

May 12, 1997

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[REDACTED]  
Appellant,  
v.  
Office of Independent  
Counsel,  
Agency

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No. [REDACTED]

TO: Merit Systems Protection Board  
1120 Vermont Avenue, N.W. Suite 806  
Washington, D.C. 20419

APPELLANT'S CLARIFICATION OF PERSONNEL ACTION AND  
PARTIAL SUMMARY OF WHISTLE-BLOWING ACTIVITY

INTRODUCTION

I did not violate Rule 6(e), much less "deliberately and knowingly" violate Rule 6(e) as stated in the United States Department of Justice, Federal Programs Branch (DOJ) motion on behalf of the Office of the Independent Counsel (OIC). The DOJ motion also states that I was removed from my position on December 28, 1993, but does not attempt to explain why I was given sixty days notice of termination on November 22, 1993.

THE POSITION OF DOCUMENT MANAGER WAS CENTRAL TO FULFILLING THE  
OFFICE OF INDEPENDENT COUNSEL'S OBLIGATION TO PRESERVE ALL OF ITS

RECORDS AND TO TRANSFER THEM TO THE ARCHIVIST OF THE UNITED STATES UPON TERMINATION OF THE OFFICE. [See 28 U.S.C § 594 (k)]

When I was interviewing for the position of Document Manager at the Office of the Independent Counsel, I asked Terry Duggan (Arlin Adams' Office Manager) about the duration of my position. Duggan responded that though she could not predict the duration of the office, she could assure me that the investigations had only recently begun and that my position (Document Manager) would be one of the last to expire. She explained to me that the office's investigations were document intensive and that even after the conclusion of these investigations, the Document Manager would be involved in the closing of the office. There were two components to closing down the office which would, in part, be the responsibility of the Document Manager. One component was The Final Report and the other was preparation of the internal collection for permanent storage at The National Archives.

While employed at the OIC, I worked hard and did my job in a competent manner. I took initiative and suggested ways to improve the records management of that office. I maintained the internal collection (over one million pages) in a professional manner and as a result -- I received three pay increases in two years, plus the yearly COLAS. My employee evaluations were excellent, and my personnel record will bear this out.

When I was terminated on (or about) November 16, 1993 and given 60 days notice on November 22, 1993 (although the typed letter was backdated to the week prior), it was not because the office was being pressured by Congress to downsize. When I was terminated on (or about) November 16, 1993 and given 60 days notice on November 22, 1993 (although the typed letter was backdated to the week prior), it was not because my services (the management of the internal collection; scheduling of Grand Jury hearings; preparation of Final Report; and preparation of internal collection for eventual storage at the National Archives) were not needed any longer. And, I was not terminated on November 16, 1993 because of my work performance. I was terminated on or about November 16, 1993 because I made it known to Arlin Adams that some of the practices of our office were horribly wrong.

In April 1992 (or thereabouts) I met with Terri Duggan and Bruce Swartz (Deputy Independent Counsel) to discuss the performance of Suburban Reporting Company. Suburban was a court reporter service vendor that supplied transcripts to the OIC. Suburban routinely billed the office for services which were not received. I had the responsibility for reviewing and verifying these invoices. When I would inform Duggan and Swartz of these routine inaccuracies, I was told to approve the invoices -- despite the overcharges. In addition to the invoices which

overcharged the government, several Associate Independent Counsel's (AIC) complained to me about the performance and accuracy of this reporting service's transcripts. Several AICs were upset with Suburban's practice of re-using (deleting) audio tapes of Grand Jury Hearings and thus leaving the Suburban reporter's version as the only record. The problem with this (in my experience at the OIC) was that the OIC Attorneys would review transcripts and make corrections. Some of these corrections were clerical (misspelled words), but other changes seemed substantive (the adding of Program Names, Dates and the editing/altering of prosecutor's questions). Suburban's practice of deleting these audio tapes, but still incorporating the AIC's changes to the transcripts, created significant potential for abuse. Suburban had no back up to dispute the corrections requested by the prosecutors -- so they would incorporate these changes into the "official" transcript. I reported this problem to Swartz.

In early 1993, I reported another concern to Bruce Swartz. It had to do with the handling and utilization of the FBI Interviews (ROI or 302's) on the BRS Database. I informed Swartz that the system for copying ROIs from the Wordprocessing Database to the BRS Database had flaws and that an initial audit of these databases reflected that as many as 50 to 100 ROI's were listed on the ROI Database, but were not reflected on the BRS database. In addition, I told Swartz that an audit of original (hard copy) ROIs in the internal collection turned up instances of ROIs which

were not reflected on either the ROI Database or the BRS database. Big deal... right? Well, actually it is when you consider the OIC's practice of searching only the BRS system for all ROIs which might be relevant to discovery. IF there are ROIs missing from the BRS Database collection and this is the only collection searched to comply with discovery -- then the OIC would not be in full compliance with discovery. This was not the only instance of possible discovery violations by the OIC (the other instances were far more troubling) but, this was one of the instances I reported to Swartz.

After this disclosure to Swartz (and earlier discussions with Duggan) their behavior towards me changed in what I can only assume was the result of being the "bearer of bad news". This was particularly true after the Suburban Reporting confrontation. Nothing dramatic, but just the same -- I decided that I would not be the bearer of any more bad news to Swartz or Duggan. I needed this job, and, I was doing well.

#### THE HYPOCRISY IN THE OIC

While employed at Arlin Adam's OIC, I observed, learned or was informed of numerous instances of mismanagement; contract violations; fraud; favoritism; abuse; and prosecutorial misconduct. I did not want to be a "whistle-blower", and I certainly did not want to risk my job. But, I was disgusted by the activities of this office. And I was disgusted by the

hypocrisy.

Consider this hypocrisy. We indicted people for allegedly steering contracts to friends and family. But, Jo Ann Harris (former Associate Independent Counsel before she was nominated for the Assistant Attorney General position in the Criminal Division at DOJ) while she was the lead prosecutor for the OIC, steered a handwriting analysis contract away from the FBI Laboratory and to her friend Pearl Tytell. Hypocrisy. Bruce Swartz directed outside counsel work to his former partners at Shea and Gardner.

We indicted people for misusing the HUD Motor Pool. While in our office, FBI Agents (some of the agents detailed to the OIC) used their cars for personal business. In fact, the office knew that their car leasing contract was a violation of standard GSA policy, but continued with this contract (with a private car leasing firm) anyway.

We accused and indicted people for misusing official travel and travel per diem. At the same time, our office tried to justify as "official" a pleasure trip taken by FBI Special Agent [REDACTED] to Puerto Rico in 1993.

Our office accused a great many officials of private gain from public funds. And yet, Diane Smith used government

resources, telephone service, fax equipment and government time over a period of two years trying to set up a distributorship in the U.S. for a Norwegian Yogurt product called "SKY".

I believed that Arlin Adams' Office of the Independent Counsel operated beyond the pale. These federal prosecutors were and to date are answerable to no one. Let me highlight two incidents that I think reflect this arrogance.

In March of 1992, Adams asked the staff to consider whether he should attempt to stop the appointment/selection of [REDACTED] as [REDACTED] Adams believed he could stop [REDACTED] from getting this position very easily by placing a phone call to his friends on the Board of Trustees at the [REDACTED]. At this general staff meeting, Adams explained that he thought [REDACTED] was a particularly difficult witness for the OIC, and he that thought Hale had lied [REDACTED]

[REDACTED]

On December 28, 1993, federal prosecutor Robert Warren during an interrogation of me made a threat. Warren said that I can forget about any help from the Office of Special Counsel

(OSC). Warren told me that he knew a senior person at the OSC (someone named Robert L'Heureux) and that he (Warren) would place a call to L'Heureux, and afterwards, no one in that office would help me. What is interesting about this incident is not the threat he made to me, but the fact that Warren (a federal prosecutor) actually executed this threat. The record is clear that Warren placed this call to L'Heureux -- and L'Heureux (to his credit) knew the call was inappropriate and reported the incident to the Special Counsel.

We should not think about the OIC as some abstract entity that is difficult to understand. These are federal prosecutors and a former judge (and Independent Counsel) conducting themselves and the investigation of their office in a inappropriate way.

#### **DISCUSSION**

I have read the Whistle-Blower Act and I have read The Ethics in Government Act (which created the "special prosecutor" statute). I have complete faith that the intent of the legislators was not to leave this class of public servants unprotected. Ironically, the same act that created the OIC (Ethics in Government Act) also established the Inspector General's Office.

Yet, there is no I.G. for the OIC's. Why should the federal



prosecutors at the DOJ need a I.G., but not the federal prosecutors at the OIC?

PARTIAL HISTORY OF SOME KEY EVENTS  
and PARTIAL CHRONOLOGY OF WHISTLE-BLOWER ACTIVITY

On or about June 1992, the General Accounting Office (GAO) came to the OIC offices to audit our books. Duggan was concerned by this audit and confided in me that she hated auditors and had learned in her government experience (Duggan's entire government experience was spent solely in the Independent Counsel's office - Arlin Adams and four earlier Independent Counsel's offices) that it was not smart to write anything down. I think she told me this because I had been a proponent of written policies and procedures.

Karyn Jones, a CPA and Senior Auditor for HUD's IG's office (and detailed to our office) came to me and discussed what she believed were violations of standard government operating procedures. She told me that she was considering telling her supervisors at HUD-IG about her concerns. Jones told me that the mismanagement and fraud in the OIC were the very types of incidents her office was charged with investigating.

In late summer/early fall of 1992, Adams' and Swartz's personal secretary, [REDACTED] was caught using government

resources and time preparing billing memorandum for her second job as a Billing Agent for two Maryland Doctors. She was not punished.

In January/February 1993, Adams' and Swartz's personal secretary, [REDACTED], was found to have printed her government phone number and name on a flyer which advertized a cruise on an ocean liner. When numerous calls were received by the receptionist inquiring about the cruise, it was discovered that Adams' secretary was using her government office to book suites on an ocean liner. [REDACTED] was made to take a half-day leave without pay as punishment. [REDACTED] was allowed to choose the half day. I believe Aarons chose a Friday afternoon to take this leave without pay.

Soon after [REDACTED] got caught, The Principles of Ethical Conduct was posted in the kitchen. Item ten was highlighted and stated: "Employees shall not engage in outside employment that conflicts with official Government duties and responsibilities". I took the memo off the bulletin board to make a copy of it for myself. I thought the office had violated more than a few of the listed general provisions. Item eleven on this list stated: Employees shall disclose waste, fraud, abuse and corruption to the appropriate authorities.

FBI Agents Marina Murphy and Deborah Bond discussed with me

their concerns regarding the activities taking place in this office. Murphy was upset with how the prosecutors were conducting the investigations and Bond discussed with me her anger at the lack of professionalism among some of her fellow FBI agents.

In April 1993, Swartz called me into his office to discuss the notes I had been asked to take at the OIC Staff meetings. Earlier, in December of 1992 or January of 1993, Robert Elliot (the AIC who was initially charged with drafting The Final Report) asked me to take notes at meetings he was unable to attend. Elliot thought my notes were excellent and told Adams he thought I should take notes at future staff meetings. According to Elliot, Adams liked my notes and thought they would prove useful in preparing The Final Report. I took notes for approximately 7-8 staff meetings. After that, Swartz told me that my notes were perhaps "too good" and that he and Adams had decided that they did not want any formal notes recording staff deliberations. Swartz told me that there was no reason to retain the meeting notes previously taken and that I was not to take notes at future meetings.

In May 1993, <sup>JP</sup> [REDACTED], a senior legal researcher, discussed his plans to work as a bartender in Ocean City for the summer. He was excited about taking this break and was told by Duggan that he could keep his health benefits by returning to the

office one day every two weeks for six hours. Six hours was enough time to keep partial benefits. I might be a neophyte to government, but if there was not enough work to sustain [REDACTED] why not just release him? Why come up with a scheme to keep his benefits?

In May 1993, I called the DOJ's office on Fraud. This was the first time I raised any of my concerns about the OIC's management and misconduct outside the office. I told a receptionist at DOJ that I could not give my name, but that I worked for the Independent Counsel's Office and that I had observed and/or knew about mismanagement, fraud, waste and prosecutorial misconduct taking place in my office. I asked to speak with the IG's office with jurisdiction over the OIC. In the alternative, I requested the hotline number for reporting these allegations. After numerous transfers to various people in DOJ (to whom, I repeated my story "I could not give my name, but that I worked for the Independent Counsel's Office and that I had observed and/or knew about mismanagement, fraud, waste and prosecutorial misconduct taking place in the OIC"), I was put through to a Ms. Barbara Corprew.

Corprew listened to my concerns and told me that she thought them serious. She informed me that, although she was in the fraud division at DOJ, she was involved only in the area of defense contractor fraud. She encouraged me to report these

allegations to the proper authorities. She stated that she would try to find me the right person with whom to speak (i.e., someone who would have jurisdiction over an investigation into the OIC). I took her phone number, and told her I would call her back in a couple of days.

In late May, I called Corprew once again. She told me to call the IG's Office in the GAO and to call her back if no one there was helpful or receptive to my allegations.

I called the GAO-IG's office in the first week of June 1993. I spoke to an individual (last name was Jaynes) to whom I repeated, "I could not give my name, but that I worked for the Independent Counsel's Office and that I had observed and/or knew about mismanagement, fraud, waste and prosecutorial misconduct taking place in the OIC". Jaynes transferred me to a Mr. Meeker who told me to talk to a Roger Williams. I called Roger Williams that day or the next, but Williams did not think he could help me. I eventually called Corprew back a couple of days later.

When I re-reached Corprew, she gave me the name of Adrian Silas. Adrian Silas was a fraud examiner at the Office of Management and Budget. Silas was sympathetic to my story, but was not sure he was allowed to advise me or even suggest the right agency to speak with. He agreed to think about this and said he was going to talk to a few people to determine if there

was any agency or IG assigned to review my allegations. He told me to call him in a week. He also told me that he was going to make a record of the date of our discussion for a file he would soon create.

Sometime in late June or early July 1993, I spoke with Sharon Barkelloo from the Office of Management and Budget. I do not recall how I got Barkelloo's name, but she listened to my allegations and suggested that if no agency had oversight authority to investigate the OIC, then I should consider bringing this information to Congress or the media. She said the press might be able to pressure the GAO into doing their job.

On or about the first week of July 1993, I touched base again with Silas at OMB. He told me to call the Administrative Office of the U.S. Courts and ask for General Counsel, Bill Burchill.

I called the A.O. of U.S. Courts several times and was unable to speak with Burchill. His office told me he had a policy against accepting anonymous phone calls.

I called Silas back and told him about my experience with the A.O. of the U.S. Courts. He told me to call back and say I was calling on behalf of Adrian Silas. He told me Burchill would take my call.

Also in July, [REDACTED] JPS, a senior research assistant at the OIC (and a family friend of Duggan) disclosed that she had decided to enter law school in the fall. [REDACTED] JPS was excited about the deal she worked out with Duggan to keep her benefits. [REDACTED] JPS proposed to Duggan that the office allow her to protect her 1,000 plus hours of comp time and her health benefits by working a few hours each week and using her comp hours a little at a time to increase her paycheck. The deal that [REDACTED] JPS worked out allowed her to keep her health benefits and not get penalized in taxes if she was forced to take a lump sum payment for accrued vacation. The deal also protected [REDACTED] JPS from losing her comp hours.

In late July/early August, I finally got through to Burchill. I told him about my allegations, and he told me that his office already had more to do with the OIC than he cared to have. He told me that his office was not responsible for the oversight of the OIC and that I should call the President's Committee for Integrity and Ethics (PCIE) or the Vice-President's Committee on Reinventing Government. I think I asked him if he was kidding. He said he was not.

I called directory assistance and found no listing for any committee called the President's Committee for Integrity and Ethics but was given the White House desk number. I called this number, and they too had no listing for PCIE. I decided not to call the Vice President.

In the middle of August, I called Rep. John Conyers' office and told the person answering the phone that I was unable to give my name, "but that I worked for the Independent Counsel's Office and that I had observed and/or knew about mismanagement, fraud, waste and prosecutorial misconduct taking place in the OIC". I asked to speak with the person on Conyers' staff who handled these matters. I was referred to Sara Doll.

I spoke with Sara Doll on two or three occasions and after a week or two, Sara Doll put me in touch with a staffer on Conyers' subcommittee. I spoke with this person (name not recalled) on three or four occasions. On the third or fourth occasion, he told me he had talked to someone on Senator Levin's staff about this matter because Levin's staff knew more about my agency - the OIC. Conyers' subcommittee staffer asked me if I would be willing to speak to Linda Gustitus - an attorney from Senator Levin's office about the allegations I had discussed with him. I took down Gustitus' phone number and told the staffer that I would call.

In the middle of September, I finally got a hold of Linda Gustitus. I told her I could not give her my name ("but that I worked for the Independent Counsel's Office and that I had observed and/or knew about mismanagement, fraud, waste and prosecutorial misconduct taking place in the OIC"). After several questions, Gustitus told me to call her next week. She



wanted to set a meeting with a senior GAO investigator who would know best how to investigate the allegations I described.

In early October 1993, FBI Agent Bond discussed with me her outrage about Agent [REDACTED] trip to Puerto Rico. She explained to me that another agent (FBI Agent Heaney) had been setting up interviews via the telephone in Puerto Rico for approximately the last two months and that at the last minute - Agent [REDACTED] decided he wanted to go to Puerto Rico too. (Agent [REDACTED] had told me personally that he liked going to Puerto Rico because it [REDACTED] and that the bonus was the high per diem for travel to Puerto Rico. He told me that the per diem amount for Puerto Rico was \$90.00.) Agent Bond explained to me that Agent [REDACTED] and federal prosecutor Robert Meyer tried to set up their own interviews in Puerto Rico, so that they could join Agent Heaney and IRS Investigator John Murphy on their trip. When no interviews could be set up and the trip could not be justified -- Meyer had to cancel. But, Agent [REDACTED] insisted on going anyway. According to Agent Bond, [REDACTED] had told the OIC prosecutors that Puerto Rico was dangerous and that since he had been there before, he would be able to show Agent Heaney around and provide her protection. When Agent Heaney returned from Puerto Rico she told me that [REDACTED] was of no value to her investigation. She told me that Agent [REDACTED] preference for eating a large breakfast and taking a long lunch each day took precious time away from her available interview time.

As instructed, I called Linda Gustitus back and gave her my name and phone number at home and at work. She informed me that a meeting had been scheduled for two weeks time, and that if I did not hear from her -- I should report to the Hart Building, Room 442 on November 8, 1993.

On November 8, 1993 at a meeting set up by Gustitus, I met with a senior GAO Auditor, (name un-recalled), Elise Bean and Linda Gustitus (both attorneys from Levin's staff). After my meeting with Levin's office, I decided that the only person who could effect change in the OIC was the Independent Counsel - Arlin Adams. I mean, I had spoken to Swartz and Duggan numerous times about some of the nonsense which took place in our office, but that exercise only got me "placed in the dog house" so to speak. Duggan made it clear to me that she did not want to know about problems in the office. And it was Swartz's mentality to "shoot the messenger".

I spoke with Adams and told him about some of my concerns. Adams told me he was surprised by my allegations. He thanked me for telling him, and he told me he would have to investigate these allegations and when he was through, he would get back with me.

Two hours later I was subjected to threats and warnings by

Bruce Swartz about the allegations I made to Adams.

On or about November 16, 1993, Adams entered my office and closed the door. He told me "he thought the office would be able to explain most of my allegations by writing a "memo to file"". He told me he was going to have more trouble with explaining the office car leasing contract and the Pearl Tytell contract. He went on to tell me that Duggan and Swartz had recommended that he terminate me. He told me that the office would give me sixty days notice.

On November 22, 1993, Adams came into my office and handed me a sixty day notice letter which had a date of 11/15/93 typed on it.

On December 28, 1993, I was interrogated by Swartz and Warren. Also present was Special Agent Thompson ( <sup>928</sup> ). After the interrogation, I was escorted back to my office by Swartz and Thompson. Swartz instructed Thompson to search my entire office, but not to begin until Agent Cutler arrived to supervise.

After searching the contents of my office, Thompson searched my coat and told me to hand over my wallet for inspection. He inspected my wallet and returned it to me. Right before I was escorted out of the office -- I was handed a letter by Swartz

which informed me that I was being terminated for cause for violating Rule 6(e).

The next day (December 29, 1993), Agent ██████████<sup>804</sup> and Thompson working for the OIC, searched my home.

On or about the sixth of January 1994, the DOJ was invited by the OIC to investigate me for allegedly violating Rule 6(e). Up to this point, all aspects of the investigation of me was controlled by Swartz and Cutler of the OIC

In January, The Office of the Special Counsel (though still considering jurisdiction) decided to begin their investigation.

Shortly thereafter, The Criminal Division of the Department of Justice called the Special Counsel and requested that the Special Counsel's office "hold in abeyance" their proposed investigation of Appellant's allegations until the DOJ Criminal Division had concluded their investigation of Appellant's alleged violation of Rule 6(e). At that time, the Assistant Attorney General for Justice's Criminal Division was Jo Ann Harris. Jo Ann Harris was a former federal prosecutor at the OIC, and the person I had told Adams was responsible for steering a handwriting analysis contract away from the FBI and to an inferior lab owned by her friend, Pearl Tytell.

Two or three months later, the OSC recommenced their investigation. The OIC was, no doubt, fortunate to have so much time to complete their "memos to file" which were (according to Adams) going to "explain away my allegations."

#### CONCLUSION

I invite the Department of Justice to assume their historical role as "fact finder" and "truth seeker". Investigate my partial chronology -- do you honestly think that I would make up names of the people that I contacted. Contacts that would be so easy to check? Investigate whether or not the Assistant Attorney General for the Department of Justice - while performing as a prosecutor at the OIC -- steered a critical handwriting analysis contract to an inferior lab?

I was falsely accused of violating Rule 6(e). The investigation of this violation was "on-going" for over three years. And, where is the violation?

Do you think that The Washington Times or The Washington Post or any number of newspapers would NOT be interested in any stories about the Independent Counsel? What is more timely, more current?

What if I told you that Paula Sweeney, a federal prosecutor at the OIC, instructed FBI Agents to prepare a sex chronology of

partners whom Deborah Gore Dean was alleged to have slept with during her appointment at HUD. Do you think that would NOT be of interest to the Press? What do YOU think about a prosecutor directing resources of the government towards preparing a chronology of Dean's bed partners? I did not find it funny. And I did not find the tally of abuses at the OIC acceptable. And I took great efforts (evidenced by my chronology) to put a stop to it.

Show me the newspaper item that discusses the allegations I have consistently made over the past three and one-half years. Show me the DATELINE special that discusses the allegations I have consistently made over the past three and one-half years. I said it before, but I think it deserves repetition. IF I WALK LIKE A WHISTLE-BLOWER, TALK LIKE A WHISTLE-BLOWER, AM I NOT PROTECTED BY THE WHISTLE-BLOWER ACT? DO YOU BELIEVE THAT WAS THE INTENT OF THIS ACT?

The OIC violated the law; I was witness to these violations and when my concerns were made known to Swartz, Duggan and Adams ... I was fired. If I had kept my mouth shut to the abuses I saw, I would presumably, still be working at the OIC -- preparing exhibits for The Final Report and culling files for retention at The National Archives.

I petition the Merit Systems Protection Board to grant me a public hearing in this matter.

Respectfully submitted,

[REDACTED]

[REDACTED]

Pro Se

[REDACTED]