



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

CONFIDENTIAL

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 17, 2010

Re: Individuals Suspected to be Responsible for Cutler Files Website

This memo is confidential under 21-A M.R.S.A. § 1003(3-A) as an intra-agency communication related to the staff's investigation of the Cutler Files website. It is intended to identify the two individuals we suspect are mentioned in the affidavit provided by attorney Dan Billings.

In the answer to question #1, the affidavit states that "Two individuals primarily conducted the research, writing, editing and graphics of the Cutler Files website." It also states that "Others provided suggestions which were incorporated into the content," but does not identify how many others provided the suggestions.

In the answer to question #2, the affidavit states "One individual primarily completed the research and the second individual primarily completed the writing and graphics for the website. ... Both individuals have been involved with the editing of the site content."

The staff of the Commission suspects that the two individuals described in the affidavit are Thom Rhoads and Dennis Bailey. Both have connections to a former 2010 candidate for governor, Rosa Scarcelli. On June 8, 2010, Rosa Scarcelli lost the Democratic nomination to Sen. Elizabeth Mitchell.

Dennis Bailey is an experienced political consultant who owns a consulting firm, Savvy Incorporated. Among other services, Savvy Inc. provides campaign management services. Dennis provided consulting services to the 2010 Scarcelli campaign, and was paid \$33,000 for his services. He was the press secretary for Angus King. He has performed campaign consulting for a number of committees concerned with ballot questions.

Thom Rhoads is the husband of Ms. Scarcelli.

My suspicion is that Thom Rhoads is the individual mentioned in the affidavit who primarily completed the research for the website, and it is Dennis Bailey who primarily completed the writing and graphics for the website.

Assistant Director Paul Lavin and I began an interview of Dennis Bailey on September 13. He admitted to knowing who conducted the research for the Cutler Files, and that he stayed in contact with them. He tried to interest some news reporters in the information, but he was not successful. He admitted that he provided editorial tips on the website. In my opinion, the majority of Mr. Bailey's statements to me during the interview were truthful, but some were shaded, and, overall, he was minimizing his involvement. He declined to answer some questions, although he expressed openness to resuming the interview after conferring with his associates.

I asked Dan Billings for an opportunity to interview the two individuals identified in the affidavit. Dan replied that his clients would like to comply and trust that the Commission staff would attempt to keep their identities confidential as the Commission considers Billings' legal argument. Mr. Billings said that his clients are unwilling to be interviewed voluntarily because they are concerned about a possible defamation or libel suit by Mr. Cutler, in which I could be called as a witness.

To summarize, my grounds for suspecting Dennis Bailey and Thom Rhoads are as follows:

- Dennis Bailey has admitted to me that he provided editorial tips on the website.
- The Commission staff has analyzed data within e-mails sent to me from "Michael Blessing" on behalf of the Cutler Files. The e-mails were sent by the same computer that Dennis Bailey has used to send e-mails to me from dennis@savvy-inc. com.
- Under circumstances that I find trustworthy, a consultant for another gubernatorial campaign said to me that Thom Rhoads told him that Rhoads did the research for the Cutler Files website. This was told to me in confidence and I ask that you please do not share this with people outside of the Commission.
- I received first- and second-hand information that people within the Scarcelli campaign were obsessed with Eliot Cutler during the primary election period.

After Ms. Scarcelli lost the primary election, Mr. Bailey was free to work for other candidates. He was hired as a political consultant for current 2010 independent gubernatorial candidate Shawn Moody. Mr. Bailey has denied that Shawn Moody had any knowledge of the Cutler Files website. The Commission staff finds this completely credible.

My working theory of the development of the website is as follows, although, admittedly, it contains some speculation:

A core group in the Scarcelli campaign was concerned about running against Eliot Cutler in the general election. They decided to research Mr. Cutler "in-house" and did not hire an opposition research firm. Thom

Rhoads performed most of the research on the internet during late 2009 and early 2010.

Ms. Scarcelli lost the primary election on June 8, 2010. After the primary campaign was over, Rhoads and Bailey were motivated to distribute the anti-Cutler information to the electorate. After other avenues did not work out, they decided to create the Cutler Files website. The domain name was purchased in August 2010, and the site went live on August 30, 2010. Bailey was primarily responsible for the writing and graphics on the website, as stated in the affidavit.

Phyllis Gardiner is prepared to discuss with you in executive session the strengths and weaknesses of the constitutional arguments raised by Dan Billings' and the other interested parties, and the litigation risks involved in any decision you might make in this case. We can also discuss with you the impact of Rhoads and Bailey's potential involvement on the First Amendment arguments made by Dan Billings. Although they have connections to a former 2010 primary campaign, the expenditures for the Cutler Files website appear to be essentially the work of two private individuals who are motivated by a desire to speak out against a candidate and wish to remain anonymous in doing so.

Thank you for your consideration of this memo.