

OFFICE OF THE INDEPENDENT ADVOCATE  
REPORT OF INVESTIGATION

K #:09-136

Date Opened:

Date Closed:

Name of investigator: Kennedy Rosario

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**Background**

On April 24, 2009 Jay Flynn (Flynn) was “removed” from his position as a Division Director with in the Human Resources Department by Human Resources Director Angela Maher (Maher) and placed on Paid Administrative Leave.

Maher, in her removal correspondence to Flynn, indicated that Flynn would be assisted in “identifying employment alternatives through the Pipeline Assistance Program” (PAP).

The PAP provides employment referrals to employees, with good work records, who have been impacted by layoff and have no classified service rights to exercise.

This County assistance program eventually resulted in Flynn becoming the Head Start Program Coordinator for the Miami-Dade Community Action Agency (CAA).

However, the Coordinator position, in comparison to the Division Director position, constituted a demotion in rank as well as a sizable reduction in salary/income.

Flynn, a long term County employee, rose to Human Resources Division Director under former Employee Relations Department (ERD) Director Don Allen.

ERD, later known as Human Resources (HR), under the County Manager / Mayor’s directive and during Flynn’s tenure, was overseen by various Special Assistants / Assistant County Managers including Susan Torriente.

The Miami-Dade County Tuition Refund Program (RP) was approved in 1963 by the Board of County Commissioners to “encourage County employees to improve their job effectiveness and prepare them for increased responsibilities by receiving additional training and education”.

In 2006, the Employees Relations Department (ERD) “became concerned that many County employees were not reporting to ERD, grants and scholarships they received”. These employee grants / scholarships/ monetary awards were utilized by ERD to determine the amount of reimbursement the employee was entitled to receive under the RP.

This “scandal” was the subject of investigations by a State of Florida Grand Jury, the Office of the Inspector General (OIG), the Public Corruption Unit of the State Attorney’s Office (SAO) and to a lesser extent the COE.

Flynn, as Director of the Administrative Services Division, administered the RP.

The RP investigation, its outcome, investigative methodology and subsequent indictments are not a part of this investigation.

However, it is material that one of the many County employees identified as having received overpayments...and for this report need not be identified...was alleged to have a “relationship” with Torriente.

During the height of the County’s efforts to manage the fallout and correct the RP, County Manager George Burgess impaneled an Appeals Review Panel “to consider all information on a case by case basis”. Torriente was named Panel Chair.

Soon after the appointment, Burgess removed Torriente as Panel Chair/ member, ostensibly due to the revelation that one of the employees involved in the tuition refund overpayment, and thus subject to appear before the panel, was in a romantic relationship with Torriente.

### **Allegation**

Flynn alleges that Special Assistant / Assistant County Manager Susan Torriente abused her official position by orchestrating his removal as HR Division Director. His removal, Flynn believes, was in retaliation for exposing the relationship between Torriente and the County employee.

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If proven, Torriente's alleged action(s) would constitute a violation of the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, subsection (g) Prohibition on exploitation of official position.

Additionally, Flynn's demotion may also constitute a retaliatory prohibited "adverse action".

Flynn was also adamant that he should have been given the opportunity, upon his removal as Division Director, to participate in the County's "Red Circle" and/or Salary Continuation policy.

Although not granting Flynn a salary continuation is a managerial / personnel issue, and therefore not within the COE jurisdiction, it none the less will be addressed.

## **Investigation**

In numerous interviews and conversations with Flynn he stressed his many accomplishments and quality of work yet, it became abundantly clear that he attributed his demotion specifically to Torriente....as proof of this allegation he cited an encounter with Jack Dolan (Dolan), a Miami Herald investigative reporter, covering the RP scandal.

According to Flynn, Dolan met with the County Manager and threatened exposing Torriente's relationship via a Miami Herald article, allegedly prompting Burgess to remove Torriente from the panel.

While steadfast in his assertion that he did not leak the relationship information to Dolan, Flynn believed that Torriente held him responsible.

As an initial part of this investigation, COE Investigators met with County Manager George Burgess and discussed his decision to remove Torriente as Panel Chair. Burgess stated that he became aware of the possible conflict posed by the Torriente relationship, but that it was Torriente that informed him of the conflict resulting in Torriente stepping down from the panel post.

Flynn, during the course of the investigation, supplied the COE with information best described as "bullet points" in support of his allegations against Torriente as well as illustrating his body of quality work.

These bullet point e-mails have been made a permanent part of the investigation and to a certain extent, served as a roadmap on the investigations focus.

Bullet point: #1

**Melanie McLean/Arleene Cuellar - familiar with the payroll processes, tuition policies, AO's, my work, etc.**

The COE interviewed Arleene Cuellar (Cuellar)

Cuellar has been a County employee for more than 21 years. For the past eleven plus years she held the position of Assistant Director of Payroll and Information Management under Division Director Flynn.

Cuellar, although aware of Flynn's thoughts as to why he was removed, could not substantiate the retaliation complaint based on any personal knowledge.

Cuellar said that she and others were to have a meeting with Angela Maher and it was her understanding that Flynn's removal as one of her division directors, in addition to three other HR staff members, was the result of Maher deciding to "change direction and planning" of the department.

Cuellar lauded the work that Flynn accomplished, yet could not definitively state that Flynn's removal was directly related to an act of retaliation by Torriente.

The subject of the Red Circle / Salary Continuation was broached; Cuellar advised that this County policy is known to HR personnel as an economic / financial tool to help lessen the financial impact on certain class of employees. However, inclusion in this policy is contingent on approval from the department director, in this instance Ms. Maher, and authorized by the County Mayor.

The Salary Continuation was geared to employees that suffered lay-offs in 2007.

Bullet point: #2

**Mary Lou Rizzo - Division Director over Personnel Services Division, HR. Rizzo administers the Pay Plan and can speak to what is in the pay plan, what the authority is (or is not) in terms of policy and practices especially regarding lay offs, Red Circle Policy, Salary Continuation Policy. She can also speak to the quality of my (Flynn's) work and give an educated perspective on the different treatment given to Don Allen, Jose Fraguela,**

**Connie Butler and me. I believe she was also present on one occasion when Angela Maher spoke of why Susy Torriente wanted me gone. We worked on the ERP for about a year. We worked on cleaning up the Bonus Report and can speak to the erroneous criticism from [the 29<sup>th</sup> floor] about this report and the terminology.**

The COE interviewed Rizzo....Rizzo returned to County employment in 1987 and at the time of this meeting was the HR Director of Recruitment. The bullet point was shown to her and in response she made the following comments;

Rizzo only heard Maher say that Torriente was not happy with Flynn's reports.

Maher did not tell her that Torriente's displeasure with Flynn was due to the RP but had more to do with Flynn's management skills.

Rizzo quoted Maher as having said "it is either them or me" alluding to the four individuals who were removed from HR. Indicating pressure from the "29<sup>th</sup>" (the County Manager / Mayor's office) to make needed changes in HR.

Maher did voice concerns that the County Manager wanted both Flynn and Don Allen removed, a move that Maher initially disagreed with but finally came to the realization, due to Flynn's problems (managerially) with reports, that she needed to take the department in another direction.

Maher, according to Rizzo assumed full responsibility for the removals.

Rizzo has never heard Torriente mention that Flynn needed to go.

As to the Red Circle / Salary Continuation issue:

Rizzo stated that Maher "did not believe that Flynn deserved it".

The other individuals removed at the same time as Flynn from HR were Connie Butler, Don Allen and Jose Fraguela.

Both Allen and Fraguela were "out-stationed" (removed from one department and imbedded in another department); this required an agreement between HR and

the receiving department, although both Allen and Fraguela remained budgeted under HR.

Additionally, Rizzo recalls that, upon Maher's appointment as HR Department Director, Torriente had "functional but not formal control" of the department.

Note: Don Allen had been ERD Director but was demoted to a HR Division Director position, the Department Director position was left vacant for many months until Maher was hired.

Maher, as the new HR Director reports directly to the County Manager.

Torriente was only briefly "involved in HR early in Maher's tenure".

Rizzo was never present in any forum where Torriente voiced comments related to Flynn and his involvement with the RP employee conflict.

Rizzo describes the Red Circle policy as a discretionary policy which preserves an employee's salary for a limited period of time, usually one County pay period for each year of service. This long standing policy remains intact with the exception that the approving authority changed from the County Manager to the Mayor.

Red Circle approvals are granted sparingly...the policy does not automatically entitle an impacted employee.

Bullet point: #3

**Don Allen - Former Director of HR. Was in on many meetings with Angela Maher detailing the desire of Susy Torriente to remove us and Angela's opposition to this. Was also in meeting where Angela responded to my question of why Susy wanted me out as "personal and I leaked to Herald and the Bonus Report". Had many experiences with the way I was treated by Susy Torriente. Also had many experiences with the quality of my work (ERP, report writer, automation of various areas of payroll, EDMS, TesserAct**

**contract, SLA, etc.), did a number of my evaluations, all of them good. Also aware of the Tuition AO requirements, my efforts in years past to change this and the self serving behavior of some that undermined the tuition process and angered the Manager.**

The COE met with Allen and after showing him the bullet point, elicited this response: Allen has been with the County for thirty-five years, he served as ERD / HR Director for five years (2002-2007). Flynn served as one of Allen's Division Directors. After his demotion he served for two years as Division Director of Labor Management in HR. In April 2009 he was "out stationed" to the Water and Sewer Department as Human Resources and Labor Relations Advisor to the Director.

Torriente, at times during his tenure as HR Director, was the Chief Assistant to the County Manager and oversaw ERD/HR.

Torriente also served on the interview panel charged with the task of selecting a new HR Director through a national search...Maher was eventually selected.

During the period the HR Director position was vacant the department was headed by Assistant County Managers Carim Brody and Howard Piper.

Allen in conversation with COE investigators could not specifically attest to Flynn's allegation that "Susy wanted me out" for the employee conflict disclosure, offering that Maher told him, two or three months prior to the removal, that it was "personal". Yet Allen could not say that in fact Maher named Torriente as the person that Maher was referring to.

Allen, while giving kudos to Flynn's overall work, did sight instances where official, work related actions by Flynn did not sit too well with upper management, including the County Manager and Torriente.

Allen cited an incident he recalled as occurring two / three years prior; during a telephone conversation with Torriente, she expressed her displeasure with Flynn in regards to a memo Flynn had authored regarding the so-called Alonso Ordinance.



Apparently Torriente took issue with the contents critically mentioning to Allen if Flynn “knows what employee relations means?”

Allen also cited the belief by upper management, including Torriente, that Flynn “had failed to make the right pro-active changes” as Labor Management Director

As to the RP scandal, Allen stated that Susy, in his presence, never mentioned the employee conflict issue but only “attacked the process regarding how HR handled the RP investigation”.

Allen further stated that Maher was given a “charge memo” from the County Manager that consisted of a “laundry list” of expected HR accomplishments.

Bullet point: #4

**Mark Deutsch (HR) - may have been in meetings when discussion by Angela occurred about the prejudicial nature of Susy wanting me out.**

The COE met with Mark Deutsch (Deutsch), another long tenured ERD / HR employee. Deutsch was also shown the bullet point comment by Flynn, his response:

Deutsch, Labor relations Director for HR, told the COE that he “would not describe” Flynn’s removal as “personal” believing that the “main” reason was the tuition refund scandal.

Although, Deutsch opines, that “most of the criticism was unfair”, the blame for the RP fell on both Don Allen and Jay Flynn.

Deutsch further stated that he was “not really involved in meetings” as described in the bullet point and only “heard” that Allen and Flynn were to blame by allowing the RP scandal to happen.

Deutsch further stated that neither Flynn nor Torriente ever spoke to him about the issue....”I have not heard that there were personal issues”.

The alleged relationship between Torriente and the County employee was mentioned to him by Allen.

Deutsch was not aware of the Dolan meeting with the County manager but it “would be pure speculation to attach that incident to Flynn’s removal”.

Deutsch also mentioned that there were “prior incidents” with Flynn related to his management style.

Bullet Point: #5

**Ed Carberry (OIG) - He was the individual I reported the Susy Torriente conflict of interest to. Cedric Johnson (OIG) also aware of this.**

OIG S/Special Agent Ed Carberry was the lead investigator in the RP investigation, in a conversation with COE Investigator Rosario, no doubt was left that the blame for the RP scandal was squarely placed on Flynn and his Division's management of the tuition refund program.

Carberry opined that Flynn's removal was justified based on the findings of the OIG RP investigation.

Carberry could not definitively concur that Flynn was the person who first pointed out the Torriente conflict, rather that it came to light during their investigation.

Bullet Point: #6

Jose Fraguela (MTA)/Connie Butler (OCED) - were involved with the removals. Connie was Tuition Refund Coordinator.

Fraguela was one of the four individuals removed from HR by Maher. In a telephone conversation with the COE, Fraguela stated that he had no knowledge surrounding Flynn's removal....Fraguela further stated that he is still not certain as to why he was one of the four asking "if you find out let me know".

The COE interviewed Torriente:

Torriente commenced her employment with the County as a Management Trainee in 1990 and systematically rose to Assistant County Manager position.

As to the RP scandal, Torriente categorizes it as a "big screw up", laying the blame on both Flynn and Allen.

Torriente freely admits being in a relationship with the County employee and that upon her appointment as Panel Chair, realizing that the County employee would necessarily appear before the panel, she informed the County Manager of the conflict, which resulted in her removal.

However Torriente stated "I was taken out of the Panel because I was honest with the Manager about the relationship" with the County employee and given the circumstances would "have never sat in" through the County employees appeal process. Torriente added that she did not recall having a meeting with the Herald's Dolan and the County Manager on the subject of her conflict.

As to her involvement with the ERD/HR department; Torriente "knew there was a group of people in HR that did not like me" attributing this to her managerial input in the removal of Allen as ERD /HR director.

Torriente quoted the County Manager edict that ERD/HR be "more creative".

Torriente, while admitting that she “was never a fan” of Flynn, categorically denied having used her position to bring about Flynn’s removal in retaliation for the alleged “leak”.

Torriente suspects that it was Flynn that leaked the conflict information to the Herald but, she never had a conversation with any other County personnel where the topic was her suspicion that Flynn leaked the information to the Herald/Dolan.

Torriente pointed out areas where Flynn and Allen fell into disfavor with the County Manager (and herself) due to management of their respective assignments, the RP scandal being one such instance and a County Manager memo whose content / information was supplied by Flynn / Allen that put the County Manager “in a position of having to retract the memo”.

According to Torriente, Maher removed Flynn and the others, not because of any input from her, but because Maher needed to take HR in another direction.

As to Flynn not receiving the Red Circle benefit, Torriente attributes that to his “conduct” after being advised by his Director that she (Maher) would not ask the Manager/Mayor to grant it. The Redline/ salary continuation decision did not come from her.

Bullet Point: #7

Angela Maher - Director of HR. As noted in my earlier notes to you, she was the one who told me in advance of Susy Torriente wanting me removed and the reasons were "personal and because I leaked information to the Herald and the Bonus Report". When she did meet with me to remove me and I asked her for reasons, she said it was due to the recent problems with requested reports (that ETSD was doing). This conversation was witnessed by Howard Piper's assistant. Angela was involved with the Bonus Report clean up (came in at the tail end). She was also very uncomfortable with Salary Continuation policy and tried to get PCDs signed authorizing employees who were demoted and kept their old salaries (consistent with Red Circle Policy) by 29 (as did Howard and Corinne) but failed. She was aware of my efforts (but did not defend them) on trying to improve the County's report writing; the Service Level Agreement (SLA) with ETSD to get proper staffing (this is important because lack of support meant delivering poor service (like reports). She also spoke of the pressure on her and her concerns to remove me or face removal herself. Don Allen should be privy to these conversations also.

Additionally Flynn wrote the following;

Early 2009 – Angela Maher called me to her office to inform me that Susy Torriente, Jennifer Glazer Moon and the Manager wanted me removed. Angela said she was opposed to this and would do what she could to keep this from happening. Don Allen was given similar news. Between then and our removal, we had numerous conversations with Angela regarding this situation and how to prevent it. I asked Angela why Susy wanted me removed and Angela said it was “personal” and that Susy felt I

had leaked information to the Herald and there was a report on employee Bonus payments that was requested by the Herald that she did not like.

The COE interviewed Maher and shared the bullet points with her. She responded as follows:

Maher was hired as the HR department director in January 2008 and mandated by the County Manager to mold the department into a more “contemporary”, more “reactive”, better strategic planning department.

Maher was given direct report status to the Manager and was allowed to “make her own vision a reality” which included staffing.

As to Flynn, Maher eventually came to her own conclusion that Flynn “dragged his feet” on certain projects, was “overstaffed” did not “share information”, “hid information” adding that he “always had excuses”.

Maher opined that his (Flynn) “removal should not be a surprise to him”.

As to the RP/Torriente issue, Maher is quoted as saying “Susy did everything she could not to discuss the college tuition program” adding that she “never discussed the tuition at length” with Torriente and “most of the information she received “came from (Howard) Piper and other staff”.

Maher, although agonizing over the removal decision, made the decision on her own.

The Redline/salary continuation was broached, Maher was/is not a proponent of the program, consulted with Shelly Jones Horn, but did not receive any direction from Torriente.

The COE also interviewed CAA Executive Director Julie Edwards....Edwards advised that she was not on the panel that interviewed and recommended Flynn for his current position but subsequently interviewed Flynn. As part of the hiring process she did consult with Maher, receiving a favorable recommendation.

Edwards “was very candid to Jay and advised him that the department (CAA) could not afford him the red circle policy.....would not ask the County Manager”.

Edwards, on a personal note, is also not a proponent of the policy, arguing the “red circle policy is not fair” weighing the circumstances that would impact negatively the other CAA employees.

Edwards never had a conversation with Torriente about affording the Red Circle and/or salary continuation to Flynn...it was her decision.

The County Manager “never gave her a directive to give Jay the red circle”.

Edwards, on several occasions, spoke with Flynn on this issue.

**CONCLUSION:**

Retaliation occurs when an adverse action is taken AGAINST AN EMPLOYEE BECAUSE HE OR SHE HAS ENGAGED IN A PROTECTED ACTIVITY.

The RP scandal, which Flynn and Allen admirably brought to the attention of the OIG, may qualify...but...the OIG attributes the blame for the deficiencies in the program in good measure to Flynn and his division.

In order to prove retaliation there must be evidence that the adverse action was taken because of the protected activity....after numerous interviews, as stated above, and using the specific Flynn bullet points as discussion, the COE investigation finds no material substance that Torriente used her official position, or engaged in some nefarious activities, to remove Flynn as a division director and used her influence to deny him the Red Circle/salary continuation.

The bulk of Flynn’s testimony and communications with the COE involve matters of his managerial history and capabilities....others may disagree with his self assessment...however it is not within the scope of this investigation nor within the jurisdiction of the COE to address issues that are determined to be administrative in nature.