admit the first sentence. To the extent that the

second sentence avers that Davis's statements were wrongful, the Defendant lacks sufficient information upon which to admit or deny the allegation. The remainder of the second sentence sets forth a characterization of the transcript excerpt that follows, and does not require an answer as the excerpt speaks for itself.

131. Admit the first sentence. The second sentence sets forth a characterization of the transcript excerpt that follows, and does not require an answer as the transcript speaks for itself.

132. Deny, except to admit that Davis occasionally appeared on television programs discussing matters relating to the White House.

133-136. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

137. Defendant lacks sufficient information upon which to admit or deny the allegation in this paragraph.

138. Admit the first sentence, without adopting Plaintiff's characterization that Davis "joined Quinn" in the White House Counsel's Office. Deny the second sentence, except to admit that, while employed as White House counsel, Davis occasionally appeared on television to discuss various political matters.

139-142. Defendant lacks sufficient information upon which to admit or deny the allegations in these paragraphs.

143-47. These paragraphs set forth Plaintiff's legal claims against other defendants or refer to previous averments in the complaint, to which no answer on behalf of the EOP is required.

148. This paragraph merely refers to previous averments in the complaint and no answer is therefore required.

149. Deny.

150. Deny.

151. Deny.

152. Deny.

153. Deny.

154-161. These paragraphs set forth Plaintiff's legal claims against other defendants or refer to previous averments in the complaint, to which no answer on behalf of the EOP is required.

Defendant furthermore denies that Plaintiff is entitled to any relief in this action, including the specific relief asked for in his Prayer for Relief.

Respectfully submitted,

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QUINN, SHAPIRO, AND THE EXECUTIVE
OFFICE OF THE PRESIDENT.

Date: October 27, 1999.

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HEADLINE: PANELISTS DISCUSS THE POLITICAL EFFECTS OF THE WHITEWATER ACQUITTALS,
NEW EVIDENCE OF WHITE HOUSE AIDE DRUG USE, FILEGATE AND THE TRAVEL OFFICE
SCANDAL ON PRESIDENT CLINTON

ANCHORS: JOHN GIBSON

REPORTERS: JIM MIKLASZEWSKI

BODY:

JOHN GIBSON, host:

The smile on President Clinton's face following yesterday's Whitewater acquittals may be fading tonight. In a just released deposition, an FBI agent tells a congressional committee that White House aides used drugs as recently as Clinton's inauguration day. The agent, Dennis Sculimbrene, said the use of drugs, such as cocaine and LSD, was detected during background investigations, and he added, quote, "I'm not talking about junior staffers, either," end quote. Sculimbrene, by the way, retired today, saying he was upset about changes in his job assignments since he started raising concerns about various goings-on in the White House.

But the big news this week for Bill Clinton was the end of the latest Whitewater trial. NBC's Jim Miklaszewski has the details.

JIM MIKLASZEWSKI reporting:

The Little Rock jury acquitted Arkansas bankers Robert Hill and Herby Branscum, who implied that this was a political prosecution from the start.

Mr. HERBY BRANSCUM (Arkansas Banker): This trial was about the fact that I've been Bill Clinton's friend for some 20-something years.

MIKLASZEWSKI: One of the jurors, Mary Zinaman, agrees.

Ms. MARY ZINAMON (Whitewater Trial Juror): We felt like if it was not during a political season, that it would never been--went to court.

MIKLASZEWSKI: The two were found not guilty on four counts of illegally funnelling bank funds to Governor Bill Clinton's 1990 campaign. The jury deadlocked on seven other counts, for which the judge declared a mistrial.

It's good news for the White House, even better for deputy counsel Bruce Lindsey. Lindsey was named an unindicted co-conspirator in the case, but the not guilty verdicts appear to end any threat of prosecution. It's a huge relief to the Clinton White House. As President Clinton's closest friend, Lindsey was the closest the Whitewater prosecution had come to the president himself. Clinton aides call it a huge setback for independent counsel Kenneth Starr, but after the verdict, Starr said his Whitewater investigation now shifts back to Washington.

Mr. KENNETH STARR (Whitewater Independent Counsel): ...issues such as the travel office matter, the FBI files matter have come to us rather recently, and we're certainly actively going about that investigation.

MIKLASZEWSKI: And while they celebrate this victory, Clinton aides acknowledge their ordeal called Whitewater is not over yet. Jim Miklaszewski, NBC News, the White House.

GIBSON: With us tonight in Washington, longtime Democratic official and Clinton friend, Lanny Davis.

Hello, Lanny.

Mr. LANNY DAVIS (Former Democratic Party Official): Hello, John.

GIBSON: And Paul Rodriguez, managing editor of Insight on the news, a national weekly news magazine.

Mr. PAUL RODRIGUEZ (Editor, Insight Magazine): Good evening.

GIBSON: Mr. Rodriguez formerly covered the Whitewater story for The Washington Ti--Times.

Mr. Rodriguez, welcome.

Mr. RODRIGUEZ: Good evening.

GIBSON: Also, on the phone, Mary Zinamon served on the Whitewater jury. She joins us now on the phone from Little Rock. And I think I'll turn to her first.

Mary, maybe you can give us a--a--a brief description of--of why you arrived at the verdict you did.

Ms. ZINAMON: First of all, we felt like the whole trial was a waste of taxpayers' money. There was not enough evidence that was shown by the government to prove that the defendants were guilty beyond a reasonable doubt, so we had no other choice but to decide, not guilty.'

GIBSON: Mary, why did you think it was a political trial?

Ms. ZINAMON: Well, we felt like if it wasn't a campaign year for the president, then the trial would never went to court. A lot of the paper trails that we noticed when we examined exhibits during the deliberation--we found, like, a trail coming from the Republicans. You know, we looked at the campaign donations for the Republican candidates--you know, they were same as

Democrats--and it appeared like, you know, it was just a political ploy.

GIBSON: And what did you think of the president's videotaped testimony?

Ms. ZINAMON: Oh, I felt like it wasn't necessary. It didn't sway the jury one way or the other. We felt like maybe if the president had done his testimony in--in--in person it would have been more--might have changed some of our minds. But we didn't really think too much of the president's testimony.

GIBSON: OK. Mary Zinamon, Whitewater trial juror. Thank you for joining us on the phone, and thanks from a--everybody, I suppose, for your service on that jury.

Lanny Davis, I'm sure the words of that Whitewater juror are heartening to you. You've been fighting this fight a long time.

Mr. DAVIS: Yes, I think it's heartening. It does demonstrate, as in the first trial, that this trial had nothing to do with President Clinton as the first one, which resulted in convictions. And Republicans tried to suggest there was something about President Clinton in that trial--all the jurors said the same thing as this juror. But one other thing I want to mention about tax money: I just learned today that 41 FBI agents have been assigned to Mr. Starr in the last 21 months--\$ 11 1/2 million to pay those FBI agents. John, more FBI agents have investigated the matters...

GIBSON: Lanny, we got to go to a break. This always happens. We'll be right back.

Mr. DAVIS: Oh, you got to let me finish.

(Announcements)

GIBSON: We're back. We're talking about Whitewater II, which went--ended in acquittals for the two accused, Herby Branscum and Robert Hill, and, by implication, an acquittal for President Clinton. And I interrupted Lanny Davis, who was a--a--about to tell us about the excesses of--of Ken Starr's office. What--what'd you say, Lanny, 40--41 new FBI agents?

Mr. DAVIS: Forty-one agents have been working for Starr for 21 months. That's more agents than investigated the World Trade Center bombing. He's spending \$ 1 million a month--over \$ 30 million to date, unaccountable, and in this case, I think, reckless activity using that money. He accused Bruce Lindsey of being an unindicted co-conspirator; didn't have the guts to indict him. Now I'd like to challenge Mr. Starr to take Mr. Lindsey...

Mr. RODRIGUEZ: Well...

Mr. DAVIS: ...to court and prove his case. He doesn't have the guts to do that either.

GIBSON: Paul Rodriguez.

Mr. RODRIGUEZ: Well, Lanny, I appreciate that you are--are irritated, perhaps, by the Br--Branscum and Hill trials. Every prosecutor has to make a decision who to bring into the case and who not to, and many a prosecutor in

many an indictment has unindicted co-conspirators. These are people who are involved directly or tangentially in a scheme alleged by the people who have been indicted. And it's a vehicle in which to bring in ne--other and new information. So to say that Ken Starr, per se, is picking on poor little old Bruce Lindsey--that's not fair. Ken Starr applied common sense, classical prosecutorial techniques of bringing in an unindicted co-conspirator. This is also the same Ken Starr that--that fought a lot against having Bill Clinton in the first trial or the McDougals and Tucker. This is also the same Ken Starr team that did not want to have Bill Clinton in this case, either.

GIBSON: But Paul Rodriguez, you know...

Mr. RODRIGUEZ: It's not quite fair to hammer on Starr. If you want to hammer on Starr, that he's spending a lot of money, all that's fine and good; Walsh spent a lot of money and a lot of folks hammered on him. We were talking off camera that, my God, it's like Democrats are being hoisted on--on their own petard. They didn't say anything during the--the Lawrence Walsh four-year investigation of Ronald Reagan, and now they're complaining and carping about Ken Starr's two-year investigation.

GIBSON: Look...

Mr. RODRIGUEZ: Well, you can't have it both ways.

GIBSON: ...Paul, let me focus a little bit. Do you really think, as Lanny says, that--that Bruce Lindsey is off the hook?

Mr. RODRIGUEZ: No.

GIBSON: I mean, I noticed a small story in The Times that the judge in this case, for a procedural reason or some other s--had a finding that Bruce Lindsey was a part of a conspiracy to hide this money. What does that mean?

Mr. DAVIS: No, no, no, it's not true.

Mr. RODRIGUEZ: No, that's--that's not quite right. The judge did not...

Mr. DAVIS: You got it wrong, John.

Mr. RODRIGUEZ: ...the judge did not rule out...

GIBSON: That happens once in a while, Lanny. That's why I asked the question.

Mr. RODRIGUEZ: ...the judge did not rule out that--that Lindsey could not be brought into the trial. That's what that was about. The...

GIBSON: Well, all right. So is he off the hook or not, Paul?

Mr. RODRIGUEZ: ...the issue--I don't think Lindsey is off the hook yet. I think his chances of being on the hook have been diminished somewhat.

Mr. DAVIS: Mr. Ewing, the prosecutor...

Mr. RODRIGUEZ: Mr. Ewing has got to make the decision.

Mr. DAVIS: ...did say he was off the h--he--he--in--in The Post this morning, the prosecutor, Mr. Ewing, did admit that these four counts were about Bruce Lindsey.

Mr. RODRIGUEZ: And had he been at the trial he prob--he--acquitted.

Mr. DAVIS: And had he been at the trial, he would have been acquitted--he probably would have been acquitted. But remember what's significant here: These four counts--counts two, 11, 12 and 13, were about the alleged conspiracy between Bruce Lindsey and these two bankers. And this ver--verdict, I think, makes it clear that Bruce Lindsey is innocent, and that the charge of unindicted co-conspirator--as Ray Donovan, a Republican once said, having been prosecuted by a special prosecutor and acquitted: Now that I've been acquitted, who restores my good name?'

Mr. RODRIGUEZ: Reputation.

Mr. DAVIS: Ken Starr owes Bruce Lindsey an apology.

GIBSON: Paul, does he?

Mr. RODRIGUEZ: If he does not seek an indictment of Bruce Lindsey, if he does not retry Branscum and Hill on the four charges--or seven charges that you say that were deadlocked with the jury, then I think it's always good manners and good prosecutorial decisionmaking to come out and say something that, You know, we had you on this--on this hook. It was part of our legal justificat--our--our legal work, and now that you're off the hook, we're going to publicly say you're off the hook.' I j--I just think that's good public policy.

Mr. DAVIS: So do I.

Mr. RODRIGUEZ: Bert Lance never had that un--that courtesy many years ago, when he was under the gun, and I think it was unfortunate then, and I think it would be unfortunate now if Lindsey is not going to be put into a criminal conspiracy or an--an indictment in the future. He ought to be publicly told he's now off the hook.

GIBSON: All right. Le--let's--let's leave Whitewater II behind for just a moment. And--and, Lanny, you know, the--Ken Starr says, Well, we're now going to go back to Washington. We've got to get into Travelgate, FBI files,' etc.

Mr. DAVIS: Good luck.

GIBSON: And here's the stor--here--here's the story today about the White House aides using drugs as recently as President Clinton's inauguration day. An FBI agent told Congress in a deposition released...

Mr. RODRIGUEZ: It's even--it's even more current than that.

Mr. DAVIS: Wai--wait.

Mr. RODRIGUEZ: It's even more current than that. We did a story in January

'95, in Insight, based upon eyewitnesses whom we talked to, some of whom also were involved in a party--several parties, in fact, in northwest Washington, DC, not too far from here, who were involved with a little bit of dope at these parties. There were White House staffers, mid-level, low-level, and there was a staffer from the NSC, which is the National Security Council.

Mr. DAVIS: John, may--may I...

Mr. RODRIGUEZ: And the White House had a conniption...

GIBSON: Please do. Please do, Lanny.

Mr. RODRIGUEZ: The White House had a conniption about that...

Mr. DAVIS: I--I...

Mr. RODRIGUEZ: ...and they did crack down, to some extent, on the Wh--o--on the White House staffers.

Mr. DAVIS: I--I haven't--I haven't read the...

GIBSON: What do you know about the conniption, Lanny?

Mr. DAVIS: Well, I--I haven't read the Insight story, but I have read Mr. Sculimbrene's varying versions of what he hears. And let's talk about his credibility. The only source to this story is Sculimbrene, and let me tell you two things, John. I was on a another program--not as good as yours, of course--a few nights ago...

Mr. RODRIGUEZ: Smart man.

Mr. DAVIS: ...and a member of Congress on Clinger's subcommittee was there to talk about Sculimbrene. And I looked into the camera and I said, Tell me why you haven't called Sculimbrene to a hearing in person, so he can testify?' He wouldn't answer the question. I asked him over...

Mr. RODRIGUEZ: Well, there's a--well, there's--there's a good question--there's--th--there's a good reason.

Mr. DAVIS: And--and l--let me--let me tell you the reason that I...

Mr. RODRIGUEZ: He's physically injured.

Mr. DAVIS: That is not...

Mr. RODRIGUEZ: He had a helicopter blade smack him in the head.

Mr. DAVIS: He--he--he is--whatever smacked him in the head has affected his credibility because they won't call him. The deposition is quoted...

Mr. RODRIGUEZ: Oh, that's not fair.

Mr. DAVIS: Excuse me.

Mr. RODRIGUEZ: You're--you're castigating somebody who's not here to defend

himself.

Mr. DAVIS: Let me finish. Let--let me finish. Let me finish.

Mr. RODRIGUEZ: That's not fair. That's not fair, Lanny.

Mr. DAVIS: The--let me finish. The...

Mr. RODRIGUEZ: You're asking for Lindsey to get an apology. You should apologize to the S--to the agent. He's not here...

Mr. DAVIS: I'm going to finish my sentence. I didn't interrupt you.

Mr. RODRIGUEZ: Go ahead then.

Mr. DAVIS: The--the--the point number one is that he wouldn't give an answer, and we know that he's now being quoted anonymously. He was good enough to have a deposition taken, despite the head injury, but they didn't call him, and we know the reason, because he has little credibility. And the second point to make is, remember that Sculimbrene is the man who said that Hillary Clinton knew Craig Livingstone's mother and, therefore, that's why she is culpable in the hiring of Craig Livingstone. When Mrs. Livingstone was asked that question, she said...

GIBSON: Lanny, we've got to go to a break.

Mr. DAVIS: ...I've never met Hillary Clinton in my life.'

Mr. RODRIGUEZ: Yeah, quite right.

GIBSON: ...but I have to ask you, when we come back, Lanny, did you slime Sculimbrene? We'll be right back.

(Announcements)

(Excerpt from White House press conference, August 1, 1996)

Unidentified Man #3: Your White House said earlier--in fact, this morning, Mr. Toiv said that if it came here you would sign it.

President BILL CLINTON: Well, I don't--he didn't talk to me before he said that. I didn't say that. I said, I don't know what's going to be in it, but I'm--I don't believe that we should give special preference to one group of people over others.' Do you?

Man #3: I'm s...

Pres. CLINTON: Do you?

Man #3: You--you said you would do this earlier, sir.

Pres. CLINTON: Do you think we should--do you think that Congress should pay for the legal expenses for all these middle-class people that they harassed and brought up there and cost them tens of thousands of dollars in legal expenses, when they never even accused them of doing anything? And they certainly never

off--offered to plead guilty to anything. Do you believe that?

Man #3: I just wanted to know if you were going to keep your word, sir.

Pres. CLINTON: Well, I--I didn't--I never gave my word on that.

Man #3: OK.

Pres. CLINTON: You go back and see what I said when I was asked that question. I asked, Are they going to pay the expenses of anybody else?'

(End of excerpt)

GIBSON: President Clinton, getting a little testy in the White House Rose Garden, getting into an exchange with two reporters over the issue of whether or not he was going to sign the bill to pay the legal expenses of the White House travel office people who were fired, that the--that the president and the White House letter--later said they regretted were--were fired.

We are talking in--in Washington, with Paul Rodriguez and Lanny Davis, and they were having a little bit of a fight as we went into that last break.

Lanny--or maybe I should ask Paul. Paul, did Lanny slime Sculimbrene? Is he--i--is--wha--what's the situation? Why hasn't Sculimbrene been called in to testify about what he knows?

Mr. RODRIGUEZ: Sculimbrene has been called in by way of deposition. This is an agent who is retiring today, but he's been on light disab--on light duty for about a year, year and a half, because of an accident with a helicopter. And guess who won? The helicopter. The issue is really about what he says in a deposition that's now being quoted today vs. what he said in contemporaneous, background reports when he was all with us in 1992, in 1993. You cannot compare, as it were, the 1992-'93 full...

Mr. DAVIS: I just laugh because...

Mr. RODRIGUEZ: ...full-bodied, fully capable agent's contemporaneous notes of that time period to a deposition now. The Democrats on the panel have said to me that when they see this guy, they've talked to him, they've looked at his depositions--he's not fully functional. He has headaches, stuff like that. Republicans say the same thing.

Mr. DAVIS: Can you take a breath and let me in?

GIBSON: Well, Lanny, the guy got hit in the head with a--with a...

Mr. RODRIGUEZ: So it's--so...

GIBSON: ...helicopter rotor.

Mr. DAVIS: Can I get a word...

Mr. RODRIGUEZ: ...so on--on--on this deposition--on this...

Mr. DAVIS: The rules of this show is that everybody speaks in short speeches

and then lets the...

Mr. RODRIGUEZ: OK.

Mr. DAVIS: ...other guy speak, so--is that right, John?

Mr. RODRIGUEZ: Oh, OK.

GIBSON: Well, yeah, if you obey it, then he will, Lanny.

Mr. DAVIS: I'll obey it. I'll obey it.

GIBSON: But, look, here's the point: Sculimbrene had said some bad things that you don't like, and now you're hitting him because he walked into a helicopter rotor.

Mr. DAVIS: No, I'm not. No, I'm not. Listen, the funny thing that I just laughed at is that here--I didn't say that Sculimbrene isn't with it, or something mentally probable--I just said that they're embarrassed to call him because he has credibility problems. And I gave you my example of the credibility problems. He said that Hillary Clinton knew Mrs. Livingstone's mother...

Mr. RODRIGUEZ: He--he did not say that.

Mr. DAVIS: Let me fin--he--and--and Mrs.--he quoted somebody as saying it, and Mrs. Livingstone said, I never met Hillary Clinton.' I'm suggesting that a good reporter, who--and I thin--really respect this man despite the fact that he interrupts me all the time...

Mr. RODRIGUEZ: I appreciate it.

Mr. DAVIS: ...a good reporter is going to be skeptical of somebody who suddenly announces that in--on inaugural day...

GIBSON: Wait a minute.

Mr. DAVIS: ...on inaugural day that people were doing drugs in the White House.

GIBSON: Wait a minute.

Mr. DAVIS: I doubt that. I don't believe--I don't believe the man.

GIBSON: Wait--wait--wait--wait a minute, Lanny. Aren't these notes--aren't these--doesn't this testimony come from before Mr. Sculimbren...

Mr. DAVIS: No, no, not this testimony.

GIBSON: This to...

Mr. DAVIS: This comes from--this is deposition testimony, recently.

GIBSON: The thing about Craig Livingstone does, does it not?

Mr. DAVIS: That Craig Livingstone is supposedly from an FBI interview that Bernard Nussbaum says he never said, that William Kennedy says he never said and that Mrs. Livingstone and Hillary Clinton both denied. You have all the people denying that they said what this guy heard. And, you know, an FBI agent six months ago was convicted of fabricating 50 interviews--a guy named Harlan. It is conceivable--I'm not saying that he did lie--it's conceivable that he has credibility problems, and we ought to be a little bit skeptical.

GIBSON: Right.

Mr. DAVIS: But what we're quoting now is a deposition that he just gave.

GIBSON: All right, Paul. Let's--let's go on to the other thing. I--i--Ken Starr says he's going to move on to what we have called Filegate, for want of a better term, the FBI files case, and--an--and the travel office. W--has he got anything there?

Mr. RODRIGUEZ: Too soon to be determined. We know that the White House, by way of Craig Livingstone and his assistant, Anthony Marceca, an Army CID officer assigned to the White House, pulled 600, 700, 900 FBI background reports on prominent--on prominent Republicans, at the same time that they were not processing 200, 300 Clinton White House staff paperwork for security clearances. Why? We don't know the answer. The White House gives us various answers. Livingstone gives us various answers, as does Marceca. The FBI, apparently has no clue on what it's doing. I think the FBI, if there's wrong, the FBI is wr--as wrong, if not more wrong, because they should have known better not to turn over very private, confidential background reports on hundreds of Americans, particularly hundreds of senior political Americans...

Mr. DAVIS: I agree.

Mr. RODRIGUEZ: ...whether Democrat or Republican.

Mr. DAVIS: I agree with you.

Mr. RODRIGUEZ: And we don't know the facts yet because nobody's telling the whole truth, nothing but the truth, and it...

Mr. DAVIS: Well...

Mr. RODRIGUEZ: ...time--time will tell. But it is serious.

GIBSON: ...Lanny, I know, you--you have--you have--you...

Mr. RODRIGUEZ: It is serious.

GIBSON: ...Lanny, you've been on the record many times...

Mr. DAVIS: Right.

GIBSON: ...a--agreeing with that point...

Mr. DAVIS: Yes.

GIBSON: ...so I'm not going to waste any time going over that again. But...

Mr. DAVIS: You don't want to waste time with us agreeing.

GIBSON: But let me ask you about the president losing his temper in the--in the Rose Garden the other day.

Mr. RODRIGUEZ: Not cool.

GIBSON: Y--you--you're smiling.

Mr. DAVIS: I sure am.

GIBSON: Did that--did that give you some squirms?

Mr. DAVIS: No. I--I sort of thought he was right. I think it was more serious, the issue that he was talking about, which...

Mr. RODRIGUEZ: Yeah.

Mr. DAVIS: ...is why pay one individual as a special act of Congress and not pay a number of other individuals? But, you know, when Bob Dole snapped at Katie Couric he got into trouble, too. And I don't have any problem with presidential candidates or presidents showing some human emotion once in a while.

Mr. RODRIGUEZ: Now one...

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BODY:

1st CONGRESSMAN: I think it is entirely appropriate to discuss on the House floor, the fact that someone came before an investigative committee.

Rep. HENRY WAXMAN, (D), California: It's out of line to come to the floor and use information that has not been verified, presumably from some FBI file, to try to smear the First Lady, Bernard Nussbaum, the counsel, and the Democratic administration. This is a partisan smear.

ROBERT NOVAK: [voice-over] Tonight, the FBI agent versus the First Lady.

ANNOUNCER: From Washington, Crossfire. On the left, Geraldine Ferraro; on the right, Robert Novak. In the Crossfire, Republican Congressman David McIntosh, from Indiana, member of the government reform and oversight committee; and, in New York, attorney Lanny Davis.

ROBERT NOVAK: Good evening. Welcome to Crossfire. In case you still wonder who hired Craig Livingstone at the White House, the debate re-emerged this week on Capitol Hill.

[voice-over] Livingstone, you might recall, is the former bartender, who claims to have coordinated the 'Chicken George' stunt in the 1992 campaign, and then was named head of the White House personnel security, with the resulting FBI file affair. Well, last night, Republican Congressman William Clinger, Chairman of the House Oversight Committee, revealed an FBI report of a 1993 conversation between FBI agent Dennis Sculimbrene and then-White House Counsel, Bernard Nussbaum. It quotes Nussbaum as saying, Hillary Rodham Clinton, quote 'highly recommended' unquote, Livingstone for the job. That's something the First Lady, Nussbaum and everybody connected with the Clinton White House deny.

But that's not all. Congressman Clinger says the FBI gave the White House a heads up on the report and may have tried to intimidate Sculimbrene. Clinger came under attack from White House lawyer, Mark Fabiani, who accused him of

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divulging confidential information and from his Democratic Congressional colleague, Henry Waxman, who claimed it was a partisan smear.

[on camera] Just another Whitewater day.

Gerry?

GERALDINE FERRARO: Congressman, let me just pick up on the comments that Henry Waxman made because the Congress of the- the Constitution of the United States protects members of Congress when you make statements on the floor of the House. You are totally immune from any sort of libel suit or from any sort of prosecution for anything you've done. Yesterday Bill Clinger went to the floor of the House and made a statement that truly revealed confidential information from confidential files. Don't you think that the dicta of Newt Gingrich, which is that members of Congress should be treated just like everybody else, should hold here? And that maybe we should have a special prosecutor look into what Bill Clinger did yesterday?

Rep. DAVID McINTOSH, (R), Indiana: Well, let me tell you, I think Chairman Clinger was doing exactly his job of reporting to the full House a very disturbing revelation that the Committee proceedings in this FBI File matter have been receiving information from witnesses that are contradicted by FBI Files themselves.

GERALDINE FERRARO: Was that confidential information?

Rep. DAVID McINTOSH: And that that- that itself, possibly, could be a violation of the law, if a witness has not been telling us the truth.

GERALDINE FERRARO: Let me- let me stop you right there-

Rep. DAVID McINTOSH: No, no. No, absolutely not. What Mr. Clinger was doing, was reporting to the whole House, a very disturbing matter. He's also made a referral to the independent counsel, to look into the fact that there are these discrepancies on that.

GERALDINE FERRARO: Two questions: first of all - wasn't that confidential information from a confidential FBI report? Yes, it was.

Rep. DAVID McINTOSH: Well, that- that FBI report-

GERALDINE FERRARO: Was it not?

GERALDINE FERRARO: -that FBI report was made available to Mr. Clinger by Mr. Freeh, the head of the FBI because he knew that this was very sensitive and it went to the fact that very senior former White House officials are misleading Congress about this whole FBI case.

GERALDINE FERRARO: Except- except if information were given by the FBI to Congressman Clinger that still does not allow Congressman Clinger in his position of chairman of that committee-

Rep. DAVID McINTOSH: No, absolutely not-

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GERALDINE FERRARO: -to release that information to the public, which is exactly what he did, in violation-

Rep. DAVID MCINTOSH: -absolutely not. What Mr. Clinger was doing was exactly what he should have been doing following his job of reporting back to the full House-

GERALDINE FERRARO: Why couldn't he do it from the committee?

Rep. DAVID MCINTOSH: -that's exactly what he did, he went to the House floor and reported to all of the members-

GERALDINE FERRARO: Not from his committee-

Rep. DAVID MCINTOSH: -what was happening in his committee. And then, the worst thing about this is that it is beginning to smell more and more like Watergate, because you are hearing all of these things about the misuse of the FBI and now-

GERALDINE FERRARO: But that's precisely what Congressman Clinger did yesterday.

Rep. DAVID MCINTOSH: -senior White House officials have been misleading committees of Congress. What Mr. Clinger felt was important was that we immediately get that information out to the public, out to the members of the House, but also make a referral over to the independent counsel.

ROBERT NOVAK: You know, listening to Gerry's questioning, Lanny, I feel like I am on Cloud Cuckoo Land because I've been watching these-

LANNY DAVIS, Attorney: You should.

ROBERT NOVAK: -investigations for years and the idea that the FBI on a Congressional investigation - the director of the FBI gives the report to the committee chairman, that- that isn't like asking for a confidential file on Joe Beeswax, on his FBI file. Aren't you people trying to stretch something and trying to add apples and oranges?

LANNY DAVIS: First of all, Bob, the Congressman never answered Geraldine Ferraro's question. He can't, because if Bill Clinger showed up tonight, which I gather he didn't want to and made the same charge on television, revealing an FBI file, according to Robert Novak, several weeks on this program, when I was on, that's a crime and Congressman Clinger could be arrested in the studio.

ROBERT NOVAK: That's sheer- wait a minute-

LANNY DAVIS: Now why do you forgive that-

ROBERT NOVAK: -Lanny- wait a minute, Lanny. Lanny, you- you're a- I am so disappointed in you, I can't tell you how- I mean, that is so bad because the idea of-

LANNY DAVIS: It's the truth, though.

ROBERT NOVAK: No, it isn't because the idea of divulging a confidential file on somebody's background is entirely different than a report to an investigating

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committee. I have heard chairmen of investigating committees going back to- to the 50s, when I was here, reveal FBI files. You know that that isn't any kind of crime.

LANNY DAVIS: It is absolutely what Congressman Clinger has been saying, is the disclosure of an FBI file is a violation of the Privacy Act. He didn't have

the guts to do it in a press conference, he did it on the floor of the House. Everybody knows that. The Congressman knows that, and you know that, Bob.

Rep. DAVID McINTOSH: Lanny- Lanny, that is exactly the wrong thing to do - to go to a press conference - what he should have been doing is reporting to the members of the House. It's very typical of the Clinton Administration by the way, when they get bad news about one of their senior members, and in this case it's Mrs. Clinton, they go and they attack the person who reveals the news.

GERALDINE FERRARO: Oh, come on. That isn't even close.

Rep. DAVID McINTOSH: And that is a red herring. What really is important here is it became very clear that Mrs. Clinton did recommend Livingstone to senior White House-

LANNY DAVIS: So you are basing that statement, Congressman, one second-

ROBERT NOVAK: I feel- just a minute- I feel- I feel very badly, that we- that you have succeeded again in changing the subject from the substance of it, to this procedural thing of whether this was a violation or not. Let me just put this to you, Lanny-

LANNY DAVIS: Okay.

ROBERT NOVAK: -this is a conversation, a contemporaneous conversation, it isn't something that was cooked up after all this story broke about who hired Craig Livingstone - it was a conversation that Mr. Nussbaum had several years ago, 1993, in which, in the first year of the Clinton Administration in which he told this FBI agent - why would he lie at this point in time that- that Mrs. Clinton recommended the hiring, strongly recommended the hiring of this creep Livingstone?

LANNY DAVIS: You are basing what you just said and the Congressman is basing what he just said on the credibility of an FBI agent named Sculimbrene who has changed his story three times, who declared that Nussbaum told him that Mrs. Clinger [sic] knows Mrs. Livingstone. Mrs. Livingstone says, quote, 'I do not know Hillary Rodham Clinton, I have never met Mrs. Clinton, and I have never spoken with Mrs. Clinton.'

GERALDINE FERRARO: Let me just-

ROBERT NOVAK: But this is a cont- this is a contemporaneous-

LANNY DAVIS: This- this FBI agent is a-

GERALDINE FERRARO: Let me-

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LANNY DAVIS: -a non credible-

ROBERT NOVAK: - report. This is- this is-

LANNY DAVIS: -probably a liar-

ROBERT NOVAK: How come- I just want to ask you this one thing: how do you say he is non credible when the report was made in 1993?

LANNY DAVIS: Because he's changed his-

GERALDINE FERRARO: He lied then.

LANNY DAVIS: -story three times, now. Under oath he was asked, as recently as three weeks ago-

GERALDINE FERRARO: Let me- let me ask the question first. Wait a minute-

Rep. DAVID McINTOSH: But Geraldine you just said he-

GERALDINE FERRARO: Wait a minute-

Rep. DAVID McINTOSH: -might have lied then.

GERALDINE FERRARO: -no I didn't say he may have lied then, what I am saying to you is that if you take the report, he may- this is file that supposedly was a conversation that he had with Bernie Nussbaum in 1993-

Rep. DAVID McINTOSH: It was his job, doing a background check on Livingstone.

GERALDINE FERRARO: -Bernie Nussbaum- Bernie Nussbaum claims that conversation never took place. He then said that a person by the name of Bill Kennedy, who was also in the White House, told him the story, not Bernie Nussbaum - he said that later on during testimony before the Senate committee. Bill Kennedy said the conversation never took place. He then said that David Livingstone had told him that the conversation took place-

ROBERT NOVAK: Wait a minute- David? David was the one in Africa.

Rep. DAVID McINTOSH: Craig Livingstone.

GERALDINE FERRARO: Craig Livingstone told him. Craig Livingstone tells him- says that that conversation never took place.

Rep. DAVID McINTOSH: Right.

GERALDINE FERRARO: He then says 'Well, maybe-'

Rep. DAVID McINTOSH: So you've got all of these people in the White House who are- who are-

GERALDINE FERRARO: Now wait- wait a minute- hold on.

Rep. DAVID McINTOSH: -not known for-

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GERALDINE FERRARO: -hold on!

Rep. DAVID McINTOSH: -being truthful-

GERALDINE FERRARO: Hold on a minute. There is Mrs. Livingstone, Mrs. Livingstone says, 'I've never met her,' and if you take a look at what Sculimbrene says-

Rep. DAVID McINTOSH: But- but Geraldine let me ask you a question-

GERALDINE FERRARO: -no wait a minute, let me finish. When it's finished - I'm the host, I ask the questions-

Rep. DAVID McINTOSH: All right.

GERALDINE FERRARO: -not you. Okay? Let me get to the point.

Rep. DAVID McINTOSH: Your question is?

GERALDINE FERRARO: -let me get to the point. When you have everybody, including Sculimbrene, saying 'Well, maybe it wasn't even true,' which he says again to a different Senate committee, 'Maybe it wasn't true, maybe Livingstone was just puffing himself up,' you've got to turn around and say this guy doesn't- isn't telling the truth on this stuff.

Rep. DAVID McINTOSH: No, no, not at all. And frankly, I think it's outrageous-

GERALDINE FERRARO: How can you rely upon him?

Rep. DAVID McINTOSH: -that FBI agents, who the nation depends on to fight drug-criminals in the streets, in this case they depend on him to provide for the security of this administration and prior administrations - these FBI agents have been in the White House doing that for a long time, they are career civil servants - they are now being attacked in their character. All that happened here was that he took notes of his conversation with Bernie Nussbaum back in '93-

GERALDINE FERRARO: Right.

Rep. DAVID McINTOSH: -at that time, Bernie Nussbaum told him that Mrs. Hillary-

GERALDINE FERRARO: Let me just - Bob, just one-

ROBERT NOVAK: No, you've had a long question-

Rep. DAVID McINTOSH: -that she was-

ROBERT NOVAK: -Gerry, let me- let me ask-

GERALDINE FERRARO: No, just one, Bob.

Rep. DAVID McINTOSH: -one doing it.

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ROBERT NOVAK: Let me- Lanny, let me ask- let me ask-

GERALDINE FERRARO: Okay, we will get back to that point in a minute.

ROBERT NOVAK: Let me ask Lanny a question because I really - I am - I am baffled by this. I can't understand how you can state a note - you are not saying that these notes were contrived after the 1993 conversation are you?

LANNY DAVIS: I am saying-

ROBERT NOVAK: This is an FBI report.

LANNY DAVIS: I am saying that this FBI agent has no credibility and I certainly wonder why after telling a Senate Committee that only William Kennedy said anything about the source of the hiring of this guy Livingstone, he never mentioned it before, he's changed his story three times-

ROBERT NOVAK: Can you- can you-

LANNY DAVIS: -why you believe this non-credible liar.

ROBERT NOVAK: Can you- can you- I will tell you something that is very interesting, Lanny. That everybody that I hear, whether it's Judge Hale down in Little Rock, or any of the witnesses, anybody who has any kind of critical or damning information about the Clintons, the argument is 'they're a liar' - how many liars are there out there?

LANNY DAVIS: Look at the source. I am telling you facts. He has changed his story three times.

ROBERT NOVAK: You- you've used - you've made that comment three times, but what about the-

LANNY DAVIS: So- because you-

ROBERT NOVAK: -contemporaneous document. This isn't- this isn't - this isn't-

GERALDINE FERRARO: Well-

LANNY DAVIS: ~~this is~~

ROBERT NOVAK: -this isn't new testimony. This isn't-

LANNY DAVIS: ~~-contemporaneous document contains an absolute fabrication that Mrs. Livingstone has denied and-~~

ROBERT NOVAK: Oh-

Rep. DAVID McINTOSH: I think that this is-

LANNY DAVIS: -this is - and this is-

GERALDINE FERRARO: Okay. I tell you what-

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Rep. DAVID McINTOSH: -just outrageous that people are going after the FBI agents like this. These are law enforcement agents-

GERALDINE FERRARO: -we are going to be right back- I-

LANNY DAVIS: -this is- and this is- he is- he is-

GERALDINE FERRARO: I-

Rep. DAVID McINTOSH: -whose job it is- is to find out the truth, put it down in the files, compare it to this crowd at the White House that nobody is believing anymore.

LANNY DAVIS: How do you know that he is telling the truth.

GERALDINE FERRARO: I tell you what, Lanny - we just really have to break, give us just a minute. We will come right back, and we will talk about whether or not these FBI agents are all credible, if it goes with the- with the- with the title.

We will be right back.

[Commercial break]

MIKE McCURRY, White House Press Secretary: Certainly, the concern here is that private information that has never - that has not been verified, in fact, has been specifically refuted by individuals with first-hand knowledge of conversations, has now been put into the public domain by a Congressman who likes to climb up on his horse and claim that he is protecting privacy.

GERALDINE FERRARO: Welcome back to Crossfire. Republicans have an FBI agent who says that he was told that First Lady Hillary Clinton hired Craig Livingstone. They may have an agent but the White House claims everything he says is completely false. We're talking about this new twist to an old story with attorney Lanny Davis, who joins us from New York, and here in the studio, Republican Congressman David McIntosh of Indiana, who is a member of the Government Reform and Oversight Committee.

Bob?

~~ROBERT NOVAK: Lanny Davis, let me just see if I can get to comment on the procedure that was used here. We have a case where the FBI gives Congressman Clinger a three year old report which is very highly incriminating. If true, to the First Lady. It then the FBI then goes to the White House, and it says it says it has given this information to the committee. What Congressman Clinger calls a heads up and then they send FBI agents to the home of agent Sculmbrene who is on leave and they say to him that the White House is very upset about this material. Now, if you were on the other side of the fence would you like the way the FBI has been politicized in this operation?~~

~~LANNY DAVIS: I don't think they've been politicized at all. I think they should have immediately interviewed Sculmbrene and inquired as to why he suddenly is changing his story after being under oath and testifying to the Senate Judiciary Committee. Let me read to you, if you will, Bob, from The Washington Post, an~~

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FBI agent named David Bowie, who worked with Sculimbrene, who knew that Sculimbrene was a close friend of Gary Aldrich, another great font of credibility, and here is what Bowie said to the FBI that the Congressman was just vouching for. He said that Sculimbrene quote "had a very bitter political feelings about the Clinton White House" and further, quote "that he was exhibiting irrational behavior." Now why haven't you called Sculimbrene before your committee publicly and have him be- and have him testify.

Rep. DAVID McINTOSH: I think there are-

ROBERT NOVAK: Let me- let me tell you what-

LANNY DAVIS: Are you afraid what people will see?

Rep. DAVID McINTOSH: -much more serious problems here.

LANNY DAVIS: Call him to testify, Congressman.

Rep. DAVID McINTOSH: The FBI-

ROBERT NOVAK: All right, one at a time, one at a time.

LANNY DAVIS: Call him to testify.

Rep. DAVID McINTOSH: -the FBI- has been disqualified from this by Attorney General Janet Reno because they- she realizes there is an inherent conflict of interest for them or for the Justice Department to investigate this matter-

LANNY DAVIS: Call Sculimbrene to testify-

Rep. DAVID McINTOSH: -they are trying to do their best-

LANNY DAVIS: Why not? Call him to testify.

Rep. DAVID McINTOSH: -to show us that they are an independent agency and now they are going to the White House and tipping them off with this very, very damaging information.

ROBERT NOVAK: Let me just ask one. I don't understand the time line on this, Lanny. You are accusing Sculimbrene of changing his story? This is- this is at the beginning of the Clinton Administration there- he professes that he wanted the Clinton Administration to succeed-

LANNY DAVIS: I-

ROBERT NOVAK: -how could he change his story if this is a three year old document? I don't understand how that works.

LANNY DAVIS: First of all, I am accusing Sculimbrene of having a political bias, and that report is filled with lies.

ROBERT NOVAK: Oh-

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LANNY DAVIS: -secondly, that report was found in the FBI report as an insert. I'd like to know how it got there. And thirdly, why isn't the Congressman answering my question. Why haven't you called Sculimbrene for a public hearing so that he can say publicly what he is saying now?

GERALDINE FERRARO: I am going to let you answer that question, and then-

LANNY DAVIS: Why not?

GERALDINE FERRARO: I am going to let him answer that question and then I am going to ask him one. Go ahead.

Rep. DAVID McINTOSH: Okay. Thanks, Geraldine. There- I think there are much more fundamental issues here. The-

LANNY DAVIS: You didn't answer the question.

GERALDINE FERRARO: You didn't answer my question.

Rep. DAVID McINTOSH: The answer to the question-

LANNY DAVIS: Answer my question!

Rep. DAVID McINTOSH: -the answer to the question - the reason we're not- the reason we're not calling Sculimbrene to testify-

LANNY DAVIS: Thank you.

Rep. DAVID McINTOSH: -is that there are much more fundamental issues here.

LANNY DAVIS: Oh, gee-

GERALDINE FERRARO: Okay, then that's not the answer to the question. Let me-

Rep. DAVID McINTOSH: -the FBI has been used as a -

LANNY DAVIS: Nice evasive answer, Congressman.

Rep. DAVID McINTOSH: -political ploy.

GERALDINE FERRARO: Let me ask my question- let me ask my question. You have- you and Bob have both sat here and said 'Oh, this guy had to be telling the truth, after all he was an FBI agent, he was working in the White House doing interviews'- do you know somebody by the name of Halbert Gary Harlow?

Rep. DAVID McINTOSH: No.

GERALDINE FERRARO: Halbert Gary Harlow was charged and eventually convicted last year of falsifying at least 50 interviews that he claimed to have conducted at the White House, he was a former FBI agent. So, he wouldn't- our- our friend here would not be the first one who has falsified some interviews. We've already had one FBI agent already convicted of having done that.

Rep. DAVID McINTOSH: Okay. Geraldine, I don't think it helps us to go in and

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smear all of these career FBI agents-

GERALDINE FERRARO: No, that's not the purpose. We're not smearing at all-

Rep. DAVID McINTOSH: I think-

GERALDINE FERRARO: -we're talking about two people-

Rep. DAVID McINTOSH: -I think there are very - I think there are really serious-

GERALDINE FERRARO: -who have done something seriously wrong.

Rep. DAVID McINTOSH: -questions here that we have to look at. Why was the FBI brought into this in the first place? Why were over - almost 1,000 files sent over to the White House of Republicans-

GERALDINE FERRARO: Do you know of any one of those files that have been used by-

Rep. DAVID McINTOSH: -who knew about it? And apparently-

GERALDINE FERRARO: -like this one has by Congressman Clinger?

Rep. DAVID McINTOSH: -and apparently, the White House has been trying to cover that up.

GERALDINE FERRARO: Wait a minute- wait a minute - answer the question- tell me- tell me-

Rep. DAVID McINTOSH: We've got Bernie Nussbaum, who has contradicted in testimony-

GERALDINE FERRARO: -answer the- tell me- instead of [crosstalk] tell me something-

Rep. DAVID McINTOSH: -these FBI transcripts.

GERALDINE FERRARO: Who- which one of the files that the White House has-

ROBERT NOVAK: I can name one.

GERALDINE FERRARO: -has any one of them- have any one of them - do you want to be the guest? I get - do I get paid twice if you are the guest?

ROBERT NOVAK: Billy Dale.

Rep. DAVID McINTOSH: Billy Dale.

GERALDINE FERRARO: Do I -

Rep. DAVID McINTOSH: Billy Dale is one where the White House abused that use of the FBI file. That's what started this whole investigation. We had no idea that they had sent over nearly 1,000 to the White House. This is a huge violation of civil liberties.

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Geraldine, when I go home to-

GERALDINE FERRARO: No-

Rep. DAVID McINTOSH: -Indiana, Democrats come up to me and say -

GERALDINE FERRARO: Not one-

Rep. DAVID McINTOSH: -'David, you need to get to the bottom of this-'

GERALDINE FERRARO: -not one of those-

Rep. DAVID McINTOSH: -'because this civil liberties violation is terrible.'

GERALDINE FERRARO: -not one of those 800 files that you have been talking about has there been any indication of the violation of the Privacy Act by anybody in the White House.

Rep. DAVID McINTOSH: I-

GERALDINE FERRARO: This is the first time that we have seen that happen.

ROBERT NOVAK: All right. All right, Lanny- Lanny Davis, I want to take up something that you said because I think it was very- very serious. You said that there was- that the-

LANNY DAVIS: Insert.

ROBERT NOVAK: -the material was an insert-

LANNY DAVIS: Correct.

ROBERT NOVAK: -in the 1993 report. Are you making an accusation that agent Sculimbrene falsified the conversation after the fact with Mr. Nussbaum.

LANNY DAVIS: I don't know if it was after the fact. I would like to know the answer to that question and the Congressman refused to answer the question why he- why Sculimbrene isn't called up publicly to answer your question.

ROBERT NOVAK: Well, we've been- we've been through that.

LANNY DAVIS: The answer is-

ROBERT NOVAK: What I want to ask you-

LANNY DAVIS: -I don't-

ROBERT NOVAK: -are you making an accusation that this man sent an insert in there, after the fact? That's a harsh accusation.

LANNY DAVIS: I am not making an accusation-

Rep. DAVID McINTOSH: A very serious accusation.

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LANNY DAVIS: -I'm- I'm suggesting to you that that question needs to be asked of him. I don't know the answer. What I do know is that the content of what was in there is false-

ROBERT NOVAK: Why do you say it's an insert?

LANNY DAVIS: I happen to know that that piece of paper in the FBI file-

ROBERT NOVAK: Who told you that? That wasn't in Mr. Clinger's speech.

LANNY DAVIS: Members of- members of Congress- this was widely discussed-

ROBERT NOVAK: No, I've never heard that.

LANNY DAVIS: -by yesterday.

ROBERT NOVAK: Who told you that Mr. Davis. Are you giving confidential information as a private citizen?

LANNY DAVIS: Members of Congress who I talked to yesterday.

ROBERT NOVAK: Who told you, which member of Congress.

LANNY DAVIS: I am not going to tell you which member of Congress.

GERALDINE FERRARO: This is a matter of public knowledge, it was on national television-

ROBERT NOVAK: No, there was no- I haven't known-

GERALDINE FERRARO: -I mean this is not-

ROBERT NOVAK: -anything about an insert-

GERALDINE FERRARO: Well- once- once that file is opened-

Rep. DAVID McINTOSH: Geraldine as far-

GERALDINE FERRARO: -is it not then a matter of full discussion by everybody? Everything-

Rep. DAVID McINTOSH: No. No, very much not.

GERALDINE FERRARO: -that was in the file.

Rep. DAVID McINTOSH: No.

GERALDINE FERRARO: Really?

Rep. DAVID McINTOSH: The only person that I know of who has looked at this is Mr. Clinger, who went down to the FBI, they kept the file-

LANNY DAVIS: Excuse me, that's a false-

Crossfire, July 26, 1996

Rep. DAVID McINTOSH: -they allowed him to look at it-

LANNY DAVIS: -that's-

Rep. DAVID McINTOSH: They did tip off the White House about the information. So maybe that's where-

GERALDINE FERRARO: Well, let's let Lanny-

Rep. DAVID McINTOSH: -that information is coming from.

GERALDINE FERRARO: -Lanny has some information other than that.

ROBERT NOVAK: Well, tell- tell me where you got that information, I'd really like to know that.

LANNY DAVIS: I just told you Robert and I will tell you once again that why isn't this Congressman and why are you supporting calling Sculimbrene before-

ROBERT NOVAK: Okay.

LANNY DAVIS: -you want to know the answer? The reason he's not answering is because Sculimbrene has no credibility-

ROBERT NOVAK: All right, counselor-

LANNY DAVIS: -and they know it and they are embarrassed and that's why-

ROBERT NOVAK: Lanny, we have to go.

LANNY DAVIS: -they're not calling him.

ROBERT NOVAK: Thank you very much, Lanny Davis, in New York. Thank you very much Congressman McIntosh.

Rep. DAVID McINTOSH: Thank you.

ROBERT NOVAK: And Geraldine and I will be back to settle this once and for all.

[Commercial break]

ROBERT NOVAK: Gerry, I wonder, as a civil libertarian, if you are not just a little bit concerned that when anybody makes an accusation about the Clintons, they are immediately accused of being a liar, without documentation. We really had something very interesting happen tonight, we were given some information that has occurred nowhere at all, an accusation, that- an implication that the FBI agent falsified a report, stuck an insert in years after it was written, boy that- that might be a slander, you know that?

GERALDINE FERRARO: You know what, Bob? The problem is that you believe everybody who comes out and says something negative about the White House. I mean, even with that Aldrich book - and this was his partner - this guy is accusing the president of some strange affair, running out of the White House-

Crossfire, July 26, 1996

ROBERT NOVAK: You know-

GERALDINE FERRARO: -I mean, these two guys, from the beginning, really-

ROBERT NOVAK: You know what ad hominem-

GERALDINE FERRARO: -don't like the White House.

ROBERT NOVAK: -do you now what ad hominem means?

GERALDINE FERRARO: These two don't- Yes, I do.

ROBERT NOVAK: What does it mean?

GERALDINE FERRARO: Well, what these two guys are doing-

ROBERT NOVAK: It's ad hominem, and I'm ashamed that you are going that direction, Geraldine.

GERALDINE FERRARO: No, it is not.

ROBERT NOVAK: Yes-

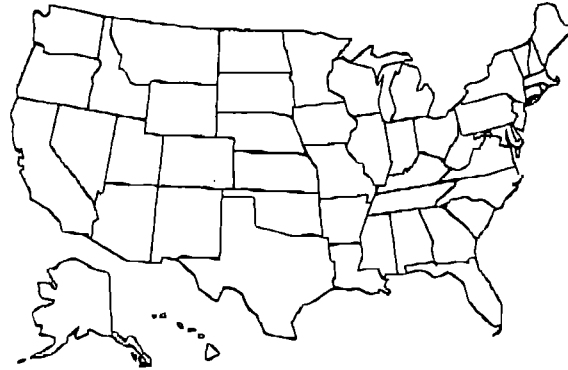
GERALDINE FERRARO: These two guys in particular are people who have absolutely no credibility. From the left, I am Geraldine Ferraro, good night from Crossfire.

ROBERT NOVAK: From the right, I'm Robert Novak. Join us again next time for another edition of Crossfire.

The preceding text has been professionally transcribed. However, although the text has been checked against an audio track, in order to meet rigid distribution and transmission deadlines, it has not yet been proofread against videotape.

LANGUAGE: ENGLISH

LOAD-DATE: July 28, 1996



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE
807 Seven Fountains Road
Fort Valley, Virginia 22652,

Plaintiff,

vs.

JANET RENO, in her official
capacity as Attorney General
of the United States
950 Pennsylvania Avenue, N.W.
Washington, DC 20530,

and

THE EXECUTIVE OFFICE OF
THE PRESIDENT
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500,

and

JACK QUINN
501 Slaters Lane, #306
Alexandria, Virginia 22314,

and

HOWARD SHAPIRO
8303 Bryant Drive
Bethesda, Maryland 20817,

and

LANNY J. DAVIS
12517 Bracken Hill Lane
Rockville, Maryland 20854,

and

(CASE NUMBER 1:99CV02010
JUDGE: Royce C. Lamberth
DECK TYPE: Civil General
DATE STAMP: 07/26/1999

JOHN AND JANE DOES NOS. 1-5,
Certain Unknown Officials and/or
Agents of The White House, and/or
Certain Unknown Officials of the
Federal Bureau of Investigation,

Defendants.

COMPLAINT

This is an action for violations of Rehabilitation Act, 29 U.S.C. § 701, *et seq.*, the Privacy Act, 5 U.S.C. § 552a, the Klu Klux Klan Act, 42 U.S.C. §§ 1985(1) and 1985(2), and the First and Fifth Amendments of the United States Constitution.

PARTIES

1. M. Dennis Sculimbrene is a citizen of the Commonwealth of Virginia and resides at 807 Seven Fountains Road, Fort Valley, Virginia 22652.

2. Janet Reno is the Attorney General of the United States and is being named in her official capacity as head of the Federal Bureau of Investigation (hereinafter the "FBI"). Attorney General Reno's offices are located at 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

3. The Executive Office of the President (hereinafter "The White House") is an agency of the U.S. Government and is headquartered at 1600 Pennsylvania Avenue, N.W., Washington, D.C. 20500.

4. Jack Quinn is a citizen of the Commonwealth of Virginia and resides at 501 Slaters Lane, #306, Alexandria, Virginia 22314.

5. Howard Shapiro is a citizen of State of Maryland and resides at 8303 Bryant Drive, Bethesda, Maryland 20817.

*use answer
from Bar;
alex*

6. Lanny J. Davis is a citizen of the State of Maryland and resides at 12517 Bracken Hill Lane, Rockville, Maryland 20854.

7. John and Jane Does Nos. 1-5 are currently unknown officials and/or agents of The White House and/or officials of the FBI who agreed to participated in, and did participate in the matters alleged herein.

JURISDICTION AND VENUE

8. Jurisdiction over this matter is proper under 28 U.S.C. § 1331, as Plaintiff asserts claims arising under the laws of the United States.

9. Venue is proper in this district pursuant to the provisions of 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the District of Columbia.

STATEMENT OF FACTS

10. Plaintiff is a former Air Force pilot who served in the Vietnam War and thereafter worked as an FBI Special Agent for twenty-three (23) years.

11. In July 1976, Plaintiff was assigned to the FBI's Washington Field Office, where his duties and responsibilities included conducting background investigations on persons employed by or seeking employment with the U.S. Government.

12. In approximately December 1985, Plaintiff was detailed to the FBI's White House Liaison Office, where he worked out of an office in the Old Executive Office Building (hereinafter "OEOB").

13. Plaintiff's duties and responsibilities in the FBI's White House Liaison Office consisted of interviewing White House executives and staff, as well as detailees, volunteers and

contractors requiring access to The White House, preparing memoranda of his interviews, and transmitting his memoranda to the Washington Field Office.

14. At no point did Plaintiffs' daily duties and responsibilities at The White House require him to carry a gun, make arrests or even work in the field. Plaintiff's duties and responsibilities were in large part limited to office work.

15. In January 1993, the Clinton Administration took over control of The White House from the Bush Administration. Consequently, there was a large influx of new political appointees and employees at The White House. *(Pres elected in Nov 92; transition occurred in Jan '93.)*

16. At that time, Plaintiff was the senior FBI Special Agent detailed to The White House. Consequently, he was the only FBI agent at The White House with a special "Secret Compartmentalized Information" security clearance, which allowed him to have access to highly classified information.

17. In early March 1993, Assistant White House Counsel William H. Kennedy, III, Deputy White House Communications Director Jeff Eller and Director of White House Management and Administration David Watkins tried to question Plaintiff about the backgrounds and political views of the staff of The White House Travel Office. *Check Kennedy Dep.* *Deny*

18. Because the Privacy Act prohibited Plaintiff from revealing information about specific persons, Plaintiff advised Kennedy, Eller and Watkins that, based upon his memory of previous background investigations, he was not aware of any derogatory information about any persons employed in The White House Travel Office. *Check Kennedy Dep.* *Deny*

19. Plaintiff notified his supervisor about being questioned by Kennedy, Eller and Watkins. Plaintiff suggested to his supervisor that The White House was looking for an excuse to

fire The White House Travel Office employees and that the FBI was being "used" to provide that excuse.

20. Also in early March 1993, Plaintiff conducted several interviews in conjunction with a background investigation of David Craig Livingstone, whom the Clinton Administration had appointed, or was considering for appointment as the Director of The White House Office of Personnel Security.

21. FBI procedures required that Livingstone's supervisors be interviewed. Thus, Plaintiff was required to interview both Assistant White House Counsel William H. Kennedy III and White House Counsel Bernard Nussbaum.

22. Nussbaum related to Plaintiff that he did not know Livingstone well, but that he had been highly recommended by Hillary Clinton, who apparently knew Livingstone's mother.

23. Plaintiff then typed a contemporaneous memorandum, which is formally called an "insert" in FBI nomenclature. Plaintiff was not required by FBI procedures to record or maintain notes of this interview since the information obtained was considered positive. The insert states, in pertinent part:

The following investigation was conducted by SA M. Dennis Sculimbrene regarding DAVID CRAIG LIVINGSTONE on 3/1 - 3/99 . . .

BERNARD NUSSBAUM, Counsel to the President, advised that he has known the appointee for the period of time that he has been employed in the new administration. He had come highly recommended to him by **HILLARY CLINTON**, who has known his mother for a longer period of time. . . .

24. Plaintiff then sent the insert the Washington Field Office, where it became part of Livingstone's permanent FBI background investigation file. Plaintiff eventually forgot that he had even prepared the insert of the Nussbaum interview.

25. Because subsequent interviews into Livingstone's background had uncovered potentially conflicting information, Plaintiff was required by FBI procedures to interview Livingstone himself several times. During the course of one of these interviews, Livingstone claimed a personal connection between himself, his mother and Hillary Rodham Clinton.

26. Subsequent to Plaintiff's first interview of Kennedy, when neither Plaintiff nor Kennedy were aware of the potentially conflicting information that had been uncovered, Kennedy called Plaintiff to his office to discuss Livingstone. Kennedy indicated his personal concerns with Livingstone and asked Plaintiff for an opinion regarding Livingstone's continued employment. Plaintiff offered an opinion, albeit hesitatingly because his obligations did not include making recommendations. Plaintiff advised Kennedy that Jackie Dinwiddie, who had been Director of The White House Office of Personnel Security during the Carter Administration (then known as the Security Office), was interested in Livingstone's position. Kennedy then inferred to Plaintiff that he was "stuck" with Livingstone. Plaintiff inferred that Hillary Rodham Clinton wanted Livingstone in the position.

27. In May, 1993, The White House publicly announced that The White House Travel Office staff was being fired for alleged financial improprieties and that the FBI would be undertaking a criminal investigation.

28. Because of allegations that The White House Travel Office firings and subsequent criminal investigation were politically-motivated, the firings became a major political scandal for the Clinton Administration.

CLS
denial

Check
Kennedy
Dep

(Krause
memo
re
Dinwiddie)

object to term

29. "Travelgate," as the scandal was popularly known, became the subject of congressional hearings and a committee report by the U.S. House of Representatives Government Reform and Oversight Committee.

30. "Travelgate" was also the subject of an investigation by Independent Counsel Kenneth W. Starr.

31. Shortly after the firings and criminal investigation by the FBI were announced, Plaintiff walked by The White House Travel Office and observed that the office itself had not been secured. Plaintiff observed numerous unknown persons going through files and throwing items away, some of which appeared to be official documents.

32. In May and early June, 1993, Plaintiff advised his immediate supervisor, Supervisory Special Agent (hereinafter "SSA") Thomas Reneghan, and SSA David Bowie, the supervisor of the criminal case that was eventually brought against former White House Travel Office Director Billy Dale, that he was concerned about chain of custody issues. Plaintiff recommended that he be interviewed. Eventually, Plaintiff gave a memorandum to his immediate supervisor which set forth his observations and concerns. Plaintiff would not be interviewed until 1995.

33. On August 9, 1993, The White House Office of Personnel Security obtained Plaintiff's FBI background investigation summary and materials.

34. As of January 24, 1994, Plaintiff had a current pilot's licenses. He had formerly flown surveillance for the FBI.

35. On that date, Plaintiff was attempting to gain access to the engine of his personal aircraft to clean the starter solenoid. As Plaintiff moved the propeller slightly, the engine

Requested
8/9/93 got
2/16/93

inadvertently started. Plaintiff suffered an open, indented skull fracture which was life-threatening and required air evacuation to Fairfax Hospital, where he underwent emergency surgery.

36. Plaintiff suffered a number of physical, neurological and cognitive deficits as a result of the accident. A few months after the accident, Plaintiff experienced the effects of Post Traumatic Stress Syndrome, which were exhibited by a period of deep depression, anxiety and severe insomnia. Plaintiff lost vision in his lower left quadrant and, for a time, could not read, do simple math, use a computer or drive. Plaintiff was unable to work for the next eight (8) months.

37. After Plaintiff's physical health returned to an acceptable level, he was enrolled at Shenandoah Learning Services, a medical rehabilitation facility in Manassas, Virginia.

38. While enrolled at Shenandoah Learning Services from June 1994 to October 1994, Plaintiff recovered his ability to read, do math, use a computer and generally function at a level where it was recommended that he return to work at the FBI.

39. Ms. Sue Collins, an occupational therapist at Shenandoah Learning Services, contacted Plaintiff's supervisors, SSA Tom Reneghan and Primary Relief Supervisor Jim Mahoney, and made arrangements for Plaintiff to return to work at the FBI.

40. In order to return to work, however, Plaintiff required and was granted several reasonable accommodations, which were approved by FBI-HQ.

41. Plaintiff's neurological and cognitive deficits had impaired his spatial orientation and prevented him from tasks such as map-reading and finding his way to new locations. Consequently, he was and is no longer capable of conducting field investigations.

42. Plaintiff also has some difficulty learning new tasks. He suffers from a loss of vision in the lower left quadrant and chronic tinnitus, or ringing in the ears.

43. Consequently, when Plaintiff returned to work, he was placed on "limited duty" status. He was detailed back to his previous position at The White House, where he was not required to perform field investigations or learn new tasks, but was limited to conducting interviews within The White House complex itself and preparing memoranda of his interviews.

44. Plaintiff was also exempted from night and week-end duty, and was relieved of firearms and fitness training.

45. Plaintiff was also temporarily given a reduced work load, and granted permission to work at home part-time.

46. To confirm the need for these accommodations, in October 1994 FBI Nurse Pat Regan requested that Plaintiff obtain a letter from his personal physician and have him complete a medical form assessing Plaintiff's condition.

47. On October 25, 1994, Plaintiff's personal physician, Frederick W. Parker, M.D., M.S. Ed., sent a letter to FBI Nurse Regan. Dr. Parker's letter stated:

As you know, Mr. Sculimbrene suffered an open depressed skull fracture on the right occipital and central occipital regions on January 24, 1994 after an injury sustained from an airplane propellor blade. After initial surgery he has been undergoing intensive rehabilitation, most recently at the Learning Services Corporation on Fairview Avenue in Manassas, Virginia. He is now felt to be capable of returning to his prior occupation. He was quick to emphasize the fact that he is office-stationed and will not be doing any 'field work.' I feel it would be in his best interest to avoid any aerobic activity, therefore he should avoid any fitness test as per your general regulations. It would also be helpful for him to avoid any firearms training since he has chronic tinnitus or ringing in his ears. . . .

Dr. Parker's letter concluded "It is my recommendation that he return to full-time office based activities as was his pre-injury occupation."

48. Within several months after his return to work, Plaintiff gradually returned to a full work load at The White House, but his duties and responsibilities were still limited to conducting

interviews within The White House complex and preparing memoranda of his interviews. Plaintiff continued to be relieved of firearms and fitness training, and was also allowed to work from 10:00 a.m to 6:00 p.m. so as to avoid night and week-end duty, as well as the morning rush hour.

49. On April 21, 1995, Plaintiff received an "Exceptional" performance rating from his supervisor, the highest possible rating that can be achieved.

50. Plaintiff's April 21, 1995 Performance Appraisal Report specifically describes Plaintiff's work assignments:

Within a month after return to duty, SA Sculimbrene had returned to his usual assignment of conducting background investigations at The White House complex. In this capacity, he is required to conduct a significant number of interviews within short deadlines of White House executives and staff, as well as detailees, volunteers and contractors requiring access to The White House. These interviews are often highly sensitive and require tact, polished interviewing skills, experience and professionalism. This assignment is also particularly sensitive because of the requirement for constant interacting with various White House personnel as an FBI representative.

51. On May 12, 1995, Dr. Parker wrote a second letter to FBI Nurse Regan that concluded, "I would recommend that he continue his employment at his present capacity; however, he should avoid firearms training and physical fitness, at least at present.

52. In the interim, congressional and Independent Counsel investigations into "Travelgate" had continued. Mr. Billy Dale, the former Director of The White House Travel Office had been indicted and was due to be tried for alleged financial improprieties.

53. On or about August 4, 1995, the FBI agent leading the investigation into the alleged financial improprieties at The White House Travel Office, Supervisory Special Agent (hereinafter "SSA") David Bowie, threatened Plaintiff with an Office of Professional Responsibility (hereinafter

"OPR") complaint after Plaintiff suggested that Mr. Dale's upcoming criminal trial was a "political football" and that Plaintiff should have been interviewed as part of the investigation.

54. Plaintiff related the substance of his discussion with SSA Bowie to one of his supervisors, Assistant Supervisory Agent in Charge (hereinafter "ASAC") Ed Shubert, during a subsequent telephone conversation and a meeting on August 8, 1995, and memorialized both the telephone conversation and meeting in a memorandum to ASAC Schubert. During his conversation and meeting with ASAC Shubert, Plaintiff again suggested that he be interviewed in conjunction with the FBI investigation into The White House Travel Office firings.

55. On or about August 10, 1995, shortly after his August 4, 1995 discussion with SSA Bowie and his telephone conversation, meeting and memorandum to ASAC Shubert, Plaintiff was subject to a random drug test for the first time in what was then his twenty-two (22) year career with the FBI.

56. After several requests, Plaintiff was finally interviewed by SSA Thomas Becker in conjunction with The White House Travel Office investigation on August 14, 1995.

57. In September 1995, Plaintiff interviewed Wade Plunkett, a detailee assigned to The White House Personnel Office. A few days later, Plunkett returned to Plaintiff's office in the OEOB. Plunkett stated that he had a conversation about Plaintiff with Patsy Thomasson, who at the time was the Deputy Director of Presidential Personnel. "As a favor," Plunkett asked Plaintiff to submit his name as a candidate for Inspector General of the Department of Veterans Affairs because the Administration allegedly did not have many qualified applicants who were veterans. Plaintiff submitted such a letter on or about October 28, 1995.

58. On or about October 25, 1995, Plaintiff was subpoenaed by Mr. Dale to testify at his upcoming criminal trial.

59. Plaintiff immediately advised his acting supervisor, Primary Relief Supervisor James Mahoney, that he had been subpoenaed and gave him a copy of the subpoena. Plaintiff also personally gave a copy of the subpoena to the secretary to ASAC Shubert, Ms. Inez Territo.

60. On or about November 3, 1995, Plaintiff testified as a defense witness at Mr. Dale's criminal trial. Immediately prior to his testimony, the prosecution attempted to prevent Plaintiff from testifying by incorrectly claiming that Plaintiff had not given a copy of the subpoena to the FBI. Plaintiff was ultimately allowed to testify, however.

61. The following day, Plaintiff's testimony received substantial press coverage, much of which was unfavorable towards both The White House or the FBI. See e.g., Tony Loci, "FBI Agent Says Travel Office Unsecured on Day of Firings; Ex-Director's Defense Suggests White House Moved Files," *The Washington Post*, November 4, 1995; Paul Bedard, "Dale jury told of travel file looting; Defense attorney demands papers," *The Washington Times*, November 4, 1995.

62. Mr. Dale was subsequently acquitted of all charges against him.

63. After his testimony at Mr. Dale's criminal trial, Plaintiff was subjected to repeated "pranks." Plaintiff's complaints to management went unheeded.

64. Also after his testimony at Mr. Dale's criminal trial, Plaintiff happened to meet Plunkett — the Office of White House Personnel detailee who asked Plaintiff to submit his name as potential candidate for Inspector General of the Department of Veterans Affairs — in the OEOB cafeteria. Plunkett advised Plaintiff that his consideration for the Inspector General position was "out of the question," or used similar words to that effect.

65. In approximately December 1995, SSA Brad Wambach became Plaintiff's supervisor.

~~66. Shortly after SSA Wambach became Plaintiff's supervisor, Plaintiff began receiving~~
work assignments that were contrary to the reasonable accommodations previously granted to him.

67. For example, even though Plaintiff's duties and responsibilities had been limited to conducting interviews within The White House complex itself, SSA Wambach requested that Plaintiff assist in a research and development project regarding personnel and program responsibilities for the FBI's White House Liaison Office and Capitol Hill office, prepare a detailed report concerning the FBI's White House Liaison Office's operational structure and personnel needs, and assist in the development of operational guidelines for conducting interviews at The White House.

68. Plaintiff requested that he be relieved of these assignments because they were contrary to the reasonable accommodations previously granted to him. Plaintiff's requests were overruled, and he performed the assignments to the best of his ability.

69. Plaintiff prepared the requested report and submitted it to SSA Wambach on or about January 11, 1996. The report again notes that the Livingstone, the Director of The White House Office of Personnel Security, is a political appointee whose mother and Hillary Rodham Clinton are personal friends.

70. In late January, two (2) articles appeared in *The Washington Times*, both authored by Mark R. Levin, stating that, contrary to information he had provided to federal investigators, Assistant White House Counsel William H. Kennedy had discussed his allegations of criminality at The White House Travel Office with FBI agents assigned to The White House weeks before contacting FBI headquarters about the alleged wrongdoing. See Mark R. Levin, "Travelgate and the

FBI," *The Washington Times*, January 26, 1999; Mark R. Levin, "The FBI, Mr. Kennedy and the Clintons," *The Washington Times*, January 31, 1996. Although Plaintiff was not identified by name

in the articles, they obviously referred to him. Plaintiff had not provided the information contained in the articles to the press.

71. Days after the articles concerning Kennedy had appeared in *The Washington Times*, Plaintiff received word that Howard Shapiro, then General Counsel to the FBI, wanted to see him.

72. Rather than meet with Plaintiff himself, Shapiro sent two (2) representatives from the FBI General Counsel's Office to meet with Plaintiff and his supervisor.

73. During the course of this meeting, Plaintiff confirmed that Kennedy, Eller and Watkins had tried to pry him for information about the backgrounds and political views of the staff of The White House Travel Office before the firings. However, Plaintiff denied being the source of the articles in *The Washington Times*.

74. Also during the course of this meeting, Plaintiff was given parts of a manuscript written by Gary Aldrich, a former FBI Special Agent who had been assigned to White House along with Plaintiff.

75. Plaintiff confirmed the accuracy of several statements attributed to him in the manuscript, but denied any participation in writing it. The manuscript was later published under the title *Unlimited Access* and was widely know for its highly unflattering portrayal of the Clinton White House. It made numerous references to Plaintiff and attributed several direct quotes to him.

76. During this same time period, Plaintiff continued to receive assignments that were contrary to the reasonable accommodations previously granted to him.

77. For example, Plaintiff was assigned several field investigations outside The White House complex. Plaintiff was thus required to travel to and find new locations in order to conduct interviews. Such assignments were directly contrary to the reasonable accommodations previously granted him.

78. In addition, Plaintiff was assigned investigations of persons who worked night shifts at The White House, thus requiring him to conduct interviews at night, outside his regularly scheduled hours. This was also contrary to the reasonable accommodations previously granted to him, namely, that he be allowed to avoid night-duty.

79. Plaintiff was also assigned new duties and responsibilities associated with the training of new agents. This was also contrary to the reasonable accommodations previously granted to him, namely, that his duties and responsibilities be limited to conducting interviews within The White House complex and preparing memoranda of his interviews.

80. Plaintiff objected to these assignments as being contrary to the reasonable accommodations previously granted to him, but nonetheless attempted to perform them to the best of his ability.

81. On February 28, 1996, Plaintiff receive an unsealed envelope in his mailbox at the FBI's Washington Field Office in Tyson's Corner, Virginia. The envelope contained a notice, dated January 5, 1996, stating that Plaintiff was to be investigated for unprofessional conduct, namely the alleged misuse of his U.S. Government parking pass. This type of internal investigation is undertaken by the FBI's Office of Professional Responsibility (hereinafter "OPR").

82. Following receipt of the notice, Plaintiff learned from conversations with ASAC Shubert and the OPR case agent assigned to the matter, SSA Resnick, that the investigation was

based on a single, anonymous letter. SSA Resnick further advised Plaintiff that the purported misuse was Plaintiff's allegedly giving the parking pass to his son, who at the time was an employee of the

National Security Counsel.

83. Plaintiff advised ASAC Shubert and SSA Resnick that, not only was the charge false, but that his son had his own parking pass which allowed him to park closer to his work than Plaintiff's pass would have allowed.

84. Nonetheless, the OPR investigation proceeded, and was a source of substantial stress to Plaintiff. Plaintiff's ability to handle the stress caused by the false accusation raised against him in the OPR investigation was made more difficult because of Plaintiff's 1994 accident.

85. FBI procedures require that the subject of an OPR investigation be formally interviewed. Plaintiff was interviewed about the OPR investigation on April 4, 1996.

86. During the interview, Plaintiff was distressed to learn that additional allegations had been raised against him. These additional charges were set forth in a March 6, 1996 notice that Plaintiff previously had not seen.

87. The additional charges against Plaintiff also were allegedly based on an anonymous letter and were as equally baseless as the charge that Plaintiff allegedly misused his U.S. Government parking pass.

88. The two (2) FBI Special Agents who interviewed Plaintiff, SA Dave Stewart and SA Warren Linscott would not allow Plaintiff to see the anonymous letter that was allegedly the basis for the charges against him.

89. Moreover, SA Stewart and SA Linscott had not even seen the January 5, 1995 notice setting forth the charge that Plaintiff had allegedly misused his U.S. Government parking pass.

90. SA Steward and SA Linscott nonetheless proceeded to question Plaintiff about the new charges.

91. Plaintiff found the baseless allegations and procedural irregularities of the OPR investigation it to be very stressful. Consequently, he immediately went home, then requested that he be placed on administrative leave until the OPR investigation was completed.

92. Plaintiff's request was denied, and he thus elected to take extended sick leave.

93. Later in April 1996, on the advise of a counselor, Plaintiff scheduled an appointment with SSA Wambach to discuss the OPR investigation and the changes that were being made to the reasonable accommodations he had previously been granted.

94. The meeting between Plaintiff and SSA Wambach took place on April 24, 1996.

95. During the meeting, Plaintiff described to SSA Wambach the stress being placed on him by the OPR investigation and the removal of the reasonable accommodations previously granted to him. SSA Wambach denied that Plaintiff had ever been provided any reasonable accommodations.

96. The following day, April 25, 1996, SSA Wambach advised Plaintiff that his detail to The White House was being terminated and that, when he returned from sick leave, he was to report to the Washington Field Office headquarters at Tysons Corner, Virginia.

97. When Plaintiff returned from sick leave, he reported to the Washington Field Office headquarters as instructed by SSA Wambach. However, Plaintiff was given literally no work assignments. He was told by SSA Wambach to sit at his desk, without even access to a computer, until the FBI could figure out what to do with him.

98. On May 13, 1996, Plaintiff again received another "Exceptional" performance rating from his supervisor, the highest possible rating that can be achieved.

99. On May 23, 1996, the FBI issued a notification that the OPR investigation of Plaintiff was being closed. Despite repeated requests, Plaintiff did not receive confirmation that the OPR investigation was being closed until approximately June 26, 1996.

100. On May 24, 1996, Plaintiff filed a timely administrative complaint against the FBI, *M. Dennis Sculimbrene v. Federal Bureau of Investigation*, Agency Complaint No. F-96-4839, DJ Number 187-2-99, alleging that the FBI had unlawfully removed the reasonable accommodations previously granted him and otherwise discriminated against him because of his disabilities.

101. During this same time period, Plaintiff was subject to a battery of medical and psychiatric examinations allegedly to determine his "fitness for duty" and whether he should be granted any accommodations. Plaintiff fully cooperated with all of the tests required of him.

102. On May 30, 1996, Livingstone, head of The White House Office of Personnel Security, requested that the FBI conduct a five (5) year background re-investigation of Plaintiff despite the fact that Plaintiff's White House detail had ended and Plaintiff was not due for a five (5) year background re-investigation for another two (2) years. *I was due - prev. report in 91*

103. In early June 1996, it became known that Livingstone and Anthony Marceca, a detailee assigned to The White House Office of Personnel Security, had obtained FBI background investigation summaries and materials on hundreds of former Reagan and Bush Administration appointees and employees, a political scandal that George Stephanopoulos, then a Senior Assistant to the President, would describe as having "the potential to be our most serious scandal yet."

104. Like "Travelgate," "Filegate," as the scandal was popularly known, became the subject of congressional hearings and a committee report by the U.S. House of Representatives Government Reform and Oversight Committee.

OPS req.
(push Dennis or Hughes)
See Hughes
decl. w/
attach.

91
96

105. "Filegate" was also the subject of an investigation by Independent Counsel Kenneth

W. Starr.

106. On June 19, 1996, Plaintiff gave an unsworn interview to Senate Judiciary Committee investigators concerning "Filegate."

get
transcript

107. During the course of this interview, Plaintiff told Senate Judiciary Committee investigators that he complained to his supervisors about the chaotic management of The White House Office of Personnel Security, delays in the clearance process for White House employees and the fact that many persons, including employees, were being given access to The White House complex without proper passes.

108. In addition, Plaintiff told Senate Judiciary Committee investigators Livingstone himself told Plaintiff that his mother knew Hillary Rodham Clinton. Plaintiff further told Senate Judiciary Committee investigators that Kennedy told Plaintiff he was "stuck" with Livingstone, and that Plaintiff thus inferred Hillary Rodham Clinton wanted Livingstone in the position.

109. Plaintiff also told Senate Judiciary Committee investigators that, at one point he suggested that The White House Office of Personnel Security be headed by a professional career person rather than a political appointee.

110. Plaintiff also told Senate Judiciary Committee investigators that Kennedy, Eller and Watkins had tried to pry him for information about the backgrounds and political views of the staff of The White House Travel Office. Plaintiff thus contradicted information that Kennedy had provided to federal investigators.

111. Plaintiff also told Senate Judiciary Committee investigators that he was concerned he was being retaliated against for testifying on behalf of Mr. Dale at Mr. Dale's criminal trial.

112. Plaintiff's interview with Senate Judiciary Committee investigators was leaked to the press almost immediately and resulted in substantial, unfavorable press coverage for The White House. "Former Top FBI Agent at White House Raises Questions About Security Office," *The Wall Street Journal*, June 25, 1996; "FBI Agent Says Aides Inquired on Travel Staff; White House Firings Followed, Probers Told," *The Washington Post*, June 26, 1996.

113. On June 28, 1996, Plaintiff's permanent White House pass was canceled. Plaintiff asked for a formal record of the action, but was refused. SSA Wambach verbally told Plaintiff that his pass was being revoked for his own safety and because his presence "made the First Family uncomfortable."

114. In July 1996, OPR contacted Plaintiff and requested that he submit to an interview and provide a sworn written statement for an OPR investigation into the OPR investigation of Plaintiff.

115. On July 15, 1996, Plaintiff gave a sworn deposition to U.S. House of Representatives investigators concerning "Filegate." During his testimony, Plaintiff again linked Livingstone's hiring to Hillary Rodham Clinton.

116. On or about that same day, FBI General Counsel Howard Shapiro alerted The White House that, in reviewing Livingstone's FBI background investigation file, it located Plaintiff's three-year old insert of his interview with then White House Counsel Bernard Nussbaum, which memorialized Nussbaum's statement linking Livingstone's hiring to Hillary Rodham Clinton.

117. The following morning, July 16, 1996, Shapiro and Deputy General Counsel Thomas A. Kelley dispatched two (2) FBI agents to Plaintiff's home to interview Plaintiff about the three-year old insert.

118. During the course of the interview, the FBI agents asked Plaintiff approximately thirty (30) times if he had any notes of his three-year old interview with Bernard Nussbaum, despite the fact that FBI procedures prohibit agents from maintaining notes of inserts for more than ninety (90) days.

119. Also during the course of the course of the interview, the FBI agents repeatedly told Plaintiff that President Clinton, Hillary Rodham Clinton and White House Counsel Bernard Nussbaum had contradicted Plaintiff's three-year old insert, pitting Plaintiff's credibility against the credibility of President Clinton, Hillary Rodham Clinton and White House Counsel Bernard Nussbaum approximately four (4) times.

120. While the FBI agents stated that the purpose of the interview was to "clarify" certain issues, Plaintiff's efforts to provide clarification were rebuffed.

121. Also during the course of this interview, Plaintiff's supervisor, SSA Wambach, telephoned Plaintiff to advised him that he had to fly to Chicago, Illinois for a psychiatric examination to determine his fitness for further duty with the FBI.

122. That same afternoon, on July 16, 1996, OPR investigators interviewed Plaintiff at his home, under oath, with the stated intention of taking a signed, sworn statement from Plaintiff that would initiate an OPR investigation into the circumstances surrounding the OPR investigation of Plaintiff. Pursuant to FBI procedures, the statement should have been prepared and ready for Plaintiff's signature within five (5) days, or by July 21, 1996. However, the sworn statement was not presented to Plaintiff for his signature until August 9, 1996, and only after Plaintiff's attorney sent several letters requesting that an OPR investigation proceed. Plaintiff has never been informed of the results of any OPR investigation.

123. On July 18, 1996, Plaintiff received a letter formally advising him the Department of Veterans Affairs was no longer considering him for appointment to the Department's Inspector General position.

124. In mid- to late July 1996, Plaintiff received several anonymous telephone calls warning him that White House Counsel Jack Quinn and FBI General Counsel Howard Shapiro were planning to discredit and harm Plaintiff by attempting to tie him to another FBI agent detailed to The White House who had recently been convicted of falsifying FBI background investigation records.

125. In point of fact, Plaintiff had attempted to have the FBI agent in question removed from The White House. During a meeting between Plaintiff, another agent and SSA Reneghan in May 1993, Plaintiff expressed concern about the agent's conduct and professionalism.

126. On July 25, 1996 White House Counsel Jack Quinn sent a false and disparaging letter to FBI Director Louis J. Freeh wrongfully accusing Plaintiff of falsifying his three-year old insert about Livingstone's hiring. The letter specifically states:

According to [Chairman of the House Government Reform and Oversight Committee William Clinger]'s statement today, the background investigation file on Mr. Livingstone includes a report by Agent Dennis Sculimbrene on a conversation he says he had with White House Counsel Bernard Nussbaum concerning Mr. Livingstone's hiring. But according to a statement issued by Mr. Nussbaum today, that conversation never took place.

This Administration and the American People have enormous confidence in the FBI, for good reason. And, the role that the agency plays in conducting background investigations and helping to ensure the suitability of appointees for their posts cannot be overstated. The President, you and the American people have a large stake indeed in the fairness and accuracy of this process.

That is why we are troubled, as we know you must be, by the implication that a background investigation might include a false report. This matter is especially worrisome coming as it does on the heels of published reports of the conviction of one of the agents who did background checks at The White House on charges of falsifying at least 50 interviews that he claimed to have conducted.

*we
have
letter*

127. On information and belief, FBI General Counsel Howard Shapiro, other, unknown White House officials and agents, and other unknown FBI officials participated in drafting Quinn's July 25, 1996 letter to Director Freeh.

128. Shapiro admittedly reviewed different drafts of Quinn's July 25, 1996 letter and recommended which draft to send to Director Freeh.

129. Because the letter itself makes clear that fabrication of a FBI background investigation report is a criminal offense, Quinn, Shapiro, and anyone else who participated in preparation of the letter obviously knew or had reason to know that they were accusing Plaintiff, albeit wrongfully, of committing a criminal offense.

130. The following day, on July 26, 1996, Lanny J. Davis appeared on CNN's *Cross-Fire*. During this appearance, Davis wrongfully accused Plaintiff of falsifying his three-year old insert about Livingstone's hiring, disparaged Plaintiff's credibility, and otherwise harmed Plaintiff:

[By Lanny Davis] This . . . contemporaneous document contains an absolute fabrication that Mrs. Livingstone has denied . . .

* * *

[By Robert Novak] Lanny Davis, let me just see if I can get to comment on the procedure that was used here. We have a case where the FBI gives Congressman Clinger a three year old report which is highly incriminating, if true, to the First Lady. It then, the FBI then goes to The White House, and it says -- it says it has given this information to the committee -- what Congressman Clinger calls a 'heads up' and then they send FBI agents to the home of Agent Sculimbrene who is on leave and they say to him that The White House is very upset about this material. Now, if you were on the other side of the fence would you like the way the FBI has been politicized in this operation?

[By Lanny Davis] I don't think they've been politicized at all. I think they should have immediately interviewed Sculimbrene and inquired as to why he is suddenly changing his story after being under oath and testifying to the Senate Judiciary Committee. Let me read to you, if you will, Bob, from the Washington Post, an FBI agent named David Bowie, who worked with Sculimbrene, who knew that

Sculimbrene was a close friend of Gary Aldrich, another great font of credibility, and here is what Bowie said, the FBI that the Congressman was just vouching for. He said that Sculimbrene quite 'had a very bitter political feelings about the Clinton White House,' and further, quote, 'that he was exhibiting irrational behavior.' Now why haven't you called Sculimbrene before your committee publically and have him be -- and have him testify.

* * *

[By Robert Novak] Let me just ask you one -- I don't understand the time line on this Lanny. You are accusing Sculimbrene of changing his story? This is -- this is at the beginning of the Clinton Administration there -- he professes he wanted the Clinton Administration to succeed... how could he change his story if this is a three year old document? I don't understand how that works.

[By Lanny Davis] First of all, I am accusing Sculimbrene of having a political bias and that report is filled with lies...

* * *

[By Lanny J. Davis] I just told you Robert and I will tell you once again; that why isn't this Congressman and why are you supporting calling Sculimbrene before [the House Government Reform and Oversight Committee]... you want to know the answer? The reason he's not answering is because Sculimbrene has no credibility... and they know it and they are embarrassed and that's why... they're not calling him.

131. On August 2, 1996, Davis appeared on CNBC's *Rivera Live*. During this appearance, Davis again wrongfully accused Plaintiff of falsifying his three-year old insert about Livingstone's hiring, disparaged Plaintiff's credibility, and otherwise harmed Plaintiff:

[By Lanny J. Davis] He -- he -- he is -- whatever smacked him in the head has affected his credibility because they won't call him... The -- the -- the point number one is he wouldn't give an answer and we know that he's now being quoted anonymously. He was good enough to have a deposition taken, despite the head injury, but they didn't call him, and we know the reason, because he has little credibility. And the second point to make is, remember that Sculimbrene is the man who said Hillary Clinton knew Craig Livingstone's mother and, therefore, that's why she is culpable in the hiring of Craig Livingstone. When Mrs. Livingstone was asked that question, she said... I've never met Hillary Clinton in my life.

132. Prior to his appearances on *Cross Fire* and *Rivera Live*, Davis had appeared frequently on television programs as a spokesman and surrogate for The White House.

133. On information and belief, prior to his television appearances, Davis participated in meetings and telephone conference calls and/or had other communications with currently unknown White House officials and agents to discuss what he would say on television on behalf of The White House.

check
Davis
Dep.
for
133-138

134. On information and belief, Davis also received background information and reference materials from currently unknown White House officials and agents to assist him during his appearances.

135. On information and belief, Davis communicated with Quinn, Shapiro and other currently unknown White House officials and agents to discuss what he would say about Plaintiff on behalf of The White House during his July 26, 1996 and August 2, 1996 appearances on *Cross Fire* and *Rivera Live*.

136. On information and belief, Davis also received background information and reference materials concerning Plaintiff from Quinn and other currently unknown White House officials and agents before his July 26, 1996 and August 2, 1996 appearances on *Cross Fire* and *Rivera Live*, including but not limited to the *Washington Post* article referred to during Davis' July 26, 1996 appearance on *Cross Fire*.

137. On information and belief, Davis also knew that he was accusing Plaintiff, albeit wrongfully, of committing a criminal offense.

Cant answer as to
Davis knowledge

138. Only four (4) months later, Davis was formally hired by The White House as Special Counsel to the President and joined Quinn in The White House Counsel's Office. His duties and

Davis joined WH CO on 12/9/96

-25-

JMD

resigned 12/12/96

responsibilities included appearing on television on behalf of The White House to discuss various political scandals. *primarily responsible for dealing with the WH Press Corp on certain issues & occasionally appearing on TV*

139. The same day that Davis appeared on *Rivera Live*, August 2, 1996, Plaintiff was forced to take an early retirement from the FBI as a result of the withdrawal of the reasonable accommodations previously granted him by the FBI, the false accusations and disparagement to which he been subjected, and the other, unwarranted retaliation and harassment alleged herein.

140. On March 5, 1998, Plaintiff wrote to EOP requesting access to any White House records pertaining to himself. Plaintiff's request was made pursuant to the Privacy Act, 5 U.S.C. § 552a

141. On April 1, 1998, EOP denied Plaintiff's Privacy Act request, claiming that "[t]he Privacy Act does not establish a statutory right to the records you have requested from The White House, if such records exist," despite the fact that a U.S. District Court had previously ruled to the contrary. *See Alexander v. Federal Bureau of Investigation*, 971 F. Supp. 603 (D.D.C. 1997) (Lamberth, J.).

142. On April 29, 1999, Plaintiff's employment discrimination complaint against the FBI was denied.

COUNT I
(Violation of the Rehabilitation Act – FBI)

143. Plaintiff realleges paragraphs 1 through 142 as if fully set forth herein.

144. Plaintiff is an individual with a disability as defined under the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

145. Plaintiff is otherwise qualified to perform the duties and responsibilities of the job in question, and, in fact, excelled at those duties and responsibilities when provided with reasonable accommodations.

146. Plaintiff was adversely treated or denied the benefits of his position solely because of his disability, in violation of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

147. As a proximate result of the FBI's violation of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, Plaintiff suffered substantial damages, including but not limited to loss of income.

WHEREFORE, Plaintiff demands: (1) that judgment be entered against the FBI; (2) an award of compensatory damages in excess of \$300,000; (3) an award of costs and reasonable attorneys' fees pursuant to 27 U.S.C. § 794a, among other applicable laws; and (4) such other relief as the Court deems just and proper.

COUNT II

(Violation of the Privacy Act — EOP)

148. Plaintiff realleges paragraphs 1 through 147 as if fully set forth herein.

149. EOP willfully and intentionally maintained, and maintains, confidential records on individuals, including Plaintiff, as part of a system of records.

150. The maintenance of this system of records by EOP is not relevant to accomplish any purpose required by statute or executive order of the President, but is part of a pattern of willful and intentional misconduct undertaken for purposes of injuring and/or retaliating against Plaintiff.

151. EOP's willful and intentional refusal to allow Plaintiff access to records and information pertaining him in its system of records violates 5 U.S.C. §§ 552a(d)(1) and g(1)(B), among other relevant provisions of the Privacy Act.

152. EOP's willful and intentional maintenance of this system of records on individuals, including Plaintiff, against them, violates 5 U.S.C. §§ 552a(e)(1) and (g)(1)(D), among other relevant provisions of the Privacy Act.

153. As a proximate result of EOP's willful, intentional and unlawful maintenance of this system of records on individuals, including Plaintiff, Plaintiff has suffered damages.

WHEREFORE, Plaintiff demands: (1) that judgment be entered against EOP; (2) that EOP be enjoined from withholding all records concerning Plaintiff and be ordered to produce such records pursuant to 5 U.S.C. § 552a(g)(3)(A); (3) an award of compensatory damages in an amount not less than the \$1,000 statutory minimum set forth at 5 U.S.C. § 552a(g)(4)(A); (4) an award of costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552a(g)(4)(B), among other applicable laws; and (5) such other relief as the Court deems just and proper.

COUNT III

(Violation of the 42 U.S.C. § 1985(1) and (2) – Quinn, Shapiro, Davis and John and Jane Does Nos. 1-5)

154. Plaintiff realleges paragraphs 1 through 153 as if fully set forth herein.

155. Defendants Quinn, Shapiro, Davis and John and Jane Does Nos. 1-5 intentionally, maliciously and wrongfully conspired to injure Plaintiff in his person and property on account of his lawful discharge of the duties of his office, namely, that of a Special Agent for the FBI, in violation of 42 U.S.C. § 1985(1).

156. Defendants Quinn, Shapiro, Davis and John and Jane Does Nos. 1-5 intentionally, maliciously and wrongfully conspired to injure Plaintiff in his person and property on account of Plaintiff's having provided testimony in a court of law of the United States, in violation of 42 U.S.C. § 1985(2).

157. As a proximate result, Plaintiff suffered substantial damages, including but not limited to loss of income, loss of reputation and emotional distress.

WHEREFORE, Plaintiff demands: (1) that judgment be entered against Defendants Quinn, Shapiro, Davis and John and Jane Does Nos. 1-5, jointly and severally; (2) an award of compensatory damages in excess of \$5,000,000.00; (3) an award of costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, among other applicable laws; and (4) such other relief as the Court deems just and proper.

COUNT IV

(Violations of the First and Fifth Amendment to the U.S. Constitution -- Quinn, Shapiro and John and Jane Does Nos. 1-5)

158. Plaintiff realleges paragraphs 1 through 157 as if fully set forth herein.

159. Quinn, Shapiro and John and Jane Does Nos. 1-5, acting under color of law, deprived Plaintiff of his First Amendment rights by retaliating against him for testifying in a court of law of the United States and before the U.S. House of Representatives Government Reform and Oversight Committee, and for giving an unsworn interview to the U.S. Senate Judiciary Committee.

160. Quinn, Shapiro and John and Jane Does Nos. 1-5, acting under color of law, deprived Plaintiff of his Fifth Amendment rights by wrongfully and maliciously causing damage to Plaintiff's good name, reputation, honor and integrity without due process of law.

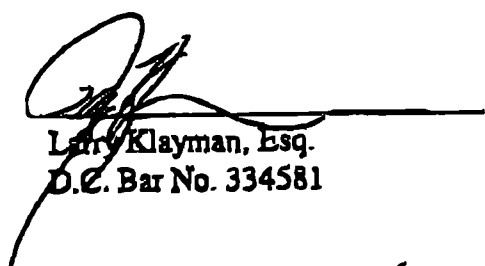
161. As a proximate result, Plaintiff suffered substantial damages, including but not limited to loss of income, loss of reputation and emotional distress.

WHEREFORE, Plaintiff demands: (1) that judgment be entered against Defendants Quinn, Shapiro and John and Jane Does Nos. 1-5, jointly and severally; (2) an award of compensatory

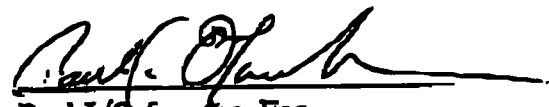
damages in excess of \$5,000,000.00; (3) an award of punitive damages; (4) an award of costs; and (5) such other relief as the Court deems just and proper.

Plaintiff demands trial by jury.

JUDICIAL WATCH, INC.



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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NOTICE OF DESIGNATION OF RELATED CIVIL/MISCELLANEOUS CASES
PENDING IN THIS OR ANY OTHER UNITED STATES COURT**

Civil Action No. _____
(To be supplied by the Clerk)

NOTICE TO THE PLAINTIFF:

Pursuant to Rule 405(b)(2), you are required to prepare and submit this form at the time of filing any civil or miscellaneous case which is related to any pending case(s) or which involves the same parties and relates to the same subject matter of any dismissed related case(s). This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the case is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rules 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff or counsel for plaintiff will please complete the following:

1. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: (Check appropriate box(es) below.)

- ☐ (a) relates to common property
- ☒ (b) involves common issues of fact
- ☒ (c) grows out of the same event or transaction
- ☐ (d) involves the validity or infringement of the same patent
- ☐ (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASES TO DISMISSED RELATED CASE(S).

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and relates to the same subject matter.

Check box if new cases is related to a dismissed case: ☐

3. NAME THE U.S. COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(S). IF MORE ROOM IS NEEDED PLEASE USE THE OTHER SIDE.

Alexander, et al. vs FBI, et al., CA No. 96-2123/97-1288

David C. O'Leary
Signature of Plaintiff (or counsel)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

M. DENNIS SCULIMBRENE,

Plaintiff,

v.

JANET RENO, *et al.*,

Defendants.

Case No. 1:99-cv-2010 (RCL)

**RESPONSE TO CLINTON ADMINISTRATION DEFENDANTS' OBJECTION
TO PLAINTIFF'S LOCAL RULE 206 REPORT AND CERTIFICATION**

Plaintiff, by counsel, hereby submits his response to the Clinton Administration Defendants' Objection to Plaintiff's Local Rule 206 Report and Certification ("Def. Obj.").

MEMORANDUM OF LAW

I. Introduction.

On September 7, 1999, Plaintiff filed a Local Rule 206(d) certification informing the Court that it had in good faith attempted to arrange a Local Rule 206(a) meet-and-confer with the Defendants, but they refused to meet-and-confer arguing that the parties need not do so "until such time as Defendants file an answer or motion."¹ Def. Obj. at 2. Plaintiff could not agree to this

¹ Local Rule 206(a) states:

Counsel shall meet and confer in person or, if all parties consent, by telephone, in accordance with this Rule and Rule 26(f), Federal Rules of Civil Procedure, within 15 days after the defendant's appearance or first filing in the form of an answer or motion. In a case involving multiple defendants, the 15-day period shall run from the date of appearance or first filing in the form of an answer or motion, pursuant to Rule 12, Federal Rules of Civil Procedure, by the defendant given the longest time to answer under the Federal Rules of Civil Procedure.

(continued...)

incorrect and distorted interpretation of the Rule and, when Defendants refused to meet-and-confer, Plaintiff unilaterally filed his case management report by the September 7, 1999 deadline.² The Clinton Administration Defendants filed an objection to Plaintiff's report and certification, arguing, without legal basis,³ that the word "appearance" in Local Rule 206(a) means the filing of an answer or motion pursuant to Rule 12. *Id.* Plaintiff respectfully submits that this is illogical, as it would render meaningless the first clause of the Rule distinguishing an appearance from such filings. The Clinton Administration Defendants' argument has no basis in law, and is nothing more than a blatant attempt to delay this case, which is confirmed by recent information that they intend to request an additional thirty (30) days in which to respond to the complaint. Such dilatory tactics and distortions of the Local Rules should, respectfully, be rejected by the Court. Plaintiff is entitled to have this matter proceed in a timely fashion and in accordance with the provisions of the Court's Local Rules.

II. Discussion.

Existing legal authority indicates that a party's counsel "appears" in a case when "an intent to defend" is demonstrated. *Muniz v. Vidal*, 739 F.2d 699, 701 (1st Cir.1984) ("we follow preexisting authority in finding an 'appearance' through defendants' demonstrat[ion of] an intent to defend the

¹(...continued)

Local Rule 206(a) (emphasis added). Defendant Lanny Davis has asserted this same, incorrect and distorted interpretation of the Rule. *See* Exhibit 1 attached.

² The Clinton Justice Department counsel for Defendants Janet Reno, the Executive Office of the President ("EOP"), Jack Quinn and Howard Shapiro – the defendants given the longest time to answer being agencies and officer of the United States – entered an appearance on August 20, 1999 thus establishing September 7, 1999 as the end of the fifteen (15) day time period for conducting the required meet-and-confer.

³ Defendants refer to Local Rule 201(a) and attempt to rely on it to support their erroneous argument but can do so only by distorting the express language and meaning of that rule. *See id.* at 2 n.2.

case.”). In this case, counsel for the Clinton Administration Defendants “appeared” on August 20, 1999, when they filed a “notice of appearance.” As they admit, “nothing in the Local Rules require[ed]” them to do so. Def. Obj. at 3. While the Clinton Administration Defendants could have waited to appear when they filed their answer or motion pursuant to Fed. R. Civ. P. 12, they chose instead to file a separate notice of appearance. *See id.* at 1. It is contrary to logic and reason to now argue that they did not “appear” at that time. Yet, that is the Clinton Administration Defendants’ argument, and obviously erroneous position they would like this Court to adopt.

Further supporting Plaintiff is the express language of Local Rule 206(c), which specifically requires that the parties discuss whether dispositive motions are likely and, “if a dispositive motion has already been filed,” whether discovery should await a ruling by the Court on the motion. *See* Local Rule 206(c)(1). Thus, the Rule itself contemplates a meet-and-confer between the parties before dispositive motions have been filed, which directly contradicts the Clinton Administration Defendants’ argument that counsel need not confer “until such time as Defendants file an answer or motion.” Def. Obj. at 2.

Nor are any of the other arguments raised by the Clinton Administration Defendants persuasive. Presumably, when counsel files a notice of appearance, he or she has already made some inquiry into the nature of the case. Counsel must be generally familiar with the Local Rules, which must be read and interpreted based on the plain meaning of their terms. Here, counsel for the Clinton Administration Defendants filed a notice of appearance and, realizing it triggered their duty to meet-and-confer, now seek to distort the plain meaning of the Local Rules to avoid doing so. Their position is illogical and should, respectfully, be rejected, particularly since they provide no legal basis or authority in support.

Plaintiff respectfully requests that the Court give effect to Plaintiff's Local Rule 206 case management report, overrule the Defendants' objection, and direct that this case proceed to discovery.

Respectfully submitted,

JUDICIAL WATCH, INC.


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D.C. Bar No. 334581


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Attorneys for Plaintiff

EXHIBIT 1

PATTON BOGGS LLP
ATTORNEYS AT LAW2550 M Street, NW
Washington, DC 20037 1340
202-457-8000

FACSIMILE 202-457-8315

Date: September 16, 1999

To: Larry Klayman, Esquire

Company: Judicial Watch

Fax Number: (202) 648-5188

Phone Number: (202) 648-5172

From: Timothy B. Mills

Sender's Direct Line: 202-457-5884

Total Pages
Including Cover: 5

Client Number: Firm

Comments:*Re: Sculimbrene v Reno, et al. --**Response to Your Request for Rule 206 Conference*

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GREENSBORO

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WASHINGTON, D.C.

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September 16, 1999

Tracy B. Mills
(202) 457-5684
tmills@pattonboggs.com**BY FACSIMILE (202) 646-5199;**
ORIGINAL BY FIRST CLASS MAILLarry Klayman
Paul Orafendes, Esquire
Judicial Watch, Inc.
501 School Street, S.W.
Washington, D.C. 20024*Re. Scullimbren v. Reno, et al. —
Response to Your Request for Rule 206 Conference*

Dear Messrs. Klayman and Orafendes:

We write on behalf of our client, Lanny J. Davis. Upon review of Plaintiff's Local Rule 206(d) Certification and Plaintiff's unilateral Rule 206(d) report, filed on September 7, 1999, I wish to express our disagreement with your opinion that the requirement for a Rule 206 conference was triggered because a notice of appearance was filed with the court by counsel for the Government and our objection to your filing with the Court a "unilateral" Local Rule 206(d) Report without first affording us the opportunity to see, review and respond to your intended filing (as required by Local Rule 206(d)).

As the plain language of Local Rule 206(d) provides, the requirement for the parties to conduct a Rule 206(d) conference is only triggered only upon the filing of the first responsive pleading. No responsive pleading has been filed in this case by any of the Defendants, and no responsive pleading is due to be filed until September 27, 1999. Therefore, Local Rule 206(d) has not yet been triggered, and the parties have no obligation under Rule 206 to meet and confer.

We note that on September 1, 1999, counsel for the Government Defendants responded to your request for a Rule 206 conference and advised you that your reading of Rule 206 is unprecedented and ignores the plain language of the Rule. We concur in the Government's reading of the Rule, and also from our own practice before this court, we cannot agree that your opinion of the rule is correct. We further note that we have not filed a responsive pleading and that, with your consent, the Court has granted us up to the time for the filing of the Government defendants' responsive pleading to file Mr. Davis' responsive pleading. The issues in the case

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PATTON BOGGS LLP
ATTORNEYS AT LAW

Larry Klayman
Paul Orfanedes, Esquire
September 16, 1999
Page 2

have not yet been joined nor identified, and the requirements for discovery are not yet able to be formulated. Therefore, any Rule 206 conference at this stage of the proceedings would be premature and wasteful.

First and foremost, we intend to abide by each and every obligation that arises under the Federal Rules of Civil Procedure, the Local Rules and the Court, including, but not limited to, each conference requirement imposed on the litigants in this case by Federal Rule of Civil Procedure 26(b) and Local Rule 206. We will meet those requirements within the time provided by those Rules and any applicable rulings of the Court. Our understanding of these requirements is informed by our years of practice in Federal courts - including before this Court. Note well: the mere fact of your disagreement with our educated understanding of the requirements does nothing to either change the Rules or place obligations on us beyond those that are imposed by the Rules.

Second, during the telephone communication on September 3, 1999, I asked Mr. Orfanedes why Judicial Watch was in such a hurry to accelerate the occurrence of the Local Rule 206 conference and thereby short-circuit by several weeks the time for this conference established by Local Rule 206. I also sought to understand how counsels' participation in such a premature Local Rule 206 conference would fulfill the purpose of Local Rule 206 - especially as here, where no answers are yet due and, thus, the litigants are in no position to yet form an informed judgment as to what discovery will be needed to prove disputed facts. It is our view that it would be wasteful to participate in such an unprecedentedly premature conference.

Specifically, I asked Mr. Orfanedes if Judicial Watch's intent was to accelerate the defendants' Rule 26(b) disclosures as well as the commencement of other discovery. Mr. Orfanedes replied to the effect that Judicial Watch wanted such disclosures to be made now - well before the time provided by the Federal Rules of Civil Procedure for the Government defendants to answer as well as before the due date for Mr. Davis' answer that has been established by Court order.

Mr. Orfanedes rejected outright, without any discussion, my request that Judicial Watch agree that discovery shall not commence until after the date for the Local Rule 206 conference that counsel for the Government defendants and counsel for Mr. Davis believe to be set by that Rule - namely, fifteen (15) days from the due date for the answer by the Government defendants.

Mr. Orfanedes then said that Judicial Watch intends to prepare and file with the Court a unilateral "case management report", and intended to use that unilateral document that we

PATTON BOGGS LLP
ATTORNEYS AT LAW

Larry Klayman
Paul Orfanedes, Esquire
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believe does not begin to meet the requirement of Local Rule 206 as the means of proceeding with what otherwise would be unpermitted discovery - without regard to the objectionability of Judicial Watch's intended course of action. And, we do object to precisely this improper procedural ploy.

Mr. Orfanedes then contended that the Government's reading of Local Rule 206 is wrong. We disagree with Judicial Watch's overly simplistic reading of this Rule, and agree with the Government's well-reasoned explanation of the date by which Local Rule 206 requires counsel to fulfil the "meet and confer" requirements.

By way of example, your own unilateral Rule 206 report contains several assertions which reveal that any Local Rule 206 conference preceding Defendants' filing of pleadings responsive to the Complaint would be premature:

- Your unilateral report states that this case is not likely to be disposed of by dispositive motion - an assertion that is unreliable at this point since Defendants have not yet answered the factual allegations or asserted affirmative defenses.
- In your unilateral report, you assert that there is no realistic possibility of settlement at this time. Again, currently there is no informed basis for any of the Parties to assess any strengths or weaknesses of their respective positions.
- Contrary to your assertions in your unilateral report, it is impracticable at this point to predict whether: (a) alternative dispute resolution procedures are viable; or (b) whether the case can be resolved by means of a motion for summary judgment or to dismiss, until Defendants have admitted or denied the allegations of the Complaint, and have set forth their affirmative defenses.
- Without such definition of the issues to be litigated (which will occur upon the filing of Defendants' responsive pleading(s)), it is impossible to predict the nature and extent of discovery which will be needed in this case, as you have attempted to do in your unilateral report.

As a result, the speculative and premature state of your unilateral report underscores why Local Rule 206 conferences are meant to take place after Fed. R. Civ. P. 7 responsive pleadings are filed.

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Larry Klayman
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Accordingly, we have respectfully declined Judicial Watch's revolutionary invitation to participate in a premature Local Rule 206 "meet and confer" session. Mr. Davis, through counsel, nevertheless stands ready, willing and able to fulfill these "meet and confer" obligations as required by the Local Rule - namely, fifteen (15) days from the date that the Government Defendants' answer to the Complaint is due.

We expect - indeed, demand - that Plaintiff participate in the timely Rule 206 conference that is required to be held within fifteen (15) days after the filing of Fed. R. Civ P. 7 responsive pleadings by all Defendants.

Should you wish to discuss this further, I can be reached at (202) 457-5684.

Sincerely yours,


Timothy B. Mills
Counsel for Defendant Lanny J. Davis

TBM/jmr

cc: Lanny J. Davis, Esquire

John Tyler, Esquire
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
901 E Street, N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

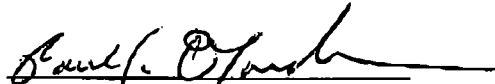
I hereby certify that on September 30, 1999 a true and correct copy of the foregoing RESPONSE TO CLINTON ADMINISTRATION DEFENDANTS' OBJECTION TO PLAINTIFF'S LOCAL RULE 206 REPORT AND CERTIFICATION was served by first class mail, postage prepaid, on the following:

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and the Executive Office of the President:

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Washington, DC 20037-1350


Paul J. Orfanedes

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**DRAFT**

M. DENNIS SCULIMBRENE,)
)
Plaintiff,)
)
v.) Civil Act. No. 1:99CV02010(RCL)
)
JANET RENO, et al.,)
)
Defendants.)
_____)

REPLY MEMORANDUM ON BEHALF OF DEFENDANTS QUINN AND
SHAPIRO IN SUPPORT OF THEIR MOTION TO DISMISS

PRELIMINARY STATEMENT

The Civil Service Reform Act of 1978 ("CSRA") provides the exclusive remedies available to federal employees to address employment-related claims. Pursuant to this established law, individual defendants Jack Quinn and Howard Shapiro moved on September 27, 1999 to dismiss the damage claims brought against them. Because the matters plaintiff complains of pursuant to these claims come within the CSRA's broad remedial scope, the Court is without jurisdiction to grant additional relief to plaintiff under either the constitution or 42 U.S.C. § 1985.

Plaintiff opposes Quinn and Shapiro's dispositive motion on the ground that the CSRA purportedly has no application to his claims against these defendants. More specifically, plaintiff contends that the conduct that forms the basis for his damage claims did not arise out of plaintiff's "employment relationship" with the FBI, i.e., that such conduct does not give rise to a "personnel action" as that term is defined under the CSRA. See Plaintiff's Opposition Memorandum ("Opp. Mem.") at 15. Plaintiff additionally contends that his damage claims are not precluded by

the CSRA because the Act allegedly applies only to actions taken by an employee's immediate supervisors. Id. at 15-16 (arguing that neither of the defendants had "authority" over plaintiff within the meaning of the CSRA because Quinn worked at the White House, not the FBI, and because Shapiro "was neither Plaintiff's supervisor, nor in Plaintiff's chain of command").

None of plaintiff's arguments has merit. The conduct he complains of relating to Quinn and Shapiro is clearly encompassed by the "merit system principles" set forth in the CSRA, which require the government "to treat its employees fairly and shield them from capricious actions, personal vendettas, favoritism, and the like." Roth v. United States, 952 F.2d 611, 614 (1st Cir. 1981). Indeed, plaintiff makes no attempt to argue to the contrary. He relies, instead, on his assertions that the conduct which forms the basis for his damage claims does not rise to the level of a "personnel action" as defined under the Act, and that he is otherwise precluded from obtaining relief against Quinn and Shapiro under the CSRA because they did not act as his immediate supervisors while he was employed at the FBI. However, even if these assertions were true, they at most stand for the proposition that the CSRA does not have preclusive effect in this case because it does not afford him meaningful relief; an argument that has been squarely rejected by the D.C. Circuit and other courts. E.g., Spagnola v. Mathis, 859 F.2d 223, 227 (D.C. Cir. 1988) (en banc) ("the preclusive effect of [the CSRA] extends even to those claimants within the system for whom the CSRA

provides 'no remedy whatsoever'). Owing to the comprehensiveness of the CSRA's remedial scheme, and because claims such as those brought by plaintiff in this lawsuit are clearly within the CSRA's ambit, plaintiff is precluded as a matter of law from proceeding on his damage claims against defendants Quinn and Shapiro.

ARGUMENT

THE PRECLUSIVE EFFECT OF THE CSRA REQUIRES THAT PLAINTIFF'S CLAIMS AGAINST QUINN AND SHAPIRO BE DISMISSED

The D.C. Circuit, sitting en banc, has made clear that, when judging the preclusive effect of the CSRA, "it is the comprehensiveness of the statutory scheme involved, not the 'adequacy' of specific remedies extended thereunder, that counsels judicial restraint." Spagnola, 859 F.2d at 227; see id. at 228 ("the [Supreme] Court regards a case-by-case examination of the particular administrative remedies available to a given plaintiff as unnecessary"). Instead, the CSRA must be given preclusive effect if the claims advanced by a federal employee are "within CSRA's ambit." Id. at 229.

The fact that plaintiff's claims at issue here come within the CSRA's broad remedial scheme is made clear by reference to the Act's merit system principles, which "are designed to protect career employees against improper political influences or personal favoritism * * *, to assure that personnel management is conducted without discrimination, and to protect individuals who speak out about government wrongdoing from reprisals." House

Conf. Report, No. 95-1717, 95th Cong., 2d Sess., reprinted in 1978 U.S. Code Cong. & Admin. News 2723, 2740 (Oct. 5, 1978).

The conduct complained of by plaintiff relating to defendants Quinn and Shapiro is undeniably addressed by these principles, as plaintiff effectively concedes. Indeed, the underlying theory of plaintiff's case against these defendants is they, allegedly in concert with others, subjected him to arbitrary action and coercion for political purposes relating to the performance of his official duties. The CSRA's merit principles prohibit such conduct, requiring that all employees be protected "against arbitrary action, personal favoritism, or coercion for partisan political purposes." 5 U.S.C. § 2301(b)(8)(A)

Plaintiff, for example, alleges that Mr. Shapiro, in his former capacity as FBI General Counsel, dispatched two FBI Special Agents to "coerce" plaintiff into retracting findings that he had allegedly made in a background investigation file which "linked Mrs. Clinton to Filegate." See Opp. Mem. at 2. Pursuant to plaintiff's theory of the case, Mr. Shapiro's alleged actions were politically motivated and intended to disparage him relating to the performance of his official duties. Id. In this same vein, plaintiff also accuses Mr. Quinn, in his former capacity as Counsel to the President, of having sent a "false and disparaging" letter to FBI Director Louis J. Freeh, which allegedly accused plaintiff of falsifying information in this same background investigation report concerning Mrs. Clinton.

Id. at 9. Plaintiff additionally accuses both Quinn and Shapiro of having assisted defendant Lanny Davis, in his capacity as a private citizen, to "embark[] on a campaign to destroy Plaintiff's reputation." Id. at 2.

Based on these allegations, plaintiff brings a civil rights claim against Quinn and Shapiro alleging unfair treatment and injury relating to the execution of his official duties,^{1/} and separate *Bivens* claims alleging violations of his constitutional rights.^{2/} These claims are plainly and expressly addressed by the CSRA's merit principle requiring that all federal employees "should receive fair and equitable treatment in all aspects of personnel management * * * and with proper regard for their privacy and constitutional rights." 5 U.S.C. § 2301(b)(2). The CSRA also protects employees from "reprisal" for having lawfully disclosed information evidencing "the violation of any law, rule, or regulation," id. § 2301(b)(9), which is an additional basis for plaintiff's claims.^{3/}

^{1/} See Count III, Complaint § 155 (alleging a conspiracy to injure him "on account of his lawful discharge of the duties of his office").

^{2/} See Count IV, Complaint § 160 (alleging that defendants "wrongfully and maliciously caus[ed] damage to Plaintiff's good name, reputation, honor and integrity without due process of law").

^{3/} See Complaint, ¶¶ 156, 159 (alleging violations of civil rights and first amendment rights for "having provided testimony in a court of law of the United States" and for testifying "before [a House Committee], and for giving an unsworn interview to the U.S. Senate Judiciary Committee").

Although plaintiff effectively concedes that application of these merit principles to this case, he argues that his claims are not addressed by the CSRA because the conduct he complains of does constitute a "prohibited personnel practice" within the meaning of the Act. See Opp. Mem. at 14-15. More specifically, although prohibited personnel practices under the CSRA include the taking of any "personnel action" in violation of the Act's merit system principles, 5 U.S.C. § 2302(b)(11), plaintiff argues that the conduct at issue does not rise to the level of a "personnel action" as defined under the CSRA. Plaintiff, however, is wrong as a matter of law.

"The types of personnel action which can constitute a prohibited personnel practice claim are extremely broad, if not exhaustive." Carducci v. Regan, 714 F.2d 171, 174 (D.C. Cir. 1983)(Scalia, J.). See also, Spagnola, 859 F.2d at 225 n.1 (noting that Congress broadly defined "prohibited personnel actions"). In addition to other "personnel actions" such as demotions, promotions, appointments, job reassignments, performance evaluations, and decisions relating to pay and benefits, the statutory term also encompasses "other disciplinary or corrective action." 5 U.S.C. § 2302(a)(2)(A)(iii)(emphasis added). As one court has explained, "[t]he corrective action category is a capacious one, encompassing a wide variety of conduct affecting federal employees." Roth v. United States, supra, 952 F.2d at 614. Thus, as an example, plaintiff in Roth brought damage claims against her Division Manager at the FAA

complaining of "slanderous utterances" that related to plaintiff's job performance. Id. at 614. The court rejected adopting a "cramped construction of 'personnel action,'" and found that plaintiff's defamation claim easily came within the meaning of this term, thereby setting forth an alleged "prohibited personnel action" in violation of the Act's merit system principles. See also, Saul v. United States, 928 F.2d 829, 834 (9th Cir. 1991) (holding that the "plain meaning" of the statutory term "corrective action" encompasses plaintiff's defamation claims).

In this case, plaintiff effectively accuses defendant Quinn, in his letter to Director Freeh, of defaming him relating to the performance of his official duties, and also accuses both Quinn and Shapiro of allegedly assisting defendant Lanny Davis to further defame him, again relating to the performance of his duties at the FBI. As found by the courts in Roth and Saul, such allegations clearly come within the CSRA's broad definition of a "prohibited personnel action." Also, as noted above, plaintiff additionally accuses defendant Shapiro of causing FBI Special Agents to "coerce" plaintiff into retracting statements he had allegedly made in a background investigation file. Such alleged "coercive" (or "corrective") action just as plainly comes within the broad meaning of this statutory term.

Moreover, even if the conduct complained of by plaintiff did not rise to the level of a "prohibited personnel action" under the CSRA, this would not entitle him to proceed on his damage

claims against Quinn and Shapiro in federal court. See Carducci, supra, 714 F.2d at 174 (even where no prohibited personnel action was alleged, the comprehensive nature of the CSRA "reflects a congressional intent that no judicial relief be available").⁴ As found by every court to have addressed this issue, it is unnecessary to show that a federal employee can make out a viable claim for relief under the CSRA in order for the Act to have preclusive effect. Schweiker v. Chilicky, 487 U.S. 412, 421-22 (1988) ("[t]he absence of statutory relief for a constitutional violation * * * does not by any means necessarily imply that courts should award money damages against the officers responsible for the violation"); Spagnola, 859 F.2d at 227 (same).

Plaintiff lastly argues that the CSRA does not have preclusive effect in this case because it is limited by its terms to address only the conduct of "supervisors or other persons with authority over personnel who are prohibited from engaging in [prohibited] personnel actions." See Opp. Mem. at 15. In support, plaintiff relies on 5 U.S.C. § 2302(b), which provides

⁴ In Carducci, although plaintiff alleged a "personnel action" as defined under the CSRA, he could not establish any of the elements listed in 5 U.S.C. § 2302(b) that give rise to a "prohibited personnel action" (e.g., he could not make out a violation of the merit system principles). 714 F.2d at 174 n.3. In this case, on the other hand, plaintiff effectively concedes that the CSRA's merit principles address his claims, but argues that the conduct complained of does not give rise to a "personnel action." Regardless, the court's finding in Carducci, that the CSRA has preclusive effect even if a prohibited personnel action has not been alleged, applies equally here.

that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—" engage in prohibited personnel actions, including the violation of any merit system principle. (Emphasis added). Plaintiff argues that defendants Quinn and Shapiro fall outside of this subsection because they did not serve as his immediate supervisors at the FBI. See Opp. Mem. at 15-16 ("neither Quinn, Shapiro, nor Davis had 'authority to take, direct others to take, recommend or approve any personnel action' with respect to Plaintiff").^{5/}

In relation to the claims at issue here, plaintiff's restrictive interpretation of this statutory provision appears to conflict with its plain language. For example, defendant Shapiro had sufficient "authority" over plaintiff at the FBI to cause two Special Agents to interview him relating to his official duties, a matter about which plaintiff complains. In a like manner, defendant Quinn unquestionably had the "authority" to write to Director Freeh (who had "supervisory" responsibility over plaintiff) to express concern about plaintiff's official conduct. Certainly, a reasonable argument can be made that Congress' concern under the CSRA regarding personnel management was not

^{5/} Plaintiff's reference to defendant Lanny Davis within the context of this argument, and throughout his opposition brief, is irrelevant to the issues before the Court. The undersigned counsel does not represent Davis in this litigation, who at all times relevant to the complaint acted in his capacity as a private citizen, and no arguments are made on his behalf relating to the CSRA's preclusive effect.

limited to the conduct of an employee's supervisors; that Congress, in other words, was equally concerned that high federal officials, due to their consequent greater authority over agency decision-making, are equally responsible under the CSRA to conform their conduct to all applicable merit system principles.

In any event, even if Congress arguably chose, upon a balance of the interests involved, to limit the remedies available under the CSRA to only those actions taken by an employee's supervisors, this does not entitle plaintiff to judicial relief outside of the Act's remedial scheme. See Wolvorton v. United States, 1997 WL 85153 (6th Cir. Feb. 26, 1997) (even assuming that the CSRA provides no remedy for plaintiff's claims against her co-workers under 5 U.S.C. § 2302(b), the comprehensive nature of the Act's remedial scheme precludes extending to her any *Bivens* remedy). There is no question in this case that the CSRA addresses the personnel actions at issue; that the conduct complained of by plaintiff, if true, would violate the CSRA's merit principles. Accordingly, the fact that plaintiff might be precluded from obtaining relief under the CSRA for any number of reasons is irrelevant.⁶

Rather, the appropriate question is "whether an elaborate remedial system that has been constructed step by step, with careful attention to conflicting policy considerations, should be

⁶ Indeed, as defendants explained in their opening brief (at 9-10), Congress expressly curtailed the remedies available under the CSRA to excepted service FBI employees. See 5 U.S.C. § 2302(a)(2)(C)(ii) and § 7511(b)(8).

augmented by the creation of a new judicial remedy for the * * * violation[s] at issue." Bush v. Lucas, 462 U.S. 367, 388 (1983). Because Congress "is in a far better position to evaluate appropriate remedies for federal employees," special factors counsel against extending to plaintiff the judicial relief he seeks. Id. at 389. See Spagnola, 859 F.2d at 227 (same). Pursuant to these factors, and because plaintiff's claims come within the CSRA's broad remedial scheme, he is not entitled to bring a separate action for damages in federal court.^{2/}

CONCLUSION

For the foregoing reasons, defendant Quinn and Shapiro's motion to dismiss should be granted.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

WILMA A. LEWIS
United States Attorney

ANNE L. WEISMANN
(D.C. Bar No. 298190)
JOHN R. TYLER
(D.C. Bar No. 297713)

^{2/} As a separate matter, plaintiff argues that defendants effectively concede that he has adequately pled the elements of his constitutional tort claims and civil rights claims. See Opp. Mem. at 13, 14. Defendants Quinn and Shapiro make no such concession, and most certainly do not concede the validity of any of the underlying allegations in support of plaintiff's claims. Instead, these allegations are assumed as true solely for the purposes of this motion.

Civil Division
U.S. Department of Justice
901 E. Street, N.W., Rm 1074
Washington, D.C. 20004
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ATTORNEYS FOR DEFENDANTS
RENO, QUINN, SHAPIRO,
AND THE EXECUTIVE OFFICE
OF THE PRESIDENT.

Date: October 22, 1999.

AO 140 (Rev. 10/93) Summons in a Civil Action

United States District Court

DISTRICT OF COLUMBIA

M. Dennis Sculimbrene,
Plaintiff,

SUMMONS IN A CIVIL CASE

V.

Janet Reno, et al.,
Defendants.

CASE NUMBER

CASE NUMBER 1:99CV02010

JUDGE: Royce C. Lamberth

DECK TYPE: Civil General

DATE STAMP: 07/26/1999

TO: (Name and address of defendant)

Howard Shapiro
8303 Bryant Drive
Bethesda, Maryland 20817

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Larry Klayman, Esq.
JUDICIAL WATCH, INC.
501 School Street, S.W.
Suite 725
Washington, DC 20024

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

John Tyler 514-2356

NANCY MAYER-WHITTINGTON

CLERK

JUL 26 1999

DATE

DEPUTY CLERK

AO 440 (Rev. 10/83) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date_____
Signature of Server_____
Address of Server