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Mary Patrice Brown
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cc: Attorney General Eric Holder:
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U.S. Attorney Patrick Fitzgerald
312-353-5300

June 13th, 2009
Via Federal Express

Ms. Brown,

I am writing to file a complaint; asking the Department of Justice to open an investigation by the Office of Professional Responsibility as a result of the twenty (20) month campaign by Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, to kill the hardcover and paperback editions of my HarperCollins (HCP) investigative book **Triple Cross**.

As you'll see from the thirty-two (32) pages of letters ¹ sent by Mr. Fitzgerald from October 2007 to June, 2009, he has attempted to use the authority of his office to intimidate me and my publisher; threatening repeatedly to sue for defamation and other relief if we did not stop publication of the book, which was critical of Mr. Fitzgerald's performance in office. Mr. Fitzgerald sent his first eleven (11) page threat letter on October 11th, 2007 demanding 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 no steps to transfer the rights to any other person or entity to publish the book in any form."

In this initial letter, Mr. Fitzgerald included an Attachment requesting that HarperCollins "preserve" twelve (12) separate categories of records including all "book drafts," correspondence between me and the publisher, even "records of any and all projected sales" of the book "including any and all records of profits attributable to Triple Cross."

¹ All 32 pages of letters from Mr. Fitzgerald and HarperCollins' initial response can be downloaded at: [www.peterlance.com/Fitzgerald Libel Claim Letters HCP Response.pdf](http://www.peterlance.com/Fitzgerald%20Libel%20Claim%20Letters%20HCP%20Response.pdf)

On November 2nd, 2007, Mark Jackson, then attorney for HCP, rejected Mr. Fitzgerald's libel claim, calling *TRIPLE CROSS* "an important work of investigative journalism." Undaunted, Mr. Fitzgerald fired off a second sixteen (16) page letter, on November 16th, 2007 making many of the same allegations.

But this time he faxed it from the office of the "U.S. Attorney Chicago."

I believe that Mr. Fitzgerald's intent in using Dept. of Justice resources to send a letter purporting to press his personal claim, was a clear attempt to intimidate me and chill my publisher.

At that point, out of an abundance of caution and considering that the official making the threat was, arguably, the most intimidating U.S. Attorney in the country, HCP and I decided to re-vet the entire book.

The process took more than ten (10) months and was extraordinarily time consuming. As a self employed journalist and writer, this detailed process effectively prevented me from working on my fourth book for HCP, which was due to be delivered in early 2008.

Nonetheless, as we were doing our due diligence and examining virtually every factual allegation in the book, Mr. Fitzgerald fired off another letter.

On September 22nd, 2008, he sent a third threat letter to HCP in which he stated: "I write to demand immediate compliance with my demands of October 2007. Surely HarperCollins can make a decision in a year."

At that point Mr. Fitzgerald, who used the word "demand" twice in the same sentence, reached the conclusion that "...if (HCP) cannot be comfortable proceeding after 11 months of thought, that ought to tell HarperCollins something about its confidence level in the book."

With that statement Mr. Fitzgerald seemed to associate the thoroughness and duty of care HCP and I were demonstrating in the re-vetting process with a lack of confidence by my publisher in *Triple Cross*. But nothing could have been further from the truth. HarperCollins and I took his repeated threats very seriously, particularly since he ended that third letter with "a request to preserve documents set forth in the prior two letters...in anticipation of litigation." (emphasis added).

In the fall 2008 we completed the re-vetting process and HCP reached the same conclusion that Mr. Jackson had enunciated in his first letter a year earlier -- rejecting Mr. Fitzgerald's meritless claims and deciding to go forward with the publication of the trade paperback edition of *Triple Cross*.

Because two (2) years had lapsed from the date of the book's hardcover publication, I then began a process of both updating the text, to reflect contemporary events and adding lengthy sections which set forth Mr. Fitzgerald's allegations and my responses to them.

The final editing process was completed in the spring of 2009 and June 16th, 2009 was set as the publication date for the new, updated edition in paperback, expanded by twenty-six additional pages.

On Monday June 1st, 2009 I cited the new publication date on my website: www.peterlance.com. The next day, Mr. Fitzgerald sent a fourth letter to HarperCollins, in which he reiterated an earlier admonition contained in his first letter; making the extraordinary statement that:

Triple Cross, "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.**" (emphasis added).

I ask you to consider that statement in light of the following:

- 1) In its hardcover edition, *Triple Cross* ran 604 pages in length;
- 2) It was documented with 1,420 end notes and
- 3) Thirty-two (32) pages of documentary appendices, including a number of FBI 302 memos, evidence from an eleven (11) month terrorism investigation conducted in 1996 by the New York Office of the FBI (NYO) and a sworn Affirmation dated June 25th, 1999 relating to that evidence, signed by Mr. Fitzgerald himself.

To characterize an entire investigative work of this scope, which was meticulously researched in the first instance and then meticulously re-vetted by one of the world's leading publishing houses, as "a deliberate lie," speaks to the baselessness of Mr. Fitzgerald's claims and his almost obsessive campaign to kill a book critical of his performance in office.

In recent press reports associated with what has now become a public controversy over Mr. Fitzgerald's attempt to pulp the book, he has gone even further in making other specious allegations. On June 8th, 2009 the Associated Press published a story under the byline of Mike Robertson, quoting Mr. Fitzgerald as saying:

"The book lied about the facts and alleged that I deliberately misled the courts and the public in ways that in part caused the deaths in the 1998 embassy bombing attacks and in the attacks of Sept. 11, 2001." Fitzgerald said the lives lost in those attacks were personal for him and he decided to stand up for himself because "it is outrageous to falsely accuse me of causing those deaths corruptly."

A simple reading of *Triple Cross* in its hardcover edition will offer proof positive that I never even came close to making such a claim. But that comment, along with Mr. Fitzgerald's "lie masquerading as the truth" line suggests the same reckless disregard for the truth that I was accused of by the Chicago U.S. Attorney.

I asked that an investigation be opened by the DOJ's Office of Professional Responsibility to answer a series of questions:

First, apart from his use of the fax machine, did Mr. Fitzgerald devote any other Department of Justice resources in furtherance of his campaign to kill the book?

Second, if he acted as a private citizen, how much time did Mr. Fitzgerald spend on attempting to chill me and my publisher and, what if any impact did it have on his duty to protect the citizens of the Northern District of Illinois?

Third, given that Mr. Fitzgerald is a public official and knew that under the New York Times vs. Sullivan rule he would have demonstrate not only falsity but "malice," why did he continue to press his claim when he knew that my reporting in *Triple Cross* did not defame him?

Fourth, and perhaps most important, did Mr. Fitzgerald use the privileges and powers of his office to intimidate a publishing company and a reporter who were acting in the best traditions of investigative journalism?

In effect, did he abuse his authority by bringing the weight of his reputation as a "relentless" prosecutor to bear in attempting to crush a book he found critical of his tenure as an Assistant U.S. Attorney in the Southern District of New York?

Along with Mr. Fitzgerald's compendium of threat letters and a copy of the aforementioned A.P. story I'm attaching a copy of *Triple Cross's* paperback edition; the book that Mr. Fitzgerald tried to prevent from seeing the light of day.

In commencing this OPR investigation I ask the Dept. of Justice whether it is the proper role of a U.S. Attorney to attempt the pulping of any book; much less a book that documents with such care, the lapses of the two bin Laden "offices of origin," the FBI's (NYO) and The Office of the U.S. Attorney for the SDNY where Mr. Fitzgerald was head of the Organized Crime and Terrorism Unit?

Decrying censorship, Alfred Whitney Griswold, the historian and former President of Yale University once declared that, "Books won't stay banned. They won't burn. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost. The only weapon against bad ideas is better ideas."

Patrick Fitzgerald has enjoyed an extraordinary, and well deserved reputation as a relentless prosecutor who has fought organized crime, terrorism and political corruption in his long career.

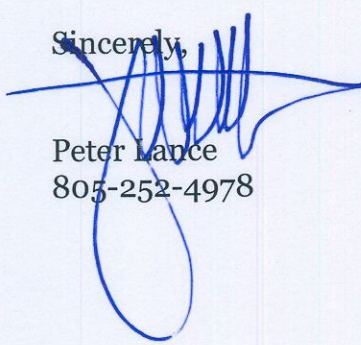
At the same time, he's made serious incursions against The First Amendment by supporting the jailing of *New York Times* reporter Judith Miller for 85 days during his tenure as Special Counsel in the CIA investigation and subpoenaing her cell phone records and those of *NYT* reporter Philip Shenon in the Islamic charities case.

In both instances Patrick Fitzgerald took aggressive action against reporters for one of the greatest newspapers in this country. With his twenty (20) month campaign to kill *Triple Cross*, he also attempted to intimidate a great publishing company and to chill me from continuing my ongoing reporting on the failures of FBI and DOJ in the years leading up to the 9/11 attacks.

I ask that the Office of Professional Responsibility to investigate to determine whether, in waging his latest campaign, Mr. Fitzgerald crossed the line from public official charged with *protecting* the Constitution to thin-skinned prosecutor who used the authority of his office to undermine it.

Please contact me if you have any questions.

Sincerely,



Peter Lance
805-252-4978

Fitzgerald threatens to sue publisher over book

By MIKE ROBINSON
The Associated Press
Monday, June 8, 2009 9:20 PM

CHICAGO -- The top federal prosecutor in Chicago is threatening to sue publisher HarperCollins, calling a book about the war on terrorism that focuses in part on cases he handled "a deliberate lie masquerading as the truth."

If HarperCollins publishes the new edition of "Triple Cross" by Peter Lance this month "and it defames me or casts me in a false light, HarperCollins will be sued," Patrick Fitzgerald said in a letter to the New York-based company.

The book focuses on, among other things, major terrorism cases that Fitzgerald prosecuted when he was an assistant U.S. attorney in New York in the 1990s.

Its content goes beyond normal criticism, which "goes with the territory" for public figures, Fitzgerald told The Associated Press on Monday.

"This is different," he said. "The book lied about the facts and alleged that I deliberately misled the courts and the public in ways that in part caused the deaths in the 1998 embassy bombing attacks and in the attacks of Sept. 11, 2001."

Fitzgerald said the lives lost in those attacks were personal for him and he decided to stand up for himself because "it is outrageous to falsely accuse me of causing those deaths corruptly."

The author said Fitzgerald has tried to "kill" the book with "baseless" allegations.

"Patrick Fitzgerald accuses me of making charges in the book that I never made," Lance said. "At the same time, he continually fails to respond to the substantive allegations documented in 604 pages, 1,425 end notes and 32 pages of documentary appendices."

He said the book was revetted "out of an abundance of caution" and because the accusations were made by Fitzgerald, known for successfully prosecuting prominent terrorism and public corruption cases.

The new edition with 26 additional pages and an introduction responding to Fitzgerald will be published June 16, Lance said.

HarperCollins spokeswoman Erin Crum and publisher Jonathan Burnham did not immediately return telephone calls on Monday.

Fitzgerald has been U.S. attorney in Chicago since September 2001. He won a conviction against former Illinois Gov. George Ryan for political corruption, and as a special prosecutor successfully presented the case against former vice presidential aide I. Lewis "Scooter" Libby, who was convicted of lying to a grand jury in the CIA leak investigation.

As an assistant U.S. attorney in New York he successfully prosecuted major terrorism cases such as those responsible for the 1998 bombing of two U.S. embassies in East Africa and Omar Abdel-Rahman, the so-called "blind sheik" convicted in 1995 of plotting to bomb the Holland Tunnel and other key sites around the city.

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