

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
	:	No. 21-cr-254 (RCL)
	:	
v.	:	
	:	
FRANK SCAVO,	:	
	:	
<i>Defendant.</i>	:	

FRANK SCAVO’S SENTENCING MEMORANDUM

Defendant Frank Scavo, by and through his undersigned counsel, submits this memorandum in support of his sentencing pursuant to 18 U.S.C. § 3553.

I. Introduction

On January 6, 2021, Mr. Scavo walked into the U.S. Capitol through an open door. He was peaceable during the 10 minutes he was inside. He did not destroy property. He did not accost anyone. He did not enter any private office space or chamber. Mr. Scavo fully acknowledges that his action was a crime. He regrets what he did. As he wrote in his October 5, 2021, letter to the Court:

January 6, 2021, was a dark day in our country’s history. Entering the U.S. Capitol Building was wrong and it was a crime. I regret doing it. I am committed to continuing to do what I can to make amends for my actions. My family and friends have always trusted me as someone who wants to improve our society, not weaken it. And I intend to live up to that.

Presentence Investigation Report (PSR) at ¶ 24 (Doc. 36). He knows that from this day forward he will have to show others that entering the U.S. Capitol that day was an aberration in a life that has been devoted to family, honest labor, and positive civic engagement.

After January 6, 2021, Mr. Scavo took steps to try to make amends for his actions. He voluntarily met with FBI investigators on two occasions, and provided them with his cellphone and

the videos he had taken at the U.S. Capitol. He subsequently engaged with the government through counsel in an effort to enter an early guilty plea, in order to minimize the impact on the justice system.

Before this matter, Mr. Scavo had never been arrested. Given his personal history and his acceptance of responsibility, we respectfully seek a sentence of probation.

II. Voluntary Cooperation And Guilty Plea

The Statement of Offense (Doc. 33) accurately describes Mr. Scavo's conduct on January 6, 2021. He travelled from his home in Old Forge, PA, to attend a political rally. Over the past three decades, Mr. Scavo had participated in numerous public events in support of Presidential candidates. He has supported candidates at the local level from both major political parties. None of these public gatherings involved violence. And so, on January 6, 2021, he did not foresee the terrible events that would mark the day – including loss of life and destruction of property – and become a blot on this Nation's history.

On January 19 and 25, 2021, about two months before his arrest, Mr. Scavo voluntarily submitted to interviews by the FBI. He provided the FBI agents with his cellphone, the photos and videos that he had taken in the U.S. Capitol, and answered all of their questions. As noted in the PSR, “[h]e has been cooperative with law enforcement.” PSR at ¶ 20. He was arrested on March 25, 2021, and “waived an identity hearing and production of the warrant.” *Id.* at ¶ 7. On September 8, 2021, Mr. Scavo pleaded guilty, pursuant to a written plea agreement, to Parading, Demonstrating, or Picketing in a Capitol Building, a Class B misdemeanor, in violation of 40 U.S.C. §5104(e)(2)(G). *Id.* at ¶ 4. The offense is punishable by up to 6 months imprisonment and a \$5,000 fine. *Id.* He agreed to pay restitution in the amount of \$500. *Id.* at ¶ 6.

Mr. Scavo has been subject to supervision, including restrictions on his liberty, since March 25, 2021. Over more than 7 months of such supervision, he “has remained in compliance with the conditions of release.” PSR at ¶ 8

III. Mr. Scavo’s Actions At The U.S. Capitol

No excuse can be offered for January 6, 2021. Yet each person present on that day must be judged on their own actions. Mr. Scavo crossed the U.S. Capitol threshold at approximately 2:40 pm and left by 2:50 pm. The videos and photos that he took, as well as the surveillance videos obtained from government cameras, show that he was peaceable throughout. While inside, he realized that what he was doing was wrong. He described this in his letter to the Court as follows:

About 2 minutes into my trespass in the Capitol, I realized that this was wrong. Candidly, I wondered to myself what I was doing there, and sought an exit. It took me about 8 minutes to get from the 3rd floor level to the outside tarmac. I even asked police security twice at various levels how to exit the building. They pointed me to the exit ways to the tarmac. The truth is that on any given day before or after, I cannot imagine entering a public building that is closed to the public. But on that day, I did. And it was a crime.

PSR at ¶ 24. Thus, Mr. Scavo’s actions involved a momentary lapse of judgment, a 10-minute entry into a place where he should not have been, and a timely recognition that what he was doing was wrong.

IV. Mr. Scavo’s Background

Mr. Scavo (59) has been married for 32 years and has two children. He has lived most of his life in Old Forge, Pennsylvania (population 8,300), a few miles southwest of Scranton. He has an associate degree from Keystone College. He worked for approximately 28 years for Keystone Automotive, followed by positions in the automotive supply businesses. PSR at ¶¶ 63-64. Since 2015, he has supported his family by purchasing and improving rental properties. *Id.* at ¶ 61. This is his first brush with the justice system, as prior to this matter he had never been arrested. *Id.* at ¶ 32.

Mr. Scavo has engaged in many activities over the years devoted to the public good. For instance, he served in various capacities on the Old Forge School District Board of Education for approximately 13 years, in unpaid, elected positions. PSR at ¶ 65. In addition, he has committed countless hours over the years to volunteer work and community service. *Id.* at ¶ 66. In the past few months, Mr. Scavo has continued these efforts, performing scores of hours of community service.

V. Sentencing Considerations

As set forth in the plea agreement and PSR, the maximum sentence for Mr. Scavo's violation of 40 U.S.C. § 5104(e)(2)(G) is up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply. 18 U.S.C. § 3559; U.S.S.G. §1B1.9. We respectfully seek a sentence of probation, because such a sentence would appropriately reflect the factors to be considered pursuant to 18 U.S.C. 3553, as described below.

A. Nature and Circumstances Of The Offense

Mr. Scavo's conduct was as follows:

- (1) he entered an open door to the U.S. Capitol;
 - (2) he did not engage in or incite violence;
 - (3) he did not engage in or incite acts of destruction;
 - (4) he did not destroy any evidence;
 - (5) he was in the U.S. Capitol for approximately 10 minutes;
 - (6) he made no incendiary public statements;
 - (7) he cooperated with law enforcement;
 - (8) he has demonstrated remorse and contrition;
 - (9) he was not involved in planning any illegal acts;
- and

(10) he timely offered to accept responsibility for his actions.

These factors all merit leniency in Mr. Scavo's sentencing.

B. History Of Mr. Scavo

As set forth above in Section IV above, and in the PSR, Mr. Scavo has had a stable life. He has devoted himself to positive civic contributions over many years. *See* Attachment A. He has been devoted to his family. He has held stable employment. He has never been arrested prior to the arrest in this matter. He has been an active citizen, in a positive way, for many decades. He held unpaid elective office for approximately 13 years with the Old Forge School District Board of Education – a clear demonstration that he is committed to improving our society. This history shows that Mr. Scavo is someone who “wants to improve our society, not weaken it.” PSR at ¶ 24.

His positive contributions to society over many years weigh in favor of a lenient sentence.

C. Seriousness Of The Offense

There are few events more serious than the civil disorder that took place on January 6, 2021. But, of course, the prime consideration here is the severity of Mr. Scavo's personal conduct. He committed a non-violent misdemeanor that was unplanned. He showed very poor judgment when he walked through the open door to the U.S. Capitol. Yet he soon recovered his bearings, recognized his wrongdoing, cooperated at every step of the way after that, admitted his guilt, and in doing these things showed respect for the rule of law.

D. Deterrence

Courts weighing this factor are mindful of both general deterrence – the goal of deterring crime generally – and specific deterrence – the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C); *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). General deterrence objectives were achieved by the initiation of Mr. Scavo's prosecution. He was the subject of media attention and scorn in his hometown, *see* PSR at ¶ 40-43, such that the public is well

aware that such actions have consequences. *See, e.g. Wayte v. United States*, 470 U.S. 598, 607 (1985) (prosecution of crime has “general deterrence value”); *United States v. Gamarra*, 940 F.3d 1315, 1321 (D.C. Cir. 2019) (same).

A sentence of probation in this matter will achieve specific deterrence objectives as to Mr. Scavo. As should be evident from a consideration of all of the available information, this is likely to be Mr. Scavo’s sole brush with the law. He has led a crime-free life. His actions on January 6, 2021, and the public notoriety that followed, have already taken a huge toll on him and his family. It has affected him “tremendously . . . physically, emotionally, regretfully.” PSR at ¶ 40. His health has deteriorated. *Id.* at ¶ 40, 52-53 (stress and kidney stones). His reputation has suffered. *Id.* at ¶ 40. His wife has suffered endured health and other ill effects due to Mr. Scavo’s acts, and the fallout from them. *Id.* at ¶ 42 (heart attack and notoriety that led her to resign her work position). To be clear, the far-reaching negative effects on Mr. Scavo and his family were not *required* in order to deter him from engaging in criminal acts in the future. He has led a crime-free life. But they have had a tremendous negative impact on him and his family, and represent a high price paid for his wrongful act of entering the U.S. Capitol.

As this Court is well aware, a sentence of probation is a form of punishment that can be a substantial restriction on a person’s freedom. *See Gall v. United States*, 552 U.S. 38, 44 (2007)(quoting district court observation that probation or post-sentence supervision “rather than an act of leniency, is a substantial restriction of freedom”) (internal quotation marks omitted). The *Gall* Court emphasized that a defendant serving such a sentence would have to “comply with strict reporting conditions,” and would “not be able to change or make decisions about significant circumstances in his life, such as where to live or work, which are prized liberty interests, without first seeking authorization from his Probation Officer or, perhaps, even the Court.” *Id.*

Under the circumstances of this case, a probationary sentence would sufficiently advance the interests of specific and general deterrence.

E. Sentencing Parity

This Court is well-versed in sentencing. Mr. Scavo understands that each defendant receives an individualized sentence. Accordingly, we provide the information below only to illustrate that a probationary sentence is within the heartland of sentences imposed on other January 6, 2021, defendants who pleaded guilty to Parading, Demonstrating, or Picketing in a Capitol Building. A sample of such sentences is as follows:

- *United States v. Eliel Rosa*, No. 21-cr-68 (TNM) – Sentenced to probation for a term of 12 months, with conditions, 100 hours of community service, \$500 restitution, and a \$10 assessment;
- *United States v. Joshua Kale Bustle*, No. 21-cr-238 (TFH) – Sentenced to probation for a term of 24 months, to include 30 days’ home confinement, with conditions, \$500 restitution, and a \$10 assessment;
- *United States v. Leonard Gruppo*, No. 21-cr-391 (BAH) – Sentenced to probation for a term of 24 months, with conditions, 90 days location monitoring, a fine of \$3,000, \$500 restitution, and a \$10 assessment;
- *United States v. Thomas Gallagher*, No. 21-cr-41 (CJN) – Sentenced to probation for a term of 24 months, with conditions, 60 hours of community service, \$500 restitution, and a \$10 assessment;
- *United States v. Jonathan Ace Sanders, Sr.*, No. 21-cr-384 (CJN) – Sentenced to probation for a term of 36 months, with conditions, 60 hours of community service, \$500 restitution, and a \$10 assessment;
- *United States v. Valerie Ehrke*, No. 21-cr-97 (PLF) – Sentenced to probation for a term of 3 years, with conditions, 120 hours of community service, \$500 restitution, and a \$10 assessment; and
- *United States v. Anna Morgan-Lloyd*, No. 21-cr-164 (RCL) – Sentenced to probation for a term of 36 months, with conditions, 120 hours of community service, \$500 restitution, and a \$10 assessment.

We believe that Mr. Scavo's background, early acceptance of responsibility, and his demonstrated compliance with the terms of his release over the past 7 months, make him an excellent candidate for a probationary sentence.

VI. Conclusion

Wherefore, for the reasons set forth above, we respectfully ask the Court to impose a sentence of probation in this matter, along with restitution in the agreed amount.

Dated: November 15, 2021

Respectfully submitted,

/s/ Ernest D. Preate
Ernest D. Preate (*Admitted Pro Hac Vice*)
204 Wyoming Avenue, Suite C
Scranton, PA 18503
Telephone: (570) 558-5970
epreate@comcast.net

/s/ Evan Corcoran
M. Evan Corcoran (D.C. Bar No. 440027)
Silverman, Thompson, Slutkin & White LLC
201 N. Charles Street – 25th Floor
Baltimore, MD 21201
Telephone: (410) 385-2225
ecorcoran@silvermanthompson.com

Counsel for Defendant Frank Scavo

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November 2021, a copy of the foregoing filed was via the Court's CM/ECF system and served on all properly registered parties and counsel.

/s/ M. Evan Corcoran
M. Evan Corcoran (D.C. Bar No. 440027)

Attachment A

The Honorable Royce C. Lamberth
United States District Judge
E. Barrett Prettyman Courthouse
333 Constitution Avenue NW
Washington, DC 20001

Re: Sentencing in *United States v. Frank J. Scavo*
Criminal Case No. 21-CR-254 (RCL)

Dear Judge Lamberth:

I write to provide my personal thoughts for your consideration about the crime that I committed and the deep sense of regret that I feel.

By way of background only, prior to January 6, 2021, as a life-long Republican, I often participated in political events, starting with the campaign for President George H. W. Bush in 1992. I also supported various Republican candidates for President over the years. I attended rallies and worked with others to advance our democracy. I also publically supported Democrats for various local offices.

I ran for and was elected to the office of Old Forge Borough School Board Director in 2001. My service as a school board director was extended by the people of the Borough of Old Forge in 2005 for a second 4 year term, one year of which I served as President of the Board. I was appointed in 2018 to the Old Forge School Board for an unexpired 2 year term that ended November 2020.

I supported the campaign of Donald Trump for President in 2016 and 2020. I fully expected the January 6, 2020 rally at the Capitol be no different than any other political rally that I attended. It was not.

I did not know in advance that some in the crowd were set on violent interference with the operations of government. But that does not excuse my own actions.

When the crowd surged through the doors, I entered the U.S. Capitol. The Statement of Offense filed by the government accurately describes my conduct. I remained in the building for less than 10 minutes, walking around and taking videos on my camera. I did not assault anybody nor threaten anybody. I did not destroy any property or seek to enter any private work spaces.

About 2 minutes into my trespass into the Capitol, I realized that this was wrong. Candidly, I wondered to myself what I was doing there, and sought an exit. It took me about 8 minutes to get from the 3rd floor level to the outside tarmac. I even asked police security twice at various levels how to exit the building. They pointed me to the exit ways to the tarmac.

The truth is that on any given day before or after, I cannot imagine entering a public building that is closed to the public. But on that day, I did. And it was a crime.

Upon my return to Scranton, Pennsylvania, I have tried to embark on a course to take responsibility for what I had done. On two different occasions – January 19th and 25th 2021 - I voluntarily spoke with agents of the Federal Bureau of Investigation. I told them what had happened and what my role had been. I provided them with my cellphone with the videos that I had taken on January 6th at the Capitol. I later worked with my lawyers to try to minimize the effort that the prosecutor and court system would have to put into my case.

Beyond that, I have tried to engage in several different activities in and around Scranton in order to demonstrate my commitment to the public good. I have cleaned up trash on Route 309 in Kingston, PA with the organization, New Horizons, a non-profit community action group. I work four hours each Saturday and expect to have 40 hours completed by mid-November. In addition, I have worked to aid those less fortunate, most recently, at the St. Francis of Assisi soup kitchen in Scranton for the poor and homeless. I work 9 hours a week doing food prep, serving, and clean-up. By mid-November I will have at least 60 hours in service there. My intention in doing these things was to show that I am a humble person.

January 6, 2021, was a dark day in our country's history. Entering the U.S. Capitol Building was wrong and it was a crime. I regret doing it. I am committed to continuing to do what I can to make amends for my actions. My family and friends have always trusted me as someone who wants to improve our society, not weaken it. And I intend to live up to that.

Thank you for considering this information.

Sincerely,



Frank J. Scavo

cc: Talia Santella
U.S. Probation Officer
Eastern District of Pennsylvania (*via email*)

Seth Adam Meinero
Trial Attorney -- Detailee
U.S. Attorney's Office for the District of Columbia (*via email*)



Felicia Dailey <felicia.preatelaw@gmail.com>

Fw:

1 message

FRANK SCAVO <f_scavo@yahoo.com>
To: Ernest Preate <epreate@comcast.net>
Cc: Felicia Abrams <felicia.preatelaw@gmail.com>

Thu, Oct 7, 2021 at 10:39 AM

Ernie & Felecia, here is another Scavo letter written Gene Michinski for the record. Please review. I can stop in today around 3 pm to review the Bolus letter if that fits your schedule. See you then :)

October 06, 2021

To Honorable:

JUDGE Royce Lambert

Sir I am writing this letter in reference for a personal friend Mr. Frank Scavo.

For the record I am providing a quick snap shot bio and writing this of my own free will.

My name is Eugene M. Michinski. I reside at 404 Rose Road, Springville, Pa. 18844.

I was born and raised in Scranton Pa. I graduated from Scranton Central High School and received a Bachelor of Science Degree in Criminal Justice from West Chester University.

I worked for The United States Secret Service for 29 years prior to retiring. My assignments included presidential protection, emergency response team and training division.

I am currently employed by the Susquehanna County District Attorney's Office as a detective and I am in charge of the D.A.R.E. Program for the Susquehanna County School District.

I am a Mason Waverly Lodge #301.

I have known the Scavo family for the last 12 years. Both Frank and his wife Caren along with being great parents, are hard working members of there community. When referring to Frank two words define the man, (Mission and Service). Frank's mission in life has been to look out for the needs of the members of his community. He has been relentless in his mission through

political, personal and private means to assure that his community member's freedoms and rights guaranteed by law are never violated.

Franks dedication to service to his community is unsurpassed. He unselfishly spends countless hours serving his community members, many times at his own expense.

In closing Frank is a good man. He loves his family, community and the United States of America.

Be Safe

Eugene M. Michinski

3654 Cottage Drive

Bethlehem, PA 18020

November 11, 2021

To: The Honorable Judge Royce Lambert

Re: Frank Scavo

Sir:

I have been asked to provide a character reference for the gentleman above, who is due to appear before you on November 22, 2021 re: his involvement and actions on January 6, 2021 in Washington, D.C. I have known Frank for thirty-three years thanks to our employment for Keystone Automotive & LKQ Corporation. For ten of these years, Frank was a direct report of mine in my role as District Manager for both organizations.

I can tell you that in those ten years. Frank's adherence to corporate directives was non puerile; never once was there a need for me to "write him up" for any infractions. In 1988, Frank took the start-up Old Forge depot of our Bethlehem, PA facility and built it to a twenty-one employee location, which at its height in 2016 featured an in-stock level of 1.25M and 15M in revenue. During those ten years, I audited Frank's facility a total of sixteen times to find only small opportunities for improvement. To say that Frank was one of my better lieutenants is an understatement.

In addition, in 2012 Frank had to foresight to convert his 401K into real estate when he purchased his first rental unit, which his father, son & he renovated and turned into three apartments. Today, Frank and his family have turned a total of seven derelict facilities into thirteen housing units for low- to middle-income families.

In the political arena, Frank served the Old Forge School Board in an elected capacity from 2001-09 and in an appointed one in 2018 & 2019 as replacement for the departed Mr. Christopher Jones.

As a son, husband, and father, Frank's successes are many: his Catholic faith as well as his solid upbringing have served him well, as the Scavo clan can often be found to celebrating his twenty-one-year-old son's and his twenty-five year-old – daughter's achievements.

As a retiree from LKQ in 2017, I look back fondly on times spent with Frank & Caren both on the clock and off. When I remember Frank, three words come to my mind: passion, loyalty, and commitment. In my opinion, it was these three traits that lead to Frank's involvement with regards to the January 6 incident: passion for his country, loyalty to his party, and a commitment to the American way of life.

When my wife and I saw the footage from that day on CNN, one can witness Frank at the portal of the Capitol as a hesitant participant. His conundrum was obvious, with an error of judgement causing him to enter the facility with others. After a quick assessment re: his inappropriate presence there, he quickly made his way to the exit without committing any violent act, his common sense winning the day.

I can tell you that since that day Frank is a changed man, removing himself from social media, helping out at the Scranton soup kitchen, and cleaning up trash in his community. I ask only that you take all of the above into account when you pass your judgement on this citizen on the twenty-second of November.

In the event I can answer any further questions regarding Frank, his character, or his background, please do not hesitate to reach me on my cell (below).

Thank you.

Sincerely:

A handwritten signature in cursive script, appearing to read "Dan R. Jones".

Dennis R. Jones

412-860-5312

To: Senior Judge Royce Lambert

Hi,

My name is Joanna Reviello, a retired therapist and educator. I am the coordinator of the Social Concerns Charity and the Director of the Religious Education program at our church, Prince of Peace here in Old Forge.

I am writing this letter to provide a character reference about Frank Scavo who I have known for over 20 years. I can say with total confidence that he and his beautiful family are a cherished part of our church and community. I have observed him with his family and interacting in the community. He is patient, understanding, kind, and loving with his family. He is respectful, responsible, and reliable in the community. Frank has always volunteered to help with charitable events.

As a board member for the Felittese Association, a non-profit group that celebrates Italian American ancestry in Old Forge, we raise money and scholarships for the community. I often call on Frank to help and he has never refused. Annually, Frank would carry the statue of Blessed Mother Mary in the procession that honors Old Forge's religious roots and celebrates our towns ethnic heritage. Of great importance was the year where we had half of the 10 people needed to lift and carry the Blessed Mother Mary statue in a procession down main street. Frank proceeded to rally the crowd of friends and family and had doubled the number of volunteers needed for the procession, which allowed the procession to move out on time! Frank's easy going and inviting character made everyone feel comfortable volunteering. Often, people are too shy or reserved to step forward.

I hope that this letter will give you an idea of his good character and help you to understand that this January 6th incident was an unusual occurrence.

Sincerely,

Joanna Reviello

A handwritten signature in cursive script that reads "Joanna Reviello". The signature is written in black ink and is positioned below the printed name.

November 10, 2021

Honorable Senior Judge Royce Lamberth

Washington D.C.

Dear Judge Royce Lamberth,

My name is Greg Griffin. I am a retired 25-year Pennsylvania State Senior Corrections officer. I reside in Swoyersville, Pennsylvania with my wife Rosanne. I am now a coordinator for outdoor volunteers at the nonprofit New Roots community organization in Luzerne county. WWW.NEWROOTSPA.ORG Recovery Support Center.

I have known Mr. Scavo for many years before we once again united in his effort to give back to the community after the January 6th incident. Frank had volunteered to help with insulating the basements of senior citizens during the winter months here in Northeast Pennsylvania. This was a big comfort to seniors on fixed incomes. Frank had always been active in the community. In fact, Frank had been present and helped coordinate efforts to end drug trafficking and drug users at drug houses in Luzerne county neighborhoods by attending all night vigils to discourage drug users and transactions with residents. Frank has also

Today, I can confirm that Frank has accumulated 75 hours to date in volunteering with New Roots organization, picking and clearing litter from the highways, and insulating basements as we have in the past. Frank has received no recognition or notoriety for these hours and tasks per his request.

As a judge of character in my corrections position, I can say the January 6th event was out of character for Frank, and he has stated his regret to me for his actions. I had told Frank he was responsible, and Frank agrees with my assessment of the situation and his owning of his actions and regret for that day.

I thank you for this opportunity to speak about Frank and would be glad to appear before you on his behalf. I can be reached at 570-239-6244.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Griffin', written over a white background.

Greg Griffin

EXECUTIVE DIRECTOR

Robert J. Williams
Telephone: 570-342-5558
Email: kilchen@stfranciskitchen.org
www.stfranciskitchen.org
www.facebook.com/stfranciskitchen.org



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November 11, 2021

Ernest D. Preate, Jr. Esquire
204 Wyoming Avenue
2nd Floor, Suite C
Scranton, Pennsylvania 18503

Atty. Preate,

I am providing this letter to verify that Mr. Frank Scavo provided 26 hours of volunteer service between September and late October of 2021. While here Mr. Scavo assisted our chef with meal prep, meal service and light cleaning.

The service that he provided to those in need was appreciated. He is welcome back at any time.

Sincerely,

Robert J. Williams
Executive Director

cc. Frank Scavo