

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

In re: Special Proceedings

Misc. 01-47T

**DEFENDANT JAMES TARICANI'S
SUPPLEMENTARY SENTENCING SUBMISSION**

Defendant James Taricani hereby provides the following supplementary submission in connection with the sentencing hearing scheduled to take place on December 9, 2004.

1. Medical Information.

Pursuant to the Court's November 18, 2004 order, the defendant hereby files the following information, in the nature of objections to the letter of Barbara J. Cadogan, Health Systems Administrator of the Federal Bureau of Prisons ("BOP") (the "Cadogan Letter") to Chief U.S. Probation Officer Barry J. Weiner dated November 23, 2004, provided to Mr. Weiner in connection with his Presentence Investigation:

The Cadogan Letter does not address certain of the specific risks cited by the submissions of two of Mr. Taricani's cardiologists, Dr. Marc Jay Semigran, a transplant cardiologist at Massachusetts General Hospital, and Dr. Richard S. Shulman, a cardiologist who practices in Rhode Island. In addition, the BOP's stated confidence that it can provide the necessary care for Mr. Taricani should he be incarcerated in a federal correctional facility is based on a series of questionable assumptions that do not eliminate the unique risks of incarceration on the facts of this case.¹

¹ At the outset, in summarizing Mr. Taricani's health condition, the BOP failed to note that in addition to being a heart transplant recipient with an implanted pacemaker who suffers from renal insufficiency and severe tri-cuspid disease, Mr. Taricani also has severe hypertension (a side effect of his immunosuppression medications as well as his renal failure) and cerebrovascular disease, specifically subclavian artery stenosis that leads to decreased flow to the vertebral artery. See Letter from Marc Jay

The BOP states that it is "likely" -- not certain -- that Mr. Taricani would be designated to a medical referral center after being reviewed for designation by the Bureau of Prisons Office of Medical Designations. See Cadogan Letter at 1. Assuming that such a designation is made, the Cadogan Letter states that "[i]f at any time it is determined that [Mr. Taricani's] cardiac or kidney condition requires more specialized care, each BOP medical referral center contracts with major medical centers to provide specialized medical treatment." Cadogan Letter at 2. The BOP offers no evidence, however, that the staffs of its medical referral centers have any expertise in monitoring heart transplant recipients to determine when intervention is required.

Even assuming, however, that Mr. Taricani is in fact designated to a medical referral center after being reviewed for designation by the Bureau of Prisons Office of Medical Designations, and assuming further that the on-site staff at the designated facility has sufficient training in cardiac transplant medicine to determine when more "specialized care" is required, the inherent limitations of the federal prison system make it impossible for the BOP to ensure that such specialized care will in fact be available to Mr. Taricani.

For example, the Cadogan Letter states that the BOP's medical center in Fort Devens, Massachusetts "has extensive contracts with the University of Massachusetts Medical Center, to include kidney and cardiac transplant specialists and pacemaker monitoring and evaluations." Cadogan Letter at 2. As stated in Dr. Semigran's letter, however, the University of Massachusetts does not currently have a cardiac transplant program, and the Fort Devens medical center does not currently house any cardiac transplant recipients. Semigran Letter at 6. The BOP's submission therefore does not address Dr. Semigran's expressed concern that Mr. Taricani will not have the ability to readily contact physicians trained in cardiac transplant

Semigran, M.D. ("Semigran Letter") at 1-2. The BOP also omitted Norvasc, a calcium channel blocker, from the list of daily medications that Mr. Taricani is required to take. Semigran Letter at 3.

medicine, a crucial aspect of his medical care. Semigran Letter at 2. Nor does the BOP address the medical opinion of Dr. Shulman that transferring the care of a complicated patient such as Mr. Taricani from one group of doctors and one health care system to another group of doctors and another health care system by definition carries risks for that patient, particularly when the patient currently is being treated by a team of highly experienced transplant cardiologists who are personally familiar with his medical history and condition. Shulman Letter at 3.

The BOP also fails to address certain significant risks associated with Mr. Taricani's day-to-day routine if incarcerated. The Cadogan Letter (at 2) states that each institution provides an inmate with the opportunity for some daily physical activity, but does not state whether the BOP will provide the minimum of 60 minutes cardiovascular and weight-lifting exercise medically required by Mr. Taricani's condition. The Cadogan Letter (at 2) also states that each institution provides an inmate with the opportunity for "nutritionally balanced dining," but does not state whether the BOP will accommodate the dietary restrictions medically required by Mr. Taricani's condition.

The Cadogan Letter states that the BOP "prides itself on maintaining a clean, sanitary environment for medical and correctional reasons." The letter also states that the accreditation process of the Joint Commission on Accreditation for Health Care Organizations includes a review of each BOP medical facility for cleanliness and to determine whether appropriate steps are taken to prevent or reduce the risk of infection from communicable diseases to patients, staff and others. Cadogan Letter at 2. The BOP fails to take into account, however, that Mr. Taricani's immunosuppressed state makes him far more susceptible to infections than are non-immunosuppressed patients, and that, in Dr. Semigran's words, "what might be a mild infection in a non-immunosuppressed patient can become life threatening in a transplant recipient because of the immunosuppressed state." Semigran Letter at 3. The BOP's failure to address this

increased risk is particularly significant in light of Dr. Semigran's statement (based on a conversation with Dr. Sandra Howard, the Clinical Director of the Fort Devens medical facility), that the Fort Devens facility lacks the means to isolate transplant recipients from other inmates/patients who have been exposed to viruses, infections, colds or the flu. Semigran Letter at 6.

Finally, the BOP does not attempt to address the medical opinions offered by both Dr. Semigran and Dr. Shulman that the additional stress of imprisonment could alter the balance between suppression so as to avoid rejection and permitting enough activity to allow Mr. Taricani to fight infection. As both doctors made clear, the relative fragility of transplant recipients, along with the high blood pressure caused by anti-rejection medicine, make stress a far more significant health risk for Mr. Taricani than for people who do not suffer from heart disease and are not transplant recipients.


As Dr. Semigran stated: "In my medical opinion, despite the quality of care the Facility is able to deliver to many inmates, the absence of expertise in the treatment of heart transplant recipients, combined with the risk that Mr. Taricani would be exposed to individuals with communicable viruses or infections, makes a placement at Fort Devens Medical Center more high risk for Mr. Taricani than for many other patients/inmates." Semigran Letter at 6. The medical reality is that this risk cannot be avoided if a sentence of incarceration is imposed on Mr. Taricani. For the reasons set forth in more detail in Mr. Taricani's sentencing memorandum, it is respectfully submitted that the circumstances of this case fall far short of justifying a sentence that imposes such serious medical risks.

2. **James Taricani's Affidavit.**

In light of the Special Prosecutor's Reply Memorandum, and the evidentiary hearing scheduled for December 9, 2004, defendant files herewith his Affidavit, addressing certain of factual issues set forth in the Special Prosecutor's Reply Memorandum.²

JAMES TARICANI,

By his attorneys,



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Dated: December 6, 2004

*Admitted *Pro Hac Vice*

² Defendant notes that he has addressed, in ¶ 18, information relayed to the Special Prosecutor by FBI Special Agent Dennis Aiken. In doing so, he does not waive his objections to the use of such information at sentencing, as it was obtained in violation of defendant's rights under *Massiah v. United States*, 377 U.S. 201 (1964).

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2004, I caused a copy of the within Defendant James Taricani's Supplementary Sentencing Memorandum and Affidavit of James Taricani to be served by facsimile and first-class mail, postage prepaid, on Marc DeSisto, Special Prosecutor, 211 Angell Street, Providence, RI 02906.

Deming E. Sturman