

To: City of Coral Gables Commission¹
From: Roberto Martínez, Colson Hicks Eidson
Date: June 23, 2020
Re: Independent Investigation – Police Matter

The Engagement

On June 15, 2018 attorney Roberto Martínez of the law firm of Colson Hicks Eidson was engaged by the City of Coral Gables to conduct an independent “investigation surrounding the anonymous letter relating to a pool party that took place in August of 2017 that Chief Hudak attended.”

The purpose of the investigation was to determine, if possible, who authored or sent the City of Coral Gables a two-page anonymous letter dated July, 31, 2017, addressed to “Attention: City Manager Cathy Swanson-Rivenbark” along with an enclosed video (thumb drive) and photo (“the Anonymous Complaint Letter”).

The investigation was subsequently expanded at the request of Mr. Martínez, with the authorization of the City of Coral Gables, to determine, if possible, who authored or sent an unsigned letter, dated November 20, 2017, addressed to “Cathy Swanson-Rivenbark, 405 Biltmore Way, Coral Gables, Florida” requesting her “to look into some allegations we have heard about Chief Ed Hudak (“the Anonymous November Letter”).”

Summary of Findings

Based on a review of all the evidence, including a forensic document examination, the investigation was unable to reveal the identity of the author or sender of the Anonymous Complaint Letter. However, the forensic document examiner engaged by Mr. Martinez concluded that in his professional opinion with a high degree of probability Ms. Swanson-Rivenbark wrote the address that appears on the envelope of the Anonymous November Letter.

¹ All the work performed by Mr. Martínez, CW Johnson LLC, and Speckin Forensics Laboratories (“Speckin Lab”), including this report and its transmittal to the City of Coral Gables Commission, was done pursuant to the engagement of Mr. Martínez by the City of Coral Gables and under its authority. Mr. Martinez and his law firm performed their work *pro bono publico* and were not compensated. All payments made to Colson Hicks Eidson were to reimburse the law firm for advancing expenses paid to CW Johnson LLC and Speckin Lab.

A copy of the report of the forensic document examiner engaged by Mr. Martinez along with the underlying documents were made available for inspection to counsel for Ms. Swanson-Rivenbark and the forensic document examiner he engaged. That examiner concluded that in her professional opinion Ms. Swanson-Rivenbark very probably did not write the address that appears on the envelope of the Anonymous November Letter. Ms. Swanson-Rivenbark, through her counsel, has also stated that "she was not the author of either letter, did not prepare or address either letter, and did not cause either letter to be mailed or delivered to the City of Coral Gables."

The Investigation

On July 24, 2018, CW Johnson LLC, a licensed investigative agency, was engaged by Mr. Martínez, with the authorization of the City of Coral Gables, to assist him with the independent investigation. Cedric W. Johnson, a former Supervisory Special Agent of the Miami-Dade County Office of the Inspector General, conducted the investigation. His curriculum vitae is attached as Exhibit 1.

The investigation involved the review, analysis, and forensic examination of substantial documentation from the City of Coral Gables, including reports, interviews, emails, correspondence, employee files, and analysis of the computer hard drive of Cathy Swanson-Rivenbark, the former Manager of the City of Coral Gables.

The police officers of the City of Coral Gables Police Department ("CGPD") identified as attending the pool party that was the subject of the anonymous letters were all interviewed by Transparency Matters, LLC ("TMLLC") and the Internal Affairs Division of the CGPD. As a result of those documented interviews and due to the Law Enforcement Officer's Bill of Rights established in Part VI, Chapter 112, Florida Statutes, pertaining to interviewing law enforcement officers, no attempts were made to interview those same officers as part of our investigation.

The documents and reports we reviewed included the:

- TMLLC Administrative and Supplemental Reports, including attachments and sworn statements;
- CGPD Internal Affairs documents, reports, interviews, charts, and timelines;
- City of Coral Gables employee files and correspondence;
- Reports of forensic examinations of questioned documents; and,
- Computer file images.

Mr. Johnson prepared a timeline of events relevant to the investigation. That timeline along with supporting documents are attached as Exhibit 2.

Results of the Investigation²

The investigation was initially tasked to determine the identity of the author or sender of the Anonymous Complaint Letter. During the course of that investigation, in April 2019, we were provided with the Anonymous November Letter. The investigation performed by CW Johnson LLC was unable to reveal the identity of the author or sender of the two anonymous letters.

Forensic Examination Performed by the Forensic Expert Engaged by Mr. Martínez

Due to the inability to ascertain the identity of the author and sender of the two anonymous letters, on March 15, 2019, Speckin Lab was engaged by Investigator CW Johnson, with the approval of Mr. Martínez and the authorization of the City of Coral Gables, to conduct a forensic examination of the letters. Erich J. Speckin, a forensic document analyst, was assigned to perform the forensic examination. His curriculum vitae is attached as Exhibit 3.

Scope of Examination: Mr. Speckin obtained the questioned documents along with known handwriting and fingerprints from the files of twenty-one (21) Coral Gables employees. He performed the following procedures: visual document examination; visual handwriting examination; electrostatic detection apparatus (ESDA); fingerprint analysis; DNA analysis; and, computer discovery analysis. A copy of the final report of Speckin Lab is attached as Exhibit 4.

Summary of Results: Mr. Speckin was unable to draw any professional conclusions from his forensic examination of the Anonymous Complaint Letter.

The only procedure performed by Mr. Speckin that allowed him to provide a professional opinion as to the probable author of either anonymous letter was the visual handwriting examination of the Anonymous November Letter. The following summarizes the conclusions reached by Mr. Speckin as to each procedure performed on both anonymous letters.

1. Visual Document Examination: Inconclusive.

² The time to conclude this investigation and transmit this report was impacted by the on-going work of TMLLC, the CGPD Internal Affairs, the time it took Mr. Speckin to conclude his work and report, and the time afforded to Ms. Swanson-Rivenbark to engage a forensic document examiner and for that examiner to conclude her work and report. In the interest of completeness and fairness, it was important to give Ms. Swanson-Rivenbark and her counsel the opportunity to provide a response.

2. **Visual Handwriting Examination:** Per Mr. Speckin, as set forth on page 4 of his report:

After examining the 21 employee files and comparing them to the handwritten address on the envelope of Q-2 [the Anonymous November Letter], one employee file, Cathy Swanson-Rivenbark, was chosen for further examination as it was the most similar to the writing on the questioned envelope of Q-2 [the Anonymous November Letter]. Additional known writings of Ms. Swanson-Rivenbark were then provided for comparison.

The writings of Cathy Swanson-Rivenbark presented in the known documents are all consistent with one another and were all written by the same individual. Based on the formative, spatial, and proportional similarities that exist, it is highly probable that the writing on the envelope of Q-2 was written by the same individual who wrote the Cathy Swanson-Rivenbark known documents.

Mr. Speckin's conclusion, found on page 7 of his report, states:

Conclusion:

Based on all the evidence reviewed in this matter and the forensic evidence present, it is my opinion that Cathy Swanson-Rivenbark, with a high degree of probability (using the above explained nine-point scale from SWGDOC), wrote the address on the second letter. This opinion is based on the evidence reviewed and the agreement in the individual handwriting characteristics between the known (employment file writings of Cathy Swanson-Rivenbark) and questioned (address on the envelope of Q-2 [the Anonymous November Letter]) writings.³

³ According to Mr. Speckin, in the field of forensic document examination, a nine-point scale is commonly used to express the degree of certainty in an opinion on handwriting analysis. His conclusion of "high degree of probability" is based on Number 8 of that scale, which states as follows: "8- Highly probable - The evidence is very persuasive, yet some critical feature or quality is missing so that an *identification* is not in order; however, the examiner is virtually certain that the questioned and known writings were written by the same individual."

3. **ESDA:** No significant impressions were found.
4. **Fingerprinting:** No identifiable fingerprints were found on the letter or flash drive contained in the Anonymous Complaint Letter, although an identifiable print was found on the front center of the photo. Mr. Speckin did not have sufficient known prints to compare with the identifiable print. Partial fingerprints were identified on the Anonymous November Letter, but they were not complete enough to be used for a fingerprint comparison.
5. **DNA Analysis:** The only area of either letter that contained a usable comparison profile was on the photo contained in the Anonymous Complaint Letter, which revealed DNA of an unidentified male. A comparison could be performed if a known DNA swab were provided for analysis.
6. **Computer Discovery Analysis:** The image of drive of the Dell Latitude E7440 laptop previously used by Ms. Swanson-Rivenbark was examined using FTK Toolkit and the computer was searched using the following terms: Hudak, dmannow256, Political Cafecito, Roxy Bolton, Skurkis, Kevin Kelley, Walter Thomas, Anthony Johnson, Skurkis and Hudak, and pool party. The analysis was inconclusive.

Forensic Examination Performed by the Forensic Expert Engaged by Counsel for Cathy Swanson-Rivenbark

On October 11, 2019, Mr. Martínez attempted to interview Ms. Swanson-Rivenbark by contacting her counsel, attorney Benedict P. Kuehne. Before making his client available for interview, Mr. Kuehne requested to review both anonymous letters and a draft of Mr. Speckin's forensic report.

On October 31, 2019, Ms. Swanson-Rivenbark and her attorney, Mr. Kuehne, reviewed at the offices of the law firm of Colson Hicks Eidson a draft of the forensic report from Speckin Lab. Mr. Martinez invited Mr. Kuehne to provide him with any statements or other information that he or Ms. Swanson-Rivenbark would like transmitted to the City of Coral Gables responding to the report from Speckin Lab.

On November 6, 2019, Mr. Kuehne wrote a letter to Mr. Martínez. A copy of the letter and its exhibits are attached as Exhibit 5. In his letter Mr. Kuehne stated, in part, "[I]t is evident that relevant information is missing from your inquiry, and that the inclusion of pertinent facts is essential for a full and fair report. Because portions of your report concern Ms. Swanson-Rivenbark, it is imperative that the facts be accurately identified so that no unwarranted accusations are leveled against her or anyone else." Mr. Kuehne further went on to state that "[B]ecause the draft

report contains a false conclusion regarding the printing on the envelope without first seeking the participation of Ms. Swanson-Rivenbark, we object to any dissemination or publication of the inaccurate report." Mr. Kuehne demanded that a "qualified and credentialed forensic document examiner, selected by Ms. Swanson-Rivenbark's counsel, be given full access to the subject materials in order to conduct a thorough examination consistent with the scientific principles, methods, and standards prevailing in the field of questioned documents."

As requested by Mr. Kuehne, the City of Coral Gables arranged and made available to Mr. Kuehne's selected document examiner all the documents requested.

On March 4, 2019, Mr. Kuehne transmitted to Mr. Martinez the March 4, 2020, Report of Laboratory Examination by Dianne C. Flores, Hart & Flores Questioned Document Laboratory, Inc. A copy of Ms. Flores' report and Mr. Kuehne's transmittal email are attached as Exhibit 6.

Mr. Kuehne's transmittal states as follows

I have attached the March 4, 2020 Report of Laboratory Examination by Forensic Documents Examiner Dianne C. Flores of Hart & Flores Questioned Documents Laboratory, Inc. Page 6 of Examiner Flores' comprehensive report succinctly states her conclusion:

"In accordance with scientific probability and following industry-wide standards, it is my professional opinion that Catherine Swanson-Rivenbark (K1 - K36) very probably did not write the address that appears on the questioned envelope. *Very probably did not* is defined as ... "the examiner is virtually certain that the questioned and known writings were not written by the same individual."

In view of this definitive conclusion by a respected Questioned Documents Examiner, I ask you to not publish or disseminate your contrary report until an objective and disinterested expert can review both reports and offer guidance as to whether the reports can be reconciled and opine on the reliability of the reports. The dissemination of a report suggesting Ms. Swanson-Rivenbark was involved in any way with an anonymous mailing constitutes a false and inaccurate accusation. Publication could substantially harm Ms. Swanson-Rivenbark's professional standing, her reputation, and her livelihood. In view of her long and honorable service to the City of Coral Gables, any impugning

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of her reputation and integrity is both unfair and inconsistent with a proper and accurate view of her public service. The spirit if not the letter of her Cooperation and Transition Agreement with the City is intended to promote a positive relationship with Ms. Swanson-Rivenbark, and not an adversarial one.

Should the City decide to publish and disseminate what Ms. Swanson-Rivenbark maintains are false statements and accusations designed or intended to impugn her character, reputation, or professionalism, she will have no alternative except to utilize all available remedies at law or in equity.

In an effort to continue the positive relationship between the City of Coral Gables and Ms. Swanson-Rivenbark, I urge you to decline to disseminate any information that might tend to cast Ms. Swanson-Rivenbark in an unflattering light.

Thank you for your consideration. I am readily available to discuss this matter with you.