FOIA Number: 2014-0469-F

FOIA MARKER

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Folder Title:
Sculimbrene Case / DOJ Counsel John Tyler 514-2356 [2]

Stack:	Row:	Section:	Shelf:	Position:
S	115	2	9	1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nancy M. Mayer-Whittington
Clerk

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in a delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to a trial of your case by a United States Magistrate Judge. By statute, 28 U.S.C. § 636(c), Fed.R.Civ.P. 73 and Local Rule 502, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Rule 206 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial.

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Attached is a copy of the "Consent to Proceed Before a United States Magistrate Judge for All Purposes" form. Your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned for all purposes to a Magistrate Judge.

U.S. Department of Justice

Civil Division
Federal Programs Branch
901 E Street, N.W., Room 1074
Washington, D.C. 20530

Tel: 202/514-2356

August 31, 1999

BY FACSIMILE TRANSMISSION

Paul J. Orfanedes
Judicial Watch, Inc.
501 School Street, S.W.
Suite 725
Washington, D.C. 20024

DRAFT

Re: Sculimbrene v. Reno, C.A. No. 1:99-cv-2010 (D.D.C.)

Dear Mr. Orfanedes:

I have received your letter of August 27, 1999 in which you set forth your understanding that the parties in the above-captioned lawsuit are obligated to hold a Local Rule 206(a) conference on or before Monday, September 6, 1999. More specifically, you state that we are obligated under Local Rule 206 to meet and confer by the above date based on the fact that I entered a notice of appearance on August 20, 1999 as counsel on behalf the Attorney General, the Executive Office of the President, and Messrs. Quinn and Shapiro.

I, of course, am willing to meet and confer with you at any appropriate and mutually convenient time as required under Local Rule 206. However, I write to point out that we do not have an obligation to hold a Local Rule 206(a) conference within the time frame set forth in your letter.

The 15-day period for holding a Local Rule 206 conference is not triggered by the notice that I filed on August 20, in which I simply informed the Court of my appearance in this case as counsel on behalf of the Attorney General and other defendants. In pertinent part, Local Rule 206(a) provides that:

> In a case involving multiple defendants, the 15-day period shall run from the date of appearance or the first filing *in the form of an answer or motion, pursuant to Rule 12, Federal Rules of Civil Procedure*, by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure.

The above highlighted language — *in the form of an answer or motion, pursuant to Rule 12* — qualifies and defines the character of the "appearance or first filing" contemplated by the Rule for purposes of triggering the 15-day period within which the parties are required to meet and confer. To interpret this rule as you have would render the highlighted language a nullity without meaning or effect.[1]

In addition, it is illogical to interpret Local Rule 206 to require the parties to meet and confer based on when a defense counsel might arbitrarily choose to file a simple notice of appearance with the Court. As in this case, such an interpretation of the Rule would require the parties to meet long before a response to the complaint is even due, which would make a "meet and confer" conference rather meaningless.[2] Local Rule 206 clearly contemplates that the meet and confer conference take place only after defendants have either answered the complaint or otherwise responded pursuant to a motion brought under Fed. R. Civ. P. 12.

I hope that the parties can come to an agreement on this matter and thereby schedule a conference in accordance with Local Rule 206 at some appropriate time *after* defendants have answered or otherwise responded to the complaint. Please do not hesitate to call me to discuss this issue further.

Very truly yours,

JOHN R. TYLER
Senior Trial Counsel
Civil Division

---

[1] Local Rule 201(a) provides that "[a]n attorney eligible to appear may enter an appearance in a civil action *by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure*, or by filing a written notice of the entry of an appearance listing the attorney's correct address, telephone number and bar identification number." Local Rule 206(a) contemplates that only the first form of "appearance" defined in Local Rule 201(a), i.e., the filing by a defendant of a pleading as described in Rule 7(a), triggers the 15-day time frame.

[2] For example, a Local Rule 206 conference triggers the parties' responsibility under Fed. R. Civ. P. 26(a)(1) to provide "initial disclosures," including the identification of "individuals likely to have discoverable information relevant to disputed facts *alleged with particularity in the pleadings*." This obligation would be impossible to perform prior to the time when defendants are required to respond to the complaint because disputed facts will not have been "alleged with particularity in the pleadings."

U.S. Department of Justice

Civil Division
Federal Programs Branch
901 E Street, N.W., Room 1074
Washington, D.C. 20530

Tel: 202/514-2356

August 31, 1999

BY FACSIMILE TRANSMISSION

DRAFT

Paul J. Orfanedes
Judicial Watch, Inc.
501 School Street, S.W.
Suite 725
Washington, D.C. 20024

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Very truly yours,

JOHN R. TYLER
Senior Trial Counsel
Civil Division

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DEPARTMENT OF JUSTICE
QUI PRO DOMINA JUSTITIA SEQUITUR

CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: 8/31

TO: Shelli Peterson

FAX NUMBER: 456- 7027

FROM: John Tyler

ROOM 1000
FAX NUMBER(S)
COMMERCIAL: (202) 616-8470
CONFIRMATION NO.: (202) 616-8474

THERE ARE A TOTAL OF 3 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL.

COMMENTS:

UNITE STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DRAFT

OBJECTION UNDER LOCAL RULE 405 TO
PLAINTIFF'S RELATED CASE DESIGNATION

Plaintiff, a retired Special Agent with the FBI, filed the above-captioned case on July 26, 1999 against the Attorney General, the Executive Office of the President ("EOP"), former Counsel to the President Jack Quinn, former FBI General Counsel Howard Shapiro, Lanny Davis, and "John and Jane Does Nos. 1-5," who are identified (Complaint, ¶ 7) as "currently unknown officials and/or agents of The White House and/or officials of the FBI." [1] In a form filed with the Clerk of the Court pursuant to Local Rule 405(b), plaintiff has designated the instant case as being "related" to Alexander v. F.B.I., et al., Civil Action No. 96-2123 (D.D.C.), asserting that it "involves common issues of fact" and "grows out of the same event or transaction."

[1] The undersigned Department of Justice counsel represent the Attorney General, the EOP, and Messrs. Quinn and Shapiro in their capacities as former government officials. Because Mr. Davis is named as a defendant in this case solely in his capacity as a private citizen, he is represented by private counsel and no representations are made herein on his behalf. All references to "defendants" herein are limited to the identified "government defendants."

The government defendants hereby object to plaintiff's related-case designation. Plaintiff's lawsuit has no relationship to Alexander as contemplated under Local Rule 405, and judicial efficiency will not meaningfully be served by assigning these cases to the same Judge. Pursuant to the Court's policy that cases be randomly assigned, and because grounds do not exist in this case for an exception to this rule, it is respectfully requested that plaintiff's lawsuit be transferred to the Calendar Committee for reassignment in the ordinary fashion.

ARGUMENT

PLAINTIFF'S LAWSUIT AND ALEXANDER ARE NOT "RELATED" UNDER LOCAL RULE 405(a)

"Local Rule 405 is intended to constitute an exception to the normal judicial policy of random assignment of cases * * *." Judicial Watch, Inc. v. Department of Justice, C.A. No. 97-00796, Order at 1 (D.D.C. June 16, 1997)(emphasis in original) (Attachment 1). This exception is not "wide-ranging" and does not apply simply because there might be some overlap between cases that could result in some judicial efficiency. Id.; Judicial Watch, Inc. v. Commission on the United States Pacific Trade and Investment Policy, C.A. No. 97-0099, Order at 1 (D.D.C. June 16, 1997)(Attachment 2). "Judicial efficiency is not the only policy served by Local Rule 405." Id.

A comparison of plaintiff Sculimbrene's lawsuit to Alexander demonstrates that plaintiff's claims do not arise out of the same transactions at issue in Alexander, nor do they have a commonality of facts sufficient to justify an exception to the Court's policy that cases be assigned on a random basis.

The Alexander Case

This Court has succinctly set forth the matters at issue in Alexander as follows:

> [P]laintiffs allege that the FBI improperly handed over to the White House hundreds of FBI files of former political appointees and government employees under the Reagan and Bush administrations. Plaintiffs further aver that the requests for the files came from defendants Bernard Nussbaum, David Craig Livingstone, and Anthony Marceca, who were allegedly acting outside the scope of their employment and at the request of defendant Hillary Rodham Clinton. Plaintiffs allege that these actions were taken for partisan political purposes in order to obtain potentially embarrassing and damaging information on former Reagan and Bush administration personnel.

971 F. Supp. 603, 605 (D.D.C. 1997). Based on these allegations, the Alexander plaintiffs brought Privacy Act claims against the FBI and the White House for the alleged improper maintenance and disclosure of FBI background investigation files, and common law tort claims of invasion of privacy against the individually named defendants, none of whom are named as defendants in the instant case.

Plaintiff's Case

The present case does not grow out of the same event or transaction at issue in Alexander, i.e., the FBI's alleged improper transfer to the White House of "hundreds of FBI files of former political appointees and government employees under the Reagan and Bush administrations." 971 F. Supp. at 605. To the contrary, plaintiff's claims arise out of entirely different events having no relationship to Alexander.

Specifically, plaintiff at all times relevant to his complaint served as an FBI Special Agent assigned to the "White House Liaison Office" during the Clinton Administration where his duties consisted, inter alia, "of interviewing White House executives and staff, as well as detailees, volunteers and contractors requiring access to The White House * * *." Complaint, ¶ 13. In January 1994, plaintiff suffered a severe head injury outside of work (id., ¶ 34), and was thereafter only able to perform limited duties in his position at the White House Liaison Office. Id., ¶¶ 43, 48. In April 1996, plaintiff's detail to the White House was terminated, and he subsequently retired from the FBI in August 1996. Id., ¶¶ 96, 139.

In significant contrast to Alexander, the instant action is primarily an employment case in which plaintiff alleges, inter alia, that he was forced to retire from the FBI on account of his disability in violation of the Rehabilitation Act. Id., ¶¶ 144-47. In support, plaintiff contends that he was capable of performing certain limited duties at the White House Liaison Office. Id., ¶¶ 36-51, 98. Plaintiff also contends that the FBI denied him "reasonable accommodations" that had allegedly been previously granted to him and which would allegedly have allowed him to continue in his job. Id., ¶¶ 67-68, 78-80, 145. None of these allegations, of course, have anything in common with any of the matters before the Court in Alexander.

Indeed, a review of the complaint demonstrates an enormously broad array of allegations that have no relationship to Alexander. For example, plaintiff apparently contends that he was forced to retire from the FBI as a result, inter alia, of opinions he expressed relating to the dismissal of White House Travel Office staff owing to alleged financial improprieties, and the fact that he testified in the criminal trial of Mr. Billy Dale, former head of that office. See Complaint, ¶¶ 32, 53, 58-68. Plaintiff further alleges numerous "retaliatory" actions taken against him including: (1) that he was subject to a random drug test (id. ¶ 55); (2) that he was taken out of consideration for the position as Inspector General of the Department of Veterans Affairs (id. ¶¶ 57, __); (3) that he was subject to "repeated pranks" that "went unheeded" by FBI management (id. ¶ 63); (4) that he was subject to various internal investigations by the FBI's Office of Professional Responsibility, including one directed to the alleged misuse of his government parking pass (id. ¶ 81, 86); (5) that he was subject to an allegedly unnecessary five-year security background reinvestigation (id. ¶ 102); and (6) that his permanent White House pass was canceled (id. ¶ 113). None of these matters has any connection to Alexander.

Plaintiff's other claims against the individually named defendants just as plainly have no relationship to Alexander. Thus, in Count III of his complaint, plaintiff alleges that defendants Davis, Quinn, and Shapiro (and "John and Jane Does

Nos. 1-5") violated his civil rights under 42 U.S.C. § 1985, for having purportedly conspired to injure him "in his person and property on account of his lawful discharge of the duties of his office" and for "having provided testimony in a court of law of the United States." Complaint, ¶¶ 155-56. Plaintiff bases this claim on various events, including (1) statements made by White House Counsel Jack Quinn in a letter to FBI Director Freeh that plaintiff alleges wrongly accused him of a criminal offense (id. ¶ 127); (2) defendant Howard Shapiro's alleged participation in drafting Mr. Quinn's letter to Director Freeh (id. ¶ 127); (3) various statements made by Lanny Davis (in his private capacity) in television talk-shows in which he allegedly accused plaintiff of political bias and falsifying the FBI background investigation file on David Craig Livingstone (id. ¶¶ 131-33); (4) defendants' alleged attempt to discredit plaintiff by tying "him to another FBI agent detailed to the White House who had recently been convicted of falsifying FBI background investigation records" (id. ¶ 124); and (5) plaintiff's testimony in the Billy Dale criminal trial (id. ¶ 60). As noted earlier, none of the individually named defendants in plaintiff's lawsuit appear as defendants in Alexander. Just as plainly, none of these allegations in support of plaintiff's claims against these defendants have any real or immediate relationship to the specific allegations at issue in Alexander.

This is equally true in regard to plaintiff's *Bivens* claims (Count IV) brought against defendants Quinn and Shapiro under the

First and Fifth Amendments. Plaintiff's First Amendment claim is premised on the fact that he gave testimony in the Billy Dale criminal trial, and that he also testified in House and Senate committees regarding his background investigation of David Craig Livingstone and his stated belief that, inter alia, "many persons, including employees, were being given access to The White House complex without proper passes." Id., ¶¶ 107-108, 159. In addition, plaintiff's Fifth Amendment claim is apparently based on his contention that he was subject to "baseless allegations and procedural irregularities" in internal investigations conducted by the FBI's Office of Professional Responsibility relating to such matters as plaintiff's government parking pass. Id. ¶ 91. Plaintiff does not explain how his constitutional rights were violated by defendants Quinn and Shapiro with respect to any of these events. More importantly, it is impossible to understand how these specific claims or the allegations on which they are based have any real or meaningful relationship to Alexander.

Indeed, the only connection between this case and Alexander is that plaintiff makes allegations tangentially touching upon the FBI files controversy, and the fact that plaintiff has brought a Privacy Act claim against the EOP (Count II). The FBI files matter, however, comes into this case only to the extent that plaintiff delves into the question of how David Craig Livingstone was appointed as Director of the White House Office of Personnel Security. See Alexander, 971 F. Supp. at 605 (explaining that Livingstone is one the defendants who allegedly requested the transfer of FBI files to the White House). More specifically, plaintiff contends that information allegedly obtained by him in his background investigation of Mr. Livingstone, which was subsequently made known to Congress, is one of the reasons why he was retaliated against by defendants. See Complaint, ¶¶ 23-26, __. While these allegations might collaterally touch upon the FBI files matter, they have no direct bearing on the alleged improper transfer and use of FBI background investigation files of Reagan and Bush political appointees, which is at issue in Alexander. See 971 F. Supp. at 605.

Nor does plaintiff's Privacy Act claim have any meaningful or direct relationship to Alexander. Plaintiff avers no discernible, discrete facts in support of this claim, but instead broadly contends that the EOP, allegedly for purposes of "injuring and/or retaliating against Plaintiff," has improperly maintained "confidential records on individuals, including Plaintiff, as part of a system of records." Complaint, ¶¶ 149-51. Common to plaintiff's other allegations, this particular, vaguely alleged claim has no bearing on the specific records at issue in Alexander, i.e., the background investigation files of former Reagan and Bush political appointees.[2] Owing to this

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[2] Plaintiff avers (Complaint, ¶ 33) that in 1993 the "White House Office of Personnel Security obtained Plaintiff's FBI background investigation summary and materials," but does not (continued...)

fact, plaintiff in effect is attempting to have this Court become the repository for any and all claims alleging the misuse of government files of any description that are purportedly maintained by anyone or any office within the White House complex. Such a designation would be inappropriate under Local Rule 405. This is especially true where, as here, the Privacy Act claim at issue is appended to numerous other claims and allegations that have no relationship whatever to the matters before this Court in Alexander.

CONCLUSION

For the foregoing reasons, defendants respectfully request that this lawsuit be transferred to the Calendar Committee for reassignment in the ordinary fashion.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

WILMA A. LEWIS
United States Attorney

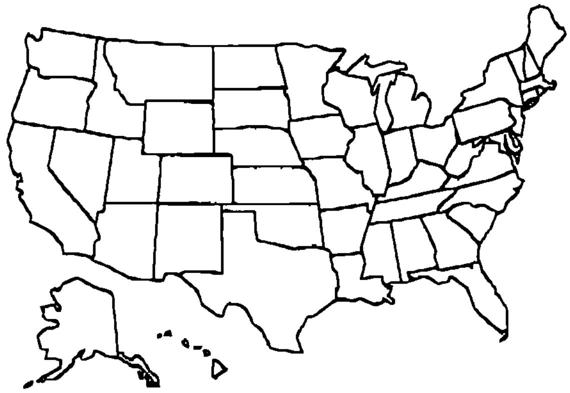
ANNE L. WEISMANN
(D.C. Bar No.
JOHN R. TYLER
(D.C. Bar No. 297713)

[3](...continued)
allege that this was in violation of any law. Notably, plaintiff was at that time assigned (and had access) to the White House complex. See Alexander v. F.B.I., C.A. Nos. 96-2123, 97-1288, Memorandum and Order at 10 (D.D.C. April 16, 1999)(finding that testimony relating to the background investigation files of then-current White House employees to be irrelevant to plaintiffs' claims).

Civil Division
U.S. Department of Justice
901 E. Street, N.W., Rm 1074
Washington, D.C. 20004
Tel: (202) 514-2356
Fax: (202) 616-8470

Attorneys for Defendants
Reno, Quinn, Shapiro, and
the Executive Office of
the President.

Date: August 20, 1999.



CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER STREET

DATE: 8-18-99

TO: Steven Reich

FAX NUMBER: (202) 456-7024

FROM: John Tyler
FAX NUMBER(S) ROOM 1000
COMMERCIAL: 202-616-8470
CONFIRMATION NO.: 202-616-8474

THERE ARE A TOTAL OF ____ PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL

MEMORANDUM TO: All EOP Staff

FROM: Beth Nolan
Counsel to the President

SUBJECT: REQUEST FOR DOCUMENTS

Dennis Sculimbrene has filed a lawsuit alleging in part that the White House maintains files on him in violation of the Privacy Act. To allow us to respond to these allegations, please conduct a thorough and complete search of all your records -- whether in hard copy, computer form, or any other form -- for any of the following material:

> **Any and all files identified as pertaining to Dennis Sculimbrene by his name or any other identifying number, symbol or other information that is particular to him, and which contains any item, collection or grouping of information about Mr. Sculimbrene. To the extent that you have responsive documents, please provide a copy of the file folder or file jacket that the document was contained in as well as the documents.**

Every employee is responsible for searching his or her own files and records to ensure a comprehensive search. Each office head or Assistant to the President must certify that his or her staff has done a complete and thorough search.

In addition, if you believe that files from your office that have been sent to the Office of Records Management may contain responsive information, please advise us so that we may ensure that all responsive documents have been located.

All materials must be provided to Shelli Peterson (OEOB Room 482) by noon on Thursday, September 30, 1999. If you have any questions, Shelli can be reached at 456-7804.

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
1999 SEP -3 PM 6:05
NANCY M.
MAYER-WHITTINGTON
CLERK

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

M. DENNIS SCULIMBRENE, Plaintiff,	)	
vs.	)	Case No. 1:99-cv-2010 (RCL)
JANET RENO, THE EXECUTIVE OFFICE OF THE PRESIDENT, JACK QUINN, HOWARD SHAPIRO, LANNY J. DAVIS and JOHN AND JANE DOES NOS. 1-5, Defendants.	)	

**PLAINTIFF'S RESPONSE TO DEFENDANTS' OBJECTION TO
<u>LOCAL RULE 405 RELATED CASE DESIGNATION</u>**

Plaintiff, by counsel, respectfully submits this response to the Objection Under Local Rule 405 to Plaintiff's Related Case Designation filed by Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President ("EOP").

<u>MEMORANDUM OF LAW</u>

Pursuant to Local Rule 405(a)(3), "civil cases are deemed related when the earliest is still pending on the merits in the District Court and they . . . (ii) involve common issues of fact, or (iii) grow out of the same event or transaction . . . ." *See* Local Rule 405(a)(3). Because this case and *Alexander* v. *Federal Bureau of Investigation, et al.*, Consolidated Civil Action Nos. 96-2123/97-1288 (RCL) involve common issues of fact and arise out of the same events and transactions — namely the Filegate scandal and its precursor, the Travelgate scandal — they are "related" for purposes of Local Rule 405(a)(3). Due to the expertise this Court has developed with regard to the facts and the law of Filegate, Plaintiff also respectfully submits that substantial judicial efficiencies will result from having this case remain before this Court.

First of all, this lawsuit does not arise from a simple personnel action, as Defendants disingenuously contend. Rather, it arises from a campaign of harassment and retaliation designed to silence and destroy the credibility, reputation and career of Plaintiff, a federal law enforcement official, because of events he witnessed while carrying out his duties and responsibilities at the Clinton White House -- events that also lie at the core of the *Alexander* matter. Defendants' disingenuous assertion that "plaintiff's claims arise out of entirely different events having no relationship to Alexander" could not be further from the truth. The facts and events that gave rise to this case are inherently intertwined with the facts and events that gave rise to the *Alexander* matter, and the two (2) cases are thus "related" within the meaning of Local Rule 405(a)(3)(ii) and (iii). Defendants' claims to the contrary are a distortion of Plaintiff's Complaint.

Plaintiff, M. Dennis Sculimbrene, is a former Special Agent of the Federal Bureau of Investigation ("FBI"). In December 1985, Plaintiff was assigned to the FBI's White House Liaison Office, where he was responsible for conducting background investigation interviews on White House executives, staff, detailees, volunteers and interns, among other duties. *See* Complaint at paras. 12-13. Plaintiff remained in the White House in this same official capacity when the Clinton Administration took over in 1993. *Id.* at para. 96. Consequently, Plaintiff was uniquely situated to witness the events and circumstances underlying both Filegate -- the unlawful obtaining and misuse by the Clinton White House of the FBI background investigation files of hundreds of former Reagan and Bush Administration appointees, employees and others -- and Travelgate -- the politically-motivated firing of the White House Travel Office employees and subsequent prosecution of White House Travel Office Director Billy Ray Dale on trumped-up charges of financial improprieties.

In addition to having had his own FBI background investigation file improperly obtained by the Clinton White House and thus being a member of the putative class in the *Alexander* matter-- Plaintiff's name was included among the list of hundreds of former Reagan and Bush Administration appointees, employees and others whose FBI background investigation files were unlawfully obtained and misused by the Clinton White House – Plaintiff is also a key, material witness to Filegate.[1] *See* Exhibit 2, produced in the *Alexander* matter. Specifically, in early March 1993, Plaintiff conducted a background investigation on David Craig Livingstone, the Director of the White House Office of Personnel Security ("OPS") who, along with Hillary Rodham Clinton, Bernard Nussbaum, Vince Foster, William Kennedy and Anthony Marceca, stand at the center of Filegate. It was Livingstone who actually reviewed each FBI background investigation file obtained by the Clinton White House, even those of former Reagan and Bush Administration staffers that were obtained despite the fact that the Clinton White House knew it had no legitimate purpose for obtaining such files. *See* Excerpt from Deposition of Mari Anderson at 102-03; 109-10; 157-61, attached as Exhibit 3.

During the course of Plaintiff's background investigation of Livingstone, White House Counsel Bernard Nussbaum, Livingstone's supervisor, told Plaintiff that Livingstone had been highly recommended by Mrs. Clinton. A contemporaneous memorandum prepared by Plaintiff -- which became part of Livingstone's FBI background investigation file -- states:

---

[1] In fact, Plaintiff submitted a crucial declaration in support of the *Alexander* plaintiffs' Supplemental Memorandum Concerning Substitution and Class Certification, filed on August 9, 1999 in that matter. A copy of Plaintiff's declaration submitted in the *Alexander* matter is attached as Exhibit 1.

> 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. . . .**

See March 1993 Memorandum of SA M. Dennis Sculimbrene, attached as Exhibit 4 (emphasis added); *see also* Complaint at para. 23. Livingstone himself boasted to Plaintiff that he had a personal connection to Mrs. Clinton (*see* Complaint at para. 25), and Assistant White House Counsel William Kennedy told Plaintiff that he was "stuck" with Livingstone during a conversation about Livingstone's continued employment as Director of OPS, from which Plaintiff inferred that Mrs. Clinton wanted Livingstone in that position. *Id.* at para. 26. Thus, Plaintiff is a key link in tying Mrs. Clinton to Filegate.[2,3]

---

[2] In January 1996, Plaintiff also authored a memorandum to his supervisor tying Mrs. Clinton to Livingstone, and, consequently, to Filegate. *See* Complaint at para. 69.

[3] Ironically, Plaintiff is one of the few persons who may have been able to prevent Filegate from occurring had the Clinton White House not changed long-standing White House policies. As Plaintiff set forth in the declaration he submitted in the *Alexander* matter, for years FBI agents detailed to the White House were required to routinely interact with OPS personnel. *See* Exhibit 1, at para. 8. Beginning with the Reagan Administration, Plaintiff also had a mail box in OPS, where he would receive copies of requests for FBI background investigation summaries sought by OPS. *Id.* This practice thus served as a backstop to avoid unnecessary background requests on persons who no longer required access to the White House. Beginning in May 1993, however, Plaintiff was told to avoid liaison activity with OPS and was no longer provided with copies of background requests. *Id.* at para. 8. His mail box in OPS no longer used. *Id.* The practice of providing Plaintiff with copies of background requests was resumed in late Fall or early Winter 1994, after in excess of 900 FBI background summaries on Plaintiffs and other former Reagan and Bush Administration appointees, employees and others had already been obtained. *Id.* Thus, the one person who could have prevented Filegate -- and a potential eyewitness -- was, not coincidentally, himself denied access to key information about OPS's activities and to OPS itself during this crucial time period. *Id.*

In addition, because of his unique vantage point in the Clinton White House, Plaintiff is also a key witness to the Travelgate scandal, which, in turn, lead to the public revelation of Filegate. It was the discovery that the Clinton White House had unlawfully obtained the FBI background investigation file of Mr. Billy Dale, the former Director of the White House Travel Office, which led to the revelation that literally hundreds of other FBI background investigation files also had been unlawfully obtained by the Clinton White House. Plaintiff was subpoenaed to testify on behalf of Mr. Dale at his criminal trial in November 1995 on trumped-up charges of financial improprieties in the White House Travel Office. *Id.* at para. 60. Mr. Dale's file was seen by Linda Tripp in the office of Vince Foster before Mr. Dale was fired, and later in a safe in Mr. Nussbaum's office, along with similar files likely of other travel office employees. *See* Deposition of Linda Tripp, filed in the *Alexander* matter, at 41-47, 58-59, 61-62; 71-72.

As a result of his role as a key witness to both Filegate and its precursor, Travelgate, Plaintiff was subjected to a campaign of harassment and retaliation at the hands of the Clinton White House and its FBI. For instance, after testifying under subpoena at Mr. Dale's criminal trial, Plaintiff was subject to harassment and retaliation, was denied reasonable accommodations granted to him by the FBI after a 1994 accident, and, ultimately, was removed from the Clinton White House. *Id.* at paras. 60-101; 143-47. Livingstone 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. *Id.* at 102.

After Filegate became public in June 1996, Plaintiff became the target of a conspiracy to destroy his good name and reputation. During a June 19, 1996 unsworn interview, Plaintiff told Senate Judiciary Committee investigators about the tie between Mrs. Clinton an Livingstone. *Id.* at

106-08; *see also id.* at 109-11. On July 15, 1996, Plaintiff gave a sworn deposition to House investigators during which he again linked Livingstone's hiring to Mrs. Clinton. *Id.* at 115. That same day, in a transparent attempt to assist the Clinton White House of its "spin" on this latest scandal, FBI General Counsel Shapiro gave the Clinton White House a "heads up" about the existence of Plaintiff's March 1993 memorandum linking Livingstone's hiring to Mrs. Clinton. *Id.* at para. 116. Apparently, the memorandum had been uncovered by the FBI in going through Livingstone's FBI background investigation file. *Id.* The following morning, FBI agents were dispatched to Plaintiff's home to "interrogate" Plaintiff about the memorandum. *Id.* at para. 117-20. White House Counsel Jack Quinn and Shapiro then began collaborating on a letter to send to Plaintiff's boss, FBI Director Louis Freeh, wrongfully accusing Plaintiff of falsifying his March 1993 memorandum, conduct which, if true (although obviously false in this instance), would constitute a criminal offense. *Id.* at 126-28; *see, e.g.*, 18 U.S.C. § 2073. The letter was sent to Director Freeh under Quinn's signature on July 25, 1996. *Id.* at 126. The following day, July 26, 1996, Clinton White House spokesperson Lanny J. Davis appeared on CNN's *Cross-Fire* and, as part of the smear operation, wrongfully accused Plaintiff of falsifying his March 1993 memorandum:

> This . . . contemporaneous document contains an absolute fabrication . . . . First of all, I am accusing Sculimbrene of having a political bias and that report is filled with lies . . . . Sculimbrene has no credibility . . . and [congressional investigators] know it and they are embarrassed and that's why . . . they're not calling him [to provide further testimony].

Id. at para. 130. The conduct that Plaintiff was falsely accused of would constitute a criminal offense. *See, e.g.*, 18 U.S.C. § 2073. On August 2, 1996, Davis appeared on CNBC's *Rivera Live* and again attacked and smeared Plaintiff's credibility. *See* Complaint at para. 131.

Thus, not only are the facts and events that gave rise to both this case and the *Alexander* matter inexplicably intertwined, and consequently "related" under Local Rule 405(a), but Plaintiff also respectfully submits that Defendants' attempts to silence, intimidate and retaliate against Plaintiff, a material witness in the *Alexander* matter, may also constitute obstruction of justice and/or witness tampering. *See, e.g.*, 18 U.S.C. § 1512. The Court thus has an inherent duty, if not an obligation, to protect Plaintiff as an important, material witness in a case pending before it. This, in turn, provides yet another reason why the Court should retain this matter, and underscores its status as a related case.

Moreover, because of this Court's familiarity with, if not expertise in Filegate and its precursor scandal, Travelgate, judicial efficiencies dictate that this case remain before this Court. The main actors in both scandals, including Mrs. Clinton, Nussbaum, Foster, Kennedy, Livingstone and Marceca, are already well known to the Court, as is Defendant Lanny J. Davis.[4] As result of the *Alexander* matter, this Court is also acutely familiar with the harassment and retaliation experienced by other key witnesses to Clinton scandals, including Ms. Linda Tripp and Ms. Kathleen Willey.

Finally, and importantly, Plaintiff's Complaint also includes a Privacy Act claim, and the Court has developed substantial expertise in the requirements of the Privacy Act and how government records were maintained and misused by the Clinton White House. On March 5, 1998, Plaintiff wrote

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[4] Plaintiffs deposed Davis in the *Alexander* matter, during which Davis revealed that, while at the Clinton White House, he maintained newspaper clippings and other materials on individuals and occasionally disseminated such materials to members of the news media. *See* Davis Depo., filed in the *Alexander* matter, at 32-33, 40. Davis also testified during his deposition in the *Alexander* matter that he *received* "talking points" and newspaper clippings from officials in the White House Counsel's Office before appearing on television programs in 1996, including CNN's *Cross-Fire*, in order to present the Clinton's White House's position "spin" on Filegate. *See* Davis Depo. at 265-71.

to EOP requesting access, pursuant to the Privacy Act, to all records maintained by the Clinton White House on him. *See* Complaint at para. 140. This obviously would have included Plaintiff's FBI file, correspondence between Quinn and Shapiro concerning preparation of Quinn's July 25, 1996 letter to Director Freeh, the letter to Director Freeh itself, materials provided to Lanny Davis for his appearances on *Cross-Fire* and *Rivera Live*, and any other materials used in the campaign to try to silence Plaintiff and destroy his credibility, reputation and career. The Clinton White House refused to give Plaintiff access to these records, however, claiming in an April 1, 1998 response 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." *Id.* at para. 141. The Clinton White House made this false claim despite the fact that this Court had expressly ruled to the contrary in the *Alexander* matter. *Id.*, *citing*, *Alexander v. Federal Bureau of Investigation*, 971 F. Supp. 603 (D.D.C. 1997).

If this matter is reassigned, another Court will have to duplicate the substantial amount of time and effort already expended by this Court in learning and understanding the complex factual and legal background and the numerous actors involved in Filegate and Travelgate. This would not, respectfully, promote the interests of judicial efficiency embodied in Local Rule 405(a).

WHEREFORE, Plaintiff respectfully requests that the Court overrule Defendants' objection to Plaintiff's Local Rule 405 "related case" designation and allow this case to proceed before it.

Respectfully submitted,

JUDICIAL WATCH, INC.

Larry Klayman /PJO

Larry Klayman, Esq.
D.C. Bar No. 334581

Paul J. Orfanedes

Paul J. Orfanedes, Esq.
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 1999 a true and correct copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' OBJECTION TO LOCAL RULE 405 RELATED CASE DESIGNATION was served via first class, U.S. mail, postage prepaid, on the following:

Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

Paul J. Orfanedes

CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: September 9, 1999

TO: SHELLI PETERSON

FAX NUMBER: (202) 456-7024

FROM: John R. Tyler
OFFICE NUMBER: (202) 514-2356
FAX NUMBERS: (202) 616-8470, 8202 or 8460

THERE ARE A TOTAL OF 17 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL

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DISTRICT OF COLUMBIA
1999 SEP -7 PM 5:40
NANCY M.
MAYER-WHITTINGTON
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,

Plaintiff,

vs.

JANET RENO, *et al.*,

Defendants.

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

PLAINTIFF'S LOCAL RULE 206(d) REPORT

Plaintiff, M. Dennis Sculimbrene, by counsel and pursuant to Local Rule 206(d), respectfully submits this Local Rule 206(d) Report. This report is being submitted by Plaintiff unilaterally because, contrary to the express language of Local Rule 206(a) requiring the parties to meet and confer within fifteen (15) days from the date of appearance by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure, Defendants erroneously claim that the parties need not meet and confer until such time as they have filed an answer or motion.

1. Case Tracking Category; Whether the Case is Likely to be Disposed of by Dispositive Motion.

Plaintiff submits that this matter should be placed on the standard track. Plaintiff also submits that this case is not likely to be disposed of by dispositive motion, and no such motion has yet been filed. Should any such motion be filed, Plaintiff submits that discovery and/or other matters should not await a decision on the motion.

2. Date for Joinder of Other Parties; Amendments to Pleadings; Narrowing of Factual or Legal Issues.

Plaintiff's Complaint names several John and Jane Doe Defendants. Consequently, Plaintiff submits that he be allowed to undertake at least six (6) months of discovery before being required to join other parties or amend his pleadings. Plaintiff does not anticipate that the factual or legal issues raised in his Complaint can be narrowed at this time.

3. Assignment to Magistrate Judge.

Plaintiff does not consent to assignment of this matter to a magistrate judge.

4. Realistic Possibility of Settlement.

Plaintiff does not believe there is a realistic possibility of settlement at this time, but remains open to engage in good faith settlement negotiations.

5. Alternative Dispute Resolution.

Plaintiff submits it is unlikely that this case could benefit from alternative dispute resolution procedures or some other form of alternative dispute resolution.

6. Summary Judgment Motions and/or Motions to Dismiss; Dates for Filing Dispositive Motions and Cross-Motions, Oppositions and Replies.

Plaintiff submits that the case cannot be resolved by summary judgment or a motion to dismiss. Nonetheless, the Court has already set September 27, 1999 as the date for Defendants to respond to Plaintiff's Complaint, which presumably includes any motions to dismiss. Plaintiff also submits that any summary judgment motions be filed one (1) month after the close of discovery. Plaintiff further submits that the briefing schedule for any such motion to dismiss or summary judgment motion be in accordance with the standard briefing schedule set forth in the Court's Local Rules.

7. Initial Disclosures.

Plaintiff does not agree to dispense with the initial disclosure requirements set forth in Rule 26(a)(1) of the Federal Rules of Civil Procedure.

8. Discovery.

Plaintiff submits that he should be allowed at least nine (9) months to complete discovery. Plaintiff also submits that each party be limited to twenty-five (25) interrogatories, unless leave of court is obtained first. Plaintiff further submits that there should be no limit on the number or duration of depositions. Plaintiff does not anticipate the need for a protective order at this time, but reserves the right to request a protective order should one prove necessary in the future. Plaintiff also submits that discovery be completed within nine (9) months of the date of entry of a Scheduling Order by the Court, including answers to interrogatories, document requests, requests for admission and depositions.

9. Exchange of Expert Witness Reports.

Plaintiff submits that any party intending to designate an expert witness to testify at trial shall provide all parties with an expert report pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure at least ninety (90) days before the close of discovery. Any party wishing to cross-designate an expert witness to testify at trial shall provide all parties with an expert report pursuant Rule 26(a)(2) of the Federal Rules of Civil Procedure at least sixty (60) days before the close of discovery. Depositions of any expert witness should be completed before the close of discovery.

10. Class Actions.

Not applicable.

11. Bifurcation of Discovery and/or Trial.

Plaintiff submits that discovery and/or trial should not be bifurcated or managed in phases.

12. Date for Pretrial Conference.

Plaintiff submits that a pretrial conference be held not more than two (2) months after the close of discovery.

13. Firm Trial Date.

Plaintiff submits that a firm trial date should be set at the pretrial conference.

Respectfully submitted,

JUDICIAL WATCH, INC.

Larry Klayman, Esq.
D.C. Bar No. 334581

Paul J. Orfanedes, Esq.
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 1999 a true and correct copy of the foregoing PLAINTIFF'S LOCAL RULE 206(d) REPORT was served via first class, U.S. mail, postage prepaid, on the following:

Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

Paul J. Orfanedes

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE, Plaintiff, vs. JANET RENO, *et al.*, Defendants.	Case No. 1:99-cv-2010 (RCL)

[PROPOSED] SCHEDULING ORDER

Upon consideration of Plaintiff's Local Rule 206(d) Case Management Report and the entire record herein, it is hereby ordered that:

1. This matter shall be placed on the Court's standard track.

2. An initial status conference shall be held on ______ ______________ at ______ a.m./p.m.

3. Plaintiff shall have six (6) months from the entry of this Scheduling Order in which to move for leave to join other parties or amend his pleadings.

4. Discovery shall be completed within nine (9) months of the entry of this Scheduling Order.

5. Any party intending to designate an expert witness to testify at trial shall provide all parties with an expert report pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure at least ninety (90) days before the close of discovery. Any party wishing to cross-designate an expert witness to testify at trial shall provide all parties with an expert report pursuant Rule 26(a)(2) of the Federal

Rules of Civil Procedure at least sixty (60) days before the close of discovery. Depositions of any expert witness should be completed before the close of discovery.

6. Any summary judgment motions shall be filed within none (1) month after the close of discovery.

7. A pretrial conference shall be held on ____________________ at _____ a.m./p.m.

SO ORDERED.

____

The Hon. Royce C. Lamberth, U.S.D.J.

Copies to:
Attorneys for Plaintiff:

Larry Klayman, Esq
Paul J. Orfanedes, Esq.
Suite 725
501 School Street, S.W.
Washington, DC 20024

Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street. N.W.
Washington, DC 20037-1350

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CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,

Plaintiff,

vs.

JANET RENO, *et al.*,

Defendants.

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

PLAINTIFF'S LOCAL RULE 206(d) CERTIFICATION

Plaintiff, by counsel and pursuant to Local Rule 206(d), hereby certify that on August 27, 1999 counsel for Defendants Janet Reno, the Executive Office of the President ("EOP"), Jack Quinn, Howard Shapiro and Lanny Davis were sent the enclosed facsimile requesting them to meet and confer on the preparation of Local Rule 206(d) Joint Case Management Report on or before September 6, 1999.[1] *See* Exhibit 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.

Local Rule 206(a) (emphasis added).

Being agencies and officers of the United States, Defendants Reno and EOP have the longest time to answer Plaintiff's Complaint under Rule 4(i) of the Federal Rules of Civil Procedure. Clinton

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1 Because Monday, September 6, 1999 was a legal holiday, the parties had until the following day, Tuesday, September 7, 1999, in which to meet and confer.

Justice Department counsel entered an appearance on behalf of Defendants Reno and EOP, as well as Defendants Quinn and Shapiro, on August 20, 1999. Consequently, the parties had fifteen (15) days from August 20, 1999 in which to meet and confer under Local Rule 206(a). That fifteen (15) day time period runs out on September 7, 1999.

Clinton Justice Department Counsel responded by letter on September 1, 1999, erroneously claiming – despite the express language of Local Rule 206(a) requiring the parties to meet and confer within fifteen (15) days of the date of "appearance or first filing in the form of an answer or motion" by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure – that the parties need not meet and confer until such time as Defendants file an answer or motion. *See* September 1, 1999 Letter from John R. Tyler, attached as Exhibit 2. In a follow-up telephone conversation that same day, Clinton Justice Department Counsel again asserted that the parties need not meet and confer at this time. Clinton Justice Department Counsel was then advised that Plaintiff would be filing a unilateral case management report pursuant to Local Rule 206(d).

During a telephone conversation with Defendant Davis' counsel on September 2, 1999, Davis' counsel also claimed that the parties need not meet and confer at this time. Davis' counsel was also advised that Plaintiff would be filing a unilateral case management report pursuant to Local Rule 206(d).

Plaintiff respectfully submits that Local Rule 206(a) is clear and unambiguous, and that the parties are required to meet and confer on or before September 7, 19991. Plaintiff is entitled to have this matter proceed in a timely fashion and in accordance with the Court's Local Rules. Consequently, Plaintiff is filing his case management report unilaterally.

Respectfully submitted,

JUDICIAL WATCH, INC.

Larry Klayman, Esq.
D.C. Bar No. 334581

Paul J. Orfanedes, Esq.
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

EXHIBIT 1

Judicial Watch™

VIA FACSIMILE AND U.S. MAIL

August 27, 1999

Timothy B. Mills, Esq.
Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Re: M. Dennis Sculimbrene v. Reno, et al., Case No. 1:99-cv-2010 (RCL) (D. District of Columbia)

Dear Messrs. Mills, Guiffre and Tyler:

Local Rule 206 requires the parties to meet and confer on the preparation of a case management report within fifteen (15) days of the entry of an appearance by the defendant who has the longest time to answer under the Federal Rules of Civil Procedure. Since that is the government in this case, the parties have fifteen (15) days from August 20, 1999, the date of Mr. Tyler filed an appearance on behalf of Attorney General Reno, the Executive Office of the President, Jack Quinn and Howard Shapiro, in which to meet and confer. We are thus required to meet and confer sometime before Monday, September 6, 1999.

Please contact me at your earliest convenience to set up a time for this meeting, which can take place by telephone if all parties agree. In the interim, I will prepare a draft case management report setting forth Plaintiff's positions on the various points to be discussed and forward it to you for your review.

Thank you for your attention to this matter.

501 School Street, S.W., Suite 725, Washington, D.C. 20024, Tel: (202) 646-5172
Fax: (202) 646-5199

EXHIBIT 2

U.S. Department of Justice

Civil Division
Federal Programs Branch
901 E Street, N.W., Room 1074
Washington, D.C. 20530

Tel: 202/514-2356

September 1, 1999

BY FACSIMILE TRANSMISSION

Paul J. Orfanedes
Judicial Watch, Inc.
501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Re: Sculimbrene v. Reno, C.A. No. 1:99-cv-2010 (D.D.C.)

Dear Mr. Orfanedes:

I have received your letter of August 27, 1999 in which you set forth your understanding that the parties in the above-captioned lawsuit are obligated to hold a Local Rule 206(a) conference on or before Monday, September 6, 1999. More specifically, you state that we are obligated under Local Rule 206 to meet and confer by the above date based on the fact that I entered a notice of appearance on August 20, 1999 as counsel on behalf the Attorney General, the Executive Office of the President, and Messrs. Quinn and Shapiro.

I, of course, am willing to meet and confer with you at any appropriate and mutually convenient time as required under Local Rule 206. However, I write to point out that we do not have an obligation to hold a Local Rule 206(a) conference within the time frame set forth in your letter.

The 15-day period for holding a Local Rule 206 conference is not triggered by the notice that I filed on August 20, in which I simply informed the Court of my appearance in this case as counsel on behalf of the Attorney General and other defendants. In pertinent part, Local Rule 206(a) provides that:

> In a case involving multiple defendants, the 15-day period shall run from the date of appearance or the first filing *in the form of an answer or motion, pursuant to Rule 12, Federal Rules of Civil Procedure*, by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure.

The above highlighted language — *in the form of an answer or motion, pursuant to Rule 12* — qualifies and defines the character of the "appearance or first filing" contemplated by the Rule for purposes of triggering the 15-day period within which the parties are required to meet and confer. To interpret this rule as you have would render the highlighted language a nullity without meaning or effect.[1]

In addition, it is illogical to interpret Local Rule 206 to require the parties to meet and confer based on when a defense counsel might arbitrarily choose to file a simple notice of appearance with the Court. As in this case, such an interpretation of the Rule would require the parties to meet long before a response to the complaint is even due, which would make a "meet and confer" conference rather meaningless.[2] Local Rule 206 clearly contemplates that the meet and confer conference take place only after defendants have either answered the complaint or otherwise responded pursuant to a motion brought under Fed. R. Civ. P. 12.

I hope that the parties can come to an agreement on this matter and thereby schedule a conference in accordance with Local Rule 206 at some appropriate time after defendants have answered or otherwise responded to the complaint. Please do not hesitate to call me to discuss this issue further.

Very truly yours,

JOHN R. TYLER
Senior Trial Counsel
Civil Division

---

[1] Local Rule 201(a) provides that "[a]n attorney eligible to appear may enter an appearance in a civil action *by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure*, or by filing a written notice of the entry of an appearance listing the attorney's correct address, telephone number and bar identification number." Local Rule 206(a) contemplates that only the first form of "appearance" defined in Local Rule 201(a), i.e., the filing by a defendant of a pleading as described in Rule 7(a), triggers the 15-day time frame.

[2] For example, a Local Rule 206 conference triggers the parties' responsibility under Fed. R. Civ. P. 26(a)(1) to provide "initial disclosures," including the identification of "individuals likely to have discoverable information relevant to disputed facts *alleged with particularity in the pleadings*." This obligation would be impossible to perform prior to the time when defendants are required to respond to the complaint because disputed facts will not have been "alleged with particularity in the pleadings."

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 1999 a true and correct copy of the foregoing PLAINTIFF'S LOCAL RULE 206(d) CERTIFICATION was served via first class, U.S. mail, postage prepaid, on the following:

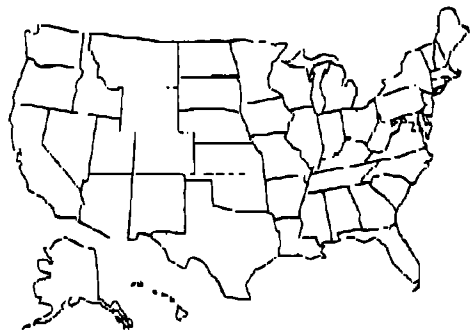
Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

Paul J. Orfanedes



CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: September 14, 1999

TO: SHELLI PETERSON

FAX NUMBER: (202) 456-7024

FROM: John R. Tyler
OFFICE NUMBER: (202) 514-2356
FAX NUMBERS: (202) 616-8470, 8202 or 8460

THERE ARE A TOTAL OF 6 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL

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NEED COMMENTS, IF ANY, AS SOON AS POSSIBLE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DRAFT

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

GOVERNMENT DEFENDANTS' REPLY IN SUPPORT OF THEIR OBJECTIONS TO PLAINTIFF'S LOCAL RULE 405 RELATED CASE DESIGNATION

Plaintiff, in his memorandum filed on September 3, 1999, argues that the above-captioned case and Alexander v. FBI, Civil Action No. 96-2123, are "inexplicably [sic] intertwined, and consequently 'related' under Local Rule 405(a)." Plaintiff's Mem. at 7. In support, plaintiff argues principally that he is a "key, material witness to Filegate" and also "a key witness to the Travelgate scandal, which, in turn, lead to the public revelation of Filegate." Id. at 3, 5. Plaintiff even goes on to say that this court should "retain" his lawsuit because it "has an inherent duty, if not an obligation, to protect Plaintiff as an important, material witness in a case pending before it." Id. at 7.

Plaintiff's histrionic accusation that he needs "protection" by the Court as a "material witness" in Alexander is highly objectionable for obvious reasons. Needless and baseless accusations such as this never assist any Court to address the issues before it. More to the point, when shorn of their inflammatory rhetoric and wild accusations, plaintiff's arguments do not support his contention that an exception should be made in this lawsuit under Local Rule 405 to the Court's policy that cases be randomly assigned.

In this regard, the government defendants in this case are admittedly not in a position to judge whether or not Mr. Sculimbrene might be a "material witness" in the Alexander case, as he contends. However, plaintiff's purported value as a witness in Alexander is entirely irrelevant to the issue before the Court. Even if it were assumed, arguendo, that plaintiff might have knowledge bearing on the specific matters at issue in that case, the fact remains that the separate claims that he brings on his own behalf in this case are wholly unrelated.

We are, quite frankly, at a loss to understand how plaintiff's handicap discrimination claim (Count 1) bears upon the Privacy Act claim and tort claims at issue in Alexander, which concern whether the "FBI improperly handed over to the White House hundreds of FBI files of former political appointees and government employees under the Reagan and Bush administrations." 971 F. Supp. 603, 605 (D.D.C. 1997). Just as clearly, plaintiff's civil rights and Bivens claims (Counts III and IV), which are also employment-related (he was allegedly injured in his job), are based on numerous discrete allegations which are wholly outside of, and have no bearing upon, what is at issue in Alexander, as set forth in the government defendants' objections to plaintiff's related case designation filed on August 20, 1999. Indeed, plaintiff does not dispute this as such, but posits instead that there are witnesses common to both cases. See Mem. at 7. Even if this were possibly true (although this is far from certain), the fact remains that the employment claims at issue in this case are separate and distinct from Alexander, are based on alleged events having no bearing on the issues in that case, and are brought against separate defendants.

For this reason, plaintiff ultimately rests on the proposition (Mem. at 7) that his case and Alexander are related because they both include Privacy Act claims. Mr. Sculimbrene, however, was not a Reagan or Bush Administration political appointee. As concerns plaintiff's own FBI background investigation materials, the fact that Mr. Sculimbrene at all times relevant to his complaint worked in the Clinton White House immediately distinguishes his Privacy Act claim from what is at issue in Alexander. See Alexander v. FBI, C.A. Nos. 96-2123, 97-1288, Memorandum and Order at 10 (D.D.C. April 16, 1999)(finding that testimony relating to the FBI background investigation files of current White House employees is irrelevant to plaintiffs' claims). Plaintiff otherwise refers in support of his Privacy Act claim to records that have nothing to do with the records at issue in Alexander. See Mem. at 7.

Perhaps what is most troubling about plaintiff's arguments in support of his related case designation is his representation that the Court in Alexander has "developed substantial expertise * * * [on] how government records were maintained and *misused* by the Clinton White House." Mem. at 7 (emphasis added). This suggests that plaintiff, upon presuming to know how the Court will ultimately rule in Alexander, seeks to manipulate the Local Rules for purposes of "forum shopping." Local Rule 405 allows for legitimately related cases to be assigned to the same Judge for the common-sense purpose of achieving judicial efficiency. The Rule does not exist so that a plaintiff can have a case assigned to a Judge whom he presumes will be prejudiced on his behalf. Any such presumption and consequent manipulation of the Rule degrades the judicial process and should not condoned.

For this reason, in addition to the grounds set forth in the government defendants' objections to plaintiff's Local Rule 405 designation, it is respectfully requested that this case be randomly assigned by the Calendar Committee in the ordinary fashion.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

WILMA A. LEWIS
United States Attorney

ANNE L. WEISMANN
(D.C. Bar No. 298190)
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ATTORNEYS FOR DEFENDANTS
RENO, QUINN, SHAPIRO, AND
THE EXECUTIVE OFFICE OF
THE PRESIDENT.

Date: September 14, 1999.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DRAFT

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

MEMORANDUM IN SUPPORT OF DEFENDANTS QUINN AND SHAPIRO'S MOTION TO DISMISS

PRELIMINARY STATEMENT

Plaintiff alleges in this lawsuit, inter alia, that former Counsel to the President Jack Quinn and former FBI General Counsel Howard Shapiro took various retaliatory actions against him relating to his duties as a FBI Special Agent assigned to the White House complex. Based on these allegations, plaintiff brings claims for money damages against defendants Quinn and Shapiro under 42 U.S.C. § 1985 and the first and fifth amendments.[1]

As established below, the civil rights and *Bivens* claims against Quinn and Shapiro are barred as a matter of law and must be dismissed for lack of subject matter jurisdiction. It is established law that the Civil Service Reform Act of 1978 ("CSRA"), Pub.L. 95-454, 92 Stat. 111 (codified in various sections in 5 U.S.C.), provides the exclusive relief available to federal employees for employment-related claims. Moreover,

[1] Plaintiff brings separate claims, not addressed here, against the FBI under the Rehabilitation Act and against the Executive Office of the President under the Privacy Act.

although the CSRA provides different remedies to different employees depending on an individual's employment status and the nature of the action being challenged, it is irrelevant that the remedies available to any particular individual might not provide complete relief or that Congress has chosen under the CSRA not to provide any remedy at all. It is enough, as in this case, that the matters complained of come within the CSRA's broad remedial scope. Because the remedies available to FBI employees are specifically prescribed under the CSRA, the Court is without jurisdiction to grant additional relief to plaintiff under the constitution or 42 U.S.C. § 1985.

BACKGROUND

1. Plaintiff's Allegations[2]

Plaintiff at all times relevant to his complaint was employed as a FBI Special Agent assigned to the FBI's "White House Liaison Office" where his duties included "interviewing White House executives and staff * * * requiring access to the White House [complex]." Complaint, ¶ 13.[3] In specific regard to his claims against defendants Quinn and Shapiro (Counts III and IV), plaintiff complains of retaliatory actions taken against him relating to the performance of his official duties at the White House beginning in 1993.

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[2] Defendants do not admit the validity of plaintiff's averments. However, for purposes of this motion, the allegations stated in the complaint can be assumed as true. [CITE].

[3] After suffering a severe head injury outside of work, plaintiff retired from the FBI in August 1996. Id., §§ 96, 139.

According to plaintiff's version of events, the White House publicly announced in May 1993 that the White House Travel Office staff were being fired for alleged financial improprieties and that the FBI would undertake a criminal investigation. Id. ¶ 27. Plaintiff alleges that two months prior to this announcement, in early March 1993, Assistant White House Counsel William Kennedy and others had questioned him about the background and political views of the Travel Office staff. Id. ¶ 17. It was plaintiff's opinion, shared with his FBI superior at the time, that the White House was "looking for an excuse to fire the White House Travel Office employees and that the FBI was 'used' to provide that excuse." Id. ¶ 19. It was furthermore plaintiff's opinion that, after the FBI's criminal investigation was announced, the Travel Office was not properly "secured" and that there were possibly "chain of custody issues." Id. ¶¶ 31-32. In addition, plaintiff subsequently appeared as a defense witness in the criminal trial of Billy Dale, former head of the Travel Office. Id. ¶ 60. According to plaintiff, his testimony "received substantial press coverage, much of which was unfavorable towards the White House [and] the FBI." Id. 61.

In addition to the above matters, plaintiff's claims against Quinn and Shapiro are based on allegations relating to the FBI files controversy. Plaintiff alleges that David Craig Livingstone and Anthony Marceca, assigned to the White House Office of Personnel Security, were responsible for obtaining FBI background investigation materials on "hundreds of former Reagan and Bush Administration appointees." Id. ¶ 103. Plaintiff states that he had been responsible for conducting Livingstone's own background investigation when he was hired at the White House. Id. ¶ 20. Plaintiff further represents that, in the course of this investigation, he was advised by Bernard Nussbaum, then Counsel to the President, that Livingstone had been recommended by Hilary Clinton. Id. ¶ 23. Plaintiff allegedly memorialized this information in a memorandum ("insert") which was placed in Livingstone's investigation file. Id.

Plaintiff subsequently gave an "unsworn interview" to Senate Judiciary Committee staff about, inter alia, the alleged connection between Livingstone and Hilary Clinton. Id. § 108. Plaintiff also "gave sworn testimony to U.S. House of Representatives investigators" in which he "again linked Livingstone's hiring to Hillary Rodham Clinton." Id. ¶ 115.

On or around the same day that he testified before the House Committee, plaintiff states that defendant Shapiro notified the White House of the "insert" in Livingstone's investigation file relating to Nussbaum's "statement linking Livingstone's hiring to Hillary Rodham Clinton." Id. § 116. The following morning, Shapiro and another FBI lawyer allegedly "dispatched" two FBI agents to interview plaintiff regarding this insert. Id. § 117. Plaintiff further alleges that he received anonymous telephone calls "warning him" that defendants Quinn and 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." Id. § 124.

Plaintiff additionally accuses Quinn of sending "a false and disparaging letter to FBI Director Louis J. Freeh wrongly accusing Plaintiff of falsifying his three-year old insert about Livingstone's hiring." Id. § 126. It is plaintiff's contention, based on "information and belief," that Shapiro and possibly others at the FBI participated in drafting the Quinn letter to Director Freeh. Id. § 127. Plaintiff also asserts that "Quinn, Shapiro, and anyone else who participated in [the] preparation of the letter obviously knew or had reason to know that they were accusing Plaintiff, albeit wrongly, of committing a criminal offense." Id. § 129.

Plaintiff lastly complains of statements made on television talk-shows by defendant Lanny Davis which allegedly "disparaged Plaintiff's credibility, and otherwise harmed Plaintiff."[4] Id. § 130. Plaintiff alleges, again based on "information and belief," that Davis either communicated with, or received background information from, Quinn and Shapiro to assist him on what to say about plaintiff when appearing on these television talk-shows. Id. §§ 135-36.[5]

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[4] Plaintiff's claims against defendant Davis relate to actions taken solely in his capacity as a private citizen and he is, accordingly, represented by private counsel in this action.

[5] Plaintiff alleges numerous other retaliatory actions that are not specifically attributed to defendants Quinn and Shapiro. These allegations include: (1) that he was subject to a random (continued...)

2. Plaintiff's Individual Claims Against Quinn and Shapiro

Pursuant to the above allegations, plaintiff brings civil rights claims (Count III) against Quinn and Shapiro (and defendant Davis) under 42 U.S.C. § 1985, contending: (1) that they "intentionally, maliciously and wrongly 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;" and (2) that they "intentionally, maliciously and wrongly 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." Complaint, §§ 155-56.

Plaintiff additionally brings *Bivens* claims (Count IV) against Quinn and Shapiro alleging: (1) that they violated 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; and (2) that they violated his fifth amendment rights "by wrongfully and maliciously causing damage to Plaintiff's good

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[5] (...continued) drug test (id. ¶ 55); (2) that he was taken out of consideration for the position as Inspector General of the Department of Veterans Affairs (id. ¶¶ 57, 64); (3) that he was subject to "repeated pranks" that "went unheeded" by FBI management (id. ¶ 63); (4) that he was subject to various internal investigations by the FBI's Office of Professional Responsibility, including one directed to the alleged misuse of his government parking pass (id. ¶ 81, 86); (5) that he was subject to an allegedly unnecessary five-year security background reinvestigation (id. ¶ 102); and (6) that his permanent White House pass was canceled (id. ¶ 113).

name, reputation, honor and integrity without due process of law." Complaint, §§ 159-60.

3. The CSRA's Statutory Framework

The CSRA established an integrated and comprehensive scheme to promote professionalism and efficiency in the federal work force while protecting the rights of federal employees. See S. Rep. No. 95-969 at 2-3, reprinted in, 1978 U.S. Code Cong. & Admin. News, 2723-26 (1978); Lindahl v. OPM, 470 U.S. 768, 773 (1985). Pursuant to this scheme, the CSRA provides federal employees with a number of substantive and procedural rights, including the right in certain cases to administrative review of adverse personnel actions by the Merit Systems Protection Board ("MSPB") and limited judicial review.[6]

The CSRA additionally authorizes the Office of Special Counsel to investigate and protect federal employees from prohibited personnel practices. See 5 U.S.C. § 1214 ("Investigation of prohibited personnel actions; corrective actions"); 5 U.S.C. § 2302 (definitions of "Prohibited personnel practices"). Included within these provisions is a prohibition

[6] See 5 U.S.C. § 7701(a)("An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation"). See Carducci v. Regan, 714 F.2d 171, 175 (D.C. Cir. 1983)(setting forth generally the level of review available to employees relating to different classes of personnel actions). See also, the Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25 (1982) (by which Congress created a new Article III court — the United States Court of Appeals for the Federal Circuit — and vested it with exclusive jurisdiction over final orders and decisions of the MSPB). See 5 U.S.C. § 7703(b)(1); 28 U.S.C. § 1295(a)(9) (1988).

against violating the "merit system principles" set forth in the CSRA that 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). The merit system principles are broadly defined and include the requirement that "[a]ll employees and applicants for employment 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). Employees also receive protection "against reprisal for the lawful disclosure of information which the employees reasonably believe evidences" the violation "any law, rule, or regulation," or mismanagement, an abuse of authority, or "a substantial and specific danger to public health or safety." 5 U.S.C. § 2301(b)(9).

Different employees are entitled to different protections under the CSRA depending generally on their employment status and the type of personnel action at issue.[3] FBI employees serve in the excepted service. 28 U.S.C. § 536. While excepted service

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[3] Under the CSRA, federal employees are divided into three main classifications. "Senior Executive Service" employees occupy high-level positions in the Executive Branch but do not require appointment by the President or confirmation by the Senate. 5 U.S.C. § 3132(a)(2). "Competitive service" employees consist of all other employees for whom appointment by the President and confirmation by the Senate is not required and who are not specifically excepted from the competitive service by statute. Id. § 2102(a). The "'excepted service' consists of those civil service positions which are not in the competitive service or the Senior Executive Service." Id. § 2103(a).

employees with sufficient tenure are generally eligible to invoke MSPB appeal rights relating to adverse personnel actions, 5 U.S.C. § 7511, Congress has expressly provided that non-preference eligible employees of the FBI do not have these rights. Id. § 7511(b)(8)(subchapter providing MSPB appeal rights "does not apply to any employee * * * whose position is within * * * the Federal Bureau of Investigation").

In addition, although excepted service employees are generally eligible to invoke the Office of Special Counsel procedures relating to prohibited personnel practices, Id. § 2302(a)(2)(B), Congress has expressly denied this remedy to FBI excepted service employees. Id. § 2302(a)(2)(C)(ii). Instead, in a provision relating solely to the FBI, Congress has provided a single prohibited practice; reprisal for whistle-blowing. This provision authorizes the Attorney General to prescribe regulations to prevent this prohibited form of personnel practice.

ARGUMENT

BECAUSE THE CSRA PROVIDES PLAINTIFF HIS EXCLUSIVE REMEDIES FOR EMPLOYMENT RELATED CLAIMS, HIS *BIVENS* AND CIVIL RIGHTS CLAIMS BROUGHT AGAINST DEFENDANTS QUINN AND SHAPIRO SHOULD BE DISMISSED

The CSRA was enacted to "replace the haphazard arrangements for administrative and judicial review of personnel action[s]." United States v. Fausto, 484 U.S. 439, 444 (1988). The Supreme Court describes the CSRA as "an integrated scheme of administration and judicial review, designed to balance the legitimate interests of the various categories of federal employees with the needs of sound and efficient administration." Id. at 445.

In recognition of the balance struck by this integrated statutory scheme, the Supreme Court in Bush v. Lucus, 462 U.S. 367 (1983), held that it would be inappropriate to supplement it by the creation of a *Bivens* remedy to address the employment claims at issue. As defined by the Supreme Court, the question before it was "whether an elaborate remedial system that has been constructed step by step, with careful attention to conflicting policy considerations, should be augmented by the creation of a new judicial remedy for the constitutional violation at issue." Id. at 388. Congress, the Court determined, is in a far better position to evaluate appropriate remedies for federal employees because it not only has "developed considerable familiarity with balancing governmental efficiency and the rights of employees, but it also may inform itself through factfinding procedures such as hearings that are not available to the courts." Id. at 389. See also Schweiker v. Chilicky, 487 U.S. 412 (1988)(in view of the existence of a comprehensive statutory scheme governing social security disability claims, Congress is in a better position to determine whether the public's interest would be served by granting additional remedies outside of this scheme).

Pursuant to these principles, federal employees cannot obtain *Bivens* remedies for employment-related injuries. Spagnola v. Mathis, 970 F.2d 223 (D.D.C. 1988)(en banc). These same principles also bar federal employees from bringing employment-related claims under pre-existing civil rights statutes, such as 42 U.S.C. 1985. Spagnola v. Mathis, 809 F.2d 16, 28 (D.C. Cir. 1987)("Spagnola I"), reh'g en banc, 970 F.2d 223 (D.C. Cir. 1988)(the CSRA forecloses the resort by federal employees to pre-existing statutory actions relating to personnel claims). See also Suzal v. Director, U.S. Information Agency, 32 F.3d 574, 585-86 (D.C. Cir. 1994)(CSRA "implicitly repealed prior laws to the extent that they conferred implied rights to judicial review of personnel actions"); Mittleman v. U.S. Treasury, 773 F. Supp. 442, 229 (D.D.C. 1991) ("Our Court of Appeals has held that the CSRA is the exclusive remedy for aggrieved federal employees and that, therefore, they are precluded from resorting to § 1985(1)").

Moreover, when applying the above holdings, it is irrelevant that the CSRA remedies available to a particular plaintiff are inadequate. It is established law in this Circuit (and all others) "that it is the comprehensiveness of the statutory scheme involved, not the 'adequacy' of specific remedies extended thereunder, that counsels judicial abstention." Spagnola, 859 F.2d at 227; id. at 228 ("a case-by-case examination of the particular administrative remedies available to a given plaintiff [is] unnecessary"). This is true even where Congress has chosen under the CSRA to deny remedies entirely. Id. ("the preclusive effect of *Bush* extends even to those claimants within the system for whom the CSRA provides 'no remedy whatsoever'")(citation omitted). See Mittleman v. U.S. Treasury, supra, 773 F. Supp. at

449 ("the fact that Congress explicitly denied a remedy to Schedule A employees shows an intention to deny them a statutory or constitutional remedy for damages"); McGregor v. Greer, 748 F. Supp. 881, 884 (D.D.C. 1990)("Congress's explicit denial of a remedy to Schedule C employees shows an intention to deny them court access to challenge dismissals"); Information Systems & Network Corp. v. Health & Human Services, 970 F. Supp. 1, 10 (D.D.C. 1997)(where a comprehensive remedial scheme is in place and the omission of damage remedies is not inadvertent, "even if Congress provided 'no remedy whatsoever,' this is enough to preclude a *Bivens* action")(citation omitted).[8]

In regard to plaintiff's claims, Congress did not "inadvertently" omit remedies under the CSRA for FBI excepted-service personnel.[9] In recognition of this obvious fact, the

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[8] See also, Lee v. Hughes, 145 F.3d 1272, 1275 (11th Cir. 1998) ("the CSRA precludes a *Bivens* remedy in this case notwithstanding the fact that the CSRA does not provide administrative or judicial review of the adverse personnel action"); Jones v. TVA, 948 F.2d 258, 264 (6th Cir. 1991)("In the field of federal employment, even if no remedy at all has been provided by the CSRA, courts will not create a *Bivens* remedy"); Saul v. United States, 928 F.2d 829, 840 (9th Cir. 1991)("the CSRA precludes even those *Bivens* claims for which the act prescribes no alternative remedy"); Volk v. Hobson, 866 F.2d 1398, 1403 (Fed. Cir.), cert. denied, 490 U.S. 1092 (1989)(no *Bivens* remedy even if employee lacks "access to all of the procedures and remedies of the CSRA").

[9] To the contrary, pursuant to the balance struck by Congress under the CSRA, such remedies have been expressly limited. See 5 U.S.C. § 2302(a)(2)(c)(for purposes of applying the CSRA's section relating to "prohibited personnel practices," the term executive "agency" does not include the FBI); 5 U.S.C. § 7511(b)(8)(the CSRA's provisions relating to "adverse actions" do not apply to the FBI).

courts have declined to extend remedies to FBI personnel outside of those permitted under the CSRA. Tahy v. United States, 1999 WL 651388 (10th Cir. Aug. 26, 1999)(in affirming the dismissal of a *Bivens* claim brought by a former FBI Special Agent, the court held that "we will not create a Bivens remedy in a federal employment action, even if the CSRA provides the employee with no remedy at all"). See also, Feit v. Ward, 886 F.2d 848, 855-56 (7th Cir. 1989)(overturning a prior decision which had extended *Bivens* remedies to a FBI Special Agent as being contrary to Supreme Court precedent); Bolivar v. Director of the FBI, 846 F. Supp. 163 (D. Puerto Rico 1994) (dismissing *Bivens* claims brought by FBI employees).

Just as clearly, the specific claims at issue in this case against defendants Quinn and Shapiro are employment-related and within the CSRA's broad remedial scope. See Spagnola, 859 F.2d at 229 ("there can be little doubt as to whether Congress has brought claims like those advanced by [appellants] within CSRA's ambit"); Lombardi v. Small Business Admin., 889 F.2d 959, 961 (10th Cir. 1989)("[Plaintiff's] position as a federal employee is central to his complaints, and it is this employment relationship that the Supreme Court emphasized in *Bush* and its progeny, rather than the nature of the specific violation involved").

Thus, as set forth above, plaintiff's claims against Quinn and Shapiro all relate to and arise from the performance of his duties as a FBI Special Agent assigned to the White House, including his observations of the White House Travel Office affair (e.g., his belief that the criminal investigation of that office was an "excuse" to fire Travel Office staff, and that there were "chain of custody" issues relating to that investigation), and his background investigation of David Craig Livingstone, who plaintiff believes was "linked" to Hillary Clinton. Plaintiff apparently contends that his "linking" of Livingstone to Hillary Clinton, and his subsequent testimony at the trial of Billy Dale and his statements to congressional staff relating to these various matters, purportedly embarrassed the FBI and the White House, thereby giving Quinn and Shapiro motive to retaliate against him. According to plaintiff, Quinn (with the alleged assistance of Shapiro) defamed him in his letter to FBI Director Freeh, and both Quinn and Shapiro (and possibly others) allegedly assisted defendant Lanny Davis in further defaming him on various television talk-shows.

The merit system principles set forth under the CSRA encompass these allegations. These principles are broadly defined to include, inter alia, the injunction that federal employees "should receive fair and equitable treatment in all aspects of personnel management * * * and with proper regard for their privacy and constitutional rights." Id. § 2301(b)(2). In essence, plaintiff complains of unfair treatment and injury relating to the execution of his official duties (see Count III, Complaint § 155: alleging a conspiracy to injure him "on account of his lawful discharge of the duties of his office"), and a consequent violation of his constitutional rights (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"). See Roth v. United States, supra, 952 F.2d at 614 (the merit system principles require the government "to treat its employees fairly and shield them from capricious actions, personal vendettas, favoritism, and the like").

The merit system principles also protect employees from "reprisal for the lawful disclosure of information which the employees reasonably believe evidences" the violation of any law, rule, or regulation. Id. § 2301(b)(9). This principle encompasses plaintiff's additional claims that his civil rights and first amendment speech rights were allegedly violated for "having provided testimony in a court of law of the United States" (Complaint § 156), and for testifying "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 (Complaint § 159).[10]

The fact that plaintiff is denied specific relief under the CSRA relating to any of these matters is irrelevant to the Court's analysis, as established above. E.g., Spagnola, 859 F.2d at 227 ("it is the comprehensiveness of the statutory scheme

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[10] As set forth in footnote 5, supra, plaintiff alleges numerous other retaliatory actions that are not specifically attributed to either Quinn or Shapiro. Even if it were plaintiff's contention that these defendants were somehow responsible for these alleged retaliatory acts, they are unquestionably employment-related and within the CSRA's broad scope.

involved, not the 'adequacy' of specific remedies extended thereunder, that counsels judicial abstention"). It "is not for the judiciary to question whether Congress' 'response [under the CSRA was] the best response, [for] Congress is the body charged with making the inevitable compromises required in the design of a massive and complex * * * program.'" Id. at 228 (citation omitted). Pursuant to these principles, plaintiff is barred as a matter of law from going forward on his claims under § 1985 and the constitution.

CONCLUSION

For the foregoing reasons, defendants Quinn and Shapiro's motion to dismiss plaintiff's damage claims against them for lack of subject matter jurisdiction should be granted.

Respectfully submitted,

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Acting Assistant Attorney General

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United States Attorney

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ATTORNEYS FOR DEFENDANTS
RENO, QUINN, SHAPIRO, AND
THE EXECUTIVE OFFICE OF
THE PRESIDENT.

Date: September 27, 1999.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: All EOP Staff

FROM: Beth Nolan
Counsel to the President

SUBJECT: REQUEST FOR DOCUMENTS

M. Dennis Sculimbrene has filed a lawsuit alleging in part that the White House maintains files on him in violation of the Privacy Act. To allow us to respond to these allegations, please conduct a thorough and complete search of all your records -- whether in hard copy, computer form, or any other form -- for any of the following material:

> **Any and all documents relating or pertaining to M. Dennis Sculimbrene. To the extent that you have responsive documents, please provide a copy of the file folders or file jackets that the documents were contained in as well as the documents.**

Every employee is responsible for searching his or her own files and records to ensure a comprehensive search. Each office head or Assistant to the President must certify that his or her staff has done a complete and thorough search.

In addition, if you believe that files from your office that have been sent to the Office of Records Management may contain responsive information, please advise us so that we may ensure that all responsive documents have been located.

All materials must be provided to Shelli Peterson (OEOB Room 482) by noon on Thursday, September 30, 1999. If you have any questions, Shelli can be reached at 456-7804.

PETERSON, MICHELLE M.
WHITE HOUSE OFFICE

GENERAL COUNSEL 482

OEOB

AO 440 (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.

CASE NUMBER:

Janet Reno, et al.,
Defendants.

CASE NUMBER 1:99CV02010

JUDGE: Royce C. Lamberth

DECK TYPE: Civil General

DATE STAMP: 07/26/1999

TO: (Name and address of defendant)

Lanny J. Davis
12517 Bracken Hill Lane
Rockville, Maryland 20854

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.

NANCY MAYER-WHITTINGTON
CLERK

JUL 26 1999
DATE

Maureen Higgins
(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me [1] *	DATE July 28,1 999 @ 9:30 pm
NAME OF SERVER (PRINT) Marshall F. Parsons, Jr.	TITLE Private Process Server

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: Carolyn Davis, wife, 12517 Bracken Hill Lane, Rockville, Maryland 20854

☐ Returned unexecuted: ______

☐ Other *(specify)*: ______

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

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 August 2, 1999
Date

Signature of Server

CAPITOL PROCESS SERVICES
1827 18th Street, N.W.
Washington D.C. 20009
(202) 667-0050
Address of Server

* Notice of Right to Consent to Trial Before a United States Magistrate Judge

[1] As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Judicial Watch™

VIA HAND DELIVERY

August 11, 1999

Kathleen A. Behan, Esq.
ARNOLD & PORTER
555 12th Street, N.W.
Washington, DC 20004-1202

Re: M. Dennis Sculimbrene v. Reno, et al., Case No. 1:99-cv-2010 (RCL) (D. District of Columbia)

Dear Ms. Behan:

Pursuant to our conversation yesterday, August 10,1999, we understand that you have agreed to accept service of process on behalf of Jack Quinn in the above-captioned matter. Accordingly, we are enclosing a Summons and a copy of the Complaint, and will consider service to have been effected as of today's date, August 11, 1999.

Thank you for your cooperation in this matter.

Sincerely,

JUDICIAL WATCH, INC.

Paul J. Orfanedes

Paul J. Orfanedes

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 1999, a true and correct copy of the foregoing NOTICE OF FILING PROOF OF SERVICE was served via first-class mail, postage prepaid, on the following:

The U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Wilma Lewis, Esq.
U.S. Attorney for the District of Columbia
555 - 4th Street, N.W.
Washington, DC 20001

Kathleen A. Behan, Esq.
Arnold & Porter
555 - 12th Street, N.W.
Washington, DC 20004-1202

Howard Shapiro
8303 Bryant Drive
Bethesda, MD 20817

Timothy B. Mills, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037

Robert J. Corry

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

NOTICE OF FILING PROOF OF SERVICE

Plaintiff, M. Dennis Sculimbrene, by counsel and pursuant to Rule 4(l) of the Federal Rules of Civil Procedure, respectfully submits the attached declaration demonstrating that service of process has been effected on all defendants. *See* Exhibit 1.

Respectfully submitted,

Larry Klayman, Esq.
DC Bar No. 334581
Paul J. Orfanedes, Esq.
DC Bar No. 429716
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 725
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT OF PROOF OF SERVICE

I, Paul J. Orfanedes, hereby declare and say:

1. I am over the age of eighteen and am not a party to this action.

2. I am an attorney employed by Judicial Watch, Inc., counsel to Plaintiff in the above-captioned matter. I have personal knowledge of the facts set forth below.

3. I caused summonses and copies of the complaint in the above-captioned matter to be sent to the Executive Office of the President, Attorney General Janet Reno, and U.S. Attorney Wilma Lewis via certified mail, return receipt requested, pursuant to Rule 4(i).

4. I caused summonses and copies of the complaint to be served on Jack Quinn, Howard Shapiro, and Lanny J. Davis via private process server. Mr. Shapiro and Mr. Davis were personally served. Mr. Quinn's attorney accepted service on behalf of her client.

5. As reflected by the attached true and correct copies of return receipts received at Judicial Watch, Inc. by mail, declarations of process servers, and a confirming letter to counsel, service was effected on the Executive Office of the President, Attorney General Janet Reno, U.S. Attorney Wilma Lewis, Jack Quinn, Howard Shapiro, and Lanny J. Davis on the following dates:

U.S. Attorney Wilma Lewis	July 28, 1999
Lanny J. Davis	July 28, 1999
Executive Office of the President	July 29, 1999
Attorney General Janet Reno	July 29, 1999
Howard Shapiro	July 31, 1999
Jack Quinn	August 11, 1999

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 12, 1999 in Washington, D.C.

Paul J. Orfanedes

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
EXECUTIVE OFFICE OF THE PRESIDENT
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

4a. Article Number
Z 009 914 071

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
JUL 29 1999

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X White House Mail Room
Washington, D.C. 20502

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
The Honorable Janet Reno
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

4a. Article Number
Z 009 914 072

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Wilma Lewis, Esq.
United States Attorney for the District of Columbia
555 4th Street, NW
Washington, DC 20001

4a. Article Number
Z 009 914 073

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

JOINT LOCAL RULE 206(d) CASE MANAGEMENT REPORT

Plaintiff and defendants, by counsel and pursuant to Local Rule 206(d), respectfully submit this Joint Local Rule 206(d) Case Management Report. This report is being submitted in direct accordance with the express language of Local Rule 206(d) requiring the parties to file a statement with the Court describing all agreements reached and providing the positions of each party on any matters as to which they disagree.

1. **Case Tracking Category; Whether the Case is Likely to be Disposed of by Dispositive Motion.**

The parties agree that this matter should be placed on the standard track.

Defendants: Defendants Quinn, Shapiro and Davis submit that plaintiff's claims against them are likely to be resolved by dispositive motions which have been filed and are pending decision by the Court. It is further anticipated that the Rehabilitation Act claim brought against the Attorney General and the Privacy Act claim brought against the Executive Office of the President ("EOP") also can be disposed of by motion.

Doc. 488821

2. Date for Joinder of Other Parties; Amendments to Pleadings; Narrowing of Factual or Legal Issues.

The parties agree that the factual and legal issues raised in plaintiff's complaint cannot be narrowed (by agreement of the parties) at this time.

Defendants: Defendants do not expect any additional parties to be joined. Defendants reserve the right to object should plaintiff move to amend his Complaint.

3. Assignment to Magistrate Judge.

The parties agree that this case should not be assigned to a Magistrate Judge.

4. Realistic Possibility of Settlement.

The parties agree that there is no realistic possibility of settlement at this time, but remain open to engaging in good faith settlement negotiations.

5. Alternative Dispute Resolution.

The parties agree that it is unlikely that this case would benefit from alternative dispute resolution procedures or some other form of alternative dispute resolution.

6. Summary Judgment Motions and/or Motions to Dismiss; Dates for Filing Dispositive Motions and Cross-Motions, Oppositions and Replies.

[Insert plaintiff's position.]

Defendants: Defendants Quinn and Shapiro's dispositive motion, filed on September 27, 1999, has been fully briefed and is pending for decision by the Court. Defendant Davis filed his dispositive motion on October 27, 1999. Briefing should be concluded on defendant Davis' motion by mid-December 1999. Defendant Davis submits that thereafter the hearing on his dispositive motion should be calendared for a date that is as soon practicable.

The Attorney General and the EOP request that they be given until on or before Tuesday, February 29, 2000, within which to file their dispositive motions relating to plaintiff's

Rehabilitation Act and Privacy Act claims, and that these motions be briefed in accordance with the Court's Local Rules.

7. **Initial Disclosures.**

[Insert plaintiff's position.]

Defendants: The Attorney General and the EOP do not believe that there is any need to dispense with initial disclosures in regard to the respective claims brought against them under the Rehabilitation Act and the Privacy Act.

Defendants Quinn and Shapiro object to providing initial disclosures under Rule 26(a)(1) at this time. The dispositive motion brought by these defendants is currently pending for decision by the Court. Even if this motion were denied, defendants Quinn and Shapiro anticipate that they will plead the defense of qualified immunity in answer to plaintiff's complaint. These defendants also anticipate that they will thereafter move to dismiss plaintiff's claims against them on the ground that they are time-barred in whole or in part, and because plaintiff otherwise fails to state claims on which relief can be granted. Pursuant to the principles of qualified immunity, defendants Quinn and Shapiro submit that they are entitled to protection against all discovery at least until the above dispositive motions are adjudicated.

Defendant Davis submits that the timing for initial disclosures, as established in Local Rule 207(a), should be modified in light of the current procedural posture of the claims asserted against him. Federal Rule 26(a)(1) requires the parties to provide limited initial disclosures regarding "disputed facts alleged with particularity in the pleadings." Fed. R. Civ. P. 26(a)(1)(A) and (B). As defendant Davis filed a dispositive motion and has not filed an answer to plaintiff's Complaint, the parties are unable at this time to identify with any particularity the factual allegations which may be in dispute. Since it would be premature to exchange initial disclosures pursuant to Rule 26 before defendant Davis files an answer, the Court's scheduling order should provide that the parties make initial disclosures either 10 days after entry of the scheduling order or 10 days after defendant Davis files an answer, whichever occurs later.

8. <u>Discovery.</u>

<u>[Insert plaintiff's position.]</u>

<u>Defendants</u>: The Attorney General submits that plaintiff's Rehabilitation Act claim can be dismissed as a matter of law pursuant to the dispositive motion to be filed on or before February 29, 2000, and that no discovery is appropriate or necessary pending the adjudication of that motion. The EOP submits that plaintiff's Privacy Act claim can also be disposed of by motion. Discovery, if any, relating to this motion should be strictly limited to the issue whether the

in a system of records
EOP maintains records about plaintiff

the Privacy Act applies to any of the documents within the EOP that might pertain to plaintiff.

within the meaning of the Privacy Act

If, after the adjudication of the government defendants' dispositive motions, any discovery is deemed appropriate, such discovery, other than the depositions of experts, should be completed within 90 days. The government defendants further submit that there is no reason for the Court to depart from the presumptive limits on the number of interrogatories (25 by each party) and depositions (5 by each side) prescribed by Local Rule 26.2(b). The government defendants also reserve the right to move for a protective order limiting the duration of depositions.

For the reasons stated under item 7 above, defendants Quinn and Shapiro submit that no discovery is appropriate relating to the claims brought against them at least until after all initial dispositive issues have been adjudicated. If any discovery is ever deemed appropriate relating to the claims against Quinn and Shapiro, it should be strictly limited, by entry of an appropriate protective order, to the precise issues raised in plaintiff's complaint.

Defendant Davis submits that discovery should not proceed until the Court decides all pending dispositive motions as to defendants Davis, Quinn and Shapiro. Ruling on dispositive motions prior to proceeding with discovery is appropriate in this case, particularly with regard to defendant Davis' motion to dismiss, which is based in part on defendant Davis' exercise of his First Amendment rights. The D.C. Circuit has recognized that summary procedures are essential to protect persons from incurring the substantial cost of defending libel suits, which would discourage the full and free exercise of First Amendment rights. Washington Post Co. v. Keogh, 365 F. 965, 968 (D.C. Circuit 1966).

If the Court does permit discovery to proceed prior to deciding the pending dispositive motions by defendants Davis, Quinn and Shapiro, defendant Davis submits that any discovery in this case should be in accord with the presumptive limits on interrogatories and depositions for Standard Track cases, as established by Local Rule 207(b). Further, defendant Davis intends to seek an appropriate protective order limiting the scope and extent of discovery that may be conducted.

9. Exchange of Expert Witness Reports.

The parties agree that the requirements of Fed. R. Civ. P. 26(a)(2) should not be modified. The parties agree that any depositions of any expert witness should be completed before the close of discovery.

10. Class Actions.

Not Applicable.

11. Bifurcation of Discovery and/or Trial.

The parties agree that discovery should not be managed in phases.

Defendant Davis: Defendant Davis anticipates that this case will be resolved by dispositive motion. However, defendant Davis submits that any trial in this matter should be bifurcated by separately trying Count III of the Complaint, which is the only cause of action plaintiff alleges against defendant Davis. If the prospective trial is not bifurcated, it is likely that a single trial will result in confusion of the issues to be decided by the trier of fact, as well as substantial prejudice to defendant Davis. Defendant Davis submits, however, that any decision whether to bifurcate the trial is not yet ripe, as the Court's decision on dispositive motions and disposition of other pretrial matters most likely will impact on the manner in which bifurcation must be made. Therefore, this Court should reserve the decision to bifurcate the trial until a motion to bifurcate is brought.

12. **Date for Pretrial Conference.** The parties agree that a pretrial conference should be held not less than two (2) months after the close of discovery.

13. **Firm Trial Date.**

The parties agree that a firm trial date should be set at the pretrial conference.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,

Plaintiff,

v.

JANET RENO, et al.,

Defendants.

Civil Act. No. 1:99CV02010 (RCL)

[DEFENDANTS' PROPOSED] SCHEDULING ORDER

Upon consideration of the Joint Local Rule 206(d) Case Management Report and the entire record herein, it is hereby ordered that:

1. This matter shall be placed on the Court's Standard Track.

2. An initial status conference shall be held on ________________ at ______ a.m./p.m.

3. Initial disclosures pursuant to Local Rule 207(a) and Fed. R. Civ. P. 26(a)(1) shall be exchanged among plaintiff, defendant Reno and defendant Executive Office of the President (EOP) within ten (10) days after the entry of this Order. Further Local Rule 207(a) and Fed. R. Civ. P. 26(a)(1) disclosures as to all claims asserted against defendant Davis shall be exchanged between plaintiff and defendant Davis within ten (10) days after defendant Davis files an answer or the date of entry of this Order, whichever occurs later. If defendant Davis files an answer which disputes facts alleged in the pleadings which were not disputed by defendant Reno or defendant EOP, plaintiff shall make a supplemental initial disclosure as to the additional disputed facts. No initial disclosures shall be made by defendants Quinn and Shapiro except by subsequent order of the Court.

4. Discovery beyond the initial disclosure shall be stayed pending the Court's decision on any pending dispositive motions filed prior to the date of this Order.

Doc. 487204

5. Provided that this case is not resolved by the Court's decisions on pending dispositive motions, discovery shall commence after the Court's decides all dispositive motions filed prior to the date of this Order. Discovery shall be limited in accordance with Local Rule 207(b) for Standard Track cases and shall be completed within ninety (90) days of the date that the Court allows plaintiff to commence discovery beyond the initial disclosures.

6. A pretrial conference shall be held on ______ ____________ ____ at ______ a.m./p.m.

SO ORDERED.

____
United States District Judge

Dated: ______________

Doc. 487204

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE, Plaintiff, vs. JANET RENO, THE EXECUTIVE OFFICE OF THE PRESIDENT, JACK QUINN, HOWARD SHAPIRO, LANNY J. DAVIS and JOHN AND JANE DOES NOS. 1-5, Defendants.	Case No. 1:99-cv-2010 (RCL)

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT EXECUTIVE OFFICE OF THE PRESIDENT

Plaintiff, M. Dennis Sculimbrene, by counsel and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, hereby requests that Defendant Executive Office of the President answer the following interrogatories within 30 days of service hereof. Answers should be served upon Plaintiff's counsel, Judicial Watch, Inc. at 501 School Street, S.W., Suite 700, Washington, D.C. 20024.

INSTRUCTIONS

A. In each of your answers to these Interrogatories, you are requested to provide not only such information as is in your possession, but also all information as is reasonably available, whether or not it is in your possession. In the event you are able to provide only part of the information called for by any particular interrogatory, provide all of the information you are able to provide and state the reason for your inability to state the remainder.

B. If you object to, or otherwise decline to answer, any portion of an interrogatory, please provide all information called for in that portion of the interrogatory to which you do not object, or to which you do not decline to answer. If you object to an interrogatory on the ground that it is too broad (*i.e.*, that it calls both for information which is relevant to the subject matter of the action and for information which is not relevant), please provide such information as you concede to be relevant. If you object to an interrogatory on the ground that it would constitute an undue burden to provide an answer, please provide such requested information as can be supplied without undertaking such undue burden. For those portions of an Interrogatory to which you object or otherwise decline to answer, state the reason for such objection or declination.

C. For purposes of these interrogatories, the relevant time period, unless otherwise stated, shall be from December 1985 through the present.

D. These interrogatories are continuing in nature and require you to file timely supplementation of responses in accordance with Fed. R. Civ. P. 26(e).

DEFINITIONS

The following words or terms shall be deemed to mean the following:

1. The terms "document" or "documents" means the original (or, when the original is not in your possession, custody, or control, a duplicate copy of the original), and any non identical copy (*e.g.*, different from the original because of attachments, notes, changes, or markings) of all written, printed, typed, recorded, or visually or aurally reproduced material of any kind, all graphic materials and data compilations from which information can be obtained, all materials using other means of preserving thought or expression, and all tangible things from which information can be obtained, processed or transcribed, prepared by any person, whether or not privileged, including

without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, drawings, sketches, forms, records, communications, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, press releases, and any and all drafts, alterations, modifications, changes and amendments of any of the foregoing, and any and all devices used for holding documents, including without limitation all file folders, file binders, file wrappers, file labels, file sleeves, file jackets, envelopes, and portfolios, and any and all aural and video records, recordings, and representations of any kind, including without limitation all photographs, microfiche, microfilm, videotapes, motion pictures, and electronic, magnetic, mechanical and electronic records or representations of any kind, electronic mail ("e-mail"), meaning any electronically transmitted graphic or text communication created upon and transmitted or received by computer or other electronic device, including both records managed e mail and e-mail non records managed e-mail, which said non records managed e-mail is sometimes known or referred to as "mail 2".

3. "EOP" means all offices, agencies, divisions, branches or organizational units of the Executive Office of the President,

4. "The White House" means the residence and business offices of the President of the United States and his spouse, the First Lady, including but not limited to all related offices, agencies, divisions, branches, bureaus, commissions and organizational units, however denominated.

5. The terms "concerning" and/or "relating to" means affecting, bearing upon, comprising, concerning, constituting, containing, dealing with, embodying, embracing, encompassing,

entailing, evidencing, germane to, identifying, implicating, including, incorporating, involving, pertaining to, regarding, relating to, referring to, reflecting, in any manner.

6. The term "describe" means fully and completely state, explain, illustrate, characterize, define, delineate, recount, detail, designate, expound, elucidate or recapitulate.

7. The term "identify" means designate, specify, name, pinpoint, relate, or relate.

8. The terms "and" and "or" shall be construed conjunctively and disjunctively, as necessary, to make the document request inclusive rather than exclusive.

INTERROGATORIES

INTERROGATORY NO. 1:

For each document produced in response to Plaintiff's First Set of Requests for Production of Documents to Defendant Executive Office of the President or withheld under claim of privilege or exemption, describe how the document was maintained, including the office and file folder in which the document was located and the person(s) responsible for maintaining the document.

ANSWER:

INTERROGATORY NO. 2:

For each document produced in response to Plaintiff's First Set of Requests for Production of Documents to Defendant Executive Office of the President or withheld under claim of privilege or exemption, identify each person, both inside and outside the White House, to whom the document was disclosed, disseminated, distributed, revealed or otherwise shown, including: (1) the date the document was disclosed, disseminated, distributed, revealed or otherwise shown; (2) the identity(ies) of the person(s) responsible for disclosing, disseminating, distributing, revealing or otherwise showing the document; (3) the title of the person(s) to whom the document was disclosed, disseminated, distributed, revealing or otherwise shown; and (4) the purpose of disclosing disseminating, distributing, revealing or otherwise showing the document.

ANSWER

JUDICIAL WATCH, INC.

Larry Klayman, Esq.
D.C. Bar No.
Paul J. Ortonedes, Esq
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, D.C. 20024
(202) 646-5172

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 1999 a true and correct copy of the foregoing PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT EXECUTIVE OFFICE OF THE PRESIDENT was served via first class, U.S. mail, postage prepaid, on the following:

Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
T. Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

Paul J. Orfanedes

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE, Plaintiff, vs. JANET RENO, THE EXECUTIVE OFFICE OF THE PRESIDENT, JACK QUINN, HOWARD SHAPIRO, LANNY J. DAVIS and JOHN AND JANE DOES NOS. 1-5, Defendants.	Case No. 1:99-cv-2010 (RCL)

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT EXECUTIVE OFFICE OF THE PRESIDENT

Plaintiff, M. Dennis Sculimbrene, by counsel and pursuant to Rules 26 and 34of the Federal Rules of Civil Procedure, hereby requests that Defendant Executive Office of the President produce for inspection and copying the documents described below within 30 days of service hereof, at the offices of Judicial Watch, Inc., attorney for the Plaintiff, 501 School Street, S.W., Suite 700, Washington, D.C. 20024.

INSTRUCTIONS

A. In producing the documents requested herein, produce the original, in full, without abridgment, abbreviation or expurgation of any sort, in their original file folders, if any. If the original of a document is not in your possession, custody, or control, produce a carbon or other identical copy of the original document. Also, produce any non-identical copies, *e.g.*, copies different from the original because of attachments, notes, changes, or markings.

B. Documents or items produced in response to a request must be organized and labeled to correspond to each request.

C. If any document responsive to a document request is withheld under a claim of privilege or attorney-work product, or on any other ground for any reason, furnish a list of such documents in accordance with Instruction B above, and specify all information required by Fed.R.Civ.P. 26(b)(5), including but not limited to: (a) preparer(s); (b) sender(s); (c) addressee(s); (d) recipient(s); (e) date; (f) type of document; (g) subject matter; (k) all individuals to whom distributed, shown or explained, and with whom discussed; (l) present custodian; and (m) factual and legal basis for the claimed privilege, or specific statutory authority that provides the basis for the claimed privilege.

D. For purposes of these document requests, the relevant time period, unless otherwise stated, shall be from December 1985 through the present.

E. These document requests are continuing in nature and require you to file timely supplementation of responses in accordance with Fed. R. Civ. P. 26(e). In the event that any responsive information and/or documents not included in your initial responses come to your attention, or into your possession, custody, or control subsequent to the filing of your responses to these document requests, furnish said information and/or documents to the undersigned attorneys for plaintiffs as soon as possible.

DEFINITIONS

The following words or terms shall be deemed to mean the following:

1. The terms "document" or "documents" means the original (or, when the original is not in your possession, custody, or control, a duplicate copy of the original), and any non-identical

copy (*e.g.*, different from the original because of attachments, notes, changes, or markings) of all written, printed, typed, recorded, or visually or aurally reproduced material of any kind, all graphic materials and data compilations from which information can be obtained, all materials using other means of preserving thought or expression, and all tangible things from which information can be obtained, processed or transcribed, prepared by any person, whether or not privileged, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, drawings, sketches, forms, records, communications, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, press releases, and any and all drafts, alterations, modifications, changes and amendments of any of the foregoing, and any and all devices used for holding documents, including without limitation all file folders, file binders, file wrappers, file labels, file sleeves, file jackets, envelopes, and portfolios, and any and all aural and video records, recordings, and representations of any kind, including without limitation all photographs, microfiche, microfilm, videotapes, motion pictures, and electronic, magnetic, mechanical and electric records or representations of any kind, electronic mail ("e-mail"), meaning any electronically transmitted graphic or text communication created upon and transmitted or received by computer or other electronic device, including both records managed e-mail and e-mail non records managed e-mail, which said non records managed e-mail is sometimes known or referred to as "mail 2".

3. "EOP" means all offices, agencies, divisions, branches or organizational units of the Executive Office of the President,

4. "The White House" means the residence and business offices of the President of the United States and his spouse, the First Lady, including but not limited to all related offices, agencies, divisions, branches, bureaus, commissions and organizational units, however denominated.

5. The terms "concerning" and/or "relating to" mean affecting, bearing upon, comprising, concerning, constituting, containing, dealing with, embodying, embracing, encompassing, entailing, evidencing, germane to, identifying, implicating, including, incorporating, involving, pertaining to, regarding, relating to, referring to, reflecting, in any manner.

6. The term "describe" means fully and completely state, explain, illustrate, characterize, define, delineate, recount, detail, designate, expound, elucidate or recapitulate.

7. The term "identify" means designate, specify, name, pinpoint, relate, or relate.

8. The terms "and" and "or" shall be construed conjunctively and disjunctively, as necessary, to make the document request inclusive rather than exclusive.

DOCUMENT REQUESTS

REQUEST NO. 1:

Any and all documents concerning or relating to Plaintiff, M. Dennis Sculimbrene.

JUDICIAL WATCH, INC.

Larry Klayman, Esq.
D.C. Bar No.
Paul J. Orfanedes, Esq.
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, D.C. 20024
(202) 646-5172

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 1999 a true and correct copy of the foregoing PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT EXECUTIVE OFFICE OF THE PRESIDENT was served via first class, U.S. mail, postage prepaid, on the following:

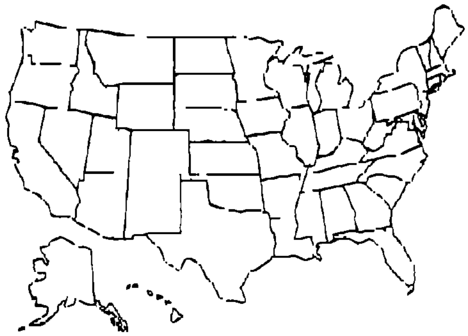
Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
U.S. DEPARTMENT OF JUSTICE
Room 1074
901 E Street, N.W.
Washington, DC 20004

Attorneys for Defendant Lanny J. Davis:

Timothy B. Mills, Esq.
T. Michael Guiffre, Esq.
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, DC 20037-1350

Paul J. Orfanedes



CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: December 14, 1999

TO: SHELLI PETERSON

FAX NUMBER: (202) 456-7024

FROM: John R. Tyler
OFFICE NUMBER: (202) 514-2356
FAX NUMBERS: (202) 616 8470, 8202 or 8460

THERE ARE A TOTAL OF 13 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL

CONFIDENTIAL -- ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

SHELLI: I RECEIVED THESE DISCOVERY REQUESTS TODAY BY MAIL. I BELIEVE THAT MUCH OF THE WORK NEEDED TO RESPOND TO THESE REQUESTS HAS ALREADY BEEN DONE, AT LEAST TO THE EXTENT THAT YOU HAVE ALREADY IDENTIFIED ALL DOCUMENTS RELATING TO SCULIMBRENE. ALSO, I BELIEVE THAT RESPONDING TO THE INTERROGATORIES ACTUALLY ASSISTS US FOR PURPOSES OF MOVING TO DISMISS PLAINTIFF'S PRIVACY ACT CLAIM. LET'S TALK ABOUT THIS BRIEFLY AFTER YOU HAVE HAD AN OPPORTUNITY TO REVIEW PLAINTIFF'S INTENDED DISCOVERY. JOHN.

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

1999 SEP -7 PM 5:40

NANCY M. MAYER-WHITTINGTON
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,

Plaintiff,

vs.

JANET RENO, *et al.*,

Defendants.

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

PLAINTIFF'S LOCAL RULE 206(d) REPORT

Plaintiff, M. Dennis Sculimbrene, by counsel and pursuant to Local Rule 206(d), respectfully submits this Local Rule 206(d) Report. This report is being submitted by Plaintiff unilaterally because, contrary to the express language of Local Rule 206(a) requiring the parties to meet and confer within fifteen (15) days from the date of appearance by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure, Defendants erroneously claim that the parties need not meet and confer until such time as they have filed an answer or motion.

1. **Case Tracking Category; Whether the Case is Likely to be <u>Disposed of by Dispositive Motion</u>.**

Plaintiff submits that this matter should be placed on the standard track. Plaintiff also submits that this case is not likely to be disposed of by dispositive motion, and no such motion has yet been filed. Should any such motion be filed, Plaintiff submits that discovery and/or other matters should not await a decision on the motion.

2. Date for Joinder of Other Parties; Amendments to Pleadings; Narrowing of Factual or Legal Issues.

Plaintiff's Complaint names several John and Jane Doe Defendants. Consequently, Plaintiff submits that he be allowed to undertake at least six (6) months of discovery before being required to join other parties or amend his pleadings. Plaintiff does not anticipate that the factual or legal issues raised in his Complaint can be narrowed at this time.

3. Assignment to Magistrate Judge.

Plaintiff does not consent to assignment of this matter to a magistrate judge.

4. Realistic Possibility of Settlement.

Plaintiff does not believe there is a realistic possibility of settlement at this time, but remains open to engage in good faith settlement negotiations.

5. Alternative Dispute Resolution.

Plaintiff submits it is unlikely that this case could benefit from alternative dispute resolution procedures or some other form of alternative dispute resolution.

6. Summary Judgment Motions and/or Motions to Dismiss; Dates for Filing Dispositive Motions and Cross-Motions, Oppositions and Replies.

Plaintiff submits that the case cannot be resolved by summary judgment or a motion to dismiss. Nonetheless, the Court has already set September 27, 1999 as the date for Defendants to respond to Plaintiff's Complaint, which presumably includes any motions to dismiss. Plaintiff also submits that any summary judgment motions be filed one (1) month after the close of discovery. Plaintiff further submits that the briefing schedule for any such motion to dismiss or summary judgment motion be in accordance with the standard briefing schedule set forth in the Court's Local Rules.

7. Initial Disclosures.

Plaintiff does not agree to dispense with the initial disclosure requirements set forth in Rule 26(a)(1) of the Federal Rules of Civil Procedure

8. Discovery.

Plaintiff submits that he should be allowed at least nine (9) months to complete discovery. Plaintiff also submits that each party be limited to twenty-five (25) interrogatories, unless leave of court is obtained first. Plaintiff further submits that there should be no limit on the number or duration of depositions. Plaintiff does not anticipate the need for a protective order at this time, but reserves the right to request a protective order should one prove necessary in the future. Plaintiff also submits that discovery be completed within nine (9) months of the date of entry of a Scheduling Order by the Court, including answers to interrogatories, document requests, requests for admission and depositions.

9. Exchange of Expert Witness Reports.

Plaintiff submits that any party intending to designate an expert witness to testify at trial shall provide all parties with an expert report pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure at least ninety (90) days before the close of discovery. Any party wishing to cross-designate an expert witness to testify at trial shall provide all parties with an expert report pursuant Rule 26(a)(2) of the Federal Rules of Civil Procedure at least sixty (60) days before the close of discovery. Depositions of any expert witness should be completed before the close of discovery.

10. Class Actions.

Not applicable.

11. Bifurcation of Discovery and/or Trial.

Plaintiff submits that discovery and/or trial should not be bifurcated or managed in phases.

12. Date for Pretrial Conference.

Plaintiff submits that a pretrial conference be held not more than two (2) months after the close of discovery.

13. Firm Trial Date.

Plaintiff submits that a firm trial date should be set at the pretrial conference.

Respectfully submitted,

JUDICIAL WATCH, INC.

Larry Klayman, Esq
D.C. Bar No. 334581

Paul J. Orfanedes, Esq.
D.C. Bar No. 429716
Suite 725
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 1999 a true and correct copy of the foregoing PLAINTIFF'S LOCAL RULE 206(d) REPORT was served via first class, U.S. mail, postage prepaid, on the following:

Attorneys for Defendants Janet Reno, Jack Quinn, Howard Shapiro and the Executive Office of the President:

Anne L. Weismann, Esq.
John R. Tyler, Esq.
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Paul J. Orfanedes

FILED

JAN 24 2000

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. DENNIS SCULIMBRENE,

Plaintiff,

v.

JANET RENO, et al.,

Defendants.

Civil Action No. 99-02010 (RCL)

MEMORANDUM AND ORDER

This matter comes before the court for a determination of whether this case is related to Alexander v. F.B.I., et al., Consolidated Civil Action Nos. 96-2123/ 97-1288.

Plaintiff designated this as a "related" case under what is now Local Rule 40.5 when the complaint was filed, so this case was automatically assigned to the undersigned judge, as the rules requires. Defendants Attorney General Reno, former Counsel to the President Jack Quinn, former General Counsel of the F.B.I. Howard Shapiro, and the Executive Office of the President, thereafter filed an objection to the plaintiff's related case designation. Defendant Larry J. Davis filed a motion to join in the government defendants' objection, and Davis' motion is hereby GRANTED.

Plaintiff thereafter filed a response to the defendants' objection, and the defendants thereafter filed a reply.

The question presented is whether this case involves common issues of fact, or grows out of the same event or transaction, as the Alexander case.

The Alexander case involves the F.B.I.'s alleged improper transfer to the White

House of hundreds of F.B.I. files of former political appointees and government employees under the Reagan and Bush Administrations.

The plaintiff in this case was a Special Agent of the F.B.I. assigned to The White House at all relevant times. Plaintiff's White House duties were terminated in April, 1996, and plaintiff retired from the F.B.I. in August, 1996. Although plaintiff is clearly an important witness in the Alexander case, that fact is insufficient to make this a related case. Even if plaintiff's F.B.I. file had been obtained by the White House, since he was a current employee, he would not be similarly situated in the Alexander plaintiffs and proposed class. Plaintiff's grievances here do not arise from the same event or transaction as the Alexander plaintiffs, and the overlap of any common issues of fact is quite minimal and plainly insufficient to deem this a related case.

While it is true that there might be some judicial efficiency if the undersigned judge handled this case, Local Rule 40.5 is intended to constitute an exception to the normal judicial policy of random assignment of cases, and it does not contemplate the kind of wide-ranging exception plaintiff seeks, as this court held in 1997 in the case of Judicial Watch Inc. v. Commission on the United States-Pacific Trade and Investment Policy, Civil Action No. 97-0099 (Order of June 13, 1997). At that time, the undersigned judge had served for several years as a member and then Chairman of this court's Calendar Committee. While the written history of Local Rule 40.5 is quite sparse, the consistent interpretation by this judge as set forth in the1997 Order is the appropriate course to follow in this case. The burden must be on the party seeking to avoid random assignment, and plaintiff here has failed to meet that burden. In a separate order on June 16, 1997, in the case of Judicial

Watch, Inc. v. United States Department of Justice, Civil Action No. 97-796, this court noted that judicial efficiency is not the only policy served by what is now Local Rule 40.5.

Defendants are entitled to random assignment of a judge, and this case is hereby **TRANSFERRED** to the Calendar Committee for random reassignment.

SO ORDERED.

Royce C. Lamberth

Royce C. Lamberth
United States District Judge

DATE: 1-24-00

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAN 2 8 2000

M. DENNIS SCULIMBRENE,

Plaintiff,

v.

JANET RENO, et al.,

Defendants.

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United States District Judge

DATE: 1-24-00