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# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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<http://www.house.gov/judiciary>

July 9, 2007

The Honorable Paul J. McNulty  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dear Mr. McNulty:

On behalf of the Subcommittee on Commercial and Administrative Law, I would again like to express our sincere appreciation for your participation in the hearing on "The Continuing Investigation into the U.S. Attorneys Controversy and Related Matters" on Thursday, June 21, 2007. Your testimony was informative and will assist us in future deliberations on the important issues addressed during the hearing.

Please find a **verbatim** transcript of the hearing enclosed for your review. The Judiciary Committee's Rule III(e) pertaining to the printing of transcripts is as follows:

*The transcripts...shall be published in **verbatim form** .... Any requests by ...witnesses to correct any errors other than errors in the transcription, or disputed errors in transcription, shall be appended to the record, and the appropriate place where the change is requested will be footnoted.*

Please send your transcript edits via fax at (202) 225-7680 to Ms. Renata Strause, Committee on the Judiciary, or via e-mail to [Renata.Strause@mail.house.gov](mailto:Renata.Strause@mail.house.gov) no later than July 27, 2007.

The Honorable Paul J. McNulty  
Page Two  
July 9, 2007

Enclosed you will also find additional questions from the Subcommittee to supplement the information you provided at the June 21, 2007 hearing. Please send your written responses via fax to the attention of Ms. Strause at the number above or via e-mail to Renata.Strause@mail.house.gov no later than July 27, 2007.

If you have any questions, please contact Ms. Strause at (202) 225-3951.

Thank you, again, for your testimony.

Sincerely,



Linda Sánchez  
Chair

Enclosure.

cc: The Honorable John Conyers, Jr.  
The Honorable Lamar S. Smith  
The Honorable Chris Cannon

## QUESTIONS FOR THE RECORD

### PAUL MCNULTY APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

June 21, 2007

#### PRELIMINARY NOTES

Where these questions refer to “communications,” “conversations,” “discussions,” or any similar terms, they should be read to ask for any information regarding any form of communication such as in-person discussion, telephone conversations, emails, instant messages, exchange of written documents, or any other form of communication.

Where these questions refer to the “White House,” that term should be read to ask about any information pertaining to anyone working in the White House itself, the Executive Office of the President, the Office of Management and Budget (OMB), or any other component of the Executive Branch that is commonly referred to as the “White House.”

#### **Monica Goodling’s Statements Regarding Your Prior Testimony on the Role of the White House and Tim Griffin & Voter “Caging”**

1. After you testified at the Senate Judiciary Committee, did Monica Goodling or Kyle Sampson ever tell you that your testimony had been incomplete or incorrect?
  - a) If they did tell you, when did they inform you?
  - b) How did they inform you?
  - c) What was your response?
  - d) What if any corrective measure did you take?
  
2. In your testimony before the Senate Judiciary Committee, you explained that “you [didn’t] know anything about [the issue of Tim Griffin and voter caging] personally.” In your testimony before this Subcommittee, you acknowledged that Ms. Goodling had briefed you about the subject prior to the hearing and that your hearing briefing book contained an article about the issue as well as an e-mail from Mr. Griffin in which he provided an explanation of the article itself, although you had not read those materials. Please specifically and clearly explain how you reconcile your Senate testimony about

your lack of knowledge about Mr. Griffin and voter caging with the fact that Ms. Goodling had personally briefed you on the subject prior to the Senate hearing.

3. In your testimony before this Subcommittee, you testified in response to questioning by Congressman Conyers that “if you’re raising with me as deputy attorney general the question of cadging [sic] votes, I’m very happy to work with you on that concern.” In keeping with your offer, please provide the Subcommittee with any documents that relate to the Department’s knowledge of voter caging.
4. To the extent that you considered it inappropriate for you to speak on Senator Domenici’s behalf regarding David Iglesias, did you or your staff ask the Senator himself or his staff to provide the information regarding his calls to the Department to the investigating Committees?
  - a) If you did, please describe what happened, including who spoke with whom and what was said.
  - b) If you did not, why not?
5. At the Senate Judiciary Committee hearing, Senator Schumer asked if anyone outside the Department urged one of these U.S. Attorneys to be dismissed. You did not want to answer with reference to any specific U.S. Attorney, but instead made a broad statement that there had been no outside influence in any of the firings, you said: “Generically, I can say that with any change we made, they weren’t subject to some influence from the outside.”

Given that you had previously heard Senator Domenici’s complaints about David Iglesias and that you considered the call from the Senator important in not objecting to Mr. Iglesias being fired, wasn’t that statement at least incomplete, if not misleading? Please explain.
6. During her testimony before the Committee, Ms. Goodling described a staff meeting that occurred near the end of her time at the Department and after Mr. Sampson had resigned. She said that, at this meeting, she asked how Mr. Iglesias had been placed on the list, and that someone said “that’s been addressed.”
  - a) Do you remember the meeting at which she testified that you and the Attorney General were present?
  - b) Who else was present at the meeting?

- c) Who said “that’s been addressed”?
- d) What was said during this meeting about why Mr. Iglesias had been placed on the list?
- e) Have you ever had any other discussion with any senior official at the Department, including the Attorney General and his chief of staff, at which you asked or were informed why Mr. Iglesias was placed on the termination list?
- f) If so, what were you told and by whom?

**Firing of Todd Graves and Replacement by Brad Schlozman**

- 7. When you testified before the Senate Judiciary Committee in February of this year, you said the following about interim U.S. Attorneys chosen to replace fired U.S. Attorneys: “not one situation have we had an interim yet appointed who is – falls into some category of a Washington person or an insider or something...[I]n the cases where an interim has been appointed in those most recent situations, they’ve both been career persons from the office who are the interims.” Was that statement true about the replacement of Mr. Graves by Mr. Schlozman? Please explain.

**Hiring for the Attorney General’s Honors Program**

- 8. In your testimony during the Subcommittee hearing, you acknowledged that you were aware of the anonymous April 9, 2007 letter from unidentified Department employees. The letter describes a December 5, 2006 meeting that top Department supervisors had with your Chief of Staff, Michael Elston, to address concerns raised by the hiring practices. Specifically, the concerns related to the fact that the lists of qualified applicants the supervisors had ultimately sent to the DAG’s office had been cut dramatically.
  - a) Were you aware of the meeting involving Mr. Elston that was described in the letter?
  - b) How and why was the meeting set-up?
  - c) What was Mr. Elston’s role?
  - d) Did you tell Mr. Elston what to say in the meeting or discuss in advance the nature of what Mr. Elston was going to say?

9. The letter further mentions that Mr. Elston “was offensive to the point of insulting” and claimed that the supervisors had not done their jobs in reviewing applicants. According to the letter, Mr. Elston explained that he had his own screening panel review lists of applicants, but he refused to provide names of those on the panel. The letter recounts that, according to Mr. Elston, applicants on the list had been cut for three reasons: grades, spelling errors on applications, and inappropriate information about them on the Internet.
- a) Is this description correct? If not, please explain.
  - b) What inappropriate information is being referred to?
  - c) How do you reconcile Mr. Elston’s alleged comments about grades with the supervisors’ representations that the applicants had excellent grades?
  - d) Did you ever speak with Mr. Elston regarding the allegations of his inappropriate behavior? If so, what transpired?
10. In the Subcommittee hearing, Congressman Steve Cohen asked you “Were politics involved in determining who got . . . appointments to the honors program at the Department of Justice and the summer internship program?” Your response was, “I don’t know the answer to that question. I’m happy to provide you with more information in terms of context, but I don’t know the specific answer to that question.” Consistent with your offer to provide more information, please provide the relevant documents and information in response to Congressman Cohen’s question.
11. Other than Mr. Elston and supervisors in particular divisions, who else was involved in screening honors programs applicants at the time of the meeting with Mr. Elston?
- a) Was Ms. Goodling involved?
  - b) Was Mr. Sampson involved?
  - c) Was anyone outside of the Department involved?
12. Was there any discussion or e-mail traffic after the meeting about the meeting with Mr. Elston, the anonymous letter, or charges of politicization of the honors program? Please fully describe, to the best of your knowledge and belief, the content of any discussion and the name of each person involved in each discussion. Provide copies of any relevant written materials.
13. The Department has recently stated that it has returned control of the honors program hiring to career attorneys, after about four years during which political appointees directed the process. Were you involved in the decision-making process to change the

honors program hiring process? Please describe what happened, including whether the change in control of the honors program in fact returns hiring completely to career lawyers in the Department.

### Other Politicization of Hiring at DOJ

14. When you were serving as U.S. Attorney for the Eastern District of Virginia, and you were hiring people as career assistant U.S. Attorneys, did you ever take into account whether applicants were Republicans or Democrats, how they had voted in elections, or similar political factors?
15. Why is it important that this hiring of career prosecutors be nonpolitical?
16. Ms. Goodling testified before the full Judiciary Committee that she “crossed the line” and did take political factors into account in helping make hiring decisions on career legal positions at the Department of Justice, including Assistant U.S. Attorneys, detailees, immigration judges, and other career employees. When she was still working at the Department, did you have any indication at all that this was occurring?
17. If you were aware that Ms. Goodling had engaged in these practices, what specifically did you know about them, how were you informed, when did you learn of them, and what, if anything, did you do after you became aware of these practices?
18. Other than Ms. Goodling, do you have any indication as to who knew about this practice or who else may have participated in it?
  - a) In particular, do you have any indication as to whether the Attorney General knew? Please explain.
19. The June 21, 2007 *Washington Post* reported that with respect to former acting Assistant Attorney General for Civil Rights, Brad Schlozman, DOJ employees “overheard him making brazen political remarks about career employees or witnessed him making personnel decisions with apparent political motivation.” Do you have any information about this clear departure from your opening statement that the Department is “blind to partisan politics?”
20. What is your reaction to Ms. Goodling’s admission and other disclosures about politicization of the Department, including its effect on the Department and its reputation and what can be done about it?
21. What is the Department of Justice doing, if anything, to identify persons who were discriminated against in hiring and promotion based on political affiliation?

22. Did anyone in the Department question the legality of considering political affiliation in hiring career attorneys?
- a) If yes, who raised the issue of legality, and what came of it?
  - b) Was there any legal research done on this?
  - c) Was this matter ever referred to any component of the Department for legal analysis? Please explain.

**The Department's Plan to have Annual Review Meetings with U.S. Attorneys**

23. At his appearance before this Committee in May of this year, the Attorney General answered a question from Representative Coble about whether the Department planned to change its process for evaluating U.S. Attorneys. His testimony was that "I think one thing that we are going to do is at least once a year every United States attorney is going to sit down with either myself or the deputy attorney general and we are going to have a very candid conversation about issues and problems in their districts. If I have heard of complaints from [someone] that is a member of Congress, it gives me an opportunity or the DAG, the deputy attorney general, an opportunity to tell the U.S. attorney what we are hearing."

There has been some confusion about this issue, and, on June 17, 2007, the *Chicago Tribune* quoted Department officials making conflicting statements about whether these review meetings would occur.

- a) What do you know about the Department's plans to revise or change its U.S. Attorney evaluation processes?
  - b) Will the Attorney General, or your successor as Deputy, hold one-on-one meetings with U.S. Attorneys?
24. Based on his testimony, the Attorney General seems to believe that the point of such meetings would be to pass on complaints from Members of Congress to U.S. Attorneys.
- a) Do you believe that mentioning the views of Members of Congress to U.S. Attorneys will make them more responsive to political considerations? Please explain.
25. Are any changes planned to the review process that would protect U.S. Attorneys from undue political pressure, encourage them to exercise appropriate independence and

prosecutorial judgment, and communicate to them that they are expected to use their authority without taking partisan political considerations into account? Please describe.

### **Mike Elston's Post-Termination Calls to Several U.S. Attorneys**

26. Several of the fired U.S. Attorneys have told our Committee that, as this controversy came to light, they received some very uncomfortable phone calls from your Chief of Staff Michael Elston. They are as follows:
- John McKay of Seattle wrote that “I greatly resented what I felt Mr. Elston was trying to do: buy my silence by promising that the Attorney General would not demean me in his Senate testimony.” Mr. McKay also stated that the call was “sinister” and that he believed Mr. Elston was “prepared to threaten [him] further” if he did not stay quiet.
  - Paul Charlton described a similar call: “In that conversation I believe that Elston was offering me a quid pro quo agreement: my silence in exchange for the Attorney General’s.”
  - Bud Cummins testified in some detail at his March appearance before this Committee about a call he received from Mr. Elston, and in his written answers to follow questions described that call this way: “[Elston] essentially said that, if the controversy continued, then some of the USAs would have to be thrown under the bus.”

In your testimony before the Subcommittee, you explained that you were aware of the first two calls and that Mr. Elston made those calls “at my encouragement.” Who else in the Department knew about the calls?

27. In your testimony before the Subcommittee, you explained that you initially were unaware of Mr. Elston’s March phone call to Bud Cummins. You also testified to what you believed Mr. Elston “would say” about that phone call. Now that you also are aware of that phone call, what is your response to the reaction to the statements made under oath by these former United States Attorneys that all of Mr. Elston’s calls were threatening?
28. Once these calls came to light, did you conduct or order any investigation into whether Mr. Elston had made the threats described by the U.S. Attorneys? Please explain, including if you did not order an investigation, why not?

### **Conversation with Mary Beth Buchanan regarding Paul Charlton**

29. In her interview, Ms. Buchanan mentioned a conversation that she had with you at the award ceremony for Victim Rights Week in April or May of this year at the Ronald

- Reagan Building. She explained that you had told her about the Department's concerns about Paul Charlton and the death penalty. Do you recall that conversation?
- a) Please fully describe the content of the conversation.
  - b) What do you recall about how that topic arose?
30. Ms. Buchanan also mentioned that you had expressed your regret that she "had been dragged into the process [of explaining the U.S. Attorney firings.]" Do you recall that aspect of the conversation?
- a) Please fully describe the content of the conversation?
  - b) At the time that you had that conversation with Ms. Buchanan, did you know that she was expected to be interviewed by Committee staff?
31. Did you have any other conversations with Department officials who were expected to be interviewed by Committee staff prior to their interviews?
- a) If so, with whom did you have conversations?
  - b) What was the content of those conversations?
  - c) When did those conversations occur?
  - d) How did those conversations arise?
  - e) Where did those conversations occur?

**Reciprocal of America (ROA)**

32. As you are aware from your tenure as the U.S. Attorney for the Eastern District of Virginia, that U.S. Attorney's office launched an investigation in 2004 into the collapse of Reciprocal of America (ROA), a Virginia-based medical malpractice insurance company. After two ROA executives pled guilty to conspiracy to commit insurance fraud, investigations continued into another Reciprocal of America executive and General Reinsurance, a company possibly implicated in the fraud scheme. After you left your post as the U.S. Attorney for that district, however, your replacement removed the experienced senior Assistant U.S. Attorney from the case and eventually dropped the investigations of General Reinsurance and the other ROA executive, notwithstanding strong evidence presented by investigators in a draft indictment and prosecution memorandum. Accordingly, concerns have been raised that these cases were dropped for improper

political reasons. *See Alan Cooper, Further federal indictments in Reciprocal case unlikely*, VIRGINIA LAWYERS WEEKLY, Apr. 2, 2007.

Please explain what happened, including:

- a) Provide the Subcommittee with copies of any and all written responses you made to the February 21, 2007, letter to you from Tom Gober, the forensic accounting expert hired by the U.S. Attorney's office to assist with these investigations. (A copy of the letter is enclosed). If you did not respond to Mr. Gober's letter, please explain why you did not respond and provide a response to the Committee.
- b) During your tenure in the Office of U.S. Attorney for the Eastern District of Virginia, to the best of your knowledge, did anyone outside the investigatory team in that Office encourage, pressure, or suggest to you or anyone on the investigatory team that the investigations of General Reinsurance or of the ROA executive be dropped? If so, please name each person who did so, and explain fully, to the best of your knowledge and belief, what each such person did that you perceive to be such encouragement, pressure, or suggestion.
- c) During the tenure of your successor, Chuck Rosenberg, in the Office of U.S. Attorney for the Eastern District of Virginia, to the best of your knowledge, did anyone outside the investigatory team in that Office encourage, pressure, or suggest to Mr. Rosenberg or anyone on the investigatory team that the investigations of General Reinsurance or of the ROA executive be dropped? If so, please name each person who did so, and explain fully, to the best of your knowledge and belief, what each such person did that you perceive to be such encouragement, pressure, or suggestion.
- d) Did you, or to your knowledge did any other Department of Justice employee, discuss either of these investigations with anyone in the White House? If so, please name each person you know or believe to have participated in any such discussion, and fully describe the content of each such discussion.
- e) Did you, or to your knowledge did any other Department of Justice employee, discuss these cases with any individuals associated with or speaking for General Reinsurance, Berkshire Hathaway, or Mr. Warren Buffett? If so, please name each person you know or believe to have participated in any such discussion, and fully describe the content of each such discussion.
- f) What is your understanding of why the U.S. Attorney for the Eastern District of Virginia dropped the investigations of General Reinsurance and the ROA executive regarding the insurance fraud schemes that caused the ROA collapse?

**Question Submitted By The Honorable Zoe Lofgren (CA-16)**

1. In the attached email exchange, recently made public by the Election Assistance Commission, Hans Von Spakovsky, formerly of the DOJ and currently at the Federal Election Commission, discusses a “deal” that he believed he had made with the Vice Chairman of the EAC, Paul DeGregorio. Under the deal, the DOJ would consider changing its position on whether voters who did not comply with an Arizona voter ID law should be able to cast a provisional ballot. In exchange, the EAC was to change its position on the proper treatment of voter registration forms on which the citizenship checkbox is left blank but the applicant swears under oath that he or she is a US citizen. Mr. DeGregorio responded, “I do not agree to ‘deals,’ especially when it comes to an interpretation of the law.”
  - a. Although this exchange took place before you became the Deputy Attorney General, were you aware of this proposed deal?
  - b. In your experience, was it common for the DOJ to make “deals” about the proper interpretation of law with other federal agencies? Please describe any such deals of which you are aware.
  - c. Under DOJ guidelines, are such deals proper? In your view, are such deals proper?

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February 21, 2007

**CONFIDENTIAL**

Paul J. McNulty, Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Paul:

Because we have not had a chance to visit with each other since the day you left your position as United States Attorney for the Eastern District of Virginia, I take this opportunity to congratulate you upon your appointment as Deputy U.S. Attorney General. Based on my interactions with you and the significant support and encouragement you gave us in the complex criminal investigation related to the Reciprocal of America (ROA) insurance company collapse, I am confident that you will do an excellent job in your new capacity. No doubt cases such as ROA are what resulted in your deserved elevation.

As a matter of fact, there are certain aspects of the ROA matter and investigation which have prompted me to write to you today. I need your thoughts and advice, and it is my hope that you will be willing and able to respond to me in a reasonably short period of time. Naturally, I am hesitant to impose on your already crowded schedule, and I would not do so if I did not feel this is an important matter which needs your considered judgment.

Over the entire course of the ROA investigation, it was clear to me (and, I think it is safe to say, to the rest of our team as well) that you were fully committed to seeing this important investigation through to a successful prosecution. On every occasion where it was appropriate to do so, you expressed a high level of interest in the case and you seemed to be impressed with the weight and quality of the evidence we discovered and the approaches we developed. As you will recall, there was near-uniform agreement that we had built a very strong case against [REDACTED]. To be frank with you, when the decision was made to not pursue General Re as part of the Department's ongoing criminal investigation, I was quite disappointed. Although certain aspects of the case would have presented unique challenges, it was clear to me that we had ample evidence for a proper indictment. Nevertheless, this letter is not sent for the purpose of revisiting that decision. It is my desire, however, to get your views and recommendation on certain concerns which I will now express to you in confidence. I do so not to skirt any "chain of command"; rather, I want your opinion because I value it as coming from a man of honesty and integrity.

Up until the day you left the Eastern District of Virginia, we both know that you had expressed solid confidence in the case we built against [REDACTED]. Since the time of your departure, however, there have been a series of events which have caused me great concern. I do not know how much you have been kept "in the loop" regarding the ongoing investigation, but right after you left a decision was made to remove Assistant U.S. Attorney David Maguire from the case. As you know, Dave and the rest of our team were aggressively pursuing the investigation

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into both Gen Re and ROA. When Dave was replaced by Mike Dry and Mike Gill, a decision was made to no longer pursue Gen Re, and Gen Re was even told that it was no longer a target. Despite the fact that we had overwhelming evidence against [REDACTED], Mike Gill told me that he did not believe we had "a strong enough case" to pursue criminal charges against [REDACTED].

**I made it crystal clear to all members of our team that I disagreed with such assessment.** In fact, everyone on the team *except* for Mike Dry and Mike Gill felt that we had ample evidence to pursue indictments against [REDACTED]. For whatever reason, I was then taken out of the loop. I was no longer invited to the "team meetings." Fearing that the case against [REDACTED] might be dropped, I strongly suggested that the team re-interview the Virginia Deputy Commissioner, Doug Stolte. **Based upon my review of documents and prior interviews with Doug, I was confident that Mike Gill would see that we had a very strong case against [REDACTED].** Although I was not invited to that interview, I learned that the members of the team were extremely impressed with Doug as a very convincing prosecution witness, and that they saw the case as almost a "slam dunk."

You can imagine why, therefore, I was shocked to learn that Mike Gill (despite that interview) continued to hold to his earlier decision to not pursue the case against [REDACTED]. I shared my concerns with everyone on the team, including Special Agent Dave Hulser. It sounded as if everyone on the team, except for Mike Gill, was adamant that we pursue this most important case. That includes the Virginia Deputy Attorney General Martin Kent. In fact, it is my understanding that the FBI agents, with Kent's assistance, recently assembled documents in support of a DOJ Prosecution Memo and tendered it to your office in hopes of convincing Gill to not drop the case.

Paul, the purpose of this letter is to express my very real concern that the case against [REDACTED] might actually be killed. Please let me remind you that there were over 80,000 policyholders and over 380 employees at ROA that felt the pain of this terrible and unnecessary collapse. According to the state of Virginia, the losses approximate the \$500 million range.

I am at a loss here. I am looking to you for advice as to what I might do to get this criminal case back on track. As you know, I am currently under a contract with the Department of Justice with funding available to assure that I am able to assist your office throughout this prosecution. I am eager to continue to pursue this important effort, but Mike Gill is no longer communicating with me. I expressed similar concerns to Brian Whisler in several e-mails a couple of weeks ago. Brian replied to the first e-mail, but I never received a response to the second e-mail. For your convenient review, I am attaching a .PDF version of those e-mails to this message.

If the reluctance of the Department of Justice to pursue this matter is based upon any opinion that there is insufficient evidence, I feel it is my duty to assist your office in reviewing and discussing the evidence to convince everyone otherwise. If the reluctance is based on something

I apologize for having to send this letter, and for any awkward or unintended effects which may result or flow from it. At the same time, Paul, I find myself in a very peculiar and awkward position now. I need your help in getting us all "back on track" in the pursuit of a successful prosecution of [REDACTED]. I do not understand what has caused your office to hesitate, and the

circumstances have caused me a lot of confusion. The actions (and inaction) in this matter, since the time of your departure from Virginia, seem to be wholly at odds with the keen interest you showed in this prosecution before you left.

As you know, I have "lived" this case from its inception. In fact, my involvement predated the initial criminal investigation. Because of this fact, and all that we have worked so hard to discover and develop, I am unwilling to see an important matter such as this simply "fade away" unless I can understand what is causing that to occur. As of today, I do not know the real reason.

Let me say one other thing. While I may have reservations about what has *caused* this matter to stagnate, and while those reservations may have caused me some personal confusion, I assure you I am *not* confused about who has to make the ultimate call in a matter such as this. Yet, while I realize and appreciate the fact that my participation has been in a support role, and that I am not the U.S. Attorney for the Eastern District of Virginia, I also know what the facts are and what we have all worked to put together in this case. The bottom line is that the only thing that has changed since you left Virginia is that you are no longer here. The case is just as strong, if not stronger, than when you last walked out the door. If I thought this matter might possibly be shut down because of a material change of circumstances, that would be one thing. But if there is any possibility that this matter is being improperly impacted by outside "political" considerations, I know you will want to get to the bottom of the problem -- whatever it may be.

My heart is in this case and I certainly want to see it through. Moreover, this is not just a matter of what "you" or "I" may think. It is a simple matter of doing what is right and what the law [REDACTED]. You know the determination and the integrity of the key people who have been working on this matter. If their good work is being pushed aside, for reasons other than an application of the law to the facts, we need to talk in person so a decision can be made on what to do next.

You may reach me via e-mail or at the telephone number shown on our letterhead.

Thank you so much, Paul, for your prompt attention to this important matter. I also thank you for your dedication to the Department of Justice and for doing "the right thing" even when it may be difficult. I recall, years ago, seeing a phrase which was carved into the marble wall of a small county courthouse in Alabama. It read: "Equal and exact justice to all men of whatever state or persuasion." That is what I want, and what I know you want, in connection with this matter.

I look forward to hearing from you shortly.

Very truly yours,

*Original Signed by*

Thomas D. Gober, CFE

Attachment: As noted

---

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# VIRGINIA LAWYERS WEEKLY




Wednesday, April 4, 2007

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April 2, 2007

Virginia Lawyers Weekly

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Article of the week from *Virginia Lawyers Weekly*:

## Further federal indictments in Reciprocal case unlikely

### Key forensic accountant prods Justice not to drop case

By Alan Cooper

The federal criminal investigation related to the implosion of Reciprocal of America appears unlikely to result in additional indictments, much to the chagrin of a forensic accountant who worked for the government on the case.

Thomas D. Gober, the accountant, wrote Deputy Attorney General Paul J. McNulty in February to express his frustration.

In the letter, Gober noted that McNulty had been a champion of the case before his elevation from U.S. attorney for the Eastern District of Virginia to the No. 2 post in the U.S. Justice Department.

After McNulty's departure, however, Assistant U.S. Attorney David T. Maguire, the prosecutor originally assigned to the case, was pulled from it, ostensibly for health reasons.

At about the same time, General Reinsurance Corp. was told that the company and four current or former employees who had received grand jury subpoenas were no longer targets of the investigation, Gober noted in the letter. Gen Re, one of the world's largest reinsurance companies, is a subsidiary of Berkshire Hathaway, the holding company for investment guru Warren Buffett.

Gober said he was disappointed in the decision not to pursue those potential defendants but was primarily concerned that the investigation appears to ending with no further charges.

He said prosecutors who have been assigned to replace Maguire are no longer communicating with him.

"If the reluctance of the Department of Justice to pursue this matter is based upon an opinion that there is insufficient evidence, I feel it is my duty to assist your office in reviewing and discussing the evidence to convince everyone otherwise," Gober said. "If the reluctance is based on something else, there is even more reason for concern and for corrective, remedial action."

Gober contended that the case has only gotten stronger since McNulty left the U.S. attorney's office.

"If I thought this matter might possibly be shut down because of a material change of circumstances, that would be one thing," Gober wrote. "But if there is any possibility that this matter is being improperly impacted by outside 'political' considerations, I know you will want to get to the bottom of the problem—whatever it may be."

Gober said McNulty has not responded to the letter, and efforts by Virginia Lawyers Weekly to get a response from McNulty, the Department of Justice and the U.S. attorney's office were unsuccessful.

#### Message in incarceration

Other sources with some knowledge of the investigation said the probe appears to be near abandonment, if it hasn't ended already.

One indication is the incarceration of the only two ROA officials to be charged. Kenneth R. Patterson, the president of ROA at the time of the insolvency, and Carolyn B. Hudgins, executive vice president of the company, pleaded guilty to conspiracy and fraud charges.

Patterson was sentenced in June 2005 to 12-1/2 years in prison and Hudgins to five years, but they remained free until earlier this year because prosecutors said they needed them to cooperate in the criminal investigation.

Court orders setting the dates they reported to prison are under seal, but a federal inmate locator shows that they are in separate minimum security facilities in Texas.

Court documents alleged that First Virginia Reinsurance, a subsidiary of ROA based in Bermuda, was short of the money it needed in a trust account to avoid the scrutiny of state regulators. At the same time, the parent company had barely the amount of surplus it needed to avoid regulators. To get around the problems, ROA reported a \$10 million payment to the trust account as the prepayment of a premium, which converted what was in fact a reduction of surplus to an ostensible asset.

The documents also alleged that Patterson created the appearance that the company's liabilities were smaller than they were by ordering an arbitrary reduction in the amount of reserves allocated to resolve filed cases.

The criminal investigation uncovered allegations that Gen Re had made a series of secret deals with ROA and FVR that concealed the precarious condition of the companies from state insurance regulators. Related civil suits allege that Gen Re appeared to be ROA's reinsurer, when it had secretly transferred the risk to FVR.

The federal criminal investigation in Virginia led to the discovery of a somewhat similar scheme involving former senior executives of Gen Re and another insurer, American International Group, to make AIG's finances appear better than they were. Two of the executives pleaded guilty to fraud charges.

Gober said he has spent much of the last 15 years investigating what he calls "insidious side letters" in which insurers ostensibly enhance their balance sheets by paying a premium and ceding risk to a reinsurer. Regulators rely on those public contracts in evaluating the financial health of the insurer, unaware that a side letter acknowledges that the reinsurer is not taking any risk.

The result is to convert the reinsurance to a loan, with the reinsurance premium as interest, which in reality makes the insurer's financial situation even more precarious, Gober said.

Much of his work has been done for regulators and federal prosecutors, and he said he is very aware that the letter to McNulty is not likely to lead to more such work. "I'm truly facing throwing my career away," he said. "But God has led me on this path, and it's not supposed to end like this."

On the regulatory side of the case, Virginia Insurance Commissioner Alfred W. Gross won a court order placing ROA in receivership in January 2003.

The insolvency of two related entities, Doctors Insurance Reciprocal, which insured physicians and medical practice groups, and American National Lawyers Insurance Reciprocal, which insured attorneys and their firms, followed shortly because they relied on reinsurance from ROA for their financial well being.

At the time, the State Corporation Commission reported, ANLIR provided professional liability insurance for about 5,000 Virginia lawyers and law firms and DIR provided coverage for 2,000 state physicians and medical practices

ROA, which was formed in 1976 when hospitals and physicians were having trouble getting medical malpractice insurance, continued to provide liability and workers' compensation insurance for health facilities until it failed. ROA and the groups insured more than 40,000 individuals and entities nationwide when they were placed in receivership.

As of June 30, ROA had \$360.7 million in net admitted assets and \$832.9 million in liabilities for a negative surplus \$472.2 million, according to the State Corporation Commission.

The implosion spawned several federal civil lawsuits, which have been consolidated into a multi-district litigation proceeding in Memphis.

Patrick Cantilo, the Texas lawyer who is representing Gross in a case filed in Richmond, said "pretty vigorous settlement efforts" have been made to resolve the MDL cases but without success so far.

In addition to Gen Re, defendants include such financial giants as Wachovia, Milliman and PricewaterhouseCoopers.

Defendants with more intimate ties to Virginia include former ROA officials and the Crews & Hancock law firm, which dissolved shortly after creation of the receivership.

Gross's lawsuit notes that the firm received more than \$63 million over the years for legal work done for ROA and related entities.

John William Crews, a founder of ROA and general counsel to The Reciprocal Group, the management company for the retention groups, also is named as a defendant.

A suit brought against Gen Re and ROA by the Alabama Hospital Insurance Trust on behalf of its 37 hospital members was scheduled for trial in January but settled after mediation under confidential terms.

The trust's attorneys had structured their case so that it could not be removed to federal court.

J. Jonathan Schraub, the McLean lawyer who represents Crews in the civil case, insists that Crews did nothing wrong.

He cited the stalled MDL proceeding as evidence of the lack of substance to the allegations. "Nobody has succeeded in stating a viable claim against anybody," he said.

Schraub contends that the insolvency proceeding was unnecessary and does not see the settlement of the Alabama litigation as any indication to the contrary.

The fact of a settlement doesn't mean the underlying allegations have any merit, he said.

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Paul DeGregorio /EAC/GOV  
08/30/2005 10:33 AM

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc  
bcc  
Subject Re: e-mail from Jack Bartling

Hans,

First of all, I do not agree to "deals," especially when it comes to an interpretation of the law. What I did tell you at the time that we discussed this issue was that a plan was already in the works for us to correct our position on the checkbox issue regarding our best practices; and that we would do so when we do another reiteration of our best practices documents. There was no deal to do so immediately. To my knowledge this delay has nothing to do with our Chairman--at least she has never said anything to what you have suggested in your e-mail to me.

The letter from our assistant General Counsel was not a "threat". It is, in fact, a courtesy we are extending to DOJ, since our positions are currently different on this issue. Had DOJ extended the same courtesy to us back when you sent your original letter to AZ, perhaps we would not be in this position. I believe that our staff has taken great pains to have good communications with DOJ on HAVA issues, and that DOJ has not extended to the EAC the same level of courtesy or communication. Perhaps a discussion with John Tanner or his boss is in order.

To assure you that I am not being "railroaded" by anyone on this Commission, I thought I would share the attached internal memos with you regarding the Eagleton contract and others, so that you can see for yourself that I take my job seriously and work to insure that we are getting proper balance in the work that



we receive. Since they are internal, they are for your eyes only. August 19 memo regarding Eagleton.doc



Council on Government proposal.doc

Commissioner Davidson and I will call you at 4 PM, as previously arranged.

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To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc



08/30/2005 08:32 AM

Subject Re: e-mail from Jack Bartling

You and I should talk before any official call. We did not agree that your position was correct. If you will recall, we had a deal where I told you we would consider taking the position you were pushing even though we think it is too strict if you would correct the obviously wrong position on the citizenship checkbox. You agreed to that. However, instead of contacting me and telling me you are pulling out of the deal, I get an email from your assistant counsel threatening DOJ with this letter - with nothing about the citizenship issue. Are you aware that the Arizona AG, SOS, and governor have finally agreed on how to implement the ID rules? Your letter will blow that agreement out of the water. You and I are obviously both angry about this. I suggest a quick phonecall this morning to see if there has been some kind of miscommunication here. The fact that your chairman does not want to do this because she does not want to anger her friends at the league of women voters is no reason for you to be railroaded into this.

-----Original Message-----

From: pdegregorio@eac.gov <pdegregorio@eac.gov>  
To: von Spakovsky, Hans (CRT) <Hans.VonSpakovsky@crt.usdoj.gov>  
Sent: Mon Aug 29 22:58:26 2005  
Subject: e-mail from Jack Bartling

Hans,

Is the e-mail below from Jack Bartling a product of some phone calls you have made regarding the AZ case? Is it an attempt by you to put pressure on me--and the EAC? If so, I do not appreciate it. As you may know, Donetta and I have scheduled a telephone call with you on Tuesday afternoon to discuss this issue. You are well aware our legal staff has done considerable research on this issue and, if I recall correctly, you told me and Julie Thompson several weeks ago that our position that HAVA requires a state to give someone a provisional ballot, even if they do not show an ID when requesting the provisional ballot, was the correct legal position and HAVA interpretation. You also indicated that the previous DOJ position on this issue was to be withdrawn. We have given Arizona and DOJ all summer to act on this issue to correct the previous position they have taken so that there would not be conflicting interpretations of HAVA by two federal agencies. To me HAVA is very clear on this issue. Our interpretation is a strict interpretation of HAVA. No more--no less. Our opinion also makes its very clear that if a state wants to require an ID for a provisional to be counted, it has every right to do so. If it is you who have contacted Jack, I'm disappointed that you feel you have to resort to this kind of tactics to get us to change our mind. I don't appreciate it. Perhaps if DOJ would have shared their AZ letter with us prior to it being sent, we would not be in this situation.

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----- Forwarded by Paul DeGregorio/EAC/GOV on 08/29/2005 10:37 PM -----

"Bartling, Jack (Bond)" <Jack\_Bartling@bond.senate.gov>  
08/29/2005 10:25 PM

To  
pdegregorio@eac.gov  
cc

Subject

Paul,

Just heard the EAC is seriously considering taking a position against DOJ on the Arizona issue. Didn't the parties reach a political compromise agreement?

Nonetheless, certainly seems DOJ has it right. What is going on with this?

Jack

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Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)