

DOD INSPECTOR GENERAL

Mr. GRASSLEY. Mr. President, it is with a feeling of disappointment that I come to the floor today. What's bothering me is a disturbing report I am releasing today on the Office of the Inspector General, or IG, at the Department of Defense, DOD.

This is about a report prepared by the Majority Staff of the Judiciary Subcommittee on Administrative Oversight and the Courts, of which I am the Chairman.

I have always had such great respect for the DOD IG. I have always thought that we could rely on that office to be fair and independent and thorough, and above all, honest.

In the past, I always felt like I could trust the DOD IG's judgment.

This report, Mr. President is disturbing.

The evidence in this report questions the credibility of the IG's investigative process. And it raises questions about the judgment of the Acting IG, Mr. Donald Mancuso.

It is a report on the Oversight Investigation of allegations of misconduct at the Defense Criminal Investigative Service, or DCIS. DCIS is the criminal investigations arm of the DOD IG.

The allegations examined by the Staff involve possible misconduct by DCIS agents between 1993 and 1996.

The current Acting DOD IG, Mr. Mancuso, is associated with the allegations. Mr. Mancuso was the Director of DCIS from 1988 until 1997, when he became the Deputy DOD IG.

I also understand that Mr. Mancuso is a potential candidate for nomination to be the next DOD IG.

In June 1999, the Staff was approached by a former DCIS agent, Mr. William G. Steakley.

Mr. Steakley raised numerous allegations regarding prohibited employment practices at DCIS, but these were far too extensive and complex to be examined by my small Subcommittee staff.

However, one of Mr. Steakley's allegations caught our attention. This was the allegation that DCIS officials had "made false statements" in adverse reports on his conduct.

Mr. Steakley alleged that an agent assigned to the DCIS internal affairs unit, Mr. Mathew A. Walinski, had a history of falsifying investigative reports to damage the reputations of fellow agents.

Mr. Steakley further alleged that senior DCIS management, including Mr. Mancuso, was fully aware of the allegations about this agent's unethical practices, yet failed to take appropriate corrective action.

And Mr. Steakley claimed he had proof to back up the allegations.

The staff conducted a careful examination of these allegations and concluded that some have merit.

To evaluate the allegations, the staff reviewed numerous documents to include the extensive files at the Office of Special Counsel, OSC, DOD personnel files, and DCIS investigative re-

ports. The staff also conducted a number of formal interviews.

A careful review of all pertinent material makes one point crystal clear:

The evidence shows that Mr. Walinski fabricated his reported interview of the Air Force payroll technician, Ms. Nancy Gianino, on May 21, 1993. This reported interview was conducted in connection with the investigation of possible tax evasion charges against Mr. Steakley.

In addition, OSC files contain numerous references to a second internal affairs case handled by Mr. Walinski, in which he apparently fabricated another report.

When the staff asked the DOD IG for this case file—known as the Johanson stolen gun case, they discovered that Mr. Walinski had apparently fabricated the reported interview of Agent Jon Clark on March 2, 1994 and possibly others. This file contains sworn statements by the agents involved that Walinski's reported interview with Clark never took place.

These two cases—when taken together—show that Mr. Walinski has a history of falsifying reports.

And more importantly, the record shows that rank and file complaints about Mr. Walinski's unethical investigative practices went directly to top DCIS management, including Mr. Mancuso.

The record also shows DCIS management knew about the Walinski problem but failed to take appropriate corrective action.

Yet despite rank and file complaints, Mr. Walinski's false reports were used by DCIS management to discredit and punish Agents Johanson and Steakley.

In January 1999, Mr. Walinski was allowed to transfer to another federal law enforcement agency—the Treasury IG—with no record of punishment or accountability. In his new assignment, Mr. Walinski is still responsible for investigating employee misconduct.

In fact, the record shows that at least 3 weeks after DCIS management was informed that Mr. Walinski had fabricated the Clark interview, he was given a generous cash bonus award.

Moreover, Mr. Walinski was assigned to conduct an inspection of the field office where rank and file complaints about his false reports had originated.

While investigating Mr. Steakley's allegations, the staff discovered that the DCIS internal affairs unit—to which Mr. Walinski was assigned—was directed by Mr. Larry J. Hollingsworth.

Mr. Hollingsworth was convicted of a felony in U.S. District Court in March 1996. He was apprehended and confessed to filing a fraudulent passport application after a fellow agent recognized his photo in a law enforcement bulletin.

The government authorities, who investigated Mr. Hollingsworth's criminal conduct, believe that he committed about 12 overt acts of fraud. These overt acts of fraud were committed while Mr. Hollingsworth was Director

of the DCIS internal affairs unit—Mr. Walinski's office.

Mr. President, can you imagine that? The head of the internal affairs unit of DOD's criminal investigative division was committing passport fraud. That's certainly a confidence builder in that organization, isn't it?

These authorities further believe Mr. Hollingsworth's actions were especially disturbing since passport fraud is usually committed in furtherance of a more serious crime, but the underlying crime was never discovered.

Although Mr. Mancuso and Mr. Hollingsworth were considered friends by associates, Mr. Mancuso failed to recuse himself from administrative actions affecting Mr. Hollingsworth.

Mr. Mancuso even aided in Hollingsworth's defense during criminal trial proceedings—even though Mr. Hollingsworth was considered uncooperative.

What's more, Mr. Mancuso endorsed an outstanding performance rating for Mr. Hollingsworth three weeks after he confessed to felonious activity to U.S. State Department special agents.

Mr. Mancuso even wrote a letter on official DOD IG stationary to the sentencing judge, Judge Ellis, on the convicted felon's behalf.

In this letter, he asked the judge to consider extenuating circumstances. He told the judge that Mr. Hollingsworth had taken a half day's leave to file the fraudulent passport application. Evidently, Mr. Mancuso thought that taking leave to commit a crime was somehow exculpatory.

This is what Mr. Mancuso said in his letter to Judge Ellis, and I quote: "Mr. Hollingsworth could have come and gone as he pleased," but he "took leave to commit a felony."

Mr. Mancuso concluded with this telling remark: "To this day, there is no evidence that Mr. Hollingsworth has ever done anything improper relating to his duties and responsibilities as a DCIS agent and manager."

Coming from a law enforcement officer like Mr. Mancuso, these words defy understanding. The last time I checked, part of doing your job as a law enforcement officer is not committing crimes.

Mr. Hollingsworth confessed to and was convicted of felonious activity while employed by DCIS as a criminal investigator.

As State Department agents put it, these crimes were committed in the furtherance of a more serious crime that was never discovered.

Unfortunately, Mr. Mancuso seems to have been completely blind to the problem.

As a result of a series of decisions—personally approved by Mr. Mancuso, Mr. Hollingsworth was allowed to remain in an employed status at DCIS for 6 months after his felony conviction. He was then allowed to retire with a full federal law enforcement annuity exactly on his 50th birthday in September 1996.

Had Mr. Mancuso exercised good judgement and other available legal options, Mr. Hollingsworth could have been removed from DCIS immediately after conviction—in March 1996. Under these circumstances, he would have been forced to wait 12 years—until the year 2008—to begin receiving a non-law enforcement annuity commencing at age 62. Had Mr. Mancuso exercised this option, he would have saved the taxpayers at least \$750,000.00, which is the amount of money Mr. Hollingsworth will collect thanks to the generous treatment he received from his friend and colleague, Mr. Mancuso.

Think of the signal this sends to rank and file law enforcement officers who look to their managers for leadership and fair treatment.

The office of the DOD IG demands the highest standards of integrity, judgment, and conduct.

Does Mr. Mancuso meet those standards?

Given Mr. Mancuso's poor judgment and his irresponsible handling of the three cases examined in the staff report, I believe it is reasonable to question:

(1) Whether Mr. Mancuso should now be nominated and confirmed as the DOD IG;

(2) Whether Mr. Mancuso should be allowed to remain in the post he now occupies—Acting DOD IG;

And given the evidence that Mr. Walinski falsified several investigative reports, it is reasonable to question whether he should be assigned to a position at the Treasury Department in which he is responsible for conducting criminal and administrative inquiries.

Mr. President, today I am forwarding the Majority Staff report to the appropriate committees, the Secretaries of Defense and Treasury and other officials.

These officials must evaluate Mr. Mancuso's fitness to serve as the DOD IG as well as Mr. Walinski's continued assignment as a criminal investigator.

I hope they will take the time to review this report before making a final decision on these matters.

Mr. President, I now ask unanimous consent to have printed two documents in the RECORD: (1) A letter of comment from Mr. Mancuso; and (2) the Majority Staff report. I know it's a lengthy report, and the GPO says it will cost \$2,282.00 to print. But leaving no stone unturned in ensuring that a person of the highest integrity occupies the key watch dog post of DOD IG is well worth that cost, in my view.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAJORITY STAFF REPORT TO THE CHAIRMAN ON THE OVERSIGHT INVESTIGATION—THE DEFENSE CRIMINAL INVESTIGATIVE SERVICE, DEPARTMENT OF DEFENSE

(U.S. Senate Judiciary Subcommittee on Administrative Oversight and the Courts, October 1999, Senator Charles E. Grassley, Chairman)

EXECUTIVE SUMMARY

The Majority Staff for the Senate Judiciary Subcommittee on Administrative Over-

sight and the Courts has conducted an inquiry into the personnel practices and conduct of certain agents within the Defense Criminal Investigative Service (DCIS). The DCIS is an agency in the Office of the Department of Defense (DOD) Inspector General (IG). The former Director of DCIS—a sworn federal law enforcement officer—is now Acting DOD IG, Mr. Donald Mancuso. Mr. Mancuso was Director of DCIS from 1988-1997. Mr. Mancuso is currently a potential candidate for nomination to be the next DOD IG.

This staff report contrasts DCIS personnel management practices that condoned and encouraged maltreatment of rank and file agents, including the use of falsified investigative reports, while protecting and rewarding a fellow manager who was a convicted felon. Management's favorable treatment of the convicted felon, Mr. Larry J. Hollingsworth, will result in his receiving substantial sums of money in federal law enforcement retirement annuities between 1996 and the year 2008. If DCIS management had exercised good judgment and other more reasonable options, Mr. Hollingsworth would not have been allowed to retire on his 50th birthday and receive the \$750,000.00 in benefits. He would have had to wait 12 years to retire. In another matter, a criminal investigator, who falsified reports. Mr. Mathew A. Walinski, also received a cash bonus award after this misconduct was brought to the attention of senior DCIS management.

The staff report cites three separate personnel cases brought to the Subcommittee's attention involving DCIS. Each of these cases involves questionable personnel practices that were either condoned or ignored by DCIS management between 1993 and 1996.

The Subcommittee on Administrative Oversight and the Courts has primary jurisdiction and oversight authority for administrative practices and procedures throughout the Federal Government. As part of the process of conducting its oversight responsibilities, the Subcommittee has been examining administrative procedures followed by various inspectors general. This report reflects the Subcommittee Majority Staff's review of questionable administrative decisions and misconduct within the criminal investigative branch in the DOD IG's office—DCIS, while Mr. Mancuso was the director of the organization.

BACKGROUND

In June of 1999, the Subcommittee Majority Staff was approached by a former agent of DCIS, Mr. Gary Steakley. Mr. Steakley alleged that a DCIS internal affairs Special Agent, Mr. Walinski, had a history of falsifying official reports to damage the reputations of fellow agents. Mr. Steakley also alleged that senior officials at DCIS were fully aware of this agent's questionable practices, yet failed to take appropriate corrective action.

It should be noted that an investigator in the Office of Special Counsel (OSC), Mr. William Shea, also looked into Mr. Steakley's allegations of DCIS misconduct. OSC concluded that Mr. Steakley was not a victim of prohibited personnel practices. While the staff examined the conduct of DCIS supervisors in regard to several specific decisions, it did not attempt to examine the numerous other allegations raised by Mr. Steakley.

While investigating Mr. Steakley's allegations, the staff learned that Mr. Walinski was supervised by Mr. Hollingsworth—the director of internal affairs. Mr. Hollingsworth was convicted of a felony in April 1996. Nonetheless, management allowed him to retire with full federal law enforcement retirement benefits six months after his felony conviction. Federal law enforcement agencies com-

monly remove an employee on criminal misconduct alone, or at a minimum, immediately after a felony conviction. Had management availed itself of other appropriate legal removal options, Mr. Hollingsworth would not have been allowed to retire on his 50th birthday, which gave him entitlement to benefits amounting to more than three quarters of a million dollars.

The staff reviewed numerous documents to include the above-referenced OSC investigation, DOD personnel files, DOD investigative reports, a Subcommittee-requested review by the Office of Personnel Management (OPM), State Department Diplomatic Security investigative reports, and public court papers registered in the U.S. District Court for the Eastern District of Virginia. The Subcommittee Majority Staff also conducted the following formal interviews:

Former DOD personnel:

Mr. Matthew Walinski, DCIS Special Agent Internal Affairs

Mr. Larry Hollingsworth, DCIS Director of Internal Affairs

Mr. William Dupree, Deputy Director of DCIS

Ms. Eleanor Hill, Former DOD Inspector General

Current DOD personnel:

Mr. Donald Mancuso, Former Director of DCIS and Current Acting IG for DOD

Ms. Jane Charters, DCIS Investigative Support

Ms. Donna Seracino, Director of Personnel for DCIS

Ms. Linda Martz, Employee Relations Specialist

Mr. Paul Tedesco, DCIS liaison agent in Hollingsworth criminal case

Mr. John Keenan, Current Director of DCIS, formerly Dir., DCIS Operations

Mr. Thomas Bonner, Current Agent in Charge Dallas Office, DCIS, Assist. Dir DCIS Internal Affairs

Ms. Nancy Gianino, Air Force Payroll Specialist

Lt. Col. Greg McClelland, DOD IG Administrative Investigator

State Department Personnel:

Special Agent Robert Starnes and Special Agent Sean O'Brien

Office of Special Counsel:

Investigator William Shea

Current and former DCIS Special Agents were also interviewed on a confidential basis. They requested confidentiality out of fear of reprisal. This report will show fears of such reprisal are plausible based on the facts developed by the Subcommittee.

SUMMARY OF SIGNIFICANT FINDINGS

The case of convicted felon Mr. Hollingsworth

Mr. Hollingsworth was the Director of internal affairs for DCIS from April 1991 to September 1996. This unit routinely conducted investigations regarding the integrity and conduct of agents in DCIS. As stated above, in at least two cases, DCIS management had knowledge of false witness statements by an internal affairs agent, Mr. Walinski.

Former Director of DCIS, Mr. Donald Mancuso, assisted Mr. Hollingsworth in remaining in an employed status—as Director of internal affairs—for six months after his felony conviction in U.S. District Court. Law enforcement authorities, who investigated Mr. Hollingsworth's criminal activities, believe that he committed at least 12 acts of overt fraud while head of the DCIS internal affairs unit.

Mr. Mancuso, a sworn federal law enforcement officer, aided in the defense of this particular subordinate at his criminal trial. At no time did Mr. Mancuso offer to recuse himself from administrative or personnel actions

in regards to Mr. Hollingsworth—even though they were considered 'close personal friends.'

Mr. Mancuso endorsed an outstanding performance evaluation of Mr. Hollingsworth three weeks after he confessed to felonious activity to the U.S. State Department special agents.

Using official DOD IG stationery, with DOD IG emblem, Mr. Mancuso wrote to the sentencing judge on the convicted felon's behalf, even though the State Department investigators opined Mr. Hollingsworth was an uncooperative defendant. Mr. Mancuso signed the letter in his official capacity as an Assistant Inspector General.

Former DOD Inspector General Eleanor Hill stated that Mr. Mancuso did not advise her of pertinent facts in the case. Ms. Hill had directed Mr. Mancuso to remove Mr. Hollingsworth from his position "as soon as legally possible."

Mr. Mancuso directly assisted Mr. Hollingsworth in obtaining over three quarters of a million dollars in full federal law enforcement retirement benefits six months after a felony conviction. OPM retirement experts, legal counsel at DOD's Washington Headquarters Service, and Inspector General regulations all state that Mr. Mancuso had options to remove this employee immediately after conviction. In fact, the law, DOD regulations, and an OPM opinion all suggest that Mr. Hollingsworth could have been removed based on the criminal conduct alone, and not on criminal court procedures.

The retirement benefits given to Mr. Hollingsworth were extremely generous, since federal law enforcement officials may retire at age 50 instead of age 62, and computation of their general schedule grade has law enforcement availability pay of up to 25% added in on top of regular pay. This resulted in a convicted felon being able to obtain approximately \$750,000.00 in additional annuity payments (excluding cost-of-living allowances) as compared to what he would have received had he been terminated immediately after conviction and allowed only non-law enforcement civil service retirement benefits commencing at age 62 in the year 2008.

Falsification of Witness Statements by Agent Walinski in Steakley Case

There were numerous claims of misconduct made by Mr. Steakley in regard to the conduct of the DCIS office of internal affairs. Several of Mr. Steakley's allegations were substantiated.

There is credible evidence that at least one agent assigned to DCIS internal affairs, Agent Walinski, falsified a witness statement in support of a tax evasion charge against Mr. Steakley, and was reprimanded and reassigned for a similar problem in another internal affairs case. Agent Walinski even acknowledged that the tax evasion charge was "unresolved" and that his inconclusive findings were not made apparent in his report to the DCIS Administrative Review Board (ARB).

The false tax evasion charge in which Mr. Steakley was eventually exonerated was instigated by DCIS management, to include Mr. Mancuso, in an area in which DCIS had no authority or jurisdiction. The States of California and Virginia repeatedly informed DCIS that the agency could not obtain Mr. Steakley's tax records without a court order or authorization from the taxpayer involved. DCIS had neither.

In an interview with the Subcommittee staff, Lt. Col. Greg McClelland, an independent DOD IG investigator assigned to review allegations by Mr. Steakley, characterized the conduct of Agent Walinski in this case as "egregious." The Subcommittee staff

has substantiated evidence that Agent Walinski made false statements to Lt. Col. McClelland in sworn testimony in 1997.

Mr. Steakley's attorney, Mr. Luciano A. Cerasi of the Federal Law Enforcement Officers Association (FLEOA), notified DCIS management that Agent Walinski's witness interview of an Air Force payroll technician was falsified. DCIS management ignored Mr. Cerasi's allegations despite the fact that it had received another FLEOA letter alleging that Agent Walinski had falsified witness statement in a separate internal affairs investigation.

Falsification of Witness Statements by Agent Walinski in Johanson Case

Prior to the adjudication of the Steakley case, Agent Walinski had falsified witness statements against another DCIS agent.

DCIS Agent Stephen Johanson had his undercover weapon stolen from his residence near Los Angeles, California while he was participating in the execution of a search warrant in another California city. In the investigation that followed the theft of Johanson's weapon, Agent Walinski falsified more witness statements. His false reports resulted in a recommendation that Agent Johanson be suspended without pay for 8 calendar days for failing to secure and return an issued weapon. DCIS supervisors and rank and file agents protested to management at DCIS headquarters in Washington that Agent Walinski's interviews were either inaccurate or never took place.

FLEOA attorney Cerasi wrote a second letter to top DCIS management supporting rank and file agents' complaints about Agent Walinski's reports in the Johanson case. Mr. Cerasi alleged that Agent Walinski had falsified his interview of Agent Jon Clark.

DCIS officials claim that Agent Walinski was reprimanded for "failing to show due diligence and accuracy" in reporting witness interviews in the Johanson case. Agent Walinski reported an interview of DCIS Agent Clark that never took place. Despite these allegations, personnel records indicate that Agent Walinski received a cash award—at least 18 days after rank and file agents had formally complained to senior management at DCIS headquarters that Agent Walinski falsified reports. The staff could find no evidence that DCIS management ever attempted to determine if the allegations about Mr. Walinski's reports had merit. In fact, immediately following the first Johanson investigation and while the re-investigation was in progress, Mr. Walinski was assigned a leadership role in the inspection of the field office where the complaints about his reports had originated. This could be viewed as a retaliatory measure to silence the agents who had "blown the whistle" on Agent Walinski.

DCIS now records all witness interviews for accuracy. Some DCIS Agents refer to this new practice as "the Walinski rule".

REPORT FORMAT

This report has been divided into three separate DCIS personnel cases as follows:

- The Case of Mr. Hollingsworth
- The Case of Mr. Steakley
- The Case of Mr. Johanson

In addition, the report includes written comments from the Acting DOD IG, Mr. Mancuso, along with an extensive list of the source documents used in preparing the report.

On September 27, 1999, Mr. Mancuso requested that he be given the opportunity to review this report prior to its release and to provide written comments. In response, the Subcommittee Chairman, Senator Charles E. Grassley, assured Mr. Mancuso that his written response would be attached to the staff

report. Consistent with the Chairman's commitment, Mr. Mancuso's written response, dated October 1, 1999, is included at the end of the report.

The attachments listed at the end of each section of the report are far too voluminous to reproduce in the printed report. A complete set of the attachments will be maintained in the Subcommittee files and available on Judiciary Committee's web site along with other Committee documents.

CONCLUSIONS

The three personnel cases, which the staff reviewed, demonstrate disparate treatment given to DCIS employees by senior management.

Mr. Hollingsworth, a high ranking DCIS official, was convicted of a felony but protected by Mr. Mancuso and allowed to retire 6 months later—on his 50th birthday—with a full law enforcement annuity. Mr. Walinski falsified reports to such a degree that several witness statements appearing in his investigative reports never took place. He even claimed in sworn testimony in 1997 that a DOD employee, whom he had interviewed and reported absent from her office due to "extended illness," had ovarian cancer, despite the fact there was no evidence that this person suffered from such a disease. Mr. Walinski received a cash bonus award weeks after allegations about his falsified reports reached senior DCIS management. DCIS management never attempted to determine whether those allegations had merit, and Mr. Walinski was allowed to transfer to another law enforcement agency—Treasury IG—with no record of accountability.

Two other DCIS employees were the subject of disciplinary action by DCIS management for significantly less serious offenses, and in one case, based on no evidence. Mr. Steakley, repeatedly and unjustly accused of numerous misconduct charges, is now retired with a damaged reputation among the federal law enforcement community that was undeserved. Similarly, Mr. Johanson was undeservedly punished for having a gun stolen from his residence during a burglary. This gun was issued to him by his own agency. The initial punishment proposed for Mr. Johanson was based on false witness interviews and a distorted interpretation of disciplinary guidelines.

The Office of the DOD Inspector General is a position that requires a very high standard of integrity, with equal treatment for all departmental employees. When information is developed on the criminal misconduct of a senior employee such as Mr. Hollingsworth, that employee should be removed "as soon as legally possible" to ensure that the morale of all employees is maintained. When allegations are made of misconduct such as against Mr. Walinski, the IG's office should ensure that allegations are professionally and thoroughly investigated, and all discrepancies are resolved. When allegations are made against employees such as Mr. Steakley and Mr. Johanson, charges should be investigated, witnesses should be accurately interviewed, and bias should not interfere with the integrity or facts in the investigation.

If DCIS—under Mr. Mancuso's management—could not investigate its own employees honestly and fairly, then how could the much larger Office of the DOD IG—if managed by Mr. Mancuso—be expected by the American people to investigate honestly and fairly misconduct and fraud within the entire Department of Defense?

Given Mr. Mancuso's poor judgment and his irresponsible handling of the three cases examined in this report, it is reasonable to question: 1) Whether Mr. Mancuso should now be nominated and confirmed as the DOD

IG—an office that demands the highest standards of integrity, judgment, and conduct; and 2) Whether Mr. Mancuso should be allowed to remain in the post of Acting DOD IG. In addition, given the evidence that Mr. Walinski falsified several witness interviews, it is reasonable to question whether Mr. Walinski should be assigned to a position in which he is responsible for conducting criminal or administrative inquiries.

RECOMMENDATIONS

1. The Majority Staff recommends that Members consider a change in legislation regarding federal law enforcement officers convicted of felonies. Consideration should be given to whether federal law enforcement officers should be immediately dismissed after their conviction of a felony.

Under current law, agencies have considerable discretionary authority in determining how to handle such cases. In the Hollingsworth case, a series of personnel actions approved by DOD Acting Inspector General Mancuso raise serious questions about his integrity and judgment. The proposed change in legislation could eliminate any discretionary authority on the part of individual law enforcement agencies in dismissing employees convicted of felonies.

2. The Majority Staff recommends that the Chairman forward this report to appropriate committees, the Secretaries of Defense and the Treasury and other officials who must evaluate Mr. Mancuso's fitness as a potential candidate to be DOD IG, as well as Mr. Walinski's continued assignment as a GS-1811 criminal investigator.

THE CASE OF MR. HOLLINGSWORTH

Mr. Larry J. Hollingsworth, former GS-15 Director of internal affairs, DCIS, was convicted of a felony charge in 1996 in U.S. District Court for the Eastern District of Virginia. Mr. Hollingsworth was never terminated by DCIS and allowed to retire on his 50th birthday—six months after a felony conviction. He is currently receiving full federal law enforcement retirement benefits totaling approximately \$750,000.00 he would not otherwise have received had management exercised other more reasonable options.

Background on felonious activity by Mr. Hollingsworth

According to State Department law enforcement agents, Mr. Hollingsworth's criminal activity in this case commenced on or about September, 1992, when he reviewed the local obituaries in Florida and obtained the name of Charles W. Drew, who was born in 1944 and died in 1948. Mr. Hollingsworth, with a Top Secret security clearance, requested from the State of Florida a copy of the death certificate, representing himself as the deceased's half-brother. Mr. Hollingsworth leased a mailbox in Springfield, Virginia under the alias of Charles and Maureen Drew and Harold Turner.

Mr. Hollingsworth then obtained a birth certificate for Charles Drew from the State of Georgia and had it sent to the mailbox in Springfield, Virginia. Mr. Hollingsworth then leased another mailbox under the alias of Charles and Mary Drew in Arlington, Virginia. Mr. Hollingsworth submitted an application and received a social security card under the alias Charles Drew Jr. by posing as the applicant's father. Mr. Hollingsworth, accompanied by his spouse, applied for and received a Virginia Department of Motor Vehicles identification card in the name of Charles Drew. Using the DMV identification card in the name of Charles Drew, Mr. Hollingsworth applied for a U.S. Passport. It should be noted that his wife, Mrs. Jaureen Hollingsworth, a DOD IG employee at the time, was never implicated or charged in this felonious activity. She was not a suspect in

the investigation by the U.S. State Department. Mr. Hollingsworth stated to State Department law enforcement agents that he procured approximately eight to ten false identify documents, to include an international drivers license and a priest ID, by means of mail order.

In April of 1995, U.S. State Department law enforcement officials placed a photo of Mr. Hollingsworth in law enforcement bulletins as an unidentified suspect in passport fraud. The local Philadelphia office of DCIS notified DCIS headquarters in Washington D.C. that a photo of Mr. Hollingsworth was found in a bulletin. Officials at DCIS in Washington D.C. notified Mr. Mancuso who in turn immediately notified Inspector General Eleanor Hill. Mr. Mancuso was then ordered by DOD IG Eleanor Hill to notify the State Department Office of Inspector General.

[See Attachment #1—Sentencing memorandum date stamped 06/04/96]

[See Attachment #2—State Department Investigative Timeline]

Statements made by State Department law enforcement agent

On July 16, 1999, the Subcommittee Majority Staff interviewed Sean O'Brien, Special Agent with the State Department Diplomatic Security Service. Agent O'Brien was one of the agents assigned to the Hollingsworth case. Agent O'Brien stated that there were at least 12 overt acts of fraud perpetrated by Mr. Hollingsworth over the course of several years. Agent O'Brien felt that the actions of Mr. Hollingsworth were disturbing in light of the fact that passport fraud is usually committed in furtherance of a more serious crime, and a credible motive had never been established.

Mr. O'Brien added that family members of the deceased boy, Charles Drew, whose identity was used by Mr. Hollingsworth, were very upset and prepared to testify at trial. Agent O'Brien also opined that various motions to dismiss the case were delaying tactics used by Mr. Hollingsworth until he reached his 50th birthday—when he could retire with law enforcement benefits.

The State Department Supervisor of the Hollingsworth case, Special Agent Robert Starnes, stated that DCIS management initially refused to let him examine the contents of Mr. Hollingsworth's government computer under the pretense that Mr. Hollingsworth may have had personal and/or classified material on a government computer. Despite possessing a Top Secret security clearance, Agent Starnes had to raise the possibility of a search warrant with DCIS management before they acquiesced and allowed a consent search of the computer.

DCIS management assigned DCIS Agent Paul Tedesco as the point of contact in this case for the State Department. Relevant information regarding Mr. Hollingsworth's criminal conduct was provided by State Department investigators directly to DCIS Agent Tedesco during all criminal proceedings. Agent Tedesco also provided certified court documents to then Director of Operations and current Director of DCIS John Keenan. These court documents described the criminal conduct of Mr. Hollingsworth. Agent Tedesco stated that DCIS management was kept fully informed of the criminal conduct of Mr. Hollingsworth from the time of his confession through sentencing.

In the experienced opinion of State Department Case Agent Sean O'Brien, State Department Special Agent Case Supervisor Starnes and DCIS Case Liaison Agent Paul Tedesco, this fraudulent activity was most probably in furtherance of another crime that was never discovered or proven.

[See Attachment #3—Subcommittee memorandum of 07/16/99 interview with agent O'Brien]

Chronology of judicial and personnel actions in the case of Mr. Hollingsworth

07/28/95: Larry J. Hollingsworth's home is searched by U.S. State Department law enforcement agents and he subsequently confesses to fraudulently applying for a U.S. Passport. [See Attachment #4—Time line provided by DOD 7/27/95-9/20/96]

01/27/96: Larry J. Hollingsworth is indicted in U.S. District Court on two felony counts.

03/18/96: Larry J. Hollingsworth pleads guilty and is convicted of a felony, 18 USC 1001.

06/4/96: Convicted felon Larry J. Hollingsworth is sentenced to 30 days imprisonment on weekends, 2 years probation, 200 hours community service and a \$5,000.00 fine. [See Attachment #5—U.S. District Court Criminal Docket]

08/12/96: Larry J. Hollingsworth is notified by DOD DCIS of a "Proposed Removal" and given thirty days to respond. [See Attachment #6—DOD OIG notice of Proposed Removal dated 08/12/96]

09/19/96: Larry J. Hollingsworth retires on his 50th birthday citing a reason of "pursuing other interests". [See Attachment #7—DOD Notice of Personnel Action form 50-B dated 09/19/94]

09/20/96: Larry J. Hollingsworth's attorney notifies then DOD Assistant Inspector General Mancuso that he waives his right to appeal the removal. [See Attachment #8—Letter from Hollingsworth's attorney to Mr. Mancuso dated 09/20/96]

DOD General Counsel claims conditional plea prevented removal of Mr. Hollingsworth

On September 14, 1999, Mr. Mancuso and the Deputy General Counsel (Inspector General), Mr. Kevin Flanagan, stated to the Subcommittee that the reason Mr. Hollingsworth was never removed and allowed to retire, was that his guilty plea was "conditional" and that he could withdraw his plea at any time at his own initiative.

The Federal Rules of Criminal Procedure Rule 11(A)(2) states; "with the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea."

The plea agreement in this case acknowledges a conditional plea by Mr. Hollingsworth reserving "his right to appeal the Court's adverse March 8, 1996 ruling denying defendant's motion to suppress his statement to State Department Agents". The plea agreement also states; "the defendant knowingly waives his right to appeal any sentence."

Therefore, Mr. Hollingsworth never had unilateral authority to withdraw his plea at anytime, as Mr. Mancuso and DOD General Counsel argued. Their reason for not terminating Mr. Hollingsworth after conviction appears to be invalid.

[See Attachment #20—Rules of Criminal Procedure 11(a)(1)]

[See Attachment #21 Plea Agreement dated 03/15/96 page 3]

Mr. Hollingsworth was never removed by DOD and as stated in the chronology, remains a convicted felon despite the numerous motions to dismiss. Federal Law, DOD IG regulations, legal counsel at the DOD Washington Headquarters Services (WHS) and OPM General Counsel stated that Mr. Hollingsworth could have been removed based on his criminal misconduct alone. The misconduct must be proved with a "preponderance of the evidence" and not "beyond a

reasonable doubt." Preponderance of the evidence is a much lower threshold than a criminal court procedure wherein criminal conduct must be proved "beyond a reasonable doubt."

Federal law states Mr. Hollingsworth could be dismissed within 7 days

5 U.S.C. 7513, (b), regarding removals of federal employees states:

1. At least 30 days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action.

2. A reasonable time, but not less than seven days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. [See Attachment #9—5 United States Code 7513]

The DOD Time Line cites this law as reason for a 60 day delay in issuing a 30 day "proposed removal." Mr. Hollingsworth had already served a considerable amount of time in jail before the proposed removal was issued.

DOD Inspector General Regulations state Mr. Hollingsworth could have been terminated after Indictment.

IGDR 1400.4, Disciplinary and Adverse Action dated December 30, 1994, page 7, states an immediate removal can be initiated "when the agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. Reasonable cause to believe is not established by the mere fact either of an arrest or an ongoing agency investigation of possible criminal misconduct. A criminal indictment will usually constitute reasonable cause."

[See Attachment #10—IGDR—dated 12/30/94, Page 7]

DOD WHS Legal Counsel advises Mr. Hollingsworth may be terminated after his guilty plea

On March 14, 1996, Gilda Goldsmith, legal counsel at the DOD WHS, advised that "the indefinite suspension, which suspends Mr. Hollingsworth from duty until final disposition of criminal charges and any administrative proceedings, does not bar the agency from terminating him based on his guilty plea . . . the agency could remove Mr. Hollingsworth for both the guilty plea and underlying conduct, but would have to prove the conduct by a preponderance of the evidence if the conviction is reversed."

[See Attachment #11—DOD WHS Legal Counsel memo dated 03/14/96]

OPM General Counsel cites other options available to DCIS management

The Subcommittee Majority Staff requested the assistance of OPM in determining whether Mr. Hollingsworth, a convicted felon, was entitled to a federal law enforcement retirement six months after conviction and two months after serving his sentence of jail on weekends. He received retirement credit and remained in an employed status as Director of Internal Affairs during the six months in question to include two months of jail time on weekends.

On July 20, 1999, DOD Personnel Director Donna Seracino stated that Mr. Hollingsworth could not be immediately removed after his guilty plea and felony conviction because "he had rights to due process under OPM guidelines".

On September 13, 1999, OPM General Counsel Suzanne Seiden stated in her legal opinion: "Instead of seeking to remove him because of the criminal conviction, it is possible that DCIS appropriately could have charged him with, among other things, an action under 5 U.S.C., 7313, on grounds of general criminal misconduct or failure to

maintain his security clearance. Further, DCIS might have chosen to expedite his removal following Mr. Hollingsworth's guilty plea".

[See Attachment #12—OPM General Counsel opinion dated 09/13/99]

Outstanding evaluation for Mr. Hollingsworth endorsed by Director of DCIS Mancuso

On August 18, 1999, approximately three weeks after Mr. Hollingsworth's home was searched and he confessed to at least three years of felonious activity (07/27/95), Mr. Mancuso signed and approved an "outstanding" performance evaluation for Mr. Hollingsworth. Mr. Hollingsworth replied on the evaluation form: "I appreciate your comments on my appraisal, especially in light of my recent actions."

[See Attachment #13—Employee Performance rating signed by Mr. Mancuso 08/18/95]

Mr. Mancuso places Mr. Hollingsworth on Paid Leave

On November 22, 1995, Mr. Mancuso decided to hold indefinite suspension of Mr. Hollingsworth in abeyance and advised "Mr. Hollingsworth he would be carried on sick leave for any period of time that was supported by acceptable medical documentation, carried on annual leave as long as he had an annual leave balance and requested such leave, and that the indefinite suspension would become effective when his annual leave was exhausted and he no longer met the requirements for sick leave."

[See Attachment #4—Time line provided by DOD 7/27/95-9/20/96]

Mr. Mancuso advises Mr. Hollingsworth to meet with a physician

On November 22, 1995, "Mr. Mancuso advises Mr. Hollingsworth to schedule an appointment with the Independent Medical Evaluation (IME) physician. The agency would approve sick leave through November 30, 1995, and any request for additional sick leave would be held in abeyance pending receipt and review of the additional medical documentation."

[See Attachment #4—Time line provided by DOD 7/27/95-9/20/96]

Assistant United States Attorney opposes use of physician as Defense Witness

On March 8, 1996, Assistant United States Attorney Thomas G. Connolly for the Eastern District of Virginia stated in his legal brief to the U.S. District Court in regards to the testimony of the IME physician for the defense:

"This testimony is not relevant to a determination of any issue to be tried in this case. It is a patent attempt at jury nullification by presenting evidence in the hope of making the defendant sympathetic to the jury. It is a backdoor attempt to raise issues of mental condition prohibited by law; and it is prejudicial, confusing, and misleading. This court should exclude any proposed psychiatric testimony from evidence at trial."

[See Attachment #14—Government's motion to exclude psychiatric testimony page 2]

Mr. Seldon, Attorney for Mr. Hollingsworth, contacts DOD Employee Relations concerning retirement

On February 7, 1996, the defense attorney for Mr. Hollingsworth contacts DOD Employee Relations Specialist Linda Martz. She states the attorney said "he wanted to ensure that his client was technically on the agency rolls. I said yes. Mr. Seldon said the U.S. Attorney wanted his client to plead guilty to one felony count. He said he understood that if the criminal matter ended and Mr. Hollingsworth was convicted, removal was probable. He asked if that was correct. I said most likely. He said his client's hope was to stay on the agency rolls until Sep-

tember 1996 at which time he would retire. I said he could retire now, but not under law enforcement. Mr. Seldon said he understood that, but there would be a substantial reduction."

[See Attachment #15—Memorandum for the record of Linda Martz dated 02/07/96]

Defendant Hollingsworth makes motion to dismiss case

On March 12, 1996, Mr. Hollingsworth's defense attorney made a motion in U.S. District Court to dismiss the charges, citing Mr. Mancuso's request for medical information. He said Mr. Mancuso had "directed him to provide sufficient medical information which will be reviewed by the medical consultant for the Office of Inspector General, to assist him in making a decision on the proposed suspension."

[See Attachment #16—Motion to dismiss indictment page 3 section 7]

Assistant United States Attorney comments on sick leave status and use of a physician

On March 12, 1996, Assistant United States Attorney Thomas G. Connolly for the Eastern District of Virginia stated in his legal brief to U.S. District Court:

"The defendant's motion to dismiss the indictment is not only untimely, it is frivolous . . . The government (in the form of the United States Attorneys Office) was not party to any negotiations concerning the defendants sick leave. In fact, the first time we heard about this was on March 7, 1996, when defense counsel faxed us a letter detailing Dr. Holland's findings."

"The United States Attorneys Office had no opportunity, whatsoever to be heard in the negotiations between Mr. Hollingsworth's lawyers and the Department of Defense concerning whether Mr. Hollingsworth should be granted sick leave because he was allegedly suffering from depression a year-and-a-half after he had committed the crimes and 4 months after he had been caught."

[See Attachment #17—Opposition to Defendant's Motion to Dismiss page 3]

Attorney for Mr. Hollingsworth contacts DOD Employee Relations one day after motion to dismiss and complements Mr. Mancuso for assistance

On March 13, 1996, Linda Martz, DOD Employee Relations Specialists took a call from Mr. Seldon, attorney for Mr. Hollingsworth. She stated; "Mr. Seldon wanted to know what Larry's sick and annual leave balances were. . . I went on to explain that when he was indicted the situation took on another look. He said he understood and believed Mr. Mancuso did what he could be help Mr. Hollingsworth".

[See Attachment #18—Linda Martz memo dated 03/13/96]

Mr. Mancuso acknowledges Mr. Hollingsworth's criminal conduct was perpetrated in furtherance of another unknown crime

On September 14, 1999, during a Subcommittee Majority Staff interview regarding the criminal misconduct of Mr. Hollingsworth, Mr. Mancuso stated he now believes that logically, the criminal misconduct of Mr. Hollingsworth appeared to be in furtherance of another crime.

Mr. Mancuso writes letter to sentencing judge on behalf of Mr. Hollingsworth

Mr. Mancuso wrote a letter dated April 29, 1996, to sentencing Judge Ellis on official DOD Assistant Inspector General stationery. Mr. Mancuso wrote this letter "on behalf of Mr. Hollingsworth . . . one of the few individuals in whom I placed complete confidence and trust." In writing the letter, Mr. Mancuso asked the judge to consider extenuating circumstances. For example, he told

the judge that Mr. Hollingsworth took a half day's leave to file the fraudulent passport application. Mr. Mancuso said he was not surprised by this action. He said: "Mr. Hollingsworth could have come and gone as he pleased," but he "took leave to commit a felony." Mr. Mancuso went on to say: "To this day, there is no evidence that Mr. Hollingsworth has ever done anything improper relating to his duties and responsibilities as a DCIS agent and manager."

In concluding the letter, Mr. Mancuso added: "I do ask, however, that you consider all these things as well as his stated remorse and acceptance of responsibility for his actions . . . it is our intention to consider removal action against him after the conclusion of the criminal charges. In this regard, I would ask that you consider the severity of these administrative actions as you pronounce sentencing."

The letter was signed: "Sincerely, Donald Mancuso, Director, Defense Criminal Investigative Service".

[See Attachment #19—Letter from Mr. Mancuso to Judge Ellis dated 04/29/96]

Mr. Mancuso comments on letter to Judge Ellis

In a Majority Staff interview on September 14, 1999, Mr. Mancuso claimed that the stationary used in the letter to Judge Ellis was "personal, bought with my own money" and not official DOD Inspector General stationary. It was pointed out to Mr. Mancuso that the letterhead had a government seal which contained the words; "Inspector General—Department of Defense." In addition, Mr. Mancuso signed the letter in his official capacity as an Assistant Inspector General. The letter was made a part of the sentencing report by Judge Ellis.

[See Attachment #19—Letter from Mr. Mancuso to Judge Ellis dated 04/29/96]

[See Attachment #1—Sentencing memorandum date stamped 06/04/96]

Assistant United States Attorney comments on lack of remorse by Mr. Hollingsworth

On March 12, 1996, Assistant United States Attorney Thomas G. Connolly for the Eastern District of Virginia stated in his legal brief to U.S. District Court:

"The defendant's appreciation of the wrongfulness of his conduct in April of 1994 has never been determined in any hearing at which the United States Attorneys Office (or any other government agency, including the Department of Defense) was a party."

[See Attachment #17—Opposition to Defendant's Motion to Dismiss page 3]

Assistant United States Attorney comments on Mr. Hollingsworth's mental state

"Mr. Hollingsworth's condition, whatever it is, is not found in DSM IV, the 886-page tome that lists every psychosis, neurosis, syndrome, and personality disorder known to man."

[See Attachment #14—Government's motion to exclude psychiatric testimony page 5]

Mr. Dupree, former Deputy Director of DCIS stated Mr. Hollingsworth was considered a cooperative defendant by DCIS management

On August 24, 1999, Mr. Dupree, a former Deputy Director of DCIS, and under the direct supervision of Mr. Mancuso, was interviewed by the Majority Staff. Mr. Dupree reviewed proposals to remove DCIS employees for misconduct based on internal investigations. He characterized Mr. Hollingsworth as a "cooperative defendant". Mr. Dupree stated that it would have been easier to remove Mr. Hollingsworth if he had misused a government vehicle.

9/13/96—Mr. Hollingsworth requests extension on proposal removal

On August 23, 1996, Mr. Hollingsworth asks Mr. Mancuso for an extension of his proposed

removal pending an oral reply to be made on 09/13/96.

[See Attachment #4 Time line provided by DOD 7/27/95-9/20/96]

Mr. Mancuso grants requested extension and schedules oral response for 09/23/96, four days after Mr. Hollingsworth's 50th Birthday

On August 26, 1996, Mr. Mancuso grants the extension request and schedules the oral reply for September 23, 1996, the first available date because Mr. Mancuso claimed that he would "be on travel much of September and will not be available to hear Mr. Hollingsworth's oral response" until that date.

A review of Mr. Mancuso's travel vouchers suggests that the projected travel conflicts—outlined in his August 26, 1996 memo—never materialized and that he would have been available to hear the case at any point during the month of September—with several minor exceptions. During an interview on September 14, 1999, Mr. Mancuso was asked if he was aware of Mr. Hollingsworth's birthday when he signed the August 26, 1996 memo. Initially, he denied having that knowledge, but with coaching from Deputy DOD General Counsel Flanagan, he admitted that he did, in fact, know that Mr. Hollingsworth's 50th birthday was in September 1996.

[See Attachment #4 Time line provided by DOD 7/27/95-9/20/96]

Convicted Felon Mr. Hollingsworth retires with full federal law enforcement retirement benefits totaling over \$750,000.00

On September 19, 1996, Mr. Hollingsworth retired on his 50th birthday and first date of eligibility for federal law enforcement retirement, citing his desire "to pursue other interests." Mr. Hollingsworth currently receives full federal law enforcement retirement benefits.

[See Attachment #7 notice of personnel action]

According to OPM, if Mr. Hollingsworth had been removed immediately after his felony conviction, he would have been entitled to an annuity commencing at age 62. Since Mr. Hollingsworth was not removed by DOD after his conviction and was allowed to retire six months after his conviction at age 50, Mr. Hollingsworth immediately began receiving a federal law enforcement yearly annuity of over \$60,000. Not including cost of living adjustments, these annuities will total over 750,000.00 for 1996-2008—annuities he would not have received had DCIS management exercised other more reasonable options.

On September 20, 1996, Mr. Hollingsworth's attorney "waives his right to any further proceedings in connection with the proposed removal due to his retirement."

[See Attachment #8—Letter from Hollingsworth Attorney dated 09/20/96]

Mr. Mancuso characterizes State Department Investigators as 'Horse's Asses'

On September 14, 1999 the Majority Staff interviewed Mr. Mancuso to review his role in Mr. Hollingsworth's retirement.

Mr. Mancuso claimed that State Department investigators did not brief DCIS on the details of the criminal case against Mr. Hollingsworth until after sentencing. The State Department's failure to share this information in a timely manner was another reason for delay in removal action against Mr. Hollingsworth. Mr. Mancuso characterized State Department investigators in this case as "Horses' Asses."

DCIS Agent Tedesco keeps DCIS management informed and complements performance of State Department Investigators in the Hollingsworth case

As stated previously, DCIS Agent Tedesco provided all relevant certified court docu-

ments to DCIS Director of Operations John Keenan throughout the judicial proceedings against Mr. Hollingsworth. These documents were passed to senior DCIS management as they became available. These documents fully described the criminal conduct for which Mr. Hollingsworth was being prosecuted. Agent Tedesco described his relationship with State Department investigators as "excellent," resulting in a timely, accurate, and professional flow of information between the two law enforcement agencies. Agent Tedesco refutes any assertion that DCIS management was not informed during any part of the judicial process.

DOD Inspector General Eleanor Hill orders Mr. Hollingsworth to be removed "as soon as legally possible"

Eleanor Hill was the DOD Inspector General during the Hollingsworth criminal procedures. On September 21, 1999, Eleanor Hill stated to the Subcommittee Majority Staff that shortly after Mr. Hollingsworth confessed, she had ordered IG personnel, including Mr. Mancuso, "to remove Hollingsworth as soon as legally possible."

DOD Inspector General Eleanor Hill was unaware of several decisions by Mr. Mancuso regarding Mr. Hollingsworth

Ms. Hill stated she was unaware that DCIS management initially refused to allow State Department investigators a consent search of Mr. Hollingsworth's government computer.

Ms. Hill stated she was unaware that Mr. Mancuso endorsed an outstanding evaluation of Mr. Hollingsworth after his confession to criminal conduct.

Ms. Hill stated she was unaware that Mr. Mancuso wrote a letter as an Assistant Inspector General on official stationary to the sentencing judge on Mr. Hollingsworth's behalf.

Hollingsworth Case—Attachments

1. Sentencing Memorandum filed in U.S. District Court, dated 06/04/96
2. State Department Investigative Time line
3. Subcommittee interview of State Department Special Agent O'Brien
4. Timeline provided by DOD 7/27/95-9/20/96
5. U.S. District Court Criminal Docket
6. DCIS Proposal for Removal
7. Notice of Personnel Action
8. Letter from Mr. Hollingsworth's attorney waiving right to appeal removal
9. Copy of 5 U.S.C. 7513
10. DOD IG Regulations on Disciplinary and Adverse Action Page 7
11. DOD General Counsel memo dated 3/14/96
12. OPM response to subcommittee request
13. Evaluation of Mr. Hollingsworth dated 08/18/95
14. Government's motion to exclude Defendant's Proposed Psychiatric Testimony
15. Memorandum of Linda Martz dated 02/07/96
16. Motion to Dismiss Indictment
17. Opposition to Defendant's Motion to dismiss
18. Memorandum of Linda Martz dated 03/13/96
19. Letter to Judge Ellis written by Mr. Mancuso on behalf of Mr. Hollingsworth dated 04/29/96
20. Rules of Criminal Procedure 11(a)(1)
21. Plea Agreement dated 03/15/96

WALINSKI: CRIMINAL INVESTIGATOR, DCIS INTERNAL AFFAIRS

Mr. Matthew A. Walinski worked at the Defense Criminal Investigative Service (DCIS) as a criminal investigator (GS-1811) from August 1987 through 1998. Since January 1999, he has been employed as a criminal investigator (special agent) in the Office of

the Inspector General at the Department of the Treasury. His assigned duties at the Treasury Department include investigating employee misconduct and fraud. Although Walinski was promoted to the grade of GS-14 at DCIS in August 1991, he accepted a reduction in grade to GS-13 at the Treasury Department. He told the Subcommittee on September 8, 1999 that he left DCIS because he was informed by the DCIS Director Keenan that his goal of becoming a manager was unattainable.

DCIS Internal Affairs

In June 1999, the Subcommittee received a complaint from a former DCIS agent that Walinski had falsified official reports of investigation while employed at DCIS. The complaints about the falsification of reports by Walinski relate to investigations he conducted while assigned to DCIS' Program Review and Analysis Directorate. This office is known informally as "internal affairs." Walinski was assigned to internal affairs from August 1991 until July 1994.

Throughout Walinski's tour of duty in the office of internal affairs, the unit was headed by Mr. Larry J. Hollingsworth. As Director of internal affairs, Hollingsworth held a key position in DCIS's organizational structure—along with the Director (Mancuso), Deputy Director (Dupree), and the Director of Operations (Keenan). Though important internal affairs was a small office. It normally consisted of three investigators (Hollingsworth, Bonnar, and Walinski). However, the office could be augmented—as needed—with special agents from the field.

Hollingsworth directed the DCIS office of internal affairs from April 1991 until his retirement in September 1996, according to a document provided by the IG's office. That Hollingsworth was technically listed as the director of internal affairs until his retirement in September 1996 defies understanding, since Hollingsworth was convicted of a felony (18 USC 1001) in March 1996 and sentenced to 30 days in jail on the weekends in June 1996.

The authorities, who conducted the investigation (Bureau of Diplomatic Security) of Hollingsworth's criminal activities, believe Hollingsworth committed about 12 overt acts of fraud between October 1992 and April 1994. The 12 alleged overt acts of fraud committed by Hollingsworth were perpetrated while he was the director of DCIS' office of internal affairs. Hollingsworth's criminal conduct while director of internal affairs must inevitably raise questions about the overall integrity of the work performed by this office while Hollingsworth was director.

Mr. Thomas J. Bonnar was the Assistant Director of Program Review. Bonnar was Mr. Walinski's immediate supervisor.

While Hollingsworth was in charge of the day-to-day operations of the office of internal review, the DCIS Director, Mr. Donald Mancuso, exercised overall management control of all internal investigations. As DCIS Director, Mancuso was the person chiefly responsible for the conduct of internal inquiries. His position description (DDES0466) states under "Major Duties," paragraph (1): Mancuso "provides staffing and direction for the conduct of internal investigations, as needed." Once allegations were received about potential misconduct by DCIS agents, Mancuso and the Deputy DCIS Director, Mr. William Dupree, would usually decide if an inquiry would be conducted, and what its scope would be. As a rule, those decisions were reached in consultation with Hollingsworth.

Mancuso and Dupree would normally receive periodic briefings or status reports on each internal investigation still in progress. If a problem arose during an inquiry,

Mancuso and Dupree would know about it. When Walinski completed his report of investigation, it would usually be forwarded up the chain of command by Hollingsworth to an Administrative Review Board (ARB). The ARB then made recommendations. Either Mancuso or Dupree would review those recommendations and make the final decision on what—if any—disciplinary action was needed.

While assigned to DCIS' office of internal review, Walinski was tasked to complete about 30 "administrative inquiries" concerning allegations of misconduct by DCIS agents. The complaints about the falsification of his reports pertain to two "administrative inquiries" conducted by Walinski in 1993 and 1994 as follows: (1) the tax fraud case involving Special Agent (SA) William G. Steakley—Administrative Inquiry 91; and (2) Stolen gun case involving Special Agent (SA) Stephen J. Johanson—Administrative Inquiry 108.

The purpose of this portion of our review was to assess the validity of the allegations against Walinski and to search for the answers to three questions: (1) Did Walinski falsify his reports on the Steakley and Johanson cases? (2) If Walinski falsified reports, did senior management at DCIS know about it? And (3) If DCIS management knew about it, did management take appropriate corrective action?

To answer the three questions, the Majority Staff examined all pertinent General Counsel, IG, and U.S. Office of Special Counsel (OSC) files, including reports of investigations and E-mails. The staff also conducted a number of separate interviews.

The Case of Mr. Steakley

On May 11, 1993, Walinski opened the tax evasion case against Steakley. This was Administrative Inquiry 91. It was opened "based on information that SA Steakley made misleading statements to the DCIS payroll support activity regarding his actual place of residence in an apparent effort to circumvent his state income tax obligations."

[See Attachment 1—page 1 of Report of Investigation (ROI)]

The foundation for Walinski's ROI on the Steakley tax fraud case was his interview with a payroll specialist at Bolling AFB, Washington, D.C.—Mrs. Nancy Gianino. At the time, Gianino was responsible for handling all DCIS payroll matters. Walinski's official witness interview report, dated June 1, 1993, states that Gianino was interviewed at Bolling AFB on May 21, 1993 "concerning her knowledge of the payroll deductions of SA Steakley."

Gianino Interview

Since the Gianino interview is such a crucial piece of evidence in evaluating the accuracy of Walinski's reports, it is quoted here in its entirety:

"Mrs. Gianino said that sometime in late November 1991 she received a letter from SA Steakley which instructed her to discontinue payroll withholding on SA Steakley's salary by the Commonwealth of Virginia. After receiving the letter, which is appended as attachment 1, she contacted SA Steakley via telephone and he informed her that he was being transferred and had, in conjunction with his transfer, established residency in the State of Tennessee. At the time she thought it was strange that an employee who lived and worked in Virginia could move his residency to another state, but because SA Steakley told her he was being transferred in December 1991 she was not concerned. On December 11, 1991, Mrs. Gianino changed SA Steakley's state tax code from Virginia to Tennessee. Mrs. Gianino stated that very shortly after her discussions with SA

Steakley she became very ill and was off work for an extended period of time. Because of her illness she was unable to follow-up concerning SA Steakley and his move as would be her normal practice. Normally, Mrs. Gianino makes sure that state income taxes are withheld from the state where the individual's duty assignment is located, especially a state as strict as California.

In the Spring of 1993, after her return from the extended illness, Mrs. Gianino started to reconcile the payroll records for the Defense Criminal Investigative Service. During this reconciliation she reviewed and compared the permanent duty station location for each employee from their Notification of Personnel Action Standard Form 50; the state code of each employee utilized by the Air Force for deductions for state income taxes; and the current mailing address for each employee. She then discovered that SA Steakley was permanently assigned to California, had a state tax code for Tennessee, and a mailing address in Virginia. Mrs. Gianino stated that she brought this discrepancy to the attention of DCIS management as the Air Force considers this situation to be unacceptable under applicable payroll guidelines.

Mrs. Gianino said that in retrospect she felt that both SA Steakley's letter and the subsequent telephone call were vague and very misleading."

[See Amendment 1, Witness Interview/Gianino]

DCIS Contacts State Tax Authorities

Based on the information provided by Gianino, DCIS officials, including Walinski and Hollingsworth, contacted the departments of taxation in the states of California and Virginia to determine whether Steakley had unpaid income tax liabilities in either state. In addition, they contacted the State of Tennessee to determine whether Steakley was a resident of that state.

DCIS made repeated attempts to obtain information on Steakley's tax obligations in California and Virginia. Letters were sent to the tax authorities in both states on July 27, 1993, July 30, 1993 and December 2, 1993. The letters were followed up by telephone calls.

Access To Tax Records Blocked

In a memo dated December 23, 1993, Walinski reported that he was unable to obtain any information from Virginia on Steakley's tax liabilities. Walinski reported:

On December 22, 1993, an official in Virginia's Department of Taxation informed DCIS: The Commonwealth of Virginia will not acknowledge or provide documentation to generic tax liability issues unless the writer of the correspondence is the Commonwealth of Virginia taxpayer Per Commonwealth of Virginia Statute the information in question could not be released to DCIS because DCIS was not the taxpayer in question."

[See Amendment 1, Contact Report with Department of Taxation, Commonwealth of Virginia]

In an E-mail message to his supervisor, Bonnar, on July 8, 1994, Walinski reported that identical restrictions applied to access on individual tax liability data in California. Walinski reported:

On May 5, 1994, California tax authorities informed DCIS: By law, California can not release any information concerning an individual taxpayer without a court order or a release from the individual in question."

[See Attachment 1, Contact Report with California Franchise Tax Board]

DCIS Continues to Pursue Tax Data

Even though DCIS was prohibited by state law from obtaining information on Steakley's state tax liabilities, DCIS Director Mancuso and Hollingsworth pressed

Walinski to find a way to obtain that information.

During an interview on August 24, 1999, Hollingsworth reacted strongly to the suggestion that DCIS lacks authority to obtain information on Steakley's unpaid state tax liabilities. He insisted that DCIS had all the authority it needed to get the job done. He said: "I could have done that investigation." Both Mancuso and Hollingsworth were formerly employed criminal investigators at the Internal Revenue Service.

Mancuso's E-mail to Hollingsworth on July 7, 1994 demonstrates something more than a passing interest in the Steakley tax evasion case. Mancuso's message conveys a sense of urgency on the need to obtain Steakley's state tax data. It also seems to suggest that DOD legal counsel may have advised DCIS not to pursue tax fraud charges against Steakley. Mancuso made this request:

"Please copy me on all transmittals between our office and the states of California and Virginia relative to Mr. Steakley's taxes. It has been a ridiculous amount of time since you told me that we were waiting to hear back from them. At the time of our last discussion I directed you to document your contacts so that I could refer to them if some quick action did not ensue. I've spoken to OGC [Office of the General Counsel] and I think I can get their support despite Perkul [Deputy General Counsel, Washington Headquarters Services] and crew."

"I'd also like to start making phone calls to the two states and finding out what they're doing with our information."

[See Attachment 1, E-mail from Mancuso to Bonnar and Hollingsworth]

When asked by an independent DOD investigator, Mr. Greg McClelland, why DCIS would pursue tax charges against Steakley when prohibited by state law from obtaining that information, Mancuso replied: "We'll pursue anything that goes to the integrity of the agent."

[See Attachment 2, Greg McClelland interview, March 13, 1997, p. 35]

Mancuso's reply to McClelland's question in March 1997 suggests that he may have known that DCIS lacked authority to gain access to Steakley state tax records. During an interview on September 14, 1999, Mancuso provided a completely different answer to essentially the same question. He was asked why DCIS would pursue charges against Steakley in an area—individual state tax obligations—where it had no authority or jurisdiction to operate. He claimed ignorance. He replied: "I did not know that DCIS was not authorized access to individual state income tax data."

Walinski Complains about Pressure on Tax Data

One day after Mancuso's E-mail to Hollingsworth—July 8, 1994, Walinski complained about the pressure from Mancuso to his supervisor, Bonnar. In this E-mail, Walinski stated:

"I do not understand what he [Mancuso] wants us to do. . . . Without a release from Steakley, which both he and his attorney(s) stated will not be provided or a court order of some kind there is nothing else that I can do. I am sorry!"

[See Attachment 1, Walinski E-Mail to Bonnar]

Steakley's Tax Attorney Responds

DCIS attempted to interview SA Steakley's tax accountant/lawyer, Mr. John T. Ambrose, but Steakley refused to waive attorney-client privilege, and Mr. Ambrose refused to be interviewed. However, after further discussion, Steakley's tax attorney provided DCIS with a letter addressing various tax issues bearing on the potential charges

against his client. The letter was dated February 22, 1994 and hand delivered to Dupree. Mr. Ambrose stated:

"For tax year 1992, based on a determination that Mr. Steakley was a resident of Tennessee, I prepared three (3) state income tax returns for the Steakleys, one resident state income tax return for Virginia and two (2) nonresident state income tax returns for Virginia and California. In determining how to complete those returns, I reviewed the tax instructions published by the respective state tax agencies and consulted with personnel at those agencies."

[See Attachment 3]

Tennessee Residency

A DCIS records check in Tennessee did show that SA Steakley owned two homes in the state; was registered to vote there and, in fact, voted in the November 1992 general elections; and applied for and received a state driver's license. Mr. Walinski's report of investigation contains the general guidelines in Tennessee tax law that are used as the standard for determining whether a person can claim they are a resident of the state. According to the information contained in Walinski's report, Steakley appears to meet most of the state residency requirements.

No Proof of Tax Fraud

At the conclusion of Walinski's investigation, DCIS had no credible evidence or proof that Steakley had unpaid tax liabilities in either California or Virginia.

In our interview on September 8, 1999, Walinski acknowledged that his report of investigation on the tax evasion case against Steakley was inconclusive and unsubstantiated.

Walinski characterized the tax fraud case against Steakley as "an unresolved case." The investigation had serious shortcomings: "We couldn't nail him," Walinski said. Walinski's inconclusive findings are not apparent in his report. In fact, the report suggests DCIS had an airtight case against Steakley. Walinski also claims Mancuso and Dupree were aware of the flaw. Despite these known deficiencies, Walinski said that he was "not surprised" to learn that the ARB Board had subsequently recommended that Steakley "be removed from his position at DCIS" for failing to meet his state tax obligations—a recommendation based on Walinski's incomplete report. "That's just the way DCIS did things," he said.

In our interview on September 14, 1999, Mancuso contradicted Walinski's assertion that management knew the tax case against Steakley was weak. Mancuso insisted that he was not aware of the lack of credible evidence to support tax evasion charges that were eventually brought against Steakley. He said: "I didn't know about that."

Decisions on Tax Investigation Questioned

The staff does not understand why Mancuso and Dupree decided to pursue the tax evasion charges given the prohibitions in place that effectively blocked access to Steakley's state tax records. If DCIS believed that this matter needed further investigation, it should have referred the matter to an external organization that had the authority and jurisdiction to examine those records and determine if Steakley had unpaid tax liabilities. In the absence of that information, the tax evasion charge would be unjustified.

ARB Board Recommends Removal

The DCIS ARB met on February 7, 1994 to consider the Steakley tax evasion case.

In a memo dated March 7, 1994, the ARB recommended that SA Steakley "be removed from his position with DCIS for violating Executive Order 12674." The Board concluded

that "SA Steakley has a tax liability to the State of California and he took overt steps to avoid paying this tax from December 1991 through February 1993." The Board's report was signed by James J. Hagen, Special Agent in Charge.

[See Attachment 4, page 2]

Tax Fraud Charges

On August 4, 1994, after reviewing the ARB's recommendations, DCIS management issued Steakley a "Notice of Proposed Suspension." The notice was signed by Mr. John F. Keenan, Director of Investigative Operations. Mr. Keenan was also previously employed by the Internal Revenue Service as a special agent. He is the Director of DCIS today.

Mr. Keenan rejected the ARB's recommendation to remove Steakley. Instead, he proposed that SA Steakley be "suspended without pay for fourteen (14) calendar days." The proposed suspension was based on: (1) SA Steakley's failure to pay income taxes in the states of California and Virginia; and (2) SA Steakley's failure to comply with Executive Order 12730 [Section 101, paragraph (1)] that requires employees to pay federal, state, and local taxes—"that are imposed by law."

[See Attachment 5, page 1]

In presenting their case against Steakley, both Mr. Keenan and the ARB relied heavily on Walinski's reported interview of Gianino. Key portions of that interview were incorporated in both memos. For example, after reviewing the communications between Steakley and Gianino in 1991 about payroll deductions—as summarized in Walinski's report, Keenan's memo cites her alleged reconciliation of DCIS payroll records as the event that triggered the whole investigation:

"In the spring of 1993, during a reconciliation of payroll records for DCIS, it was discovered that you were permanently assigned to California, had a state tax code for Tennessee, and a mailing address in Virginia. This discrepancy was brought to the attention of DCIS management as the Air Force considers this situation to be unacceptable under applicable payroll guidelines."

[See Attachment 5, page 2]

Adjudication—Charges Dropped

On October 25, 1994, Mancuso's deputy, Dupree, informed Steakley that the tax fraud charges against him would be dropped.

In a memo addressed to Steakley, Mr. Dupree attempted to provide an explanation for his decision to drop the charges:

"I have considered the written response submitted by your representative, Mr. Luciano Cerasi, as well as the oral response presented by you and Mr. Cerasi on October 20, 1994. Based on the information you provided concerning the filing date of October 15 for the state of California, I have decided that the charges are not substantiated. Therefore, it is my decision to overturn the proposal to suspend you for 14 days."

[See Attachment 6]

Dupree's explanation seems to suggest that the charges were dropped because the California's state tax filing deadline had not yet arrived. His explanation is difficult to comprehend. Senior DCIS officials had consistently claimed that Steakley's misconduct was "an integrity issue." For example, in his memo dated August 4, 1994, Keenan told Steakley:

"I find you have violated the trust placed in you as an employee of the OIG [Office of the Inspector General]."

[See Attachment 5, page 3]

It very difficult to reconcile Dupree's explanation for dropping the charges with the questions raised about Steakley's integrity—particularly since Dupree's memo was signed ten days after the California filing deadline had passed.

FLEOA's Allegations Against Walinski

During the adjudication process on tax fraud charges, Steakley was represented by an attorney with the Federal Law Enforcement Officers Association (FLEOA), Mr. Luciano A. Cerasi.

As Steakley's defense counsel, Cerasi directed a 10-page letter to Dupree in response to the proposed notice of suspension issued to Steakley in August 1994. Cerasi's letter was hand-delivered to Dupree on September 15, 1994. Cerasi argued that "the proposed adverse action against SA Steakley must be rescinded due to a lack of preponderant evidence to support the charges."

In offering a spirited defense of his client, Cerasi, who represents ranks and file agents, also raised explosive allegations about the accuracy of the investigative report underlying the tax evasion charges. He alleged that Walinski's report contained "false, misleading, and fabricated investigative material."

Cerasi alleged that Walinski had "fabricated the interview in another [Johanson] case." He alleged that Walinski "completely fabricated the results of his interview with Mrs. Nancy Gianino." He referred to Walinski as "management's pit bull." He said Walinski was "willing to fabricate investigative information to destroy the career of a subject of an investigation." Cerasi urged Dupree to re-open the case and re-investigate the entire matter.

[See Attachment 7, pages 2 and 3]

Cerasi's allegations about Walinski's report on the Steakley case in September 1994 followed allegations and complaints, which surfaced two months earlier, about Walinski's report on the Johanson stolen gun case. The Johanson case is discussed in the next section of this report.

Steakley's Request for Re-Investigation

On October 20, 1994, both Cerasi and Steakley were given an opportunity to present an oral response to the tax evasion charges. During the oral rebuttal session in Dupree's office, Steakley followed up on Cerasi's written request for a "reinvestigation of this whole Walinski file." Steakley requested "an internal investigation of SA Walinski's actions." Steakley stated once again "he had proof that SA Walinski had fabricated the results of the administrative inquiry involving his state income taxes."

[See Attachments 8, page 1]

Steakley's "Proof"

The "proof" referred to by Steakley was a taped telephone conversation he had with Gianino on September 8, 1994 about Walinski's reported interview of her on May 21, 1993. This tape was subsequently provided to and transcribed by the DOD IG, and a copy of the transcription is located in the files of the U.S. Office of Special Counsel (OSC).

The Majority Staff reviewed the tape transcription in the OSC files.

Gianino's statements on this tape appear to indicate that Walinski fabricated the entire Gianino interview. Steakley read her Walinski's report of interview. She said that every statement in Walinski's report, which was attributed to her, was "not true." She never had an extended illness, and her leave records would prove it. She said Walinski made several visits to her office to examine Steakley's file. She gave him the file, and he took notes from the file. [Walinski probably made these visits in March or April 1993 when checking Steakley's time and attendance records during the investigation of Steakley's accident with a government vehicle in Administrative Inquiry 861. At the conclusion of the tape, Gianino said: "Walinski came over here with his badge and puts false

accusations in his report. How am I ever going to trust anybody coming over here [from that office] again."

[See Attachment 2, Telephone Conversation between William G. Steakley and Nancy Gianino, September 8, 1994—Tape Transcription, page 78]

DCIS Rejects Request for Re-Investigation

Except for what appears to be an exchange of perfunctory phone calls in 1995, requests for an independent review of Walinski's report were largely ignored—and finally dismissed—by senior DCIS management. Another three years would pass before Steakley's allegations about Walinski would be subjected to an independent review.

IG Request for Independent Review

The independent review was triggered by a series of letters from Steakley to Ms. Eleanor Hill, DOD IG, and to Senator Fred Thompson. These letters were dated February 9, 1996 and March 12, 1996. In these letters, Steakley renewed his allegations that "Walinski and Hollingsworth had 'prepared fabricated reports.'" They had "falsely accused him of tax fraud," he alleged. These letters also put a new twist on the allegations. Steakley now alleged that "Walinski stated directly that the entire matter was directed by Mancuso and Dupree."

[See Attachment 9, Steakley letters to Hill and Sen. Thompson multiple pages]

DOD IG Refers Case to PCIE

Since Steakley's allegations were "long-standing in nature and involve a number of individuals in various parts of the IG organization," Hill concluded that her office was not capable of conducting "an objective internal investigation of the allegations." She said it simply was "not feasible." Consequently, on May 23, 1996, she referred the entire matter to the President's Council on Integrity and Efficiency (PCIE) for further review.

[See Attachment 10, Hill's letters to PCIE and Senator Thompson, May 23, 1996, page 1]

PCIE Response

On October 16, 1996—five months after Hill's request was made, the PCIE returned the case to the DOD IG "for appropriate handling," because Steakley's complaints concerned IG employees—not the IG herself. [Attachment 10, PCIE letter to Hill, page 2] Following another request from the DOD IG on February 20, 1997, the Integrity Committee of the PCIE agreed to review Steakley's allegations. In her final request, Hill again expressed frustration over her inability to conduct an independent review: "Our attempts to conduct an impartial internal inquiry have been hampered by the increasing number of senior managers who have recused themselves as a result of the growing allegations, including the Director [Mancuso] of the office which would be investigating this matter internally."

[See Attachment 10, PCIE letter to Hill, October 16, 1996]

Case Referred to OSC

On June 3, 1997, the case was finally referred to OSC for investigation.

[See Attachment 10, Hill memo to PCIE, February 20, 1997; OSC letter to DOD IG, June 3, 1997; IC letter to PCIE, January 8, 1999, page 2]

OSC Report and Conclusions

On July 21, 1998, the OSC completed a report on Steakley's allegations about senior DCIS officials. The OSC report focused primarily on prohibited employment practices and not whether Walinski had falsified official reports on investigation.

Despite a mountain of evidence pointing to a number of unresolved issues, the OSC notified DOD in December 1998 that Steakley's

allegations "were without merit," and the case was closed in January 1999.

[See Attachment 10, IC letter to PCIE, January 8, 1999, page 2.]

McClelland's Investigation

On March 27, 1996—two months before Hill initially referred the matter to the PCIE, she attempted to launch an investigation of Steakley's allegations. This investigation continued while Hill worked with PCIE/OSC to assume responsibility for the investigation.

The job was assigned to the IG's Office of Departmental Inquiries—an organization that is separate from DCIS—and more independent, though both offices report to the same boss—the DOD IG. Mr. Dennis Cullen was initially assigned as the case action officer on April 2, 1996, but Mr. Greg McClelland was placed in charge of the internal inquiry on December 12, 1996.

Between January and June 1997, McClelland conducted a very extensive set of interviews. The staff has examined the transcripts of McClelland's interviews and believes that McClelland conducted a very thorough and credible investigation. He gathered all pertinent information needed to prepare an independent report on Steakley's allegations. While McClelland actually began drafting a report, it was never finalized. Once the OSC agreed to assume jurisdiction over the case on June 3, 1997, McClelland was directed to terminate his effort and transfer all materials to the OSC. Even though McClelland's report was never finalized, his files contain important information bearing on the allegations against Walinski—information that was completely ignored by OSC. *McClelland's Investigative Plan*

The guidance given to McClelland was clear. He was to investigate all the allegations raised by Steakley, including "alleged false statements" by DCIS investigator. On the tax fraud inquiry, he intended to address this issue: "Did DCIS fabricate an ethics violation [suspected tax fraud] against Mr. Steakley?" He planned to "review applicable regulations" to determine whether "officials acted within the scope of their authority." His investigative plan called for questioning Gianino first. If warranted—based on information obtained from Gianino, he would then interview other DCIS officials as follows: Walinski, Hollingsworth, Dupree, and Mancuso.

[See Attachment 11, page 3]

Gianino

On January 28, 1997, McClelland interviewed the key witness—Gianino—regarding the contents of Walinski's reported interview of her on May 21, 1993. In this interview, Gianino disputes and contradicts virtually every point raised in Walinski's report.

Walinski's report declares that the interview took place at Gianino's Bolling AFB office on May 21, 1993. Gianino, by comparison, testified that she had just one telephone conversation with Walinski; that he called her; but she was unable to remember when the call took place.

McCllelland questioned Gianino about each individual part of Walinski's report of interview. McClelland read her each sentence in Walinski's report. In each case, he asked Gianino: "Is that accurate?" And in each case, Gianino replied: "I did not call him." Or "that's not a true statement." Or "that's not true." Or "I did not do that." On the question of sick leave between 1991 and 1993, Gianino testified: "I had maybe a couple of hours of sick leave. But I was not out for a long extended period of time due to illness."

[See Attachment 2, Gianino interview, 1/28/97, pages 4-12]

Gianino's Leave Records

The staff examined Gianino's leave records for 1991 through 1993.

In his report of investigation, Walinski states: "Very shortly after her discussions with Steakley [in late 1991], she [Gianino] became very ill and was off work for an extended period of time. Because of her illness she was unable to follow-up concerning Steakley. . . . In the Spring of 1993, after her return from the extended illness, Mrs. Gianino. . . ."

Walinski's assertions about Gianino's absence from her Bolling AFB office due to an extended illness are inconsistent with her official leave records.

Those records show: (1) Gianino used 54.5 hours of sick leave in 1992; and (2) she used .5 hours in the first half of 1993 and a total of 15 hours of sick leave for the balance of the year.

[See Attachment 12]

Walinski

McClelland then interviewed Walinski—first on February 14, 1997—and then again on June 6, 1997. After questioning Walinski at length about other parts of his report of investigation on the Steakley tax fraud case, McClelland confronts him with the conflict between his report and Gianino's sworn testimony:

"Okay. Well, Mr. Walinski, we have a problem. And the problem is that Ms. Gianino contends almost everything you say about her in here [Walinski's report], under oath, on tape."

[See Attachment 2, Walinski interview, 2/14/97, page 62]

Walinski replies: "Okay. Well.—In here somewhere we will find the information that she provided to me, and it will be in her handwriting."

[See Attachment 2, Walinski interview, 2/14/97, page 62]

Walinski never produced any documentation from Gianino that had a bearing on the contents or accuracy of his May 21, 1993 report of interview.

Then McClelland moved to the key question about sick leave. Walinski's report contains a number of references to how Gianino "became very ill and was off work for an extended period of time." McClelland asked this question:

"Okay. Ms. Gianino states that she was not out sick from December 1991 to spring 1993, and the records substantiate that."

[See Attachment 2, Walinski interview, 2/14/97, page 65]

McClelland asked Walinski to explain the discrepancy between his report and Gianino's official leave records. Here is Walinski's response:

"Well.—well, the remembrance that I have is, folks, is that she was out sick, and I remember everybody at headquarters telling me that . . . I think she had cancer really bad, ovarian cancer, and she would come into work and work a couple of hours, and then she would go home."

[See Attachment 2, Walinski interview, 2/14/97, pages 14 and 65]

Under intense probing, Walinski admitted that the Gianino interview may not have taken place on May 21, 1993—as stated in his official report. He told McClelland: "I interviewed her [Gianino], like, two or three times." McClelland responded to this revelation with another question: "Why isn't that reflected in the ROI [report of investigation]?" Walinski's response helps to shed light on his investigative methods. He told McClelland that his reports do not necessarily reflect the way he conducted the investigation:

"Well, because one day I went over there and she told me this information. Another day I went over there and I interviewed her and I was interviewing her about another, you, something else."

[See Attachment 2, Walinski interview, 2/14/97, pages 63-65]

During the second interview on June 6, 1997, McClelland attempted to determine if there was any concrete linkage between Walinski's handwritten notes of the Gianino interview and the final version of the interview that accompanied his report of investigation. McClelland determined that there was essentially no linkage. Not one important fact contained in the final report could be traced back to Walinski's handwritten notes. And Walinski agreed with McClelland's assessment. The Majority Staff examined those notes and agreed with McClelland's assessment. Walinski's notes are undated and cannot be considered proof that the interview took place. McClelland asked Walinski about the disconnect. Walinski replied:

"I don't write down verbatim what people tell me, so I remember she just said she was out . . . I just write down highlights in my notes . . . Just enough that jogs my memory so I can remember what people said."

[See Attachment 2, Walinski interview, 6/6/97, pages 28, 37, 69]

Staff Interviews Gianino

Gianino was interviewed on June 30, 1999 regarding her knowledge of Walinski's May 21, 1993 witness interview report.

At the beginning of the interview, the Majority Staff gave her an opportunity to examine Walinski's report. She had never seen it. She re-confirmed all the facts previously developed by McClelland. Point-by-point, she characterized Walinski's report as completely false. She stated that she was never interviewed by Walinski but may have spoken to him briefly on the telephone. She noted that he was even mistaken about her GS grade. Walinski reported that she was a "GS-12 Payroll Specialist" at the top of the witness interview form. In fact, Gianino was a GS-7 Payroll technician on the date of the interview. When asked why she thought Walinski fabricated his report of interview, she offered this opinion:

"DCIS was out to get Steakley. They wanted to destroy him."

On August 20, 1999, the staff conducted a follow-up interview with Gianino. At that time, she was shown portions of Walinski's sworn testimony to McClelland on February 14, 1997 where he attempted to explain the discrepancy between his report and her leave records. In this testimony, Walinski fabricated a new reason for his May 1993 report about her extended absences from the office. He suggested that "she had cancer really bad, ovarian cancer." Gianino was shocked that Walinski had made such a statement under oath. She said: "that statement is not true. I have never had ovarian cancer."

Staff Interviews Walinski

On September 8, 1999, the Majority Staff questioned Walinski about the accuracy of his May 21, 1993 interview of Gianino. During the meeting, he attempted to offer evidence that his reported interview of Gianino did, in fact, take place.

This is the explanation offered by Walinski:

Since Steakley had refused to cooperate with the investigation and provide his state income tax returns, DCIS could not prove that Steakley had failed to meet his state tax obligations. This shortcoming was painfully evident when the ARB Board met to review the Steakley case. Walinski's report did not answer the key question: What were Steakley's total unpaid tax liabilities? Exactly how much did he owe Virginia and California?

The ARB wanted that question answered. So Walinski was called into the ARB Board meeting and directed to get the missing in-

formation. Walinski claims he contacted Gianino on the telephone and then went over to her office at Bolling AFB. At this meeting, she provided the earnings data that he needed to calculate Steakley's unpaid state taxes for the Board. He said there were detailed notes containing the tax calculations. He further stated that some of those notes were in Gianino's handwriting, and they prove that the Gianino interview actually took place as he reported.

[See Attachment 14]

Walinski offered essentially the same explanation to McClelland in testimony on February 14, 1997, and June 6, 1997.

Walinski's explanation does not stand up to scrutiny for three reasons:

First, Walinski's handwritten notes that he purportedly took during his interview of Gianino on May 21, 1993 do not contain tax calculations or references to them.

Second, The final version of Walinski's report of interview with Gianino on May 21, 1993 contains no reference to income tax calculations.

Third, since the ARB Board did not meet on the Steakley tax evasion case until February 17, 1994—nine months after the reported Gianino interview, and since Walinski claims the tax calculations were prepared in response to a question that arose during the Board meeting, the notes on tax calculations—if they ever existed—could not constitute proof that the Gianino interview took place as reported by Walinski.

McClelland's Evaluation of Walinski

McClelland was interviewed on August 4, 1999 to elicit his impressions on the irreconcilable differences between the testimony of Walinski and Gianino. This is what McClelland stated:

"While he was unable to document willful intent on the part of Walinski, he characterized Walinski's conduct and reporting in the Steakley tax fraud case as egregious. Walinski was a sloppy investigator. His report contained widespread discrepancies and inaccuracies."

Response by Management

This portion of the reports addresses the question of how DCIS management responded to allegations that Walinski had fabricated his official report on the Steakley investigation:

Did DCIS management make an honest attempt to review the allegations about Walinski's report?

The Majority Staff was unable to find any evidence to suggest that DCIS management attempted to evaluate complaints that Walinski had falsified his report on the Steakley tax fraud case.

Examples of how DCIS management responded to the allegations are cited below.

Bonnar

In a memo dated November 15, 1994, Bonnar—Walinski's immediate supervisor—reported that he had received a telephone call from Steakley the previous day—November 14, 1994. Bonnar reported that Steakley asked if Dupree had launched an investigation into Mr. Walinski's actions. Steakley had requested the investigation during his meeting with Dupree on October 20, 1994. Bonnar told Steakley: "there are no pending internal administrative inquiries involving your case."

In the memo, Bonnar also reported on Steakley's overall impressions of DCIS' commitment to reviewing Walinski's actions:

"It was clear to him [Steakley] that Mr. Dupree had decided not to act on his request for an investigation.

[See Attachment 8, page 2]

Hollingsworth

According to the OSC report, Dupree asked Hollingsworth to be certain that Walinski's

report was consistent with the facts, and Hollingsworth assured him that there was no truth to Steakley's allegations:

"Dupree asked Hollingsworth to look into the [Walinski] matter and recalled that he was assured by Hollingsworth that the documents were in support of the information . . . and found the allegation was not correct."

[See Attachment 15, pages 15 and 22]

OSC's assessment does not seem to square with the facts.

First, there is no evidence to suggest that Hollingsworth investigated the accuracy of Walinski's report. Quite to the contrary, a memo signed by Hollingsworth on November 23, 1994 suggests that he had no plan to do it—unless Steakley provided more specific information Hollingsworth stated:

"Based on a review of the allegations made by SA Steakley, no action will be taken until he provides written documentation."

[See Attachment 16]

Use of the words "written documentation" seems important, since Steakley had taped a conversation with Gianino on September 8, 1994 suggesting that Walinski had falsified the interview. Testimony by Dupree, which is cited in the next section of this report, indicates that management knew about the tape but refused to consider it as a useful piece of evidence.

Secondly, it seems like Hollingsworth thought he knew the answer to the key question surrounding the accuracy of Walinski's report—Gianino's leave status. In his November 23, 1994 memo, Hollingsworth indicated that he had already made up his mind on this core issue:

"The one issue that can be readily resolved is the issue of Mrs. Nancy Gianino's leave status. Contrary to SA Steakley's allegations, her lengthy leave was well known at DCIS since she handles the payroll at Bolling AFB for DCIS."

[See Attachment 16]

An independent interview of Gianino and review of her leave records would have quickly resolved all the issues surrounding Walinski's report of investigation. However, Hollingsworth failed to pursue this line of inquiry.

Dupree

On March 13, 1997, McClelland interviewed Mancuso's Deputy, Mr. William Dupree, about his knowledge of and reactions to allegations that Walinski had falsified his report on the Steakley tax evasion case.

Initially, Dupree flatly denied having any knowledge about Walinski's fabricated reports. For example, McClelland asked: "Were you aware of factual inaccuracies in the [Walinski] ROI [report of investigation]?" Dupree's answer: "No." McClelland's follow-up question: "You weren't?" Dupree: "No."

[See Attachment 2, Dupree interview 3/13/97, page 37]

Fortunately, McClelland pressed Dupree about the issue and succeeded in making Dupree admit he was aware of the problem. From his response, it seems very clear that he never had any intention of examining the accuracy of Walinski's reports.

Question

McClelland asked him if he remembered if the subject of "false information in Walinski's ROI [report of investigation] came up at a meeting in his office [Meeting with Steakley and Cerasi in October 20, 1994]."

[See Attachment 2, Dupree interview, 3/13/97, page 38]

This was Dupree's response:

Response

"Oh, Gary [Steakley] was making all kinds of statements about things. Yeah. The false-

ness, you know, allegedly there are false statements. But you know, he didn't provide any facts or information."

[See Attachment 2, Page 38]

Question

McClelland then began questioning Dupree about his response to allegations that Walinski had falsified the Gianino interview. McClelland asked this question: "Did you take any action to look into that?"

Response

"Other than to assure Larry [Hollingsworth], 'Let's make sure that what we're doing is something we can support and back it up and everything. But Gary didn't offer anything. He said he had a tape [interview with Gianino on September 8, 1994]. And I'm saying, Gary, you know, I need more than that."

[See Attachment 2, Page 39]

Question

McClelland turned to the crucial follow-up question: "Did anybody call Gianino and find out, find out what she had actually said?"

Response

Dupree's response is very revealing. It suggests he never had any intention of checking out the questions about the inaccuracy of Walinski's report. He said:

"I have no reason to question the statement that she provided to Walinski, an agent, no different than the statement I provide to you."

Question

McClelland responded with this question: "Well, you have an allegation from Gary [Steakley]?"

Response

"Allegation. With what? He is the person that's being investigated. I had reason to believe Gary [Steakley] was making a speculative allegation without any evidence other than he doesn't like Matt Walinski."

Final Exchange

McClelland closed this segment of the interview with another question:

"If you were to find out that there were inaccuracies in the ROI [report of investigation] with regard to—"

However, before McClelland could complete the sentence, Dupree jumped in with this assertion: "I would do the similar thing we previously did." So McClelland asked: And what's that? Dupree's response: "Investigate it."

[See attachment 2, page 41]

The Majority Staff's puzzled by Dupree's response to the last question. He had allegations—from FLEOA and Steakley—about inaccuracies in Walinski's investigation report. Why did he fail to investigate them?

Hollingsworth provided a partial answer to this question during an interview on August 24, 1999. Hollingsworth asserted:

"DCIS gave absolutely no credence to Steakley's allegations."

Mancuso

McClelland also interviewed DCIS Director Mancuso on March 13, 1997.

Mancuso's responses to McClelland's questions clearly indicate that he was aware of the allegations about Walinski's report.

This is Mancuso's response to McClelland's question about his knowledge of inaccuracies in Walinski's report of investigation and the Gianino interview:

"I know that there was a question that Gary [Steakley] had as to where Matt [Walinski] had gotten the information. I remember something on that * * * * But it was—what I heard of complaints, I heard from Gary. I'm not aware from Bill [Dupree] or from anyone else that there was anything inaccurate in Matt's report."

[See Attachment 2, Mancuso interview, 3/13/97, page 27]

McClelland then asked Mancuso: "What did you hear from Gary [Steakley] on that [inaccuracies in Walinski's report]?"

In replying to this question, Mancuso indicates that Steakley's allegations about Walinski's report were coming into his office and being relayed to him through secondary sources:

"I would walk down the hall and somebody would say Steakley called me up last night, and he was saying that Matt Walinski had not attributed remarks properly in some way and that kind of thing."

[See Attachment 2, Mancuso interview, 3/13/97, page 26]

McClelland follow up by asking: Did he [Steakley] tell you anything about a woman over at payroll called Nancy Gianino? Mancuso's reply suggests that he was not only familiar with Gianino's name, but more importantly, he heard about her from sources other than Steakley. It also suggests that Mancuso had knowledge of the core problem with Walinski's report. This is Mancuso's reply: "I've heard that from other people. I did not hear it from Gary." Mancuso's response to that question prompted McClelland to suggest that Mancuso had "some idea of the allegations that Steakley was making with regard to Gianino?" Mancuso admitted that he did but again claimed that it was coming from Steakley.

[See Attachment 2, Mancuso interview, 3/13/97, pages 26-27]

Mancuso's response to these questions is consistent with the assessment presented by the OSC in its report of July 21, 1998 on the Steakley case, OSC concluded:

"Mancuso was aware of the conflict between the Walinski interview of Gianino and Steakley's version of the interview. However, Mancuso was not aware of any manufactured information relating to Steakley."

[See Attachment 15, page 22]

Mancuso Ignored Walinski Problem

To summarize, Mancuso admits that he knew about Steakley's allegation that Walinski had fabricated the Gianino interview, but no one in DCIS, including Dupree, had ever suggested to him that there was any truth to those allegations. Clearly, management did not give the allegations much credibility. As Hollingsworth put it: "DCIS gave absolutely no credence to Steakley's allegations."

It seems very clear from Mancuso's testimony that he never considered the need to investigate the allegations. The apparent lack of curiosity on the part of the most senior criminal investigator at the DOD IG is astonishing. As a result, the allegations about Walinski were never examined, and no corrective action was taken.

THE CASE OF MR. JOHANSON

Walinski initiated this inquiry—Administrative Inquiry 108—on February 23, 1994 after DCIS headquarters, including Bonnar, Hollingsworth, and Mancuso, were officially notified that a DCIS-issued weapon was stolen from the home of Special Agent Stephen Johanson, who was assigned to the Van Nuys Resident Agency office in California.

Stolen Gun

DCIS had issued Johanson two weapons: (1) a 9mm Sig Sauer that he normally carried; and (2) a smaller Smith and Wesson revolver for undercover work.

Sometime between February 14 and February 16, 1994, while Johanson was participating in the execution of a search warrant in San Diego, his home in Palmdale was burglarized. The burglars stole a number of items valued at about \$10,000.00, including jewelry and the loaded Smith and Wesson revolver. The stolen revolver was issued to Johanson because of his involvement in an

undercover operation the previous year. Since an earthquake had severely damaged the Van Nuys Resident Agency office and made it insecure—and no Class-5 safe was available there, Johanson kept this weapon stored on the top shelf of his bedroom closet under a pile of clothing. When he returned from San Diego on February 16th and discovered the burglary, he immediately notified the local police authorities and DCIS management of the break-in and loss of the service weapon.

Walinski's Report

Walinski reported that he conducted the following interviews of DCIS officials assigned to the Los Angeles Field Office: (1) Richard Smith, Special Agent in Charge (SAC)—March 4, 1994; (2) Robert Young, Assistant Special Agent in Charge (ASAC)—March 2, 1994; (3) Jon Clark, Group Manager—March 2, 1994; (4) Michael R. Shiohama (RAC)—March 2, 1994; (5) Michael D. Litterelle, Firearms Coordinator—March 3, 1994; and (6) Stephen J. Johanson, Special Agent—March 3, 1994. While all the interviews were conducted during a 3-day period, March 2-4, it took Walinski more than five weeks to sign, date, and finalize these interviews. They are actually dated April 12-13, 1994.

Based on these interviews, Walinski reached four important conclusions. These conclusions are contained in his report of investigation: First, Johanson's supervisors—RAC, SAC, and ASAC—never authorized Johanson to have the undercover weapon issued to him. Second, his supervisors did not know that Johanson had the undercover weapon until it was reported as stolen. Third, Johanson informed the Group Manager (Clark) on February 10, 1994 that he had the undercover weapon, and the Group Manager "immediately" instructed him to turn it in at the next firearms range training session scheduled for March 7, 1994. And fourth, neither Johanson nor the Firearms Coordinator could remember who authorized Johanson to have the undercover weapon.

[See Attachment 1, Report of Investigation, Synopsis]

Walinski completed this inquiry on April 15, 1994. On that date, Hollingsworth forwarded Walinski's report of investigation and appended interviews to Dupree "for whatever action you deem appropriate."

[See Attachment 1, letter of transmittal]

ARB Recommendation

The Administrative Review Board (ARB) met on April 21, 1993 to consider Walinski's report on the Johanson case.

After reviewing Walinski's report, the ARB reached these conclusions: (1) Johanson stored a government-issued weapon at his residence while on "extended leave or non-duty status for 5 or more consecutive days" in violation of Section 3807.4 of the DCIS Special Agent's Manual; and (2) Johanson was not authorized to possess two issued weapons. The ARB also concluded that Johanson failed to return the weapon at the conclusion of the undercover operation and failed to sign the proper forms when the weapon was issued to him.

The ARB recommended that Johanson be suspended for 10 days without pay. The ARB's report, dated May 9, 1994, was forwarded to the SAC, Los Angeles Field Office, Richard R. Smith, for consideration.

[See Attachment 2, page 1]

Charges

On June 24, 1994, Smith issued a Notice of Proposed Suspension to Johanson. Smith recommended that Johanson be suspended without pay for 8 calendar days: for failing "to sign for, properly secure, and return a weapon issued to you for an undercover assignment."

Smith's memo to Johanson recited many facts taken directly from Walinski's report of investigation and accompanying interviews. These same facts were subsequently disputed—and formally challenged—by many of the agents involved.

Smith's decision to discipline Johanson seemed to hinge on one piece of disputed information developed by Walinski. This was a meeting that allegedly occurred in the Van Nuys Resident Agency office on February 10, 1994. At this meeting, Walinski claimed that Group Manager Jon Clark informed Johanson that he would not be assigned to an ongoing undercover operation known as "Skyworthy." According to Walinski, Johanson then informed Clark that he still had an undercover weapon. At this point, Walinski states, Clark told Johanson to bring the weapon to the next firearms qualification session to be held on March 7, 1994. This particular assertion appears in Walinski's interviews of Young, Clark and Johanson as well as in his report of investigation. The February 10, 1994 meeting is the centerpiece of Smith's Notice of Proposed Suspension. Smith used this piece of information as the basis for charging Johanson with failing to return a weapon issued to him for undercover work. This is what Smith said about the alleged February 10, 1994 meeting attended by Clark:

"On February 10, 1994, you [Johanson] were informed by Group Manager Clark that you would not be part of the undercover operation relocated from 50PX [Phoenix]. When you told Group Manager Clark that you still had a second weapon in your possession he instructed you to bring it to the next 50LA range qualification on March 7, 1994. Before you could return the weapon, your home was burglarized and the gun was stolen."

[See Attachment 3, page 1]

Rank and File Challenge Walinski's Report

The first formal complaint about Walinski's report on the stolen gun case was initiated on the day Johanson received Smith's Notice of Proposed Suspension—July 6, 1994—and saw the erroneous information about the February 10th meeting.

The first complaint was embodied in a sworn statement signed jointly by Supervisory Special Agent Jon Clark and Mr. Thomas J. Bonnar—Walinski's immediate supervisor at DCIS Headquarters in Washington. While this statement was signed on July 19, 1994, it concerned a telephone conversation between Johanson and Clark on July 6, 1994. The joint Clark/Bonnar statement clearly suggests that Walinski falsified information in this report of investigation on the stolen gun case.

Portions of the joint statement are summarized below.

After receiving Smith's Notice of Proposed Suspension on July 6, 1994, Johanson called Jon Clark on the telephone to express alarm and confusion over a statement in Smith's memo that was attributed to Clark. Johanson read the following statement to Clark:

"That he [Johanson] was instructed by Group Manager Jon Clark on February 10, 1994, that he was not going to be participating in the undercover operation at LAFO [Los Angeles Field Office] and that he should return the undercover weapon he had at the next firearms qualification."

[See Attachment 4, page 1]

Johanson informed Clark that he had no recollection of receiving this instruction from Clark and asked Clark if he could recall giving it. This is how Clark responded to the news:

"I was astonished and confounded by this statement. I asked him to re-read the statement. I said I have no idea how or why that

statement was in the letter. I said I had no recollection of providing him those instructions nor had I any recollection of saying that to anyone. Moreover, I was not aware of the fact that he had an undercover weapon."

[See Attachment 4, page 1]

Clark told Johanson that he would check his calendar for the date of February 10, 1994 to verify whether he was at the meeting in the Van Nuys Resident Agency office as reported by Walinski. In checking his calendar, he discovered that he was not in the Van Nuys office that day. Instead, he spent that entire day at the El Segundo Resident Agency office on other business with both Young and Smith [Smith and Young later confirm the fact. Smith and Young were the SAC and ASAC in the Los Angeles Field Office].

Following the phone conversation with Johanson, Clark contacted Smith and Young in the Los Angeles Field Office to inquire about the origins of the assertions in Smith's letter to Johanson. Smith advised Clark that the information on the February 10, 1994 meeting was extracted for Walinski's "internal" report of investigation (ROI). At that point, Clark assured Smith that "he had not provided a statement on this investigation." Clark asked Smith to double-check the ROI "to be sure that was no mistake." Smith re-checked the ROI and "advised me that there was a DCIS Form 1, Report of Interview of me."

Clark denied again that he was ever interviewed by Walinski. This is what he said to Smith:

"I was perplexed. I advised SAC Smith that I had no recollection of this report being taken and asked that I be permitted to read it to refresh my recollection. He said no. . . I informed SAC Smith that these were facts that I not only did not say—but information I did not know. . . . I could not corroborate the statement attributed to me in SAC Smith's letter to Johanson. . . . I cannot believe I made those statements since I had no specific knowledge of those facts. The statements appear to be factually inaccurate, and therefore would not have been stated by me."

[See Attachment 4, page 1-2]

About a week later—on July 5, 1994—Mr. Michael D. Litterelle [Firearms Coordinator] informed Clark that he had a copy of Walinski's ROI, and Litterelle actually gave Clark a copy of Walinski's form 1 Witness Interview of Clark. After reading it, Clark stated:

"I read the interview and found it contained statements that were attributed to me that I knew were untrue. . . . I never made this statement."

[See Attachment 4, page 3]

The exact distribution of the joint Bonner-Clark statement is unknown. However, since it was "solicited" by Bonner, the Assistant Director of internal affairs, it would not be unreasonable to assume that Hollingsworth—the director—and other DCIS managers knew about it and actually saw it.

Supervisor Challenges Walinski's Report

Several weeks after the Bonner/Clark complaint, another formal complaint about Walinski's report was submitted to Hollingsworth's office. This one was signed on August 4, 1994 by ASAC Young in the Los Angeles Field Office. It contained a detailed, line-by-line commentary on inaccuracies in Walinski's interview of Young along with highly critical comments on Walinski's interviews of Clark and Shiohama on the same date [March 2, 1994].

Young stated that he was "somewhat shocked" after reading Walinski's report. He stated that Walinski's report contained statement that were misleading, "wrong"

and "inaccurate." He said that Walinski attributed statements to him that he never made.

After alluding to the "significant discrepancies" in Walinski's interview of Clark, Young reports that Shiohama had advised him that "there were subject areas in the report or statements that he had not discussed with SA Walinski. Shiohama stated that the last paragraph of his interview was totally inaccurate." However, both Young and Shiohama insisted that portions of their interviews appeared to accurately reflect what they had said to Walinski.

Appeal to Management About Walinski's Reports

In asking Hollingsworth to examine the discrepancies in Walinski's report, Young makes an appeal to senior management on behalf of rank and file agents:

"I am not trying to cause you or Matt [Walinski] problems. But in this situation I am caught in the middle. I have agents that are in the process of being disciplined and based on what I know now the recommended disciplinary actions may be based on incomplete and inaccurate information. The agents throughout the Field Office know this and are now finding fault with management for not taking some type of action to have this situation re-evaluated."

[See Attachment 5, Note from Young to Hollingsworth]

Young's report was officially moved up the chain of command—to the top. Young forwarded it to Bonnar who, in turn, submitted it to Hollingsworth, and Dupree—Mr. Mancuso's Deputy. However, during an interview on September 14, 1999, Mancuso denied having knowledge of the allegation that the Clark interview was fabricated until recently or August 1999.

FLEOA Letter

Young's formal complaint to Hollingsworth about Walinski's inaccurate reports was followed almost immediately by a formal complaint from another source.

During the adjudication phase of the stolen gun case, Johnson was represented by an attorney with the Federal Law Enforcement Officers Association (FLEOA), Luciano A. Cerasi—the same lawyer who represented Steakley in the tax evasion case.

In a letter to Dupree, dated August 8, 1994, regarding the Johanson case, Cerasi raised the possibility that Walinski had falsified his report of investigation. Cerasi's letter contains this explosive allegation:

"It is questionable whether SA Walinski even interviewed SA Clark."

Cerasi also raised questions about why five weeks elapsed between the dates on which Walinski conducted the disputed interviews and the final dates on the interview reports. Cerasi suggested that this delay violated DCIS policy requiring that witness reports be completed and finalized within 3 working days of the investigative activity. Cerasi characterized Walinski's report as a "shabby investigative effort" that would only serve to demonstrate to other agents that in DCIS "justice is unattainable."

[See Attachment 6, pages 3-4]

Attempted DCIS Coverup Possible

Initially, DCIS management may have tried to put a lid on the groundswell of adverse information on Walinski's reports that began to surface in mid-1994. First, there were complaints from rank and file agents—Clark, Young, and Shiohama—in July and August 1994. Those were followed immediately by the FLEOA letter. A month later—in September 1994—FLEOA filed a second complaint with management. This one concerned allegations that Walinski had fabricated the Gianino interview.

The sworn statement signed jointly by Bonnar and Clark alludes to a possible attempt by DCIS management to keep a lid on all the complaints about Walinski's reports:

"On July 8, 1994, ASAC Young advised me that HQ [DCIS Headquarters] had decided that they would wait and not raise the issue regarding my discrepant interview unless it was raised by SA Johanson. I [Clark] expressed concern that this may be released to agents and that they may conclude that I fabricated this story and it would therefore discredit me. I was informed that the information was controlled in its release."

[See Attachment 4, pages 2-3]

On August 9, 1999, the staff contacted the DOD IG with this question: "Who at DCIS made this decision?" The following answer was provided on September 30, 1999: "We have not been able to determine who, if anyone, made this alleged decision."

Re-Investigation

As a result of all the complaints, DCIS management eventually made a decision to launch a re-investigation of the Johanson stolen gun case. The re-investigation was conducted by SA Timothy L. Shroeder from August 10, 1994 until October 5, 1994.

Unfortunately, the re-investigation was conducted in a complete vacuum—as if the entire matter had never been investigated by Walinski.

It is easy to understand why DCIS needed to go back to square one and re-examine all the facts bearing on the stolen weapon. The second investigation had to be impartial and independent after Walinski was accused of falsifying information contained in the original investigation. At the same time, DCIS management had a responsibility and an obligation to determine whether Walinski had falsified his report—as alleged by rank and file agents. Unfortunately, there was no attempt to reconcile the facts contained in Walinski's report of investigation with the facts developed in the re-investigation. In fact, the agent in charge of the re-investigation—Shroeder—received specific instructions to steer clear of the disputed interviews. Hollingsworth gave him these instructions: The "new investigation should be conducted without reviewing the results of the previous interviews."

[See Attachment 7]

Clearly, Shroeder needed to avoid the pitfalls created in first investigation, but management should have assigned another agent to examine the allegations made about Walinski's report. If Walinski bungled his investigation and the case had to be re-investigated, then DCIS management should have determined exactly where and how Walinski's investigation deviated from accepted standards. All the complaints from rank and file agents and the FLEOA attorney required nothing less than that.

New Charges

Based on the re-investigation, Smith recommended that Johanson be suspended without pay for 10 calendar days. Smith's second Notice of Proposed Suspension was dated November 23, 1994. Smith charged Johanson with violating two sections of the Special Agents' Manual: (1) Failing to exercise "utmost caution" in storing a firearm at his residence; and (2) Storing a weapon at his residence while away from his assigned office for an extended time.

[See attachment 8, pages 1-2]

In the final notice on suspension, dated February 9, 1995, Durpee suspended Johanson for 3 calendar days, beginning on February 15, 1995.

[See attachment 9]

Need for Investigation Questioned

It's difficult to understand why DCIS would suspend an agent for losing a gun that

was stolen from his home during a burglary. The staff checked with other federal law enforcement authorities to determine how similar cases have been handled in the past. Under normal circumstances, they suggested that a routine administrative inquiry would be conducted. Once it was determined that the firearm was stolen during a burglary and the theft was duly reported to the proper authorities, the entire matter would be dropped.

Walinski "Disciplined" for Bungled Investigation

On July 20, 1999 and again on August 4, 1999, Ms. Jane Charters was interviewed regarding her knowledge of personnel actions taken against Walinski in the wake of the bungled Johanson investigation.

Ms. Charters is currently the Director of the Investigative Support Branch at DCIS—the same position she occupied in 1994 during the Johanson and Steakley investigations. She exercises personnel responsibilities in DCIS.

During the first interview of July 20, 1994, Charters stated that as a result of mistakes in stolen gun case investigations, DCIS "lost confidence" in Walinski and transferred him out of internal affairs and into her office. In the new position, Walinski was no longer conducting internal investigations. Instead, he was to be responsible for DCIS training, physical fitness and security. Charters also reported that Walinski was issued a letter of reprimand that was placed in his file—a fact that was confirmed by Bonnar during an interview on July 12, 1999.

Walinski's Personnel File

On two occasions in July—July 7th and again on July 23, 1999, the Majority Staff examined Walinski personnel file to determine if the disciplinary actions taken against him for his mistakes in Johanson investigation—as described by Charters and others—were accurately reflected in performance ratings and other personnel actions in his file.

The Majority Staff found no evidence that Walinski was ever disciplined for the failed Johanson gun case. Quite to the contrary, the available evidence suggests Walinski was actually rewarded for what happened.

Here is what the Majority Staff found in his file:

Employee Performance Rating—1993/94

For the rating period August 26, 1993 to March 31, 1994, Walinski received an "outstanding" rating.

The outstanding rating applied to the period of time when Walinski conducted two investigations—Steakley and Johanson—where the accuracy of his reports were later questioned. In fact, the rating period included the date—March 2, 1994—on Walinski claims he conducted interviews with Young, Clark, and Shiohama. Those reports of interview were later characterized as false, misleading and inaccurate by the agents involved and the FLEOA attorney. The Gianino interview occurred on May 21, 1993—just prior to the beginning of the rating period, but considerable investigative activity on the Steakley case occurred during his rating period.

The rating officials offered this comment: "Walinski continues to excel in every aspect of his job. He is a very valued employee of DCIS." The outstanding rating was approved by Bonnar and the Director of internal affairs, Hollingsworth, on April 15, 1994—the exact same day that Hollingsworth forwarded Walinski's completed report of investigation on the Johanson case to Dupree.

[See attachment 10]

Incentive Award Nomination—Recommendation

On April 25, 1994, Hollingsworth recommended that Walinski receive a performance award of \$1,200.00 to accompany the

"outstanding" rating he received for the period August 1993 to March 1994—the same period when he conducted witness interviews in the Johanson case that were later characterized as false, inaccurate and misleading.

[See attachment 11]

Previous Cash Award—1993

The form used to recommend the \$1,200.00 performance award also noted that Walinski had not received any other performance awards in the preceding 52 weeks. His personnel file indicates otherwise. He received a "Special Act or Service Award" of \$2,000.00 on May 2, 1993—several weeks before his fabricated interview with Gianino on May 21, 1993.

[See Attachments 11 & 12]

Special Performance Rating—1994

This a special rating given to Walinski immediately before his sudden transfer out of internal affairs and into the Investigative Support Directorate. It was the last rating he received for his work in internal affairs and covered a "shortened rating period" of April 1, 1994 through July 2, 1994. This rating period includes the date on which Walinski finalized the report of investigation on the Johanson case—April 15, 1994. The closing date for this reporting period—July 2, 1994—came one day before his move to Charters' office and just four days before the first known written complaint about Walinski's false and inaccurate reports reached DCIS Headquarters in Washington.

Bonnar and Hollingsworth gave him a "fully successful" rating, but for unexplained reasons, took over three months to approve it. It was finally signed on October 12, 1994. Walinski's other ratings were approved quickly—within two weeks of the end of the rating period.

[See Attachment 12].

DCIS says the delay was due to "an administrative oversight."

Walinski stated August 2, 1999 that this is the rating where "he took a hit" for his mistakes in the Johanson case. The language in the performance rating documents seemed to support Walinski's assessment:

"Unfortunately, during this rating period he failed to show due diligence and accuracy in reporting the results of some interviews with regard to one administrative inquiry. This one shortfall in SA Walinski's performance is not typical of the otherwise high quality and professional level of his work."

[See Attachment 13, pages 3-4]

When Bonnar and Hollingsworth signed this document in October 1994, they had already received the allegations about Walinski's false reports on the Steakley tax evasion case. For that reason, the reference to "accuracy of reporting" in just one internal investigation does not appear to square with the facts.

Reassignment

Walinski's personnel records indicate that his transfer from internal affairs to the Investigative Support Branch became effective on July 3, 1994.

[See Attachment 14]

As previously reported, Charters suggested during two interviews that DCIS management "had lost confidence in Walinski" as an investigator "and moved him into her office" as a disciplinary measure. Charters' description of the reasons behind Walinski's transfer are consistent with those provided by Mancuso during an interview on September 14, 1999.

Hollingsworth and Walinski, by comparison, provided a completely different set of reasons behind the July 1994 move.

During an interview on August 24, 1994, Hollingsworth suggested that the move was not taken for disciplinary reasons: "It was

for his health." He said Walinski "blew" the Johanson case because "he was totally stressed out." Hollingsworth feared he might "have a heart attack."

Walinski maintains that the transfer was driven by routine considerations.

During an interview on September 8, 1999, he gave the following reasons for the move: (1) There was an attractive opening in Charters' organization; (2) The opening offered him some growth potential into a management position in the future; (3) He had completed his planned 3-year tour of duty in internal affairs; and (4) He had a plan for addressing the training deficiencies in Charters' Directorate. When asked if there was any other reasons for the move, he said "No."

[See Attachment 15, pages 1-2]

Walinski Assigned Inspection Duties

A personnel document, signed by Bonnar and Hollingsworth on October 12, 1994 suggests that Walinski conduct inspections long after he was reassigned to "training" in Charters' office. Along with inquiries of employee misconduct, inspections are the main responsibility of the internal affairs office. This document suggests that Walinski continue to perform work for the internal affairs office—despite his removal from that office. This document shows that Walinski played a leadership role in various inspections as follows:

"He also worked on the preparation for the Los Angeles FO [field office] inspection. Although the Los Angeles FO inspection was conducted after the end of this special rating period when SA Walinski reported to his new assignment in the Investigative Support Directorate, he returned to assist with the LA inspection and played a significant role by leading inspection efforts in the DCIS offices in Phoenix, Tucson, Albuquerque, and Honolulu as well as Los Angeles. He worked independently on these inspections without the need for any close supervision."

[See Attachment 13, page 3]

During an interview on September 14, 1999, Mancuso expressed surprise that Walinski led the inspection of the Los Angeles field office after his reassignment:

Mancuso said he had no knowledge of Walinski's involvement in the inspection of the LA Field Office after his transfer. He would be surprised and concerned if true, and said he would be checking on the accuracy of that information.

Decision on Inspection Duties Questioned

In an information paper provided on September 30, 1999, Mancuso admitted that Walinski was involved in the inspection of the Los Angeles Field Office. However, Mancuso maintains Walinski was kept on the team only "to train his replacement" and "did not participate in the actual inspection." Mancuso's statement conflicts with the personnel document signed by Bonnar, Hollingsworth, and Walinski in 1994 referenced above.

It is very difficult to understand why Walinski would have been assigned to prepare the inspection report on the Los Angeles Field Office in the wake of all the allegations and complaints flowing from the Johanson case. The re-investigation of the Johanson case, which began in August 1994 and was concluded in October 1994, was in progress while Walinski conducted the inspection of the Los Angeles Field Office. That re-investigation was specifically triggered by his disputed interviews of at least three agents assigned to the Los Angeles field office. Those agents made formal complaints to management about the quality of Walinski's reports. In effect, these agents "blew the whistle" on Walinski. Assigning Walinski a leadership role in the Los Angeles

Field Office inspection could be viewed as a retaliatory measure, and as such, a very questionable management decision.

Performance Award—1994

On July 24, 1994—exactly three weeks after his transfer from internal affairs into training, Walinski received a cash award of \$1,200.00.

[See Attachment 16]

At our meeting with Charters on August 4, 1997, she offered an explanation for the \$1,200.00 cash award—in light of Walinski's mistakes on the Johanson case. She suggested that it was given for the rating period August 26, 1993 through March 31, 1994—"before the problem arose over the Johanson gun case."

Charters' explanation is not supported by the facts. The facts cited below clearly indicate that DCIS management was aware of the complaints about Walinski's report at least three weeks before Walinski received the cash award:

—The rating period for which the cash award was given included the date—March 2, 1994—on which Walinski conducted interviews of agents that were later characterized as false, misleading and inaccurate in rank and file complaints to management;

—Management claims that Walinski was transferred from internal affairs into training on July 3, 1994 as a disciplinary measure for the mistakes he made in the Johanson case. This indicates that management knew about the allegations prior to that date;

—Walinski admitted that he received a reprimand for making "administrative errors" in his report on the Johanson case while still assigned to internal affairs—or prior to July 3, 1999;

—Clark informed DCIS management, beginning on July 6, 1994, that Walinski's March 2, 1994 interview of Clark was completely false;

The facts show that the \$1,200.00 cash award given to Walinski on July 24, 1994 came at least three weeks after DCIS management had knowledge that Walinski had falsified reports on the Johanson case.

Reprimand

The staff was never able to locate the letter of reprimand that was placed in Walinski's file, nor was the staff able to establish the exact date on which the reprimand was given.

During an interview on July 12, 1999, Walinski's immediate supervisor, Tom Bonnar, stated that he was "furious" with Walinski about the Johanson interview statements. He said Walinski "was verbally and officially reprimanded and a letter was placed in his file." Bonnar doubted the reprimand would still be in his personnel file, since it's customary to remove them after a brief period of time.

[See Attachment 17, page 2]

On September 8, 1999, Walinski confirmed that Bonnar had indeed "handed him" a "letter of caution" for making "administrative errors" on the Johanson case, but he could not remember if he kept it for 30, 60, or 90 days. In a telephone conversation on August 2, 1999, Walinski claimed that "Bonnar told him to destroy it in the shredder after 30 days."

Walinski also seemed somewhat confused about the actual date of the reprimand. Initially, he suggested that it was dated October 12, 1994. However when it was pointed out that date was the exact day Bonnar and Hollingsworth approved his last performance evaluation for internal affairs, he suggested that October 12, 1994 might have seen the day he destroyed the letter of reprimand. Mr. Walinski seemed certain of one fact: he received the reprimand while still in internal

affairs. This statement is consistent with statements by Charters and Mancuso that the reprimand was issued before July 3, 1994.

[See Attachment 15, page 2]

Walinski's Rebuttal

Walinski has a simple explanation for the inaccuracies in his report of investigation on the Johanson stolen gun case. His explanation was given during testimony to McClelland on February 14, 1997 and confirmed in a telephone conversation on August 2, 1999.

He claims it was a clerical error. In a nutshell, this is his explanation:

"The headers got switched. The wrong headers ended up on the Form 1 interview sheet. I said that one guy said one thing when I said another guy said another thing. This happened when the interviews got typed up. We had a secretary that wasn't a top quality individual. She typed them up wrong. . . . But it was my mistake."

[See Attachment 18, interview, 2/14/97, pages 74-75, and telephone interview 8/2/99]

During an interview on September 8, 1999, Walinski offered a similar explanation:

"It was an administrative error. I roughed out the form 1 interview reports on my computer and gave my write up to a secretary. The secretary got the headers mixed up and switched some paragraphs."

[See Attachment 15, page 2]

Walinski's explanation is highly questionable for two reasons: 1) if the Clark interview never took place—as Clark stated, then how could Clark's name end up on a Form 1 "header" that was only inadvertently "switched"? Clark's name not should not have appeared on the radar screen; And 2) Both Young and Shiohama contend that portions of their interviews were true and accurate. If portions of the Young and Shiohama interviews were true and accurate, then how could the incorrect portions of their interviews involved "switched headers"?

Furthermore, Walinski states that he prepared his write-ups of the interviews on a computer and transferred them to a clerk typist to be finalized. That being the case, a mix up of headers seems improbable.

Walinski rule

Following the Johanson investigation, DCIS management instituted investigative reforms, including the so-called "Walinski rule." Under this rule, all interviews have to be recorded and transcripts reviewed and verified by witnesses.

Management Backs Up Walinski

During an official DOD IG interview by McClelland on March 13, 1997, both Dupree and Mancuso attempted to diminish the significance of the allegations that Walinski had falsified his reports on the Johanson case. They seemed to accept the "wrong headers" excuse used by Walinski.

McClelland questioned Dupree on March 13, 1997 about "Walinski's ability as an investigator" and problems with regard to "factual inaccuracies" in his reports. During the course of that interview, Dupree offered Walinski's "wrong header" excuse. This is what Dupree said:

"Matt's [Walinski] probably one of the most capable investigators I know. It wasn't factual inaccuracies. It was in the deliberation of putting a lot of statements together. Unfortunately, some of the comments that were made by individuals were transposed to other individuals. The statements and the facts were absolutely correct. They were just attributed to the wrong person."

[See Attachment 18, interview, 3/13/97, pages 45-46]

During an interview on March 13, 1997, McClelland asked Mancuso if he ever got "any word from Bill Dupree about inaccura-

cies in the report of investigation that Walinski prepared." Although McClelland appeared to be asking about the Steakley report, Mancuso's response seems to address the Johanson case. Mancuso also accepted the "switched headers" excuse:

"No. Again, I'm a little bit fuzzy because we had one or two instances where Matt [Walinski] on different cases which were in the same area, where Matt had inaccurately attributed certain remarks—had confused witnesses' names in his notes. But I don't recall any inaccuracies involving Steakley. . . . Gary [Steakley] was saying Walinski's responsible for other cases that are now suspect because of inaccuracies. . . ."

[See Attachment 18, interview, 3/13/97, pages 25-46]

Management's Knowledge of Allegations

The testimony given by Dupree and Mancuso to McClelland on March 13, 1997 clearly indicates that senior management at DCIS was aware of the allegations about Walinski's falsified report on the Johanson case.

Rank and file complaints about Walinski's false and misleading reports went right to the top at Headquarters as follows:

—On July 19, 1994, Agent Clark signed a sworn statement, alleging that Walinski had falsified his report [based on complaints received from Johanson on July 6, 1994]; Clark's statement was "solicited" and witnessed by Bonnar, the Assistant Director of Internal Affairs and Walinski's immediate supervisor; A document indicates that DCIS headquarters was aware of this complaint on or about July 8, 1994;

—On August 4, 1994, ASAC Young in the Los Angeles Field Office formally complained to Hollingsworth about Walinski's false and inaccurate reports of interview with agents Young, Clark, and Shiohama; Young reports that rank and file agents are "finding fault with management for not taking some type of action to have this situation re-evaluated;" Hollingsworth forwarded Young's formal complaint to Mancuso's Deputy, Dupree;

—On August 8, 1994, FLEOA addressed a formal complaint to Dupree, alleging that Walinski falsified his report of investigation;

—On August 10, 1994, management launched a re-investigation of the Johanson case based on rank and file complaints about Walinski's reports;

Mancuso's Knowledge of Allegations

Mancuso's broad responsibilities for internal investigations suggest that he would have been informed immediately of rank and file complaints about the integrity of an ongoing inquiry. Testimony and statements indicate that Mancuso was kept up-to-date on the progress of all ongoing internal investigations. Mancuso's responsibilities as DCIS Director—and the DCIS person chiefly responsible "for staffing and direction for the conduct of internal investigations"—meant that he would have been informed about the controversy over the Walinski report on the Johanson case and would have been involved in the decision to re-investigate the case and reassign Walinski to Charters' office.

During an interview on September 14, 1999, Mancuso was questioned about his knowledge and awareness of the allegations about Walinski's reports. This is what Mancuso said:

Mancuso admitted that he knew about "the problems of Walinski's reporting" on the Johanson case back in 1994, but he contends that he was unaware of the allegations that Walinski had fabricated the Clark interview in its entirety "until a few weeks ago" or in August 1999.

Mancuso said that Walinski was given a reprimand and transferred [in July 1994] because of rank and file complaints, of which he was aware, about the credibility of the work being performed by the internal affairs office. He said the "transfer and reprimand were the culmination of several negative reports on Walinski." As a result of these complaints, policy changes—like the need to record and verify interviews—were put in place—and the Johanson case was re-investigated.

Mancuso insisted that he "did not know about the extent of Walinski's mistakes." He claims that as DCIS Director, he normally "did not get beyond that level of detail," though he admitted he got deeply involved with the Steakley case because of the lack of progress in the investigation.

[See attachment 19, page 1]

Decision to Re-Open Case

The directive that re-opened the Johanson case was dated September 23, 1994. This memo suggests that DCIS managers were aware of rank and file complaints about Walinski's report.

The memo states that the Johanson case was re-opened "after allegations of discrepancies were made concerning the original interviews." It also states that Charters and Hollingsworth directed the assigned agent [Schroeder] "to conduct an independent inquiry concerning the circumstances surrounding" Johanson's stolen firearm.

[See attachment 7]

Legal Questions about Walinski's Reports

There seems to be a consensus within DCIS that Walinski's reports on the Steakley and Johanson were "inaccurate." DCIS thinking seems to suggest that Walinski's reports might have carelessly deviated from the facts, or he may have misinterpreted a statement. He was just mistaken or careless. Or as Walinski put it, he just made "administrative errors."

During an interview on July 12, 1999, Bonnar characterized Walinski's reports this way:

"The statements in Walinski's reports were inaccurate and not falsified."

[See attachment 17, page 2]

Mr. John Kennan, the current Director of DCIS, was interviewed on August 4, 1999. He indicated that he was well aware of all the adverse information on Walinski's reports in August 1994, but he attempted to minimize the significance of the problem. He said those reports were not a concern because:

"Walinski's inaccurate reports did not affect the outcome of the investigation."

McClelland offered a similar view in an interview with OSC on November 5, 1997:

"Walinski had been inconsistent and inaccurate in his report on the tax issue (regarding Gianino's testimony) but that it was not harmful. Walinski was just a sloppy investigator."

[See Attachment 20]

The staff believes that Walinski's reports of interview with Gianino and Clark and his sworn testimony to McClelland regarding these matters in 1997 went far beyond simple factual inaccuracies. The staff believes that Walinski invited or fabricated information contained in those reports for the following reasons:

First, both Gianino and Clark deny that they were ever interviewed by Walinski; they deny making the statements attributed to them by Walinski; and both deny any knowledge of the facts attributed to them by Walinski.

Second, it is possible to independently verify certain inaccuracies in Walinski's reports.

—In Gianino's case, Walinski stated "very shortly after her [Gianino's] discussions with Steakley she became very ill and was off

work for an extended period of time." Walinski later explained that "she had cancer really bad, ovarian cancer." Gianino's official leave records clearly indicate that she had no "extended illness" as reported by Walinski. In fact, she was shocked when told that Walinski had testified in 1997—under oath—that she had ovarian cancer. She stated: "That statement is not true."

—In Clark's case, Walinski stated that Clark had made statements, which Clark said he never made, at a meeting, which Clark said he never attended. Clark's appointment calendar shows that he did not attend the meeting at the DCIS office identified by Walinski. Instead, he spent that entire day at another DCIS office with two other supervisory agents—Young and Smith—who both subsequently confirmed that fact.

DCIS officials also contend that even if Walinski's reports contained false information, that information was "not harmful." For example, what difference does it make if Gianino did not have an "extended illness" as reported by Walinski. They argued that the questionable facts generated by Walinski did not affect the outcome of the investigation.

The level of danger or harm caused by a false statement is not a valid standard for determining whether the law was violated.

Under the law—18 USC 1001—a person who deliberately makes false statements could be convicted of a felony and sent to prison for up to five years. The law does not make exceptions for the extent of damage or harm caused by a false statement. In fact, a court decision specifically suggests the false statements need not involve loss or damage to the government [U.S. v. Fern, C.A. 11 (Fla.) 1983, 696 F.2d 1269].

Furthermore, the staff would argue that Walinski's false reports did, in fact, cause damage.

First, Walinski's reports undermined the integrity and credibility of the investigative process at DCIS—the Defense Department's criminal investigative arm.

Second, Walinski's reports damage the reputations of two fellow agents—Steakley and Johanson. Walinski's false reports formed the foundation for charges that were eventually made against both individuals. According to Steakley, those reports caused Steakley and Johanson and their families to incur considerable legal expenses and mental anguish.

Other Cases

During the course of the inquiry into the Steakley and Johanson cases, the majority Staff received allegations from a current and a former DCIS agent that Walinski had falsified reports during two other internal investigations, but the staff was unable to investigate and substantiate those allegations.

Conclusion

Based on a thorough review of all documents bearing on the Steakley and Johanson cases, it is crystal clear that senior DCIS management, including Mancuso, were aware of the allegations about Walinski's witness reports. Although management made certain administrative adjustments in the wake of rank and file complaints about Walinski's reports, management never attempted to determine if those allegations had merit. Management never attempted to reconcile Walinski's reports with the facts. Independent interviews of Gianino and Clark would have quickly established the fact that Walinski had fabricated at least two witness interviews. This very simple step would have led to appropriate corrective action. Instead, the record shows that Walinski was never disciplined. In fact, the record shows that Walinski actually was given a cash award—at least three weeks after management

began receiving rank and file complaints about the accuracy of his reports.

Steakley Case—Attachments

(1) Report of Investigation—Administrative Inquiry 91, May 1993, with witness interviews and other documents

(2) McClelland interviews located in Subcommittee and OSC files; Testimony dates and pages cited; Including tape transcriptions

(3) Letter from Steakley's tax attorney, John T. Ambrose, February 22, 1994

(4) Recommendation of the Administrative Review Board on Steakley case, March 7, 1994

(5) Notice of Proposed Suspension, Memo from Keenan to Steakley, August 4, 1994

(6) Final Decision on Proposed Suspension, Memo from Dupree to Steakley, October 25, 1994

(7) Letter from Steakley's attorney, Luciano A. Cerasi, to Dupree, Received by DCIS ON September 15, 1994

(8) Memo from Bonnar to Hollingsworth on telephone call from Steakley, November 15, 1994

(9) Letters from Steakley to DOD IG Eleanor Hill and Senator Fred Thompson, March 9 & 12, 1996

(10) Exchange of letters between DOD IG Hill and President's Council on Integrity & Efficiency, May 23, 1996 and October 16, 1996; Hill's letter to Sen. Thompson, May 23, 1996; Hill's memo to PCIE, February 20, 1997; OSC letter to Hill, June 3, 1997; IC letter to PCIE, January 8, 1999

(11) Investigative Plan Into Allegations by William G. Steakley, March 27, 1996

(12) Gianino's official leave records for 1991-1993

(13) Memo of interview with Gianino, June 30, 1999

(14) Memo of interview with Walinski, September 8, 1999

(15) OSC Report on Steakley case, No. MA-97-1477, July 21, 1999—Located in Subcommittee files]

(16) Hollingsworth memo for the record, November 23, 1994

Johanson Cast—Attachments

(1) Report of Investigation—Administrative Inquiry 108, April 15, 1994, including witness interviews and other documents

(2) Recommendation of the Administrative Review Board on the Johnson case, May 9, 1994

(3) Notice of Proposed Suspension, Memo from Smith to Johnson, June 24, 1994; acknowledged and signed by Johnson on July 6, 1994

(4) Formal Statement "signed and sworn" jointly by Clark and Bonnar, July 19, 1994

(5) Memo from Bonnar to Dupree and Hollingsworth, dated August 9, 1994 transmitting Young's signed statement, dated August 4, 1994, to Johnson

(6) Letter from Johnson's attorney, Luciano A. Cerasi, to Dupree, August 8, 1994

(7) Case Re-Initiation, Memo signed by SA Timothy L. Schroeder, September 23, 1994

(8) Notice of Proposed Suspension, Memo from Smith to Johanson, November 23, 1994

(9) Amendment to Final Decision on Proposed Suspension, Memo from Dupree to Johnson, February 9, 1995

(10) Employee Performance Rating, IG Form 1400.430-2 for 8/26/93 thru 3/31/94

(11) Incentive Award Nomination and Action, IG Form 1400.430-3, for 8/26/93 thru 3/31/94

(12) Notification of Personnel Action, Form 50-B, Special Act or Service Award, 5/2/93

(13) Employee Performance Rating, IG FORM 1400.430-2, for 4/1/94 thru 7/2/94

(14) Notification of Personnel Action, Form 50-B, Reassignment, 7/3/94

(15) Memo of interview with Walinski, September 8, 1999

(16) Notification of Personnel Action, Form 50-B, Performance Award, 7/24/94

(17) Memo of interview with Bonnar, July 12, 1999

(18) McClelland interviews located in Subcommittee and OSC files combined with Subcommittee interview on August 2, 1999

(19) Memo of interview with Mancuso, September 14, 1999

(20) OSC (Shea) interview, November 5, 1997

INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE,
Arlington, VA, October 1, 1999.

Hon. CHARLES E. GRASSLEY,
Chairman, Subcommittee on Administrative
Oversight and the Courts, Committee on the
Judiciary, United States Senate, Wash-
ington, DC.

DEAR MR. CHAIRMAN: I am writing regarding the inquiry of your Subcommittee into certain personnel cases in the Defense Criminal Investigative Service (DCIS). Your letter of September 27, 1999, invited the Office of Inspector General (OIG) to provide a written response based on my interview by your staff on September 14, 1999. I understand that this response will be attached to any final report that you may issue.

In your letter you state that I was allowed the opportunity to review the factual findings of your staff. I respectfully disagree with that assertion. I have not been given an opportunity to review any written work product, nor did your staff orally share any draft findings. Rather, our meeting consisted of an interview in which I responded to a lengthy series of questions. In light of these facts, the OIG would again request the opportunity to review your final written report and provide comments prior to its release.

During my nine-year tenure as Director, DCIS, I supervised approximately 500 investigative personnel at any given time and the conduct of nearly 10,000 defense fraud investigations. I have devoted my life to public service and have proudly served for over 27 years. I am committed to integrity in leadership within the Inspector General community and proud of my investigative and management record.

Given my limited understanding of the scope of the inquiry of your Subcommittee, I will in this letter attempt to furnish you with further insight as to the matters in question. My objective in this matter is to provide you with the information you need to accurately assess these cases. Specifically, I will address actions with respect to the handling of DCIS internal review matters involving Special Agents (SA) Hollingsworth, Steakley and Walinski.

SA Larry Hollingsworth: SA Hollingsworth was employed by the DCIS from November 1983 until his retirement in September 1996. I first met SA Hollingsworth some time after his hiring during which time we were peers, I as Special Agent in Charge (SAC) of the New York Field Office and he as SAC of the Chicago Field Office.

In July 1995, I identified a photograph in a law enforcement journal as possibly that of SA Hollingsworth. The unidentified individual was being sought by the Department of State (DoS) relative to the filing of a false passport application. I immediately contacted the DoS and reported my suspicions to them and later assisted the DoS in arranging a surveillance of SA Hollingsworth in anticipation of a search of his home. Following the search, he was immediately barred from the worksite and kept from any active service with this organization. Although he was arrested in July 1995, he was not indicted until January 1996. During those seven months, while the DoS investigation was ongoing, SA Hollingsworth was allowed to use sick leave to the extent verifiable by

medical authorities and accumulated annual leave. Subsequent to his indictment, he was suspended without pay and denied further use of leave. He entered a conditional guilty plea in March 1996 and was sentenced in June 1996.

During this time period I was involved in a variety of administrative matters in which SA Hollingsworth contested actions proposed by his supervisor. I, as Director, DCIS, at the time was his second level supervisor and acted as deciding official in each of these matters. These administrative actions were separate and distinct from the investigation by the DoS and prosecution by the Department of Justice.

My next involvement with this matter began when SA Hollingsworth appealed a Notice of Proposed Removal issued by his supervisor. On August 23, 1996, his attorney requested an extension until September 13, 1996, to file a written response and notified us of his intent to make a subsequent oral presentation. As deciding official, I granted this request consistent with past DCIS practice and, to preclude further delay, I simultaneously scheduled the oral presentation for September 23, 1996. However, four days prior to his scheduled oral presentation, SA Hollingsworth retired.

SA Hollingsworth was provided the same due process afforded to all other DCIS special agents in the form of a review by the Special Agents Administrative Review Board and reasonable time to prepare a written and oral response to a Notice of Proposed Removal. Variation from past practice would have been unwarranted and inconsistent with my experience as a deciding official in dozens of disciplinary proceedings.

SA Hollingsworth's criminal conduct was both inexcusable and inexplicable. His violation of law was totally out of character and inconsistent with his job performance and lengthy career. I noted this same observation in a letter to the sentencing judge as I went on record describing SA Hollingsworth's job performance.

Throughout this process, the OIG was provided advice by personnel and legal experts. The course of action taken in this case was one of the several available options permitted by Federal personnel guidelines.

SA Gary Steakley: SA Steakley began his employment with DCIS in December 1987. From that time until he entered the Worker's Compensation program in February 1993 as a result of a traffic accident involving a Government vehicle, he worked in a variety of positions within DCIS. As Director, DCIS, I selected him for several positions and promoted him to his last job as manager of a DCIS investigative office in California.

Subsequent to his vehicle accident, SA Steakley was the subject of several adverse personnel and disciplinary actions. With the exception of ensuring that internal reviews proceeded in due course, my actions with respect to SA Steakley were taken as the deciding official in these cases. In addition, as Director, I proposed to involuntarily transfer him in order to "backfill" his management billet after his accident. In this case, the then Deputy Inspector General acted as deciding official.

SA Steakley was treated fairly by DCIS, although he has repeatedly alleged that he was subjected to prohibited personnel practices. His allegations have been reviewed in various venues, including the Office of Special Counsel who, in December 1998, closed their file and declined to pursue the case further.

SA Matthew Walinski: SA Walinski held a variety of positions in DCIS from his initial hiring in August 1987, until his transfer to the Office of Inspector General, Department of the Treasury, earlier this year. Your staff

has questioned the accuracy of several reports of interview prepared by SA Walinski to include a report dealing with SA Steakley. It is my understanding that your staff perceives that allegations concerning SA Walinski were not pursued with the same tenacity shown in the SA Steakley investigations.

I was not aware of many of the facts alleged in this matter until reviewing documents in response to the inquiry of your Subcommittee. I did, however, have a general concern at the time regarding the handling of internal investigations. As a result, I directed that the internal review process be restructured so as to ensure that all future interviews be taped and transcribed to preclude any further dispute as to reporting. I was also apprised by my deputy that SA Walinski was being transferred from his duties to a position in the DCIS Training Branch. It is my understanding that SA Walinski received a downgraded appraisal as a result of his poor performance as well as a written letter cautioning him as to the importance of accuracy in his reporting.

In closing, I hope that my insights have provided you the information you need to accurately assess these cases. I appreciate your assurance that this letter will be included in any report that may be issued on this topic and look forward to an opportunity to review your draft report.

Sincerely,

DONALD MANCUSO,
Acting Inspector General

Mr. GRASSLEY. Mr. President, I think it is imperative that Congress continue to send the strongest possible signal only that the highest standards and integrity are acceptable among our law enforcement and watchdog communities, the more we will ensure that outcome. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until 2:15 p.m. today.

Thereupon, at 12:30 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRAMAS).

AFRICAN GROWTH AND OPPORTUNITY ACT—Continued

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 2379

Purpose: To require the negotiation, and submission to Congress, of side agreements concerning labor before benefits are received)

Mr. HOLLINGS. I call up my amendment No. 2379 and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 2379:

At the appropriate place, insert the following:

SEC. . LABOR AGREEMENT REQUIRED.

The benefits provided by the amendments made by this Act shall not become available to any country until—

(1) the President has negotiated with that country a side agreement concerning labor standards, similar to the North American Agreement on Labor Cooperation (as defined in section 532(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 3471(b)(2)); and

(2) submitted that agreement to the Congress.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the amendment has been read in its entirety. It is very brief and much to the point. It is similar to the North American agreement on labor. When we debated NAFTA at length, there was a great deal more participation and attention given. In these closing days, everyone is anxious to get out of town. Most of the attention has been given, of course, to the appropriations bills and the budget, and avoiding, as they say, spending Social Security after they have already spent at least \$17 billion, according to the Congressional Budget Office.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. HOLLINGS. Mr. President, I had a very interesting experience with respect to labor conditions in Mexico prior to the NAFTA agreement. I wanted to see with my own eyes exactly what was going on. I visited Tijuana, which is right across the line from southern California.

I was being led around a valley. There were some 200,000 people living in the valley, with beautiful plants, mowed lawns, flags outside. But the 200,000 living in the valley were living in veritable hovels; the living conditions were miserable.

I was in the middle of the tour when the mayor came up to me and asked if I would meet with 12 of the residents of that valley. I told him I would be glad to. He was very courteous and generous.

I met with that group. In a few sentences, summing up what occurred, the Christmas before—actually around New Year's—they had a heavy rain in southern California and in the Tijuana area. With that rain, the hardened and crusted soil became mushy and muddy and boggy, and the little hovels made with garage doors and other such items started slipping and sliding. In those streets, there are no light poles and there are no water lines. There is nothing, just bare existence.

They were all trying to hold on to their houses and put them back in order. These particular workers missed a day of work. Under the work rules in Mexico, if you miss a day of work, you are docked 3 days. So they lost 4 days' pay.

Around February, one of the workers was making plastic coat hangers—the industry had moved from San Angelo to Tijuana. They had no eye protection whatsoever. The machines were stamping out the plastic, and a flick of plastic went into the worker's eye. The