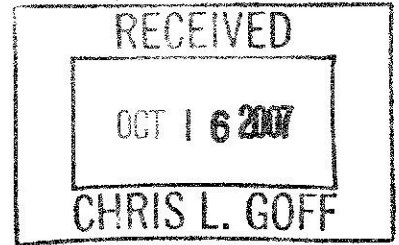


PATRICK J. FITZGERALD
P.O. Box 1231
Chicago, IL 60690



By Registered Mail and Fax

October 11, 2007

Christopher Goff, Esq.
General Counsel
Harper Collins Publishers LLC
10 East 53rd Street
New York, New York 10022

Dear Mr. Goff:

I write in reference to the book titled "*Triple Cross: How Bin Laden's Master Spy Penetrated the CIA, the Green Berets and the FBI -- and Why Patrick Fitzgerald Failed to Stop Him.*" The book was authored by Peter Lance and published by Harper Collins Publishers LLC (hereafter "Harper Collins") under the "Regan Books" imprint. I am the "Patrick Fitzgerald" named in the title and whose photograph is placed on the book cover between that of Usama Bin Laden and Ali Mohamed.

Triple Cross makes a number of statements of fact which defame me (and others) and which are easily proven to be objectively false. I understand that Harper Collins intends to republish the book in updated form this month or next. I write to demand that Harper Collins: cease publication, distribution and sale of the current version of the book; issue and publish a clear and unequivocal statement acknowledging that the book contains false statements about me; refrain from publication of any updated version; and take further steps as described below.

Background to the First Publication

Upon information and belief, Peter Lance, the author of *Triple Cross*, entered into an agreement with *National Geographic* to work on a documentary concerning Ali Mohamed, a defendant I investigated and prosecuted when I formerly worked as a federal prosecutor in the United States Attorney's Office for the Southern District of New York. However, *National Geographic* later felt compelled to sever ties with Mr. Lance, explaining in a statement issued on or about August 17, 2006, that Mr. Lance had insisted that the *National Geographic* program "... include details, accusations and conclusions that we could not independently confirm." Peter Lance thereafter publicly discussed that statement in a statement of his own. Thereafter Regan Books, an imprint of Harper Collins that has since been discontinued, published and promoted *Triple Cross* in the United States, the United Kingdom and elsewhere.

The Defamatory Nature of *Triple Cross*

As described more fully below, the book as already published defames me (and others) and places me in a false light. The book alleges that as a federal prosecutor I was personally involved in deliberately misleading the courts and the public as to certain important facts and that my wrongful conduct was a proximate cause for the massive loss of life on September 11, 2001. Among other things, the book alleges that:

(1) I was part of an effort to conceal from the public prior to 1996 the fact that the FBI had infiltrated in 1991 the terrorist cell that would later bomb the World Trade Center in 1993;

(2) I filed a false affidavit with a federal judge to conceal the purported "fact" that the fatal crash of TWA 800 was really a terrorist attack to which I had been tipped in advance by an organized crime figure and that I otherwise conspired with the National Transportation Safety Board, the 9/11 Commission and numerous others to hide the truth; and

(3) I led an effort to conceal from the public prior to 2003 the fact that the United States government had infiltrated and wiretapped in 1996 the al Qaeda terrorist cell in Nairobi which would later bomb the American embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania in 1998 and otherwise concealed the role played by Ali Mohamed in the bombing conspiracy.

Each of these allegations is *per se* defamatory of me. Allegations that a government attorney lied and concealed evidence are defamatory *per se* because such allegations: (i) impute that I have engaged in criminal activity (making false statements, which is an offense in itself and which constitutes perjury when contained in a sworn affidavit; and obstruction of justice); (ii) impute that I lack integrity in performing employment duties; and (iii) and otherwise prejudices me in my profession.¹ See *Muzikowski v. Paramount Pictures*, 322 F.2d 918 (7th Cir. 2003); *Solaia Technology LLC v. Specialty Publishing Company*, 852 N.E. 2d 825, 839-40 (Ill. 2006); and *Bryson v. News America Publications, Inc.*, 672 N.E. 2d 1207, 1215 (Ill. 1996).

The false statements are also actionable in that: (1) the statements cast me in a false light before the public; (2) the false light would be highly offensive to a reasonable person; and (3) the statements were made and published with actual malice. See *Lovgren v. Citizens First National Bank of Princeton*, 534 N.E. 2d 987 (Ill. 1989); and *Berkos v. National Broadcasting*, 515 N.E. 2d 668, 689 (Ill. 1987).

¹ The false allegations impute violations of Rules 3.3 (a) and 8.4, among others, of the Model Code of Professional Conduct.

The Provably False Nature of the Defamatory Accusations

I do not undertake any obligation to catalogue the entire litany of sensational misstatements of fact contained in the book, which would be a rather strenuous undertaking. I do, however, point out certain defamatory assertions of fact which are easily proven false by the most minimal of efforts. First, *Triple Cross* asserts that in *United States v. Usama Bin Laden, et al*, 98 Cr. 1023 (LBS), the prosecution team led by me concealed from the public until October 2003 that two years prior to the August 7, 1998, embassy bombings, the United States intelligence community was aware of an al Qaeda cell in Kenya and that as early as 1996 the intelligence community had wiretapped the telephone of Bin Laden's personal secretary Wadih el Hage and others in Nairobi. It is also alleged that we concealed the significant role played in the bombing conspiracy by Ali Mohamed, the focus of *Triple Cross*.

By way of illustration, *Triple Cross* asserts at p. 367:

Because of the secrecy surrounding terror prosecutions in the SDNY, nobody in the mainstream media had a clue at the time of the convictions that Fitzgerald's Squad 149 had years of advance warning of the plot, or that Ali Mohamed, the spy whom they agreed to plead out, had played such a prominent role in its execution. It wasn't until October 2003, more than two years *after* the verdict, that Robert Windrem of NBC News filed this report: "Newly disclosed documents disclosed in the East Africa bombings case show that U.S. intelligence was aware of Osama Bin Laden's terrorist cell in Kenya two years before the August 1998 bombings that killed 224 people, including 12 Americans. As early as August 1996, the intelligence community bugged the Nairobi phones of Bin Laden's personal secretary, Wadih el Hage, and others in Kenya capital, according to court records.

The assertion is absurdly false. Public filings at least as early as 1999 openly described the role of Ali Mohamed in explicit detail. Indeed, the language of a single count of a publicly filed Indictment refutes Mr. Lance's false claim. Count One of Indictment S(6) 98 Cr. 1023 (LBS), filed on June 16, 1999, specifically alleged that Ali Mohamed was a longstanding member of the al Qaeda conspiracy to kill Americans, averring, among other things, that:

At various times from at least as early as 1990, the defendant ALI MOHAMED, and others known and unknown, provided military and intelligence training in various areas, including Afghanistan, Pakistan and the Sudan, for the use of al Qaeda and its affiliated groups, including the al Jihad organization. [Overt Act 12(c)]

...

In Afghanistan in or about 1991 and 1992, the defendant ALI MOHAMED

trained members of al Qaeda, including FAZUL ABDULLAH MOHAMED², a/k/a "Harun," in various military techniques including urban fighting, guerilla fighting and evasion of surveillance; [Overt Act 12(o)]

...

Beginning in the latter part of 1993, members of al Qaeda discussed with defendant ALI MOHAMED a possible attack against the United States Embassy in Nairobi, Kenya, in retaliation for the United States' participation in Operation Restore Hope in Somalia; [Overt Act 12(ii)]

On or about December 9, 1993, the defendant ALI MOHAMED entered Nairobi, Kenya; [Overt Act 12(jj)]

On or before January 23, 1994, the defendant ALI MOHAMED left Kenya; [Overt Act 12(kk)]

On or about January 23, 1994, the defendant ALI MOHAMED returned to Nairobi, Kenya, using the Egyptian passport bearing MOHAMED's photograph and the false name "Ahmed Bahaa Eldin Mohamed Adam"; [Overt Act 12(ll)]

On or about February 3, 1994, the defendant ALI MOHAMED entered the United States Embassy building in Nairobi, Kenya, with his United States passport; [Overt Act 12(mm)]

In or about 1994, members of al Qaeda reviewed with the defendant ALI MOHAMED files concerning possible terrorist attacks against: (i) the United States Embassy in Nairobi, Kenya; (ii) the building then housing the United States Agency for International Development in Nairobi, Kenya; and (iii) British, French and Israeli targets in Nairobi, Kenya; [Overt Act 12(nn)]

...

At various times in the summer of 1998, ALI MOHAMED made false statements to a Special Agent of the Federal Bureau of Investigation conducting a criminal investigation of al Qaeda and the affiliated al Jihad organization; [Overt Act 12(iiii)]

..

In or [about] late August 1998, the defendant ALI MOHAMED possessed, among other things:

- documents concerning techniques of surveilling various targets, including military, diplomatic and government targets;
- documents concerning the planning of terrorist operations and the structuring of a terrorist group into different cells;
- documents concerning how intelligence agencies operate;

² The Indictment elsewhere charges FAZUL ABDULLAH MOHAMED with a direct role in executing the bombings. Among other things, the Indictment charges that FAZUL MOHAMED rented the location where the bomb was assembled and escorted the truck containing the bomb to the American embassy on the day of the bombing. (Count One, overt acts 12 (rrrr) and (yyyy)).

- documents regarding various explosives, including documents concerning the planting of explosives in buildings;
- documents regarding assassination techniques;
- documents regarding the firing of various weapons, including the rocket-propelled grenade ("RPG");
- documents concerning a military-style training program;
- documents concerning codes;
- coded correspondence;

...

and

- an Egyptian passport in the name of "Ahmed Bahaa Eldin Mohamed Adam" bearing MOHAMED's photograph; [Overt Act 12(jjjjjj)]

On or about September 10, 1998, in the Southern District of New York, the defendant ALI MOHAMED made false statements to a federal Grand Jury conducting an investigation of al Qaeda and the August 1998 bombings in Africa. [Overt Act 12(kkkkkk)]

(Emphasis added.)

If there were any doubt from the publicly filed charges that Ali Mohamed played a key role in the plot, Ali Mohamed's public guilty plea allocution on October 20, 2000, added even more details to the public record. Mr. Mohamed publicly allocuted, among other things, that with respect to the embassy bombings he played a significant role:

[I]n late 1993, I was asked by Bin Laden to conduct surveillance of American, British, French and Israeli targets in Nairobi. Among the targets I did surveillance for was the American Embassy in Nairobi, the United States AID building in Nairobi, the United States Agricultural Office in Nairobi, the French Cultural Center and French Embassy in Nairobi. The targets were selected to retaliate against the United States for its involvement in Somalia. I took pictures, drew diagrams and wrote a report. ...

I later went to Khartoum, where my surveillance files and photographs were reviewed by Usama Bin Laden, Abu Hafs, Abu Ubaidah and others. Bin Laden looked at the picture of the American Embassy and pointed to where a truck could go as a suicide bomber.

(Emphasis added.)

Nor did I conceal the fact that the intelligence community had infiltrated the al Qaeda cell prior to the bombing. We instead exposed that. The government filed motion papers – many signed by me – describing, among other things, the intelligence community's infiltration of the Nairobi al Qaeda cell, including the conduct of wiretaps in Kenya and the searching of Wadih el

Hage's house. Indeed, prosecutors -- for the first time ever -- litigated the admissibility of a wiretap and search of an American citizen overseas in which American authorities participated. The prosecution team declassified previously classified materials and offered those materials in evidence. Indeed, they became a key part of the evidence at the trial, the transcript of which Mr. Lance claimed to have pored over. Publicly filed court opinions discussed these same facts -- even before the January 2001 trial. *See, e.g., United States v. Bin Laden*, 126 F. Supp. 2d 264 (S.D.N.Y. 2000). In that opinion for example, it was stated:

By the late spring of 1996, the United States intelligence community ("Intelligence Community") became aware that persons associated with Bin Laden's organization had established an al Qaeda presence in Kenya [citing to Government motion papers]. In addition, the Intelligence Community had isolated and identified five telephone numbers which were being used by persons associated with al Qaeda. (*Id.*) All five of these phone lines were monitored by the Intelligence Community from August 1996 through August 1997. (*Id.* at 3.) One of those phone lines was located in an office in the same building where the Defendant, El-Hage, and his family resided. (*Id.* At 2.)

...

On August 21, 1997, American and Kenyan officials conducted a search of the defendant's residence...

126 F. Supp. at 269.

At trial, witnesses, several of whom were examined in open court by me personally, testified to the facts *Triple Cross* claims were concealed. In February 2001, witness L'Houssaine Kherchtou described Ali Mohamed's role in the surveillances in the 1993-1994 time period. Tape recordings from the wiretap whose existence *Triple Cross* contends was concealed from the public until October 2003 were admitted into evidence as public exhibits at the 2001 trial. FBI Special Agent Daniel Coleman testified about the 1997 search of el Hage's house in Nairobi and various items seized in that search were received in evidence.

Nor did these public developments go unreported by the media. For example, a February 22, 2001, article on CNN.com reported that:

FBI agent Daniel Coleman testified on Wednesday that he directed an August, 21, 1997 Kenyan police raid on el Hage's's Nairobi residence. El Hage's personal computer and discs, business card collection, and planning diary were among the items confiscated and entered into evidence.

Similarly, a CNN.com article on April 25, 2001, reported:

The United States began wiretapping el Hage's home in July 1996, suspecting him

of running a Kenyan cell for Saudi exile and accused terrorist Osama bin Laden, who was then already under federal investigation. In the early 1990s el Hage worked for bin Laden companies in Sudan.

In short, the notion that I concealed until October 2003 the role that Ali Mohamed had played in the terror conspiracy, or the existence of wiretaps into el Hage's house in Nairobi prior to the bombing, is completely disproved by the public record many times over.

It is also telling that Mr. Lance in part proves the existence of the information he claims was concealed by quoting transcripts from the trial. Indeed, he cites transcripts where I elicited information about Ali Mohamed from witness L'Houssaine Kherchtou in open court. In so doing, *Triple Cross* quoted the transcripts but deleted my name and referred simply to a generic prosecutor: "an assistant U.S. attorney" and "AUSA." See p. 106-107. This is compelling evidence that Mr. Lance libeled me in a deliberate and calculating way. Harper Collins is on clear notice that the falsehoods so rife in *Triple Cross* are not a result of mere negligence or even recklessness. Nor could the book's inaccuracies be fixed by a redaction of a few offending sentences. The book is a deliberate lie masquerading as truth.

Furthermore, the October 2003 *NBC* report that Mr. Lance relies on in *Triple Cross* to "prove" the concealment until 2003 of information concerning the search of el Hage's home and 1996 intelligence wiretap was actually first published on December 4, 2000, just *prior* to when the embassy bombing trial began in January 2001. The article states:

Both the electronic eavesdropping and the residence search are likely to become evidence in the trial of four bin Laden associates in New York beginning this week. El-Hage, a naturalized American citizen, is one of the four men on trial. (emphasis added)

The text of the article makes clear that it was written before the start of the trial and that the evidence would be public, not concealed. However, quoting the article selectively in the book, Mr. Lance deleted the references to the anticipation that the evidence would be received at the then-upcoming trial in order to "prove" that this evidence was concealed before, during and after the trial. Again, Mr. Lance's calculated distortion of this article shows that *Triple Cross* is a deliberately false book.

False Claims about the 1995 Trial

The false allegation about my efforts to conceal information until 2003 about government infiltration of an al Qaeda cell in 1996 mirrors a similar false allegation in the book about efforts by prosecutors until 1996 to conceal infiltration of the terrorist cell in 1991 that eventually bombed the World Trade Center in 1993. *Triple Cross* levels that false allegation against the trial team in *United States v. Abdel Rahman, et al.*, led by then federal prosecutor Andrew C.

Christopher Goff, Esq.
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McCarthy, which also included me.

For example, on page 209, Mr. Lance writes that after the 1995 trial of Sheik Abdel Rahman and others:

...almost no one outside the confines of 26 Federal Plaza or the SDNY knew the real truth: that Salem had first infiltrated the Sheikh's cell in the fall of 1991, and that ASAC Carson Dunbar had caused his withdrawal, leading Rahman to bring in a professional bomber named Ramzi Yousef.

This defamation is also patently and provably false.

The prosecution team proved up in open court and at great length that informant Emad Salem infiltrated the terror cell and took a trip with Sheikh Abdel Rahman to Detroit as early as 1991. Mr. Salem testified at great length about his dealings with the FBI and his falling out with ASAC Dunbar and others. Mr. Salem explained how his relationship with the FBI terminated months before the bombing and how it resumed after the bombing when it was clear that the group he had infiltrated had carried out the bombing. Salem spent well over a month on the stand as a witness in open court. ASAC Dunbar and many other FBI agents testified as well. There was also media coverage of that trial and those very issues. *See, e.g. the New York Times* coverage of the trial, including an article dated July 6, 1995, discussing the testimony of Emad Salem and Carson Dunbar.

Perhaps the clearest proof that the prosecution team did not conceal until 1996 the fact that Emad Salem had penetrated the terrorist cell in 1991 is the language of Indictment S(5) 93 Cr. 181 (MBM), publicly filed prior to the January 1995 trial, which states in pertinent part in Count One:

In or about November 1991, IBRAHIM A. ELGABROWNY, among others, sought to recruit Emad Salem into the Jihad Organization. *Salem, in fact, was working as an informant for the Federal Bureau of Investigation.*

In or about late November and early December 1991, OMAR AHMAD ALI ABDEL RAHMAN traveled with Emad Salem and others to Detroit, Michigan.
[Overt Act (i) and (j)](emphasis added)

I enclose copies of Indictment S (6) 98 Cr. 1023 (LBS) filed in *United States v. Usama Bin Laden, et al.* and Indictment S5 93 Cr. 181 (MBM), filed in *United States v Omar Abdel Rahman*.

Christopher Goff, Esq.
October 11, 2007
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Demand that Publication and Defamation Cease

In light of the foregoing, if Harper Collins fails to take immediate corrective action, including but not limited to cancellation of the "updated" version, there is clear and convincing evidence that Harper Collins will be proceeding with further publication with "actual malice": knowing that the offending book is actually false in substantial part and having serious doubts about the truth of the balance.

I therefore demand that Harper Collins:

- (i) cease publication, distribution and sale of the current version of the book, and withdraw unsold copies from circulation;
- (ii) issue and publish a clear and unequivocal statement acknowledging that the book contains material false statements about my conduct and making clear that Harper Collins does not stand behind the factual assertions made in the book regarding my conduct; and
- (iii) agree to refrain from publication of any updated version of the book and to take no steps to transfer the rights to any other person or entity to publish the book in any form.

This demand is not a waiver by me of any right to sue Harper Collins (or anyone else, including Mr. Lance) for tortious conduct committed to date. In the meantime, I ask that you preserve the records described on Attachment A, which records, among others, I believe will be necessary for me to obtain and review if there is any litigation. I do not claim now, and will not later claim, that the mere preservation of such documents at my request constitutes an admission by Harper Collins that I am entitled to review or production of the documents.

Please advise me in writing of the position of Harper Collins at your earliest convenience following receipt and review of this letter. You should direct any such correspondence to the above personal address, which I have established specifically for this matter. If Harper Collins decides to further publish this book, please also advise whether you will accept service of any civil process by registered mail or otherwise how you would prefer that I effect service of process upon the company.

Thank you for your kind attention to this matter.

Very truly yours,


Patrick J. Fitzgerald

Attachment

Attachment A

The request governs all documents of any kind (including correspondence, contracts, handwritten notes, drafts, emails, tape recordings and any other form of writing or electronic communication) of Regan Books, Harper Collins or any of its affiliates (collectively "Harper Collins") which relate to:

(1) any statements issued by *National Geographic* about Peter Lance, *Triple Cross* or the documentary on which they worked; any documents showing that Mr. Lance or Harper Collins were aware of those statements at any time; any documents reflecting whether Mr. Lance brought those concerns to the attention of Harper Collins; any documents reflecting any oral or written communication with *National Geographic* or its employees or contractors concerning Peter Lance, *Triple Cross* or the documentary;

(2) all contracts and correspondence between Mr. Lance and Harper Collins concerning *Triple Cross*, its drafting, its publication, its promotion, any further publications (including in updated and/or paperback form or any movie rights) including, but not limited to, any indemnification agreements;

(3) all drafts of the book and any correspondence or documents where changes to the book or the focus of the book are suggested, reflected or discussed, including, but not limited to, changes that were anticipated to focus the book on persons who had greater name recognition by the public;

(4) records reflecting market conditions and expected market conditions for the book when it was published;

(5) records of any and all projected sales and actual sales, whether in the United States, the United Kingdom or anywhere else, including sales by Internet, as well as any and all records of profits attributable to *Triple Cross*³;

(6) all documents reflecting any awareness by Harper Collins or its employees or contractors as to factual inaccuracies or doubts about the factual accuracies of any material appearing in *Tripe Cross* or any drafts;

(7) efforts, if any, undertaken by Mr. Lance or his employees to fact check the book or any draft;

(8) efforts, if any, undertaken by Harper Collins or its employees to fact check the book or any draft;

(9) documents reflecting any Harper Collins policies concerning what due diligence, if any, it performs prior to publications of work it represents as "non-fiction";

(10) any documents reflecting Harper Collins representing or categorizing or holding out *Triple Cross* as being a non-fiction work, including any and all filings with the Library of Congress;

(11) any documents reflecting Harper Collins estimate of the market value of my personal reputation, including but not limited to, any documents relating to an unsolicited letter from Judith Regan, on behalf of Harper Collins, to me offering me a "seven figure" sum for the rights

³ See *Douglass v. Hustler*, 769 F.2d 1129, 1145 (7th Cir. 1985)(regarding calculation of punitive damages)

to my biography and any documents establishing how that number was derived or otherwise constituting admissions as to the nature and value of my reputation at that time; and

(12) any and all documents reflecting payment to Mr. Lance, including the locations and identifies of accounts to which payments were transferred for the benefit of Mr. Lance or his designees.



November 2, 2007

Patrick J. Fitzgerald
P.O. Box 1231
Chicago, IL 60690

Re: TRIPLE CROSS by Peter Lance

Dear Mr. Fitzgerald:

Your October 11, 2007 letter addressed to Christopher Goff of this office, concerning the book *TRIPLE CROSS* by Peter Lance ("Book"), was referred to me for response.

In your letter you set forth three aspects of the Book which you claim are inaccurate and defamatory in nature; including (1) that you were part of an effort to conceal from the public prior to 1996 the fact that the FBI had infiltrated in 1991 the terrorist cell that would later bomb the World Trade Center in 1993; (2) that you filed a false affidavit to conceal the purported "fact" that the crash of TWA 800 was a terrorist attack; and (3) that you led an effort to conceal from the public prior to 2003 the fact that the United States government had infiltrated and wiretapped in 1996 the al Qaeda terrorist cell in Nairobi which would later bomb the American embassies in Nairobi, Kenya and Dar es Salaam, Tanzania in 1998 and that you further concealed the role played by Ali Mohamed in the bombing conspiracy.

I have reviewed the contents of the Book against your claims and believe that in each instance you have mischaracterized the nature of the references about which you complain.

With respect to the first claim, the Book never charges that you were part of an effort to conceal the fact that the FBI had infiltrated in 1991 the terrorist cell that would later bomb the World Trade Center in 1993. The one reference you cite on page 209 of the Book does not support your characterization. That reference merely makes the claim that people outside of the FBI and US Attorney's office in New York were not aware of the "real truth" behind Emad Salem and his relationship with certain federal agencies. Immediately following the reference you cite, Lance lists certain details of Salem's history that were not known to the general public. Nowhere in the Book does Lance state

or otherwise imply that Salem was not referred to in the publicly filed indictment or during trial testimony.

Your second claim – in which you maintain that the Book accuses you of filing a false affidavit regarding the crash of TWA 800, that you had been tipped in advance by an organized crime figure about the crash and that you conspired with various federal bodies to hide the truth – is also without support in the Book. (Your October 11 letter does not appear to discuss this second claim other than listing it on page 2.)

The Book discusses at great length the affirmation in which you discount the credibility of the “kites” that were passed from Ramzi Yousef to Greg Scarpa, Jr. and presents evidence that contradicts certain statements in your affirmation. Lance also expressly disagrees with your conclusions regarding the credibility of the Yousef/Scarpa material. But the Book never accuses you of the misconduct that you allege. Instead, after presenting evidence that John Napoli denied telling your office that Scarpa had confided to him that the material was a “fabrication”, as you allege in your affirmation, Lance then writes the following:

If Napoli’s account is accurate, it appears that two senior federal prosecutors, Fitzgerald and Kelly went along with a government story that characterized the Yousef-Scarpa Jr. intelligence as fraudulent. If, as per Fitzgerald’s affidavit, that occurred in conjunction with the late summer decision by the Feds to pardon DeVecchio and destroy Greg Jr. as a potential witness against him, then the creation of the “hoax” and “scam” story by the Feds could, in my opinion, amount to a serious obstruction of justice. (Emphasis added)

Fitzgerald was asked to answer a series of detailed questions raised by this investigation, but through his spokesperson in Chicago, Randall Samborn, he declined.

In the foregoing reference, Lance sets forth certain allegations and states that if those allegations were true, then in his opinion, certain federal agencies and employees were engaged in wrongdoing. Lance is clearly permitted, as a matter of law, to set forth underlying statements of fact and then give his opinion based on those disclosed facts. Lance is also entitled to set forth his theory – clearly expressed as such throughout the Book – that certain federal agencies had a motive to discount the Yousef-Scarpa intelligence because if Scarpa, Jr. were accepted as a credible witness on terrorism issues, he would have to be considered a credible witness with respect to his father’s relationship with former FBI SSA R. Lindley DeVecchio, thereby jeopardizing a score of mafia convictions in the Eastern District of New York.

Finally, your letter accuses Lance of charging you with improperly withholding until 2003 the fact that two years prior to the 1998 embassy bombing the United States intelligence community was aware of an al Qaeda cell in Kenya and that as early as 1996 the intelligence community had wiretapped the phone of Wadhi el Hage and others in Nairobi. You also claim that Lance falsely states that you concealed until 2003 the significant role that Ali Mohamed played in the embassy bombing notwithstanding the fact that Mohamed's role was made clear in the indictments and in trial testimony prior to 2003.

The Book does contain a minor error in that the NBC News report regarding intelligence of al Qaeda activity in East Africa, which Lance cited, was apparently first broadcast in December 2000, although the MSNBC.com website containing the report uses an October 24, 2003 date. HarperCollins will correct that dating discrepancy and modify the language in the first full paragraph of page 367 of the Book, but that clearly inadvertent misdating does not support a claim of defamation.

First, the Book does not accuse you or anyone else of improperly withholding evidence that Squad I-49 had advance warning of the bombing plot. In fact, the paragraph which you cite in your letter begins with the phrase "Because of the secrecy surrounding terror prosecutions in the SDNY..." That language does not indicate wrongdoing, but instead suggests that because of the perceived need for secrecy in terrorism trials, the information was not previously disclosed.

Second, although the NBC News article is misdated, it appears that the essence of Lance's point with respect to Mohamed is correct; namely, that the U.S. Attorneys Office in the Southern District of New York did conceal, for whatever reason, Mohamed's extensive role in al Qaeda activity -- at least up until the time his indictment was unsealed. As reported in the Book, Mohamed was not called as a witness in either the Day of Terror or the embassy bombing trials. FBI and Justice Department officials chose not to arrest Mohamed in the fall of 1997 at the time of your meeting with him. Further, after Mohamed's arrest, he was kept on a "John Doe" warrant for months. Even after the announcement of Osama bin Laden's indictment in the Embassy plot, U.S. Attorney Mary Jo White expressly refused to comment publicly on Mohamed.

Perhaps most important, the responsible federal agencies did not disclose the critical fact that Mohamed had been an FBI informant for six years prior to the embassy bombings.

Lance presents a number of potential reasons why the government may have wanted to keep secret Mohamed's role as an FBI informant, something that he is certainly entitled to do based on the underlying facts that he presents in the Book.

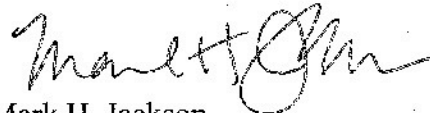
Patrick J. Fitzgerald
November 2, 2007
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In sum, HarperCollins does not believe that there is any merit to the claims contained in your October 11 letter. We will, however, take steps to correct the misdating of the NBC News story that you have pointed out with respect to the paragraph on page 367 of the Book. We stand behind Mr. Lance and intend to go forward with the publication of the updated trade paperback edition of the Book, which we regard as an important work of investigative journalism.

You should also know that prior to, and entirely unrelated to our receipt of your letter, the cover of the upcoming paperback edition of the Book no longer makes specific reference to you, nor does it contain your photograph. The subtitle now reads: *How bin Laden's Master Spy Penetrated the CIA, the Green Berets, and the FBI*.

This letter is written without prejudice to HarperCollins' defenses in this matter, all of which are expressly reserved.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mark H. Jackson", written in a cursive style.

Mark H. Jackson

cc: Peter Lance

PATRICK J. FITZGERALD
P.O. Box 1231
Chicago, IL 60690

November 16, 2007

By Certified Mail and Fax
Mark Jackson, Esq.
General Counsel
Harper Collins Publishers LLC
10 East 53rd Street
New York, New York 10022

Re: Triple Cross

Dear Mr. Jackson:

In my earlier letter of October 11, 2007, I outlined how allegations made in the book, *Triple Cross*, authored by Peter Lance and published by Harper Collins, both defamed me and placed me in a false light. I outlined three of the main themes of the book as they concerned me, but focused on two particular allegations concerning the conduct of the prosecution teams at terrorism trials in 1995 and 2001. I did so because a simple comparison of those two allegations with the extrinsic public record proves that the allegations are objectively false, without the need to weigh the credibility of any other sources for the book. I also focused on those two false allegations because they were remarkably similar in their dishonesty: in both cases, Mr. Lance alleged that certain facts about government contact with terror cells prior to the commission of terrorist acts were concealed from the public by prosecutors when they in fact were made public through the efforts of the prosecution team.

I also explained in the October letter how the allegation that certain information about the American government's penetration of an al Qaeda cell in Kenya prior to the 1998 bombings did not enter the public domain until three years after the 2001 terrorism trial was so clearly deceitful as to be compelling evidence of Mr. Lance's deliberate disregard for the truth: Mr. Lance selectively misquoted an article to create an impression he had to know was false. Accordingly, I demanded that Harper Collins cease publishing *Triple Cross*, refrain from publishing an updated paperback version, issue a public and unequivocal retraction of the false allegations against me and take other specified steps.

You responded by letter dated November 2, 2007, contending that I "mischaracterized" the nature of the allegations made against me in *Triple Cross*. You conceded that the factual

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contention regarding the 2001 trial which I cited as deliberately false was not accurate, but dismissed the inaccurate statements as a "minor error" and a "dating discrepancy" that was "clearly inadvertent misdating." (Letter of Mark Jackson, Esq., dated November 2, 2007, hereafter "Jackson letter" at p. 3.) Your letter further contended that none of the allegations made against me were defamatory. You further noted that I did not discuss at length my contention that *Triple Cross* alleged that I was involved in obstructing justice in connection with sworn filings I made regarding Gregory Scarpa, Jr. You contended, however, that in making any such assertions, Mr. Lance was clearly stating an "opinion" based upon facts he set forth.

Your letter made clear that Harper Collins intends to publish an updated version of the book, which you went so far as to embrace as "an important work of investigative journalism." (*Id.* at p. 4.) It is implicit in your letter that Harper Collins does not intend to issue any retraction of the allegations already published in *Triple Cross* as you indicated that Harper Collins "stand[s] behind Mr. Lance." (*Id.*) Finally, your letter never directly addressed the contention that the book places me in a false light.¹

In this letter, I set forth how your response is wide of the mark in that my earlier letter did not mischaracterize the allegations set forth in *Triple Cross*. To the contrary, the benign descriptions of the book's allegations contained in your letter are a cramped view of the language I cited, divorced from the context of the book. I address such context below, first discussing the two allegations which were the principal focus of the October letter, and then discuss the allegations concerning the sworn filings regarding Mr. Scarpa.

The Allegations Regarding Concealment of the FBI Penetration of the Kenyan Terror Cell

My October letter set forth that *Triple Cross* alleged that: "I led an effort to conceal from the public prior to 2003 the fact that the United States government had infiltrated and wiretapped in 1996 the al Qaeda terrorist cell in Nairobi which would later bomb the American embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania in 1998 and otherwise concealed the role played by Ali Mohamed in the bombing conspiracy." (October 11, 2007, letter of Patrick Fitzgerald, hereafter "Fitzgerald letter" at p. 2.) Regarding that claim, you respond that "... the Book does not accuse you or anyone else of improperly withholding evidence that Squad I-49 had advance warning of the bombing plot." (Jackson letter at p. 3.) You further assert that the language I cited from the book "does not indicate wrongdoing, but instead suggests that because of the perceived need for secrecy in terrorism trials, the information was not previously disclosed." (*Id.*)

Readers of both letters might wonder if we read the same book. Accordingly, I discuss

¹ Your letter also did not address my request that certain documents be preserved.

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the content of *Triple Cross* in some detail to demonstrate that a fair reading of *Triple Cross* makes plain that it contains the accusations that you contend are not there. To briefly summarize the matters quoted below, it is a central theme of *Triple Cross* that the truth about a number of terrorism matters was deliberately and actively concealed from the public by prosecutors (specifically including me) and other government officials who had a dishonest motive to hide the truth and that death on a massive scale resulted.

To begin, the book's Preface plainly sets out the allegation of a deliberate coverup in which I played a significant role:

... But rather than risk losing a series of sixty Mafia cases in the Eastern District built on tainted evidence from Scarpa, Sr., *the Feds decided to bury the intel.*²

One of the lead prosecutors who disconnected those dots, I learned, was Patrick Fitzgerald, then the head of the Organized Crime and Terrorism in New York's Southern District. ... (p. xxi)

...

As I looked back on the Justice Department's counterterrorism track record, I concluded that many of the dots left unconnected by the FBI and Department of Justice (DOJ) on the road to 9/11 appeared to have been the result of an *intentional* obscuring of the evidence. (Emphasis in original)

Continuing to work sources and examine the reams of documentary evidence generated in the SDNY al Qaeda cases, I came to the conclusion that the FBI's failure to prevent the African embassy bombings in 1998, the deadly assault on the USS *Cole* in 2000, and the 9/11 attacks themselves, went *beyond gross negligence*. It seems as if a number of FBI officials and *federal prosecutors* at the heart of the Bin Laden hunt realized that they had been outgunned for years. So they *acted affirmatively to partition the intelligence*.

I believe that their motive was to sanitize the record and thus prevent the public from understanding the full depth of the FBI/DOJ missteps in the years leading up to September 11. So "walls" were intentionally built, and key intelligence was withheld from other agencies, including the CIA and the DIA. In any other government enterprise,

² Italics reflect emphasis I have added except where it is specifically noted that the emphasis was in the original.

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the consequences might have been more benign, but in the realm of national security that compartmentalization of intelligence proved fatal. (p. xxii-xxiii)

The main body of the book repeats and expands on these allegations:

In the months ahead, Kallstrom and other top feds, including Patrick Fitzgerald, certainly got the DeVecchio scandal "over with," at least for the time being. But in the process they *flushed enough probative evidence* on al Qaeda to have interdicted the 9/11 plot. (p. 230)

In a chapter titled "Crossing the Line" it was stated that:

... [t]he Feds in the FBI's New York Office and the SDNY had now begun to *cross the line from negligence to intent in their disconnection of the dots*. At least that's what the evidence suggested to me. (p. 252)

Then, under the subtitle "The Disconnection of the Dots," it was alleged:

It now appears that by the late summer and early fall of 1996 the FBI and Justice Department had gone into a containment mode, with *key officials deciding to limit the evidence and affirmatively acting to disconnect certain dots*. officials of the FBI and DOJ had every interest in hording the intel so that these multiple failures in the terror war would not be exposed. But in containing that intelligence, the FBI and Justice prevented other US intelligence agencies from connecting the dots on Osama Bin Laden's network ... (p. 257)

The book continues:

Jamal al Fadl ... should indeed have been 'a great thing' for the FBI and the SDNY prosecutors. *But he also presented a new problem for Patrick Fitzgerald... Once those ties were made public, it would be impossible for Fitzgerald to deny that Bin Laden was the puppetmaster behind both of Ramzi Yousef's cells...* By the fall of 1996, Patrick Fitzgerald had a choice. *He could continue to ignore the evidence that documented the history of Bureau and DOJ failures, or he could use al Fadl to string them together in a once-and-for-all honest assessment of al Qaeda's victories against the United States and its threat to America in the future.*

But as Patrick Fitzgerald must have known, that would have meant bucking James Kallstrom, Jamie Gorelick and Valerie Caproni, chief of the EDNY's Criminal Division.

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As the head of the SDNY's Organized Crime and Terrorism Unit, Patrick Fitzgerald knew exactly how the wiseguy could rip open the dark underside of the DeVecchio scandal. And that was too great a risk for him to take.

The Company Line

At some point in that fall of 1996, *despite getting chapter and verse from al Fadl on the true connection between al Qaeda and Yousef's two cells, Fitzgerald chose to go with the company line.* He would acquiesce to a decision that would soon dismiss the critical Yousef-Scarpa intelligence cache as a fabrication. He would support the closing of the De Vecchio OPR....

David Kelly, ... who was Fitzgerald's partner in 1995 as Chief of the SDNY's Organized Crime and Terrorism Unit, would use a mob snitch to claim that Scarpa Jr. and Yousef had concocted all of that intel. *Fitzgerald would go along with that story as well.*

...
To make this rewrite of history work, Yousef had to be minimized as well. So Fitzgerald would perpetrate the fiction that al Qaeda wasn't behind Yousef's cell in New York...

The FBI/DOJ cover story that Fitzgerald endorsed also appears in the 9/11 Commission's final report

That fiction, which Fitzgerald and other DOJ officials perpetrated through the 9/11 commission hearings and beyond, allowed the FBI and prosecutors in the SDNY deniability, insulating themselves from the charge that they were negligent in ignoring Emad Salem's advice and not stopping the first attack on the World Trade Center in 1993... (pp. 264-266)

...
A few weeks later, in another federal courthouse across the East River in Brooklyn, *the Feds would seek to rewrite history again – excising from the public record a major intelligence initiative from 1996 that had revealed the existence of an active al Qaeda cell in New York City. Once again, Patrick Fitzgerald was directly involved. (p. 302)*

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Since the evidence, now memorialized in dozens of FBI 302 memos, couldn't be ignored or hidden, *they concocted a story that it wasn't really evidence* – that, in effect, Yousef and Scarpa have made it all up. (p. 306)

The book continues with a chapter titled "The 'Hoax' and the 'Scam'":

Now for the first time we'll produce evidence that the Feds *themselves* actually concocted the "hoax" and "scam" story and that their principal source denies ever telling prosecutors that Yousef's intelligence provided by Greg, Jr. wasn't genuine. (p. 308)(emphasis in this paragraph in the original)

...

If Napoli's account is accurate, it appears that two senior federal prosecutors, Fitzgerald and Kelly, went along with a government story that characterized the Yousef-Scarpa Jr. intelligence as fraudulent ... the creation of the "hoax" and "scam" story by the Feds could, in my opinion, amount to a serious obstruction of justice. (p. 313)

...

The March 21, 2000, link chart ... is the smoking gun document proving that the government understood both Ramzi Yousef and Ali Mohamed were involved with multiple acts of mass murder and terror perpetrated by bin Laden's network, from the killing of Rabbi Meir Kahane in 1990 forward. ... *it confirms my contention that Fitzgerald, Snell, Gorelick and other key DOJ officials sought to hide the full truth behind the Justice Department's failures.* (p. 342)

...

... However, after the Feds decided to bury the 'Scarpa materials' and clear Supervisory Special Agent Lin DeVecchio, that particular 'dot' on the chart documenting al Qaeda's terror war against America was disconnected by Patrick Fitzgerald, FBI General Counsel Valerie Caproni, and James Kallstrom, terrorism adviser to New York State. (p. 442)

In short, there is little doubt that the book alleges concealment and wrongful conduct against me. Indeed, *Triple Cross* maintains that my testimony before the 9/11 Commission, provided pursuant to an oath, was a "fiction" I "perpetrated" and that the account in my affidavit in the Scarpa proceeding was "concocted" – accusing me of perjury in two separate instances.

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Representations That the Book is Factual

In addition to defaming me, it is plain from the Preface through the Afterword that the assertions in the book were purported to be based on fact. The Preface begins with the oversized lead in: "THIS IS A TRUE STORY..." The Preface then represents:

Now, after more than a decade writing fiction, I was back developing sources inside and outside of the bureau, *poring over the 40,000-plus pages of trial transcripts* from the al Qaeda cases in the Southern District of New York... (p. xvii-xviii)

...
To begin with, I reread more than twenty-five four-inch-thick three-ring binders of research from my first two books. *I then went back through the summaries I'd made of the forty thousand pages of trial testimony* in the SDNY's al Qaeda-related cases, including the first WTC bombing trial in 1994; the Day of Terror trial of Sheikh Omar Abdel Rahman and eleven others in 1995; the Bojinka trial of Ramzi Yousef and his Manila coconspirators in 1996; the second WTC trial – this one with Yousef as a defendant – in 1997; and the African embassy bombing trial, known formally as *United States v. Bin Laden*, which began in February 2001, seven months before 9/11. (p. xxv)

For good measure, the "Afterword" later warrants that the book was prepared in collaboration with an attorney "who ensured that the narrative was *factually bullet proof*." (p. 485)

The Allegations that Information Was Concealed Until Years After the Verdict

With these statements and representations as context, there is little doubt that *Triple Cross* alleges misconduct and concealment when it asserts under the heading "Failing to Stop the Bombings":

Because of the secrecy surrounding terror prosecutions in the SDNY, nobody in the mainstream media had a clue at the time of the convictions that Fitzgerald's Squad I-49 had years of advance warning of the plot, or that Ali Mohamed, the spy whom they agreed to plead out, had played such a prominent role in its execution. It wasn't until October 2003, more than two years *after* the verdict, that Robert Windrem of NBC News filed this report: "Newly disclosed documents in the East Africa embassy bombings case show that U.S. intelligence was aware of Osama bin Laden's terrorist cell in Kenya two years before the August 1998 bombings that killed 224 people, including 12 Americans.

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As early as August 1996, the intelligence community bugged the Nairobi phones of bin Laden's personal secretary, Wadih el Hage, and others in the Kenyan capital, according to court records." (Emphasis in original)(p. 367)

As noted in the October letter, the October 2003 *NBC* report that Mr. Lance relies upon in *Triple Cross* to "prove" the concealment of information concerning the search of el Hage's home and 1996 intelligence wiretap for "more than two years *after* the verdict" actually proves the converse. The article was in fact first published on December 4, 2000, just *prior* to when the embassy bombing trial began in January 2001. The article as it appears on line reflects that it was "updated" on October 24, 2003 – but the original date immediately follows as "Dec. 4" and the text makes clear that it was prior to the trial which began in January 2001 :

Both the electronic eavesdropping and the residence search *are likely to become evidence in the trial of four bin Laden associates in New York beginning this week*. El-Hage, a naturalized American citizen, is one of the four men on trial. (emphasis added)

However, Mr. Lance deleted the language making plain that the evidence would be made public at the upcoming trial when quoting the article to "prove" that this evidence was concealed until after the trial. Mr. Lance also deleted any reference to the multiple statements in the same article which referenced prior public filings discussing the search and the wiretap, specifically including reference to an affidavit by an FBI agent in November 1998 – more than two years *prior* to the trial -- which stated that the agent witnessed the search of the el Hage residence in Kenya.

It is simply inconceivable that Mr. Lance could have misread the "updated" reference to convey that the information at issue came out years *after* the 2001 trial given that, as described above, Lance claims to have "por[ed] over the 40,000- plus pages of trial transcripts from the al Qaeda cases in the Southern District of New York" (p. xvii) and specifically claimed to have reviewed the record of the 2001 trial (p. xxv) and that trial transcript – to say nothing of the record of public proceedings prior to trial -- was replete with evidence of the wiretaps and searches, which were a central part of the case.³

The Allegations Regarding Concealment of the FBI Penetration of a Terror Cell in 1991

Similarly, my October letter also set forth that *Triple Cross* alleged that "I was part of an effort to conceal from the public prior to 1996 the fact that the FBI had infiltrated in 1991 the

³ I also note that there were numerous reports in print and other media (including the *New York Times* and CNN) contemporaneously describing these public court developments.

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terrorist cell that would later bomb the World Trade Center in 1993." (Fitzgerald letter at p. 2.) In response, you contended that "[w]ith respect to the first claim, the Book never charges that you were part of an effort to conceal the fact that the FBI had infiltrated in 1991 the terrorist cell that would later bomb the World Trade Center in 1993." (Jackson letter at p. 1.) You claimed that the book "merely makes the claim that people outside of the FBI and US Attorney's office in New York were not aware of the 'real truth' behind Emad Salem and his relationship with federal agencies... Nowhere in the Book does Lance state or otherwise imply that Salem was not referred to in the publicly filed indictment or during trial testimony." (Jackson letter at pp. 1-2.)

The statements at issue were contained in *Triple Cross* at page 209, in a chapter titled "The Cover Up Begins." These statements, fairly read in the context of the repeated contentions in the book discussed at some length above, allege that information was wrongfully concealed from the public – not that the public was somehow merely unaware of the information. Indeed, readers of the book would be stunned to read your casual assertion that it is not at all inconsistent with the central premise of the book – affirmative concealment and disconnection of the dots – that the key information – "the 'real truth'" – was actually placed in the public record by prosecutors. I refer you back to the detailed discussion contained in the October letter which set forth in detail why this allegation is both defamatory and false.⁴ I also note that Lance's false assertions about two significant terrorism trials whose transcripts he claims to have pored over are remarkably parallel – making it clear that his deceptive accounts were deliberately crafted and not the product of a coincidence of inadvertent mistakes.

The Allegations Concerning the Terrorism Trials Generally

In short, the false – and italicized -- statement made by Mr. Lance that the information was not disclosed until years "*after the verdict*" in the 2001 trial cannot seriously be maintained to be a "minor error," a "dating discrepancy" or the result of "clearly inadvertent misdating." My October letter was an effort to put Harper Collins on clear notice of Lance's intentionally false reporting so that the publishing company could proceed with a decision whether to continue publishing material which defames me and places me in a false light. In that way, Harper Collins

⁴ I also refer you back to my October letter for a discussion of why the assertion that I improperly concealed information about Ali Mohamed until after the 2001 trial is both defamatory and false. Your response that "the essence of Lance's point with respect to Mohamed is correct" and that Mohamed's role in al Qaeda activity was concealed "at least up until the time his indictment was unsealed" (Jackson letter at p. 3) misses the point: the bulk of the information was disclosed no later than June 16, 1999, when the indictment was unsealed – more than four (4) years before the NBC piece he dates to October 2003. The "essence of Lance's point" is false and belied by the public record.

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could make a decision to avoid doing further damage to my reputation – and ultimately to its own. My intention was not to direct Harper Collins to where the clearest proof of defamation and actual malice in the book lies so as to allow Lance and Harper Collins to leave the defamatory gravamen of the book, remove the extrinsic proof of the actual malice (dismissing it as “clearly inadvertent misdating” and refusing a retraction) and then embrace the book as “an important work of investigative journalism.” This is a particularly cavalier approach given that Harper Collins published the first iteration of the book after *National Geographic* severed its ties with Mr. Lance on the same body of work, publicly explaining in a statement issued on or about August 17, 2006, that Mr. Lance had insisted that a *National Geographic* program on the topic “... include details, accusations and conclusions that we could not independently confirm.” The threshold required to prove libel, defamation and false claims is high for a good reason: to protect freedom of expression. On the other hand, the threshold is not insurmountable for an equally compelling reason: individuals have a right not to be defamed by persons acting with either an intentional or reckless disregard for the truth. As noted in *Edwards v. Paddock Publications*, No. 1-00-0599 (Ill. 4th Division 2002), “the spectre of reckless disregard” may be raised when the facts “reveal[] either insufficient information to support ... allegations in good faith or information which creates substantial doubt as to the truth of published allegations,” (*quoting Wanless v. Rothballer*, 115 Ill. 2d 158, 172, 503 N.E.2d 316, 322 (1986)). In this case, Harper Collins has both.

I further note as I did in the October letter that I have not undertaken an obligation to do the fact checking Harper Collins failed to do when it published *Triple Cross* the first time. Given that there are any number of statements concerning me in the book that are not true, as well as a number of statements about others I believe not to be true, my focus on the three particular allegations I highlighted should in no way be deemed as tacit acceptance of the truth of anything said in *Triple Cross*. Moreover, I certainly am not in a position to assess what Lance may say in his new “updated” version other than to say that his track record indicates it will not hew to the truth. If it is anything like the first version of *Triple Cross*, it will not be an important work of investigative journalism; it will be defamation for profit, hiding behind protections that apply to genuine important works of investigative journalism that are not false. I know Lance’s standards, or lack thereof; what remains to be seen is whether Harper Collins will define its standards for publishing as the same and choose to stick its head in the sand in the face of convincing evidence of Lance’s disregard for the truth.

The Allegations Regarding My Dealings with Gregory Scarpa

But there is still more basis to question *Triple Cross*. My October letter also set forth that *Triple Cross* alleged that “I filed a false affidavit with a federal judge to conceal the purported ‘fact’ that the fatal crash of TWA 800 was really a terrorist attack to which I had been tipped in advance by an organized crime figure and that I otherwise conspired with the National

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Transportation Safety Board, the 9/11 Commission and numerous others to hide the truth." (Fitzgerald letter at p. 2.) Regarding that claim, you contend that "the Book never accuses you of the misconduct that you allege." (Jackson letter at 2.) You then parsed statements in the book that contain the phrase "if Napoli's account is accurate..." and "...in my opinion" to state that "Lance sets forth certain allegations and states that if those allegations were true, then in his opinion, certain federal agencies and employees were engaged in wrongdoing. Lance is clearly permitted, as a matter of law, to set forth underlying statements of fact and then give his opinion based on those disclosed facts." (Jackson letter at p. 2.)

I will not belabor the fantastically paranoid nature of Lance's theory that the victims of TWA 800 died as a result of a terrorist attack but that a massive conspiracy – involving the leadership of the FBI, multiple federal prosecutors in different districts, the National Transportation Safety Board, the 9/11 Commission and others, aided and abetted by the press (save the heroic Lance) – falsely portrayed the deaths as the result of an accidental crash. I will focus on that part of the allegation which specifically defames me.

The facts appear to be that one organized crime inmate, Greg Scarpa, claimed to the government in 1996 that another incarcerated organized crime member, John Napoli, had direct access to information about the terrorist plans of terrorist Ramzi Yousef. (p. 559-565.)⁵ The government, through me, later represented in a June 1999 affidavit that the information Scarpa provided was a scam because, among other things, Scarpa provided the information to Napoli for Napoli to furnish to the government as if Napoli had obtained it himself. (*Id.*) The government further contended that Scarpa sought to influence Napoli to testify – falsely – at an upcoming trial that Scarpa's father had carried out the murders that Scarpa himself was charged with.⁶ (*Id.*)

In preparation for the book, Lance apparently spoke with Napoli who corroborated that, contrary to what Scarpa told the government, Napoli did not in fact have any access to Yousef. Lance specifically quotes Napoli as stating that "I never spoke to Ramzi. I never spoke to Ismoil. I never spoke to none of them. Zero. No conversations. Not one." (p. 312.) Napoli also

⁵ I note that my discussion here is limited to facts (or purported facts) I know to have appeared in the public record or to be discussed in *Triple Cross*.

⁶ I also note that there were recent published accounts – which I do not know either to be true or false – that Scarpa was expected to testify at the recently concluded criminal trial of former FBI supervisor Lin DeVecchio that Scarpa in fact committed various murders for which he had previously been charged and which he denied under oath in prior testimony. If that were so, that would be additional reason not to believe Scarpa's account. However, the De Vecchio case was dismissed during trial without Scarpa testifying.

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corroborated that Scarpa "had this great plan that I could testify for him, and in return that he would give me information to bring to the Southern District." (*Id.*) Thus, if Napoli's account is accurate, Scarpa both obstructed justice – at the very least by providing false information to the government indicating that Napoli had received information directly from Yousef when he knew he did not – and committed the crime of offering something of value to a witness to influence testimony at a federal criminal trial. (See generally Title 18, United States Code, Section 201(b)(3).) Yet, in Lance's unique style of "investigative journalism," faced with proof that Scarpa obstructed justice, Lance instead concludes that two federal prosecutors committed obstruction of justice:

If Napoli's account is accurate, it appears that two senior federal prosecutors, Fitzgerald and Kelly, went along with a government story that characterized the Yousef-Scarpa Jr. intelligence as fraudulent ... *the creation of the "hoax" and "scam" story by the Feds could, in my opinion, amount to a serious obstruction of justice.*

(p. 313)(emphasis added).

In short, Lance takes a witness who exposes Scarpa as a fraud and treats him as corroboration of Scarpa. It is of no moment that Lance claims that Mr. Napoli adds to his account his claimed belief that the information coming from Yousef was genuine -- as Napoli admits he never spoke to Yousef at all. Nor does it matter that Napoli denies saying to Mr. Kelly that the information was fraudulent – Napoli's own statements prove that Scarpa was fraudulently claiming that Napoli had access to Yousef. Nor is it significant that the information passed by Scarpa and Yousef to the government contained information about bomb formulas and drawings of explosives and timers. Mr. Lance conveniently overlooks the facts clear from the trial record (and other public record) that the government already had such information in its possession – something Yousef no doubt knew when he reviewed the discovery materials and passed the information through Scarpa. Lance no doubt also knew this when he "pored" over the 40,000 pages of transcripts which he represented included the transcripts of Yousef's trial.

In any event, if my recollection of the public record is correct, Scarpa later testified at his own trial in 1998, but was convicted of racketeering by the jury that heard his testimony. At sentencing, Judge Reena Raggi (then on the district court in the Eastern District of New York) rejected the truthfulness of Scarpa's trial testimony. Still later, Scarpa testified at a hearing in 2004 before Judge Jack Weinstein who has been quoted stating: "The court finds this witness [Scarpa] to be not credible." For good measure, I understand that a third federal judge, Judge Kevin T. Duffy of the Southern District of New York, found Scarpa's efforts at cooperation to

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have been fraudulent.⁷

The "Opinion" Defense

In your letter, you assert that "Lance is clearly permitted, as a matter of law, to set forth underlying statements of fact and then give his opinion based on those disclosed facts." (Jackson letter at p. 2.) As to that general statement, I agree. However, it is also clear that Lance is not allowed to make a series of underlying false and/or misleading statements, then predicate a defamatory conclusion upon those false facts and disclaim liability because he said the words "...in my opinion." See *Milkovich v. Lorain Journal*, 491 U.S. 1, 18-19 (1990); *Wilkow v. Forbes*, 241 F.3d 552, 555 (7th Cir. 2001) and *Hatfill v. New York Times*, 416 F.3d 320, 333-334 (4th Cir. 2005), rehearing en banc denied, 427 F.3d 253 (4th Cir. 2005); cert. denied, 126 S. Ct. 1619 (2006).⁸

The False Light Invasion of Privacy

Your letter did not address my false light claim. To that end, I note that the false light tort claim is recognized under Illinois law, which would control in any action filed by me in the United States. Any American action would be filed in the United States District Court for the Northern District of Illinois, where Seventh Circuit precedent makes clear both that the federal court would look to Illinois choice of law principles and that such principles would dictate that the suit would be governed by the law of the "victim's domicile, period." *Cook v. Winfrey* 141

⁷ If either Scarpa or Napoli had a shred of credibility, I would discuss at greater length their respective criminal histories (and Mr. Lance's strained efforts to minimize them). Those histories are accessible to Lance and Harper Collins and are relevant to the question of "substantial doubt as to the truth of the published allegations."

⁸ Even if couching a defamatory allegation as "opinion" provided a safe harbor – which it does not – it should be clear that *Triple Cross* made the unqualified factual assertion that "the Feds themselves actually concocted the 'hoax' and 'scam' story" (p. 308) (emphasis in original)

Moreover, in a press release marketing *Triple Cross*, Mr. Lance did not even attempt to qualify his accusation of false statements by me as "opinion":

[A]s I reported first in my last book COVER UP, Fitzgerald and other DOJ officials ... entered into an ends/means decision to discredit the younger Scarpa, bury the Yousef intel (falsely calling it a "hoax" and a "scam") and allowing DeVecchio to retire with a full pension. (Emphasis added)

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F.3d 322, 329 (7th Cir. 1998), quoting *Rice v. Nova Biomedical Corp.*, 38 F.3d 909, 916 (7th Cir.), cert. denied 514 US 1111 (1994). Illinois has consistently recognized a false light claim. See e.g. *Lovgren v. Citizens First National Bank of Princeton*, 534 N.E.2d 987 (Ill. 1989); and *Berkos v. National Broadcasting*, 515 N.E. 2d 668, 689 (Ill. 1987).

Demand that Publication and Defamation Cease

I reiterate my demand that Harper Collins:

- (i) cease publication, distribution and sale of the current version of the book, and withdraw unsold copies from circulation;
- (ii) issue and publish a clear and unequivocal statement acknowledging that the book contains material false statements about my conduct and making clear that Harper Collins does not stand behind the factual assertions made in the book regarding my conduct; and
- (iii) agree to refrain from publication of any updated version of the book and take no steps to transfer the rights to any other person or entity to publish the book in any form.

I also ask that in addition to preserving the documents previously requested, you preserve the following items:

- (i) copies of all tapes, transcripts, notes or other items or documents reflecting the statements of John Napoli including, but not limited to, such items pertaining to his statements referenced at page 311 *et seq.* of the book;
- (ii) any and all court documents (including transcripts of trials, hearings or other proceedings; any indictments and/or informations; any motions, briefs of other court pleadings) involving any cases in which Patrick Fitzgerald participated as a prosecutor, which were reviewed or possessed by Peter Lance, Harper Collins or any associates or employees of Peter Lance and Harper Collins;
- (iii) any and all court documents (including transcripts of trials, hearings or other proceedings; any indictments and/or informations; any motions, briefs of other court pleadings) involving any cases in which Gregory Scarpa participated as a witness or defendant (including but not limited to transcripts of his testimony in the 1998 jury trial before Judge Reena Raggi and his testimony before Judge Jack Weinstein in January 2004), which were reviewed or possessed by Peter Lance, Harper Collins or any associates or employees of Peter Lance and Harper Collins;
- (iv) any and documents reflecting any complaints to Peter Lance or Harper Collins, or complaints to anyone else made known to Mr. Lance or Harper Collins, about the accuracy of Mr. Lance's reporting generally, including, but not limited to, complaints about the accuracy of "Triple Cross" or "Cover Up," also published by Harper Collins;
- (v) the work papers of attorney John Pelosi, whom Mr. Lance represented made the book

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November 16, 2007

"factually bulletproof";

(vi) copies of any and all documents, including court filings, hearing and trial transcripts and court exhibits in the possession of Mr. Lance or Harper Collins which reflect that information passed by Greg Scarpa to the government concerning bomb formulas and devices were otherwise in the possession of the government and/or were produced to Ramzi Yousef or others and/or disclosed at trial;

(vii) copies of any and all documents in the possession of Mr. Lance or Harper Collins which reflect that other persons under contract to write books for Harper Collins (or other persons interviewed for such books), including but not limited to any participants in the discontinued prosecution of Lin DeVecchio in Brooklyn, New York, made any statements calling into question the general veracity of Greg Scarpa, Jr., or inconsistent with any account or testimony by Scarpa as to his prior criminal history or his dealings with Ramzi Yousef, John Napoli or the government;

(viii) copies of any and all press releases issued, reviewed or obtained by Peter Lance or Harper Collins concerning "Triple Cross;" and

(ix) any documents supporting in any way the claim made in Triple Cross that Patrick Fitzgerald was in any way consulted in the purported decision to allow former FBI Agent Lin DeVecchio to retire from the Federal Bureau of Investigation with a full pension.

I am copying Mr. Goff, in his capacity as General Counsel (and thus an officer of Harper Collins), and request that this letter (and the October letter) be shared with any other appropriate corporate officers of Harper Collins responsible for publishing decisions. If it is not so shared, it will be my position that the failure to do so upon specific request would be a waiver of any contention under Illinois law (or other applicable law) that punitive damages can be resisted by Harper Collins on the ground that no officer of the corporation was made aware of the facts constituting the book's falsehood and reckless disregard for the truth. See *Oakview New Lenox School District v. Ford Motor Co.*, 61 Ill. App. 3d 194, 199-200, 378 N.E.2d 544, 548-49, 19 Ill. Dec. 43 (1978).

I am copying Mr. Lance and make the same request that in anticipation of litigation he preserve such documents as well as the documents specified in the request contained in the October 11 letter and on the same understandings specified in that letter. Because I do not know (nor need to know at this point) the personal address of Mr. Lance, I ask that you forward this correspondence to him.

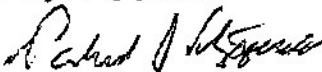
This demand is not a waiver by me of any right to sue Harper Collins (or anyone else,

Mark Jackson, Esq.
November 16, 2007

including Mr. Lance) for tortious conduct committed to date.

Thank you for your kind attention to this matter.

Very truly yours,


Patrick J. Fitzgerald

cc: Christopher Goff, Esq.
Peter Lance

Beth N. Silfin

SEP 26 2008

Received

PDF please

PATRICK J. FITZGERALD
P.O. Box 1231
Chicago, IL 60690

September 22, 2008

By Regular Mail and Fax
Beth Silfin, Esq.
Office of the General Counsel
Harper Collins Publishers LLC
10 East 53rd Street
New York, New York 10022

Re: Triple Cross

Dear Ms. Silfin:

In my earlier letters of October 11 and November 16, 2007, I outlined how allegations made in the book, *Triple Cross*, authored by Peter Lance and published by Harper Collins, both defamed me and placed me in a false light. In those letters, I demanded that Harper Collins: (i) cease publication, distribution and sale of the then current version of the book, and withdraw unsold copies from circulation; (ii) issue and publish a clear and unequivocal statement acknowledging that the book contains material false statements about my conduct and making clear that Harper Collins does not stand behind the factual assertions made in the book regarding my conduct; and (iii) agree to refrain from publication of any updated version of the book and take no steps to transfer the rights to any other person or entity to publish the book in any form. While I recognize that a publication previously planned for last fall has not taken place as of yet, I have not received a definitive answer as to whether Harper Collins will in fact publish a further edition of the book, nor has a retraction been issued. Moreover, the books have not been withdrawn from circulation. Indeed, the book remains for sale on Harper Collins' website even today - eleven months after my demand for retraction and for an end of publication.¹ Thus, Harper Collins has maintained publication for more than a year after being put on notice of the book's falsity and after a demand to cease publication was made. Each day is both a new and continuing defamation.

I write to demand immediate compliance with my demands of October 2007. Surely, Harper Collins can make a decision in a year. And if it cannot be comfortable proceeding after

¹ I further note that Mr. Lance has indicated on his website that the book will be published by Harper Collins in an updated form soon - though I do not put much stock in Mr. Lance's factual representations.

11 months of thought, that ought to tell Harper Collins something about its confidence level in the book - which Harper Collins should be sharing with prior readers.

I also write to bring to your attention that the book, *Willful Blindness*, authored by Andrew C. McCarthy and recently published by Encounter Books, contains a discussion refuting some of Mr. Lance's contentions in *Triple Cross*. See, e.g., *Willful Blindness* at pp. 107-110 and 301-306.

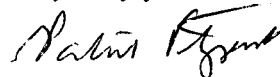
I am copying Mr. Goff, in his capacity as General Counsel (and thus an officer of Harper Collins), and request that this letter (and the October and November letters) be shared with any other appropriate corporate officers of Harper Collins responsible for decisions whether to publish books. If it is not so shared, it will be my position that the failure to do so upon specific request would be a waiver of any contention under Illinois law (or other applicable law) that punitive damages can be resisted by Harper Collins on the ground that no officer of the corporation was made aware of the facts constituting the book's falsehood and reckless disregard for the truth. See *Oakview New Lenox School District v. Ford Motor Co.*, 61 Ill. App. 3d 194, 199-200, 378 N.E.2d 544, 548-49, 19 Ill. Dec. 43 (1978). I further repeat my requests to preserve documents set forth in the prior two letters.

I am copying Mr. Lance and make the same request that in anticipation of litigation he preserve such documents as well as the documents specified in the request contained in the October 11 letter and on the same understandings specified in that letter. Because I do not know (nor need to know at this point) the personal address of Mr. Lance, I ask that you forward this correspondence to him.

This demand is not a waiver by me of any right to sue Harper Collins (or anyone else, including Mr. Lance) for tortious conduct committed to date.

Thank you for your kind attention to this matter. I await a prompt response.

Very truly yours,



Patrick J. Fitzgerald

cc: Christopher Goff, Esq.
Peter Lance

PATRICK J. FITZGERALD
P.O. Box 1231
Chicago, IL 60690

June 2, 2009

By Regular Mail and Fax
Beth Silfin, Esq.
Office of the General Counsel
Harper Collins Publishers LLC
10 East 53rd Street
New York, New York 10022

Re: Triple Cross

Dear Ms. Silfin:

In my earlier letters of October 11, November 16, 2007, and September 22, 2008, I outlined in some detail how allegations made in the book, *Triple Cross*, authored by Peter Lance and published by Harper Collins, both defamed me and placed me in a false light. In those letters, I demanded that Harper Collins: (i) cease publication, distribution and sale of the then current version of the book, and withdraw unsold copies from circulation; (ii) issue and publish a clear and unequivocal statement acknowledging that the book contains material false statements about my conduct and making clear that Harper Collins does not stand behind the factual assertions made in the book regarding my conduct; and (iii) agree to refrain from publication of any updated version of the book and take no steps to transfer the rights to any other person or entity to publish the book in any form. You eventually advised me during May of this year for the first time that Harper Collins will in fact publish a further edition of the book. As is clear from the record to date, no retraction of the past book has been issued. Moreover, the book has never been withdrawn from circulation despite the errors pointed out. Indeed, the book in its original form remains for sale on Harper Collins' website even today. Thus, Harper Collins has maintained publication for more than 19 months after being put on notice of the book's falsity and after a demand to cease publication was made. Each day is both a new and continuing defamation.

I write to reiterate my admonition from my first letter to Harper Collins that while I catalogued serious errors in the book, I did "not undertake any obligation to catalogue the entire litany of sensational misstatements of fact contained in the book, which would be a rather strenuous undertaking." (October 17, 2007, letter at p. 3). I then went on to spell out that not only was the book *Triple Cross* wrong but that Harper Collins was on clear notice that "is not a book whose falsehoods are a result of mere negligence or even recklessness. Nor is it a book

whose inaccuracies can be fixed by a redaction of a few offending sentences. The book is a deliberate lie masquerading as truth." (*Id.* at p. 7) I further cited examples in the letter where it is clear that Mr. Lance selectively and precisely misquoted the record in a manner that made his intention to misstate the truth quite clear. (*Id.*)

In my November 16, 2007, letter, I made clear once again that it had not been my intention:

to direct Harper Collins to where the clearest proof of defamation and actual malice in the book lies so as to allow Lance and Harper Collins to leave the defamatory gravamen of the book, remove the extrinsic proof of the actual malice (dismissing it as "clearly inadvertent misdating" and refusing a retraction) and then embrace the book as "an important work of investigative journalism." This is a particularly cavalier approach given that Harper Collins published the first iteration of the book after *National Geographic* severed its ties with Mr. Lance on the same body of work, publicly explaining in a statement issued on or about August 17, 2006, that Mr. Lance had insisted that a National Geographic program on the topic "... include details, accusations and conclusions that we could not independently confirm."

....

As noted in *Edwards v. Paddock Publications*, No 1-00-0599 (Ill. 4th Division 2002), "the spectre of reckless disregard" may be raised when the facts "reveal[] either insufficient information to support ... allegations in good faith or information which creates substantial doubt as to the truth of published allegations," (quoting *Wanless v. Rothballer*, 115 Ill. 2d 158, 172, 503 N.E.2d 316, 322 (1986)). In this case, Harper Collins has both.

I further note as I did in the October letter that I have not undertaken an obligation to do the fact checking Harper Collins failed to do when it published *Triple Cross* the first time. Given that there are any number of statements concerning me in the book that are not true, as well as a number of statements about others I believe not to be true, my focus on the three particular allegations I highlighted should in no way be deemed as tacit acceptance of the truth of anything said in *Triple Cross*. Moreover, I certainly am not in a position to assess what Lance may say in his new "updated" version other than to say that his track record indicates it will not hew to the truth.

It now appears that Harper Collins' standards for publishing have slipped to the standards of Peter Lance. Surely, if it took Harper Collins 19 months to decide to proceed, that ought to tell Harper Collins something about the reliability of the book. To put it plain and simple, if in fact you publish the book this month and it defames me or casts me in a false light, Harper Collins will be sued.

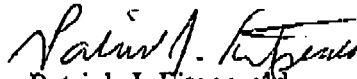
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Peter Lance