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ALLEGATIONS OF SELECTIVE PROSECUTION: THE EROSION OF PUBLIC CONFIDENCE IN OUR FEDERAL JUSTICE SYSTEM (PART II)

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

AND THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ALLEGATIONS OF SELECTIVE PROSECUTION: THE EROSION OF PUBLIC CONFIDENCE IN OUR FEDERAL JUSTICE SYSTEM (PART II)

WEDNESDAY, MAY 14, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittees met, pursuant to notice, at 2:17 p.m., in Room 2141, Rayburn House Office Building, the Honorable Linda T. Sánchez (Chairwoman of the Subcommittee on Commercial and Administrative Law] presiding.

Present: Representatives Conyers, Sánchez, Scott, Watt, Cannon, Gohmert, and Coble.

Staff present: Norberto Salinas, Majority Counsel; Daniel Flores, Minority Counsel; and Adam Russell, Majority Professional Staff Member.

Ms. SÁNCHEZ. This joint hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, and Subcommittee on Crime, Terrorism, and Homeland Security will now come to order.

Without objection, the Chair will be authorized to declare a recess of the hearing at any point.

I will now recognize myself for a short statement.

During a March 6, 2007, Commercial and Administrative Law Subcommittee hearing on a measure regarding the appointment of U.S. attorneys, we posed the following question: Are important decisions about our justice system being made for political reasons? Seeking answers, the Judiciary Committee has investigated whether the Department of Justice has allowed politics to seep into its decision-making.

The investigation initially focused on the firings of several United States attorneys for their reluctance to bring politically based prosecutions. Gathered evidence led the Judiciary Committee to look into other activities of the Justice Department, namely whether the Justice Department's hiring of career employees was based on the illegal criterion of political affiliation. We also began an examination of whether the Justice Department brought Federal prosecutions based on political motivations.

Today, we continue this investigation and focus on another aspect of the Justice Department's actions. If the Justice Department prosecuted individuals for political expediency, did it refrain from prosecuting individuals for political purposes?

Today's hearing is the second joint hearing by the Commercial and Administrative Law Subcommittee and the Crime, Terrorism, and Homeland Security Subcommittee on allegations of selective prosecution. At our first joint hearing in October of 2007, we heard testimony about Democrats being disproportionately targeted for Federal prosecutions under the current Administration. This joint hearing will focus on limited Federal prosecutions against Republican-leaning individuals and groups.

Under this Administration, the Department of Justice has investigated allegations of voter fraud, but has seemingly turned a blind eye to investigating allegations of vote suppression.

On Election Day in 2002, Republican Party members and a Republican political operative impeded the New Hampshire Democratic Party and the Manchester Firefighters Association in their efforts to get out the vote. A Department of Justice investigation into the incident led to four individuals being indicted or pleading guilty for their involvement in suppressing voter turnout.

However, there are allegations that senior Justice Department officials limited the inquiry possibly to prevent the investigators from determining whether White House officials and top Republican National Committee personnel were involved. As a result, the Judiciary Committee was requested to investigate allegations of vote suppression in New Hampshire.

We do not know if the investigators were able to determine why there were many phone calls between one of the indicted individuals, James Tobin, and the White House on the day of the election. However, we have learned that the RNC has paid the legal fees to defend Mr. Tobin, a decision apparently approved by the White House. If there are indications that more senior officials in the RNC or even the White House were involved, why did the Justice Department appear to limit the investigation?

We also have learned that the Justice Department did not fully investigate another troublesome allegation of vote suppression. Media reports in 2004 revealed that employees of Sproul & Associates, a Republican-connected voter registration firm, were apparently trained to fraudulently identify themselves as non-partisan and then register Republicans to vote while discouraging Democratic-leaning individuals from registering to vote. For those Democratic-leaning voters who completed registration cards, Sproul employees in Pennsylvania, Oregon, and West Virginia allegedly destroyed those registration cards.

Although these activities are clearly aimed to suppress the Democratic vote and to favor Republican candidates, the Justice Department quickly determined that there was insufficient evidence to prosecute Sproul & Associates. If the media alleged vote suppression efforts by a Republican-connected firm, why did the Justice Department not fully investigate these activities?

On three separate occasions, the Judiciary Committee has requested from the attorney general answers to a series of questions and documents about the Justice Department's handling of these

cases. The Justice Department has failed to address our specific questions and has only provided cursory responses.

We have also invited the Department of Justice to send a witness to testify at this hearing, but it has chosen not to present a witness. That is unfortunate because the American people need to be assured that political considerations play no role in determining whether a Justice Department investigation is pursued or whether an individual is prosecuted.

Finally, although some may allege that we are wasting time holding this hearing, I question whether those critics would tell the American people that an investigation into efforts to suppress their right to vote is a waste of time. The American people want to be secure in the knowledge that the Federal Government will protect their right to vote and will prosecute individuals who seek to limit that constitutional right.

There is simply no place for partisan politics in a prosecutor's decision to move forward with a prosecution or to end an investigation. Accordingly, I look forward to the testimony of our witnesses today.

Before I conclude, I am going to ask unanimous consent to enter into the record two documents relevant to this hearing today. The first document is a September 18, 2007, request from Representative Paul Hodes, who is here with us this afternoon, to Chairman Conyers to investigate allegations of phone jamming in New Hampshire on Election Day in 2002. The second document is a letter from Holly McCullough, the manager of Carnegie Library of Pittsburgh-Squirrel Hill, dated April 29, 2008. In the letter, Ms. McCullough documents evidence from the fall of 2004 involving voter registration efforts by Sproul & Associates.

[The information referred to follows:]

PAUL W. HODES
2ND DISTRICT, NEW HAMPSHIRE

COMMITTEES:
FINANCIAL SERVICES

OVERSIGHT AND
GOVERNMENT REFORM

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2902

Chairman John Conyers
Committee on Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Attention: Elliot Mincberg

September 18, 2007

Dear Chairman Conyers:

I respectfully request that the House Judiciary Committee investigate allegations of unlawful activities within the federal government relating to the Election Day 2002 phone jamming scandal in my home state of New Hampshire.

There is evidence suggesting that the White House participated directly in the jamming of the New Hampshire Democratic Party's phone lines on Election Day 2002. Additionally, I have reviewed numerous records and statements that point to the unlawful interference of Department of Justice (DOJ) officials in the judicial process that ensued. I urge the House Judiciary Committee to examine the evidence and determine if a politically motivated plot did in fact obstruct justice in this case, and if so to take such steps as may be reasonable.

The phone-jamming case was a major instance of election interference in New Hampshire's 2002 Senatorial election. Republican operatives in the New Hampshire Republican State Party and the Republican National Committee were engaged in a criminal conspiracy to disrupt communications at the New Hampshire Democratic Party during the hotly contested election. Republican operatives jammed the phones lines at Democratic campaign offices aimed at key get-out-the-vote initiatives on Election Day in November, 2002.

The New Hampshire Democratic Party filed civil suits against the New Hampshire Republican State Committee, the Republican National Committee, and the National Republican Senatorial Committee. Both criminal charges and civil suits were brought against three defendants, two of whom pleaded guilty and one who was convicted after trial:

Allen Raymond, Director of the GOP Marketplace, the firm which jammed the phones pleaded guilty to Conspiracy to Engage in Interstate Telephone Communications with Intent to Annoy or Harass on June 30, 2004;[1]

[1] AP. *GOP Consultant Admits Dirty Trick.* 1 July 2004.

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Charles McGee, the 2002 Executive Director of the New Hampshire Republican Party, pleaded guilty to Conspiracy to Engage in Interstate Telephone Communications with Intent to Annoy or Harass on July 28, 2004;[2] and

James Tobin, the 2002 Regional Political Director for the Republican National Committee and the 2004 New England Director for the Bush/Cheney campaign was convicted of conspiracy[3] to commit telephone harassment and aiding and abetting telephone harassment on December 15, 2005.[4]

Despite the indictments and convictions, allegations of misuse of power by the White House and DOJ have continued to surround the scandal and have yet to be thoroughly investigated. In my judgment, further investigation is warranted. These allegations include, but are not limited to: suspicious ties between the phone jamming conspiracy and the White House, as well as delays in prosecution and improper interference by the United States Attorney General's office in the criminal prosecution undertaken by the U.S. Attorney of New Hampshire.

I request that the Judiciary Committee investigate the following allegations:

1. **White House Involvement.** Twenty-two phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs from 11:20 a.m. on Election Day 2002 to 2:17 a.m. the next morning, the period during which the phone jamming occurred.[5] In trying to determine the nature of these phone calls, the New Hampshire Democratic Party requested documents relating to the White House's contact with James Tobin on Election Day, 2002. The White House claimed executive privilege and denied the request for information. Furthermore, in an unconventional move, the Republican National Committee paid the legal fees for James Tobin.[6] Former RNC Chair Ed Gillespie told a reporter that the RNC decided to pay Tobin's legal fees in consultation with the White House. In May 2006 as Ranking Member of the Judiciary Committee, you wrote a letter urging then-Attorney General Gonzales to appoint a special prosecutor to investigate the possible involvement of White House officials in the phone-jamming investigation, as well as possible wrong-doing within the investigation itself.[7] A special prosecutor was never appointed.
2. **Attorney General's Interference into the DOJ Investigation.** One defendant's attorney was told that the Attorney General himself needed to sign off on all actions in the case, a highly questionable and unusual practice that severely

[2] Vos, Sarah. *McGee admits to jamming phones*. Concord Monitor. 29 July 2004.
[3] In March, 2007, James Tobin's conviction of telephone harassment was overturned and remanded for further proceedings, not because of questions about Tobin's involvement, but with respect to questions regarding the statute that was the basis of the complaint.
[4] *Former RNC New England Regional Director Convicted in New Hampshire Phone Jamming Case*. Department of Justice. 15 December 2005.
[5] Affidavit Exhibit A, Senate Majority Project
[6] Letter to Congressman Paul Hodes and Senator Patrick Leahy from Kathleen Sullivan and Paul Twomey. March 21, 2007.
[7] Letter to Attorney General Alberto Gonzales from Congressman John Conyers. May 12, 2006.

retarded any progress in the case. Additionally, FBI Special Agent Cathleen Fuller, the only agent assigned to this investigation, was told specifically not to follow any leads to Washington, DC as the DC FBI Bureau would investigate any Washington player's involvement. However, in the FBI file on the investigation, only actions by Special Agent Fuller were indicated.[8] In April 2006, Senators Kennedy and Leahy wrote to the then Attorney General questioning the handling of DOJ's investigation into the phone jamming case.[9]

3. **Delays in Prosecution.** In February, 2003, the Chairman of the New Hampshire Democratic Party, Kathleen Sullivan, contacted the United States Attorney for the District of New Hampshire to request an investigation of the phone jamming case. In December, 2003, Charles McGee provided evidence of James Tobin's role in the phone jamming case. However, prosecutors waited until after the 2004 Presidential Elections to indict Tobin.[10] This twelve month delay in prosecution is highly unusual.

I strongly urge your Committee to investigate these allegations. The people of New Hampshire deserve fair and free elections—and the fair application of justice when their rights are denied.

Enclosed are the relevant documents that more fully detail these allegations. Please feel free to contact me or Lauren Oppenheimer on my staff with questions or for further information.

Sincerely,

PAUL W. HODES
Member of Congress

Enclosures
Sullivan/Twomey Letter
Conyers Letter
Kennedy/Leahy Letter
Union Leader Article
Motion to Intervene and Stay Discovery
James Tobin's Legal Bills/ Northeast Strategies Updated Report
Charles McGee Transcript
Kathy Sullivan Letter
Department of Justice Press Release

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[8] Letter to Congressman Paul Hodes and Senator Patrick Leahy from Kathleen Sullivan and Paul Twomey. March 21, 2007.
[9] Letter to Attorney General Alberto Gonzales from Senator Patrick Leahy and Senator Edward Kennedy. April 20, 2006.
[10] Letter to Congressman Paul Hodes and Senator Patrick Leahy from Kathleen Sullivan and Paul Twomey. March 21, 2007.

Concord Monitor: *McGee admits to jamming phones.*
AP: *GOP Consultant Admits Dirty Trick.*
Affidavit Exhibit A, Senate Majority Project

Twomey Law Office

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March 21, 2007

Senator Patrick Leahy, Chairman
United States Senate Judiciary Committee
224 Dirkson Senate Office Building
Washington, DC 20510

Congressman Paul Hodes
506 Cannon House Office Building
Washington, DC 20515

RE: Request for Congressional inquiry into possible political interference with prosecution of Phone Jamming in the 2002 United States Senate race in New Hampshire.

Dear Senator Leahy & Congressman Hodes:

We are writing to you in order to bring to your attention to what appears to be disturbing evidence of a pattern of political interference in the Department of Justice's investigation of the phone jamming in 2002 United States Senate election in the State of New Hampshire.

On November 5, 2002, operatives working on behalf of the New Hampshire Republican Party entered into a criminal conspiracy which had as its goal the total disruption of the political communications of the New Hampshire Democratic Party in order to gain an unfair advantage in what was a very closely contested United States Senate election. To date, four individuals have been indicted and convicted including Charles McGee, the 2002 Executive Director of the Republican Party and James Tobin, a long time Republican operative who was at that time Regional Political Director for both the Republican National Committee (RNC) and the National Republican Senatorial Committee. (NRSC)

Additionally, a civil suit was brought on behalf of the New Hampshire Democratic Party against the New Hampshire Republican State Committee, the Republican National Committee and the National Republican Senatorial Committee. Throughout

both the criminal prosecution and the civil suit, there were repeated actions of commission and omission on the part of the Department of Justice that give rise to serious questions as to whether or not there was political interference which operated to distort the judicial process. Because the Congress has the ability and the obligation to provide meaningful oversight for the Department of Justice, we request that you give consideration to an inquiry into the propriety of the actions of the Department of Justice in the criminal and civil cases arising out of the phone jamming. We do so fully mindful of the precious nature of scarce Congressional resources, believing that the values of free elections and impartial administration of justice fully justify our extraordinary request. As Justice Hugo Black wrote,

> "No right is more precious in a free country than that of having a vote in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined..." (Justice Hugo Black, Williams v. Rhodes, 393 US 23, 30-31 (1968)

Our very democracy depends upon the existence of fair and free elections and the impartial administration of justice. We therefore urge you to examine the following areas of concern that implicate these critical values.

I. CAUSED INORDINATE DELAYS WERE THE RESULT OF (DOJ ACTIONS) IN BOTH THE CRIMINAL AND CIVIL CASES

The phone jamming cases took place on November 5, 2002. In December of that year, a single Manchester police officer was able to within one day determine the identity of the two telemarketing vendors who effectuated the phone jamming. These two individuals cooperated very early in the investigation, providing information that they had acted at the direction of Charles McGee, Executive Director of the New Hampshire Republican State Committee. On February 7, 2003, an article written by investigative journalist John Distaso appeared in the Manchester Union Leader which for the first time gave the public knowledge of the involvement of the New Hampshire Republican State Committee in the phone jamming. [1]

Almost immediately, Chairman of the New Hampshire Democratic Party, Kathleen Sullivan, sought the assistance of Thomas Colantuono, the United States Attorney for the District of New Hampshire in investigating and prosecuting this crime. [2] The matter thereupon languished within the confines of the Department of Justice until July 28, 2004 when McGee pled guilty to an Information filed on that date. This 18 month delay is on its face both bewildering and troubling as McGee's complicity had been apparent from the beginning. By December of 2003, he had provided the FBI with a full account of the role played by James Tobin in the case, [3] which had also been

1 Union Leader Article re: Phone Jamming 2/7/03 (APPENDIX 1)
2 Kathleen Sullivan's letter to Thomas Colantuono, US Attorney District of NH (APPENDIX 2)
3 Charles McGee's FBI Interview (APPENDIX 3)

confirmed by one of the telemarketers. No significant evidence was developed against Tobin after the end of 2003, and all of it was readily available earlier.

After the filing of the criminal charges when an attorney acting for the Democratic Party, Finis Williams, was informed by the prosecutor that the delays were due to the extreme difficulty in obtaining authorization from higher levels at DOJ for any and all actions in the case. We have been further informed by Attorney John Durkin (counsel for Republican criminal defendants, Allen Raymond) that he was told by a DOJ prosecutor that all decisions in this case had to be made subject to the approval of the Attorney General himself who had to sign off on all actions in this case. As will be discussed below, the two individuals who served as Attorney General during this case both have actual conflicts of interest that would appear to rule out ethical involvement in the investigation and prosecution of the phone jamming.

The charges against both McGee and Raymond both included a description of the criminal involvement in the conspiracy of an individual who was not named but only described as an official of a national political organization, in spite of the fact that the individual was known to the DOJ to be James Tobin, formerly Regional Director for the RNC and NRSC, and then Northeast Director of the Bush/Cheney campaign. Both the failure to name Tobin and the failure to charge him in the summer of 2004 give rise to the likelihood that he was being shielded from public scrutiny until after the presidential election in November. Ultimately Josh Marshall, a journalist for TalkingPointsMemo.com, exposed Tobin on October 11, 2004 and he resigned from the campaign four days later. Had it not been for the investigative efforts of Marshall, the DOJ's failure to act would have left an individual known to be willing to commit election felonies in a key campaign position from which he was free to seek to subvert yet another election. At a minimum, the failure to protect the public was exceedingly reckless. These events suggest strongly that the indictment of Mr. Tobin was deliberately withheld in an effort to allow him to continue to operate as an official of the Bush/Cheney re-election campaign for which he was the Northeast Regional Director. Mr. Tobin was ultimately indicted several weeks after the election in December of 2004.

The proceedings against Mr. Tobin then took a tortuous path. The trial was continued several times, each time over the vociferous objection of the victim, the New Hampshire Democratic Party. At one point, in August 2005 when the matters appeared to be close to trial, the single prosecutor who had been assigned to the case from the beginning was suddenly transferred from his duties at the DOJ to an assignment in the White House. This rather unfortuitous event not only removed the one individual with full knowledge of the case, but also necessarily required the substitution of new counsel who had then to attempt to master all of the facts in the case in a very short period of time. Given that the critical importance of fair elections in this country and the fact that the Department of Justice apparently has something on the order of 30,000 employees, it is difficult to understand what other than political considerations could have occasioned the transfer of this prosecutor.

At the same time, the Department of Justice took action to interfere in the discovery process in the civil case pending against the Republican Party. On October 15, 2004, the Democratic Party was scheduled to begin their first deposition of an official of the New Hampshire Republican State Committee. Twenty minutes before the deposition, the Department of Justice apparently indicated to counsel for the Republican State Committee that it was going to seek to intervene and stop discovery in the civil case. Based upon this statement, the attorney for the Republican State Committee directed the subpoenaed witness not to appear for the deposition. (This attorney was subsequently sanctioned by the trial court for directing an individual to disobey a legal subpoena.) Shortly thereafter, the Department of Justice filed a Motion to Intervene and to Stay all Discovery in the civil case. This stay of discovery remained in effect for over a year. As a direct result of this stay of discovery, the plaintiffs were deprived of any opportunity to conduct full discovery before the Statute of Limitations had expired.

Alarmed by what appeared to be blatant political interference of a civil case on the part of the Department of Justice, two members of the United States Senate sent a letter to then Attorney General John Ashcroft stating that "the Justice Department's sudden decision to request a stay of discovery in the state lawsuit and its apparent coordination with the Republican campaign officials raises serious questions... The last minute timing of the Department's motion to intervene appears calculated to prevent the disclosure of information that might embarrass or implicate Tobin and possibly other campaign figures." [4] Congressman Conyers also requested that the DOJ appoint an independent prosecutor. [5] Thus, of course, did not occur.

II. THIS INVOLVEMENT OF ATTORNEY GENERAL'S ASHCROFT & GONZALEZ IN THIS CASE APPEARS TO BE IMPROPER IN LIGHT OF APPARENT CONFLICTS OF INTEREST.

As stated above, prosecutors in this case have indicated that both that the slow pace of this case has been occasioned by delays caused by individuals at the highest levels of the Department of Justice and that all decisions had to be reviewed by the Attorney General himself. Given the extreme and critical importance of an assault on free elections by high officials in a major political party, is it certainly appropriate for attention to be given to the case by at the highest levels at the Department of Justice. However, the attention so given should be of assistance in the expeditious and efficacious prosecution of those involved. In this case, however, the attention of the higher ups in the Justice Department served only to delay, if not deny, justice.

Both Attorney General's Ashcroft and Gonzalez had personal conflicts of interest which should have resulted in them recusing themselves from all action in the case. Attorney General Ashcroft, at the time of these events, had recently been a United States Senator and a member of the National Republican Senatorial Committee, one of the organizations for which James Tobin was working when he undertook his criminal

4 DOJ's Motion for Stay of Discovery (APPENDIX 4)
5 Letter from Congressman Conyers (APPENDIX 5)

activities. The conflict for Attorney General Gonzalez is even more apparent. At the time of the phone jamming, Attorney General Gonzales was legal counsel to the White House. During the course of the criminal conspiracy, defendant, James Tobin, made literally hundreds of calls to the political office of the White House. In the civil case, a deposition was taken of Alicia Davis, Deputy to Ken Mehlman, who was then the Political Director of the White House regarding her conversations with both Tobin and Jayne Millerick, a Republican operative on Election Day 2002. The New Hampshire Democratic Party sought to have documents produced from the White House concerning these contacts. (This request was denied by the White House on the grounds of executive privilege, although the documents sought only related to the non-official actions of the White House Political Office would not appear to be subject to executive privilege. In fact, the phone records sought were for phones that could not be paid by public funds according to the terms of the Hatch Act).

It is perfectly clear that there were significant questions regarding the involvement of the political office of the White House in this case. When it came to light that the Republican National Committee had paid several million dollars for the legal fees of James Tobin, former, RNC Chair Gillespie told a reporter that the decision to pay these legal fees made in consultation with the White House.

As Attorney General Gonzalez was then counsel for the White House, it is totally inappropriate for him to have taken any part in investigation and prosecution of the phone jamming case where part of the inquiry would involve the possible involvement of individuals working for the White House.

III. INAPPROPRIATELY LOW ASSIGNMENT OFDOJ RESOURCES TO THE PHONE JAMMING INVESTIGATION.

The phone jamming represented an insidious attack upon free elections in our country. It implicated high officials of one of the major political parties. Yet the DOJ allocation of resources failed to even reach a level appropriate for a case involving trapping out of season in a national forest. Through discovery, we have received over five thousand pages of the DOJ investigation. From these materials received, it appears that exactly 1 (one) FBI agent was assigned to the case on a part time basis. During the course of this case, the agent was continually given other assignments which interfered with her ability to conduct a coherent intensive investigation of this serious felony. Under these circumstances, Special Agent Cathleen Fuller of the Federal Bureau of Investigation did what has to be considered an astonishing job; however, her ability to follow through on investigatory leads was unfairly constrained by lack of resources and by an utter lack of assistance from other parts of the FBI.

Special Agent Fuller was furthermore affirmatively instructed **not** to follow leads that lead to Washington, on the basis that these would be supposedly be dealt with by the Bureau in Washington. While it is of course possible that these leads were followed up in Washington, there is not even a scintilla of evidence available to indicate that this

was the case. As mentioned above, in the over 5000 pages of the FBI investigation file which the victims received from one of the defendants, there is not a single indication of action on the part of any FBI agents other than Special Agent Fuller.

If in fact these leads were not investigated and political interference was what was behind the limitations placed upon Special Agent Fuller's investigation, this would constitute no less than an obstruction of justice.

The decision of the DOJ to initially assign a case of this magnitude to a single attorney in the Computer Fraud Division who had multiple other responsibilities is also troubling and consistent with a desire to starve the prosecution of resources. (Ultimately the case was transferred to a three attorney team who did an excellent job in the prosecution of Tobin. This did not occur until almost three years into the investigation, when most of the delay had already occurred).

IV. THE REFUSAL BY THE DEPARTMENT OF JUSTICE TO PURSUE PROSECUTION AGAINST ORGANIZATIONS INCLUDING THE NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE AND THE REPUBLICAN NATIONAL COMMITTEE VIOLATED DOJ GUIDELINES

Neither the Republican National Committee nor the New Hampshire Republican State Committee were ever charged in this case inn spite of the fact that it's Chair, Vice Chair, Executive Director, Finance Director and many others took part in or had prior knowledge of the criminal interference with the constitutionally protected election activities.[6]

The question of whether and when to charge organizations for the criminal actions of its employees is governed by a policy promulgated on January 20, 2003 by Larry D. Thompson, Deputy Attorney General. The so called Thompson Memorandum lists several criteria by which a decision on charging of corporations or organizations must be premised. These include such items as:

- "The seriousness of the offense including a risk of harm to the public;
- The pervasiveness of wrong doing within the corporation including the complicity in or condonation of the wrongdoing by corporate management;
- The organizations timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agent including, if necessary, the waiver of corporate attorney/client and work product;
- Is whether corporation appears to be protecting its culpable employees or agents … through the advancing of attorney's fees;
- Whether the corporation while purporting to cooperate, has engaged in conduct that impedes the investigation (whether or not rising to the level

6 Charles McGee's 302 (APPENDIX 6)

of criminal obstruction).

It would be difficult to imagine an organization more worthy of prosecution that the New Hampshire Republican State Committee and the Republican National Committee. The offense was extremely serious, striking at the heart of our democratic form of government. The entire management structure of the New Hampshire Republican State Committee took part in or was aware of the events

Most critically, the New Hampshire Republican State Committee refused to waive its attorney/client and work product protection in order to assist the prosecution of the criminal case and further asserted the privileges in the context of the civil case. Shortly after public disclosure of the involvement of the New Hampshire Republican State Committee, their counsel took statements from many if not all of the individuals involved in the case. The Republican State Committee refused to turn these materials over to the prosecution of the criminal case or the defense of the civil case, hiding evidence behind an assertion of attorney/client privilege and work product. While they have a legal right to do so, a fair handed application of the DOJ standards in the Thompson Memo would require organizational indictment for non-cooperation.

Furthermore, it appears that the New Hampshire Republican State Committee may have engaged in an affirmative act of obstruction. On the first day of the Tobin trial, the prosecutors complained bitterly that they had just learned of the existence of the computer utilized by their Executive Director, Charles McGee, during the course of this criminal conspiracy. The prosecutors stated that the computer was subject to a grand jury subpoena issued to the New Hampshire Republican State Committee over a year earlier. Because of the failure to produce the computer in a timely manner, no forensic evaluation was able to be performed on the computer for the Tobin trial. Rather, the DOJ entered into an agreement with the New Hampshire Republican State Committee that they would make it available for analysis after the trial.

Nearly a year later, undersigned counsel for the Democratic Party was informed that no analysis had ever been performed on this computer.

Similarly, it appears that the Republican National Committee or individuals associated with it may have engaged in an obstruction of justice. The trial attorneys in the Tobin case had sought the production of his desk calendar for the time period relating to the phone jamming. A copy of a desk calendar was provided to the Department of Justice, however, it appears that the Republican National Committee told the Government that it did not have possession of the original. In the subsequent civil case, the Democratic Party filed a motion to force the production of the original. Shortly before the motion was to be heard in court, the Republican National Committee miraculously discovered that they had the original calendar in spite of their past denial to the prosecutors. This was turned over to the Department of Justice and subsequent analysis showed that there had been deletions of critical notations from the copy given to the DOJ.

To date, no action has been taken over this apparent act of obstruction of justice on the part of the Republican National Committee or one of its employees.

Based upon all of the above factors, an inquiry into possible high level DOJ protection of Republican organizations is appropriate.

V. THE DEPARTMENT OF JUSTICE HAS FAILED TO TAKE OBVIOUS INVESTIGATIVE STEPS WHICH WOULD BE LIKELY TO LEAD TO THE EXPOSURE OF INVOLVEMENT OF HIGHER UPS IN THE PHONE JAMMING

In 2003, at the very onset of the FBI investigation, former New Hampshire Republican State Committee member, Charles McGee told the investigation that he believed that an individual named Darryl Henry who was a lobbyist for the American Gas Association and the United States Chamber of Commerce were involved in some degree in the phone jamming in New Hampshire on Election Day 2002. [7] In spite of this information, the Government waited almost two years to interview Mr. Henry. When Chuck McGee was called to testify as a witness for the Government in the December, 2005 trial of James Tobin, McGee testified under oath that Darryl Henry had stated that he was aware that the phone jamming had been terminated by the State Party in the morning of 2005 and that he would have his friends at the Chamber pick it up. [8]

In October 2006, the New Hampshire Democratic Party deposed Darryl Henry as part of their civil suit. In response to each and every question concerning his involvement and the involvement of the Chamber of Commerce and the involvement of higher up individuals, Mr. Henry asserted his right to remain silent and declined to answer any questions. [9]

Documents obtained in discovery of this case, shows that Henry was in New Hampshire for a meeting with Tobin and NHRSC officials in late October 2002 during the time period when the phone jamming scheme was allegedly being planned. Phone records from this period show Henry having frequent communications with both Tobin and the NHRSC.

In addition, Henry has other connections with the New Hampshire Republican politics and the US Chamber of Commerce. In 2001, Henry helped organize and served as spokesman for the Alliance for Energy and Economic Growth (AEEG), a coalition organized by the United States Chamber of Commerce which consisted of natural gas producers including the American Gas Association, Henry's employer). [10] From 2002 to 2003, the AEEG's sole lobbyist was John H. Sununu, President of JSH Associates Inc. who is the father of John E. Sununu, one of the candidates in the 2002

7 Charles McGee's 302 re: Darryl Henry (2003) (APPENDIX 7)
8 Charles McGee's Tobin Trial Testimony (APPENDIX 8)
9 Darryl Henry's Deposition (APPENDIX 9)
10 Darryl Henry – American Gas Association (APPENDIX 10)

Senatorial election. [11]

It is difficult to understand why no further action has been taken in regards to Mr. Henry. At a very minimum, Mr. Henry should be brought before a Grand Jury and given use immunity in order to determine what if anything he knows about the involvement of other individuals and organizations in the phone jamming of 2002.

There also exists unresolved questions concerning the involvement of Republican Party groups in the funding of James Tobin's defense. The Republican National Committee has admitted to paying millions of dollars to Tobin's criminal defense attorneys up to the point of his conviction. Within weeks of his conviction and the purported cessation of RNC legal payments to Tobin, a corporation was set up in Maine with an address identical to Tobin's residence. Subsequently, several hundred thousands dollars were paid to this entity, Northeast Strategies, by the re-election campaign of Rhode Island Senator Lincoln Chaffee. These payments were listed as being for the purpose of consulting, yet oddly enough almost perfectly match the unpaid balances of Tobin's legal bills. [12]

VI. THE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW HAMPSHIRE HAD A CLEAR AND DIRECT CONFLICT OF INTEREST IN THIS CASE. AN EXAMINATION OF THE CONTACT BETWEEN HIS OFFICE AND THIS CASE SHOULD BE UNDERTAKEN.

The United States Attorney for the District of New Hampshire, Thomas Colantuono, was elected in partisan elections as a Republican candidate for both State Senator and Executive Counsel. As such, he would have been intimately involved in the political affairs of the New Hampshire Republican State Committee. In the year 2000, he was a Republican candidate for congress. During the 2004 election, Attorney Colantuono's wife was a paid operative for the Republican National Committee passing out leaflets which had been paid for by the New Hampshire Republican State Committee endorsing the Bush/Cheney campaign. She thus accomplished the hat trick of advancing of working for the goals both James Tobin's present and past employer as well as the employer of Charles McGee.

Based upon these clear conflicts, at some point in the prosecution, Attorney Colantuono referred the matter to main justice. An attorney from his office continued to play some role in the proceedings. It is not known whether to what information was provided to Attorney Colantuono and to what information he had access. At some point in time during the proceedings, main justice chose to terminate the role of the attorney from Colantuono's office. Again, it is not known the basis for this termination. It clearly would have been a better practice for no one working for Attorney Colantuono to play any role in the prosecution, a definitive conclusion concerning the propriety of

11 John Sununu – Lobbyist for AGA (APPENDIX 11)
12 Senate Majority Project Analysis (APPENDIX 12)

Colantuono's involvement in this case cannot be reached without utilization of investigatory tools available only to the Congress.

VII. SUMMARY

The purposeful interference with the phone communications of the New Hampshire Democratic Party on Election Day in 2002 was a political crime committed by political operatives for political gain. The Department of Justice is headed by political appointees, most of whom were closely associated with entities whose conduct was at issue in this case. The DOJ prosecution was marked by inexplicable inordinate delays, interference with the civil suit, and a failure to hold accountable Republican party organizations in spite of a willful refusal to cooperate if not acts of obstruction. In both New Hampshire and Washington, the top DOJ officials had actual conflicts of interest and should have been fully recused from any participation in the case.

Public confidence in the fair and impartial administration of justice requires that Congress perform its oversight function by reviewing the manner in which this serious assault on democratic elections was handled by the Justice Department.

We would hope that nothing contained in this letter would be construed to any degree as a criticism of the FBI, Special Agent, trial attorneys from Justice, nor the Assistant United States Attorney for the District of New Hampshire who is referenced in the body of this letter. We believe each of these individuals to be dedicated and courageous public servants of the highest integrity, without whose valiant efforts this case would not have advanced to the point that it did. To each of these individuals we extend our profound gratitude for their efforts to achieve justice despite the obstacles placed before them.

In the absence of a full investigation, it is impossible to determine whether justice has been achieved in this case. We are available to provide any more information needed in this matter. A further source of information is Hilary Sargent, the former Special Projects Director at Senate Majority Project, who is now an independent research analyst, Ms. Sargent has an extensive collection of documents regarding this case. She may be reached at hilary.sargent@gmail.com
or (781) 588-5101.

Date:_____

_____
Kathleen Sullivan, Chair
New Hampshire Democratic Party

Date:_____

_____
Paul Twomey, Esq.
Attorney for NH Democratic Party

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ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951
http://www.house.gov/judiciary

May 12, 2006

The Honorable Alberto Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I write to ask that you appoint a special counsel to investigate whether any White House officials were involved in the New Hampshire phone jamming scheme during the 2002 elections. Justice Department prosecutors have obtained three convictions for conduct stemming from this crime. A special counsel outside of the Department is needed, however, because there are possible connections between the plot and the White House, as well as potential federal election law violations stemming from state Republican Party reporting of Native American tribe donations connected with Jack Abramoff, that have yet to be examined.

In 2002 in New Hampshire, Governor Jeanne Shaheen (D) and U.S. Rep. John Sununu (R) were running against each other in a closely-contested campaign for the U.S. Senate. It has now become clear that, in order to suppress Democratic voter turnout, Republican officials orchestrated a phone-jamming scheme for election day. The scheme involved hiring an Idaho telemarketing company, Mylo Enterprises, to flood Democratic get-out-the-vote phone banks in New Hampshire with phone calls so that potential voters would not be aware of where or when to vote.

While the Department has obtained three convictions and one indictment against political operatives who were involved in the plot,[1] outstanding issues remain. First, it has been

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[1]William Douglas, *Phone Charges Costing GOP*, PHILA. INQUIRER, May 1, 2006, at A3. James Tobin, the Republican National Committee's New England head in 2002 and the Bush-Cheney campaign regional director in 2004, was convicted of aiding and abetting telephone harassment and of conspiring to commit harassment. *Id.* Chuck McGee, a former New

uncovered that New Hampshire Republican officials, and a national Republican official convicted for his role in the scheme, called the office of Ken Mehlman, then the White House Political Director, twenty-two times in two days leading up to the election.[2] Mr. Mehlman has denied that his office knew of or was involved in the plot, but the Republican National Committee has avoided efforts at discovery regarding this issue, including testimony from Mr. Mehlman, in a civil suit filed by New Hampshire Democrats against the Republican Party.[3] In fact, there are reports that the Justice Department itself has attempted to halt discovery in the civil suit.[4]

Second, the Republican National Committee, which Mr. Mehlman now heads, has paid at least $2.8 million in legal fees for one of the defendants in the Justice Department prosecution, James Tobin. It is confusing why the Republican Party would pay the fees for an official who acted illegally and allegedly without authorization. Finally, there are new indications that the scandal may be connected to another Department investigation. In the days leading up to the election, the New Hampshire State Republican Committee received donations from Rep. Tom DeLay's political action committee and two Native American tribes connected to Jack Abramoff, the Mississippi Band of Choctaw Indians and the California Agua Caliente Band of Cahuilla Indians.[5] The contributions from the three groups approximately added up to the $15,000 cost of the phone jamming plot.[6]

As you are aware, under the Department's regulations, you are required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the

---

Hampshire Republican Party Executive Director, pled guilty to devising the plan. *Id.* Allen Raymond, the head of a company that linked Republican campaigns with telemarketers, pled guilty to carrying out the plot. *Id.* Finally, this just past March, Shaun Hansen, a co-owner of Milo Enterprises, was indicted for having his employees place the voter suppression calls. *Id.*

[2]Thomas B. Edsall & David A. Fahrenthold, *2002 N.H. Scandal Shadows GOP Anew*, WASH. POST, Apr. 14, 2006, at A6.

[3]*Id.*

[4]Sarah Schweitzer, *Parties Call Foul over N.H. Phone-Jamming Suit*, BOSTON GLOBE, Oct. 23, 2004, at A1.

[5]Cragg Hines, *Delay's Scandals: Maybe not Just for Texas Anymore*, HOUS. CHRON., Apr. 19, 2006, at B9.

[6]*Id.*

investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."[7] There is little doubt that all three factors are met in this case.

First, it is clear that a criminal investigation is warranted. The Department already has begun investigating the scandal and prosecuting individuals who were involved. The fact remains, however, that the Department appears not to be reviewing the extensive contacts between the plotters of the phone jamming and high-level Republican officials.

Second, there would be a conflict of interest for the existing Department prosecutors to investigate this matter. The U.S. Attorney responsible for the region, Thomas P. Colantuono of New Hampshire, was appointed by the President and would be investigating his own superiors. Also, the Election Fraud Unit at Main Justice in Washington, which apparently is leading the New Hampshire investigation, would face similar issues. Additionally, you served as Counsel to the President during the period in question and also should be recused from the matter for potential conflicts of interest. In fact, federal law requires you to issue regulations governing recusal of Department officials having personal, financial, or political conflicts of interest.[8]

Third, it is unquestionable that the public interest would be served by the appointment of an outside special counsel. The right to vote is one of the most important possessed by citizens of this country. The government must make every effort to indicate to its citizenry that it will protect that right no matter the cost. The last two presidential elections and the 2002 New Hampshire Senate campaign showed that, despite the successes of the Voting Rights Act and other measures, there are still those who encourage disenfranchisement. Only the appointment of a special counsel will show that the government will not tolerate these attempts.

I would appreciate your prompt response as to whether you will appoint an outside special counsel to review any potential involvement by Republican officials in Washington in the phone jamming efforts and, if not, the reason for your decision. Please reply through the

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[7] 28 C.F.R. § 600.1 (2002).

[8] 28 U.S.C. § 528.

Judiciary Committee Democratic office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,

John Conyers, Jr.
Ranking Member

cc: Honorable William E. Moschella
Honorable F. James Sensenbrenner, Jr.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 20, 2006

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

We are deeply troubled by recent media reports on the outrageous campaign tactics used by the Republican Party during the 2002 elections in New Hampshire.

In the months leading up to the election, the New Hampshire Democratic Party and the Manchester Professional Fire Fighters Association organized an effort to assist elderly, sick, and low-income voters in getting to their polling places. Telephone contact numbers were established for these persons to call on election day to request transportation. On the morning of the election, however, the phone lines were jammed by hundreds of outside calls, apparently placed at the direction of a telemarketing firm hired by the New Hampshire Republican Party. This appalling "dirty tricks" effort became the subject of both civil and criminal litigation. The New Hampshire Democratic Party filed a civil lawsuit in state court seeking damages and an injunction to prevent Republican Party officials from engaging in any further interference with the right of New Hampshire citizens to vote.

We previously wrote to former Attorney General John Ashcroft about this matter in October, 2004, requesting information about reports that the Department of Justice was attempting to halt discovery in the lawsuit challenging the unlawful campaign tactics. Attorney General Ashcroft explained the Department's actions in the case, and assured us that the Department would aggressively pursue an investigation of these campaign practices.

A federal criminal investigation was ultimately commenced of the extent of high-ranking Republican officials' involvement in the deliberate phone-jamming tactic. Guilty pleas were entered by GOP political consultant Alan Raymond, and the former Executive Director of the New Hampshire Republican State Committee, Charles McGee, who both admitted their participation in the phone jamming conspiracy. In December, 2005, James Tobin, the former New England Regional Director of the Republican National Committee, was convicted for his involvement in the phone jamming scheme.

The Honorable Alberto Gonzales
April 20, 2006
Page 2

Current media reports are raising the possibility that involvement in the phone-jamming scandal reaches higher than Mr. Tobin, and that others -- including Jack Abramoff and his Indian tribe clients -- possibly were involved in this scandal. These reports indicate that the Senate Majority Project, after examining the phone records produced in Mr. Tobin's case, discovered that at the same time he was implementing the phone-jamming scheme, Mr. Tobin also made dozens of calls to the office of political affairs in the White House.

Ken Mehlman, the Republican National Committee chairman who also was the White House political director at the time, insists that close contact of this kind between political operatives is the norm on Election Day, and that none of the calls mentioned the jamming scheme.

We believe that the public has a right to know all that happened and who else was involved in the scheme to disenfranchise New Hampshire voters. Please let us know no later than May 1, 2006: (1) whether the latest allegations involving Mr. Abramoff and Mr. Mehlman are being investigated, and if so, by whom; (2) whether you or anyone in the White House Counsel's Office made any inquiry or investigation into this incident while you were the White House Counsel, or was otherwise involved in it ; (3) whether you are currently involved in any aspect of this investigation, or have recused yourself, and, if the latter, who is in charge of the matter; and (4) whether the Office of the Inspector General or the Office of Professional Responsibility has been asked to investigate or has otherwise opened a file on the matter and, if so, whether either office has issued an informal or formal report to you on any aspect of the New Hampshire phone-jamming scheme, and what the disposition of any such report was. If there are any documents reflecting or relating to any of the answers to these questions, we request that we be provided with copies of them by May 1.

With respect and appreciation we look forward to hearing from you.

Sincerely,

PATRICK LEAHY
Ranking Member

EDWARD M. KENNEDY
United States Senator

Union Leader, The/New Hampshire Sunday News (Manchester, NH)

New Hampshire Union Leader (Manchester, NH)

February 7, 2003

Dirty tricks: Federal officials alerted by police to alleged GOP phone jamming

By JOHN DiSTASO
Senior Political Reporter

Manchester police have alerted the U.S. Justice Department to an Election Day operation allegedly ordered by a Republican telemarketing dealer that jammed get-out-the-vote phone banks operated by the city's firefighters union and the state Democratic Party.

Lt. Fred Roach of the city's detective bureau said this week Idaho-based telemarketing firm Milo Enterprises was hired by GOP Marketplace of Alexandria, Va., to make repeated hang-up calls to a group of New Hampshire phone banks on Nov. 5.

Union and Democratic officials said the phone jam, broken by Verizon after two hours, lasted long enough to hurt their efforts to reach people who needed rides to the polls. Union president William Clayton said many intended contacts with potential riders, especially seniors, were not made, and, "I know a lot of them got shut out" of voting.

Roach said a state harassment law may have been violated. The case's multi-state nature prompted him to contact authorities about possible federal violations, he said.

State Republican Chairman Jayne Millerick said yesterday the state committee hired GOP Marketplace, but not to jam opposition phone lines, something she said she knew nothing about.

Millerick, elected chairman two weeks ago, said party executive director Chuck McGee told her that, "at the very end of the election cycle, the state party contracted with GOP Marketplace with the thought that the party may use telemarketing to do more get-out-the-vote calling. But the calls were never made, and the state party is currently working on getting a refund."

She noted the hiring occurred "before my time" as party chairman. Millerick worked with the state GOP in the fall to direct the Republicans' own get-out-the-vote effort in the final hours of the campaign.

GOP Marketplace calls itself "the first Internet-based political B2B (business-to-business). We link campaigns and committees with telephone vendors online."

The Republican State Committee paid GOP Marketplace $15,600 on Nov. 1. A lawyer for GOP Marketplace would neither confirm nor deny the firm hired Milo Enterprises.

State Democratic Chairman Kathleen Sullivan said, "It breaks my heart that anyone in this country would engage in criminal activity to try to prevent seniors from voting and to interfere with a free election."

City firefighters head Clayton said union volunteers noticed they could not make or receive calls at about 7:30 a.m. on Election Day. After an hour, he said, the problem was reported to police.
Lt. Roach said Verizon was contacted, freed the phone lines and identified the caller as Milo Enterprises.

He said Milo officials, contacted last month, "were very cooperative. They said they were a telemarketing firm for hire and had been paid in advance (by GOP Marketplace, Roach said,) to repeatedly call a variety of phone numbers in New Hampshire on November 5."

Roach said Milo officials told him that when they arrived at work early on Nov. 5, their workers had been making the calls for about an hour. But after checking the work order, Roach said, they stopped the blocking operation, realizing it could be "a problem."

Roach said he later spoke to a vice president at GOP Marketplace, and, "He was very evasive." The Union Leader's call to GOP Marketplace President Allen Raymond was returned by company attorney John Partridge, who said Raymond "can't confirm or deny" that Milo Enterprises was hired.

Clayton said the firefighters don't ask riders their party affiliation. He noted many union members are Republicans and the state firefighters union backed Republican Craig Benson for governor.

Sullivan said she identified the party numbers blocked as those for the Democratic City Committee office, the state party's now-closed coordinated campaign office and state party field offices in Nashua, Rochester and Claremont.

Roach noted a state law making it a misdemeanor to make a telephone call "with a purpose to annoy or alarm another." Prosecuting an out-of-state entity on a misdemeanor is difficult, he said, but he said he has contacted the U.S. Justice Department in Washington.

One federal law prohibits causing "the telephone of another repeatedly or continuously to ring, with the intent to harass any person at the called number." Roach said, "It appears (the Justice Department) may be interested in pursuing the matter."

McGee, the Republican State Committee executive director, said early yesterday he had vaguely heard of GOP Marketplace and did not hire the firm. Later, Millerick called The Union Leader to say that McGee "was mistaken," and had in fact hired it for telemarketing.

Sullivan said, "I find it fascinating that Chuck McGee's initial reaction was to lie. I don't know if I can believe anything now."

Roach said blocking phone lines "is serious crime, regardless of whether it's a misdemeanor or a felony. Whether it be you, me, or a union hall, they're all victims."

Raymond is a 33-year-old organizer whose recent clients included Republican National Committee co-chair Patricia Harrison and former Presidential candidate Steve Forbes' 2000 campaign committee, according to the firm's Web site. Last year, he headed the Republican Leadership Conference, which spent about $150,000 advertising against conservative GOP former candidate for governor Gordon Humphrey.

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

****

TO: Steve Gordon DATE: 15 October 2004

FAX: 603-225-5112 PHONE:

****

FROM: John Lynch on Behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE: 202-305-8732

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FACSIMILE TRANSMISSION COVER SHEET

TO: Steve Gordon DATE: 15 October 2004

FAX: 603-225-5112 PHONE:

FROM: John Lynch on Behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

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United States Department of Justice

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TO: Oride LaMontagne DATE: 15 October 2001

FAX: 603-695-8610 PHONE:

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FROM: John Lynch on Behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

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Page : 001
Date & Time: Oct-15-04 12:16pm
Line 1 :
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Machine ID :

Job number	:	262
Date	:	Oct-15 12:14pm
To	:	☎916036958610
Number of pages	:	005
Start time	:	Oct-15 12:15pm
End time	:	Oct-15 12:16pm
Pages sent	:	005
Status	:	OK

Job number : 262 *** SEND SUCCESSFUL ***

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

TO: Ovide LaMontagne DATE: 15 October 2004

FAX: 602-593-8610 PHONE:

FROM: John Lynch on Behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE: 202-305-8[illegible]

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

NOTES/COMMENTS:

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Page : 001
Date & Time: Oct-15-04 01:29pm
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Machine ID :

Job number : 269

Date : Oct-15 01:28pm

To : ☎915036958610

Number of pages : 005

Start time : Oct-15 01:28pm

End time : Oct-15 01:29pm

Pages sent : 005

Status : OK

Job number : 269 *** SEND SUCCESSFUL ***

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

TO: Owen LaMontagne DATE: 15 October 2004

FAX: 603-695-8610 PHONE:

FROM: John Lynch on Behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE: 202-305-8[illegible]

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

NOTES/COMMENTS:

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United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

****

TO: Patrick E. Donovan DATE:

FAX: 603-890-6304 PHONE:

****

FROM: John Lynch on behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE:

****

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

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Confirmation Report - Memory Send

Page : 001
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Number of pages	:	005
Start time	:	Oct-15 12:20pm
End time	:	Oct-15 12:23pm
Pages sent	:	005
Status	:	OK

Job number : 263 *** SEND SUCCESSFUL ***

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

TO: Patrick E. Duncan DATE:

FAX: 603-890-6304 PHONE:

FROM: John Lynch on behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE:

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

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Job number	:	266
Date	:	Oct-15 12:31pm
To	:	☎916037494970
Number of pages	:	005
Start time	:	Oct-15 12:31pm
End time	:	Oct-15 12:32pm
Pages sent	:	005
Status	:	OK

Job number : 266 *** SEND SUCCESSFUL ***

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

TO: John E. Dukes DATE: 15 Oct 2004

FAX: 603-749-4970 PHONE:

FROM: John Lynch on behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE: 202-305-7732

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

NOTES/COMMENTS:

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United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

****

TO: Finis E. Williams DATE: 15 Oct 2004

FAX: 603-226-2183 PHONE:

****

FROM: John Lynch on behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE:

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TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

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NOTES/COMMENTS:

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Page : 001
Date & Time: Oct-15-04 12:26pm
Line 1 :
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Machine ID :

Job number	:	265
Date	:	Oct-15 12:24pm
To	:	☎916032262153
Number of pages	:	005
Start time	:	Oct-15 12:24pm
End time	:	Oct-15 12:26pm
Pages sent	:	005
Status	:	OK

Job number : 265 *** SEND SUCCESSFUL ***

United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

TO: Finis E. Williams DATE: 15 Oct 2004

FAX: 603-226-2180 PHONE:

FROM: John Lynch on behalf of Todd Hinnen
Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE:

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

NOTES/COMMENTS:

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United States Department of Justice

FACSIMILE TRANSMISSION COVER SHEET

****

TO: John E. Dutton DATE: 15 Oct 2004

FAX: 603-749-4970 PHONE:

****

FROM: John Lynch on behalf of Todd Hinnen

Computer Crime and Intellectual Property Section
Criminal Division
Department of Justice
Washington, D.C. 20530

FAX: (202) 514-6113 VOICE: 202-305-7732

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TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

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NOTES/COMMENTS:

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STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

NH Democratic Party, et al.,

v.

NH Republican State Committee, et al.,
04-E-0328

MOTION TO INTERVENE AND TO STAY DISCOVERY

NOW COMES the United States of America, by and through the undersigned counsel, and hereby moves this Court for an Order, pursuant to New Hampshire Superior Court Rule 139, permitting the United States to intervene in this case for a limited purpose, and granting a temporary stay of all discovery in this case, subject to a status review by the Court after six months.

In support of its motion, the United States relies upon its Memorandum of Law in Support of Motion to Intervene and to Stay Discovery, and further states as follows:

1. The public has a direct and apparent interest, which it is the United States' duty to protect, in preventing interference with ongoing criminal investigations and in protecting the integrity of federal Grand Jury proceedings. Pursuant to New Hampshire Superior Court Rule 139, intervention by the United States is appropriate in this case to protect this vital interest and for the limited purpose of seeking a temporary stay of discovery.

2. Discovery in this case, if allowed to go forward, would interfere in an ongoing federal Grand Jury investigation pending in the United States District Court for the District of New Hampshire.

3. The parties noticed for depositions in this case are likely witnesses in the ongoing federal criminal investigation. Deposition and document discovery of these witnesses would inevitably disclose the substance of ongoing matters occurring before the federal Grand Jury and would permit the targets of the criminal investigation to obtain access to information to which they would not otherwise be entitled at this time regarding the investigation and the United States' likely witnesses.

4. Disclosure would therefore frustrate the purposes of Grand Jury secrecy and could disrupt the ongoing criminal investigation by revealing matters occurring before the Grand Jury.

5. Furthermore, disclosure could result in unfairness to potential targets or subjects of the investigation by disclosing their identities and details about their alleged criminal activities prior to any determination by a Grand Jury as to whether probable cause exists to believe any of those parties committed crininal offenses.

WHEREFORE, the petitioner United States of America prays from this Court the following relief:

1. For an Order granting the United States permission to intervene in this matter for the limited purpose of seeking a delay of discovery;
2. For an Order granting a temporary stay of discovery for a limited period of six months, subject to further review and possible renewal by the Court at that time; and
3. For such other and further relief that the Court deems just and necessary.

Dated: October 15, 2004

Respectfully submitted,

MARTHA STANSELL-GAMM, CHIEF
DEPARTMENT OF JUSTICE
CRIMINAL DIVISION
COMPUTER CRIME & INTELLECTUAL
PROPERTY SECTION

By: /s/

Todd M. Hinnen
Trial Attorney
Tel: (202) 305-7747
Fax: (202) 514-6113

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served the MOTION OF THE UNITED STATES TO INTERVENE AND TO STAY DISCOVERY by telefax it to:

Steve Gordon, Esq. Shaheen & Gordon, PA P.O. Box. 2703 Concord, NH 03302	Ovide LaMontagne, Esq. Devine, Millimet and Branch 111 Amherst Street Manchester, NH 03101	Patrick E. Donovan, Esq. Hatem & Donovan 215 Main Street Salem, NH 03079
Fax: (603) 225-5112	Fax: (603) 695-8610	Fax: (603) 890-6304

John E. Durkin, Esq. P.O. Box 608 Dover, NH 03821	Finis E. Williams, III, Esq. The Chase Building 15 North Main Street Concord, NH 03301
Fax: (603) 749-4970	Fax: (603) 226-~~0133~~ 2153 JR

This 15th day of October, 2004.

Todd M. Hinnen
Trial Attorney
Criminal Division, Computer Crime and
Intellectual Property Section
U.S. Department of Justice

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Between 12/6/04 and 8/31/06, Williams & Connolly has billed a total of $3,326,668.57. The Republican National Committee began paying Tobin's legal bills in December 2004, and continued to do so until late January 2006. According to FEC reports showing RNC disbursements, the RNC paid Williams & Connolly a total of $2,824,584.00 between 12/9/04 and 1/26/06.

Despite the RNC's public statements that it is not paying the legal bills for Tobin's appeal, Williams & Connolly has continued to send invoices to the RNC on a monthly basis.

The invoices sent to the RNC since February 2006 show that since the RNC made its final payment on 1/26/06, there have been no payments made towards Mr. Tobin's balance.

However, within days of the RNC's final payment to Williams & Connolly, an LLC was set up in the state of Maine. In early February 2006, Northeast Strategies LLC was formed as an entity based in Bangor, Maine.

FEC reports from the Chafee for Senate campaign show that beginning on 4/1/06, the Chafee campaign made the first of a series of payments to Northeast Strategies. Between 4/1/06 and 8/21/06, payments from the Chafee campaign to Northeast Strategies totaled $550,960.86.

The Numbers

How much has Tobin's defense cost?

$3,326,668.57

How much has the RNC paid directly to Williams & Connolly?

$2,824,584.00

Difference between the amount billed and the amount paid by the RNC? (In other words, the amount Tobin would be responsible for paying with his own funds given the RNC's decision to stop covering the tab.)

$502,084.57

Amount paid to Northeast Strategies by the Chafee for Senate campaign?

$550,960.86.

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

New Information on Northeast Strategies

At the ongoing depositions of various Republicans who were either directly involved in, or may have had knowledge of the phone jamming, the NHDP has attempted to learn more about Northeast Strategies.

Alicia Davis: In November 2002, Alicia Davis was Associate Director, White House Office of Political Affairs. Ms. Davis was deposed by the NHDP on Wednesday, September 20, 2006, in Washington, DC. The following is an excerpt from the transcript of that deposition. John Hardin Young, of Sandler Reiff & Young (NHDP attorney), was questioning Ms. Davis:

> Q While you were at the RNC, did you have any discussions with anyone about the allegations of phone jamming in the 2002 New Hampshire general election?
>
> A At what time?
>
> Q Any time?
>
> A No, other than with my --
>
> Q Other than with your counsel?
>
> A Yeah.
>
> Q Do you know who is paying the legal fees for Mr. James D. Tobin?
>
> A No, I don't know.
>
> Q Has anyone told you who is paying those fees?
>
> A No.
>
> Q Were you involved in any discussions at the RNC as to the payment of any legal fees arising out of the allegations of phone jamming as it relates to the 2002 New Hampshire general election?
>
> A No.
>
> Q Were you involved in any decisions or discussions relating to the cessation of the payment of any legal fees?

A No.

Q Who's paying your legal fees today other than the representation of the United States of America?

A I don't know.

Q All right. A question we are finding out after this deposition.

A That's true. I should.

Q I would recommend that you do. Have you ever heard of an entity called Northeast Strategies?

A Yes.

Q And do you know who they are?

A I -- I believe that it is Jim Tobin's company.

Q Do you know if he is -- if his wife also works there?

A I don't know how they are set up.

Brian McCabe: Brian McCabe was deposed by the NHDP on September 7, 2006, in New Hampshire. The following is an excerpt from that deposition. Mr. McCabe is answering questions posed by Paul Twomey.

Q. Are you aware of what work Jim Tobin's doing now?

A. No.

Q. Are you aware of an organization called Northeast Strategies? Have you ever heard of it?

A. Yes.

Q. Can you tell me where you first heard of it?

A. I know Kathy Summers, who I think works there, who I think owns Northeast Strategies.

Q. And how did you know she was associated with Northeast Strategies?

A. I've met Kathy and, you know, she's introduced herself as Northeast Strategies. That's her company's name.

Q. Have you ever worked with her on campaigns or -- when I say "campaigns," I mean both political as well as advocacy campaigns or business campaigns or anything like that?

A. Not political. On advocacy. She used to be at the Department of Labor. And after she set out, she has done, like we have a -- we hire a number of contract consultants like Kathy Summers. And as Jim Tobin did, Kathy's done some work for DCI.

Q. And what types of things has Kathy Summers done for DCI?

A. She -- she'll work on, you know, our corporate public policy campaign. She's working on one right now.

Q. So she's currently performing work for DCI?

A. Yes.

Q. Is Northeast --

A. She's a vendor on one of our projects, correct.

Q. What type of project is that?

A. It's a telecommunications client, and she's helping in -- you know, helping in the northeast region, I believe.

Q. What's the name of the telecommunications –

A. Verizon.

Q. And is she doing anything else currently for DCI?

A. I don't think so but I'm not sure.

Q. Is she doing that contract as herself as an individual or as Northeast Strategies?

A. I'm not positive. But I would think that she gets paid to Northeast Strategies because, by and large, if someone's got a business, we pay to the business.

Q. But people that have more than one business, I guess is what I'm getting at. You think it's Northeast Strategies that has a contract with DCI?

A. I think but I'm not positive.

Q. Do you work on that particular campaign with her?

A. I work on Verizon, yes. But I have -- There are a number of people who work on it. I don't really interact with Kathy Summers all that much on it.

Q. How about Mr. Tobin's wife? Have you ever had any contact with her concerning Northeast Strategies?

A. No, never.

Q. Where does Kathy Summers live?

A. I think she lives in Boston, but again, I'm not positive.

Q. Have you ever had occasion to contact her in Bangor, Maine?

A. No.

Q. And the "her" was Kathy Summers.

Terry Nelson: Terry Nelson was deposed by the NHDP on Friday, September 8, 2006, in Washington, DC. The following is an excerpt from that deposition, in which NHDP attorney Joe Sandler is questioning Mr. Nelson.

Q. Do you know, Mr. Nelson, who is paying Mr. Tobin's legal fees currently?

A. No.

Q. When you had dinner with him last month, in August 2006, did you talk to him about that?

A. No.

Q. You didn't talk to him about who was paying his legal fees?

A. No.

Q. When you had dinner with him, his wife was present also, correct?

A. Yeah.

Q. Her name is Ellen Hall?

A. I don't know what her maiden name is.

Q. Ellen Tobin?

A. Yes.

Q. You know her as well then?

A. I met her before, yes.

Q. Do you know what her occupation or employment is?

A. No. I know she recently started a firm with somebody else, but up until this point, I've mostly known Ellen as somebody who takes care of her family.

Q. Does she have a background in political work, to your knowledge?

MR. KELNER: I'm going to object to this line of questioning. The subpoena to Mr. Nelson calls for him to be deposed regarding his knowledge concerning the allegations contained in the complaint in this case. And I don't really particularly see how this line of questioning relates to any of that. If you ask explain some basis, I'll give you a little bit of latitude. It is far afield to me.

MR. SANDLER: Okay.

MR. KELNER: I'm not instructing my client not to answer. I'll give you a little bit of latitude, but I'm very close to doing so.

MR. SANDLER: Okay.

THE WITNESS: What does that mean?

BY MR. SANDLER: The question is whether you know Ellen Tobin from Republican politics as somebody who has a background in analytical work?

A. She does have a background in political work.

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Northeast Strategies Emerges in Chafee for Senate FEC Report:

On February 10, 2006, papers were filed in the state of Maine to incorporate a new business – Northeast Strategies, LLC. Information obtained from the Maine Secretary of State shows that Northeast Strategies (ME Corporation #: 20062466DC) remains in "very good standing" today (7/26/06).[1]

A first look at Northeast Strategies LLC does not reveal any connection to James Tobin. The LLC's registered agent is Nathan Dane III, of 205 French Street, Bangor, ME. Tobin's name does not appear on the entity's corporate filings.

However, an FEC report filed on July 19, 2006 by the "Chafee for Senate" campaign in Rhode Island shows payments to Northeast Strategies totaling more than $386,000 for the time period April 1, 2006 -June 30, 2006. According to the Chafee for Senate FEC report, the purpose of each and every payment to Northeast Strategies LLC is listed as "consulting services."[2]

To put the amount paid to Northeast Strategies in perspective, the total amount paid to Northeast Strategies is five times the amount the campaign spent on payroll over the same period.

The address to which each and every payment is sent is 212 Kenduskeag Avenue, Bangor, ME - the home address of James & Ellen Tobin.[3][4]

Tobin's Career - Once Lost, Now Found?

At the sentencing hearing for James Tobin, held on May 17, 2006 in U.S. District Court in Concord, New Hampshire, Tobin's attorney asked the judge to spare his client a prison sentence. Dane Butswinkas attempted to show that Tobin had already suffered punishment enough: "He [Tobin] has lost his career - he [Tobin] lost his final client last Wednesday."[5] Were Butswinkas' statement correct, that would mean Tobin "lost his final client" on Wednesday, May 10, 2006.[6]

Tobin reiterated the claim. Speaking on his own behalf, Tobin said: "After 20 years, I have lost my profession."[7]

The sentencing memorandum, filed by Tobin's attorneys in U.S. District Court on May 11, 2006, states as follows under the heading "Professional and Financial Effects":

"Mr. Tobin has also suffered profound professional and financial consequences as a result of this case. Mr. Tobin, through the income from his consulting business, has supported his family of six. Following his December 2004 indictment, "one of the first decisions he made was to tell current and prospective clients that in politics perception is everything, and that while his actions were under scrutiny, it was in their best interests not to hire him for political work." His business has been deteriorating for months, and

this week his last remaining client informed him that it intends to sever ties with him. Ellen Tobin summarizes the professional toll of this case: "His business is on the brink of destruction. Regardless of what happens from this point forward, his ability to make a living in politics is gone forever." Mr. Tobin's decades of experience will likely no longer support a career in his field because the public perception of this case will trump the integrity, honesty, dedication and experience that Mr. Tobin's colleagues so admire. This stark reality weighs heavily on Mr. Tobin. "Jim worries about how we will pay for [our children's] education now that his career is through." This is a very tangible punishment for Mr. Tobin that has already affected him and his family—and will continue to do so in the future."[5]

In fact, on May 17, 2006, the very day Tobin and his attorney claimed in U.S. District Court that Tobin's career was over, and that he had "lost his final client", Chafee for Senate paid Northeast Strategies $88,268.34.

Chafee Campaign Responds to Media Reports

On Sunday, August 6, 2006, the Washington Post first reported that Chafee's campaign was sending payments to Tobin's home address. Chafee's campaign responded:

"Campaign manager Ian Lang said that Tobin has no role in the company or the Chafee campaign. Instead, he said, Northeast Strategies is made up of Tobin's wife, Ellen, and a political consultant, Kathie Summers. James Tobin -- who is appealing his December 2005 conviction -- "is not involved at all," Lang said. He said that the money pays for mailings, phone calls and staff, in addition to Summers's expertise."[5]

The Washington Post also contacted Kathie Summers, who confirmed the explanation offered by Ian Lang:

"Summers confirmed Lang's account on Friday. She said that she had worked on campaigns all over New England and that her company was built on her expertise in targeting and reaching nonaffiliated voters. "It's messaging the independent voter," Summers said. She said she spends three days a week in Rhode Island, and Ellen Tobin -- a friend whom she recruited to her company during a ski trip -- handles bookkeeping and administrative duties. "There's no connection with Jim," Summers said. "I mean, I love Jim, but he's not involved in the company." "[5]

On Tuesday, August 8, 2006, the Providence Journal wrote a second story, alleging that "Sen. Lincoln D. Chafee's campaign has paid $386,000 to a company controlled by the wife of James Tobin."[5]

The Providence Journal described Northeast Strategies as a firm specializing in "targeting unaffiliated voters" who "make up the largest slice of voters eligible for the Sept. 12 GOP Senate primary" and who are "coveted by both Chafee and his primary opponent".[5]

The Providence Journal quoted another Chafee campaign staffer, Steve Hourahan:

" "We had no idea that Northeast Strategies had any connection to Tobin," said Steve Hourahan, Chafee's campaign spokesman. The Northeast Strategies principal is Ellen Hall, Hourahan said. "Her name is Ellen Hall and we hired Ellen Hall and we know nothing about her connnection to Mr. Tobin. Mr. Tobin has no connection to the Chafee campaign at all." "[5]

Ellen Tobin: Engineer, Bookkeeper or Political Consultant

It remains unclear what role - if any - Ellen Tobin has at Northeast Strategies. Kathie Summers told the Washington Post that Ellen handles "bookkeeping and administrative" matters. Kathie Summers told the Washington Post she spends three days per week in Rhode Island, and as of early 2006, she maintains a primary residence in Newton, Massachusetts.[4] It remains unclear why a firm that is run by a Massachusetts resident - and does the majority of its business in Rhode Island, would be established in the state of Maine, and would hire a Maine resident to handle bookkeeping and administrative matters.

Ellen's Political Experience

Aside from working as manager for Susan Collins' 1996 Senate primary campaign, Ellen Tobin's political experience remains a mystery.

Stretching the Truth

Whether or not James Tobin is involved in Northeast Strategies, it is clear Tobin's attorney stretched the truth when he told asserted that James Tobin had lost his career, and that he was the family's sole source of income. On May 17, 2006, Dane Butswinkas stated that: "as the sole support of a family of six, the loss of your career is a serious punishment."

If we are to believe that James Tobin has no involvement in Northeast Strategies, then Ellen Tobin's involvement in the firm begs the question whether James Tobin was the family's sole source of income.

Given James Tobin's loss of his career, and the family's increasingly dire financial circumstances, is it plausible Ellen Tobin offered her services to Northeast Strategies free of charge?

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Chafee Campaign Payments to Northeast Strategies LLC

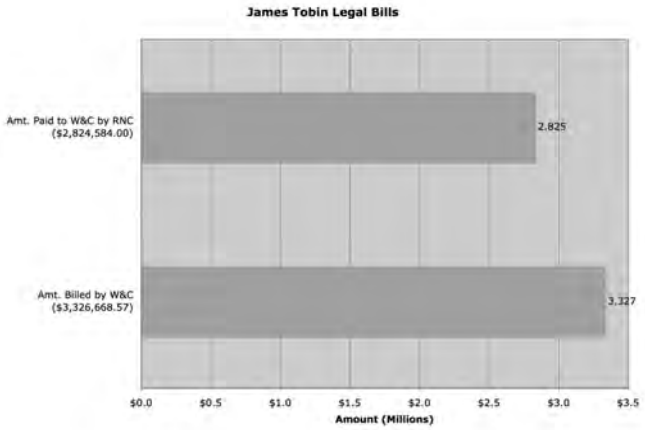
4/1/06 to 8/21/06

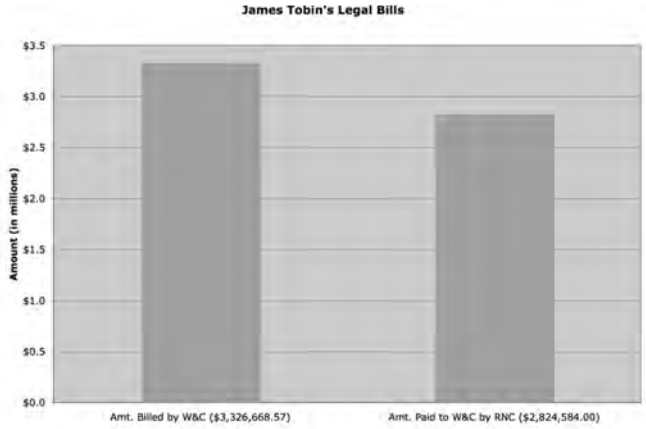
4/1/06	$125,000.00
4/15/06	$8,033.00
5/17/06	$88,268.34
5/19/06	$8,500.00
5/26/06	$2,100.00
5/26/06	$1,436.85
5/31/06	$45,093.40
6/8/06	$45,084.04
6/12/06	$940.74
6/12/06	$13,650.00
6/30/06	$48,119.93
7/2/06	$608.91
7/2/06	$4,350.00
7/13/06	$949.98
7/28/06	$20,467.23
7/28/06	$5,000.00
7/28/06	$9,321.35
7/28/06	$2,543.18
8/2/06	$45,216.03
8/18/06	$60,000.00
8/21/06	$5,262.45
8/21/06	$11,015.43
TOTAL:	**$550,960.86**

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

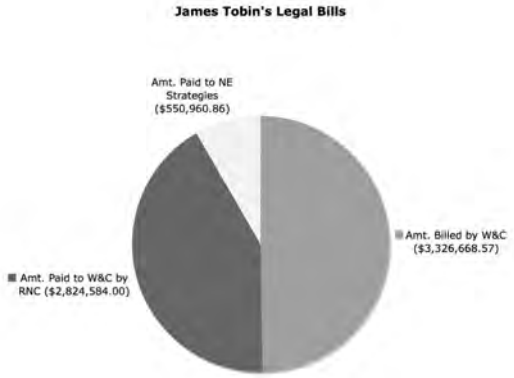
Date (of Invoice, or Payment)	Amount Billed	Amount Paid by RNC to W&C	Total Due as of Invoice Date	Amount Paid by Chafee to Northeast Strategies	Source of Information
12/9/04	$72,590.91		$235,236.92		W&C Invoice #176366
12/9/04		$162,646.00			FEC/PoliticalMoneyline
1/12/05	$75,471.75		$148,082.66		W&C Invoice #177132
2/16/05	$112,363.27		$260,445.93		W&C Invoice #178109
3/11/05	$101,781.81		$362,227.74		W&C Invoice #178484
4/6/05	$197,511.77		$559,739.51		W&C Invoice #179056
5/5/05	$277,985.35		$837,724.88		W&C Invoice #179788
5/19/05		$72,591.00			FEC/PoliticalMoneyline
5/19/05		$75,472.00			FEC/PoliticalMoneyline
5/19/05		$112,383.00			FEC/PoliticalMoneyline
5/19/05		$101,782.00			FEC/PoliticalMoneyline
5/19/05		$197,512.00			FEC/PoliticalMoneyline
6/8/05	$418,835.62		$696,820.97		W&C Invoice #180633
7/12/05	$185,723.96		$882,544.93		W&C Invoice #181276
8/10/05	$92,965.14		$975,510.07		W&C Invoice #181925
?	*$21,883.09*		*$997,393.16*		*No invoice included*
10/8/05	$132,258.76		$1,129,881.93		W&C Invoice #183154
11/3/05	$180,450.52		$1,310,132.44		W&C Invoice #183790
12/12/05	$461,227.77		$1,771,360.21		W&C Invoice #184810
12/15/05		$1,771,360.00			FEC/PoliticalMoneyline
missing invoice	?	?	?	?	?
1/17/06	$58,398.00		$387,235.93		W&C Invoice #185416
1/26/06		$286,700.00			FEC/PoliticalMoneyline
1/26/06		$44,138.00			FEC/PoliticalMoneyline
2/10/06	*Northeast Strategies, LLC is incorporated in the state of Maine in February 2006.*				
2/10/06	$278,864.48		$335,063.46		W&C Invoice #186880
3/10/06	$113,186.08		$448,250.58		W&C Invoice #186636
4/1/06				**$125,000.00**	**Chafee FEC Report**
4/11/06	$33,674.21		$481,924.77		W&C Invoice #187324
4/15/06				**$8,033.00**	**Chafee FEC Report**
5/17/06	$70,401.74		$552,326.51		W&C Invoice #188795
5/17/06				**$86,268.34**	**Chafee FEC Report**
5/19/06				**$8,500.00**	**Chafee FEC Report**
5/26/06				**$2,100.00**	**Chafee FEC Report**
5/26/06				**$1,436.85**	**Chafee FEC Report**
5/31/06				**$45,093.40**	**Chafee FEC Report**
6/8/06				**$45,084.04**	**Chafee FEC Report**
6/12/06				**$940.74**	**Chafee FEC Report**
6/12/06				**$13,650.00**	**Chafee FEC Report**
6/20/06	$214,503.16		$768,829.67		W&C Invoice #189758
6/30/06				**$48,119.93**	**Chafee FEC Report**
7/2/06				**$608.91**	**Chafee FEC Report**
7/2/06				**$4,350.00**	**Chafee FEC Report**
7/13/06				**$949.98**	**Chafee FEC Report**
7/28/06				**$20,467.23**	**Chafee FEC Report**
7/28/06				**$5,000.00**	**Chafee FEC Report**
7/28/06				**$9,321.35**	**Chafee FEC Report**
7/28/06				**$2,543.18**	**Chafee FEC Report**
8/2/06				**$45,216.03**	**Chafee FEC Report**
8/18/06				**$60,000.00**	**Chafee FEC Report**
8/21/06				**$5,262.45**	**Chafee FEC Report**
8/21/06				**$11,015.43**	**Chafee FEC Report**
8/23/06	$184,468.08		$981,297.75		W&C Invoice #191212
9/26/06	$34,271.10		$995,568.85		W&C Invoice #192164
TOTALS	**$3,326,668.57**	**$2,824,584.00**		**$550,980.86**	

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent





James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent



Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	CR.04-216-01-SM
v.	December 7, 2005
	9:30 a.m.
JAMES TOBIN	

Day 2
Morning Session
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEVEN J. McAULIFFE
and a jury

Appearances:

For the Government: Andrew Levchuk, Esq.
Lily N. Chinn, Esq.
U.S. Department of Justice
Criminal/Computer Crimes

Nicholas A. Marsh, Esq.
U.S. Department of Justice
Public Integrity Section

For the Defendant: Dane H. Butswinkas, Esq.
Tobin J. Romero, Esq.
Bradley J. Bondi, Esq.
Williams & Connolly
725 Twelfth Street, NW
Washington, DC 20005

Brian Tucker, Esq.
Rath Young Pignatelli PA
One Capital Plaza, PO Box 1500
Concord, NH 03302-1500

Court Reporter: Diane M. Churas, CSR
Official Court Reporter
U.S. District Court
9a Pleasant Street
Concord, NH 03301
(603)226-8907

COPY

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

1 do so now.
2 MR. BUTSWINKAS: Your Honor, may I approach?
3 THE COURT: No need to. Do you object?
4 MR. BUTSWINKAS: Yes.
5 THE COURT: Sustained.
6 MR. LEVCHUK: In terms of Exhibit 4, I believe
7 that is in evidence, but I did not show that to the
8 jury. So I'm going to do that now and show the witness
9 the document. So if we can have Exhibit 4 on the
10 screen, the second page.
11 THE COURT: Four does not appear to be
12 admitted. Any objection to 4?
13 MR. BUTSWINKAS: No objection, your Honor.
14 THE COURT: ID may be stricken on Government's
15 4.
16 (Government's Exhibit 4 admitted.)
17 DIRECT EXAMINATION (cont'd)
18 BY MR. LEVCHUK:
19 Q. In particular, on the second page, Mr. McGee,
20 I direct your attention to the check from the New
21 Hampshire Republican State Committee. You had testified
22 about this yesterday, but I don't think we had it in
23 front of the jury, so I want to make sure we go over it.
24 Again, whose handwriting is that?
25 A. The pay-to-the-order portion in the memo

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

1 portion is that of Kristy Stewart, an employee of the
2 state committee. The signature is a Mr. Dowd written by
3 myself with permission.
4 Q. Thank you very much. Sir, we left off
5 yesterday on Election Day eve. I'm now going to take
6 you forward, if we may, to Election Day morning,
7 November 5th, 2002. Describe the first thing that
8 happens that day. What do you do?
9 A. I woke early to go to the Concord polling
10 place where they have early voting. I think it starts
11 at 7 or 6:30. I live close by, and I was holding a sign
12 early in the morning for our republican candidates.
13 Q. Does there come a point when you hear
14 something from anyone about the phone jamming scheme?
15 A. During a portion of my time standing there,
16 Concord Republican City Committee Chairman Jeff Newman
17 came and joined me. We stood there for a few minutes
18 conversing with folks going in to vote, and I received a
19 phone call from John Dowd, who is the Republican Party
20 chairman, my boss, at which time Mr. Dowd instructed me
21 very quickly, very briefly, to put a halt to my plan, my
22 idea to jam the phone lines. I then traveled over to
23 the state party headquarters on Main Street only a few
24 short blocks away and began to, as quickly as I could,
25 reach Mr. Raymond to put an end to the phone call plan

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

1 that I came up with.
2 Q. How did you try to reach Mr. Raymond?
3 A. By telephone. I believe I tried both his
4 office phone and his cell phone.
5 Q. Were you able to get in touch with him?
6 A. Eventually. Not as early as I had hoped.
7 Q. But at some point you conveyed the message;
8 did you not?
9 A. Yes. Very briefly I told him that the
10 chairman ordered it stopped, and I told him that he
11 needed to stop it. I didn't know what Mr. Raymond
12 needed to do to make that happen, but I know he wasn't
13 the only person making the phone calls or running the
14 computers. So it was a very brief conversation, stop
15 the calls, and we left it at that.
16 Q. Later on on Election Day, do you have a
17 discussion about the phone jamming scheme with anyone?
18 A. That day, later in the day, I traveled to our
19 Manchester Republican Office where I spoke to --
20 specifically about this, I recall speaking to a
21 gentleman by the name of Daryl Henry. Daryl was up from
22 Washington volunteering on the campaign. I mentioned to
23 him that the phone call plan had been called off and
24 that I was a bit upset about that, and he indicated in
25 some fashion that he knew about the plan going on and

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

1 that he had called some associates of his to pick up
2 where we left off. I took it as bravado because I
3 didn't possibly know how he would have known about the
4 plan or who we were calling or how it had been stopped.
5 I just took it as he was trying to be a nice guy and
6 make me feel good.
7 Q. Who is Daryl Henry, sir?
8 A. He was up from Washington. As far as I know
9 he works for American Gas Association. I don't know
10 much more about him than that.
11 Q. What was he doing in New Hampshire, if you
12 know?
13 A. He was helping coordinate some of our VIP
14 visits, volunteering in general campaign fashion. The
15 time before an election is very, very, very busy for us,
16 as you know. We spent nine million dollars that year.
17 Q. Now, sir, is it fair to say you are a
18 defendant in a civil lawsuit that's pending in the
19 superior court for the State of New Hampshire?
20 A. I am.
21 Q. What's the subject of the lawsuit?
22 A. I'm being sued for this matter, the phone
23 jamming case.
24 Q. Events arising from this?
25 A. Yes.

APPENDIX 2

WADLEIGH, STARR & PETERS, P.L.L.C.

THEODORE WADLEIGH (of Counsel)
WILLIAM C. TUCKER
LUDVIG M. VAN LOAN III
JOHN E. FRIEDMAN, Jr.
JAMES C. WHEAT
JOHN A. LASSEY
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CHARLES F. CLEARY
CHRISTINE DESMARAIS-GORDON
PAUL L. APPLE
JENNIFER L. MURPHY
TODD A. McCRAVEY
STEPHEN L. BOYD

Serving New Hampshire since 1899

February 10, 2003

Thomas P. Colantuono, Esquire
U.S. Attorney's Office
55 Pleasant Street
Concord, New Hampshire 03301

RE: Possible Violation of 47 U.S.C.A. §223

Dear Attorney Colantuono:

I am writing to report certain actions that appear to violate 47 USC §223 and ask that your office investigate and, if warranted, prosecute the responsible parties. The following conduct took place on November 5, 2002, the date of the New Hampshire general election.

On that day, a continuous stream of telephone calls were made to five Democratic Party offices, which had the effect of tying up the lines and preventing legitimate business calls from being received. These calls were "hang up" calls; when the phone was answered, the incoming caller would either hang up or say nothing. The calls interfered with the "Get Out The Vote" activities of the Party. At the same time, similar calls were being made to the local Manchester Professional Firefighters Association office. As is widely known, the Firefighters conduct a "Ride to the Polls" operation at each election. They do not ask callers which party they belong to; in fact, the Firefighters are traditionally bi-partisan. In this past election, for example, the New Hampshire Professional Firefighters endorsed former Governor Jeanne Shaheen, a Democrat, and currently Gov. Craig Benson, a Republican. As you can imagine, the bulk of the rides provided by the Firefighters are to New Hampshire's senior population. I have enclosed a copy of a February 7, 2003 Union Leader article about this.

The Manchester Police Department has investigated this matter and determined the responsible parties, but decided not to prosecute under their jurisdiction because the conduct is a misdemeanor under New Hampshire law involving out of state defendants. The individual handling the investigation for the Manchester Police Department is Lt. Detective Fred Roche. Lt. Roche ascertained that the telephone calls were made by Milo Enterprises of Sand Point, Indiana. Representatives of Milo Enterprises told Detective Roche that it was contracted to call six numbers all day. The numbers were the Manchester Democratic City Committee Office, the Democratic Party Coordinated Campaign Office in Manchester, the Firefighter's Hall/"Ride to the Polls", and the Democratic Party field offices in the cities of Rochester, Claremont, and Nashua. The representatives of Milo also told Lt. Roche that they made the calls for an hour,

WADLEIGH, STARR & PETERS, P.L.L.C.

February 10, 2003
Page 2.

then stopped because they were "suspicious." It is my understanding, however, that the calls were stopped after complaints to Verizon. Milo's representatives also told Detective Roche that the company was hired to make the calls by another company called GOP Marketplace, LLC, of 600 Cameron Street, Alexandria, Virginia. GOP Marketplace paid Milo $2,500.00. Newspaper accounts have now revealed that the New Hampshire Republican Party had a contract with GOP Marketplace.

Detective Roche spoke with one Chris Cupit, Vice President of Marketing for GOP Marketplace. He referred them to the company's corporate attorney, who refused to comment.

The Manchester Police Department has decided not to pursue the matter further, given that the companies are out of state and that the New Hampshire statute involved here is a misdemeanor (RSA 644:4.I).

In reviewing this matter further, it appears that the activities of Milo Enterprises, as paid for through the auspices of GOP Marketplace, LLC, is telephone harassment within the meaning of 47 U.S.C.A. §223. This activity is, I believe, a felony, subject to both fines and a potential prison terms of up to two years.

To make a long story short, this case goes well beyond the category of political pranks. Intentional, criminal activities were undertaken with the sole purpose of harassing and disrupting efforts by the New Hampshire Democratic Party on election day. Even worse, the jamming of the firefighters' lines was a direct attempt to suppress the rights of voters, particularly senior voters, to vote. These acts violated both New Hampshire and Federal law.

I cannot believe that any public official, whether Republican or Democrat, would condone criminal conduct in political activity. For that reason, I look forward to a vigorous investigation by your office into these criminal activities.

I look forward to hearing from you.

Very truly yours,

Kathleen N. Sullivan
ksullivan@wadleighlaw.com

/sos

enclosure

FROM (MON) 2. 10'03 17:27/ST. 17:26/NO. 4861219658 P 3

Department of Justice

FOR IMMEDIATE RELEASE **CRM**
THURSDAY, DECEMBER 15, 2005 **(202) 514-2007**
WWW.USDOJ.GOV **TDD (202) 514-1888**

Former RNC New England Regional Director Convicted In New Hampshire Phone Jamming Case

WASHINGTON, D.C. -- After a four-day trial, a jury in Concord, New Hampshire today convicted James Tobin, the former New England Regional Director of the Republican National Committee, of charges stemming from a scheme to disrupt phone service to five Democratic Party offices and a firefighters' ride-to-the-polls program on Election Day 2002, the Department of Justice announced today.

Tobin, 45, of Bangor, Maine, was convicted on one count of conspiracy to commit telephone harassment in violation of 18 U.S.C. § 371 and 47 U.S.C. § 223 (a)(1)(D), and one count of aiding and abetting of telephone harassment in violation of 47 U.S.C. § 223 (a)(1)(D) and 18 U.S.C. § 2. Another count of the superseding indictment had been dismissed prior to submission of the case to the jury, and Tobin was acquitted on a charge of conspiracy to injure the free exercise of the right to vote. Tobin faces a maximum penalty of five years in prison on the conspiracy count and two years in prison on the aiding and abetting of telephone harassment count. Sentencing is scheduled for March 21, 2006. At trial, the government presented the testimony of Charles McGee, former Executive Director of the New Hampshire Republican State Committee, and Allen Raymond of GOP Marketplace, who testified that Tobin had put them in touch with each other to conduct the scheme. Both McGee and Raymond, who previously pleaded guilty and had been sentenced for related charges, testified that the phone jamming would not have gone forward without Tobin's involvement.

"This conviction sends an important message about ensuring the integrity of our election system," said Assistant Attorney General Alice S. Fisher of the Criminal Division. "The Department of Justice will prosecute any attempt to use illegal schemes on Election Day." The investigation and trial were jointly handled by the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) and the Public Integrity Section. The trial team included Andrew Levchuk and Lily Chinn of CCIPS and Nicholas Marsh of the Public Integrity Section. The team was supported by Aubrey Rupinta and Stephen Brannon of CCIPS.

###

05-672

This is a printer-friendly version of an article from the Concord Monitor at **http://www.concordmonitor.com**.

Photo Reprints
CONCORD MONITOR

Article published Jul 29, 2004
McGee admits to jamming phones
He could face up to 5 years in prison

Print article
Send to friend
Letter to editor

By SARAH C. VOS
Monitor staff

Jul 29, 2004

Protesters line the steps ouside the U.S. District Courthouse in Concord yesterday as Chuck McGee, former executive director of the state Republican committee, pleaded guilty to jamming Democratic phone banks on Election Day 2002. JIM COLE / AP photo
Zoom

Charles McGee, the former executive director of the New Hampshire Republican State Committee, admitted yesterday to jamming Democratic party phone lines on election day in November 2002.

McGee, 34, was the second person to plead guilty to a felony for the more than 800 hang-up phone calls that an Idaho company made to five state Democratic party offices and the Manchester Professional Firefighters Association, a group that was offering rides to the polls. The calls blocked phone lines for 85 minutes.

Earlier this month, Allen Raymond, who was president of the Virginia-based GOP Marketplace, pleaded guilty to the same charge: conspiring to make harassing telephone calls without identifying the caller's identity. Raymond admitted to paying the Idaho firm $2,500 to make the phone calls.

U.S. Trial Attorney Todd Hinnen said the investigation into the phone-jamming was ongoing but declined to say whether anyone else would be charged.

McGee's attorney, Patrick Donovan, said that McGee pleaded to the charge because he wanted to take responsibility for what happened and would cooperate with investigators.

"It was criminal and not Christian, and he's looking forward to putting this to an end and moving on with his life,"Donovan said.

McGee came up with the phone-jamming plan as a way to give Republicans an edge over Democrats, using a lesson from his days in the military, Hinnen told the U.S. District Court Judge Joseph DiClerico. "One of the best ways to disrupt the enemy is to disrupt their

ability to communicate," Hinnen said.

McGee contacted several vendors that the state party had used before, but the vendors were either unwilling or unable to make the repeated hang-up calls that McGee wanted, Hinnen said. Then, a visiting official from a national political organization suggested that McGee contact GOP Marketplace. Hinnen did not name the official.

Hinnen told the judge that McGee discussed his plan with a high-ranking state Republican Party official before sending a $15,600 check to GOP Marketplace. He said the same official later called the plan off.

In a phone interview yesterday, John Dowd, the former chairman of the New Hampshire Republican State Committee, said McGee told him of the phone-jamming plan late in the afternoon of Nov. 4, the day before the election.

Dowd said that he told McGee that the plan troubled him and he needed to think about it. Dowd said yesterday that he had no idea that the plan was illegal.

Dowd said that he discussed the plan with his wife and that they consulted an attorney. Early on the morning of Nov. 5, Dowd heard back from the attorney and decided to cancel the phone-jamming, he said. "I told Chuck to stop it," he said.

According to Hinnen, the Idaho company made more than 800 calls before the order to stop.

Dowd said that he did not sign the $15,600 check to GOP Marketplace.

McGee faces a maximum sentence of five years in prison and a $250,000 fine. He will be sentenced in October. The judge released him yesterday on personal recognizance bail.

Outside the courthouse, a handful of protesters held signs that called for the investigation into the phone-jamming to continue.

"The inquiry doesn't end here,"said Finis Williams, an attorney for the state Democratic Party who attended the hearing. "We still want the Republican State Committee to come forward and say who was behind it, where the money came from, why it happened and that it will never happen again."

(Sarah C. Vos can be reached at 224-5301, ext. 321, or by e-mail at scvos@cmonitor.com.)

This article is: 1147 days old.

CBS NEWS

BACK PRINT

GOP Consultant Admits Dirty Trick

CONCORD, N.H., July 1, 2004

(AP) The former head of a Republican consulting group has pleaded guilty to jamming Democratic telephone lines in several New Hampshire cities on Election Day two years ago.

The jamming involved more than 900 computer-generated calls and lasted for about 1 1/2 hours on Nov. 5, 2002, the day voters decided several races, including a close Senate contest between outgoing Gov. Jeanne Shaheen and GOP Rep. John E. Sununu, who won by fewer than 20,000 votes.

The lines that were jammed were set up so voters could call for rides to the polls. Democrats say the jamming was an organized, statewide effort that may have even affected the outcome of some local races.

"There is, short of murder, not much that is more horrific in America than purposely trying to stop people from voting," said Raymond Buckley, vice chairman of the state Democratic Party. "I do not believe this investigation should stop until every single person who had knowledge of this and paid for this is prosecuted."

Allen Raymond, former president of the Virginia-based GOP Marketplace, pleaded guilty Wednesday in federal court to conspiring to make harassing phone calls. The charge carries up to five years in prison. He will be sentenced in November.

The Justice Department said the investigation continues.

Republicans acknowledged last year that they hired GOP Marketplace for telemarketing services in 2002. But Republican Chairwoman Jayne Millerick has maintained the company was paid $15,600 for telemarketing services to encourage people to vote Republican, not to jam lines.

Chuck McGee, executive director of the state Republican Party at the time, resigned after news of the jamming broke.

"These allegations have been extremely troubling and we are happy that it appears they are coming to a just conclusion," Millerick said.

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Affidavit Exhibit A

White House Calls:

James Tobin (RNC/NRSC); Jayne Millerick (NHRSC 72-hour Director); John Dowd (NHRSC Chair); and New Hampshire Republican State Committee

(September 2002 – November 2002)

Caller	# Dialed		Date	Time	Call Length	Call made from ... (Location)
James Tobin	(202) 456-6173	OPA	9/17/02	1:30 PM	2	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/17/02	1:35 PM	2	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/18/02	4:23 PM	6	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/23/02	11:53 AM	1	Cincinnati, Ohio
James Tobin	(202) 456-6173	OPA	9/23/02	8:07 PM	1	Des Moines, Iowa
James Tobin	(202) 456-6173	OPA	9/24/02	11:44 AM	6	Des Moines, Iowa
James Tobin	(202) 456-6173	OPA	9/24/02	6:25 PM	2	Chicago, Illinois
James Tobin	(202) 456-6173	OPA	9/25/02	10:36 AM	2	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/25/02	11:10 AM	1	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/25/02	3:39 PM	3	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/25/02	3:43 PM	1	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/25/02	3:55 PM	1	Baltimore, MD
James Tobin	(202) 456-6173	OPA	9/25/02	6:17 PM	2	Boston, MA
James Tobin	(202) 456-0373	OPA	9/26/02	5:24 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	9/27/02	3:48 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	9/27/02	5:32 PM	2	Portland, ME
James Tobin	(202) 456-6173	OPA	9/30/02	2:21 PM	3	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	9/30/02	4:46 PM	2	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	9/30/02	5:41 PM	1	Central/Coastal ME
NHRSC (603-225-9341)	(202) 456-6287	?	10/1/02	11:15 AM	2	Concord, NH
James Tobin	(202) 456-6173	OPA	10/1/02	11:59 AM	3	Hillsborough County, NH
James Tobin	(202) 456-6173	OPA	10/1/02	12:25 PM	1	Coos/Western NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/1/02	3:50 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/1/02	4:07 PM	2	Concord, NH

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NHRSC (603-225-9341)	(202) 456-6173	OPA	10/1/02	5:20 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/1/02	5:56 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/2/02	12:02 PM	3	Concord, NH
NHRSC (603-225-6314)	(202) 456-6173	OPA	10/2/02	2:39 PM	2	Concord, NH
NHRSC (603-224-7739)	(202) 456-6238	OMA	10/2/02	3:46 PM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	10/3/02	9:53 AM	5	unknown
NHRSC (603-224-7739)	(202) 456-2108	OSI (Rove)	10/3/02	12:08 PM	2	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/3/02	12:14 PM	2	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/3/02	12:14 PM	1	Concord, NH
NHRSC FAX (603-225-7498)	(202) 456-6520	Fax	10/3/02	12:48 PM	1	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/3/02	1:46 PM	1	Concord, NH
James Tobin	(202) 456-7016	?	10/3/02	3:15 PM	1	unknown
NHRSC (603-225-9341)	(202) 456-6287	?	10/3/02	3:20 PM	2	Concord, NH
James Tobin	(202) 456-6173	OPA	10/3/02	3:54 PM	3	unknown
James Tobin	(202) 456-6173	OPA	10/3/02	4:04 PM	5	unknown
NHRSC (603-225-6314)	(202) 456-3735	?	10/4/02	9:30 AM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/4/02	10:12 AM	1	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/4/02	1:04 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	10/4/02	1:10 PM	2	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	10/4/02	1:20 PM	3	Local (Bangor, ME)
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/4/02	3:50 PM	4	Concord, NH
James Tobin	(202) 456-6173	OPA	10/4/02	3:52 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	10/4/02	3:54 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	10/4/02	3:56 PM	1	Boston, MA
James Tobin	(202) 456-2565	?	10/4/02	4:23 PM	1	Boston, MA
James Tobin	(202) 456-2565	?	10/4/02	4:23 PM	1	Boston, MA
James Tobin	(202) 456-8838	?	10/4/02	4:33 PM	1	Boston, MA
James Tobin	(202) 456-2565	?	10/4/02	4:34 PM	9	Boston, MA
James Tobin	(202) 456-6173	OPA	10/4/02	4:49 PM	11	Boston, MA
James Tobin	(202) 456-6173	OPA	10/7/02	2:16 PM	1	New York Metro Area NY

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NHRSC FAX (603-225-7498)	(202) 456-6520	?	10/8/02	1:39 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	10/9/02	1:50 PM	2	unknown
James Tobin	(202) 456-6173	OPA	10/9/02	4:22 PM	4	unknown
James Tobin	(202) 456-6173	OPA	10/10/02	1:09 PM	1	unknown
James Tobin	(202) 456-6173	OPA	10/10/02	8:26 PM	21	unknown
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/11/02	2:06 PM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	10/12/02	1:49 PM	1	unknown
James Tobin	(202) 456-6173	OPA	10/13/02	5:32 PM	5	Portland, ME
James Tobin	(202) 456-6173	OPA	10/14/02	10:59 AM	1	unknown
James Tobin	(202) 456-6173	OPA	10/14/02	12:32 PM	9	unknown
James Tobin	(202) 456-6173	OPA	10/14/02	12:55 PM	2	unknown
James Tobin	(202) 456-6173	OPA	10/14/02	8:46 PM	1	unknown
James Tobin	(202) 456-6173	OPA	10/15/02	10:59 AM	1	unknown
James Tobin	(202) 456-6173	OPA	10/15/02	1:34 PM	1	Augusta, ME
James Tobin	(202) 456-6173	OPA	10/15/02	1:35 PM	1	Augusta, ME
James Tobin	(202) 456-6173	OPA	10/15/02	5:20 PM	2	Local (Bangor, ME) (Bangor, ME)
James Tobin	(202) 456-6173	OPA	10/16/02	8:29 AM	1	Boston, MA
John Dowd	(202) 456-6173	OPA	10/16/02	9:13 AM	2	unknown
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/16/02	9:52 AM	4	Concord, NH
James Tobin	(202) 456-6173	OPA	10/16/02	11:32 AM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	10/16/02	12:39 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	10/16/02	5:36 PM	3	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	10/17/02	8:45 AM	5	New York Metro Area NY
James Tobin	(202) 456-6173	OPA	10/17/02	8:50 AM	3	New York Metro Area NY
James Tobin	(202) 456-6173	OPA	10/17/02	10:10 AM	1	Hundterdon City NJ
James Tobin	(202) 456-6173	OPA	10/17/02	11:38 AM	2	Hundterdon City NJ
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/18/02	9:55 AM	2	Concord, NH
James Tobin	(202) 456-6173	OPA	10/18/02	10:02 AM	1	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	10/18/02	1:26 PM	1	Central/Coastal ME

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James Tobin	(202) 456-6173	OPA	10/18/02	4:40 PM	3	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	10/23/02	7:43 AM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	10/21/02	9:21 AM	3	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	10/23/02	9:05 AM	8	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	10/23/02	9:13 AM	1	Hillsborough County NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/23/02	11:20 AM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	10/23/02	11:35 AM	2	Lakes Region NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/23/02	12:33 PM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	10/25/02	4:05 PM	1	Baltimore, MD
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/28/02	12:02 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/28/02	2:23 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/28/02	4:35 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	10/29/02	8:30 AM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	10/29/02	10:06 AM	1	Hillsborough County NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/29/02	12:43 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-5958		10/29/02	12:50 PM	1	Concord, NH
NHRSC (603-225-6314)	(202) 456-5958		10/29/02	3:10 PM	1	Concord, NH
NHRSC (603-225-6314)	(202) 456-6173	OPA	10/29/02	3:12 PM	3	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/29/02	3:14 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-5958		10/29/02	4:20 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	10/29/02	4:35 PM	4	Lakes Region NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/29/02	4:41 PM	2	Concord, NH
NHRSC (603-224-7739)	(202) 456-7350		10/29/02	4:44 PM	2	Concord, NH
NHRSC (603-228-0001)	(202) 456-6334		10/29/02	4:48 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	10/29/02	5:24 PM	1	Concord, NH
NHRSC (603-228-0001)	(202) 456-5958		10/29/02	6:07 PM	1	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/29/02	6:09 PM	2	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/29/02	6:11 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	10/29/02	9:16 PM	15	Concord, NH
James Tobin	(202) 456-6173	OPA	10/30/02	11:21 AM	2	Lakes Region NH

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NHRSC (603-225-9341)	(202) 456-6173	OPA	10/30/02	1:55 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/30/02	2:49 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-6173	OPA	10/30/02	3:10 PM	1	Concord, NH
NHRSC (603-225-6314)	(202) 456-6173	OPA	10/30/02	7:12 PM	1	Concord, NH
NHRSC (603-228-0001)	(202) 456-6173	OPA	10/31/02	11:02 AM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	10/31/02	12:13 PM	3	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	10/31/02	2:33 PM	1	Biddeford, ME
James Tobin	(202) 456-6173	OPA	10/31/02	5:27 PM	1	Central/Coastal ME
NHRSC FAX (603-225-7498)	(202) 456-6771	First Lady Fax	11/1/02	10:17 AM	2	Concord, NH
NHRSC (603-228-0001)	(202) 456-1414	Switchboard	11/1/02	10:30 AM	3	Concord, NH
NHRSC (603-228-0001)	(202) 456-1111	Comment Line	11/1/02	12:23 PM	1	Concord, NH
NHRSC (603-224-7739)	(202) 456-1414	Switchboard	11/1/02	12:26 PM	2	Concord, NH
NHRSC (603-224-7739)	(202) 456-3521	?	11/1/02	1:11 PM	1	Concord, NH
James Tobin	(202) 456-6173	OPA	11/1/02	5:16 PM	2	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/1/02	7:07 PM	2	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/1/02	9:10 PM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/2/02	9:55 AM	1	Boston, MA
James Tobin	(202) 456-6173	OPA	11/2/02	11:33 AM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/2/02	12:26 PM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/2/02	7:33 PM	1	Lakes Region NH
James Tobin	(202) 456-6173	OPA	11/2/02	10:15 PM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/3/02	1:22 PM	7	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/3/02	4:51 PM	1	Boston MA
James Tobin	(202) 456-6173	OPA	11/4/02	9:28 AM	1	Hillsborough County NH
James Tobin	(202) 456-6173	OPA	11/4/02	1:02 PM	2	Lakes Region NH
James Tobin	(202) 456-6173	OPA	11/4/02	5:10 PM	4	unknown
James Tobin	(202) 456-6173	OPA	11/5/02	11:20 AM	5	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	11/5/02	11:46 AM	2	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	11/5/02	2:34 PM	1	Local (Bangor, ME)

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Jayne Millerick	(202) 456-6173	OPA	11/5/02	2:59 PM	17	Home Area (Hookset, NH)
James Tobin	(202) 456-6173	OPA	11/5/02	5:37 PM	4	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	11/5/02	7:42 PM	1	Biddeford ME
James Tobin	(202) 456-6173	OPA	11/5/02	9:41 PM	2	Manchester, NH
James Tobin	(202) 456-6173	OPA	11/5/02	10:30 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	11/5/02	10:33 PM	1	Boston, MA
James Tobin	(202) 456-6173	OPA	11/5/02	10:35 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	11/5/02	11:09 PM	1	Boston, MA
James Tobin	(202) 456-6173	OPA	11/5/02	11:10 PM	1	Portland ME
James Tobin	(202) 456-6173	OPA	11/5/02	11:40 PM	2	Boston, MA
James Tobin	(202) 456-6173	OPA	11/6/02	12:25 AM	5	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	12:40 AM	4	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	12:46 AM	1	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	12:58 AM	2	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	12:59 AM	1	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	1:01 AM	4	Portland ME
James Tobin	(202) 456-6173	OPA	11/6/02	1:04 AM	2	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	11/6/02	1:09 AM	1	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	11/6/02	2:17 AM	1	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	11/7/02	12:26 PM	5	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	11/8/02	1:32 PM	1	Local (Bangor, ME)
NHRSC (603-225-9341)	(202) 456-6173	OPA	11/12/02	11:46 AM	4	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	11/13/02	10:23 AM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6287		11/14/02	8:29 AM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6287		11/14/02	2:46 PM	2	Concord, NH
NHRSC (603-225-9341)	(202) 456-6287		11/14/02	2:53 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6287		11/14/02	3:08 PM	3	Concord, NH
James Tobin	(202) 456-6173	OPA	11/15/02	1:17 PM	9	Central/Coastal ME
James Tobin	(202) 456-6173	OPA	11/18/02	12:20 PM	4	Central/Coastal ME
NHRSC (603-228-0001)	(202) 456-6173	OPA	11/19/02	1:46 PM	4	Concord, NH

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NHRSC FAX (603-225-7498)	(202) 456-6520		11/19/02	1:51 PM	2	Concord, NH
James Tobin	(202) 456-6173	OPA	11/21/02	11:45 AM	8	Local (Bangor, ME)
James Tobin	(202) 456-6173	OPA	11/22/02	11:09 AM	6	Central/Coastal ME
NHRSC FAX (603-225-7498)	(202) 456-6520		11/25/02	2:41 PM	6	Concord, NH
NHRSC (603-225-9341)	(202) 456-6287		11/25/02	2:39 PM	1	Concord, NH
NHRSC (603-225-9341)	(202) 456-6173	OPA	11/27/02	2:46 PM	1	Concord, NH

Sources:

- *Jayne Millerick's call on 11/05/02 → Defendant Exhibit 100*
- *John Dowd's call on 10/16/02 → Government Exhibit 17*
- *NHRSC calls (10/02 – 11/02) → Defendant's Exhibits 82 & 83*
- *James Tobin's calls to White House (9/02 – 11/02) → Defendant's Exhibit 57; Defendant's Exhibit 59; Defendant's Exhibit 153; Defendant's Exhibit 154; Government Exhibit 13*

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Analysis

James Tobin:

- 115 outgoing calls from James Tobin to White House between 9/17/02 and 11/22/02 (number of incoming calls from White House unknown; number of calls to White House employee cell phones (both outgoing and incoming) unknown

Jayne Millerick

- One 17-minute outgoing call on Election Day (11/5/02) from Jayne Millerick to the White House between 9/17/02 and 11/27/02 (number of incoming calls from White House unknown; number of calls to White House employee cell phones (both outgoing and incoming) unknown

John Dowd

- One outgoing call from John Dowd on 10/16/02 to the White House between 9/17/02 and 11/27/02 (number of incoming calls from White House unknown; number of calls to White House employee cell phones (both outgoing and incoming) unknown

NHRSC

- More than 70 outgoing calls from the NHRSC to the White House between 9/17/02 and 11/27/02 (number of incoming calls from White House unknown; number of calls to White House employee cell phones (both outgoing and incoming) unknown; these calls could have been placed by any number of individuals, including James Tobin, Jayne Millerick, John Dowd, and/or Charles McGee, as well as numerous others

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White House Extensions Called:

Phone Number	Office	# of Times Called
(202) 456-1111	White House Comment Line	1 (NHRSC)
(202) 456-1414	White House Switchboard	2 (NHRSC)
(202) 456-2108	White House Office of Strategic Initiatives (Karl Rove)	1 (NHRSC)
(202) 456-2565	?	3 (Tobin)
(202) 456-3735	?	1 (NHRSC)
(202) 456-3251	Non-working # as of 3/22/06	1 (NHRSC)
(202) 456-5958	Non-working # as of 3/22/06	4 (NHRSC)
(202) 456-6173	White House Office of Political Affairs (OPA)	77 (by Tobin) 36 (by NHRSC)
(202) 456-6238	White House Office of Media Affairs (OMA)	1 (NHRSC)
(202) 456-6287	As of March 2006, # belongs to Rue III, William H, White House staff assistant	7 (NHRSC)
(202) 456-6520	Fax	4 (NHRSC)
(202) 456-6334	First Lady's Press Office	1 (NHRSC)
(202) 456-6771	Fax (Laura Bush's office)	1 (NHRSC)
(202) 456-7016	Michael R. Davis, Associate Director	1 (Tobin)
(202) 456-7350	USA Freedom Core	1 (NHRSC)
(202) 456-8838	?	1 (Tobin)

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Holly McCullough
Manager
Carnegie Library of Pittsburgh - Squirrel Hill
5801 Forbes Ave
Pittsburgh, PA 15217

April 29, 2008

Sam Sokol
Oversight Counsel
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Sokol:

I am writing this letter to document events that happened in the fall of 2004 in my then position as Special Assistant to the Director of the Carnegie Library of Pittsburgh and my contact with the firm Sproul and Associates regarding their voter registration activities at the library. This letter represents only my personal recollections of the events and does not represent a statement or the views of the Carnegie Library of Pittsburgh. I am writing this letter at your request.

In the fall of 2004 employees of the firm Sproul and Associates called the library requesting space outside of our libraries to do non-partisan voter registration. They told me they were working on behalf of America Votes. I researched America Votes online and did find a large umbrella group of organizations doing non-partisan voter registration. One of the groups working with America Votes was the organization ACORN. The library had previously permitted the local ACORN chapter to do on-site voter registration and we had had no problems so I was encouraged that Sproul and Associates would behave similarly. Additionally the library at that time was actively pursuing civic engagement and outreach activities as one of our goals so Sproul and Associates' offer seemed like a good opportunity for the library. After getting assurances that the group would do no issue advocacy and that the registration would remain strictly non-partisan we agreed to let them contact individual locations within our library system to set up their activities.

Soon after the temporary workers that Sproul and Associates had hired showed up at one of our locations, I received a call from the location manager, saying a customer had complained about the behavior of the canvassers. The customer came into the library and indicated that the Sproul representative outside asked him who he was going to vote for. We also had the same complaint from a customer at another location. Upon contacting Sproul and Associates they apologized and said that they were doing 'market research' at some locations but that they would make sure that it stopped. They also said that they were having problems with some of their temp workers not following their training.

I was so concerned by these complaints that I did further research and found out that Sproul and Associates was absolutely not working for the organization America Votes and was in fact a Republican funded partisan organization. I was further alarmed by a story I found in the Charleston West Virginia Gazette that detailed one temp worker, also hired by Sproul, who claimed she was trained to ask people how they were going to vote and then only try and register those who

said they were voting for Bush. Upon learning these things, I immediately ended our relationship with Sproul and Associates. At that time I asked again what organization they were working for and they said 'America Votes.' I then asked them to give me the contact information for that organization. After being put on hold someone from the office came back and said to me that 'America Votes is a project of Sproul and Associates originating from this office. [pause] There is a partisan organization with that same name.'"

Soon after these events happened I saw an e-mail on a small national librarians' listserv I subscribe to warning other librarians about Sproul and Associates and their conduct with voter registration and libraries. I e-mailed that listserv to relay our similar experience and to add to this warning. That e-mail was then forwarded by a subscriber to another listserv that is archived online. Journalists who had heard about some of these stories and were researching Sproul's activities and other possible voter registration misconduct thus had access to my related experience with Sproul. The e-mail included my name and contact information. I was contacted by several journalists and was eventually interviewed by CNN, NPR, Slate, the Pittsburgh Post-Gazette, and local radio throughout the country.

I mention this widespread contact by the media because it highlights how easily accessible my information about the events and identity was at the time and still is. In fact if you do an internet search of Sproul and Associates my link to the story and my contact information is still online. I still have the same e-mail address I had then and work for the same organization. This is, of course, how you, Mr. Sokol, located me. Despite the wide dissemination of my story your recent contact, three and half years after the events, was the first contact from any governmental or law enforcement agency to contact or question me about the events. I had assumed by now that no investigation was going to be done.

In our previous phone conversation you had asked me if the library was still doing voter registration activities at our locations. I can say that since this experience I have been very wary of contact by groups wanting to do voter registration at the library. In my current capacity as a manager of our largest branch location I have turned away requests for organizations who want to do on-site voter registration. I am very cognizant that others might try the same tactics again and find it impossible to verify these groups legitimacy.

Please let me know if there is any other information about the circumstances that you might need or that might be helpful.

Sincerely,

Holly McCullough

Ms. SÁNCHEZ. I now at this time would like to recognize my colleague, Mr. Cannon, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. CANNON. I thank the gentlelady.

And I want to thank Congressman Hodes in particular. I think this is the second time you have testified before this Committee, the other time on a rather more technical and, frankly, more interesting topic. I think that was performance royalties, as I recall.

Thanks for being here.

Thank you, Madam Chair.

Welcome to our other witnesses who are not yet at the table.

Let me state at the outset that all Members reject the concept of suppression of lawful voting, and I want to be crystal clear about that, but you have to ask why are we holding this hearing today.

I think the gentlelady suggested that some have said it is a waste of time, not the issue of suppressed voting, but rather whether in this case there is sufficient reason for us to pursue that. In the case of the New Hampshire phone jamming matter, there are two pending trials. Should we be holding hearings in the midst of criminal trials? And in his recent letter to Chairman Conyers on the Siegelman matter, Representative Davis made it clear there are several reasons why we should not.

One of our witnesses today may well be one of the witnesses at those trials. I submit that the place for him to be a witness is there, not here.

Second, these cases are old news. The courts and the department have already dealt with them. To pick them up now as we head toward the 2008 election makes me wonder if this hearing is not more about election year politics than genuine oversight.

And, third, I ask: Is it the department that is selectively prosecuting or is the Democratic majority in Congress selectively investigating? We all know the evenhandedness of the Bush administration in prosecuting public corruption on both sides of the aisle and other politically charged cases, and we all should know of allegations formed by the Obama and Clinton campaigns this election cycle, allegations that each of these campaigns has attempted to suppress the other's votes. Why are we not investigating that?

We have held a host of hearings this term into allegations the department has been politicized. None of them have been substantiated. Along the way, the majority has ignored a host of other real and pressing issues that the country urgently needs to tend to. We should be holding hearings on those pressing issues today, which brings me to my final point.

Some weeks ago, I wrote the Chairwoman urging her to hold hearings on neglected Republican bills to stamp out discriminatory State taxes from cell phones to pipelines. Other Ranking Members wrote similar letters to the Chairs of their subcommittees. Why have we not turned to these legislative priorities? Why do we incessantly continue looking over the shoulders of the department and the courts, questioning the work we cannot do for them while ignoring the work that only we can do.

You know, the heading and the title of today's hearing is intriguing. It is the "Joint Hearing on Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in our Federal Justice

System." That title encompasses a host of very important issues. I suspect that the issues we deal with today are not going to rise to the level of what I think this Committee should be dealing with.

We have had a number of hearings where corruption has been thrown out. I repeatedly have asked the Chair that if she says that, she needs to substantiate it. Let us hope that at least the hearing has something worthwhile either in the way of substantiating corruption or recognizing that we are chasing shadows here.

Thank you, Madam Chair. I yield back.

Ms. SÁNCHEZ. The gentleman yields back.

At this time, I recognize my colleague, Mr. Scott, the distinguished Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for his opening remarks.

Mr. SCOTT. Thank you, Madam Chair.

And I would like to thank my colleagues on the Commercial and Administrative Law Subcommittee for joining us in holding Part II of this joint hearing.

For over a year now, Republicans as well as Democrats have accused this Administration of firing Bush appointed U.S. attorneys for improper political reasons, including some who may have been fired because they did not indict Democrats in time to affect an upcoming election or pursue alleged vote fraud cases that would have helped Republicans.

Some think that these allegations are serious, and some may be not so serious. But the fact is we have been unable to ascertain the truth of the allegations for several years.

For example, several senior Department of Justice officials question the credibility of the attorney general's original response to the allegations. Several high-ranking Justice Department officials have quit. Another one pleaded the Fifth. White House officials have refused to respond to subpoenas. And the U.S. attorney incident highlighted a growing concern, and that is the misuse of prosecutorial discretion to affect elections.

In October of last year, we held a joint hearing where the Republican former attorney general Dick Thornburgh and others testified about politically motivated and aggressive prosecutions that benefited Republicans. Today's hearing is a follow up that focuses on allegations of interference with voters' rights and the department's failure to adequately investigate and prosecute voter suppression cases, including the phone jamming case that arose in New Hampshire in 2002 and the equally troubling activities of Sproul & Associates during the 2004 election cycle that also benefitted Republicans.

Although these incidents occurred years ago, we have been stymied in conducting meaningful oversight on these issues due to the department's refusal to meaningfully respond to requests for information, and, in fact, we invited the Department of Justice to today's hearing, but they declined to send anybody.

The phone jamming incident involved the jamming of telephones belonging to the New Hampshire Democratic Party and the Manchester Firefighters Association on Election Day 2002. This disruption of the get-out-the-vote effort has led to the criminal prosecution of three perpetrators, two of them serving jail time, including Allen Raymond, a witness here today, and Charles McGee, the

2002 executive director of the New Hampshire Republican Party. These individuals pleaded guilty to charges under 18 USC 371, conspiring to commit the offense of engaging in interstate telephone communications with the intent to annoy or harass.

Although the prosecutions of relatively low-level officials have proceeded, there are serious questions about the scope of the department's investigation and prosecution effort and its failure to go after higher-level officials. According to published reports, 22 phone calls were exchanged between the New Hampshire Republican officials and the White House Office of Political Affairs starting at 11:20 a.m. on Election Day 2002 and running past 2 a.m. on Election Night, and 110 phone calls were placed between Mr. James Tobin, the New England director for President Bush's 2004 campaign, and the White House in the 2 months surrounding the election.

It is not clear what action, if any, was taken to determine the significance of these communications, and to add more intrigue to the case, the FBI special agent working on the matter allegedly was instructed not to follow the investigative leads back to Washington.

The second matter of today's hearing pertains to a voter registration firm, Sproul & Associates, which declined to register Democratic voters and even apparently went so far as destroying registration cards collected from Democratic voters in several States during the 2004 election cycle. A former employee described in an affidavit being trained to register only Republicans and to tear up Democratic registrations in that State.

The alleged misconduct taken by this firm clearly suppressed votes and would violate Federal law, but yet we are unaware of any meaningful Justice Department action with regard to this firm and the practices it engaged in. These two cases add to a growing list of disturbing incidences that raise questions as to the department's impartiality in pursuing or choosing not to pursue cases. The department's commitment to protecting and enhancing all citizens' right to vote has also been damaged and needs to be restored. I hope this hearing will help clear up the air about theses two unusual cases.

I yield back.

Ms. SÁNCHEZ. The gentleman yields back.

I want to thank Mr. Scott for his opening statement.

At this time, I would recognize Mr. Gohmert for his opening remarks.

Mr. GOHMERT. Thank you, Chairwoman Sánchez.

I must agree with my colleague, Ranking Member Cannon. You know, why are we here today?

The majority has been wasting the Committee's time and resources for 16 months now trying to find some silver bullet that they believe will completely destroy an Administration that some here on Capitol Hill despise.

Now we just cut short a markup of seven crime bills so we could hold a hearing on these allegations of supposed selective prosecution for political purposes. We went all through that as the majority went after Attorney General Gonzales for political reasons letting go some U.S. attorneys. So much time was wasted.

We were taking up just within the last hour or two what may be the most important criminal bill that this Committee has taken up, the Debbie Smith DNA Reauthorization Act. It had some great provisions in it, great bipartisan work on getting that done. We did not finish the bill so we could stop that and come in here and have this hearing.

The claim apparently is selective prosecution in a case that dates back to 2002 and allegations of phone jamming in New Hampshire on Election Day 6 years ago. This issue is a bit old. The Department of Justice has already brought charges against the four individuals alleged to have been involved. This case is old enough that two of the defendants who pled guilty have already completed their sentences.

The majority claims misconduct by the White House, the Justice Department, the RNC. Once again, desperation has led us to have a hearing on baseless accusations against nameless individuals. Now there apparently were some bases, and those are being pursued, and if there is a base, then pursue it, but this hearing was not held, I must point out, in 2007. We waited until an election year to hear about Republicans using politics.

We have heard over and over, had hearings repeatedly concerned about issues like Scooter Libby, and we have had Joseph Wilson come in here and testify, and I tell you I have heard him testify more than once, and, as a former judge, it sure looks to me like we have had false testimony. Nobody is pursuing any of that. We had Scooter Libby prosecuted when the special prosecutor knew immediately after beginning the investigation that Scooter Libby did not leak the information. So he goes after him, gets him to make more than one statement, and then pursues him for making a false statement, which certainly appears to me could be done against Joseph Wilson without a special prosecutor, but that is not being done.

What I find truly ironic is that unlike many of the previous rants about selective prosecution, this actually involves Republican and not Democratic defendants. What appears here is that if a case involves a Democrat, the department went too far; if it involves a Republican, it did not go far enough. Again, is there possible hypocrisy here?

Let me just point out, with Attorney General Gonzales, the hearings made clear over and over there was no illegal or unethical conduct. U.S. attorneys were let go for political reasons. We had a President named Clinton let go 92 U.S. attorneys, and it was purely for political reasons. There were allegations there was more skullduggery than that. None of that was pursued and not even with the new Justice Department.

I was informed that Bob Ney who was being investigated was told, "You either enter a plea by October 12 in 2006, or we will not negotiate," and if that were true, that is clearly this Justice Department using politics to help one party over another.

We had hearings; we have had information in meetings over the issues involving Congressman Jefferson. If the Justice Department could prove a fraction of what they swore to in their 80-page affidavit, they could have had him prosecuted long before the 2006

election, yet here all this time later, nothing has been done. The prosecution has not moved forward.

There were reports of other Democratic members of our body, according to published reports and newspapers, allegations of potential criminal wrongdoing. Nothing seems to be coming forward from Justice Department there.

We had election fraud that was alleged in Washington State, yet nothing was pursued there when it would have helped Republicans.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. GOHMERT. Oh, I did not see a clock. Well, let me just finish since I did not have a clock warning.

Ms. SÁNCHEZ. So finish your final thought. We are anxious to move the hearing along because——

Mr. GOHMERT. All right. Let me finish by saying this. There were 1,000 FBI files in the Clinton White House. Chuck Colson went to prison for one, and nothing was done to anybody. Those were laydown prosecutorial cases. So I have trouble getting all upset on this. Let's let justice take its course.

In closing comment, I ask one of the leaders in the Justice Department previously, "Is the veneer of appointed Republicans in your department just so thin that the Democratic underlings in the department just run things?" and he said, "The veneer is much thinner than you would ever imagine."

I yield back.

Ms. SÁNCHEZ. The gentleman yields back his time.

At this time, I would like to recognize the Chairman of the full Committee on the Judiciary, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Madam Chairwoman.

I appreciate these hearings, and the fact that we have two of our colleagues, Chris Cannon and Judge Gohmert, that I consider to be personal friends, joining me in this examination this afternoon. I think it is very critical.

I have been listening carefully, and both my friends have asked about other investigations that you in your wisdom have chosen not to pursue, but since they have listed them now publicly, I would like to meet with Chairwoman Sánchez and Ranking Member Cannon and determine which of these matters ought to be inquired into.

Gosh, Chris Cannon wants to even examine concerns about voting matters expressed by the Clinton and Obama campaigns. I notice that the McCain campaigns are not significant enough to reach his concern, but as important as the hearings were this morning, I say to Judge Gohmert, we are talking about people who have violated election laws and the criminal code, some of whom who have already been found guilty and some whose trials are pending, but you say we do not need to worry about the ones that have been found guilty and we cannot question the ones that are about to go to trial. What are we here for?

To me, Chairwoman and Members of this Committee, the single most important responsibility of the House Judiciary Committee between now and November 4 is to bring back the most honest and protected and guaranteed system of casting our ballots for governance that we have needed and have not had in a long time. Every-

one here knows that the elections of 2000 and 2004 created—well, there are books written on it now. There are lawsuits. There are people in prison.

But I want my Members on the House Judiciary Committee to be interested and concerned about how we get most people to feel comfortable about the assurances of their right to vote, the integrity of the voting process, and of the administration of justice itself. That is why we have jurisdiction over the Department of Justice. The reason is to make sure that the Justice Department does its job.

Now I have letters going back to May 12, 2006, where I have been asking Attorney General Alberto Gonzales to appoint a special prosecutor. I have letters going back about the subject matter that we are discussing today. I have about three letters, I think, so far to his successor, Attorney General Mukasey, asking for the letters and the information regarding our subject matter. So we are kind of getting a little bit tired of this.

Now the Republican National Committee is in big trouble in several respects, but the one that we are concerned with most today is the delaying of the prosecution and the interfering with the related civil case in the New Hampshire phone jamming case, the failure to bring any charges in the Sproul case. There was a videotape of destroyed Democratic registration cards and extensive evidence of numerous acts of registration and voting misconduct.

And what has our Committee, Madam Chair and gentlemen of the Committee, gotten out of this? Almost total stonewalling. Almost total stonewalling. And the patience of your Chairman is unlimited in these matters almost. But let me tell you if anyone thinks—without regard to whether it is D or R involved, we are going to continue an investigation and, as lawyers, take our experience to anywhere that it may lead, including, if necessary, subpoenas for the relevant documents.

Now this is directly to the attorney general of the United States whom I consider a friend of mine. You better get some documents answered fast, Mr. Attorney General, or you will be receiving a request from me to the Committee to issue a subpoena in this regard. I am not going to be slow-walked through the November 4 elections as if I have not been here 42 solid years.

Mr. CANNON. Would the gentleman yield?

Mr. CONYERS. With pleasure.

Mr. CANNON. I thank the gentleman and the Chairman of the Committee, and, in fact, as is almost always the case, we have large areas of agreement and only one point that I would like to make. The gentleman has talked about returning back to a state where we have confidence in the system.

We have a great deal more information today about the system. I think it is important, I think the gentleman would agree, that the American people need to have confidence in the system of how we vote and how the votes are counted, but that in comparison, rather than saying back to a system, I would hope that the gentleman would say we have always had flaws, maybe historically much greater flaws, than we have currently, but, I mean, characterizing that there is no place for known errors that should be left unprosecuted because I would hate the American people to listen

to this hearing and think that somehow in the vast majority of cases their votes are perverted or discounted or not counted appropriately.

I think it is pretty clear that the vast, vast majority of voting is done in ways where people show up at their local precincts, they are known by the people that hand out ballots, and those are not partisan people, but people who are committed to a process, and that where we have those rare areas, we ought to prosecute them. The disagreement here is only whether or not the appropriate thing is to oversee a prosecution in the midst of the prosecution as opposed to looking at the whole system to find out where those errors might be.

And, frankly, we have a much larger problem in America I think, than the current examples of problems with the voting, and that is with the discretion of prosecutors which is virtually unchecked, and that is an area where I think it is just vital that this Committee focus some attention, and so while I am not disagreeing largely, I would hope that the American people take from this that we are assiduous in looking at violations, but that the system as a whole has proven itself to be sound and that, when a person votes, his vote is overwhelmingly likely to be taken as it is and counted appropriately, and the elections that are based on his or her votes are appropriately decided.

Thank you.

I yield back.

Mr. CONYERS. I thank the gentleman, and I am sure that he is helping the citizens of this great country sleep more comfortably in their beds at night knowing that things are mostly okay and there are only a few things that we have to clean up in the process.

Well, we have a Department of Justice that is supposed to be doing the cleaning up. We are not a prosecutorial body. We do not come here to name who has committed crimes or who should stand trial to be found guilty or innocent. What we do is investigate and oversight and improve the legislative process as a result of that, and so that is all we are trying to do.

But when you have the level of politicization—and I am not naive about it. This did not start during this present Administration. I do not suggest that at all, and I hope that we can continue this hearing without becoming partisan in our comments. We are all avid Republicans and loyal Democrats and all that, but when we come to the hearings of this Committee, it is far more important that we try to prove to the American people rather than tell them most things are okay.

But many things are not okay, and no one knows better than Chris Cannon. We have problems with the machinery, the computer system, the touch screen. All of that is in disarray. We have a witness here who has written books about this subject matter, and so I am going to put the rest of my comments in the record, ask unanimous consent to put in the May 12, 2006, letter to then Attorney General Alberto Gonzales, and all the letters I have written to the present attorney general asking as politely as we can for the information that is needed for this Committee to have the kind of hearings that we deserve, and I thank the gentlelady for her generosity in allotting me time.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

This hearing brings together two of the most important subjects of the Committee's work: protecting and preserving the right to vote, and keeping politics out of the Department of Justice.

We will hear today about disturbing examples of vote suppression in New Hampshire, Nevada, and around the country, and about an even more disturbing failure of the Department to throughly address these matters.

Let me be specific and identify three serious problems with these cases, that call for serious solutions.

First, politics appears to have infected the phone jamming prosecution in several ways. Evidence suggests the Department did not investigate or prosecute higher ups at the RNC or White House, delayed the prosecution effort, and interfered with a related civil suit.

Second, despite compelling evidence of wrongdoing such as videotape of destroyed Democratic voter registration cards and on-the-record statements regarding political abuse of the voter registration process, the Department does not appear to have conducted any meaningful investigation in the Sproul case.

Third, the Department has simply stonewalled our oversight on these matters, refusing to provide complete answers to our questions and refusing to provide any documents in response to our requests.

This hearing, like others we have held before on these issues, represents an important step forward in solving these problems. Overall, I see three important steps that we should take to address these matters.

First, we must continue our aggressive investigation of these matters, including a subpoena for relevant documents if stonewalling continues.

Second, through hearings like this and other steps, we must expose and publicize these problems to provide public accountability for the Administration and to help ensure that Department decisions are made on a nonpartisan basis in connection with the 2008 elections.

Third, we must conduct regular staff meetings and Committee oversight of the Department's voting rights and prosecution practices, including a hearing with Attorney General Mukasey this summer.

I thank the Subcommittees for holding this important joint hearing and look forward to hearing from our witnesses today.

Ms. SÁNCHEZ. Without objection, the documents that you request be made a part of the record will be made a part of the record. I want to thank you for your opening statement.

[The information referred to follows:]

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May 12, 2006

The Honorable Alberto Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I write to ask that you appoint a special counsel to investigate whether any White House officials were involved in the New Hampshire phone jamming scheme during the 2002 elections. Justice Department prosecutors have obtained three convictions for conduct stemming from this crime. A special counsel outside of the Department is needed, however, because there are possible connections between the plot and the White House, as well as potential federal election law violations stemming from state Republican Party reporting of Native American tribe donations connected with Jack Abramoff, that have yet to be examined.

In 2002 in New Hampshire, Governor Jeanne Shaheen (D) and U.S. Rep. John Sununu (R) were running against each other in a closely-contested campaign for the U.S. Senate. It has now become clear that, in order to suppress Democratic voter turnout, Republican officials orchestrated a phone-jamming scheme for election day. The scheme involved hiring an Idaho telemarketing company, Mylo Enterprises, to flood Democratic get-out-the-vote phone banks in New Hampshire with phone calls so that potential voters would not be aware of where or when to vote.

While the Department has obtained three convictions and one indictment against political operatives who were involved in the plot,[1] outstanding issues remain. First, it has been

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[1] William Douglas, *Phone Charges Costing GOP*, PHILA. INQUIRER, May 1, 2006, at A3. James Tobin, the Republican National Committee's New England head in 2002 and the Bush-Cheney campaign regional director in 2004, was convicted of aiding and abetting telephone harassment and of conspiring to commit harassment. *Id.* Chuck McGee, a former New

uncovered that New Hampshire Republican officials, and a national Republican official convicted for his role in the scheme, called the office of Ken Mehlman, then the White House Political Director, twenty-two times in two days leading up to the election.[2] Mr. Mehlman has denied that his office knew of or was involved in the plot, but the Republican National Committee has avoided efforts at discovery regarding this issue, including testimony from Mr. Mehlman, in a civil suit filed by New Hampshire Democrats against the Republican Party.[3] In fact, there are reports that the Justice Department itself has attempted to halt discovery in the civil suit.[4]

Second, the Republican National Committee, which Mr. Mehlman now heads, has paid at least $2.8 million in legal fees for one of the defendants in the Justice Department prosecution, James Tobin. It is confusing why the Republican Party would pay the fees for an official who acted illegally and allegedly without authorization. Finally, there are new indications that the scandal may be connected to another Department investigation. In the days leading up to the election, the New Hampshire State Republican Committee received donations from Rep. Tom DeLay's political action committee and two Native American tribes connected to Jack Abramoff, the Mississippi Band of Choctaw Indians and the California Agua Caliente Band of Cahuilla Indians.[5] The contributions from the three groups approximately added up to the $15,000 cost of the phone jamming plot.[6]

As you are aware, under the Department's regulations, you are required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the

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Hampshire Republican Party Executive Director, pled guilty to devising the plan. *Id.* Allen Raymond, the head of a company that linked Republican campaigns with telemarketers, pled guilty to carrying out the plot. *Id.* Finally, this just past March, Shaun Hansen, a co-owner of Milo Enterprises, was indicted for having his employees place the voter suppression calls. *Id.*

[2]Thomas B. Edsall & David A. Fahrenthold, *2002 N.H. Scandal Shadows GOP Anew*, WASH. POST, Apr. 14, 2006, at A6.

[3]*Id.*

[4]Sarah Schweitzer, *Parties Call Foul over N.H. Phone-Jamming Suit*, BOSTON GLOBE, Oct. 23, 2004, at A1.

[5]Cragg Hines, *Delay's Scandals: Maybe not Just for Texas Anymore*, HOUS. CHRON., Apr. 19, 2006, at B9.

[6]*Id.*

investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."[7] There is little doubt that all three factors are met in this case.

First, it is clear that a criminal investigation is warranted. The Department already has begun investigating the scandal and prosecuting individuals who were involved. The fact remains, however, that the Department appears not to be reviewing the extensive contacts between the plotters of the phone jamming and high-level Republican officials.

Second, there would be a conflict of interest for the existing Department prosecutors to investigate this matter. The U.S. Attorney responsible for the region, Thomas P. Colantuono of New Hampshire, was appointed by the President and would be investigating his own superiors. Also, the Election Fraud Unit at Main Justice in Washington, which apparently is leading the New Hampshire investigation, would face similar issues. Additionally, you served as Counsel to the President during the period in question and also should be recused from the matter for potential conflicts of interest. In fact, federal law requires you to issue regulations governing recusal of Department officials having personal, financial, or political conflicts of interest.[8]

Third, it is unquestionable that the public interest would be served by the appointment of an outside special counsel. The right to vote is one of the most important possessed by citizens of this country. The government must make every effort to indicate to its citizenry that it will protect that right no matter the cost. The last two presidential elections and the 2002 New Hampshire Senate campaign showed that, despite the successes of the Voting Rights Act and other measures, there are still those who encourage disenfranchisement. Only the appointment of a special counsel will show that the government will not tolerate these attempts.

I would appreciate your prompt response as to whether you will appoint an outside special counsel to review any potential involvement by Republican officials in Washington in the phone jamming efforts and, if not, the reason for your decision. Please reply through the

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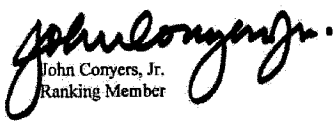
[7] 28 C.F.R. § 600.1 (2002).

[8] 28 U.S.C. § 528.

Judiciary Committee Democratic office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.
Ranking Member

cc: Honorable William E. Moschella
Honorable F. James Sensenbrenner, Jr.

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October 3, 2007

The Honorable Peter D. Keisler
Acting Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington DC, 20530

Dear Mr. Attorney General:

We write seeking answers to specific questions in order to follow up on requests by Members of Congress regarding the Department of Justice's handling of several significant instances of apparent voter suppression. These cases – the notorious "phone jamming" case that arose in New Hampshire in 2002 and the equally troubling activities of a firm known as Sproul & Associates during the 2004 election cycle – present extremely disturbing allegations of interference with voters' rights. Serious concerns remain, however, regarding whether the Department has adequately investigated and prosecuted these cases.

A. New Hampshire Phone Jamming

The first matter is the jamming by Republican political operatives of telephones belonging to the New Hampshire Democratic Party and a Manchester Fire Fighters Association on election day 2002. This brazen disruption of get out the vote efforts and election day communications has led to civil litigation and the criminal prosecution of three of the perpetrators in New England, including Allen Raymond, the head of the Republican-affiliated firm that carried out the jamming, Charles McGee, the 2002 Executive Director of the New Hampshire Republican Party, and James Tobin, the 2002 Regional Political Director for the Republican National Committee and the New England Director for President Bush's 2004 reelection campaign.[1]

[1] Klein, *White House Pressed on N.H. Tactic*, Boston Globe, Apr. 13, 2006.

Despite those efforts, however, serious questions have been raised by Members of Congress and the press about the Department's handling of this sensitive matter and, in particular, whether politics has improperly influenced the investigation.[2]

The most important open issue is whether the possible role of White House officials and Republican Party political leaders has been sufficiently investigated. Twenty-two phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs starting at 11:20 am on election day 2002 and running past 2:00 am on election night, and one hundred and ten calls were placed between James Tobin and the White House in the two months surrounding the election.[3] Also, the Republican National Committee has paid millions in legal fees to defend Mr. Tobin, a decision that was apparently made in consultation with the White House and that is hard to square with any view of Mr. Tobin as a rogue operative.[4] Other troubling reports indicate that the funds used to pay for the phone jamming may have been funneled from Native American tribal donors to the New Hampshire Republican Party by disgraced GOP lobbyist Jack Abramoff and/or the fundraising machinery of former Representative Tom Delay.[5]

Despite this compelling evidence of Washington involvement in the election day jamming of Democratic phone lines, however, the FBI Special Agent working this matter allegedly was instructed not to follow investigative leads back to Washington.[6] In addition, the attorney for one of the phone jamming defendants has stated that he was told by a federal prosecutor that "all decisions in this case had to be made subject to the approval of the Attorney General himself, who had to sign off on all actions in this case," an unusual state of affairs for a criminal prosecution, particularly since neither Attorney General Ashcroft nor Attorney General Gonzales recused themselves from these matters, despite their connections to political and

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[2] September 18, 2007, Letter from Rep. Paul Hodes to Rep. John Conyers, Jr.; Editorial, *The New Hampshire Phone Scam*, New York Times, Sept. 17, 2007.

[3] Edsall & Fahrenthold, *2002 N.H. Scandal Shadows GOP Anew*, Washington Post, Apr. 14, 2006; Kiel, *GOP Jams Democracy*, In These Times, May 29, 2006.

[4] Cohen, *A Small-Time Crime With Hints of Big-Time Connections Lights Up The Net*, New York Times, Apr. 17, 2006; Edsall, *GOP Official Faces Sentence in Phone-Jamming*, Washington Post, May 17, 2006; Klein, *note 1 supra*.

[5] Hines, *Delay's Scandals: Maybe Not Just For Texas Anymore*, Houston Chronicle, Apr. 19, 2006; Cohen, *note 4 supra;* Kiel, *note 3 supra*.

[6] March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 5.

administration officials implicated by the matter.[7] It has also been reported that Department officials affirmatively blocked the taking of discovery in related civil litigation that may have shed light on these key issues.[8]

Finally, it has been asserted that Mr. Tobin's name was kept out of court filings made prior to the 2004 election, and that he was not actually indicted until several weeks after the election, even though the facts of his involvement in this election-related misconduct were well known to the Department throughout this period.[9] That decision allowed Mr. Tobin to work on the Bush Cheney campaign through virtually all of the 2004 election cycle, and would even have allowed him to serve the campaign on Election Day 2004 if he had not been identified as a participant in the phone jamming by a journalist, despite the apparently well-documented evidence possessed by the Department at that time that Mr. Tobin had previously participated in serious election-related misconduct.

B. Sproul & Associates

The second matter of concern is the charge that a Republican-connected voter registration firm; Sproul & Associates, engaged in serious misconduct such as declining to register Democratic voters and destroying registration cards collected from Democratic voters in several states prior to the national elections in 2004.[10] Evidence of such misconduct was widely broadcast in the month prior to those elections, when a television news program in Nevada obtained destroyed registration cards from the trash and a former Sproul employee described in an affidavit being trained to register only Republicans and to tear up Democratic registrations in that state.[11] In Pennsylvania, Oregon, and West Virginia, former Sproul employees, as well as individuals who had refused to work for Sproul once the nature of the work was made clear to them, have similarly described destroying Democratic registration cards and being trained to

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[7] March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 3.

[8] Schweitzer, *Parties Call Foul over N.H. Phone-Jamming Suit*, Boston Globe, Oct. 23, 2004.

[9] March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 3.

[10] See Manjoo, *Sproul Play*, Salon, Oct. 21, 2004.

[11] Ritter, *Nevada Judge Declines to Reopen Voter Registration in Vegas Area*, Las Vegas Sun, Oct. 15, 2004; Manjoo, *note 10 supra*.

selectively register only Republican voters and to discourage Democrats from registering.[12] One such person stated that "fooling people was the key to the job" and that "canvassers were told to act is if they were nonpartisan, to hide that they were working for the RNC, especially if approached by the media."[13] At the same time, public libraries around the country reported receiving requests to set up registration tables from the firm, which asserted it was working with or on behalf of the non-partisan organization "America Votes," even though Sproul had no connection to that organization.[14]

The alleged misconduct described by the many witnesses quoted in these articles would clearly suppress votes and violate the law.[15] Because of the multiple jurisdictions involved and the proximity of this apparent misconduct to a major federal election, it is our understanding that the investigation would have been coordinated or handled by officials at Main Justice, and in particular the Public Integrity Section and its election crimes branch. Yet, to this point, we are not aware of any enforcement action, criminal or civil, by the Department on this matter.

C. Open Questions

Congressional interest in these important cases is not new. Regarding the phone jamming scandal, Chairman Conyers wrote Attorney General Gonzales on May 12, 2006, calling for the appointment of an independent special counsel to investigate the controversy. That request was rejected by the Department with the bald statement that the Department would "take all steps necessary to insure public confidence in the fairness of [the phone-jamming] investigations."[16] On the Sproul matter, in October 2004, Senators Leahy and Kennedy sent a detailed letter to Attorney General Ashcroft asking a series of specific questions.[17] That letter was not answered

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[12] Vartabedian, *GOP Consulting Firm Investigated for Voter Fraud Claims*, Los Angeles Times, Oct. 14, 2004; Roddy, *Voter Registration Workers Cry Foul*, Pittsburgh Post-Gazette, Oct. 20, 2004; Kuhn, *Vote Fraud Charges Out West*, CBS News, Oct. 14, 2004; Manjoo, *note 10 supra*.

[13] Manjoo, *note 10 supra*.

[14] Vartabedian, *note 12 supra*; Montini, *"Shameful" To Some is Nathan Sproul's "Badge of Honor,"* Arizona Republic, Oct. 26, 2004.

[15] See United States v Haynes, 977 F.2d 583 (6th Cir. 1992) (affirming conviction of county Republican official who withheld and agreed to destroy Democratic and Independent voter registration cards obtained during registration drive under 18 U.S.C. §§ 241-42).

[16] July 3, 2006, Letter from Assistant Attorney General William E. Moschella to Rep. John Conyers, Jr.

[17] October 14, 2004, Letter from Sens. Patrick Leahy and Ted Kennedy to Attorney General John Ashcroft.

until after the 2004 vote was taken, and the eventual response was entirely perfunctory, declining to answer any of the Senators' questions and stating merely that "All such matters will be investigated and, where appropriate, prosecuted to the full extent of Federal law."[18]

These cursory assurances are clearly unsatisfactory in light of the specific concerns described above and the significant evidence that has emerged of politicization of Department functions, and in particular of political pressure regarding voting-related cases, revealed by the Judiciary Committee's investigation into the firing of United States Attorneys during 2006. While the Congress is still seeking critical information to fully understand the U.S. Attorney firings, it is clear that several were motivated at least in part by partisan displeasure with the fired prosecutors' approach to so-called "vote fraud" cases.[19] In the wake of these revelations, our concern that these vote-related matters may not have received sufficient attention is acute.

Accordingly, we seek complete answers to the following questions no later than October 19, 2007:

1. Please describe the course, scope, and current status of the Department's investigative and prosecutorial efforts regarding both the Phone Jamming matter and the Sproul matter described in this letter, including a description of all major investigative steps;

2. Please identify all federal criminal prosecutions or civil or administrative enforcement actions, if any, that have occurred related to the Phone Jamming matter or the Sproul matter, including both closed and open actions;

3. Please identify all Department offices, divisions, and entities involved in the Phone Jamming and Sproul investigations at any time;

4. Please describe all steps taken to determine whether or not any White House personnel, Bush/Cheney campaign personnel, or other officials or leaders of any Republican Party organization had any knowledge of, involvement in, or potential liability regarding the Phone Jamming or Sproul matters.

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[18] November 16, 2004, Letter from Assistant Attorney General William E. Moschella to Sen. Patrick Leahy.

[19] See July 24, 2007, Memorandum from Chairman Conyers to Members of the Committee on the Judiciary re Consideration of Report of the Refusal of Former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten to Comply With Subpoenas By the House Judiciary Committee at 3-10.

5. Please identify any limitations or constraints placed by Administration or Department officials on the Phone Jamming and Sproul investigations, including limits on the scope of the investigations, on investigative techniques that could be employed, on permissible subjects or targets of the investigations, on geographic locus of the investigation, or any other limitations on the investigations' reach. In particular, specifically address the claims that a) the FBI agent investigating the Phone Jamming matter was told not to take any actions regarding persons or events in Washington D.C., and b) all case decisions regarding the Phone Jamming matter had to be personally approved by the Attorney General.

6. Please explain whether and how the Department prevented oral or written discovery from being taken in civil litigation regarding the Phone Jamming, matter including providing the rationale for such actions if they were taken, identifying the persons who made any such decision, and whether the Department's objections to civil discovery were ever lifted or resolved.

7. Please identify all contacts or communications regarding the Phone Jamming or Sproul matters, if any, between Department personnel at any level and

   - any White House personnel or officials;
   - any leaders, officials or operatives of state-level or national Republican party organizations or political campaigns, including any Bush Cheney campaign; or
   - any elected officials at any level of government.

* * * * *

Over forty years ago, the Supreme Court observed that "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 U.S. 533, 562 (1964). Yet public concern about the fairness of our elections and the Department's commitment to protecting and enhancing all citizens' right to vote only seems to increase year after year, and election after election, and recent revelations about the Department's approach to voting matters have only exacerbated the problem. For this reason, we hope that you will join with us in clearing the air about the two especially notorious cases referenced in this letter, and that the Department will commit to working with the Congress to begin the process of rebuilding public confidence on this most important of issues.

The Honorable Peter D. Keisler
Page Seven
October 3, 2007

Please direct any questions to the staff at the House Judiciary Committee, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation, and we look forward to receiving your response by October 19th.

Sincerely,

John Conyers, Jr.
Chairman

Jerrold Nadler
Chairman, Subcommittee on the Constitution, Civil Rights and Civil Liberties

Robert C. "Bobby" Scott
Chairman, Subcommittee on Crime, Terrorism and Homeland Security

Linda T. Sánchez
Chair, Subcommittee on Commercial and Administrative Law

cc: Hon. Lamar S. Smith
Hon. Trent Franks
Hon. J. Randy Forbes
Hon. Chris Cannon
Hon. Paul Hodes
Hon. Brian Benczkowski

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December 20, 2007

The Honorable Michael Mukasey
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

On October 3, I (along with several other Members of the House Judiciary Committee) wrote to Acting Attorney General Keisler regarding the Justice Department's handling of the New Hampshire phone jamming case and other matters (letter enclosed). In that case, Republican political operatives jammed the telephones of the New Hampshire Democratic Party and Manchester Fire Fighters Association on Election Day 2002, in an effort to disrupt get out the vote operations. Although over two months have passed, I have yet to receive any response to the questions posed in that letter.

One concern about the Department's handling of the New Hampshire matter stated in that letter is that Department officials may have intentionally delayed the indictment of James Tobin, the 2002 Northeast Regional Director for the Republican National Committee, until after the 2004 Presidential election to minimize the political impact of the indictment on Republican electoral interests. That decision allowed Mr. Tobin to serve the 2004 Bush-Cheney campaign through virtually the entire 2004 election cycle – indeed, if a journalist had not publicly exposed Mr. Tobin's role in this serious election day misconduct(a role that was well-known to the Justice Department officials controlling the timing of the indictment), it appears that Mr. Tobin would have served the campaign on Election Day itself.

Now, important new information has come to light that corroborates that exact allegation and raises further suspicion about the other issues that the Judiciary Committee has been investigating. According to the McClatchy newswire, an official "with detailed knowledge of the investigation" confirms that "senior" officials of the Department "slowed the inquiry," which

"protect[ed] top GOP officials from the scandal until the voting was over."[1] The McClatchy piece contains a detailed timeline of these events, asserting that the frontline prosecutor handling this case aggressively pressed for action, but that various Justice Department officials ordered delays, moved slowly on requests for action, and resisted his efforts to expand the probe.

These charges are of great concern to me. As you know, the United States Attorney firing scandal has revealed that former Department leadership brought an unreasonable and improper focus on political considerations into Department decisionmaking, and that political officials at the White House had unprecedented and entirely improper access to Department officials (a policy that I appreciate your timely steps to correct). That problem appears to have infected personnel decisions at both the career and political level, and there is grave concern that it may have led to politically selective prosecutions such as the bringing of questionable indictments of Democratic officials or discouraging meritorious prosecutions of Republicans. Our investigation into the firing of David Iglesias has revealed direct political pressure on the U.S. Attorney regarding the timing of an indictment to serve Republican electoral interests, charges that resonate in the McClatchy New Hampshire story described above.

Against this backdrop, it is clear that the Judiciary Committee must press on with its investigation of this serious matter. Accordingly, in furtherance of the Committee's investigation, and in accord with the March 29th agreement between the Department and the Committee in which the Department previously made top officials available to the Committee under mutually agreeable procedures, I request information and documents and the taking of interviews in this matter.

While some Department officials involved in the matter are known to us, many others are not. Accordingly, as a first step in scheduling productive interviews, I request a list of all Department personnel, current and former, who had input into the decisions whether to investigate the phone jamming matter and the scope of any such investigation, and all Department personnel, current and former, who had input into the decision whether to bring any indictments in the phone jamming matter, including the scope and timing of any such indictments. Please include the title and dates of Department service for each such person.

In addition, I request that the Department produce to the Judiciary Committee all documents in its possession relevant to the approval, timing, and scope of any indictments in this matter, and all documents relevant to the approval, timing, and scope of the Department's .

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[1] Gordon, *Official: Justice Dept. Sowed Probe Into Phone Jamming*, McClatchy Washington Bureau, Dec. 19, 2007.

investigation of these issues, including both internal documents and communications with other government officials and private parties

I am hopeful that we can proceed together in a cooperative and voluntary manner on this important issue. Accordingly, please provide the list of personnel requested above no later than Friday December 28, 2007, so that interviews can be timely scheduled in the new year, and please produce the requested documents and a complete response to my October 3, 2007, letter no later than Friday, January 5, 2008. Responses should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation.

Sincerely,

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Robert C. "Bobby" Scott
Hon. Linda T. Sánchez
Hon. Trent Franks
Hon. Louie Gohmert
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TRENT FRANKS, Arizona
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JIM JORDAN, Ohio

January 31, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

One week from today, you will testify for the first time before the House Judiciary Committee. I very much look forward to a frank and productive discussion that will shed light on your approach to the challenging issues facing the Department of Justice (DOJ) and our nation at this time. In order to make the most of our limited time, I am sending the following questions about issues of interest to myself and other Committee members. We would appreciate receiving your responses, along with your prepared testimony, no later than the close of business on February 5, 2008, so that all Committee members may have an opportunity to review them before you testify next week. In addition, please provide responses to the previous Committee letters to which there has not yet been a response, including letters to the Department of May 8, November 9 and December 20, 2007 and January 10, January 15, January 23, and January 29, 2008.

1. **Politicization of the Department of Justice** - Former Reagan Attorney General Richard Thornburgh is just one of a number of former DOJ officials who have expressed concern about the politicization of the Department in recent years, including U.S. Attorneys' offices, as reflected in the forced resignation of U.S. Attorneys in 2006 and other events.

    a. In addition to your revisions to DOJ policy concerning contacts between DOJ personnel and White House officials regarding pending matters, which I commend, describe any other steps you have taken to address this concern, whether with respect to the hiring of career personnel, restoring the traditionally apolitical approach to prosecution of the U.S. Attorney corps, communicating to the entire Department and the public that partisan politics must be checked at the door, or otherwise.

b. The website TPMMuckraker, which played an important role in providing information to the public concerning the U.S. Attorney scandal, revealed that it has recently been removed from DOJ's press release email distribution list. Who made this decision and why, and was there a change in policy in press release distribution after you became Attorney General?

2. **Waterboarding and Torture** – Your January 29, 2008, letter to the Chairman and members of the Senate Judiciary Committee, which preceded your Senate testimony on the same topic the following day, states that "There are some circumstances where current law would appear clearly to prohibit the use of waterboarding. Other circumstances would present a far closer question."

   a. What specific "current law" were you referring to that would prohibit waterboarding "in some circumstances"? What "circumstances" were you referring to?

   b. Are there any circumstances in which you believe that the waterboarding of a captured American soldier would be lawful?

   c. Yesterday, Senator Durbin asked if you had reviewed a 2005 legal opinion that the New York Times described as providing "explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures."[1] This memorandum, authored along with others in this period by Steven Bradbury, was apparently approved by former Attorney General Gonzales over the objections of his Deputy Jim Comey, who stated that the Department would be "ashamed" if it became public. You indicated that you had not reviewed these memoranda but that you would do so. I urge you to complete that review and state whether you agree with the legal reasoning that they contain and would have approved the opinion.

3. **Selective Prosecution** – During your confirmation hearing before the Senate Judiciary Committee, you pledged in response to a question from Senator Schumer to look into the Siegelman prosecution in Alabama, which was the subject in part of a Joint Hearing of two House Judiciary Subcommittees. You also stated that you would review a recent study finding that, during the Bush

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[1] Shane, Johnston, and Risen, *Secret U.S. Endorsement of Severe Interrogations*, New York Times, Oct. 4, 2007.

Administration, Democratic officeholders have been investigated by Department prosecutors six times more often than Republicans.

a. Please describe what steps you have taken to familiarize yourself with the Siegelman matter, including the allegations of politicization that Senator Schumer referenced in his question to you? Did you review the record of our Subcommittees' Joint Hearing on October 23, 2007?

b. Have you taken any actions or formed any views about that matter and the allegations of political pressure referred to by Senator Schumer and discussed at our hearing?

c. Please describe what steps you have taken to familiarize yourself with the study regarding the relative frequency of investigations of Democrats and Republicans. Have you taken any actions or formed any views about that issue in response to your review of the study?

4. **Investigation Into Destruction of CIA Tapes –** Justice Department regulations require you to appoint an outside special counsel when: 1) a "criminal investigation of a person or matter is warranted," 2) the investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and 3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter." Although you have publicly stated that you do not intend to appoint a special prosecutor to investigate whether the CIA violated the law when it destroyed videotapes of terrorist suspect interrogations, please address the following questions.

a. In light of the fact that the Department may have been consulted on matters and decisions which are central to the investigation, why do you believe that this matter poses no risk of a conflict of interest for the Department and that the appointment of a special counsel from outside the government would not be in the public interest?

b. What is the scope of AUSA Durham's investigative authority and reporting requirements and have any limitations on the investigation's scope, jurisdiction, subject matter and methods been placed on him? In particular, although you testified yesterday that he may investigate the issue of what was shown on the tapes as part of the motive for their destruction, does the scope of the investigation include the legality of the conduct shown on the tapes

and of the alleged failure to provide the tapes to the 9/11 Commission or to any federal court?

c. What attorney and other resources will be dedicated to the investigation?

d. What role and authority will the Deputy Attorney General have in this investigation?

5. **Vote Suppression and Civil Rights Enforcement** – In remarks you made at a Martin Luther King, Jr. Day Prayer Breakfast on January 9th, you said that vigorous, fair, and impartial enforcement of the civil rights laws is among your "top priorities" as Attorney General. You also stated that the Civil Rights Division will play a crucial role through monitors and other means in assuring that the laws are scrupulously observed as our nation chooses a new President.

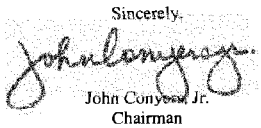
a. Despite complaints of voter suppression and intimidation, this Administration has brought fewer cases under Section 2 of the Voting Rights Act, and brought them at a significantly lower rate, than any other administration since 1982. What are your plans for ensuring that Section 2 is vigorously enforced and enforced in a fair and impartial manner?

b.. What actions is the Department preparing to take to address complaints of caging, intimidation, and other campaign tactics intended to suppress the minority vote?

c. As we approach the 2008 Presidential election and the 2010 Census, there will likely be an upsurge in submissions under Section 5 of the Voting Rights Act. What steps are being taken to prepare for and respond to an increase in Section 5 submissions?

Please send your responses to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, D.C. 20515 (tel.: 202-225-3951; fax: 202-225-7680). Thank you for your prompt attention to this matter, and we look forward to hearing from you next week.

Sincerely,



John Conyers, Jr.
Chairman

cc: Honorable Lamar S. Smith

JOHN CONYERS, JR., MICHIGAN
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STEVE KING, IOWA
TOM FEENEY, FLORIDA
TRENT FRANKS, ARIZONA
LOUIE GOHMERT, TEXAS
JIM JORDAN, OHIO

February 29, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Enclosed you will find additional questions from members of the Committee on the Judiciary to supplement the information already provided at the February 7, 2008, hearing. Please deliver your written responses to the attention of Renata Strause of the House Committee on the Judiciary, 2138 Rayburn House Office Building, Washington, DC, 20515 no later than March 14, 2008. If you have any further questions or concerns, please contact Renata Strause at (202) 225-3951.

As these questions are submitted to you as part of an oversight hearing focused in part on your personal knowledge of certain matters, the Committee would ask that you review each answer carefully to make sure you have given your direct and complete answer to the question asked. Once you have done so, you may also provide whatever further explanation or context you believe may be helpful in understanding your answer.

As you will notice from the first question in the attachments, we are still awaiting responses to questions in our January 31, 2008, letter to you, and, given that those questions have been outstanding for an extended period of time, we request that you respond to those specific questions by March 7, 2008. We appreciate your cooperation in this matter, and we await responses to our questions.

Sincerely,

John Conyers, Jr.
Chairman

Enclosure

cc: Hon. Brian Benczkowski
Hon. Lamar S. Smith

QUESTIONS FOR THE RECORD

ATTORNEY GENERAL MICHAEL MUKASEY
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE

February 7, 2008

Questions Submitted by the Honorable John Conyers, Jr.
Chairman of the House Judiciary Committee

Outstanding Questions

1. The Committee sent you several questions in a January 31, 2008, letter in advance of the hearing, and after having not received responses to them prior to the hearing, we reiterated that request via an e-mail to the head of the Office of Legislative Affairs, Brian Benczkowski, immediately following the hearing. As of today, we still have not received any responses to those questions. Please respond to the questions in that letter by C.O.B. March 7, 2008.

FY 2009 Budget

2. Do you support the President's proposal to cut the budget of the Office of Violence Against Women by $120 million which may require closure of many shelters and rape crisis centers? If so, why?

Waterboarding and Torture

3. The Committee has twice written to the Department, including to you personally, asking for memoranda on the legality of CIA interrogation methods, reportedly including waterboarding, that the Office of Legal Counsel prepared. As you know, one reason Mr. Bradbury has not been confirmed is because those memoranda have not been turned over to the appropriate congressional committees. Since you have assured Congress that waterboarding is no longer a technique available to the CIA or Department of Defense, will you now supply those memoranda to our committee? If not, why not?

4. In response to my questions during the hearing, you expressed a willingness to have a dialogue regarding the Committee's desire to acquire the legal memoranda authorizing the CIA's enhanced interrogation techniques. Do you remain committed to that dialogue in an effort for the Committee to obtain those memoranda? If not, why not?

5. During the hearing you testified that you would not authorize a criminal investigation into the C.I.A.'s use of waterboarding because they relied on Department of Justice advice. It is the Committee's understanding that a memo authorizing waterboarding was not written until 2005, well after the waterboarding occurred.

a) There was another memo authorizing aggressive interrogations that was authored in 2002. Is it true that the Department revoked that memo?

b) Is it your opinion that a person who relies on *any* Department opinion, especially one that has been revoked, is immune from criminal investigation or prosecution? If so, please explain.

c) As you well know, Department regulations require the appointment of an outside special counsel if an investigation would cause the Department to have a conflict of interest. If you believe, as your testimony indicated, that a person cannot be criminally prosecuted if he/she relied on Department opinions, doesn't that mean that the Department has a conflict of interest and that an outside special counsel should be appointed. If not, please explain.

d) In light of the possible conflict posed by the Department's investigation, wouldn't it be more prudent for an outside special counsel to assess this issue and determine, for example, if the Department's advice was lawful or the person's reliance on it was reasonable. If not, why not?

e) In light of the fact that the Office of Professional Responsibility is investigating the circumstances surrounding the Department's opinions that established a legal basis for the CIA's interrogation program, why do you still maintain that Mr. Durham's investigation should not also encompass the enhanced interrogation techniques depicted on the destroyed videotapes?

Political Independence

6. Did you select or have input into the selection of your leadership team, including your Chief of Staff, Deputy Attorney General, Associate Attorney General, and the heads of key components such as the Criminal Division, the Civil Rights Division, the Office of Legal Counsel, and the Office of Public Affairs?

a) What type of input did you have?

b) Did you have veto power over the individuals selected for these positions?

c) Were any individuals suggested by you for any of these positions ultimately not selected?

New Hampshire Phone Jamming Matter

7. On October 3, four members of the Committee sent your predecessor a letter about two major vote suppression matters in New Hampshire and Nevada and elsewhere. That letter posed seven specific questions about the Department's handling of these cases.

   On December 20, Chairman Conyers followed up after a disturbing news article reported that senior Department officials had "slowed the inquiry" in order "to protect top GOP officials." That letter asked the Department to provide information that would allow cooperative interviews on this subject to be conducted.

   The Department responded on January 22, 2008 and on February 11, 2008. The Department's response ignored many of the specific questions posed in the members' October 3rd letter. Therefore, please answer the following remaining questions:

   a) Please identify any limitations or constraints placed by Administration or Department officials on the Phone Jamming and Sproul investigations, including limits on the scope of the investigations, on investigative techniques that could be employed, on permissible subjects or targets of the investigations, on geographic locus of the investigation, or any other limitations on the investigations' reach. In particular, specifically address the claims that all case decisions regarding the Phone Jamming matter had to be personally approved by the Attorney General.
   b) Please identify all Department offices, divisions, and entities involved in the Phone Jamming and Sproul investigations at any time.
   c) Please describe all steps taken to determine whether or not any White House personnel, Bush/Cheney campaign personnel, or other officials or leaders of any Republican Party organization had any knowledge of, involvement in, or potential liability regarding the Phone Jamming or Sproul matters.
   d) Please explain why the Nevada and related matters were considered not worthy of charges where numerous witnesses described to the press engaging in serious misconduct such as refusing to accept registrations from Democratic voters and destroying Democratic voter registration cards.

Protecting Overseas Contractors/Jamie Leigh Jones Rape Case

8. On December 19, 2007, the Crime Subcommittee held a hearing about the awful case of Jamie Leigh Jones – who reports that she was raped by coworkers in the Iraq green zone and who has struggled for years to bring attention, and prosecution resources, to her case and many other cases like it. The Subcommittee was very disappointed that the

Department did not send a witness to this hearing despite our invitation or respond fully to the December 11, 2007, letter from Chairman Conyers and Representative Poe on the issue.

a) How would you respond to the suggestion that this indicates that the Department places a low priority on the issue?

b) Would you be willing to provide a witness for a future hearing? If not, why not?

c) Please answer the question from that letter as to:

i) how many MEJA cases have been referred to the Department;
ii) how many remain open; and
iii) how many involved sexual assault.

9. On January 23, 2008, Chairman Conyers, Chairman Scott, and Representative Ted Poe wrote to you and the Department of Defense seeking further information on the Departments' indications that they would put in better procedures for this sort of case and asking for a briefing and some data on these types of cases. You have not responded to this letter. When will you respond to the letter?

10. What steps have you taken to ensure that overseas contractor cases, including alleged sexual assaults, do not fall through the cracks? Please explain.

Limited authority of special prosecutor Durham and national security issues in the CIA tape destruction investigation

11. Chairman Conyers sent a letter on January 31, 2008, following a letter from 18 Committee members on January 15, 2008, asking you to explain the scope of AUSA Durham's investigative authority and articulate any limits that might be placed on the investigation's scope, jurisdiction, subject matter and methods.

During your January 30, 2008, Senate testimony, Senator Leahy raised concerns about the lack of independence of AUSA Durham who, since he is a current AUSA and appointed under 28 U.S.C 510, could have been given the plenary authority that the Acting Attorney General granted to Patrick Fitzgerald to investigate the Valerie Plame case but wasn't.

a) Is it your position that any information or evidence can be withheld from AUSA Durham?

b) If yes, then:

i) On what grounds?
ii) Who would make that decision?
iii) What, if any, recourse does AUSA Durham have?
iv) Can he appeal to a court?

c) If no, then:

i) At the conclusion of the investigation, if AUSA Durham concludes that prosecution is appropriate, do you retain the power to override that decision? If so, on what grounds?
ii) If the prosecution can ultimately be squashed over AUSA Durham's objection, then why not specify that Mr. Durham has the same plenary authority as granted Mr. Fitzgerald? Please explain.

State Secrets Privilege

12. In recent cases challenging the constitutionality of rendition to torture or warrantless wiretapping, the Justice Department has argued that the government's decision that the state secrets privilege applies must be given "utmost deference" by judges. Under this standard, how and in what circumstances can a court ever disagree with the Government? Please explain.

Cooperation with Investigations

13. Have you directed all DOJ personnel – including politically appointed personnel in the Office of Legal Counsel and elsewhere – to fully cooperate with the Office of Inspector General (OIG) and Office of Professional Responsibility (OPR) in all pending investigations?

14. To your knowledge, have DOJ personnel asserted Executive Privilege or other privileges in response to inquiries by OIG/OPR?

15. Have you directed DOJ personnel not to assert Executive Privilege in response to inquiries? If not, why not?

16. To your knowledge, has the White House or Office of Vice President attempted in any way to limit the OIG's or OPR's access to information in the possession of DOJ attorneys – in OLC or other components – either by instructing them not to cooperate, or instructing them to assert Executive Privilege? If so, please explain.

17. Will you discipline or fire persons who do not fully cooperate with the OIG or OPR? If

not, why not?

18. As you know, OIG and OPR are undertaking an investigation into the dismissal of United States Attorneys and other allegations of politicization in your Department. Are any former or current employees of the Justice Department refusing to cooperate in that investigation? If so, who?

The Department's Representations Concerning the Jose Padilla Case

19. For 3 ½ years, DOJ argued that national security required the military detention of Mr. Padilla, an American citizen arrested in the U.S., as an unlawful enemy combatant. Representations were made to you as a federal judge and to other courts. But within a few weeks of the Fourth Circuit's opinion in September, 2005, approving the military detention of Padilla based on DOJ's representations, the Administration made the decision to move Padilla to civilian courts to face federal charges, thus mooting out Supreme Court review. The Fourth Circuit commented that DOJ's actions created "at least an appearance that the government may be attempting to avoid consideration of our decision by the Supreme Court." Padilla v. U.S., 432 F.3d 582, 583 (4th Cir. 2005).

    The Committee is aware that Padilla has since been found guilty in the civilian courts – and express no opinion on that case – but remain concerned that an American was placed in custody for years based upon representations that even the Fourth Circuit – hardly a liberal court – has concluded may not have been credible. The court specifically commented that the result may "ultimately prove to be substantial cost to the government's credibility before the courts." 432 F. 3d at 587.

    a) The Committee recognizes that you were not the Attorney General when this occurred, but that it was a matter with which you had significant familiarity as a federal judge. As Attorney General, though, have you examined, or asked the Office of Professional Responsibility (OPR) or the Inspector General, to examine the source and truthfulness of the representations that Department of Justice attorneys made to the various courts – including you – in support of the Administration's efforts to have Mr. Padilla held? If no, will you do this?

    b) Isn't it standard procedure that OPR investigate allegations that a DOJ attorney made false assertions before a federal court that were not credible?

    c) Particularly in light of the concern that this episode may substantially harm DOJ's credibility before the courts, have you examined the question of who made the decision to transfer Mr. Padilla to the federal courts? If not, why not?

    d) To what extent was avoiding Supreme Court review a factor in that decision?

Jena 6 and Related Matters

20. As you know, this Committee held a hearing last year to investigate the Jena 6 incident, in which four black juveniles in Louisiana were charged with attempted murder and jailed following a school yard fight, and to examine the failure by U.S. Attorney Donald Washington to pursue hate crimes charges against the two white students who retaliated by hanging nooses from a school yard tree. Since the Jena 6 incident, there have been numerous high profile incidents of noose hangings, including one found in a black Coast Guard's bag, one on a Maryland college campus, and on the office door of a black professor at Columbia University in New York, just to name a few.

    a) But what is the status of hate crimes charges within the Department concerning these deplorable noose-hanging incidents at this time, including the specific incidents I have just listed?

    b) Do you believe that the federal hate crimes statute applies to juveniles? If not, why not?

    c) As to the Community Relations Division, what recent advances, if any, have been made?

The Office of the Pardon Attorney

21. A February 4, 2008, New York Times article detailed the mismanagement within the Office of the Pardon Attorney, citing a backlog of pardon requests. The article also recounted the abrupt resignation of the pardon attorney, Roger Adams, whose "departure came on the heels of a seven-month investigation of alleged mismanagement by the Justice Department's inspector general."[1]

    a) What steps are you taking, or do you plan to take, to rectify the problems in the Office of the Pardon Attorney?

    b) When do you intend to appoint a permanent successor to Roger Adams?

Chief Judge Mark Wolf's Letter

22. As you know, the chief federal judge in Boston, Mark Wolf, recently sent you a letter urging you to discipline Department prosecutors who commit misconduct, and to force them to be truthful in court. His letter was motivated by a concern pertaining to the

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[1] George Lardner, Jr., "*Begging Bush's Pardon*," N.Y. Times, February 4, 2008.

"Department's mild and secret discipline of Assistant U.S. Attorney Jeffrey Auerhahn in 2006 for misconduct that Wolf said required him to order the 'release from prison of a capo and associate of the Patriarca family of La Cosa Nostra."[2] What have you done in response to Chief Judge Wolf's letter to prevent misconduct from occurring in the future and to discipline prosecutors who had committed misconduct in the past? Please explain.

2004 OLC Opinion concerning the United States Commission on Civil Rights

23. On December 6, 2004, the Office of Legal Counsel (OLC) issued an opinion pertaining to the U.S. Commission on Civil Rights that allows the president to appoint as many commissioners to the Commission of the same political party as he chooses, as long as a sufficient number of sitting commissioners switch political party affiliations prior to individual presidential appointments, seemingly undermining the statutory bipartisan requirement codified in 42 U.S.C. § 1975(b). Given your willingness to review OLC opinions, would you consider reviewing and withdrawing this particular opinion? If not, why not?

Executive Office for Immigration Review (EOIR)

Personnel Issues:

24. In FY2008, the Department of Justice (DOJ) requested funding for twenty additional Immigration Judges and ten staff attorneys and support staff to handle the increase in EOIR's workload. But in its budget request for FY2009, DOJ is not requesting additional full-time employees for EOIR, despite the continuing increase in immigration enforcement personnel and activities that will likely result in a greater workload for EOIR. For example, the number of the Department of Homeland Security (DHS)'s Fugitive Operations Teams (FOTs) for United States immigration and Customs Enforcement (ICE) has increased from 15 teams in 2005, to 50 teams in 2006, to 75 teams in 2007. That number will grow to 104 teams in FY2008. Likewise, ICE has also greatly increased certain types of enforcement in the same time period. For example, administrative arrests in worksite enforcement actions have grown from 485 in FY 2002 to 4,077 in FY 2007.Can you please explain why DOJ did not request additional full-time employees for EOIR given the expected increase in EOIR's workload due to increased immigration enforcement actions by DHS?

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[2] Jonathan Saltzman, "*U.S. Judge Chastises Dept. of Justice: Blasts handling of prosecutor's misconduct*," The Boston Globe, January 5, 2008.

25. If you do not believe that EOIR needs additional full-time employees in FY2009, can you please tell us your plan for ensuring that EOIR will not develop a backlog without additional personnel? We believe that such a plan must also ensure that EOIR can provide respondents in removal proceedings with fair, thorough, and timely adjudication, and that potentially dangerous aliens are removed in a timely manner.

Improving BIA Performance:

26. In August 2006, then-Attorney General Alberto Gonzales announced that DOJ will implement 22 measures to improve the performance of the immigration courts and the Board of Immigration Appeals (BIA). Please give us an update on the progress of each initiative.

Court Reporting vs. Digital Audio Recording:

27. DOJ's budget request for EOIR is $261.4 million, $27 million over the enacted FY2008 spending level. This amount includes $10 million from the Southwest Border Enforcement Initiative. Of the $10 million, $8.3 million will be used to install and maintain a Digital Audio Recording (DAR) system for immigration courts nationwide. Immigration Judges currently use audio cassette recorders to tape proceedings in immigration courts. These recorders are often old and/or set at improper settings. In addition to their many responsibilities during the hearings, the Immigration Judges must also ensure that the tape recorder is recording the proceedings correctly. These problems are compounded by the fact that the quality of the recordings sometimes fails to capture overlapping speakers, or speakers with foreign accents. These factors lead to unintelligible written transcripts that cannot be adequately reviewed by the BIA or the federal courts. While the transition from the old tape to a new digital recording system would be an improvement, the DAR system will likely not free up the Immigration Judges to concentrate on their duties as adjudicators. Furthermore, it is unclear whether the DAR system will be able to adequately address the issue of clearly capturing overlapping speakers, or speakers with foreign accents. Can you tell us whether DOJ has considered using court reporters, rather than moving to a DAR system?

    a) If you did consider this option and decided against it, please explain why DOJ chose the DAR system over court reporters.
    b) Also, please explain how the DAR will improve the problem with clearly capturing overlapping speakers and/or speakers with foreign accents.

Backlog on Remanded Cases:

28. The Committee has recently been made aware of unreasonable delays at the Board of Immigration Appeals (BIA) with respect to cases remanded by the Circuit Court of Appeals. We have been informed of numerous cases, including cases involving detained respondents, where the BIA has taken from six months to over one year to take action

after a remand. These delays appear to occur even in cases where the only BIA action required is a further remand of proceedings to an immigration judge. What process does DOJ (including the BIA, the Office of Immigration Litigation, and the Solicitor General) employ following a remand to the BIA from the Circuit Court of Appeals?

a) Considering that the United States has a maximum of 90 days to seek rehearing or file a petition for certiorari with the Supreme Court, why should the BIA take any longer than four months to file a briefing schedule or remand the case for further proceedings to an immigration judge?
b) What is being done to ensure that the BIA moves on remanded cases—especially when the respondent is detained—as quickly as possible?

FBI Name Check Backlogs for USCIS Applications

29. FBI conducts name checks for U.S. Citizenship and Immigration Services (USCIS), which uses the results, in addition to other criminal, immigration and national security checks, to complete adjudication of certain applications for immigration benefits, including naturalization and adjustment of status. As you are aware, there are over 300,000 USCIS requests for name checks pending with FBI. Of those, over 130,000 have been pending for more than six months, 46,000 have been pending for two years, and 25,000 have been pending for more than 33 months. Because of the delays in processing name checks, approximately 4,500 law suits, including at least eight class actions, have been filed seeking mandamus relief. U.S. Attorneys and the Office of Immigration Litigation (OIL) are called on to defend these actions.

a) How many USCIS-requested name checks are currently pending with FBI?
b) How many have been pending for more than six months? Over one year? Over two years? Over three years? Over four years?
c) In both raw number and percentage terms, what is the incidence of "hits" the FBI finds in connection with USCIS name check requests?
   i) What are the most common reasons for these "hits"?
d) What steps is DOJ taking to reduce the backlog of FBI name checks?
e) What steps is DOJ taking to digitize the files it uses to conduct name checks?
f) What steps is DOJ taking to permit electronic name check searches?
g) What is the timeline for completion of digitization and electronic search capability?
h) In terms of man hours and cost, what resources is DOJ devoting to defending law suits relating to FBI name check delays?

Board of Immigration Appeals decision in Matter of A-T, 24 I. & N. Dec. 296 (BIA 2007)

30. You have yet to respond to the letter that Chairwoman Lofgren and I sent you on January 28 concerning the Board of Immigration Appeals decision in *Matter of A-T-*, 24 I. & N. Dec. 296 (BIA 2007). That decision will have devastating consequences for women who have suffered or are facing female genital mutilation, forced marriage, and other human rights abuses. Please respond to the concerns raised in that letter and let us know how the DOJ intends to address the BIA's unsupported and ill-advised reversal in U.S. policy with respect to the fundamental human rights of women. I have included the letter for your reference.

Former Governor Don Siegelman's Prosecution

31. Nick Bailey, a former aide to Governor Don Siegelman, was the government's primary witness in the prosecution of Governor Siegelman. In a "60 Minutes" piece that aired on February 24, 2008, Mr. Bailey indicated that before the Siegelman trial, he spoke to prosecutors more than seventy (70) times, and he admitted that during those conversations he had trouble remembering details. He also told "60 Minutes" that the prosecutors were so frustrated that they made him write his proposed testimony repeatedly under he got his story straight.

    a) How many times did Department prosecutors speak to Nick Bailey about the Siegelman case?

    b) Why was it necessary to speak to Mr. Bailey so many times? Please explain.

        i) Is that ordinary practice? Please explain.

    c) Did Department prosecutors in the Siegelman case require Mr. Bailey to "get his story straight" by writing his proposed testimony over and over? Please explain.

    d) Did Department prosecutors turn over Mr. Bailey's notes to Governor Siegelman's attorneys? If not, why not?

    e) If Department prosecutors did not turn over Mr. Bailey's notes, should they have in accordance with the law? If not, why not?

Voting Rights Enforcement

32. Historically, vote caging schemes have been used to suppress minority votes. When allegations of vote caging occurred in 1990 the DOJ took swift action, sending the FBI out immediately to investigate. The Department filed a federal lawsuit against the GOP

and Helms' campaign and obtained declaratory and injunctive relief in the form of a consent judgment and decree.

a) What is the Department's position on whether vote caging is a violation of civil rights laws?

   i) Has the Department's position against vote caging changed since 1990?

b) There were complaints of vote caging in Florida, Nevada, Wisconsin, and Ohio in 2004. How many "vote caging" investigations were initiated by the DOJ in response to these complaints?

   i) Were there any prosecutions? If not, why?

c) How do you plan to address complaints of vote caging during the upcoming election cycle?

33. What plans are being made by the Department to prepare for the upcoming 2008 presidential election to prevent voting rights violations, specifically vote suppression?

34. In a recent vote suppression hearing, the Judiciary Committee received statements from many organizations including the National Association for the Advancement of Colored People (NAACP), Mexican American Legal Defense and Education Fund (MALDEF), American Civil Liberties Union (ACLU), Asian American Legal Defense and Education Fund, Asian American Justice Center (AAJC), DEMOS, Project Vote, Campaign Legal Center indicating voter suppression is a major problem in the communities they represent. While the Department has been placed significant focus on voter fraud, it appears that the Voting Section of the Civil Rights Division has neglected its duty to fully enforce Section 2 of the Voting Rights Act, a provision largely aimed at combating racial discrimination in the voting process.

a) What level of resources do you intend to devote to voter suppression cases as compared to voter fraud prosecutions?

b) Will combating voter suppression be a priority for the Department in the 2008 Presidential election? If not, why?

35. Enforcement of Section 7 of the National Voter Registration Act (Motor Voter) is key to providing greater assess to voting. The Association of Community Organizations for Reform Now (ACORN), Demos, and Project Vote reported that voter registration applications from public assistance agencies nationwide have declined by 59.6% since 1995, while applications from all other sources have increased by 22%." A decline in registration applications from public assistance agencies has occurred in 36 of 41

reporting states since 1995.[5] What efforts is the Department making to ensure that states are complying with Section 7 of the National Voter Registration Act?

36. The U.S. Supreme recently heard arguments in the *Crawford v. Marion County Election Board* case. The suit challenges Indiana legislation requiring voters to provide photo ID, charging that it creates an unconstitutional burden on voters. Given the Department's history of opposing photo identification requirements for voting when the law does not include a fail safe provision for those without identification, why did the Department choose to file a brief in support of the Indiana law in the *Crawford* case?

[5] ACORN, Demos, & Project Vote, *Ten Years Later: A Promise Unfulfilled, available at* http://projectvote.org/fileadmin/ProjectVote/pdfs/Tens_Years_Later_A_Promise_Unfulfilled.pdf(Sept. 2005).

[illegible]

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
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[illegible]

January 31, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

One week from today, you will testify for the first time before the House Judiciary Committee. I very much look forward to a frank and productive discussion that will shed light on your approach to the challenging issues facing the Department of Justice (DOJ) and our nation at this time. In order to make the most of our limited time, I am sending the following questions about issues of interest to myself and other Committee members. We would appreciate receiving your responses, along with your prepared testimony, no later than the close of business on February 5, 2008, so that all Committee members may have an opportunity to review them before you testify next week. In addition, please provide responses to the previous Committee letters to which there has not yet been a response, including letters to the Department of May 8, November 9 and December 20, 2007 and January 10, January 15, January 23, and January 29, 2008.

1. **Politicization of the Department of Justice** - Former Reagan Attorney General Richard Thornburgh is just one of a number of former DOJ officials who have expressed concern about the politicization of the Department in recent years, including U.S. Attorneys' offices, as reflected in the forced resignation of U.S. Attorneys in 2006 and other events.

    a. In addition to your revisions to DOJ policy concerning contacts between DOJ personnel and White House officials regarding pending matters, which I commend, describe any other steps you have taken to address this concern, whether with respect to the hiring of career personnel, restoring the traditionally apolitical approach to prosecution of the U.S. Attorney corps, communicating to the entire Department and the public that partisan politics must be checked at the door, or otherwise.

b. The website TPMMuckraker, which played an important role in providing information to the public concerning the U.S. Attorney scandal, revealed that it has recently been removed from DOJ's press release email distribution list. Who made this decision and why, and was there a change in policy in press release distribution after you became Attorney General?

2. **Waterboarding and Torture** – Your January 29, 2008, letter to the Chairman and members of the Senate Judiciary Committee, which preceded your Senate testimony on the same topic the following day, states that "There are some circumstances where current law would appear clearly to prohibit the use of waterboarding. Other circumstances would present a far closer question."

   a. What specific "current law" were you referring to that would prohibit waterboarding "in some circumstances"? What "circumstances" were you referring to?

   b. Are there any circumstances in which you believe that the waterboarding of a captured American soldier would be lawful?

   c. Yesterday, Senator Durbin asked if you had reviewed a 2005 legal opinion that the New York Times described as providing "explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures."[1] This memorandum, authored along with others in this period by Steven Bradbury, was apparently approved by former Attorney General Gonzales over the objections of his Deputy Jim Comey, who stated that the Department would be "ashamed" if it became public. You indicated that you had not reviewed these memoranda but that you would do so. I urge you to complete that review and state whether you agree with the legal reasoning that they contain and would have approved the opinion.

3. **Selective Prosecution** – During your confirmation hearing before the Senate Judiciary Committee, you pledged in response to a question from Senator Schumer to look into the Siegelman prosecution in Alabama, which was the subject in part of a Joint Hearing of two House Judiciary Subcommittees. You also stated that you would review a recent study finding that, during the Bush

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[1] Shane, Johnston, and Risen, *Secret U.S. Endorsement of Severe Interrogations*, New York Times, Oct. 4, 2007.

Administration, Democratic officeholders have been investigated by Department prosecutors six times more often than Republicans.

a. Please describe what steps you have taken to familiarize yourself with the Siegelman matter, including the allegations of politicization that Senator Schumer referenced in his question to you? Did you review the record of our Subcommittees' Joint Hearing on October 23, 2007?

b. Have you taken any actions or formed any views about that matter and the allegations of political pressure referred to by Senator Schumer and discussed at our hearing?

c. Please describe what steps you have taken to familiarize yourself with the study regarding the relative frequency of investigations of Democrats and Republicans. Have you taken any actions or formed any views about that issue in response to your review of the study?

4. **Investigation Into Destruction of CIA Tapes –** Justice Department regulations require you to appoint an outside special counsel when: 1) a "criminal investigation of a person or matter is warranted," 2) the investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and 3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter." Although you have publicly stated that you do not intend to appoint a special prosecutor to investigate whether the CIA violated the law when it destroyed videotapes of terrorist suspect interrogations, please address the following questions.

a. In light of the fact that the Department may have been consulted on matters and decisions which are central to the investigation, why do you believe that this matter poses no risk of a conflict of interest for the Department and that the appointment of a special counsel from outside the government would not be in the public interest?

b. What is the scope of AUSA Durham's investigative authority and reporting requirements and have any limitations on the investigation's scope, jurisdiction, subject matter and methods been placed on him? In particular, although you testified yesterday that he may investigate the issue of what was shown on the tapes as part of the motive for their destruction, does the scope of the investigation include the legality of the conduct shown on the tapes

and of the alleged failure to provide the tapes to the 9/11 Commission or to any federal court?

c. What attorney and other resources will be dedicated to the investigation?

d. What role and authority will the Deputy Attorney General have in this investigation?

5. **Vote Suppression and Civil Rights Enforcement** – In remarks you made at a Martin Luther King, Jr. Day Prayer Breakfast on January 9th, you said that vigorous, fair, and impartial enforcement of the civil rights laws is among your "top priorities" as Attorney General. You also stated that the Civil Rights Division will play a crucial role through monitors and other means in assuring that the laws are scrupulously observed as our nation chooses a new President.

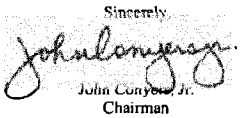
a. Despite complaints of voter suppression and intimidation, this Administration has brought fewer cases under Section 2 of the Voting Rights Act, and brought them at a significantly lower rate, than any other administration since 1982. What are your plans for ensuring that Section 2 is vigorously enforced and enforced in a fair and impartial manner?

b.. What actions is the Department preparing to take to address complaints of caging, intimidation, and other campaign tactics intended to suppress the minority vote?

c. As we approach the 2008 Presidential election and the 2010 Census, there will likely be an upsurge in submissions under Section 5 of the Voting Rights Act. What steps are being taken to prepare for and respond to an increase in Section 5 submissions?

Please send your responses to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, D.C. 20515 (tel.: 202-225-3951; fax: 202-225-7680). Thank you for your prompt attention to this matter, and we look forward to hearing from you next week.

Sincerely,



John Conyers, Jr.
Chairman

cc: Honorable Lamar S. Smith

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

January 28, 2008

The Honorable Michael Mukasey
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Mukasey:

We are extremely concerned over a recent decision by the Board of Immigration Appeals (BIA) that appears to reverse U.S. policy regarding the protection of women subjected to severe human rights abuses such as female genital mutilation (FGM) and forced marriage. In a recent decision, *Matter of A-T-*, 24 I. & N. Dec. 296 (BIA 2007), the BIA denied asylum and withholding of removal to a woman who had experienced FGM as a child in Mali and feared the further abuse of forced marriage. We strongly question the Board's reasoning in that decision, and we urge you to certify the case for further review.

As a preliminary matter, it should be noted that FGM is a reprehensible act and a gross violation of a woman's fundamental human rights. The procedure is intended to oppress and subjugate women through mutilation and sexual repression. *See Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996) (citing evidence that FGM is "a form of sexual oppression that is based on the manipulation of women's sexuality in order to assure male dominance and exploitation"). Moreover, the procedure often results in severe physical and psychological damage, including hemorrhage, shock, chronic urinary or pelvic infection, sterility, painful scars and obstructed labor, sexual dysfunction, depression, and various other gynecological and obstetric problems. Congress has criminalized the practice of FGM in this country, and the House of Representatives recently denounced FGM as a "barbaric practice" in H. Res. 32, which passed the House unanimously.

Due to the heinousness of FGM and the "risk of serious, potentially life-threatening complications" to women and girls, the BIA has previously held that FGM can support a grant of asylum. *Kasinga*, 21 I. & N. Dec. at 361. The *Kasinga* Board recognized FGM as a form of persecution and determined that women who fear being subjected to FGM may be members of a "particular social group" under our refugee laws.

Id. at 365-66. The Board thus approved the grant of asylum to the applicant in the case, a woman who feared she would be subjected to FGM if returned to Togo.

In *Matter of A-T-*, the BIA was presented with a woman from Mali who had already been subject to female genital mutilation. The Board recognized that once an applicant has shown past persecution, she is presumed to have a well-founded fear of future persecution. *A-T-*, 24 I. & N. Dec. at 297. But it determined in this case that the FGM procedure itself constituted a *changed circumstance* that rebutted the presumption. The Board concluded that the procedure represented a "fundamental change" in the applicant's situation such that she no longer had a well-founded fear of persecution. *Id.* at 299-301.

This conclusion appears to conflict with the reasoning in *Matter of Y-T-L-*, 23 I. & N. Dec. 601 (BIA 2003), a BIA decision concerning forced sterilization in the People's Republic of China. In that case, the Board held that the act of forced sterilization did not constitute a "fundamental change in circumstances" that would preclude the granting of asylum to a sterilized woman, even if such persecution could not be repeated. *Y-T-L-*, 23 I. & N. Dec. at 606. The Board noted that it would be "anomalous" for the act of persecution itself to "constitute the change in circumstances that would result in the denial of asylum." *Id.* at 605.

In the *A-T-* decision, the BIA appears to have backed away from its reasoning in *Y-T-L-* by distinguishing forced FGM from forced sterilization. The Board referred to the "refugee" definition in section 101(a)(42) of the Immigration and Nationality Act (INA), noting that Congress had specifically referred to forced sterilization and abortion in the definition. *A-T-*, 24 I. & N. Dec. at 300. The Board then concluded that "persons who suffered such harm [were] singled out by Congress as having a basis for asylum in the 'refugee' definition . . . on the strength of the past harm alone." *Id.* Because Congress had not referred to FGM, the Board reasoned, Congress had not intended for FGM to serve as a basis for asylum on past harm alone. *Id.* at 300-01.

The Board's reasoning in this regard is highly questionable, as Congress never intended to create a distinction between FGM and forced sterilization or abortion through the "refugee" definition. To the contrary, in referring to forced sterilization and abortion in the definition, Congress actually meant to *equate* such forms of persecution with FGM. The references to forced sterilization and abortion were meant to ensure that such acts were understood as persecution, a determination that the BIA had already made with respect to FGM in *Kasinga* and which obviated the need for further clarification by Congress. *See* INA § 101(a)(42); *Kasinga*, 21 I. & N. Dec. at 365-66. The *A-T-* Board appears to err when it concludes that Congress had meant to create an exception to general refugee law with respect to forced sterilization and abortion.

Nowhere does the refugee definition state that victims of these procedures are automatically eligible for asylum. The definition is simply meant to ensure that those procedures are understood as persecution, which, as noted above, had already been determined by the BIA with respect to FGM. The BIA's attempt to differentiate FGM from forced sterilization appears unsupported by the INA.

We believe that the reasoning in *Y-T-L-* with respect to forced sterilization should be applied in *A-T-* with respect to forced FGM. In *Y-T-L-*, the Board reasoned that:

> forced sterilization should not be viewed as a discrete, onetime act, comparable to a term in prison, or an incident of severe beating or even torture. Coerced sterilization is better viewed as a permanent and continuing act of persecution that has deprived a couple of the natural fruits of conjugal life, and the society and comfort of the child or children that might eventually have been born to them.

Y-T-L-, 23 I. & N. Dec. at 607. Such reasoning appears to be applicable in the *A-T-* case, as the continuing effects of FGM appear to be similar to those of forced sterilization:

> FGM is extremely painful and at least temporarily incapacitating. It permanently disfigures the female genitalia. FGM exposes the girl or woman to the risk of serious, potentially life-threatening complications. These include, among others, bleeding, infection, urine retention, stress, shock, psychological trauma, and damage to the urethra and anus. It can result in permanent loss of genital sensation and can adversely affect sexual and erotic functions.

Kasinga, 21 I. & N. Dec. at 361.

We are also concerned that the BIA's treatment of forced marriage in *A-T-* further undermines human rights protections for women in the United States. The Board failed to see the threat of forced marriage in Mali as a form of persecution, particularly in light of her experience with FGM in Mali. It is our understanding that women subjected to forced marriage in Mali are vulnerable to severe abuse and deprivation of freedom. As such, forced marriage may be related to FGM in that it subjugates and oppresses women by controlling sexuality. It appears the Board failed to consider cumulatively all of the circumstances in the applicant's case.

We believe that the BIA's decision in *A-T-* is deeply flawed and serves as an inadequate vehicle for such a significant reversal in U.S. policy with regard to the fundamental human rights of women. The Board has failed to recognize that harms

The Honorable Michael Mukasey
Page Four
January 28, 2008

unique to women - such as FGM and forced marriage - may constitute persecution entitling a woman to protection. We urge you to address this decision and its devastating consequences for the protection of women fleeing severe human rights abuses.

Sincerely,

John Conyers, Jr.
Chairman
Committee on the Judiciary

Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

cc: The Honorable Lamar S. Smith
The Honorable Steve King

QUESTIONS SUBMITTED BY REP. ROBERT C. "BOBBY" SCOTT
CHAIRMAN, SUBCOMMITTEE ON CRIME, TERRORISM
AND HOMELAND SECURITY

1. The Inspector General released a report in December 2007 that details the results of a seven-month investigation of the Office of the Pardon Attorney and lays out allegations of racism, intimidation, and mismanagement. What is the Department's official position on the findings of the Inspector General; in particular, the alleged misconduct of former Pardon Attorney Chief, Roger Adams? In addition, since part of the Office of the Pardon Attorney's task is to deal with pardon petitions in a timely manner, why is there such a significant backlog of cases that has led to waits of two, three, four, and as long as seven years before decisions are reached on petitions? What does the Department plan to do to resolve this problem?

2. During the oversight hearing on February 7, 2008, you stated that the Department of Justice will not enforce contempt citations for ignoring Congressional subpoenas against either White House Chief of Staff, Joshua Bolten, or former White House Counsel, Harriet Miers, because the President has ordered that neither Mr. Bolten nor Ms. Miers comply with the subpoenas on the basis of executive privilege. The relevant statute on enforcement of contempt citations states, in reference to the U.S. Attorney's responsibility, "whose duty it shall be to bring the matter before the grand jury for its action." Since this statutory language does not appear to leave the U.S. Attorney with discretion as to enforcement, what is the legal basis for your telling the U.S. Attorney for the District of Columbia not to present contempt citations to a grand jury as authorized by the U.S. House? Can executive privilege be claimed by the President to withhold the testimony of Administration aides when the President was not part of the conversations and has no knowledge of the matters that will be the basis of the testimony?

3. The Crime Sub-Committee was very disappointed that the Department of Justice did not send a witness to a hearing on Protecting Overseas Contractors, such as rape victim Jamie Leigh Jones, despite an invitation, since the Department is responsible for investigating and prosecuting MEJA cases, such as those involving sexual assault. How many MEJA cases have been referred to the Department and how many involve sexual assault? What steps has the Department taken to ensure that overseas contractor cases, like the sexual assault on Jamie Leigh Jones, are being thoroughly investigated and receiving due consideration for prosecution?

4. During your confirmation hearing before the Senate Judiciary Committee, you stated that you would look into a finding that, during the Bush Administration, state and federal Democratic officeholders have been investigated by Department of Justice prosecutors six times more often than Republicans. That finding is included in a study by Professor Emeritus, Donald C. Shields, Ph.D., University of Missouri - Kansas City, and is entitled, "An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ's U.S. Attorneys under Attorneys General Ashcroft and Gonzales." What steps have you taken in response to your promise to review that study?

5. At the February 7, 2008 hearing before the House Judiciary Committee, you indicated that you would provide the information supporting your contention that most of the people who may be released early as a result of the Sentencing Commission's decision to apply its crack cocaine sentencing guideline adjustments retroactively are violent offenders. Please identify the cases you are referring to and what causes you to conclude they are violent offenders that pose a threat of violence to the public if released earlier than they are now scheduled for release. Will these offenders also pose the same threat if they are released as currently scheduled, and if not, why not, and if so, what plans has the Department made to protect the public at that time that cannot now be implemented?

6. It is not uncommon for articles to appear in newspapers that suggest that serious violations of civil rights have occurred. If a member of a Congressional Committee or Subcommittee with oversight authority over the Department of Justice (DOJ) views the allegations as serious and brings such an article to the attention of DOJ requesting a review of the situation, can we rely on DOJ to assess the situation sufficiently to determine whether there is an issue warranting a civil rights investigation, or should we expect DOJ to ignore the member's request?

7. On February 25, 2007, Americans United for Separation of Church and State sent a letter to the Department of Justice and three other cabinet departments challenging the constitutionality of ten earmarks designated for religious institutions and raising constitutional concerns about sixteen others. The letter is attached hereto. Please identify what actions you intend to take in response to this letter. When do you plan to issue a formal response to the letter? Have any of these earmarks already been paid out? When are these earmarks scheduled to be paid out? If you are uncertain about exact timing, please give approximate timeframes in response to this and any other questions concerning timing. Do you plan to delay payment of the earmarks while you investigate the allegations in the letter? If so, for how long? What is your substantive response to the allegations in the letter that ten of the earmarks appear unconstitutional and sixteen other ones raise serious constitutional issues? What documents do the Department of Justice and the three other affected cabinet departments have in their possession that relate to these earmarks and/or the institutions or programs that are to be funded by the earmarks? Please provide the Committee with all documents relating to the 26 earmarks, including but not limited to any correspondence concerning the earmarks (including both internal correspondence/memoranda and correspondence with the entities to be funded, and including electronic correspondence), grant applications relating to the earmarks, grant agreements or contracts relating to the earmarks, payment records relating to the earmarks, and all other documents in each department's files concerning each earmark.

AMERICANS
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February 25, 2008

VIA U.S. MAIL AND FAX

Michael Mukasey, Attorney General
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950 Pennsylvania Ave., NW
Washington, DC 20530
FAX: (202) 616-9627

Michael O. Leavitt, Secretary
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200 Independence Ave., SW
Washington, DC 20201
FAX: (202) 401-3463

Alfonso Jackson, Secretary
Department of Housing and
Urban Development
471 7th St., SW
Washington, DC 20410
FAX: (202) 708-1160

Margaret Spellings, Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
FAX: (202) 401-0596

Re: Federal earmarks for religious activities

Dear Attorney General Mukasey, Secretary Leavitt, Secretary Jackson, and Secretary Spellings:

In reviewing recent congressional earmarks for fiscal year 2008, we identified many that raise concerns in light of the Establishment Clause of the First Amendment to the U.S. Constitution and the applicable federal regulations. We ask that you carefully investigate these earmarks and issue them only if sufficient restrictions can be imposed on the earmarks to ensure that they satisfy all the relevant legal requirements.

Americans United for Separation of Church and State is a nonsectarian, nonpartisan, nonprofit organization that works to preserve religious liberty through advocacy on a wide range of political and social issues. Our allies include many houses of worship and other religious bodies; and our membership of over 75,000 consists of individuals of nearly every imaginable faith, as well as those of no faith at all, and includes thousands of clergy members. We strongly believe that religious institutions play a vital role in American society, and we applaud the work that many such institutions perform in providing much-needed social services to our country's most disadvantaged citizens. We emphasize, however, that in considering whether to fund the efforts of such organizations, the government must be mindful of the fundamental constitutional principle of separation of church and state. Our emphasis on the importance of this separation is not motivated by hostility to religion: to the contrary, we believe that such separation is essential if religious institutions are to retain their integrity and autonomy, and therefore to continue to flourish.

With these values in mind, we provide the following information in the hopes that it will allow you to make an informed decision regarding the legality of funding the identified institutions and programs.

Constitutional Requirements:

The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the provision of public funds for religious activities, such as religious worship or instruction. *See Mitchell v. Helms*, 530 U.S. 793, 840-41, 857, 861 (2000) (O'Connor, J., concurring); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Hunt v. McNair*, 413 U.S. 734, 743 (1973). Similarly, public funds may not be granted to groups that discriminate on the basis of religion among service recipients (*see Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 425 (8th Cir. 2007)) or that coerce program participants to engage in religious activities (*see DeStefano v. Emergency Hous. Group Inc.*, 247 F.3d 379, 412 (2d Cir. 2001)).

In addition, the Establishment Clause forbids the government from making direct cash payments to pervasively sectarian institutions. *See Bowen*, 487 U.S. at 610-12, 621; *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 755 (1976); *Hunt*, 413 U.S. at 743. An institution is "pervasively sectarian" if its "secular activities cannot be separated from sectarian ones" (*Roemer*, 426 U.S. at 755) or "a substantial portion of its functions are subsumed in the religious mission" (*Hunt*, 413 U.S. at 743). Recent circuit decisions have split over whether the "pervasively sectarian" test remains good law: Although the Sixth Circuit has affirmed the continued vitality of the test (*Steele v. Indus. Dev. Bd.*, 301 F.3d 401, 408-09 (6th Cir. 2002); *Johnson v. Econ. Dev. Corp.*, 241 F.3d 501, 510 (6th Cir. 2001)), the Fourth Circuit has held that the test is no longer applicable (*Columbia Union Coll. v. Oliver*, 254 F.3d 496, 504 (4th Cir. 2001)). But only the Supreme Court can overrule its previous decisions establishing the "pervasively sectarian" test (*see Agostini v. Felton*, 521 U.S. 203, 237 (1997)), and the Court has not done so. Thus, that test remains the law in most jurisdictions — including the D.C. Circuit, which has not spoken on the issue — and we respectfully disagree with the Fourth Circuit's perspective.

Furthermore, when providing grants to faith-based organizations, it is the government's responsibility to put in place "effective means of guaranteeing that the [grants] will be used exclusively for secular, neutral, and nonideological purposes." *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 780 (1973); *accord Freedom from Religion Found. v. Bugher*, 249 F.3d 606, 614 (7th Cir. 2001). At a minimum, to ensure that aid is not used improperly, government officials should require aid recipients to submit written applications with specific project plans and signed assurances that aid will be used only for secular purposes. *See Mitchell*, 530 U.S. at 861-63 (O'Connor, J., concurring); *Roemer*, 426 U.S. at 741-42. Additionally, government officials should conduct on-site monitoring visits of the funded programs or entities. *See Mitchell*, 530 U.S. at 861-63 (O'Connor, J., concurring); *Americans United*, 509 F.3d at 425; *Bugher*, 249 F.3d at 613.

Regulatory Provisions:

Applicable federal regulations have requirements similar to those of the U.S. Constitution, prohibiting federal funding of programs that have religious content, that discriminate among service recipients based on religion, or that coerce service recipients to engage in religious activity. Specifically, the relevant regulations for each of your departments provide as follows:

Department of Justice. DOJ regulations provide that "[o]rganizations that receive direct financial assistance from [DOJ] under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services" for which DOJ funds are used. 28 C.F.R. § 38.1(b)(1) & § 38.2(b)(1). Any inherently religious activities "must be offered separately, in time or location, from the programs, activities, or services funded with direct financial assistance from [DOJ], and participation must be voluntary for the beneficiaries of the programs, activities or services provided under the program." *Id.* An organization that receives funding "shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief." *Id.* § 38.1(d) & § 38.2(d).

Department of Housing and Urban Development. HUD regulations state that "[o]rganizations that receive direct HUD funds under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a HUD program activity." 24 C.F.R. § 5.109(c). Any inherently religious activities "must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds and participation must be voluntary for the beneficiaries of the programs, activities or services provided under the HUD program." *Id.* Any HUD funding recipient "shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief." *Id.* § 5.109(f). Importantly, "HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities." *Id.* § 5.109(g).

Department of Health and Human Services. HHS regulations emphasize that no federal funds "may be expended for inherently religious activities, such as worship, religious instruction, or proselytization." Any such activities must be offered "separately, in time or location, from the programs or services for which [the grantee] receives funds . . . and participation must be voluntary for the program beneficiaries." 42 C.F.R. § 54.4. All funding recipients "shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice." *Id.* § 54.7.

Department of Education. In discussing grant eligibility, the regulations explain that "[a] private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a grant from the Department, and participation in any such inherently religious activities by beneficiaries of the programs supported by the grant must be voluntary." 34 C.F.R. § 75.52. No grant monies may be used for "[r]eligious worship, instruction, or proselytization" or "[e]quipment or supplies" for such activities. *Id.* § 75.532. The regulations also explain that "[a] private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with a recipient." *Id.* § 74.44(f)(3).

Moreover, "participation in any such inherently religious activities by beneficiaries of the programs supported by the contract must be voluntary, unless the organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program." *Id.*

Earmarks that Appear to Violate the Constitution:

The available information indicates that the following earmarks appear to run afoul of constitutional and regulatory requirements because they would fund programs with religious content, organizations that discriminate on the basis of religion, or programs that coerce participants to engage in religious activities. The Executive Branch has both inherent constitutional authority and statutory authority to impound Congressionally authorized spending that would violate the Constitution. *See Brown v. Califano*, 627 F.2d 1221, 1236 n.90 (D.C. Cir. 1980); 2 U.S.C. § 683. We accordingly ask that you refrain from disbursing these earmarks entirely, unless, after careful and thorough investigation, you determine that the earmarked funds will be restricted to purely secular uses and that the earmarks will otherwise comply with constitutional and regulatory requirements. (Unless otherwise noted, quoted material is drawn from the organization's own website.)

Department of Justice

- ***Teen Challenge, Albany, New York.*** Albany Teen Challenge's At Risk Youth Drug Prevention Program was designated to receive a Juvenile Justice grant of $47,000 to be applied toward several programs, including "Rock the Block." The "Rock the Block" program is designed to "bring[] the life-changing message of salvation through Jesus Christ to the city streets." Teen Challenge's website describes the program: "Real life testimonies are given and the word of God is shared. An altar call is given and Bibles and salvation cards are distributed. Those who accept Christ as their savior are referred to the local partner churches, to help them grow with Christ and discover God's unique plan for their life."

- ***Teen Challenge, Lebanon, Indiana.*** Central Indiana Teen Challenge was earmarked to receive a Juvenile Justice grant of $94,000 "for expanding educational and vocational training to girls and young women who have completed addiction treatment." The website states: "We at Teen Challenge believe in the principles of Biblical counseling and in the fact that Christ-centered intervention can and will create life-changing results." The program employs an explicitly Christian curriculum (Accelerated Christian Education). The application for would-be participants inquires about details of their religious beliefs, including whether, where, and how often they attend church, whether anyone in their families attends church, and how they would describe their present relationship with God.

- ***Teen Challenge — New Hope Academy, Factoryville, Pennsylvania.*** New Hope Academy, a "Christian boarding school for youth with life controlling problems," was earmarked $211,500 "to expand its operations by providing reduced or no-cost addiction treatment services to low-income families." The Academy's "main goal . . . is to show you how to depend on God, and live a victorious life through Jesus Christ." Incoming students are

provided an advisor who "give[s] Biblically sound pastoral counseling." Students attend several church services each week. Students are banned from possessing printed material and music "that [is] not conductive to Christian growth." The Academy uses the Accelerated Christian Education curriculum, which is explicitly Christian and Bible-infused. For example, the social studies curriculum includes units on various biblical figures and stories. The science curriculum mandates that students "[v]iew[] the wonders of the Creator as he studies the structure and function of man's skin, skeleton, and muscles"; "[o]bserve[] scientific proof for Creation of fish, amphibians, reptiles, and invertebrates"; and "[u]se[] character stories to apply Scriptural principles to everyday situations."

- ***Teen Challenge, Minnesota.*** A Juvenile Justice grant of $235,000 was earmarked to Minnesota Teen Challenge "to assist Minnesota schools with their drug and alcohol prevention programs." The organization's website lists its objective as "assist[ing] teens and adults in gaining freedom from chemical addiction by applying Biblical principles in establishing a chemical-free lifestyle, enhancing social skills, improving work habits, building supportive relationships, and growing in personal relationship with Jesus Christ."

- ***World Impact Youth Program, St. Louis, Missouri.*** World Impact was designated $282,000 through the Juvenile Justice Fund to "enhance programs designed to help meet the needs of low-income, at-risk youths." World Impact's website describes it as "a Christian missions organization seeking to reach the unchurched urban poor in the inner cities of America." It is explicitly evangelical, explaining that its aim is to "present Christ to the unchurched through all our ministries," "nurture people to maturity in Christ," and "train them to teach others."

- ***Detroit Rescue Mission Ministries, Detroit, Michigan.*** Detroit Rescue Mission Ministries was allocated $490,000 for its Wildwood Ranch Youth Program, a five-day summer camping program. Its website describes the program as a "Christian summer camping experience." The organization "is committed to sharing the gospel of the love of Jesus Christ, providing hope to the hopeless, disadvantaged, abused and homeless men, women and children of our community." Its website explains: "by ministering to the total person — body, soul and spirit — we help them become faithful Christians, discipled into a local church, rehabilitated, employed and living productive lives in restored families."

Housing and Urban Development

- ***Camp Barnabus, Purdy, Missouri.*** This "nondenominational Christian summer camp" was earmarked $375,000. The camp's website specifies that the volunteer staffers should be "ready to help us spread the good news of the gospel of Jesus Christ to all campers that come through our gates," and the application [for campers] asks: "How and when did you come to know Christ, and how would you describe your walk with the Lord?" It adds that "the foundation of our program is to teach the love of Christ to ALL."

- ***Dakota Boys & Girls Ranch, North Dakota.*** The program was designated $234,500 to "upgrade the mechanical heating and water lines, alarm system, and address accessibility concerns." The program is a Christian ministry whose "Christian, spiritual life programming includes spiritual life groups and activities, church attendance or other spiritual life assignments on Sundays, individual discussions with spiritual life staff or our chaplain or deaconess, and prayers at meals." Programming also may include "baptism, confirmation studies, devotions, bible studies, and other discussion groups."

- ***Jimmie Hale Mission, Birmingham, Alabama.*** The Mission was designated $250,000 for construction of the Jimmie Hale Mission Men's Center Education and Administration Building. The organization's mission is "to minister to the spiritual and physical needs of the poor and hurting in Jesus' name." The facility consists of "a 160-bed men's shelter, men's clothing distribution, nightly chapel services and a two-phase, residential recovery program" that includes "group and individual Bible studies."

- ***Morning Star Ranch, Florence, Kansas.*** Morning Star Ranch, which belongs to World Impact, was designated to receive $595,000 "to renovate facilities." World Impact's website explains that Morning Star Ranch is its "training center for inner-city young men ages 18-25." This program, known as the Christian Leadership Training Program, includes "Bible studies and devotions." The Ranch operates children's camps, the goals of which "are relationship building, evangelism, spiritual growth, and wholesome fun." The Morning Star Ranch facilities "are made available to all followers of Christ."

Earmarks That Warrant Close Scrutiny:

For the earmarks listed below, we have been unable to find sufficient information about the programs that this set of earmarks would fund to determine whether the grants would be lawful, but because the recipient organizations engage in substantial religious teaching, ministry, or other religious activity, the earmarks raise serious questions and concerns. Thus, we ask that you release these earmarks only if you can ensure that the grant funds will be restricted to secular activities and will not be used to support religious coercion or discrimination, and that the grants will otherwise comply with the constitutional and regulatory requirements described above. In addition, in the event that grant funds are disbursed, we ask that you stringently monitor the use of the grant monies to ensure compliance with the U.S. Constitution and applicable regulations.

Department of Justice

- ***Straight Ahead Ministries, Boston, Massachusetts.*** $94,000 was designated for Straight Ahead Ministries' Ready4Work program. Straight Ahead Ministries' mission is "[t]o see Jesus Christ transform the lives of juvenile offenders." It seeks to see "[e]very juvenile institution opened to ministry; every juvenile offender given the opportunity to hear and respond to the Gospel; every Christian called to juvenile offender ministry trained; every believing juvenile offender offered discipleship." Broadly, Ready4Work is "a pilot

demonstration site for faith-based re-entry programs with youth coming out of lock-up into the community," which provides "educational services, job training, mentoring, and intensive case management."

- ***New Song Urban Ministries, Inc., Baltimore, Maryland.*** A grant of $401,850 "for comprehensive services to at-risk youth" was designated for the ministry. New Song's website explains that it embraces "a holistic approach to neighborhood development known as church-based Christian community development (CCDA)," and that it is affiliated with New Song Community Church, which "is the basis for all of the ministries under the New Song Urban Ministries Umbrella." The Christian Community Development Association website, which New Song's website lists as a link, explains: "It is practically impossible to do effective wholistic [sic] ministry apart from the local church. A nurturing community of faith can best provide the thrusts of evangelism, discipleship, spiritual accountability, and relationships by which disciples grow in their walk with God."

- ***Abundant Life Church of God Family and Group Counseling Program, Holbrook, New York.*** The Abundant Life Church was designated a grant of $94,000 for "family and group counseling to improve parent-child communication and to increase anti-gang awareness." Abundant Life is a Christian church whose website demonstrates adherence to Christian doctrine.

- ***Grace College, Winona Lake, Indiana.*** $1,128,000 was earmarked for Grace College for funding "to train professional emergency responders for local disasters and emergencies." The college's website describes it as an "evangelical Christian liberal arts college," whose "goal in Christian living and teaching is to make Christ preeminent in all things." The application for admission to the college instructs applicants to provide the name of their church and pastor, and includes an essay question that reads: "Please describe your relationship with Jesus Christ as Savior and Lord. Describe how and when that relationship began and the influences that are contributing to your spiritual developments." It also notes that "regular attendance at chapel and Sunday services (in an evangelical church) is required of all full-time students."

- ***Denver Rescue Mission, Denver, Colorado.*** The Denver Rescue Mission's Strategic Transition and Response (STAR) program was slated to receive $282,000. The Mission describes itself as a "full-service Christian charity." Although its website does not provide specific information about the STAR program, another program — the New Life program — incorporates "chapel services, prayer, Bible study, and involvement in a local church," and lists "Christian counseling" by professional counselors and chaplains as one of its components.

- ***Holy Family Institute, Pittsburgh, Pennsylvania.*** The Institute was earmarked $141,000 to "provide further at-risk youth services to the children it serves." Its website notes that the children and families it serves "come to us in search of a chance to heal, to feel safe, to

believe in themselves and in the goodness of God and humanity." It explains that its mission is to "empower children and families to lead responsible lives and develop healthy relationships built on faith, hope, and love."

- ***Operation UNITE, Kentucky.*** $3,572,000 was earmarked for "the extension of Operation UNITE, a drug enforcement, treatment and education program." Operation UNITE "has embraced the faith-based community as an integral part of its anti-drug initiative." It notes that "[f]aith plays a vital role in healing those affected by drug abuse," and states that its "faith-based program is designed to empower every church member with the knowledge and skill to be an active part in this fight against drugs by providing material for activities such as mentoring, education, youth curriculum, and prayer for intervention, prevention and after-care."

Housing and Urban Development

- ***Of One Accord Ministry, Tennessee.*** The ministry was earmarked $75,000 to renovate its food pantry. The ministry describes its mission as "a cooperative effort of area churches and agencies whose mission it is to identify and meet the needs of our community with the Love of Jesus." The ministry's application for food assistance asks whether the applicant has a church affiliation, and, if so, where he or she attends.

- ***New Song Urban Ministries, Inc., Baltimore, Maryland.*** A grant of $250,000 "for renovation and construction of the Community Learning Center" was designated for the ministry. Although it is unclear what the Community Learning Center is used for, New Song's website explains that it embraces "a holistic approach to neighborhood development known as church-based Christian community development (CCDA)," and that it is affiliated with New Song Community Church, which "is the basis for all of the ministries under the New Song Urban Ministries Umbrella." The Christian Community Development Association website, which New Song's website lists as a link, explains: "It is practically impossible to do effective wholistic [sic] ministry apart from the local church. A nurturing community of faith can best provide the thrusts of evangelism, discipleship, spiritual accountability, and relationships by which disciples grow in their walk with God."

- ***Saint Richard Parish, Chicago, Illinois.*** A grant of $250,000 "for construction, renovation and buildout of a new community center" was designated for Saint Richard Parish, a Catholic church in Chicago.

- ***Covenant House Alaska, Anchorage, Alaska.*** A grant of $280,000 "for facility construction" was designated for Covenant House, an organization providing services for runaway children and teens. The website references the organization's Christian values, and notes that "[m]inistry to the kids is an integral part of our mission at Covenant House Alaska. We recognize that we must serve the spiritual needs in addition to the physical needs."

- ***World Impact, St. Louis, Missouri.*** World Impact was designated to receive approximately $560,000 "to renovate the former YMCA North Building." The organization is "a Christian missions organization seeking to reach the unchurched urban poor in the inner cities of America." It is explicitly evangelical, explaining that its aim is to "present Christ to the unchurched through all our ministries," "nurture people to maturity in Christ," and "train them to teach others."

Health and Human Services

- ***Urban Family Council, Philadelphia, Pennsylvania.*** $66,000 was earmarked for Urban Family Council "for abstinence education and related services." Urban Family Council describes itself as a "faith-based non-profit community organization," and its website indicates that it has partnered with numerous local churches "to bring quality educational services to schools, churches, and other community groups in the city and surrounding areas."

- ***Grace College, Winona Lake, Indiana.*** Grace College was slated to receive a grant "to offer more opportunities to minority, disabled and non-traditional students." The college's website describes it as an "evangelical Christian liberal arts college," whose "goal in Christian living and teaching is to make Christ preeminent in all things." The application for admission to the college includes space for applicants to provide the name of their church and pastor, and an essay question that reads: "Please describe your relationship with Jesus Christ as Savior and Lord. Describe how and when that relationship began and the influences that are contributing to your spiritual developments." It also notes that "regular attendance at chapel and Sunday services (in an evangelical church) is required of all full-time students."

- ***Covenant House Florida, Ft. Lauderdale, Florida.*** A grant of $195,000 "for a program for pregnant and parenting teens and young adults" was designated for Covenant House Florida. Covenant House's website describes it as a Catholic agency, and it is endorsed by the Catholic church. This religious affiliation reflects Covenant House's "unequivocally pro-life" position. Although Covenant House states that it does not evangelize youth or staff, it "offer[s] pastoral ministry to those who want to participate."

Department of Education

- ***Grace College, Winona Lake, Indiana.*** Grace College was designated to receive a FIPSE grant of $195,000 for "technology upgrades." The college's website describes it as an "evangelical Christian liberal arts college," whose "goal in Christian living and teaching is to make Christ preeminent in all things." The application for admission to the college includes space for applications to provide the name of their church and pastor, and an essay question that reads: "Please describe your relationship with Jesus Christ as Savior and Lord.

Describe how and when that relationship began and the influences that are contributing to your spiritual developments." It also notes that "regular attendance at chapel and Sunday services (in an evangelical church) is required of all full-time students."

* * *

Although the earmarks listed in this letter are of specific concern based on the information currently available to us, we wish to note that there are numerous fiscal year 2008 earmarks that we have not had an opportunity to investigate, and thus we ask that you evaluate *all* FY08 earmarks to ensure that they comply with constitutional and regulatory requirements. Because of the importance of the constitutional issues implicated by these earmarks, we ask that you please advise us within fifteen days of your intended actions with respect to those earmarks that are to be paid by your respective agencies. Please do not hesitate to contact us if you would like to discuss this matter.

Sincerely,

Ayesha N. Khan, Legal Director
Alex J. Luchenitser, Senior Litigation Counsel
Nancy Leong, Madison Fellow*

* *Admitted in California; supervised by Ayesha N. Khan, a member of the D.C. Bar.*

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QUESTIONS SUBMITTED BY REP. LINDA T. SÁNCHEZ
CHAIR, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Special Counsel

1. During the seven years of the Bush Administration, Members on this Committee have requested the appointment of independent special counsels dozens of times, including requests to investigate the leak of a covert CIA agent as well as the destruction of videotapes depicting waterboarding. Despite these requests, this Administration has never appointed a special counsel under the regulations.

a. Do you think the special counsel regulations serve a purpose?
   i. If yes, why are they routinely disregarded by the Department?
   ii. If no, why not?

b. Should Congress bring back the Independent Counsel Statute or a similar mechanism to ensure that an investigation is sufficiently independent when the Department has a conflict of interest? Why or why not?

2. At the House Judiciary Committee's oversight hearing of the Department of Justice, you testified that "waterboarding, because it was authorized to be part of the program, pursuant to approach -- that it was authorized to be part of the CIA program, cannot possibly be the subject of a criminal -- a Justice Department investigation, because that would mean that the same department that authorized the program would now consider prosecuting somebody who followed that advice."

a. Given the fact that you acknowledged a clear conflict of interest for the Department in investigating possible criminal violations by those who engaged in waterboarding, should a special counsel under the regulations be appointed to conduct a criminal investigation? Please explain.

Deferred Prosecution Agreements

1. Do you support the proposal that a federal monitor be selected by a third party district court judge or magistrate judge from a pool of pre qualified individuals or firms?

2. We know that deferred prosecution agreements for corporations date back at least to January 20, 2003 when Deputy Attorney General Larry Thompson first issued a Department memorandum instructing federal prosecutors to seek these agreements when possible. However, in the five years since that time, the Department of Justice has not issued any formal guidelines on this practice and has never outlined the parameters of such agreements. Therefore, attorneys cannot properly advise their corporate clients when such issues arise. Without explicit guidelines

for these agreements, federal prosecutors possess unmitigated discretion over deferred prosecution agreements.

a. Will you instruct the Department to issue explicit guidelines on deferred prosecution agreements that attorneys as well as the general public can rely upon?
   i. Why or why not?
   ii. If you plan to issue guidelines, when will they be implemented?

Politicization of the Department of Justice

1. Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and the Department's White House Liaison, testified before this Committee that she crossed the line in taking party affiliation into account in the hiring of career Department of Justice employees. Although we still do not know the scope of the effort to populate career positions at the Department with partisans, I am concerned that many Department employees hired for an improper partisan purpose have been placed in career positions that will outlast the tenure of this Administration. What have you done to address this concern?

Immigration

1. The State Criminal Alien Assistance Program (SCAAP) reimburses states for the cost of detaining criminal aliens. The program recognizes that immigration is an issue demanding federal solution. Therefore, it is unfair to force states and localities to foot the bill for incarcerating these criminal aliens, bills that can often run high enough to deprive state and local law enforcement agencies of vital funds needed for new programs, equipment purchases and training.

In 2002, President Bush allocated $265 million for SCAAP in his budget. Since then, including the recently released FY2009 Budget, he has allocated nothing for this indispensable program in his budget.

a. Do you believe that it is important to reimburse states and localities for the cost of detaining criminal aliens?

b. If yes, did you request money for SCAAP when you submitted your budget request for FY2009?

c. Would you do so for the future, were you to retain your position as Attorney General?

d. Why do you believe the Bush Administration is abandoning state and local law enforcement agencies by refusing to reimburse funds that could be used for training, equipment

purchases, and new programs that make communities safer?

2. SCAAP has been chronically under-funded and reimburses states and localities for only a small portion of what they spend. The problems don't stop there; the program also significantly delays reimbursements crucial to their everyday functioning. Counties and states often can't afford to wait for these essential resources.

a. Do you believe that states and localities should have to wait for up to two years to receive their reimbursements? Please explain.

b. I have a bill that would ensure that every state and locality receives reimbursement for incarcerating criminal aliens in a timely manner, by requiring the Department of Justice to make reimbursements within 120 days of the application deadline. Would you be supportive of that deadline?

3. The 2007 Annual Report of the Ombudsman to USCIS indicates that FBI name checks are a significant source of case backlogs for immigrants seeking visas. In this year alone, the backlog of cases pending because of FBI name checks rose by 93,358. The number of cases pending for more than 33 months rose to 31,144, and increase of 44 percent.

a. Why are these backlogs increasing?

b. What can Congress do to help you speed up the process?

4. The name-check process does not differ if an individual has been in the United States for many years or a few days, if an individual has or has not traveled frequently to a country designated a State Sponsor of Terrorism, or even if the person is a member of the US military. Many individuals who are subject to lengthy name-checks already have green-cards and employment authorization documents.

a. Why has the FBI, in conjunction with the Department of Homeland Security, refused to implement a risk-based name-check process?

b. Have you had any discussions with Secretary Chertoff about implementing a risk-based name-check process to reduce backlogs?

c. If you do not favor risk-based name-checks, what specific steps will reduce the FBI backlog and allow the Bureau to process name-checks faster?

QUESTIONS SUBMITTED BY REP. KEITH ELLISON

1. Attorney General Muksasey, I want to bring your attention to investigations of the firing and hiring of US Attorneys.

   Yes or No, are you familiar with the case of Rachel Paulose?

2. I have in my possession a letter sent to your office dated January 25, 2008 from the Office of Special Counsel Scott Bloch that raises serious concerns about your office's conduct in dealing with Ms. Paulose's case.

   Let me quote from the letter:

   "I am writing you because we are impeded in our investigations of the US Department of Justice in several areas....in our investigation into political intrusion into personnel decision making, and in the matter of former U.S. Attorney Rachel Paulose."

   Specifically, Special Counsel Bloch claims that the response by your department has been insufficient and raises some serious issues concerning the conduct of your department:

   "On December 11, 2007, I received a letter from Associate Deputy Attorney General David Margolis regarding allegations from John Marti about USA Rachel Paulose... Mr. Margolis took issue with my finding of a substantial likelihood that USA Paulose grossly mismanaged her office, and abused her authority. He expressed strong disagreement with what he refers to my characterizations of USA Paulose's actions, and requested reconsideration of my finding."

   Special Counsel Bloch states:

   "The letter from Margolis does not meet the statutory criteria for investigation and reporting to me. Rather it expresses Mr. Margolis' opinion that the allegations, if true, do not constitute gross mismanagement and an abuse of authority. This is wholly insufficient and reflects a deliberate disregard for the law under which OSC operates and with which you are obligated to comply."

   Yes or No, have you responded to Mr. Bloch's letter?

3. AG Mukasey, what position does Rachel Paulose hold now in your Department?

4. What are Ms. Paulose's responsibilities?

5. Why was Ms. Paulose recalled to Washington DC?

Questions for Attorney General Mukasey
Submitted by Rep. Robert Goodlatte

1) The STOP! Initiative was created by this Administration and has been successful in coordinating interagency efforts against copyright piracy. However, this initiative is not permanent and could expire when a new President takes over in January. Do you believe that the STOP! Initiative has been successful? If so, does it make sense to establish a permanent effort to coordinate the prosecution of intellectual property violations among federal agencies that will survive the transition to new Administrations?

2) In my district, the 6th District of Virginia, we are seeing increased gang activity, especially among international gangs. This is extremely concerning to me and my constituents, and I have worked hard to help get federal, state and local law enforcement the resources necessary to combat these gangs.

Are gangs and gang violence still on the rise nationally? What challenges are you facing in combating street gangs, including international gangs, and what additional tools can Congress give the FBI to help eliminate the gang scourge in our society?

3) It appears that online pornography and obscenity are on the rise. I have been appauled to hear reports of websites like YouPorn.com and PornoTube.com, which let users upload and view hardcore sex videos in formats similar to Youtube. According to one Internet-ranking company, YouPorn.com even ranks higher than CNN.com, About.com and Weather.com in the average number of web visits per month.

With this easy access to hardcore pornography, children are much more likely to be exposed to it than they were, say 10 or 15 years ago. Is it still a DOJ priority to prosecute pornography and

obscenity crimes online? Are there any additional tools that Congress can give DOJ to help combat this growing scourge?

4) Increasingly, we are hearing reports about the serious problem of organized retail theft rings. Most recently, we heard of an organized retail crime ring bust involving 18 people and possibly $100 million worth of medicine and health and beauty goods from convenience and grocery stores. Does the Department see Organized Retail Crime as a serious concern and will the Department commit to working with Congress to find ways to address this growing problem?

Ms. SÁNCHEZ. I am going to urge Members that we move the hearing along as quickly as we can, and, for that reason, I am pleased to introduce our first witness. Our witness for the first panel is Congressman Paul Hodes who represents the Second District of New Hampshire, elected on November 7 of 2006.

Representative Hodes has emphasized economic development, health coverage for college students, and the need for independent advocates for our veterans as part of his first-term goals. Mr. Hodes currently serves on the Oversight and Government Reform Committee and the Financial Services Committee.

Prior to his election to Congress, Mr. Hodes served as an assistant attorney general and as the special prosecutor for the State of New Hampshire.

I want to thank you for your willingness to participate in today's hearing. Without objection, your written statement will be placed into the record in its entirety, and we are going to ask that you limit your oral remarks to 5 minutes. I am sure you are familiar with the lighting system. So I am not going to belabor that point.

And at this time, I would welcome your testimony on the subject matter of today's hearing because we have kind of gotten off on some relevant but tangential issues about voter suppression. So, at this time, I would invite you to give your oral testimony.

TESTIMONY OF THE HONORABLE PAUL W. HODES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. HODES. Thank you, Chairwoman Sánchez and Chairman Conyers, Ranking Member Cannon, Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Committee, for holding this important hearing today. I am glad to be able to testify and raise some of the unanswered questions that surround the New Hampshire phone jamming case.

In 1968, Justice Hugo Black wrote, "No right is more precious in a free country than that of having a vote in the election of those who make the laws under which as good citizens we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined. Competition and ideas in governmental policies is at the core of our electoral process and in the First Amendment freedom."

Nearly 6 years ago, political operatives sought to subvert our electoral processes for their own political gain. Today, we are talking about the integrity of our elections, the very foundation of representative democracy. I am here to help ensure that New Hampshire voters are represented, their elections are conducted with integrity, and that justice is served.

On November 5, 2002, Election Day, Republican political operatives jammed the phone lines of key Democratic get-out-the-vote efforts. Three of these political operatives have been prosecuted for this scandal.

Allen Raymond, who I expect to testify here today, was the political operative hired by the New Hampshire Republican Party and was responsible for jamming the phones. He pleaded guilty to conspiracy to engage in interstate telephone communications with intent to annoy or harass on June 30, 2004.

Charles McGee, the 2002 executive director of the New Hampshire Republican Party, pleaded guilty to conspiracy to engage in interstate telephone communications with intent to annoy or harass on July 28, 2004.

James Tobin was the 2002 regional political director for the Republican National Committee and the 2004 New England director for the Bush-Cheney campaign. Tobin was convicted of conspiracy to commit telephone harassment and aiding and abetting telephone harassment on December 25, 2005. He was later acquitted on appeal. His case now is in the First Circuit Court of Appeals.

Despite years of investigation and prosecution, significant and serious questions remain unanswered. There is evidence that the political scheme runs deeper and wider than these individuals who were prosecuted and convicted.

This Committee, as you have heard, has been investigating the phone jamming case since 2006 when on May 12, 2006, Chairman Conyers asked then Attorney General Gonzales about the "outstanding issues" in the phone jamming case and requested the appointment of a special prosecutor. Additional letters were sent by Senators Leahy and Kennedy of the Senate Judiciary Committee to then Attorney General Gonzales. However, no special prosecutor was ever appointed and the Bush administration continues to claim executive privilege on key questions.

It remains unclear whether the White House was involved in the phone jamming scandal. On Election Day 2002, 22 phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs from 11:20 a.m. to 2:17 a.m. Who at the White House received those calls? Were White House officials knowledgeable of the phone jamming or plans to jam the phones? Are there documents that the White House possesses that could help the Committee or the Department of Justice to answer these questions?

Secondly, there were major delays in prosecuting the phone jamming case that have not been properly investigated. The phone jamming occurred on November 5, 2002. Yet Mr. Tobin was only indicted after the 2004 presidential elections where he was an employee of Bush/Cheney 2004.

Furthermore, according to the McClatchy newswire, as recently as December 19, a Department of Justice employee admitted that senior DOJ officials delayed the investigation. Did the DOJ deliberately wait until after the 2004 presidential election to begin the prosecution of a Bush-Cheney 2004 employee?

In short, we need to know whether others were involved in the election interference, whether they attempted to cover up the involvement of other political operatives, and whether there was a concerted effort to delay prosecution. Was there a connection between the phone jamming plot, the Republican National Committee, and the White House?

The question has been asked before, many years ago, essentially what did they know and when did they know it. At the very least, the DOJ had a conflict of interest in investigating this political scheme and should have appointed a special prosecutor. The questions surrounding phone jamming warrant an unbiased complete investigation, which we have not had.

The people of New Hampshire and of America deserve nothing less than the full truth. They deserve to know whether the 2002 elections they participated in were tampered with by Republican political operatives and whether there was a concerted effort to cover up the political trickery.

I commend this Committee for trying to give the citizens of my home State and this country the answers that they deserve. The right of Granite Staters to enjoy free and fair elections was put in jeopardy, and they need to know the full truth.

Political fraud cannot be allowed to compromise the electoral process. It happened before, and acts that compromise our process undermine the fabric of democracy and have no place in America.

Election tampering degrades who we are as a Nation and as a democracy. Let's make sure that those who broke the law and betrayed the people's trust are brought to light and brought to justice.

Thank you, and I will be happy to answer any questions you may have of me.

[The prepared statement of Mr. Hodes follows:]

Prepared Statement of the Honorable Paul W. Hodes, a Representative in Congress from the State of New Hampshire

PAUL W. HODES
2ND DISTRICT, NEW HAMPSHIRE

COMMITTEES:
FINANCIAL SERVICES

OVERSIGHT AND
GOVERNMENT REFORM

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
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Phone Jamming Opening Statement
Rep. Paul Hodes [NH-02]
May 14, 2008
Committee on Judiciary
Subcommittee on Commercial and Administration Law
Subcommittee on Crime, Terrorism and Homeland Security
Hearing on "Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in Our Federal Justice System."

Thank you, Chairwoman Sanchez, Ranking Member Cannon, Chairman Scott and Ranking Member Gohmert for holding this important hearing today. I thank the Committee for allowing me to testify and ask the unanswered questions that surround the New Hampshire phone jamming case.

Nearly six years ago, political operatives sought to subvert our electoral process for their own political gain. Today, we are talking about the integrity of our elections, the very foundation of representative democracy. I am here to ensure that New Hampshire voters are represented, their elections are conducted with integrity, and that justice is served.

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Despite years of investigation and prosecution, significant and serious questions remain unanswered. There is evidence that the political scheme runs deeper and wider than those individuals who were prosecuted and convicted.

This Committee has been investigating the phone jamming case since 2006. On May 12, 2006, Chairman Conyers asked then-Attorney General Gonzales about the "outstanding issues" in the phone jamming case, and requested the appointment of a special prosecutor. Additionally, Senators Leahy and Kennedy of the Senate Judiciary Committee sent a letter to then Attorney General Gonzales on April 20, 2006 requesting further information on allegations in the phone jamming case. No Special Prosecutor was appointed and the Bush administration continues to claim executive privilege on key questions.

It is unclear whether the White House was involved in the phone jamming scandal. On Election Day 2002, twenty-two phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs from 11:20 a.m. to 2:17 a.m. Who at the White House received the calls? Were White House officials knowledgeable of the phone jamming, or plans to jam the phones? Are there documents that the White House possesses that could help the Committee or the Department of Justice to answer these questions?

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In short, we need to know whether others were involved in the election interference, whether they attempted to cover up the involvement of other political operatives, and whether there was a concerted effort to delay prosecution. Was there a connection between the phone jamming plot, the Republican National Committee and the White House?

At the very least, the DoJ had a conflict of interest in investigating this political scheme and should have appointed a special prosecutor. The questions surrounding phone jamming warrant an unbiased, complete investigation.

The people of New Hampshire deserve nothing less than the full truth. They deserve to know whether the 2002 elections they participated in were tampered with by Republican political operatives and whether there was a concerted effort to cover up the political trickery.

I commend the Committee for trying to give the citizens of my home state the answers that they deserve. The right of Granite Staters to enjoy free and fair elections was put in jeopardy and they deserve to know the full truth.

Political fraud cannot be allowed to compromise the electoral process. It happened before when operatives for the Committee to Reelect the President burglarized the DNC headquarters in 1972. Acts like that demean our democracy and have no place in America.

Election tampering degrades who we are as a nation and as a democracy. Let's make sure that those who broke the law and betrayed the people's trust are brought to light and brought to justice.

Thank you and I will be happy to take any questions you may have.

Ms. SÁNCHEZ. Thank you, Congressman Hodes.

We certainly appreciate your testimony, and we understand how important it is to you, and that, in fact, is why we are looking at these issues of politicization of the DOJ and through the numerous avenues that we have had at our disposal to ask questions and to try to receive information that would help clarify these and many other issues, we have gotten very little, if any, cooperation from the Department of Justice to help us in our investigation.

So I can hear the frustration in your voice. I share that frustration. I think the subcommittee really has fought in good faith to try to get details of information so that we can check to make sure that the process has integrity, that it is non-partisan in the application and the prosecution of laws, and that has been thwarted time and time again.

But, at this time, we normally do our 5 minutes for questioning. I do not have any questions for you. I would ask if there are any others on the dais that do have questions.

Mr. Cannon?

Mr. CANNON. I do, Madam Chair.

Ms. SÁNCHEZ. Mr. Cannon is recognized for questioning.

Mr. CANNON. Thank you, Madam Chair.

And we are just trying to sort of put this together, and could you help me a little bit here? The activity you have testified about happened about 6 years ago, right?

Mr. HODES. Correct.

Mr. CANNON. And you had three people that were found guilty, one is still on appeal, and he was reversed, but the guilty plea is now on appeal, right?

Mr. HODES. Correct.

Mr. CANNON. You have made broader allegations of where this was all going, but, as I understand it, the telephone calling started about 7 a.m.

Mr. HODES. Really what I am here to do is to raise questions more than give you answers. There are many others who are more familiar with the intimate details of what happened. There are records which show hundreds of phone calls from various of the people involved in this scheme, and, in particular, as I have suggested, on Election Day, 22 phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs——

Mr. CANNON. I understand that, but, if you do not know the answer, I do not want to persecute you and ask you. We are just trying to get some information.

Mr. HODES. You asked me whether or not it happened at 7 a.m.

Mr. CANNON. Do you know when? Was it 7 a.m.? Are you aware?

Mr. HODES. I would defer to the records which are a better source. My information is that——

Mr. CANNON. My understanding is that the telephone jamming ended at about 7:30. So it did not go on for very long. Is——

Mr. HODES. The telephone jamming did not go on for very long?

Mr. CANNON. Is that your understanding?

Mr. HODES. My understanding is that the telephone jamming occurred. Whether it went on for very long or not——

Mr. CANNON. This is not an argument. Pardon me. If you do not understand, if you do not have the history, that is fine. I am asking. You do not know then when it stopped?

Mr. HODES. I do not have the precise time.

Mr. CANNON. Are you aware of who called it off?

Mr. HODES. My understanding is that there were Members of the Republican State Committee who eventually called it off, but I would defer again to——

Mr. CANNON. Well, you say eventually. That means——

Mr. HODES. May I just finish my answer, Mr. Cannon? I was——

Mr. CANNON. Well, I——

Ms. SÁNCHEZ. Please allow the witness to answer the question.

Mr. CANNON. Pardon me. It is my time, and I do not mean to hector the witness, but I——

Ms. SÁNCHEZ. The witness is attempting to answer your question.

Mr. CANNON. Madam Chair, it is my time.

Ms. SÁNCHEZ. I under——

Mr. CANNON. It is not your time and not your time to direct how I handle it.

Ms. SÁNCHEZ. I understand, but you will allow the witness the courtesy of answering your question. If you want additional time——

Mr. CANNON. Madam Chairman, it is not a matter of courtesy that you judge.

Ms. SÁNCHEZ [continuing]. I would be happy to give you additional time.

Mr. CANNON. It is a matter of courtesy that I judge. I am just asking a couple of simple questions. When you talk about eventually, that makes it sound like a longer period of time. If you do not know how long it was, then that is all we need to understand.

Mr. HODES. I am informed that the timeframe was 7 a.m. to 9 p.m. continuing throughout the day.

Mr. CANNON. And does your information suggest that it was planned from 7 to 9 or that it went from 7 to 9:00?

Mr. HODES. My information is, my understanding is that there was no plan to terminate the phone jamming earlier, and I would defer to others who were more intimately involved in these matters. You will be hearing from Attorney Paul Twomey who was intimately involved in all phases of both criminal and the civil cases which resulted from this matter, and I bet that he will be able to give you with specificity the answers you seek.

Mr. CANNON. That is fine.

Ms. SÁNCHEZ. Will the gentleman yield?

Mr. CANNON. I would be happy to yield.

Ms. SÁNCHEZ. I was just going to mention that our second panel of witnesses probably more appropriately can answer the detailed questions that you have——

Mr. CANNON. Well, reclaiming my time, I understand that, and I——

Ms. SÁNCHEZ [continuing]. Regarding the specifics.

Mr. CANNON. Again, I do not mean to hector the witness. I just want to find out what he knows as colleagues. I do not mean to even ask questions that are difficult.

But let me just shift gears a little bit here. I think you are aware of the claims between the Obama and the Clinton campaigns about vote suppression. Have you heard those allegations?

Mr. HODES. In general, I am aware that concerns have been raised. I have no intimate knowledge and was not expecting to testify today in any way about anything happening——

Mr. CANNON. Generally speaking, should this have been——

Mr. HODES [continuing]. With the Obama or Clinton campaign allegations. I was here——

Mr. CANNON. Well, should this——

Mr. HODES. I was here to testify about the——

Mr. CANNON. I am not asking you——

Mr. HODES [continuing]. Phone jamming matters in New Hampshire.

Mr. CANNON. Reclaiming my time, since it is almost gone here, recognizing the importance of vote suppression, is that the sort of thing this Committee should look at, the problems in Nevada between the two Democratic candidates, the claims that each are making here that they are trying to suppress the vote?

Mr. HODES. I take——

Mr. CANNON. Is that urgent for this Committee?

Mr. HODES. Well, far be it for me to dictate to the Committee what its jurisdiction or interests should be. I appreciate that the Committee is investigating this important problem, 2002, Republican operatives jamming phones in New Hampshire and a lack of investigation——

Mr. CANNON. Reclaiming my time——

Mr. HODES [continuing]. And follow up.

Mr. CANNON. I think you have actually said that several times. So why don't I yield back, Madam Chairman, and we can move on with this hearing.

Thank you.

Ms. SÁNCHEZ. The gentleman yields back the balance of his time.

Okay. If there are no further questions, I would like to thank Congressman Hodes for his testimony, and I will excuse you at this time. We appreciate again your patience.

And we will take a brief recess, so we can seat our second panel of witnesses who I think more appropriately can answer some of the questions that have been raised.

Thank you, Mr. Hodes.

Mr. HODES. I thank the Committee.

[Recess.]

Ms. SÁNCHEZ. Okay. I would like to call the subcommittee to order.

I know that we have two of our three witnesses for the second panel seated, but, as we are expecting votes at approximately 3:15, I would really like to get everybody's testimony in before then. So I am going to go ahead and introduce the witnesses on our second panel for today's hearing.

Our first witness on this panel is Allen Raymond. Mr. Raymond is a business development consultant and one of the authors of "How to Rig an Election: The Confessions of a Republican Operative."

Prior to writing his book, Mr. Raymond owned a Virginia-based GOP phone bank company called GOP Marketplace and also held a paid position as executive director of the Republican Leadership Council. During his service as executive director, Mr. Raymond took part in a phone jamming scheme during the 2002 New Hampshire elections which resulted in his conviction and a 3-month Federal prison sentence.

Our second witness is Paul Twomey. Mr. Twomey owns a private law practice focusing on criminal defense and voting rights law. Prior to 1985, he worked for the New Hampshire Public Defenders Program.

Since 2004, Mr. Twomey has represented on a pro bono basis the New Hampshire Democratic Party, the Republican, Democratic, and the Independent candidates for office on issues such as ballot order rotation, mid-decade redistricting, and the New Hampshire phone jamming case. He has served as State counsel for the Howard Dean presidential campaign and associate State counsel for the Kerry-Edwards campaign.

Mr. Twomey is currently the New Hampshire legal chair for the Obama campaign.

And our final witness for this panel, who has just joined us, is Mark Crispin Miller. Professor Miller teaches Media, Culture, and Communication at New York University. His writings on film, television, propaganda, advertising, and the culture industries have appeared in numerous journals and newspapers.

In 2005, Professor Miller authored "Fooled Again: The Real Case for Electoral Reform." He is also the author of the "Bush Dyslexicon: Observations on a National Disorder," and "Cruel and Unusual: Bush-Cheney's New World Order."

I want to thank you all for your participation in today's hearing.

Again, you will note that we have a lighting system. When your time begins, you will see a green light. After 4 minutes of testimony, the light will turn yellow to warn you that you have 1 minute remaining. When your time has expired, you will see a red light. If you are mid-sentence, we will allow you to finish your final thought before moving on to the next witness.

After each witness has presented his testimony, subcommittee Members will be permitted to ask questions subject to the 5-minute limit.

And with that, I would invite Mr. Raymond to begin his testimony.

TESTIMONY OF ALLEN RAYMOND, BETHESDA, MD

Mr. RAYMOND. Good afternoon, Chairman Conyers, Chairman Sánchez, Chairman Scott, Ranking Member Cannon, and Members of the Committee.

Your invitation to speak to you today was welcome. It gave me an opportunity to further my goal of bringing transparency to the events now known as the New Hampshire phone jamming of Democratic Election Day phone lines at the direction of the Republican National Committee, the New Hampshire Republican State Committee, and made possible by my own efforts as the Republican consultant who arranged for the telemarketing services that conducted the jamming of the phone lines.

Such an opportunity is welcome because it allows for the public service of illuminating the worst practices by bad actors within our electoral process so that awareness may dampen similar attempts in the future to taint our electoral process.

Justice Brandeis wrote that "sunlight is the best disinfectant; electric light, the best policeman." This was the spirit in which I wrote "How to Rig an Election: Confessions of a Republican Operative," a book I encourage you all to read, if you have not already.

What I hope the book and my appearance before you today to be is a public service. My desire is to shed a ray of sunlight on a process that requires periodic disinfection and perhaps evoke from this distinguished Committee the electric light that will better patrol our election process and, more importantly, the trade people within it.

Political management is a big business, boasting master degrees from top-tier universities and flaunting riches to political operatives eager for success. Already this election cycle, there has been spent in Federal elections alone $900 million, and that is before the big show in the fall when a new President of the United States is going to be elected.

This is not to suggest that money is the source of why many Americans are disenchanted with the political campaign process. Money in politics is like water, it will always find a way. As long as money is equated with free speech, the money will flow to campaign coffers.

The source of the reason why Americans instinctively know that the system does not work as the framers intended is that politics has become a big business, a cost per vote business. The stakes are great, both money and power, and the temptation can be irresistible for many in the business of running campaigns to try and win at all costs, and I know this firsthand.

As you may know and as you have said here today, I pleaded guilty to the charge of phone harassment in the New Hampshire phone jamming case and was incarcerated for 3 months at a Federal correctional institution.

When confronted with my crime by our government, despite prior confidence that the law had not been transgressed, I did not hesitate to take responsibility for my actions. Unfortunately, I am the exception, not the rule, by being the only actor in this conspiracy to take responsibility for their conduct without indecision or hesitation.

This is not to say new laws that address the symptoms of the problem should be crafted to prevent future abuses. Rather, I encourage this Committee to seek a new vantage point and confront the origin of the problem.

Politics is populated by political professionals who, when not working on Capitol Hill, are working for either a major political party committee, a political consulting company, a lobbying firm, or in government relations for either a corporation or trade association, or for some other instrument like politically oriented non-profit committees—or for all concurrently.

Therein is the solution you should consider. Just as lobbyists are required to disclose their activities to comply with the Lobbying Disclosure Act of 1995 and its amendment in 2007, so should it be

considered that political consultants be required to conduct themselves under the same transparency. Transparency seems the sunlight that is best for real reform. The protest such a bill would provoke is validation of the idea.

In fairness to my former colleagues in the Republican Party and in the spirit to treat them better than they treated me, I cannot link the New Hampshire phone jamming scheme in any way to President George Bush's White House. However, having worked at the Republican National Committee in two capacities—as a regional political director similar to Mr. Tobin's position during the 2002 election cycle and as chief of staff to a Republican National Committee co-chairman and at the National Republican Senatorial Committee—I have the ability to speak to the processes in place while I was employed there, but not thereafter and not in the context of a Republican administration in the White House.

Neither of the national Republican campaign committees mentioned above is managed by rogues, nor do they employ them. Knowing firsthand how both committees operate was a key factor to accepting the job of placing the phone jamming program with a telemarketing vendor following Mr. Tobin's inquiry on the matter.

My training at both the RNC and the NRSC taught me two main operating procedures: the first being that as an agent of either committee one never instructed another committee on vendor preferences unless that committee was financing a program and the other being that unusual programs never saw the light of day without a thorough vetting by committee attorneys.

When approached by Mr. Tobin about being hired to conduct the unusual program of jamming Democratic Party phone lines, I made the calculated assumption that both criterions had been met.

Therefore, knowing Mr. Tobin knew of the program, it would seem to follow that there would be interest during the course of the investigation into this matter as to whether Mr. Tobin's superiors were also aware of the program, unless Mr. Tobin had safely concealed his rogue status during nearly a decade of employment at the RNC.

However, I must also be fair and stress not being privy to every detail of this investigation, and, therefore, the questions raised may well have been satisfied.

I am before you today by invitation and welcome your questions.

Thank you very much.

[The prepared statement of Mr. Raymond follows:]

PREPARED STATEMENT OF ALLEN RAYMOND

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Remarks of Allen Raymond Before U.S. House of Representatives, Judiciary Committee

May 14, 2008

Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee. Your invitation to speak to you today was welcome as it gives me an opportunity to further my goal of bringing transparency to the events now known as the New Hampshire phone jamming of Democratic election day phone lines at the direction of the Republican National Committee, New Hampshire Republican State Committee, and made possible by my efforts as the Republican consultant who arranged for the telemarketing services that conducted the jamming of the phone lines. Such an opportunity is welcome because it allows for the public service of illuminating the worst practices by bad actors within our electoral process and that awareness may dampen similar attempts in the future to taint our electoral process.

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perhaps evoke from this distinguished committee the electric light that will better patrol our election process and, more importantly, the trade-people within it.

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When confronted with my crime by our government, despite prior confidence that the law had not been transgressed, I did not hesitate to take responsibility for my actions. Unfortunately, I am the exception not the rule by being the only actor in this conspiracy to take responsibility for their conduct without indecision or hesitation. This is not to say new laws that address the symptoms of the problem should be crafted to prevent future abuses. Rather I encourage this committee to seek a new vantage point and confront the origin of the problem.

Politics is populated by political professionals who, when not working on Capitol Hill, are working for either a major political party committee, a political consulting company, a lobbying firm or in government relations for either a corporation or trade association, or for some other instrument like politically oriented non-profit committees – or for all concurrently. Therein is the solution you should consider. Just as lobbyist are required to disclose their activities to comply with the Lobbying Disclosure Act of 1995, and its amendment in 2007, so should it be considered that political consultants be required to conduct themselves under the same transparency. Transparency seems the sunlight that is best for real reform. The protest such a bill would provoke is validation for the idea.

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I am before you today by invitation and welcome your questions, thank you.

Ms. SÁNCHEZ. Thank you. We appreciate your testimony, Mr. Raymond.

At this time, I would invite Mr. Twomey to give his remarks.

Use your microphone.

TESTIMONY OF PAUL TWOMEY, ESQ., TWOMEY LAW OFFICE, EPSOM, NH

Mr. TWOMEY. Sorry.

Thank you, Madam Chairman, Chairman Scott, Chairman Conyers, Ranking Member Cannon.

My name is Paul Twomey. I am from Chichester, New Hampshire.

A functioning democracy needs two essential things at its basis. It needs rules and procedures. It needs a system set up so the people have an equal and a fair access to elections, that all people and all ideas operate on a level playing field.

That by itself is not enough. We have those things in our constitutions State constitutions, and our Federal constitutions. Those types of rules and procedures also existed under despots and dictatorships in the Soviet Union. You need a second element. You need a mechanism to enforce the rules, to deter those who would cheat, and to make sure that the level playing field stays level.

For almost two centuries, the Department of Justice has admirably performed that function. Both the Civil Rights Division, the Public Integrity Division, the Criminal Division have all operated to stand up to those who sought to abuse power and those who sought to cheat to gain power. This is a critical function because when the people in a democracy fail to believe that the elections are fair, they opt out of the system.

We now have a situation in which almost half the people in our country do not engage in their wonderful right to vote in elections. Anything that diminishes the confidence of the people in the fairness of elections is a serious matter. It is a serious matter the day it happens, the day after it happens, 6 years after it happens.

The tragedy of the New Hampshire phone jamming is not that the citizens' rights to freely associate and to communicate with each other were violated. This is a terrible thing, and it is, quite frankly, the kind of thing that has happened other times in the past.

The real tragedy is that when the citizens whose rights to free association were violated turned to the Department of Justice for justice, they did not get justice.

Now I am going to talk to you and I have used about half my time. Let me be very quick.

There are a number of ways in which the Department of Justice did not provide justice, one of which is delays. Ranking Member Cannon said two things that were somehow difficult for me to square. One, he said that he should not be holding hearings in the middle of trials. And I agree with that. In general, you should not be because you should respect the right of people to have trials without interference by legislative bodies.

Well, that has been said to the people of the State of New Hampshire since 2002. There have been trials going on since 2002. The Department of Justice has slow walked this case and stretched it

out so that there has never been a time when we could get the answers and the full answers to what went on.

At the same time, Congressman Cannon said it is old news. Well, it is old news because we have not gotten the answers. We have been asking for the answers. Well, first of all, we forwarded this to the police immediately. It took a Manchester police officer exactly 1 day to essentially solve the case as to the people that actually effectuated it. It was then turned over to the Department of Justice.

It took the Department of Justice 18 months to bring an indictment. It took them 9 months to interview a single person. There is no reason whatsoever that we understand now why that happened, and, again, during this entire period, my clients were continually asking the U.S. attorney's office and the Department of Justice what was going on.

In December of 2003, all of the essential information was generated, all of the people had been spoken to. Mr. Raymond had spoken to the FBI, told them the full story. Mr. McGee, who was the executive director of New Hampshire Republican Party, had told them the full story. They had everything they needed to bring indictments in December of 2003.

They slow walked the case through. They did not bring any indictments again until, I believe, July 28 of 2004. At that time, they did not indict Mr. Tobin, who was a regional director of the RNC and the Republican Senatorial Committee.

There have been published reports, which I believe to be true, that the prosecutor in this case, Todd Hinnen, wanted to indict Mr. Tobin earlier, that he was forbidden to do so until after the presidential election. That is political interference with the administration of justice, and that is something that this Committee should take seriously.

There are numerous ways in which the Department of Justice interfered with justice. A second way is that after the indictments were first brought by the civil case, as we were about to start our discovery, on the very first day of discovery, the Department of Justice, which had known about the civil case for a period of time, intervened at the last moment and brought about a halt in discovery. That set us back by 18 months in which we were unable to ask any questions of anybody.

Again, there have been published reports by the McClatchy newspapers that individuals high in the Department of Justice have stated that that interference was not done at the request of the prosecutor, but that he was ordered to interfere with the civil case and to slow walk it.

Ms. SÁNCHEZ. Mr. Twomey, if you could summarize your final thought, I am sorry, but your time has——

Mr. TWOMEY. Okay. I will very quickly say there is numerous evidence to believe that the White House may have had some involvement in this, the Political Office. There is a refusal to indict the New Hampshire Republican Party and perhaps the Republican National Committee, but at least the Republican State Party. The prosecutor wanted to indict them because they have obstructed justice. They withheld information. They refused to turnover their in-

ternal investigation. Again, higher-ups at the Department of Justice interfered.

I could probably go on, quite frankly, for about 2 hours, and I am talking as fast as I can, and I am out of time.

[The prepared statement of Mr. Twomey follows:]

PREPARED STATEMENT OF PAUL TWOMEY

STATEMENT OF PAUL TWOMEY
TO
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
&
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

Hearing on "Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in our Federal Justice System"

May 14, 2008

"No right is more precious in a free country than that of having a vote in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined ...Competition and ideas in governmental policies is as the core of our electoral process and in the First Amendment freedom. (Justice Hugo Black, Williams v. Rhodes, 393 US 23, 30-31 (1968).

On November 4, 2002, over 2,000 volunteers and staff of the New Hampshire Democratic Party went to sleep with the hope and expectation that the next day they would take part in a fair and free election in which they would be allowed an equal chance to present the citizens of the state of New Hampshire with their policies and candidates for consideration. They expected to exercise their precious constitutional rights to vote, to freedom of association and to freedom of speech without interference or constraint. The staff and volunteers had spent thousands of hours preparing for the day when they thought they would partake in a fair and equal election. The New Hampshire Democratic Party and its candidates had spent in excess of 20 million dollars in order to present their positions to the electorate. (The Republicans spent a similar amount). Given the closeness of the polling results, both parties recognized that the key

to success would lie in their ability to identify sympathetic voters and ensure that those voters went to the polls.

Both parties instituted massive "Get out the Vote" (GOTV) efforts which depended entirely upon the ability to communicate between the workers and volunteers at the polls, the campaign headquarters, and portions of the campaign set up to encourage voting, such as phone banks and rides to the polls programs. At each polling place in New Hampshire, the major parties are allowed by law to have observers present at the check in points so as to monitor who has voted. The observers crosscheck those who have voted off of a list of persons previously identified as likely supporters and communicate the results to the headquarters, enabling the party to determine which supporters haven't voted and direct efforts towards them to encourage them to vote. In addition, the Democratic Party and the Professional Firefighters Union provided phone numbers that the elderly and infirm could call for rides to the polls so that they might join their fellow citizens in self-governance.

Unbeknownst to all those seeking to participate in a free and fair election, operatives working on behalf of the New Hampshire Republican Party had entered into a criminal conspiracy which had as its goal the total disruption of the political communications of the New Hampshire Democratic Party in order to gain an unfair advantage in what was a very closely contested United States Senate election. To date, four individuals have been indicted and convicted including Charles McGee, the 2002 Executive Director of the Republican Party and James Tobin, a long time Republican operative who was at that time Regional Political Director for both the Republican National Committee (RNC) and the National Republican Senatorial

Committee. (NRSC). Tobin's conviction has been vacated by the District Court on technical grounds relating to the particular charge brought against him and his case is currently being reviewed by the First Circuit Court of Appeals. Both the District Court and the Court of Appeals have repeatedly indicated that there is no factual doubt that Tobin took part in the conspiracy to disrupt the communications of the Democrats on Election Day.

A civil suit was brought on behalf of the New Hampshire Democratic Party against the New Hampshire Republican State Committee, the Republican National Committee and the National Republican Senatorial Committee. Throughout both the criminal prosecution and the civil suit, there were repeated actions of commission and omission on the part of the Department of Justice that give rise to serious questions as to whether or not there was political interference which operated to distort the judicial process.

At a minimum, a functioning democracy requires two precedent conditions: first, there must exist a set of rules and procedures that ensure that all ideas will have an equal and free access to the electoral marketplace; secondly, there must exist a mechanism to ensure that the procedural and substantive rights created by the system of rules are enforced and can in fact be exercised without interference. Many countries have the former, few have the latter; and it is only these few that are truly functioning democracies. In the United States it is the role of the Department of Justice to make real the promises of electoral access and fairness contained in the State and Federal Constitutions. It is the primary tragedy of the New Hampshire phone jamming scandal that the actions and inactions of the Department of Justice have deprived the

people of New Hampshire and the country of the ability to feel secure in the exercise of the voting rights.

I. THE DEPARTMENT OF JUSTICE CAUSED INORDINATE DELAYS IN BOTH THE CRIMINAL AND CIVIL CASES

The phone jamming cases took place on November 5, 2002. In December of that year, a single Manchester police officer was able to within one day determine the identity of the two telemarketing vendors who effectuated the phone jamming. These two individuals cooperated very early in the investigation, providing information that they had acted at the direction of Charles McGee, Executive Director of the New Hampshire Republican State Committee. On February 7, 2003, an article written by investigative journalist John Distaso appeared in the Manchester Union Leader which for the first time gave the public knowledge of the involvement of the New Hampshire Republican State Committee in the phone jamming. [1]

Almost immediately, the Chair of the New Hampshire Democratic Party, Kathleen Sullivan, sought the assistance of Thomas Colantuono, the United States Attorney for the District of New Hampshire in investigating and prosecuting this crime.[2] The matter thereupon languished within the confines of the Department of Justice until July 28, 2004 when McGee pled guilty to an Information filed on that date. This 18 month delay is on its face both bewildering and troubling as McGee's complicity had been apparent from the beginning. By December of 2003, he had provided the FBI with a full account of the role played by James Tobin in the case, which had also been confirmed by one of the telemarketers. No significant

[1] Union Leader Article re: Phone Jamming 2/7/03 (Appendix 1)
[2] Kathleen Sullivan's Letter to Thomas Colantuono, US Attorney District of NH (Appendix 2)

evidence was developed against Tobin after the end of 2003, and all of it was readily available earlier.[3] In April of 2004, I was informed by Alan Raymond's attorney that a plea agreement had been reached and that formal charges were imminent, yet nothing occurred for months.

After the filing of the criminal charges when an attorney acting for the Democratic Party, Finis Williams, was informed by the prosecutor that the delays were due to the extreme difficulty in obtaining authorization from higher levels at DOJ for any and all actions in the case. We have been further informed by Attorney John Durkin (counsel for Republican criminal defendants, Allen Raymond) that he was told by a DOJ prosecutor that all decisions in this case had to be made subject to the approval of the Attorney General himself who had to sign off on all actions in this case. (It should be noted that Attorney Durkin's memory is apparently at variance with that of the prosecutor with whom he spoke). As will be discussed below, the two individuals who served as Attorney General during this case both have actual conflicts of interest that would appear to rule out ethical involvement in the investigation and prosecution of the phone jamming.

The charges against both McGee and Raymond both included a description of the criminal involvement in the conspiracy of an individual who was not named but only described as an official of a national political organization, in spite of the fact that the individual was known to the DOJ to be James Tobin, formerly Regional Director for the RNC and NRSC, and then Northeast Director of the Bush/Cheney campaign. Both the failure to name Tobin and the failure to charge him in the summer of 2004 give rise to the likelihood that he was being shielded from

[3] Charles McGee's FBI Interview (Appendix 3)

public scrutiny until after the presidential election in November. Ultimately Josh Marshall, a journalist for TalkingPointsMemo.com, exposed Tobin on October 11, 2004 and he resigned from the campaign four days later. Had it not been for the investigative efforts of Marshall, the DOJ's failure to act would have left an individual known to be willing to commit election felonies in a key campaign position from which he was free to seek to subvert yet another election. At a minimum, the failure to protect the public was exceedingly reckless. These events suggest strongly that the indictment of Mr. Tobin was deliberately withheld in an effort to allow him to continue to operate as an official of the Bush/Cheney re-election campaign for which he was the Northeast Regional Director. Mr. Tobin was ultimately indicted several weeks after the election in December of 2004.

In December of 2007, Greg Gordon, a reporter for McClatchy newspapers wrote that Justice Department sources had informed him that the original DOJ prosecutor, Todd Hinnen, had been ordered to delay Tobin's indictment until after the 2004 presidential election. (See Attachment 13) I have attempted to confirm this with Mr. Hinnen who has stated that ethical considerations forbid him from discussing Justice Department Communications with a third party. Mr. Hinnen also indicated that he would likely be free to provide information in the context of inquiries from parties charged by law with oversight of the Justice Department, which might include both internal DOJ oversight mechanisms and the Judiciary Committee itself.

The legal proceedings against Mr. Tobin then took an exceedingly tortuous path. The trial was continued several times, each time over the vociferous objection of the victim, the New Hampshire Democratic Party. At one point, in August 2005 when the matters appeared to be

close to trial, Todd Hinnen, the single prosecutor who had been assigned to the case from the beginning, was suddenly transferred from his duties at the DOJ to an assignment in the White House. This rather unfortuitous event not only removed the one individual with full knowledge of the case, but also necessarily required the substitution of new counsel who had then to attempt to master all of the facts in the case in a very short period of time. Given that the critical importance of fair elections in this country and the fact that the Department of Justice apparently has something on the order of 30,000 employees, it is difficult to understand what other than political considerations could have occasioned the transfer of this prosecutor.[4] At the same time, the Department of Justice took action to interfere in the discovery process in the civil case pending against the Republican Party. On October 15, 2004, the Democratic Party was scheduled to begin their first deposition of an official of the New Hampshire Republican State Committee. Twenty minutes before the deposition, the Department of Justice apparently indicated to counsel for the Republican State Committee that it was going to seek to intervene and stop discovery in the civil case. Based upon this statement, the attorney for the Republican State Committee directed the subpoenaed witness not to appear for the deposition. (This attorney was subsequently sanctioned by the trial court for directing an individual to disobey a legal subpoena.) Shortly thereafter, the Department of Justice filed a Motion to Intervene and to Stay all Discovery in the civil case. This stay of discovery remained in effect for over a year. As a direct result of this stay of discovery, the plaintiffs were deprived of any opportunity to conduct full discovery before the Statute of Limitations had expired.

[4] DOJ's Motion to Stay Discovery (Appendix 4)

In December of 2007, the McClatchy article cited above reported that a justice department official "with detailed knowledge of the investigation" had said that Hinnen's superiors had directed him to halt the Democrats civil suit, ostensibly to prevent the suit from harming the criminal case, "although Hinnen himself had expressed no (such) concern". It is difficult to see how the efforts of a victim to obtain discovery from the perpetrators of a crime could ever constitute anything other than a windfall for the government. In fact when the civil discovery was reinstituted after a lengthy delay, the government on several occasions asked the civil plaintiffs to seek materials that the government had been unable to get prior to indictment.

II. THIS INVOLVEMENT OF ATTORNEY GENERAL'S ASHCROFT & GONZALEZ IN THIS CASE APPEARS TO BE IMPROPER IN LIGHT OF APPARENT CONFLICTS OF INTEREST.

As stated above, prosecutors in this case have apparently indicated that both that the slow pace of this case has been occasioned by delays caused by individuals at the highest levels of the Department of Justice and that all decisions had to be reviewed by the Attorney General himself. Given the extreme and critical importance of an assault on free elections by high officials in a major political party, is it certainly appropriate for attention to be given to the case by at the highest levels at the Department of Justice. However, the attention so given should be of assistance to the expeditious and efficacious prosecution of those involved. In this case, however, the attention of the higher ups in the Justice Department served only to delay, if not deny, justice. Both Attorney General's Ashcroft and Gonzalez had personal conflicts of interest which should have resulted in recusal from all involvement in the case. Attorney General Ashcroft, at the time of these events, had recently been a United States Senator and a member

of the National Republican Senatorial Committee, one of the organizations for which James Tobin was working when he undertook his criminal activities.[5] The conflict for Attorney General Gonzalez is even more apparent. At the time of the phone jamming, Attorney General Gonzales was legal counsel to the White House. During the course of the criminal conspiracy, defendant, James Tobin, made literally hundreds of calls to the political office of the White House. In the civil case, a deposition was taken of Alicia Davis, Deputy to Ken Mehlman, who was then the Political Director of the White House regarding her conversations with both Tobin and Jayne Millerick, a Republican operative on Election Day 2002. The New Hampshire Democratic Party sought to have documents produced from the White House concerning these contacts. (This request was denied by the White House even though the documents sought only related to the non-official actions of the White House Political Office that would not appear to be subject to executive privilege and related to calls that could not be paid by public funds according to the terms of the Hatch Act). It is perfectly clear that there were significant questions regarding the involvement of the political office of the White House in this case. When it came to light that the Republican National Committee had paid several million dollars for the legal fees of James Tobin, former, RNC Chair Gillespie told a reporter that the decision to pay these legal fees made in consultation with the White House. (Gillespie originally said that the White House took part in the decision making process, after reflection, and perhaps consultation, he later claimed that he had merely informed them of the decision). As Attorney General Gonzalez was then counsel for the White House, it would have been totally inappropriate for him to have taken any part in

[5] Letter from Congressman Conyers (Appendix 5)

investigation and prosecution of the phone jamming case where part of the inquiry would involve the possible involvement of individuals working for the White House.

III. AN INAPPROPRIATELY LOW LEVEL OF DOJ RESOURCES WERE DEVOTED TO THE PHONE JAMMING INVESTIGATION.

The phone jamming represented an insidious attack upon free elections in our country. It implicated high officials of one of the major political parties. Yet the DOJ allocation of resources failed to even reach a level appropriate for a case involving trapping out of season in a national forest. Through discovery, we have received over five thousand pages of the DOJ investigation. From these materials received, it appears that exactly 1 (one) FBI agent was assigned to the case on a part time basis. During the course of this case, the agent was continually given other assignments which interfered with her ability to conduct a coherent intensive investigation of this serious felony. Under these circumstances, Special Agent Cathleen Fuller of the Federal Bureau of Investigation did what has to be considered an astonishing job; however, her ability to follow through on investigatory leads was unfairly constrained by lack of resources and by an utter lack of assistance from other parts of the FBI. At times, Special Agent Fuller found in necessary to ask the plaintiffs in the civil case to retrieve public documents relating to James Tobin. Special Agent Fuller was furthermore affirmatively instructed **not** to follow up on leads concerning a possible obstruction of justice on the part of the Republican National Committee on the basis that these would be supposedly be dealt with by the Bureau in Washington. While it is of course possible that these leads were followed up in Washington, there is not even a scintilla of

evidence available to indicate that this was the case.[6] As mentioned above, in the over 5000 pages of the FBI investigation file which the victims received from one of the defendants, there is not a single indication of action on the part of any FBI special agents other than Special Agent Fuller.

If in fact these leads were not investigated and political interference was what was behind the limitations placed upon Special Agent Fuller's investigation, this would constitute no less than an obstruction of justice. The decision of the DOJ to initially assign a case of this magnitude to a single attorney in the Computer Fraud Division who had multiple other responsibilities is also troubling and consistent with a desire to starve the prosecution of resources. (Ultimately the case was transferred to a three attorney team who did an excellent job in the prosecution of Tobin. This did not occur until almost three years into the investigation, when most of the delay had already occurred).

IV. THE REFUSAL BY THE DEPARTMENT OF JUSTICE TO PURSUE PROSECUTION AGAINST ORGANIZATIONS INCLUDING THE NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE AND THE REPUBLICAN NATIONAL COMMITTEE VIOLATED DOJ GUIDELINES

Neither the Republican National Committee nor the New Hampshire Republican State Committee were ever charged in this case in spite of the fact that it's Chair, Vice Chair,

[6] Charles McGee's 302 (Appendix 6)

Executive Director, Finance Director and many others took part in or had prior knowledge of the criminal interference with the constitutionally protected election activities. [7]

The question of whether and when to charge organizations for the criminal actions of its employees is governed by a policy promulgated on January 20, 2003 by Larry D. Thompson, Deputy Attorney General. The so called Thompson Memorandum lists several criteria by which a decision on charging of corporations or organizations must be premised. These include such items as:

- "The seriousness of the offense including a risk of harm to the public;
- The pervasiveness of wrong doing within the corporation including the complicity in or condonation of the wrongdoing by corporate management;
- The organizations timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agent including, if necessary, the waiver of corporate attorney/client and work product;
- Is whether corporation appears to be protecting its culpable employees or agents … through the advancing of attorney's fees;
- Whether the corporation while purporting to cooperate, has engaged in conduct that impedes the investigation (whether or not rising to the level of criminal obstruction).

It would be difficult to imagine an organization more worthy of prosecution that the New Hampshire Republican State Committee and the Republican National Committee. The offense was extremely serious, striking at the heart of our democratic form of government. The entire

[7] Charles McGee's 302 re: Darryl Henry (2003) (Appendix 7)

management structure of the New Hampshire Republican State Committee took part in or was aware of the events. Most critically, the New Hampshire Republican State Committee refused to waive its attorney/client and work product protection in order to assist the prosecution of the criminal case and actually asserted evidentiary privileges in the context of both the criminal and civil case which impeded the investigation. Shortly after public disclosure of the involvement of the New Hampshire Republican State Committee, its counsel took statements from many if not all of the individuals involved in the case. The Republican State Committee refused to turn these materials over to the prosecution of the criminal case or the defense of the civil case, hiding evidence behind an assertion of attorney/client privilege and work product. While they have a legal right to do so, a fair handed application of the DOJ standards in the Thompson Memo would require organizational indictment for non-cooperation.

Furthermore, it appears that the New Hampshire Republican State Committee may have engaged in an affirmative act of obstruction of justice. On the first day of the Tobin trial, the prosecutors complained bitterly that they had just learned of the existence of the computer utilized by New Hampshire Republican Party Executive Director, Charles McGee, during the course of this criminal conspiracy. The prosecutors stated that the computer was subject to a grand jury subpoena issued to the New Hampshire Republican State Committee over a year earlier. Because of the failure to produce the computer in a timely manner, no forensic evaluation was able to be performed on the computer for the Tobin trial. Rather, the DOJ entered into an agreement with the New Hampshire Republican State Committee that they would make it available for analysis after the trial. Nearly a year later, undersigned counsel for

the Democratic Party was informed that no analysis had ever been performed on this computer and it appears that the Justice Department has not since demanded that it be produced, thus allowing the NH RSC to enjoy the benefit of their failure to obey a Grand Jury subpoena. Similarly, it appears that the Republican National Committee or individuals associated with it may have engaged in an obstruction of justice. The trial attorneys in the Tobin case had sought the production of his desk calendar for the time period relating to the phone jamming. A copy of a desk calendar was provided to the Department of Justice, however, it appears that the Republican National Committee told the Government that it did not have possession of the original. In the subsequent civil case, the Democratic Party filed a motion to force the production of the original. Shortly before the motion was to be heard in court, the Republican National Committee miraculously discovered that they had the original calendar in spite of their past denial to the prosecutors. This was turned over to the Department of Justice and subsequent analysis showed that there had been deletions of critical notations from the copy given to the DOJ. [8] To date, no action has been taken over this apparent act of obstruction of justice on the part of the Republican National Committee or one of its employees. Based upon all of the above factors, an inquiry into possible high level DOJ protection of Republican organizations is appropriate. Counsel for the Democratic Party was informed by Agent Fuller that she was told not further investigate this matter and that it would be 'handled in Washington'. Providing a doctored piece of evidence in response to a Grand Jury subpoena and falsely claiming to not have the original are highly suggestive of serious obstruction of justice. It is shameful that the

[8] Charles McGee's Tobin Trial Testimony (Appendix 8)

Department of Justice has apparently taken no action other than to lift a carpet and sweep the evidence.

On December 20, 2007, in the same article cited above McClatchy reporter Greg Gordon stated that he had been informed by a Justice official with knowledge of the case that federal prosecutor Todd Hinnen had sought to criminally indict the New Hampshire Republican State Committee for their responsibility for the phone jamming and their failure to cooperate with the government but was overruled by officials higher in the Justice Department. Given the highly politicized nature of the all of the actions of the Justice Department in this case, it is imperative that there be a substantial inquiry into whether political considerations dominated the rationale for this decision.

V. THE DEPARTMENT OF JUSTICE HAS FAILED TO TAKE OBVIOUS INVESTIGATIVE STEPS WHICH WOULD BE LIKELY TO LEAD TO THE EXPOSURE OF INVOLVEMENT OF HIGHER UPS IN THE PHONE JAMMING

In 2003, at the very onset of the FBI investigation, former New Hampshire Republican State Committee member, Charles McGee told the investigation that he believed that an individual named Darryl Henry who was a lobbyist for the American Gas Association and the United States Chamber of Commerce were involved in some degree in the phone jamming in New Hampshire on Election Day 2002. (See Appendix 7) In spite of this information, the Government waited almost two years to interview Mr. Henry. When Chuck McGee was called to testify as a witness for the Government in the December, 2005 trial of James Tobin, McGee testified under oath that Darryl Henry had stated that he was aware that the phone jamming had

been terminated by the State Party in the morning of 2005 and that he would have his friends at the Chamber pick it up. [8] In October 2006, the New Hampshire Democratic Party deposed Darryl Henry as part of their civil suit. In response to each and every question concerning his involvement and the involvement of the Chamber of Commerce and the involvement of higher up individuals, Mr. Henry asserted his right to remain silent and declined to answer any questions. [9]

Documents obtained in discovery of this case, shows that Henry was in New Hampshire for a meeting with Tobin and NHRSC officials in late October 2002 during the time period when the phone jamming scheme was allegedly being planned. Phone records from this period show Henry having frequent communications with both Tobin and the NHRSC.

In addition, Henry has other connections with the New Hampshire Republican politics and the US Chamber of Commerce. In 2001, Henry helped organize and served as spokesman for the Alliance for Energy and Economic Growth (AEEG), a coalition organized by the United States Chamber of Commerce which consisted of natural gas producers including the American Gas Association, Henry's employer). [10] From 2002 to 2003, the AEEG's sole lobbyist was John H. Sununu, President of JSH Associates Inc. who is the father of John E. Sununu, one of the candidates in the 2002 Senatorial election. [11] It is difficult to understand why no further action has been taken in regards to Mr. Henry. At a very minimum, Mr. Henry should be brought before a Grand Jury and given use immunity in order to determine what if anything he knows about the

[9] Darryl Henry's Deposition (Appendix 9)
[10] Darryl Henry – American Gas Association (Appendix 10)
[11] John Sununu – Lobbyist for AGA (Appendix 11)

involvement of other individuals and organizations in the phone jamming of 2002 or the subsequent cover-up.

There also exist unresolved questions concerning the involvement of Republican Party groups in the funding of James Tobin's defense. The Republican National Committee has admitted to paying millions of dollars to Tobin's criminal defense attorneys up to the point of his conviction. Within weeks of his conviction and the purported cessation of RNC legal payments to Tobin, a corporation was set up in Maine with an address identical to Tobin's residence. Subsequently, several hundred thousands dollars were paid to this entity, Northeast Strategies, by the re-election campaign of Rhode Island Senator Lincoln Chaffee. These payments were listed as being for the purpose of consulting, yet oddly enough almost perfectly match the unpaid balances of Tobin's legal bills. [12] If these payments were not for valid election purposes then the FEC reports filed in connection with them would constitute a knowing falsehood. On , during the sentencing hearing of James Tobin, his defense adduced testimony and argument to the effect that he had lost his only political client and was without a source of income. On that very date, a payment of $88,268.00 was sent from the Chaffee campaign to Tobin's home address. It appears that the Justice Department has taken no steps to determine whether the information given the Federal Judge sentencing Tobin was either false or deliberately misleading. To this date they have apparently never reported this information to either the Court or the US probation office which was supervising Tobin.

[12] Senate Majority Project Analysis (Appendix 12)

VI. THE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW HAMPSHIRE HAD A CLEAR AND DIRECT CONFLICT OF INTEREST IN THIS CASE. AN EXAMINATION OF THE CONTACT BETWEEN HIS OFFICE AND THIS CASE SHOULD BE UNDERTAKEN.

The United States Attorney for the District of New Hampshire, Thomas Colantuono, was elected in partisan elections as a Republican candidate for both State Senator and Executive Counsel. As such, he would have been intimately involved in the political affairs of the New Hampshire Republican State Committee. In the year 2000, he was a Republican candidate for congress. During the 2004 election, Attorney Colantuono's wife was a paid operative for the Republican National Committee passing out leaflets which had been paid for by the New Hampshire Republican State Committee endorsing the Bush/Cheney campaign. She thus accomplished the hat trick of advancing of working for the goals both James Tobin's present and past employer as well as the employer of Charles McGee.

Based upon these clear conflicts, at some point in the prosecution, Attorney Colantuono referred the matter to main justice. An attorney from his office however continued to play some role in the proceedings. It is not known whether to what information was provided to Attorney Colantuono and to what information he had access. At some point in time during the proceedings, main justice chose to terminate the role of the attorney from Colantuono's office. Again, it is not known the basis for this termination. It clearly would have been a better practice for no one working for Attorney Colantuono to play any role in the prosecution, a definitive conclusion concerning the propriety of Colantuono's involvement in this case cannot be reached without utilization of investigatory tools available only to the Congress.

VII. SUMMARY

The purposeful interference with the phone communications of the New Hampshire Democratic Party on Election Day in 2002 was a political crime committed by political operatives for political gain. The Department of Justice is headed by political appointees, most of whom were closely associated with entities whose conduct was at issue in this case. The DOJ prosecution was marked by inexplicable inordinate delays, interference with the civil suit, and a failure to hold accountable Republican party organizations in spite of a willful refusal to cooperate if not acts of obstruction. In both New Hampshire and Washington, the top DOJ officials had actual conflicts of interest and should have been fully recused from any participation in the case.

Public confidence in the fair and impartial administration of justice requires that Congress perform its oversight function by reviewing the manner in which this case was handled by the Department of Justice.

Yours truly,

Paul Twomey
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Epsom, NH 03234
Twomeylawoffice@verizon.net

Attachment 1

Union Leader, The/New Hampshire Sunday News (Manchester, NH)

New Hampshire Union Leader (Manchester, NH)

February 7, 2003

Dirty tricks: Federal officials alerted by police to alleged GOP phone jamming

By JOHN DiSTASO
Senior Political Reporter

Manchester police have alerted the U.S. Justice Department to an Election Day operation allegedly ordered by a Republican telemarketing dealer that jammed get-out-the-vote phone banks operated by the city's firefighters union and the state Democratic Party.

Lt. Fred Roach of the city's detective bureau said this week Idaho-based telemarketing firm Milo Enterprises was hired by GOP Marketplace of Alexandria, Va., to make repeated hang-up calls to a group of New Hampshire phone banks on Nov. 5.

Union and Democratic officials said the phone jam, broken by Verizon after two hours, lasted long enough to hurt their efforts to reach people who needed rides to the polls. Union president William Clayton said many intended contacts with potential riders, especially seniors, were not made, and, "I know a lot of them got shut out" of voting.

Roach said a state harassment law may have been violated. The case's multi-state nature prompted him to contact authorities about possible federal violations, he said.

State Republican Chairman Jayne Millerick said yesterday the state committee hired GOP Marketplace, but not to jam opposition phone lines, something she said she knew nothing about.

Millerick, elected chairman two weeks ago, said party executive director Chuck McGee told her that, "at the very end of the election cycle, the state party contracted with GOP Marketplace with the thought that the party may use telemarketing to do more get-out-the-vote calling. But the calls were never made, and the state party is currently working on getting a refund."

She noted the hiring occurred "before my time" as party chairman. Millerick worked with the state GOP in the fall to direct the Republicans' own get-out-the-vote effort in the final hours of the campaign.

GOP Marketplace calls itself "the first Internet-based political B2B (business-to-business). We link campaigns and committees with telephone vendors online."

The Republican State Committee paid GOP Marketplace $15,600 on Nov. 1. A lawyer for GOP Marketplace would neither confirm nor deny the firm hired Milo Enterprises.

State Democratic Chairman Kathleen Sullivan said, "It breaks my heart that anyone in this country would engage in criminal activity to try to prevent seniors from voting and to interfere with a free election."

City firefighters head Clayton said union volunteers noticed they could not make or receive calls at about 7:30 a.m. on Election Day. After an hour, he said, the problem was reported to police.
Lt. Roach said Verizon was contacted, freed the phone lines and identified the caller as Milo Enterprises.

He said Milo officials, contacted last month, "were very cooperative. They said they were a telemarketing firm for hire and had been paid in advance (by GOP Marketplace, Roach said,) to repeatedly call a variety of phone numbers in New Hampshire on November 5."

Roach said Milo officials told him that when they arrived at work early on Nov. 5, their workers had been making the calls for about an hour. But after checking the work order, Roach said, they stopped the blocking operation, realizing it could be "a problem."

Roach said he later spoke to a vice president at GOP Marketplace, and, "He was very evasive." The Union Leader's call to GOP Marketplace President Allen Raymond was returned by company attorney John Partridge, who said Raymond "can't confirm or deny" that Milo Enterprises was hired.

Clayton said the firefighters don't ask riders their party affiliation. He noted many union members are Republicans and the state firefighters union backed Republican Craig Benson for governor.

Sullivan said she identified the party numbers blocked as those for the Democratic City Committee office, the state party's now-closed coordinated campaign office and state party field offices in Nashua, Rochester and Claremont.

Roach noted a state law making it a misdemeanor to make a telephone call "with a purpose to annoy or alarm another." Prosecuting an out-of-state entity on a misdemeanor is difficult, he said, but he said he has contacted the U.S. Justice Department in Washington.

One federal law prohibits causing "the telephone of another repeatedly or continuously to ring, with the intent to harass any person at the called number." Roach said, "It appears (the Justice Department) may be interested in pursuing the matter."

McGee, the Republican State Committee executive director, said early yesterday he had vaguely heard of GOP Marketplace and did not hire the firm. Later, Millerick called The Union Leader to say that McGee "was mistaken," and had in fact hired it for telemarketing.

Sullivan said, "I find it fascinating that Chuck McGee's initial reaction was to lie. I don't know if I can believe anything now."

Roach said blocking phone lines "is serious crime, regardless of whether it's a misdemeanor or a felony. Whether it be you, me, or a union hall, they're all victims."

Raymond is a 33-year-old organizer whose recent clients included Republican National Committee co-chair Patricia Harrison and former Presidential candidate Steve Forbes' 2000 campaign committee, according to the firm's Web site. Last year, he headed the Republican Leadership Conference, which spent about $150,000 advertising against conservative GOP former candidate for governor Gordon Humphrey.

Attachment 2

APPENDIX 2

WADLEIGH, STARR & PETERS, P.L.L.C.

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STEPHEN L. BOYD

Serving New Hampshire since 1899

February 10, 2003

Thomas P. Colantuono, Esquire
U.S. Attorney's Office
55 Pleasant Street
Concord, New Hampshire 03301

RE: Possible Violation of 47 U.S.C.A. §223

Dear Attorney Colantuono:

I am writing to report certain actions that appear to violate 47 USC §223 and ask that your office investigate and, if warranted, prosecute the responsible parties. The following conduct took place on November 5, 2002, the date of the New Hampshire general election.

On that day, a continuous stream of telephone calls were made to five Democratic Party offices, which had the effect of tying up the lines and preventing legitimate business calls from being received. These calls were "hang up" calls; when the phone was answered, the incoming caller would either hang up or say nothing. The calls interfered with the "Get Out The Vote" activities of the Party. At the same time, similar calls were being made to the local Manchester Professional Firefighters Association office. As is widely known, the Firefighters conduct a "Ride to the Polls" operation at each election. They do not ask callers which party they belong to; in fact, the Firefighters are traditionally bi-partisan. In this past election, for example, the New Hampshire Professional Firefighters endorsed former Governor Jeanne Shaheen, a Democrat, and currently Gov. Craig Benson, a Republican. As you can imagine, the bulk of the rides provided by the Firefighters are to New Hampshire's senior population. I have enclosed a copy of a February 7, 2003 Union Leader article about this.

The Manchester Police Department has investigated this matter and determined the responsible parties, but decided not to prosecute under their jurisdiction because the conduct is a misdemeanor under New Hampshire law involving out of state defendants. The individual handling the investigation for the Manchester Police Department is Lt. Detective Fred Roche. Lt. Roche ascertained that the telephone calls were made by Milo Enterprises of Sand Point, Indiana. Representatives of Milo Enterprises told Detective Roche that it was contracted to call six numbers all day. The numbers were the Manchester Democratic City Committee Office, the Democratic Party Coordinated Campaign Office in Manchester, the Firefighter's Hall/"Ride to the Polls", and the Democratic Party field offices in the cities of Rochester, Claremont, and Nashua. The representatives of Milo also told Lt. Roche that they made the calls for an hour;

WADLEIGH, STARR & PETERS, P.L.L.C.

February 10, 2003
Page 2.

then stopped because they were "suspicious." It is my understanding, however, that the calls were stopped after complaints to Verizon. Milo's representatives also told Detective Roche that the company was hired to make the calls by another company called GOP Marketplace, LLC, of 600 Cameron Street, Alexandria, Virginia. GOP Marketplace paid Milo $2,500.00. Newspaper accounts have now revealed that the New Hampshire Republican Party had a contract with GOP Marketplace.

Detective Roche spoke with one Chris Cupit, Vice President of Marketing for GOP Marketplace. He referred them to the company's corporate attorney, who refused to comment.

The Manchester Police Department has decided not to pursue the matter further, given that the companies are out of state and that the New Hampshire statute involved here is a misdemeanor (RSA 644:4.I).

In reviewing this matter further, it appears that the activities of Milo Enterprises, as paid for through the auspices of GOP Marketplace, LLC, is telephone harassment within the meaning of 47 U.S.C.A. §223. This activity is, I believe, a felony, subject to both fines and a potential prison terms of up to two years.

To make a long story short, this case goes well beyond the category of political pranks. Intentional, criminal activities were undertaken with the sole purpose of harassing and disrupting efforts by the New Hampshire Democratic Party on election day. Even worse, the jamming of the firefighters' lines was a direct attempt to suppress the rights of voters, particularly senior voters, to vote. These acts violated both New Hampshire and Federal law.

I cannot believe that any public official, whether Republican or Democrat, would condone criminal conduct in political activity. For that reason, I look forward to a vigorous investigation by your office into these criminal activities.

I look forward to hearing from you.

Very truly yours,

Kathleen N. Sullivan
ksullivan@wadleighlaw.com

/sos

enclosure

US 00621

Attachment 3, 6 and 7

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/16/2003

CHARLES "CHUCK" C. McGEE (date of birth: December 27, 1969; Social Security Number: 001-68-4751), telephone number (603)223-6817, of 9 Waverly Street, Concord, New Hampshire, was interviewed at the office of his attorney, PATRICK DONOVAN, 215 Main Street, Suite 1, Salem, New Hampshire, telephone number (603)625-1254. Also present at the Proffer interview were Department of Justice (DOJ) Attorneys TODD HINNEN and JOHN LYNCH. After providing McGEE with the identities of the interviewing agent and the DOJ attorneys and explaining the nature of the interview, McGEE provided the following information after signing the Proffer agreement:

McGEE stated he is currently the Executive Director for the CITIZENS FOR A SOUND ECONOMY (CSE), New Hampshire Chapter, located in Concord, New Hampshire. He has been the Director of CSE since April, 2003. McGEE stated he interviewed for the position in January, 2003, shortly after resigning as Executive Director for the Republican State Committee. McGEE stated his cellular telephone number is (603)496-0639, his work cell phone number while the NH Executive Director was (603)491-0229, and his home number is (603)227-0526. McGEE has four Internet mail addresses: cmcgee@cse.org; chuckmcgee@comcast.net; cmnhgop@yahoo.com; and cmnhgop@aol.com.

McGEE stated he attended the UNIVERSITY OF NEW HAMPSHIRE, Durham, New Hampshire, and graduated with a Bachelor of Science degree in Community Development in May of 1996. Also in the same year he was on the BILL ZELIFF for Governor, who lost the primary. He was the regional field director. In 1997, he sold cars for a Nissan dealership in Exeter, New Hampshire. Later in 1997 he worked on a Republican campaign located in Portsmouth, Virginia as a State Delegate. Also at the end of 1997 he worked for the ROCKY MOUNTAIN GUN OWNERS ASSOCIATION in Colorado. He stated the ROCKY MOUNTAIN GUN OWNERS ASSOCIATION was a advocacy group for finding candidates supporting gun ownership. While in Colorado in early 1998, he joined the COLORADO CITIZENS FOR THE RIGHT TO WORK as a General Staffer. The primary purpose in this position was to help candidates support the position of no union dues in order to maintain their jobs. Later in December, 1998, he was promoted to the MONTANA CITIZENS RIGHT TO WORK located in Helena, Montana, which he held until January, 1999. He helped pass legislation in

Investigation on 12/12/2003 at Salem, NH

File # 288A-BS-92143 Date dictated 12/15/2003

by SA CATHLEEN N. FULLER/ljv

US 03193

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

January, 1999; became Executive Director for that organization, until acquiring the position of Executive Director of the NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE.

In June, 2000, right after the state primaries were over he married "CARRIE", who worked for the pro-life organization which was in the same building where he worked in Colorado. In July, 2000, he helped run campaigns which recruited candidates for New England area, to include Senators RUSSELL PRESCOTT and ROBERT BOYCE. McGEE stated that he served four years active duty in the United States Marine Corp as a helicopter crew chief and received an honorable discharge as a Corporal (E-4). He then began his political interests at UNH where he attended college and worked with the UNH COLLEGE REPUBLICANS.

In September, 2000, McGEE moved into an apartment in Manchester, New Hampshire, and worked for CLIFF NEWTON out of Rochester, New Hampshire. He then returned to Helena, Montana, where they were having problems with the RIGHT TO WORK laws and later moved back to Concord, New Hampshire, in either November or December of 2000. He rented a room from AL RUBEGA at 77 ½ South State Street, Concord, New Hampshire, until March, 2001.

Prior to traveling with his wife back to Concord, New Hampshire, in March, 2001, he traveled around the Country raising money for the RIGHT TO WORK organization. He applied for a position of Executive Director at the New Hampshire GOP office working for JOHN DOWD, who had just been elected Chairman of the New Hampshire Republican State Committee. He contacted DOWD and was interviewed three times after he forwarded his resume. He was hired in that position in February, 2001. His starting salary was $45,000. The Vice Chairman for DOWD was MARC PAPPAS.

McGEE's duties included the overall operations of the Republican Party to include planning, media, billing, vendors, website design, strategy, and direct mail. Once a month he would meet with representatives from counties, states, and various political entities throughout the State of New Hampshire, and discussed issues such as voter file updates, fundraising, upcoming events, and financial issues.

Most major decisions were presented for approval through JOHN DOWD. Both DOWD and McGEE could hire persons to work at their Concord office. McGEE remembers a vendor from Florida who he and DOWD had met at a REPUBLICAN NATIONAL COMMITTEE (RNC) meeting named

"DMS". McGEE stated there were two accounts held at the CITIZENS BANK for the New Hampshire GOP, one account was federal and the other was state. During election season it increased from two to four accounts. McGEE stated only JOHN DOWD had signature authority, but frequently McGEE would sign checks in DOWD's absence. No rubber stamping was allowed for signatures on any of the checks. If the checks were less than $5,000, McGEE would go ahead and sign the checks without contacting DOWD for approval.

McGEE stated that during the election year, also entitled a "persuasive year", they (NHGOP) often had strategy meetings in Washington, DC, where JIM TOBIN, New Hampshire Regional Political Director, JOHN DOWD, and JULIE TEER, Communications Director and National Party Spokesperson, would all attend. They were raising money for the National Committees, such as the RNC and NRCC. They discussed the "Victory Plan" , and closer to the election, more emphasis was placed on the "72 Hour Get Out The Vote Campaign" where JACK OLIVER, Deputy Chief, RNC in Washington, DC, assisted. One meeting he recalls JAYNE MARCUCCI was present as she was the former Executive Director for the RNC in New Hampshire from 1999 through 2001. During his tenure as New Hampshire Republican Committee Executive Director he (McGEE) and JOHN DOWD hired MARCUCCI (now JAYNE MILLERICK) to assist with the "72 Hour Get Out The Vote Campaign". Her job was to hire volunteers and get vans for transportation for the volunteers.

In October, 2002, McGEE said that JOHN DOWD told him that he "may not stay on as the Chairman", so McGEE began worrying about his job security. DOWD told him he was not going to seek re-election and JAYNE MILLERICK was advised she was a possible nominee for January, 2003. McGEE advised DOWD that he wanted to stay in his current position even though he was aware that if MILLERICK were elected she would have more conservative views compared to DOWD.

McGEE stated that KRISTY STUART worked on the books and did the accounting as office manager at the Concord office. He also stated that RUSS JOWERS raised money. JULIE TEER, Communications Director, left just prior to the November election in 2002. McGEE stated that KATE WHITMAN replaced JULIE TEER. He also stated that SARA CRAWFORD was a State Senate Race Coordinator and that GRANT BOSSE was a Public Relations Representative as well as JEFF FONTAINE.

FD-302a (Rev. 10-6-95)

288A-BS-92143

Continuation of FD-302 of CHARLES "CHUCK" C. McGEE, On 12/12/2003, Page 4

McGEE stated a few weeks before the election in November, 2002, his wife CARRIE showed him a flier that came into the mail from the Democratic Party. This letter gave information for voters on registration and voting procedures. It also included information on prescriptions and Medicare. McGEE stated that over the years he had decided to keep all the opposition mail that he received at his home. He remembers placing that particular advertisement in his pocket. He remembers there was a number on the paper to be used on election day, something like 1-800-WIN-DEMOCRAT. During that same week, he remembers hearing the Democrats had hired 6,000 students to go to the polls on election day. He also heard there were several people going door-to-door the weekend before the election. McGEE said he was "torqued" by this idea and because of his military training came up with the idea that "communications is as important as beans and bullets." McGEE stated he may have talked to his wife about this idea.

McGEE wanted to use this idea to block phones lines in order to stop opponents from getting through to the Democratic offices on election day. McGEE stated he may have talked to confidants: KEVIN BLIER, CHRIS WOOD, and MARC PAPPAS, and he said he wondered if this was something he could make happen.

McGEE stated he already had a phone vendor lined up to do the Get Out The Vote (GOTV), make calls on Thursday or Friday prior to the election, and contacted BOB MEYERS of TCN BROADCASTING in Utah. He told MEYERS about this idea of blocking the phone lines but was not sure how to "make it happen". MEYERS said he did not know how to do it. McGEE then contacted MIKE ONG of Minneapolis St. Paul. He worked for POLITET, or ALM, which was bought out by FLS/DCI. ONG makes fund-raising calls usually live calls and McGEE asked ONG if he could do the phone blocking idea. ONG said he could not and that he did not know anybody who could do it. McGEE then contacted BRIAN McCABE out of Concord, New Hampshire. He owns the CUSTOM SCOOP, an on-line news information site. McCABE also does clippings, contract work for DCI, or he may have worked for DCI in past years. He joked and said that McCABE'S business is sort of like a "political mafia". McCABE stated he had never heard of an idea such as this and since McCABE was well-connected in politics for at least ten years, McGEE was not sure who to call next.

The Thursday or Friday prior to election day, JIM TOBIN came into Concord, New Hampshire on the day that the President and the First Lady were arriving in Nashua, New Hampshire. McGEE

stated that TOBIN was the Regional Political Director for the RNC at this time and he talked to TOBIN about the phone blocking idea. He told TOBIN that he wanted to disrupt the lines of the Democratic Regional Offices on election day throughout New Hampshire. TOBIN gave McGEE ALLEN RAYMOND's name and phone number. McGEE had the impression that TOBIN and RAYMOND had worked together in the past. McGEE stated that TOBIN was the "lifeline to the White House" and TOBIN did not say "no" when he brought up the idea of the phone blocking on election day. This conversation was at the Office of the New Hampshire Republican State Committee in Concord, New Hampshire, and it did not last long. McGEE stated he then followed-up by calling RAYMOND on either a Thursday or Friday and introduced himself as being referred by JIM TOBIN. McGEE said he talked to RAYMOND discussing the facts of having regional offices in New Hampshire and that he was in charge of "commanding the troops" and that he had discussed the idea with TOBIN about the blocking of phone lines and how he got the idea from the military by blocking lines of communication. RAYMOND said it was something he could do.

McGEE stated that he later found out that RAYMOND was the President of GOP MARKETPLACE, a political telemarketing business out of Virginia. McGEE asked RAYMOND if there were any legal problems with this phone blocking idea and RAYMOND replied that he would check with his lawyers and call McGEE back. McGEE stated that RAYMOND also asked him if he wanted the calls to be made all day. During this particular conversation McGEE gave him no specific numbers to call, but McGEE told him there would be five or six numbers to call in Manchester and other more accessible and populated areas in New Hampshire. RAYMOND also asked McGEE if the callers were to leave a message or just hang up. McGEE told him he did not know which to choose. RAYMOND decided to just have hang-up calls.

McGEE stated that he thought there was no reason to contact any legal representative from New Hampshire, but he knew that DAVE VICINANZO was the legal counsel for the New Hampshire GOP. RAYMOND did not ask McGEE about TOBIN's involvement. McGEE waited for RAYMOND to call back about his lawyers' response of the legalities of this issue and also to discuss the phone line capacity and number of operators needed. McGEE knew that the Republican party had lots of "hard money", or cash, left for this project and was not sure how much this plan would cost. McGEE stated there were fewer restrictions on the hard dollars that were coming in closer to the election, which included monies from

donations and cash transfers. McGEE stated that DOWD was the only one to authorize any wire transfers of funds, but he did not discuss with RAYMOND or mention the cost of this project on their first conversation.

McGEE believes he told CHRIS WOOD, KEVIN BLIER, MARC PAPPAS and JEFF FONTAINE about the idea. McGEE said he told DOWD in person at his office that this was something he thought was important. He knew it was something DOWD had to approve. McGEE stated he had a good relationship with DOWD, but DOWD recently had a lot of his own personal financial problems and was out of the office quite a bit. McGEE stated that DOWD did not initially like this idea, was hesitant, and asked McGEE how it would be helpful. DOWD often gave McGEE a lot of leeway and referred to McGEE as ruthless. McGEE had a good relationship with DOWD. He stated that DOWD did not ask McGEE if he had talked or discussed this with anyone else.

On Friday or Saturday, just prior to the election, or maybe even the Monday just before on November 4, 2002, DOWD told McGEE he would call Attorney VICINANZO to establish the legalities of this idea. At this point, McGEE said he had not contacted RAYMOND back to give him the go ahead. On Monday, according to McGEE, DOWD came into McGEE's side of the office in Concord, leaned against the wall and said, "I talked to DAVID (DAVID VICINANZO), did a preliminary review and DAVID didn't like it, and mentioned something about "denial of service" some electronics or elections law, but was not sure if this idea fit." McGEE said that he and DOWD left it at that and DOWD never said "no" do not go ahead with the idea or project. DOWD knew McGEE had not yet heard back from RAYMOND. DOWD gave him the "okay" to go forward.

McGEE said he was excited about the idea as he now had the go ahead. Over the weekend, he was in the Manchester office talking to MARC PAPPAS about the idea who also thought it was a great, aggressive idea. PAPPAS gave McGEE the Manchester Firemen's Union number to add to his list of numbers to call on election day. He stated the Firemen's Union was very active in the Democratic political arena. McGEE said he also was in the Concord office on Sunday before the election and he remembers faxes were coming in from various phone vendors. He remembers a call from BOB MEYERS.

RAYMOND called McGEE back probably on Monday afternoon and RAYMOND told McGEE that his attorneys had no problem with the idea. McGEE said that RAYMOND's attorneys were "cool" with the

idea and made reference about an "interference of communication lines," but RAYMOND said there would be no problem with proceeding.

McGEE said during this conversation with RAYMOND they discussed how much it would cost, which was approximately $15,000. At that point RAYMOND said he needed the numbers to be called on election day. McGEE pulled the numbers off the Democratic web page and the Manchester Firemen's number from a mail piece that he had from MARC PAPPAS, and also some numbers from former Governor SHAHEEN's web page. He typed up the numbers on his computer, printed a copy, placed it with the payment at his office in Concord. He then placed it in a FedEx or overnight-type package and sent it to GOP MARKETPLACE, attention ALLEN RAYMOND.

McGEE later called JOHN DOWD on his cell phone early in the evening to let him know about what he was doing. DOWD asked McGEE if something came up on election day and they needed to stop this phone blocking would it be possible. McGEE told DOWD it would be and DOWD then gave him the go ahead. McGEE said that when he either FedEx'd or sent via UPS the check, he had KRISTY STUART assist him. McGEE said he signed the check with JOHN DOWD's name and later FedEx'd it on Monday evening November 4, 2002. McGEE said he is not sure if DOWD called him later that evening. He believes that when Mayor RUDY GUILIANO was arriving in Nashua, he may have received another call from DOWD. There were no other calls that evening relating to this matter. He remembers talking to JAYNE (MARCUCCI) MILLERICK that evening, but he did not tell her. He said she had a more conservative view on politics and he did not think she would like the idea.

Early morning Tuesday, election day, at about 6:00 or 6:30 a.m. early voting had begun at the City Hall in Concord, New Hampshire. McGEE went to City Hall with a sign for Governor BENSON and he met with some other citizens there at the election poll. GOP City Chairman JEFF NEWMAN showed up, and McGEE talked with him about an hour. While he was at the polls, JOHN DOWD called him on his cell phone. He said that DOWD told him, "We can't do it", meaning the phone jamming operation. McGEE did not have RAYMOND's number on him so he had to drive over to his own office which was about 8:00 or 8:30 a.m. McGEE believes he had two numbers for ALLEN RAYMOND and he called both. No one answered. JEFF NEWMAN was with him when he made the call. McGEE said he felt frantic trying to get through to RAYMOND. He said that NEWMAN thought the phone jamming idea was clever. He finally reached RAYMOND at approximately 9:00 or 9:30 a.m. He told RAYMOND, "JOHN says we

can't do it. Stop and pull the calls." McGEE is not sure if he left messages to end the calls prior to speaking in person with RAYMOND. McGEE said he told MARC PAPPAS that he had to end this and PAPPAS was upset they had to cancel. PAPPAS was in the Manchester office on election day. He believes he also told CHRIS WOOD and JEFF FONTAINE who were at the Concord office. McGEE said he remembers there were some kind of problem going on in Bedford, New Hampshire, on election day involving New Hampshire State Prosecutor BUD FITCH.

Later in the day, McGEE ran into DARRYL HENRY, Director of the American Gas Association, who said something like, "I heard the phone project got canceled. I had the chamber pick up where you left off." McGEE was surprised to hear this and did not ask him about this, but wondered how he knew about the numbers or if this was just a joke.

McGEE stated he never talked to CHRIS CUPIT at GOP MARKETPLACE in Virginia.

After election day was over, McGEE got a call from JOHN DISTASO, a reporter from THE UNION LEADER, the day before an article came out in the paper. DISTASO asked him if he had ever heard of GOP MARKETPLACE. McGEE said that he had not thought about them for so long that he told DISTASO he had never heard of them. When DISTASO refreshed his memory about the phone calls, he described the ALLEN RAYMOND outfit as GOP MARKETPLACE, McGEE said that he remembered that no calls had ever been made. McGEE then called JAYNE MILLERICK and told her that DISTASO called him and she was very upset as she was the current Chairperson of the New Hampshire Republican State Committee and she was reportedly the only person designated to speak with the media. McGEE told her he thought the phone blocking had been called off and canceled and never had taken place on election day. McGEE said that MILLERICK told him to find the check and the copy of the check on the www.fec.gov website. This all occurred the day before the article came out in the newspaper.

Also, on that same date, he may have discussed the conversation he had with DISTASSO with DOWD and PAPPAS. The following day, February 7, 2003, the article came out in the newspaper. McGEE stated that MILLERICK did not show up to the office until about 11:00 or 12:00 in the afternoon. MILLERICK came in and said that she had spoken to the governor about the article and that "McGEE had to go." McGEE was upset as he did not have an

opportunity to discuss the issue with Governor BENSON. There were two options for McGEE, he could either get fired or resign with a $6,000 bonus and get paid until the end of February. He chose the latter. McGEE found out at this meeting with MILLERICK that the calls had been made and also by reading the newspaper articles which came out earlier that day. There were a few other articles written about this incident during February, 2003. JENNIFER WROBLESKI replaced KRISTY STUART as the Office Manager about this time at the New Hampshire Republican State Committee office in Concord, New Hampshire.

McGEE said that he believes, according to his day planner, that he spoke with JIM TOBIN the last week of January at a RNC meeting located in Washington, DC. He said his wife worked for BRIAN McCABE who was a friend of JIM TOBIN. Therefore, TOBIN may have had knowledge about what was going on. He said he called TOBIN on a fairly regular basis requesting money for their offices in New Hampshire. He always saw him at the regional RNC meetings in D.C.

(At this time the interviewing agent showed a copy of the check to McGEE and he said the handwriting was all KRISTY STUART's except the signature which was his own, which was signed JOHN DOWD.)

Also, during this proffer interview, cell phone records were provided for review and by DOJ Attorney TODD HINNEN as well as the FEC reports. No additional information was provided by McGEE.

Attachment 4

APPENDIX 2

WADLEIGH, STARR & PETERS, P.L.L.C.

THEODORE WADLEIGH (Of Counsel)
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Serving New Hampshire since 1899

February 10, 2003

Thomas P. Colantuono, Esquire
U.S. Attorney's Office
55 Pleasant Street
Concord, New Hampshire 03301

RE: Possible Violation of 47 U.S.C.A. §223

Dear Attorney Colantuono:

I am writing to report certain actions that appear to violate 47 USC §223 and ask that your office investigate and, if warranted, prosecute the responsible parties. The following conduct took place on November 5, 2002, the date of the New Hampshire general election.

On that day, a continuous stream of telephone calls were made to five Democratic Party offices, which had the effect of tying up the lines and preventing legitimate business calls from being received. These calls were "hang up" calls; when the phone was answered, the incoming caller would either hang up or say nothing. The calls interfered with the "Get Out The Vote" activities of the Party. At the same time, similar calls were being made to the local Manchester Professional Firefighters Association office. As is widely known, the Firefighters conduct a "Ride to the Polls" operation at each election. They do not ask callers which party they belong to; in fact, the Firefighters are traditionally bi-partisan. In this past election, for example, the New Hampshire Professional Firefighters endorsed former Governor Jeanne Shaheen, a Democrat, and currently Gov. Craig Benson, a Republican. As you can imagine, the bulk of the rides provided by the Firefighters are to New Hampshire's senior population. I have enclosed a copy of a February 7, 2003 Union Leader article about this.

The Manchester Police Department has investigated this matter and determined the responsible parties, but decided not to prosecute under their jurisdiction because the conduct is a misdemeanor under New Hampshire law involving out of state defendants. The individual handling the investigation for the Manchester Police Department is Lt. Detective Fred Roche. Lt. Roche ascertained that the telephone calls were made by Milo Enterprises of Sand Point, Indiana. Representatives of Milo Enterprises told Detective Roche that it was contracted to call six numbers all day. The numbers were the Manchester Democratic City Committee Office, the Democratic Party Coordinated Campaign Office in Manchester, the Firefighter's Hall/"Ride to the Polls", and the Democratic Party field offices in the cities of Rochester, Claremont, and Nashua. The representatives of Milo also told Lt. Roche that they made the calls for an hour,

WADLEIGH, STARR & PETERS, P.L.L.C.

February 10, 2003
Page 2.

then stopped because they were "suspicious." It is my understanding, however, that the calls were stopped after complaints to Verizon. Milo's representatives also told Detective Roche that the company was hired to make the calls by another company called GOP Marketplace, LLC, of 600 Cameron Street, Alexandria, Virginia. GOP Marketplace paid Milo $2,500.00. Newspaper accounts have now revealed that the New Hampshire Republican Party had a contract with GOP Marketplace.

Detective Roche spoke with one Chris Cupit, Vice President of Marketing for GOP Marketplace. He referred them to the company's corporate attorney, who refused to comment.

The Manchester Police Department has decided not to pursue the matter further, given that the companies are out of state and that the New Hampshire statute involved here is a misdemeanor (RSA 644:4.I).

In reviewing this matter further, it appears that the activities of Milo Enterprises, as paid for through the auspices of GOP Marketplace, LLC, is telephone harassment within the meaning of 47 U.S.C.A. §223. This activity is, I believe, a felony, subject to both fines and a potential prison terms of up to two years.

To make a long story short, this case goes well beyond the category of political pranks. Intentional, criminal activities were undertaken with the sole purpose of harassing and disrupting efforts by the New Hampshire Democratic Party on election day. Even worse, the jamming of the firefighters' lines was a direct attempt to suppress the rights of voters, particularly senior voters, to vote. These acts violated both New Hampshire and Federal law.

I cannot believe that any public official, whether Republican or Democrat, would condone criminal conduct in political activity. For that reason, I look forward to a vigorous investigation by your office into these criminal activities.

I look forward to hearing from you.

Very truly yours,

Kathleen N. Sullivan
ksullivan@wadleighlaw.com

/sos

enclosure

FROM (MON) 2. 10'03 17:27/ST. 17:26/NO. 4861219658 P 3

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

NH Democratic Party, et al.,

v.

NH Republican State Committee, et al.,
04-E-0328

MOTION TO INTERVENE AND TO STAY DISCOVERY

NOW COMES the United States of America, by and through the undersigned counsel, and hereby moves this Court for an Order, pursuant to New Hampshire Superior Court Rule 139, permitting the United States to intervene in this case for a limited purpose, and granting a temporary stay of all discovery in this case, subject to a status review by the Court after six months.

In support of its motion, the United States relies upon its Memorandum of Law in Support of Motion to Intervene and to Stay Discovery, and further states as follows:

1. The public has a direct and apparent interest, which it is the United States' duty to protect, in preventing interference with ongoing criminal investigations and in protecting the integrity of federal Grand Jury proceedings. Pursuant to New Hampshire Superior Court Rule 139, intervention by the United States is appropriate in this case to protect this vital interest and for the limited purpose of seeking a temporary stay of discovery.

2. Discovery in this case, if allowed to go forward, would interfere in an ongoing federal Grand Jury investigation pending in the United States District Court for the District of New Hampshire.

3. The parties noticed for depositions in this case are likely witnesses in the ongoing federal criminal investigation. Deposition and document discovery of these witnesses would inevitably disclose the substance of ongoing matters occurring before the federal Grand Jury and would permit the targets of the criminal investigation to obtain access to information to which they would not otherwise be entitled at this time regarding the investigation and the United States' likely witnesses.

4. Disclosure would therefore frustrate the purposes of Grand Jury secrecy and could disrupt the ongoing criminal investigation by revealing matters occurring before the Grand Jury.

5. Furthermore, disclosure could result in unfairness to potential targets or subjects of the investigation by disclosing their identities and details about their alleged criminal activities prior to any determination by a Grand Jury as to whether probable cause exists to believe any of those parties committed criminal offenses.

WHEREFORE, the petitioner United States of America prays from this Court the following relief:

1. For an Order granting the United States permission to intervene in this matter for the limited purpose of seeking a delay of discovery;
2. For an Order granting a temporary stay of discovery for a limited period of six months, subject to further review and possible renewal by the Court at that time; and
3. For such other and further relief that the Court deems just and necessary.

Dated: October 15, 2004

Respectfully submitted,

MARTHA STANSELL-GAMM, CHIEF
DEPARTMENT OF JUSTICE
CRIMINAL DIVISION
COMPUTER CRIME & INTELLECTUAL
PROPERTY SECTION

By: /s/

Todd M. Hinnen
Trial Attorney
Tel: (202) 305-7747
Fax: (202) 514-6113

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served the MOTION OF THE UNITED STATES TO INTERVENE AND TO STAY DISCOVERY by telefax it to:

Steve Gordon, Esq. Shaheen & Gordon, PA P.O. Box. 2703 Concord, NH 03302	Ovide LaMontagne, Esq. Devine, Millimet and Branch 111 Amherst Street Manchester, NH 03101	Patrick E. Donovan, Esq. Hatem & Donovan 215 Main Street Salem, NH 03079
Fax: (603) 225-5112	Fax: (603) 695-8610	Fax: (603) 890-6304
John E. Durkin, Esq. P.O. Box 608 Dover, NH 03821	Finis E. Williams, III, Esq. The Chase Building 15 North Main Street Concord, NH 03301	
Fax: (603) 749-4970	Fax: (603) 226-~~2137~~ 2153 JR	

This 15th day of October, 2004.

Todd M. Hinnen
Trial Attorney
Criminal Division, Computer Crime and
Intellectual Property Section
U.S. Department of Justice

Attachment 5

ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

May 12, 2006

The Honorable Alberto Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I write to ask that you appoint a special counsel to investigate whether any White House officials were involved in the New Hampshire phone jamming scheme during the 2002 elections. Justice Department prosecutors have obtained three convictions for conduct stemming from this crime. A special counsel outside of the Department is needed, however, because there are possible connections between the plot and the White House, as well as potential federal election law violations stemming from state Republican Party reporting of Native American tribe donations connected with Jack Abramoff, that have yet to be examined.

In 2002 in New Hampshire, Governor Jeanne Shaheen (D) and U.S. Rep. John Sununu (R) were running against each other in a closely-contested campaign for the U.S. Senate. It has now become clear that, in order to suppress Democratic voter turnout, Republican officials orchestrated a phone-jamming scheme for election day. The scheme involved hiring an Idaho telemarketing company, Mylo Enterprises, to flood Democratic get-out-the-vote phone banks in New Hampshire with phone calls so that potential voters would not be aware of where or when to vote.

While the Department has obtained three convictions and one indictment against political operatives who were involved in the plot,[1] outstanding issues remain. First, it has been

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[1]William Douglas, *Phone Charges Costing GOP*, PHILA. INQUIRER, May 1, 2006, at A3. James Tobin, the Republican National Committee's New England head in 2002 and the Bush-Cheney campaign regional director in 2004, was convicted of aiding and abetting telephone harassment and of conspiring to commit harassment. *Id.* Chuck McGee, a former New

uncovered that New Hampshire Republican officials, and a national Republican official convicted for his role in the scheme, called the office of Ken Mehlman, then the White House Political Director, twenty-two times in two days leading up to the election.[2] Mr. Mehlman has denied that his office knew of or was involved in the plot, but the Republican National Committee has avoided efforts at discovery regarding this issue, including testimony from Mr. Mehlman, in a civil suit filed by New Hampshire Democrats against the Republican Party.[3] In fact, there are reports that the Justice Department itself has attempted to halt discovery in the civil suit.[4]

Second, the Republican National Committee, which Mr. Mehlman now heads, has paid at least $2.8 million in legal fees for one of the defendants in the Justice Department prosecution, James Tobin. It is confusing why the Republican Party would pay the fees for an official who acted illegally and allegedly without authorization. Finally, there are new indications that the scandal may be connected to another Department investigation. In the days leading up to the election, the New Hampshire State Republican Committee received donations from Rep. Tom DeLay's political action committee and two Native American tribes connected to Jack Abramoff, the Mississippi Band of Choctaw Indians and the California Agua Caliente Band of Cahuilla Indians.[5] The contributions from the three groups approximately added up to the $15,000 cost of the phone jamming plot.[6]

As you are aware, under the Department's regulations, you are required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the

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Hampshire Republican Party Executive Director, pled guilty to devising the plan. *Id.* Allen Raymond, the head of a company that linked Republican campaigns with telemarketers, pled guilty to carrying out the plot. *Id.* Finally, this just past March, Shaun Hansen, a co-owner of Milo Enterprises, was indicted for having his employees place the voter suppression calls. *Id.*

[2]Thomas B. Edsall & David A. Fahrenthold, *2002 N.H. Scandal Shadows GOP Anew*, WASH. POST, Apr. 14, 2006, at A6.

[3]*Id.*

[4]Sarah Schweitzer, *Parties Call Foul over N.H. Phone-Jamming Suit*, BOSTON GLOBE, Oct. 23, 2004, at A1.

[5]Cragg Hines, *Delay's Scandals: Maybe not Just for Texas Anymore*, HOUS. CHRON., Apr. 19, 2006, at B9.

[6]*Id.*

investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."[7] There is little doubt that all three factors are met in this case.

First, it is clear that a criminal investigation is warranted. The Department already has begun investigating the scandal and prosecuting individuals who were involved. The fact remains, however, that the Department appears not to be reviewing the extensive contacts between the plotters of the phone jamming and high-level Republican officials.

Second, there would be a conflict of interest for the existing Department prosecutors to investigate this matter. The U.S. Attorney responsible for the region, Thomas P. Colantuono of New Hampshire, was appointed by the President and would be investigating his own superiors. Also, the Election Fraud Unit at Main Justice in Washington, which apparently is leading the New Hampshire investigation, would face similar issues. Additionally, you served as Counsel to the President during the period in question and also should be recused from the matter for potential conflicts of interest. In fact, federal law requires you to issue regulations governing recusal of Department officials having personal, financial, or political conflicts of interest.[8]

Third, it is unquestionable that the public interest would be served by the appointment of an outside special counsel. The right to vote is one of the most important possessed by citizens of this country. The government must make every effort to indicate to its citizenry that it will protect that right no matter the cost. The last two presidential elections and the 2002 New Hampshire Senate campaign showed that, despite the successes of the Voting Rights Act and other measures, there are still those who encourage disenfranchisement. Only the appointment of a special counsel will show that the government will not tolerate these attempts.

I would appreciate your prompt response as to whether you will appoint an outside special counsel to review any potential involvement by Republican officials in Washington in the phone jamming efforts and, if not, the reason for your decision. Please reply through the

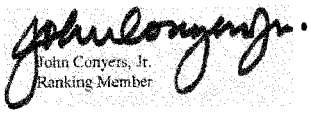
---

[7] 28 C.F.R. § 600.1 (2002).

[8] 28 U.S.C. § 528.

Judiciary Committee Democratic office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.
Ranking Member

cc: Honorable William E. Moschella
Honorable F. James Sensenbrenner, Jr.

Attachment 8

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA v. JAMES TOBIN	CR.05-216-01-SM December 7, 2005 9:30 a.m.

Day 2
Morning Session
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEVEN J. McAULIFFE
and a JURY

Appearances:

For the Government: Andrew Levchak, Esq.
Lily N. Chinn, Esq.
U.S. Department of Justice
Criminal/Computer Crimes

Nicholas A. Marsh, Esq.
U.S. Department of Justice
Public Integrity Section

For the Defendant: Dana W. Rutkowskas, Esq.
Robert J. Bonsey, Esq.
Bradley J. Reed, Esq.
Williams & Connolly
725 Twelfth Street, NW
Washington, DC 20005

Brian Tucker, Esq.
Bath Young Pignatelli PA
One Capital Plaza, PO Box 1500
Concord, NH 03302-1500

Court Reporter: Diane M. Churan, CSR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, NH 03301
(603)226-0917

COPY

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

5

1 do so now.
2 MR. BUTKEWINKAS: Your Honor, may I approach?
3 THE COURT: We need to. Do you object?
4 MR. BUTKEWINKAS: Yes.
5 THE COURT: Sustained.
6 MR. LEVCHUK: In terms of Exhibit 4, I believe
7 that is in evidence, but I did not show that to the
8 jury. So I'm going to do that now and show the witness
9 the document. So if we can have Exhibit 4 on the
10 screen, the second page.
11 THE COURT: Four does not appear to be
12 admitted. Any objection to 4?
13 MR. BUTKEWINKAS: No objection, your Honor.
14 THE COURT: It may be stricken on Government's
15 4.
16 (Government's Exhibit 4 admitted.)
17 DIRECT EXAMINATION (cont'd)
18 BY MR. LEVCHUK:
19 Q. In particular, on the second page, Mr. McGee,
20 I direct your attention to the check from the New
21 Hampshire Republican State Committee. You had testified
22 about this yesterday, but I don't think we had it in
23 front of the jury, so I want to make sure we go over it.
24 Again, whose handwriting is that?
25 A. The pay-to-the-order portion in the memo

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

1 portion is that of Kristy Stewart, an employee of the
2 state committee. The signature is a Mr. Dowd written by
3 myself with permission.
4 Q. Thank you very much. Sir, we left off
5 yesterday on Election Day eve. I'm now going to take
6 you forward, if we may, to Election Day morning,
7 November 5th, 2002. Describe the first thing that
8 happens that day. What do you do?
9 A. I went early to go to the Concord polling
10 place where they have early voting. I think it starts
11 at 6 or 6:30. I live close by, and I was holding a sign
12 early in the morning for our republican candidates.
13 Q. Does there come a point when you hear
14 something from anyone about the phone jamming scheme?
15 A. During a portion of my time standing there,
16 Concord Republican City Committee Chairman Jeff Newman
17 came and joined me. We stood there for a few minutes
18 conversing with folks going in to vote, and I received a
19 phone call from John Dowd, who is the Republican Party
20 chairman, my boss, at which time Mr. Dowd instructed me
21 very quickly, very briefly, to put a halt to my plan, my
22 idea to jam the phone lines. I then traveled over to
23 the state party headquarters on Main Street only a few
24 short blocks away and began to, as quickly as I could,
25 reach Mr. Hayward to put an end to the phone call plan

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

8

1 that I came up with.
2 Q. How did you try to reach Mr. Raymond?
3 A. By telephone. I believe I tried both his
4 office phone and his cell phone.
5 Q. Were you able to get in touch with him?
6 A. Eventually. Not as early as I had hoped.
7 Q. But at some point you conveyed the message;
8 did you not?
9 A. Yes. Very briefly I told him that the
10 chairman ordered it stopped, and I told him that he
11 needed to stop it. I didn't know what Mr. Raymond
12 needed to do to make that happen, but I knew he wasn't
13 the only person making the phone calls or running the
14 computers. So it was a very brief conversation, stop
15 the calls, and we left it at that.
16 Q. Later on on Election Day, do you have a
17 discussion about the phone jamming scheme with anyone?
18 A. That day, later in the day, I traveled to our
19 Manchester Republican Office where I spoke to --
20 specifically about this, I recall speaking to a
21 gentleman by the name of Daryl Henry. Daryl was up from
22 Washington volunteering on the campaign. I mentioned to
23 him that the phone call plan had been called off and
24 that I was a bit upset about that, and he indicated in
25 some fashion that he knew about the plan going on and

Charles McGee Testimony RE: Darrell Henry
Excerpt from United States VS. James Tobin

that he had called some associates of his to pick up where we left off. I took it as bravado because I didn't possibly know how he would have known about the plan or who we were calling or how it had been stopped. I just took it as he was trying to be a nice guy and make me feel good.

Q. Who is Darryl Henry, sir?

A. He was up from Washington. As far as I know he works for American Gas Association. I don't know much more about him than that.

Q. What was he doing in New Hampshire, if you know?

A. He was helping coordinate some of our VIP visits, volunteering in general campaign fashion. The time before an election is very, very, very busy for us, as you know. We spent nine million dollars that year.

Q. Now, sir, is it fair to say you are a defendant in a civil lawsuit that's pending in the superior court for the State of New Hampshire?

A. I am.

Q. What's the subject of the lawsuit?

A. I'm being sued for this matter, the phone jamming case.

Q. Events arising from this?

A. Yes.

Attachment 9

0001
1 STATE OF NEW HAMPSHIRE
2 SUPERIOR COURT
3 HILLSBOROUGH, SS. (NORTHERN DISTRICT)
4
5 - - - - - - - - - - - - - - - -x
6 RAYMOND BUCKLEY, et al. :
7 Plaintiffs, :
8 v. :
9 NEW HAMPSHIRE REPUBLICAN :
10 STATE COMMITTEE, et al., :
11 Defendants. :
12 - - - - - - - - - - - - - - - -x
13
14 Washington, D.C.
15 Friday, October 13, 2006
16
17
18
19
20
21
22
0002
1 Deposition of DARRELL A. HENRY, a
2 witness herein, called for examination by counsel
3 for Plaintiffs in the above-entitled matter,
4 pursuant to notice, the witness being duly sworn
5 by CATHERINE S. BOYD, a Notary Public in and for
6 the District of Columbia, taken at the offices of
7 Covington & Burling LLP, 1201 Pennsylvania
8 Avenue, N.W., Washington, D.C. 20004-2401, at
9 9:09 a.m., Friday, October 13, 2006, and the
10 proceedings being taken down by Stenotype by
11 CATHERINE S. BOYD and transcribed under her
12 direction.
13
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0003
1 APPEARANCES:
2 On behalf of the Plaintiffs:
3 JOSEPH E. SANDLER, ESQ.
4 JOHN HARDIN YOUNG, ESQ.
5 Sandler, Reiff & Young, P.C.
6 50 E Street, S.E., Suite 300
7 Washington, D.C. 20003
8 (202)479-1111
9
10 On behalf of the Defendant Republican
11 National Committee:
12 ROBERT K. KELNER, ESQ.
13 Covington & Burling LLP
14 1201 Pennsylvania Avenue, N.W.
15 Washington, D.C. 20004-2401
16 (202) 662-5503
17
18
19
20
21
22
0004
1 C O N T E N T S
2 WITNESS EXAMINATION BY COUNSEL FOR
3 DARRELL A. HENRY PLAINTIFFS DEFENDANTS
4 By Mr. Sandler 5
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0005
1 P R O C E E D I N G S
2 Whereupon,
3 DARRELL A. HENRY,
4 was called as a witness by counsel for Defendant,
5 and having been duly sworn by the Notary Public,
6 was examined and testified as follows:
7 EXAMINATION BY COUNSEL FOR PLAINTIFFS
8 BY MR. SANDLER:
9 Q. Mr. Henry, thank you for coming this
10 morning.
11 Could you state your full name and
12 address for the record?
13 A. Darrell Henry, 122 C Street, Northwest,
14 Suite 500, Washington, D.C. 20001.
15 Q. And is that your --
16 A. It's my work address.
17 Q. Okay. Could you just give us your
18 residential address for the record?
19 A. I prefer not to. I was told I didn't
20 have to -- I can give my work address.
21 Q. Okay. Have you ever had your
22 deposition taken before?
0006
1 A. On this case?
2 Q. On any case.
3 A. Yes.
4 Q. And what case was that that you had
5 your deposition taken?
6 A. It was Bill Brock versus Ruth Ann
7 Aaron.
8 I was just a witness.
9 Q. Okay. And well, I'm, just so you know,
10 Mr. Henry, I'm going to ask a question. You
11 should give an answer to each one orally.
12 You understand that?
13 A. Sure.
14 Q. And the reporter is going to make a
15 written transcript of this, and you'll have an
16 opportunity to look at the transcript after it's
17 completed.
18 Do you understand that?
19 A. Sure.
20 Q. And you understand if you make changes
21 of substance to your testimony, those changes can
22 be commented on at trial?

0007
1 A. Sure.
2 Q. And you understand today's deposition
3 is taken under oath?
4 A. Yes.
5 Q. And subject to the penalties of
6 perjury?
7 A. Yes.
8 Q. Okay. And if you don't understand a
9 question, please let me know, and I will be happy
10 to rephrase it. Okay.
11 Are you taking any medication or are
12 you under any treatment that might prohibit you
13 from rendering complete and truthful testimony
14 today?
15 A. At this point, I'm just going to go to
16 my prepared statement, and on the advice of my
17 counsel, I assert the provisions, privilege to
18 remain silent as guaranteed by the 5th and 14th
19 Amendments of the U.S. Constitution, Part 1,
20 Article 15 of New Hampshire.
21 I'm happy to provide it written if you
22 want it to refer to.
0008
1 Q. Okay. Well, I mean can you just
2 briefly describe your educational background for
3 us after graduating from high school?
4 A. The same -- based on advice of my
5 counsel, I'll assert my privilege to remain
6 silent.
7 Q. Okay. Can you give us your employment
8 history since graduating from college?
9 A. Again, based on the advice of counsel,
10 I assert my privilege to remain silent.
11 Q. Okay. Have you ever worked for the
12 U.S. Chamber of Commerce?
13 A. Based on my advice of, the advice of my
14 counsel, I assert my privilege to remain silent.
15 Q. Have you ever worked for any group or
16 entity affiliated with the U.S. Chamber of
17 Commerce?
18 A. Based upon the advice of my counsel, I
19 assert my privilege to remain silent.
20 Q. Have you ever worked as an employee of
21 a firm called DCI?
22 A. Based upon the advice of my counsel, I

0009
1 assert my privilege to remain silent.
2 Q. Did you work in the State of New
3 Hampshire on political campaigns during the Year
4 2002?
5 A. Based on the advice of my counsel, I
6 assert my privilege to remain silent.
7 Q. I think you can save time if you want
8 to just say that I assert the privilege.
9 A. Sure.
10 Q. I think that's acceptable to --
11 A. If I can go along and shorten it, I'm
12 happy to do whichever makes it easiest.
13 Q. I think it would be appropriate, it
14 would be acceptable if you want to, if it's the
15 same response, to just say I assert the
16 privilege.
17 A. All right.
18 Q. Were you -- well, I'm going to ask who
19 were you employed by while you worked in the
20 State of New Hampshire on political campaigns
21 during 2002?
22 A. I assert my privilege.
0010
1 Q. Were you paid by anyone during the time
2 you worked in New Hampshire?
3 A. I assert my privilege.
4 Q. And were you, were you on unpaid leave
5 from your job, your regular job, while you worked
6 in New Hampshire in the 2002 general election
7 campaign?
8 A. I assert my privilege.
9 Q. When you worked in New Hampshire during
10 the 2002 election campaign, where did you reside?
11 A. I assert my privilege.
12 Q. Did you share that residence with Julie
13 Teer, T-e-e-r?
14 A. I assert my privilege.
15 Q. Did you share that residence with a
16 Kate Whitman, W-h-i-t-m-a-n?
17 A. I assert my privilege.
18 Q. And what was the address of that
19 residence?
20 A. I assert my privilege.
21 Q. What was your cell phone number in the
22 fall of 2002?

0011
1 A. I assert my privilege.
2 Q. For what organization or entity were
3 you working in New Hampshire during the 2002
4 election campaign?
5 A. I assert my privilege.
6 Q. And to whom did you report in
7 undertaking work for that organization?
8 A. I assert my privilege.
9 Q. What was the nature of the work you
10 performed in New Hampshire in connection with the
11 2002 general election campaign?
12 A. I assert my privilege.
13 Q. How did you happen to come to work on
14 the 2002 general election campaign in New
15 Hampshire?
16 A. I assert my privilege.
17 Q. Okay. Did any -- well, strike that.
18 Did the New Hampshire Republican, did the, did
19 the New Hampshire State Republican Committee
20 reimburse your expenses while you were working in
21 New Hampshire in the fall of 2002?
22 A. I assert my privilege.
0012
1 Q. Did the U.S. Chamber of Commerce
2 organize or undertake any campaign activity in
3 New Hampshire in connection with the 2002 general
4 election?
5 A. I assert my privilege.
6 Q. Okay. What is the Alliance for Energy
7 and Economic Growth?
8 A. I assert my privilege.
9 Q. And did you ever have any role with
10 this organization, that is, the Alliance for
11 Energy and Economic Growth?
12 A. I assert my privilege.
13 Q. Was this organization affiliated with
14 the U.S. Chamber of Commerce?
15 A. I assert my privilege.
16 Q. Do you know James Tobin?
17 A. I assert my privilege.
18 Q. Okay. While you were working in New
19 Hampshire during the fall of 2002, did you have
20 occasion to communicate with Mr. Tobin?
21 A. I assert my privilege.
22 Q. Subsequent to the 2002 general

0013
1 election, have you communicated with Mr. Tobin?
2 A. I assert my privilege.
3 Q. Did the New Hampshire State Republican
4 Committee reimburse any of your expenses while
5 you were working in New Hampshire in the fall of
6 2002?
7 A. I assert my privilege.
8 Q. Subsequent to the 2002, while you were
9 working -- okay.
10 Subsequent to the 2002 general
11 election, have you communicated with Mr. Tobin?
12 A. I assert my privilege.
13 Q. Prior to election day November 5th,
14 2002, did you have any knowledge of the plan by
15 the New Hampshire Republican State Party to jam
16 the telephone lines of the New Hampshire
17 Democratic Party?
18 A. I assert my privilege.
19 Q. On election day itself, November 5th,
20 2002, did you speak to anyone at all about the
21 jamming of the phone lines of the New Hampshire
22 Democratic Party?
0014
1 A. I assert my privilege.
2 Q. What were you doing on election day
3 November 5th, 2002?
4 A. I assert my privilege.
5 Q. Since November 5th, 2002, have you
6 spoken to anyone about the phone jamming that
7 occurred in New Hampshire on election day
8 November 5th, 2002, other than your attorneys?
9 A. I assert my privilege.
10 Q. Can you give us an idea of what you
11 were doing on election day, November 5th, 2002,
12 taking us through the day from the beginning to
13 the end?
14 A. I assert my privilege.
15 Q. Do you know Charles McGee, the former
16 Executive Director of the New Hampshire
17 Republican State Party?
18 A. I assert my privilege.
19 Q. Did you have occasion to communicate
20 with Mr. McGee during the time you were in New
21 Hampshire in the fall of 2002?
22 A. I assert my privilege.

0015
1 Q. Did you communicate with Mr. McGee on
2 election day, November 5th, 2002?
3 A. I assert my privilege.
4 Q. And I would ask what did you say and
5 what did he say if you did speak with him?
6 A. I assert my privilege.
7 Q. Did you tell Mr. McGee that you knew
8 about the phone jamming plan that was going on?
9 A. I assert my privilege.
10 Q. Did you tell Mr. McGee that you had
11 called some associate of yours to pick up where
12 the New Hampshire Republican Party had left off?
13 A. I assert my privilege.
14 Q. Have you communicated with Mr. McGee at
15 any time since November 5th, 2002?
16 A. I assert my privilege.
17 Q. Do you know Jane Miller whose married
18 name is now I guess Jane Marcucci,
19 M-a-r-c-u-c-c-i?
20 A. I assert my privilege.
21 Q. Did you have occasion to communicate
22 with Ms. Marcucci during the time you were in New
0016
1 Hampshire in the fall of 2002?
2 A. I assert my privilege.
3 Q. Have you communicated with Ms. Marcucci
4 at any time since November 5th, 2002?
5 A. I assert my privilege.
6 MR. SANDLER: I have no further
7 questions.
8 Any questions?
9 MR. KELNER: I have no questions.
10 MR. SANDLER: That's it.
11 THE WITNESS: All right. Thank you
12 very much.
13 (Whereupon, at 9:19 a.m., the taking of
14 the instant deposition ceased.)
15 _____
16 DARRELL A. HENRY
17 SUBSCRIBED AND SWORN to before me this_____
18
19 day of_____, 2006
20 _____
21 NOTARY PUBLIC
22 My commission expires:

0017

1 CERTIFICATE OF NOTARY PUBLIC
2 I, Catherine S. Boyd, the Notary Public
3 before whom the proceeding occurred, pages 1
4 through 15, do hereby certify that the witness
5 was duly sworn, that the testimony of said
6 witness was taken by me and thereafter reduced to
7 this typewritten transcript under my supervision,
8 that said transcript is a true record of the
9 testimony given by said witness, that I am
10 neither counsel for, related to, nor employed by
11 any of the parties to the proceeding, and
12 further, that I am not a relative or an employee
13 of any attorney or counsel employed by the
14 parties thereto, or financially or otherwise
15 interested in the outcome of the proceeding, or
16 any action involved therewith.
17 Witness my signature and seal:
18
19 CATHERINE S. BOYD
20 Notary Public in and for
21 The District of Columbia
22 My commission expires: September 14, 2007

Attachment 10

LOBBYING OUTSIDE INFLUENCES: The Power Elite

2 May 2001

CongressDaily/A.M.
English
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The nation's largest energy providers and users will launch a broad coalition today to generate support for a new national energy policy. The high-powered coalition, dubbed the Alliance for Energy and Economic Growth, plans a multimillion dollar campaign to persuade members of Congress to back plans to increase U.S. supplies of coal, oil, natural gas and nuclear fuel.

The coalition, to be unveiled at a news conference, will sponsor television and radio commercials, host media events, lobby White House staff and members of Congress and brief House and Senate staff. "The country needs a new energy policy, and there needs to be one group to push the ball forward," said Darrell Henry, director of public affairs for the American Gas Association, who helped organize the group.

The alliance will provide a "united voice in support of a national energy policy, a structure to guide and coordinate an advocacy effort and a vehicle to enlist the support of the American public," said Bruce Josten, the U.S. Chamber of Commerce's executive vice president of government affairs, in a letter sent to 875 trade associations earlier this month.

In recent interviews, lobbyists who helped shape the group said they have patterned the alliance on a string of coalitions designed to support other industry priorities, such as the Tax Relief Coalition and another coalition that backed the congressional repeal of ergonomics regulations. "Before you can pass any major piece of legislation, you need to persuade people that there is real need to act," said one coalition organizer.

The energy coalition will be unveiled today with more than 100 members, but its organizers believe it will soon double or triple in size--making it one of the largest energy coalitions ever assembled. The full coalition hopes to be in place when the White House unveils its national energy policy in two weeks.

The alliance will be led by a full-time executive director--who has yet to be selected from a handful of remaining candidates--and a management committee stacked with K Street heavyweights, including Josten, National Association of Manufacturers Senior Vice President Michael Baroody,

American Iron and Steel Institute CEO Andrew Sharkey and American Forest and Paper Association CEO Henson Moore.

The heads of Washington's largest energy trade groups-- including David Parker, CEO of the American Gas Association; Red Cavaney, CEO of the American Petroleum Institute; Thomas Kuhn, CEO of the Edison Electric Institute; Barry Russell, president of the Independent Petroleum Association of America; Jerald Halvorsen, president of Interstate National Gas Association; Jack Gerard, CEO of the National Mining Association; and Joe Colvin, CEO of the Nuclear Energy Institute--also hold considerable power in the coalition. Most of the big energy groups were required to pump $100,000 or more into the coalition as an entry fee.

The coalition also will include hundreds of other corporate members, representing virtually every industry involved in the energy sector--from the developers of advanced computer systems that pinpoint energy reserves far below the earth's surface to the companies that pipe, ship and haul fuel to refineries and generators to the commercial and residential consumers who use the final product to power assembly lines, forklifts and cell phones. Some of these members will be required to pay at least $5,000 to sit on a steering committee. But the bulk of the coalition's members will not be required to support the group financially.

Nevertheless, some of the energy industry's smaller players have refused to join the Alliance for Energy and Economic Growth because they believe they will be dwarfed. "If I were to participate, I am lucky if I am a small fin on the small fish," said one association head who declined to join. Other lobbyists complain that the coalition will be dominated by energy-producing companies and will ignore consumers.

The coalition also has come under fire for reversing course and deciding to hire an executive director. Some lobbyists complain that it does not make sense to hire a full-time executive. "A lot of companies are saying, `Why are we hiring a Washington office and paying association dues just to start a new coalition and hire a chief executive?'" asked Don Duncan, vice president of government relations for Phillips Petroleum Co., which will not become a paying member. "In my opinion, it's a waste of the trade association's members' money," he added.

Even so, Duncan may join the Alliance because he believes it will play an important role in putting energy policy on the nation's agenda. Said Duncan, "The coalition has a tremendous value in getting the issue up front and center." -- By Brody Mullins

Attachment 11

U.S. CHAMBER of COMMERCE'S
ALLIANCE FOR ENERGY & ECONOMIC GROWTH

LOBBYING REGISTRATION FORMS
FOR
JHS ASSOCIATES, LTD.

Clerk of the House of Representatives Legislative Resources Center B-106 Cannon Building Washington, DC 20515	Secretary of the Senate Office of Public Records 232 Hart Building Washington, DC 20510

SECRETARY OF THE SENATE
02 APR -8 AM 8:46

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration ☐ 1. Effective Date of Registration JANUARY 3, 2002

2. House Identification Number _____ Senate Identification Number _____

REGISTRANT

3. Registrant name JHS ASSOCIATES, LTD.

Address 815 CONNECTICUT AVE.

City WASHINGTON State DC Zip 20006

4. Principal place of business (if different from line 3)

City State/Zip (or Country)

5. Telephone number and contact name

(202) 835-1673 Contact J. KENNEDY E-mail (optional)

6. General description of registrant's business or activities

CONSULTANT

CLIENT

A Lobbying firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should check the box labeled "Self" and proceed to line 10. ☐ Self

7. Client name U.S. CHAMBER OF COMMERCE ALLIANCE FOR ENERGY & ECONOMIC GROWTH

Address 1615 H ST. NW

City WASHINGTON State DC Zip 20062

8. Principal place of business (if different from line 7)

City State/Zip (or Country)

9. General description of client's business or activities

1100 MEMBER COALITION FOR COMPREHENSIVE ENERGY STRATEGY

LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within two years of first acting as a lobbyist for the client, *state the executive and/or legislative position(s) in which the person served.*

Name	Covered Official Position (if applicable)
JOHN H. SUNUNU	

Form LD-1 (Rev. 06/98)

Page 1

Registrant Name _____ Client Name _____

LOBBYING ISSUES

11. General lobbying issue areas. Select all applicable codes listed in instructions and on the reverse side of Form LD-1, page 1.

ENG

12. Specific lobbying issues (current and anticipated)

ENG (ENERGY/NUCLEAR) POLICY INCLUDING ISSUES RELATED TO PL 97-425, AS AMENDED.

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than $10,000 to the lobbying activities of the registrant in a semiannual period and in whole or in major part plans, supervises or controls the registrant's lobbying activities?

☒ No ⇨ Go to line 14. ☐ Yes ⇨ Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Name	Address	Principal Place of Business (city and state or country)

FOREIGN ENTITIES

14. Is there any foreign entity that:

a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances or subsidizes activities of the client or any organization identified on line 13; or
c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

☒ No ⇨ Sign and date the registration. ☐ Yes ⇨ Complete the rest of this section for each entity matching the criteria above, then sign and date the registration.

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

Signature _____ Date JAN. 7, 2008

Printed Name and Title JOHN H. SUNUNU

00030203318

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03 MAY 16 PM 2:06

00030203318

Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required To Complete This Page

1. Registrant Name: JHS Associates, LTD

2. Address ☐ Check if address has previously reported: 815 Connecticut Avenue

3. Principal Place of Business (if different than line 2): City: Washington State/Zip (or Country): DC

4. Contact Name: Jackie Kennedy Telephone: (202) 835-1673 E-mail (optional):

5. Senate ID #: 72651-12

7. Client Name ☐ Self: U.S. Chamber of Commerce Alliance for Energy & Economic Growth

6. House ID #:

TYPE OF REPORT 8. Year 2002 Mid-year (January 1-June 30) ☑ OR Year End (July 1-December 31) ☐

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ ⇒ Termination Date _____ 11. No Lobbying Activity ☐

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☑

$10,000 or more ☐ ⇒ $ _____ Income (nearest $20,000)

Provide a good faith estimate, rounded to the nearest $20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ ⇒ $ _____ Expenses (nearest $20,000)

14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options.

☐ Method A. Reporting amounts using LDA definitions only

☐ Method B. Reporting amounts under section 6033(b)(8) of the Internal Revenue Code

☐ Method C. Reporting amounts under section 162(e) of the Internal Revenue Code

Signature: John H. Sununu

Printed Name and Title: John H. Sununu

LD-2 (REV. 6/98)

00030203319

Registrant Name JHS Associates, LTD Client Name U.S. Chamber of Commerce Alliance for Energy & Economic Growth

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide information as requested. Attach additional page(s) as needed.

15. General issue area code ENG (one per page)

16. Specific lobbying issues

Energy/Nuclear Policy including issues related to Public Law No. 97-425, as amended.

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

Department of Energy

Executive Office of the President

U.S. House of Representatives

U.S. Senate

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	New
		☐
John H. Sununu		☐
		☐
		☐
		☐
		☐
		☐

19. Interest of each foreign entity in the specific issues listed on line 16 above ☑ Check if None

Signature John H. Sununu Date

Printed Name and Title John H. Sununu

Form LD-2 (Rev 6/98) Page 2 of 2

00030203315

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03 MAY 16 PM 2:06

5 2 1 0 7 2 6 1 6 0 0

Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required To Complete This Page

1. Registrant Name
JHS Associates, LTD

2. Address ☐ Check if different than previously reported
815 Connecticut Avenue

3. Principal Place of Business (If Different Than Line 2)
City Washington State/Zip (or Country) DC

4. Contact Name	Telephone	Email (optional)	5. Issues ID #
Jackie Kennedy	(202) 835-1673		72851-12

7. Client Name ☐ Self	8. Client ID #
U.S. Chamber of Commerce Alliance for Energy & Economic Growth	

TYPE OF REPORT 8. Year 2002 Midyear (January 1-June 30) ☐ OR Year End (July 1-December 31) ☒

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☒ ⇒ Termination Date 12/31/2002 11. No Lobbying Activity ☐

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firms	13. Organizations
INCOME relating to lobbying activities for this reporting period was:	EXPENSES relating to lobbying activities for this reporting period were:
Less than $10,000 ☒	Less than $10,000 ☐
$10,000 or more ☐ ⇒ $ _____ (Income greater than $10,000)	$10,000 or more ☐ ⇒ $ _____ (Expenses greater than $10,000)
Provide a good faith estimate, rounded to the nearest $10,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).	14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options. ☐ Method A. Reporting amounts using LDA definitions only ☐ Method B. Reporting amounts under section 6033(b)(1) of the Internal Revenue Code ☐ Method C. Reporting amounts under section 162(e) of the Internal Revenue Code

Signature John H Sununu

Printed Name and Title John H Sununu

LD-1 (REV. 6/98) PAGE 1 of 2

00030203316

Registrant Name JHS Associates, LTD Client Name U.S. Chamber of Commerce Alliance for Energy & Economic Growth

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide information as requested. Attach additional page(s) as needed.

15. General issue area code ENG (one per page)

16. Specific lobbying issues

Energy/Nuclear Policy including issues related to Public Law No. 97425, as amended.

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

Department of Energy

Executive Office of the President

U.S. House of Representatives

U.S. Senate

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	New
		☐
John H. Sununu		☐
		☐
		☐
		☐
		☐
		☐
		☐

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature John H. Sununu Date

Printed Name and Title John H. Sununu

Form LD-2 (Rev. 6/98) Page 2 of 2

Attachment 12

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Between 12/6/04 and 8/31/06, Williams & Connolly has billed a total of $3,326,668.57. The Republican National Committee began paying Tobin's legal bills in December 2004, and continued to do so until late January 2006. According to FEC reports showing RNC disbursements, the RNC paid Williams & Connolly a total of $2,824,584.00 between 12/9/04 and 1/26/06.

Despite the RNC's public statements that it is not paying the legal bills for Tobin's appeal, Williams & Connolly has continued to send invoices to the RNC on a monthly basis.

The invoices sent to the RNC since February 2006 show that since the RNC made its final payment on 1/26/06, there have been no payments made towards Mr. Tobin's balance.

However, within days of the RNC's final payment to Williams & Connolly, an LLC was set up in the state of Maine. In early February 2006, Northeast Strategies LLC was formed as an entity based in Bangor, Maine.

FEC reports from the Chafee for Senate campaign show that beginning on 4/1/06, the Chafee campaign made the first of a series of payments to Northeast Strategies. Between 4/1/06 and 8/21/06, payments from the Chafee campaign to Northeast Strategies totaled $550,960.86.

The Numbers

How much has Tobin's defense cost?

$3,326,668.57

How much has the RNC paid directly to Williams & Connolly?

$2,824,584.00

Difference between the amount billed and the amount paid by the RNC? (In other words, the amount Tobin would be responsible for paying with his own funds given the RNC's decision to stop covering the tab.).

$502,084.57

Amount paid to Northeast Strategies by the Chafee for Senate campaign?

$550,960.86.

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

New Information on Northeast Strategies

At the ongoing depositions of various Republicans who were either directly involved in, or may have had knowledge of the phone jamming, the NHDP has attempted to learn more about Northeast Strategies.

Alicia Davis: In November 2002, Alicia Davis was Associate Director, White House Office of Political Affairs. Ms. Davis was deposed by the NHDP on Wednesday, September 20, 2006, in Washington, DC. The following is an excerpt from the transcript of that deposition. John Hardin Young, of Sandler Reiff & Young (NHDP attorney), was questioning Ms. Davis:

> Q While you were at the RNC, did you have any discussions with anyone about the allegations of phone jamming in the 2002 New Hampshire general election?
>
> A At what time?
>
> Q Any time?
>
> A No, other than with my –
>
> Q Other than with your counsel?
>
> A Yeah.
>
> Q Do you know who is paying the legal fees for Mr. James D. Tobin?
>
> A No, I don't know.
>
> Q Has anyone told you who is paying those fees?
>
> A No.
>
> Q Were you involved in any discussions at the RNC as to the payment of any legal fees arising out of the allegations of phone jamming as it relates to the 2002 New Hampshire general election?
>
> A No.
>
> Q Were you involved in any decisions or discussions relating to the cessation of the payment of any legal fees?

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

A No.

Q Who's paying your legal fees today other than the representation of the United States of America?

A I don't know.

Q All right. A question we are finding out after this deposition.

A That's true. I should.

Q I would recommend that you do. Have you ever heard of an entity called Northeast Strategies?

A Yes.

Q And do you know who they are?

A I -- I believe that it is Jim Tobin's company.

Q Do you know if he is -- if his wife also works there?

A I don't know how they are set up.

Brian McCabe: Brian McCabe was deposed by the NHDP on September 7, 2006, in New Hampshire. The following is an excerpt from that deposition. Mr. McCabe is answering questions posed by Paul Twomey.

Q. Are you aware of what work Jim Tobin's doing now?

A. No.

Q. Are you aware of an organization called Northeast Strategies? Have you ever heard of it?

A. Yes.

Q. Can you tell me where you first heard of it?

A. I know Kathy Summers, who I think works there, who I think owns Northeast Strategies.

Q. And how did you know she was associated with Northeast Strategies?

A. I've met Kathy and, you know, she's introduced herself as Northeast Strategies. That's her company's name.

Q. Have you ever worked with her on campaigns or -- when I say "campaigns," I mean both political as well as advocacy campaigns or business campaigns or anything like that?

A. Not political. On advocacy. She used to be at the Department of Labor. And after she set out, she has done, like we have a -- we hire a number of contract consultants like Kathy Summers. And as Jim Tobin did, Kathy's done some work for DCI.

Q. And what types of things has Kathy Summers done for DCI?

A. She -- she'll work on, you know, our corporate public policy campaign. She's working on one right now.

Q. So she's currently performing work for DCI?

A. Yes.

Q. Is Northeast --

A. She's a vendor on one of our projects, correct.

Q. What type of project is that?

A. It's a telecommunications client, and she's helping in -- you know, helping in the northeast region, I believe.

Q. What's the name of the telecommunications --

A. Verizon.

Q. And is she doing anything else currently for DCI?

A. I don't think so but I'm not sure.

Q. Is she doing that contract as herself as an individual or as Northeast Strategies?

A. I'm not positive. But I would think that she gets paid to Northeast Strategies because, by and large, if someone's got a business, we pay to the business.

Q. But people that have more than one business, I guess is what I'm getting at. You think it's Northeast Strategies that has a contract with DCI?

A. I think but I'm not positive.

Q. Do you work on that particular campaign with her?

A. I work on Verizon, yes. But I have -- There are a number of people who work on it. I don't really interact with Kathy Summers all that much on it.

Q. How about Mr. Tobin's wife? Have you ever had any contact with her concerning Northeast Strategies?

A. No, never.

Q. Where does Kathy Summers live?

A. I think she lives in Boston, but again, I'm not positive.

Q. Have you ever had occasion to contact her in Bangor, Maine?

A. No.

Q. And the "her" was Kathy Summers.

Terry Nelson: Terry Nelson was deposed by the NHDP on Friday, September 8, 2006, in Washington, DC. The following is an excerpt from that deposition, in which NHDP attorney Joe Sandler is questioning Mr. Nelson.

Q. Do you know, Mr. Nelson, who is paying Mr. Tobin's legal fees currently?

A. No.

Q. When you had dinner with him last month, in August 2006, did you talk to him about that?

A. No.

Q. You didn't talk to him about who was paying his legal fees?

A. No.

Q. When you had dinner with him, his wife was present also, correct?

A. Yeah.

Q. Her name is Ellen Hall?

A. I don't know what her maiden name is.

Q. Ellen Tobin?

A. Yes.

Q. You know her as well then?

A. I met her before, yes.

Q. Do you know what her occupation or employment is?

A. No. I know she recently started a firm with somebody else, but up until this point, I've mostly known Ellen as somebody who takes care of her family.

Q. Does she have a background in political work, to your knowledge?

MR. KELNER: I'm going to object to this line of questioning. The subpoena to Mr. Nelson calls for him to be deposed regarding his knowledge concerning the allegations contained in the complaint in this case. And I don't really particularly see how this line of questioning relates to any of that. If you ask explain some basis, I'll give you a little bit of latitude. It is far afield to me.

MR. SANDLER: Okay.

MR. KELNER: I'm not instructing my client not to answer. I'll give you a little bit of latitude, but I'm very close to doing so.

MR. SANDLER: Okay.

THE WITNESS: What does that mean?

BY MR. SANDLER: The question is whether you know Ellen Tobin from Republican politics as somebody who has a background in analytical work?

A. She does have a background in political work.

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Northeast Strategies Emerges in Chafee for Senate FEC Report:

On February 10, 2006, papers were filed in the state of Maine to incorporate a new business – Northeast Strategies, LLC. Information obtained from the Maine Secretary of State shows that Northeast Strategies (ME Corporation #: 20062466DC) remains in "very good standing" today (7/26/06).

A first look at Northeast Strategies LLC does not reveal any connection to James Tobin. The LLC's registered agent is Nathan Dane III, of 205 French Street, Bangor, ME. Tobin's name does not appear on the entity's corporate filings.

However, an FEC report filed on July 19, 2006 by the "Chafee for Senate" campaign in Rhode Island shows payments to Northeast Strategies totaling more than $386,000 for the time period April 1, 2006 -June 30, 2006. According to the Chafee for Senate FEC report, the purpose of each and every payment to Northeast Strategies LLC is listed as "consulting services."

To put the amount paid to Northeast Strategies in perspective, the total amount paid to Northeast Strategies is five times the amount the campaign spent on payroll over the same period.

The address to which each and every payment is sent is 212 Kenduskeag Avenue, Bangor, ME - the home address of James & Ellen Tobin.

Tobin's Career - Once Lost, Now Found?

At the sentencing hearing for James Tobin, held on May 17, 2006 in U.S. District Court in Concord, New Hampshire, Tobin's attorney asked the judge to spare his client a prison sentence. Dane Butswinkas attempted to show that Tobin had already suffered punishment enough: "He [Tobin] has lost his career - he [Tobin] lost his final client last Wednesday." Were Butswinkas' statement correct, that would mean Tobin "lost his final client" on Wednesday, May 10, 2006.

Tobin reiterated the claim. Speaking on his own behalf, Tobin said: "After 20 years, I have lost my profession."

The sentencing memorandum, filed by Tobin's attorneys in U.S. District Court on May 11, 2006, states as follows under the heading "Professional and Financial Effects":

"Mr. Tobin has also suffered profound professional and financial consequences as a result of this case. Mr. Tobin, through the income from his consulting business, has supported his family of six. Following his December 2004 indictment, "one of the first decisions he made was to tell current and prospective clients that in politics perception is everything, and that while his actions were under scrutiny, it was in their best interests not to hire him for political work." His business has been deteriorating for months, and

this week his last remaining client informed him that it intends to sever ties with him. Ellen Tobin summarizes the professional toll of this case: "His business is on the brink of destruction. Regardless of what happens from this point forward, his ability to make a living in politics is gone forever." Mr. Tobin's decades of experience will likely no longer support a career in his field because the public perception of this case will trump the integrity, honesty, dedication and experience that Mr. Tobin's colleagues so admire. This stark reality weighs heavily on Mr. Tobin. "Jim worries about how we will pay for four children's education now that his career is through." This is a very tangible punishment for Mr. Tobin that has already affected him and his family—and will continue to do so in the future."[5]

In fact, on May 17, 2006, the very day Tobin and his attorney claimed in U.S. District Court that Tobin's career was over, and that he had "lost his final client", Chafee for Senate paid Northeast Strategies $88,268.34.

Chafee Campaign Responds to Media Reports

On Sunday, August 6, 2006, the Washington Post first reported that Chafee's campaign was sending payments to Tobin's home address. Chafee's campaign responded:

"Campaign manager Ian Lang said that Tobin has no role in the company or the Chafee campaign. Instead, he said, Northeast Strategies is made up of Tobin's wife, Ellen, and a political consultant, Kathie Summers. James Tobin – who is appealing his December 2005 conviction – "is not involved at all," Lang said. He said that the money pays for mailings, phone calls and staff, in addition to Summers's expertise."[6]

The Washington Post also contacted Kathie Summers, who confirmed the explanation offered by Ian Lang:

"Summers confirmed Lang's account on Friday. She said that she had worked on campaigns all over New England and that her company was built on her expertise in targeting and reaching nonaffiliated voters. "It's messaging the independent voter," Summers said. She said she spends three days a week in Rhode Island, and Ellen Tobin – a friend whom she recruited to her company during a ski trip – handles bookkeeping and administrative duties. "There's no connection with Jim," Summers said. "I mean, I love Jim, but he's not involved in the company."[7]

On Tuesday, August 8, 2006, the Providence Journal wrote a second story, alleging that "Sen. Lincoln D. Chafee's campaign has paid $386,000 to a company controlled by the wife of James Tobin."[8]

The Providence Journal described Northeast Strategies as a firm specializing in "targeting unaffiliated voters" who "make up the largest slice of voters eligible for the Sept. 12 GOP Senate primary" and who are "coveted by both Chafee and his primary opponent".[9]

The Providence Journal quoted another Chafee campaign staffer, Steve Hourahan:

"'We had no idea that Northeast Strategies had any connection to Tobin," said Steve Hourahan, Chafee's campaign spokesman. The Northeast Strategies principal is Ellen Hall, Hourahan said. "Her name is Ellen Hall and we hired Ellen Hall and we know nothing about her connnection to Mr. Tobin. Mr. Tobin has no connection to the Chafee campaign at all."[10]

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Ellen Tobin: Engineer, Bookkeeper or Political Consultant

It remains unclear what role - if any - Ellen Tobin has at Northeast Strategies. Kathie Summers told the Washington Post that Ellen handles "bookkeeping and administrative" matters. Kathie Summers told the Washington Post she spends three days per week in Rhode Island, and as of early 2006, she maintains a primary residence in Newton, Massachusetts.[1] It remains unclear why a firm that is run by a Massachusetts resident - and does the majority of its business in Rhode Island, would be established in the state of Maine, and would hire a Maine resident to handle bookkeeping and administrative matters.

Ellen's Political Experience

Aside from working as manager for Susan Collins' 1996 Senate primary campaign, Ellen Tobin's political experience remains a mystery.

Stretching the Truth

Whether or not James Tobin is involved in Northeast Strategies, it is clear Tobin's attorney stretched the truth when he told asserted that James Tobin had lost his career, and that he was the family's sole source of income. On May 17, 2006, Dane Butswinkas stated that: "as the sole support of a family of six, the loss of your career is a serious punishment."

If we are to believe that James Tobin has no involvement in Northeast Strategies, then Ellen Tobin's involvement in the firm begs the question whether James Tobin was the family's sole source of income.

Given James Tobin's loss of his career, and the family's increasingly dire financial circumstances, is it plausible Ellen Tobin offered her services to Northeast Strategies free of charge?

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Chafee Campaign Payments to Northeast Strategies LLC

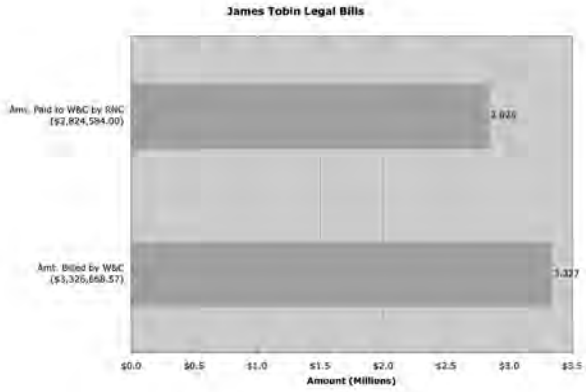
4/1/06 to 8/21/06

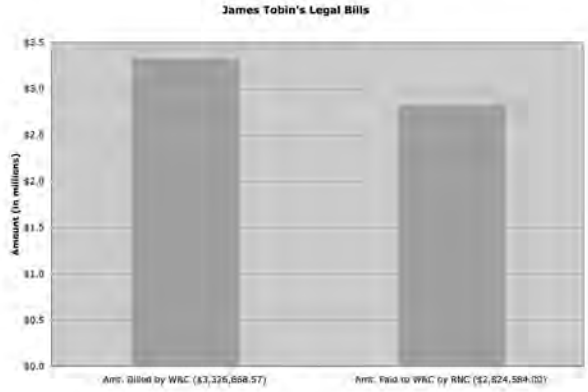
4/1/06	$125,000.00
4/15/06	$8,033.00
5/17/06	$88,268.34
5/19/06	$8,500.00
5/26/06	$2,100.00
5/26/06	$1,436.85
5/31/06	$45,093.40
6/8/06	$45,084.04
6/12/06	$940.74
6/12/06	$13,650.00
6/30/06	$48,119.93
7/2/06	$608.91
7/2/06	$4,350.00
7/13/06	$949.98
7/28/06	$20,467.23
7/28/06	$5,000.00
7/28/06	$9,321.35
7/28/06	$2,543.18
8/2/06	$45,216.03
8/18/06	$60,000.00
8/21/06	$5,262.45
8/21/06	$11,015.43
TOTAL:	**$550,960.86**

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent

Date (of Invoice, or Payment)	Amount Billed	Amount Paid by RNC to W&C	Total Due as of Invoice Date	Amount Paid by Chafee to Northeast Strategies	Source of Information
12/8/04	$72,590.91		$235,398.92		W&C Invoice #176866
12/9/04		$162,646.00			FEC/PoliticalMoneyline
1/12/05	$75,471.75		$148,062.66		W&C Invoice #177132
2/18/05	$112,383.27		$260,445.93		W&C Invoice #178109
3/11/05	$101,781.81		$362,227.74		W&C Invoice #178484
4/6/05	$197,511.77		$559,739.51		W&C Invoice #179085
5/5/05	$277,985.35		$837,724.86		W&C Invoice #179785
5/19/05		$72,591.00			FEC/PoliticalMoneyline
5/19/05		$75,472.00			FEC/PoliticalMoneyline
5/19/05		$112,383.00			FEC/PoliticalMoneyline
5/19/05		$101,782.00			FEC/PoliticalMoneyline
5/19/05		$197,512.00			FEC/PoliticalMoneyline
6/8/05	$416,835.62		$888,820.87		W&C Invoice #180633
7/12/05	$185,723.96		$882,544.93		W&C Invoice #181276
8/10/05	$92,965.14		$975,510.07		W&C Invoice #181925
?	$21,883.09		$997,393.16		*No invoice included*
10/6/05	$132,288.76		$1,129,681.92		W&C Invoice #183184
11/3/05	$180,450.52		$1,310,132.44		W&C Invoice #183790
12/12/05	$461,227.77		$1,771,360.21		W&C Invoice #184610
12/15/05		$1,771,360.00			FEC/PoliticalMoneyline
missing invoice	?	?	?	?	?
1/17/06	$56,388.00		$387,225.93		W&C Invoice #185416
1/26/06		$286,700.00			FEC/PoliticalMoneyline
1/26/06		$44,138.00			FEC/PoliticalMoneyline
2/10/06	*Northeast Strategies, LLC is incorporated in the state of Maine in February 2006.*				
2/10/06	$278,654.48		$335,082.48		W&C Invoice #185980
3/10/06	$113,168.08		$448,250.56		W&C Invoice #186626
4/1/06				**$125,000.00**	**Chafee FEC Report**
4/11/06	$33,674.21		$481,924.77		W&C Invoice #187324
4/15/06				**$8,033.00**	**Chafee FEC Report**
5/17/06	$70,401.74		$552,326.51		W&C Invoice #188786
5/17/06				**$88,268.34**	**Chafee FEC Report**
5/19/06				**$8,500.00**	**Chafee FEC Report**
5/26/06				**$2,100.00**	**Chafee FEC Report**
5/26/06				**$1,436.85**	**Chafee FEC Report**
5/31/06				**$45,093.40**	**Chafee FEC Report**
6/8/06				**$45,084.04**	**Chafee FEC Report**
6/12/06				**$940.74**	**Chafee FEC Report**
6/12/06				**$13,650.00**	**Chafee FEC Report**
6/30/06	$214,503.18		$766,829.67		W&C Invoice #189753
6/30/06				**$48,119.93**	**Chafee FEC Report**
7/2/06				**$608.91**	**Chafee FEC Report**
7/2/06				**$4,350.00**	**Chafee FEC Report**
7/13/06				**$949.98**	**Chafee FEC Report**
7/28/06				**$20,467.23**	**Chafee FEC Report**
7/28/06				**$5,000.00**	**Chafee FEC Report**
7/28/06				**$9,321.35**	**Chafee FEC Report**
7/28/06				**$2,543.18**	**Chafee FEC Report**
8/2/06				**$45,216.03**	**Chafee FEC Report**
8/18/06				**$60,000.00**	**Chafee FEC Report**
8/21/06				**$5,262.45**	**Chafee FEC Report**
8/21/06				**$11,015.43**	**Chafee FEC Report**
8/23/06	$194,468.08		$991,297.75		W&C Invoice #191212
9/28/06	$34,271.10		$995,568.85		W&C Invoice #192154
TOTALS	**$3,326,668.87**	**$2,824,534.00**		**$550,960.86**	

James Tobin's Legal Bills – Updated Report – Wednesday, October 4, 2006
Hilary Sargent





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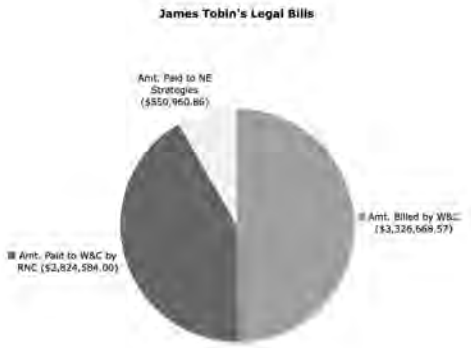

Attachment 13

McClatchy Washington Bureau

Print This Article

Posted on Thu, Dec. 20, 2007

Official: Justice Dept. slowed probe into phone jamming

Greg Gordon | McClatchy Newspapers

last updated: December 19, 2007 07:10:04 PM

WASHINGTON -- The Justice Department delayed prosecuting a key Republican official for jamming the phones of New Hampshire Democrats until after the 2004 election, protecting top GOP officials from the scandal until the voting was over.

An official with detailed knowledge of the investigation into the 2002 Election-Day scheme said the inquiry sputtered for months after a prosecutor sought approval to indict James Tobin, the northeast regional coordinator for the Republican National Committee.

The phone-jamming operation was aimed at preventing New Hampshire Democrats from rounding up voters in the close U.S. Senate race between Republican Rep. John Sununu and Democratic Gov. Jeanne Shaheen. Sununu's 19,000-vote victory helped the GOP regain control of the Senate.

While there were guilty pleas in the New Hampshire investigation prior to the 2004 presidential election, involvement of the national GOP wasn't confirmed. A Manchester, N.H., policeman quickly traced the jamming to Republican political operatives in 2003 and forwarded the evidence to the Justice Department for what ordinarily would be a straightforward case.

However, the official, who requested anonymity because of the sensitivity of the matter, told McClatchy that senior Justice Department officials slowed the inquiry. The official didn't know whether top department officials ordered the delays or what motivated those decisions.

The official said that Terry O'Donnell, a former Pentagon general counsel who was representing Tobin, was in contact with senior department officials before Tobin was indicted.

In October, the House Judiciary Committee opened an investigation to determine whether partisan politics undermined the federal probe.

The official said that department officials rejected prosecutor Todd Hinnen's push to bring criminal charges against the New Hampshire Republican Party.

Weeks before the 2004 election, Hinnen's supervisors directed him to ask a judge to halt action temporarily in a Democratic Party civil suit against the GOP so that it

wouldn't hurt the investigation, although Hinnen had expressed no concerns that it would, the official said.

Paul Twomey, a lawyer for the state Democratic Party, said the delay spared Republicans embarrassment at the peak of the campaign because a pending deposition would have revealed that several state GOP officials knew about the scheme, which was hatched by their executive director, Charles McGee. The delay also stalled the case beyond its statute of limitations, depriving Democrats of full discovery, he said.

Citing longstanding policy, spokesman Peter Carr said the Justice Department wouldn't comment on its investigation.

Four men have been convicted in the scandal, including McGee and Republican consultant Allen Raymond, who arranged to jam the phones. Their cooperation led to Tobin's indictment.

In mid-October 2004, Tobin resigned as the Bush-Cheney campaign's regional director after a news report disclosed allegations of his involvement. Bush narrowly lost New Hampshire, the only state he won in 2000 that went for Democrat John Kerry.

Hinnen, now an aide to Democratic presidential candidate and Delaware Sen. Joseph Biden, said he couldn't comment on the investigation.

Tobin was convicted in December 2005 of charges related to the scheme, but won a new trial on appeal. His lawyers didn't respond to e-mailed questions.

National Republican committees have paid more than $6 million to Washington law firms to defend Tobin and fight the civil suit, raising suspicions that there's more to the scandal.

Rep. Paul Hodes, a New Hampshire Democrat who requested the House inquiry, said he considers the delay in indicting Tobin to be ``a miscarriage of justice."

At the outset, the federal investigation hit a snag when Thomas Colantuono, the U.S. attorney for New Hampshire, withdrew from the case in early 2003 because his wife was a Bush-Cheney campaign worker. Justice Department officials then assigned the case to Hinnen, a prosecutor in the Computer Crimes Section.

HOW THE INVESTIGATION BEGAN

The official with detailed knowledge of the case gave this account of how the case unfolded:

In early 2004, Hinnen got approval from John Malcolm, the deputy chief of the Justice Department's Criminal Division, in early 2004 to investigate Tobin. Malcolm left the department soon afterward.

Hinnen then sought approval from Malcolm's successor, Laura Parsky, to prosecute Tobin but wasn't told until late summer to write a formal, detailed prosecution memo, which he did in early September.

On Oct. 1, 2004, Hinnen got the green light to prepare an indictment, but was directed to first give Tobin lawyer O'Donnell a chance to make his client's case. O'Donnell requested delays and then told Hinnen, Parsky and other senior officials that an unidentified lawyer had advised Tobin that the jamming was legal.

Hinnen argued to his superiors that it was irresponsible for the department to allow Tobin to serve as a Bush campaign official when it had evidence that he'd hindered people from voting.

In late October 2004, Justice Department officials told Hinnen it was too close to the election to bring such a politically sensitive indictment, putting it off until late November.

In early 2005, Hinnen submitted a lengthy memo arguing for a criminal indictment treating the New Hampshire Republican State Committee as a corporate entity. Hinnen noted that the party lacked an ethics policy at the time of the phone jamming and that its officials had refused to share with prosecutors the results of an internal investigation of the scheme.

Craig Donsanto, the chief of the department's Election Crimes Branch, objected to an indictment, arguing that the state GOP's ``shareholders'' are the voters.

Ultimately, John Keeney, a career deputy assistant attorney general, directed Hinnen to drop the idea.

Keeney, Donsanto and Parsky, now a San Diego County judge, didn't respond to phone calls.

In August, 2005, Hinnen was detailed for 18 months to a National Security Council job in the White House, leaving other prosecutors to handle Tobin's trial.

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Ms. SÁNCHEZ. I thank you for your testimony. Hopefully, we will be able to listen to some more of your information during our round of questions.

Mr. TWOMEY. Thank you.

Ms. SÁNCHEZ. At this time, I would invite Mr. Miller to please give his testimony.

TESTIMONY OF MARK CRISPIN MILLER, PROFESSOR, NEW YORK UNIVERSITY, NEW YORK, NY

Mr. MILLER. Thank you, Chairman Sánchez, Chairman Scott, Chairman Conyers, Ranking Member Cannon. I am very grateful to have been asked to speak here.

I want to start my attesting that I am not a Democrat or a Republican, but an Independent dedicated to the promise of American democracy as envisioned by Tom Paine. I believe with him that the right to vote is the basis on which all our other rights depend. Thus, the issue here is ultimately not the victory or defeat of either party, but the people's right to choose their government and thereby live and rule in freedom.

Such was once the view of the U.S. Justice Department whose Voting Rights Section strongly championed the individual right to vote by prosecuting all forms of illegal vote suppression. Since 2001, however, the department has turned a blind eye toward such crime.

Take the case of Sproul & Associates, an Arizona firm hired by the Republican National Committee to run stealth voter registration drives throughout the Nation prior to the 2004 election. Starting in the summer, Sproul's troops haunted public areas posing as non-partisan opinion pollsters or petitioners for liberal causes.

Through such deception, the firm worked to inflate the number of registered Republicans, by any means necessary. Closely following a script, the operatives asked leading questions in order to identify Republicans and then asked them to fill out registration forms. The teams were ordered not to register Democrats or Independents.

Nevertheless, many Democrats filled out the forms, and those forms were destroyed. Far more frequently, however, Sproul's troops bamboozled Democrats and Independents into registering as Republicans, either by altering the registration forms without their knowledge or by misleading them into re-registering themselves.

Such service was expensive. According to their filings with the Federal Election Commission, the RNC paid Sproul well over $8 million, the party's eighth-largest expenditure of the 2004 campaign.

And what did they get for it? Aside from ripping up the registration forms of many Democrats, the company appears to have created thousands of unwitting faux Republicans in Ohio, Florida, Nevada, Pennsylvania, West Virginia, Minnesota, Michigan, and Oregon.

Thanks to those inflated numbers, there appeared to be more registered Republicans than there were in reality, a misimpression that would seemingly explain the party's upset wins in those States where the exit polls predicted otherwise.

In Ohio, for example, countless Democratic votes were stolen through the tactics documented in the full Committee's seminal report on the election there: voter caging, thwarted registration drives, broad refusal of provisional ballots, organized disinformation and intimidation, shortages of functioning machines in Democratic districts only, and numerous machine irregularities undoing only Democratic votes.

Those tactics were used also in those other States where the exit polls predicted a Republican defeat and where Sproul had also helped inflate the number of grassroots Republicans. Thus, the company not only broke the law, but also may have figured in a larger plan to block the vote.

There are oddities, moreover, in the party's FEC filings, with nine expenditures totaling well over $1 million incurred somehow in 2005, suggesting an attempt to shave down the amount spent on Sproul's services.

And so Sproul & Associates clearly merited a full investigation, and yet the DOJ did nothing. If there has been a Federal probe of Sproul's activities, I have never heard of it. Far from coming under Federal suspicion, Nathan Sproul, the firm's director, was invited to the Christmas party at the White House 2 months after the election.

And while the DOJ has winked at practices that disenfranchise tens of thousands of Americans, that now wholly partisan department focuses obsessively on voter fraud, which numbers in the tens. Between 2002 and 2005, 24 people were convicted of illegal voting, with another 62 convicted since.

Those low numbers reconfirm the scholarly consensus that voter fraud is actually quite rare. It is, in fact, the highly serviceable myth that helps to justify the actual vote suppression and election fraud that Sproul and others carry out to benefit their party.

Today, the fantasy of voter fraud preoccupies the managers at Justice and the Supreme Court. It is, therefore, up to Congress to return us to reality and redirect this Nation toward democracy.

I thank you all, and I will take your questions.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF MARK CRISPIN MILLER

My name is Mark Crispin Miller. I am a professor of media, culture and communication at New York University, and a longtime analyst of media and politics. Lately my work has focused on the growing dangers of election fraud and vote suppression in this country. My books include *Fooled Again: The* Real *Case for Electoral Reform* (2005), and, more recently, *Loser Take All: Election Fraud and the Subversion of Democracy, 2000–2008.*

I am not a Democrat or a Republican, but an Independent dedicated to the promise of American democracy as envisioned by Tom Paine. I believe, with him, that the right to vote is the basis on which all our other rights depend. And so the issue here is ultimately not the victory or defeat of either party, but the people's right to choose their government, and thereby live, and rule, in freedom.

Such was once the view of the US Justice Department, whose Voting Rights Section strongly championed the individual right to vote, by prosecuting all forms of illegal disfranchisement. But things have changed since 2001, as the Department now turns a blind eye toward illegal vote suppression, as long as such blocked votes would not advantage the Republicans.

Take the case of Sproul & Associates, an Arizona firm hired by the Republican National Committee to run stealth voter registration drives throughout the nation prior to the 2004 election. Starting in the summer, Sproul's troops haunted public areas, posing as non-partisan opinion pollsters, or petitioners for liberal causes.

Through such deception, the firm worked to inflate the number of registered Republicans, by any means necessary.

Closely following a script, the operatives asked leading questions—a form of "push polling"—in order to identify Republican respondents, and then asked *them* to fill out registration forms.

The teams had been instructed *not* to register Democrats or Independents. Nevertheless, many Democrats filled out the forms—and those forms were destroyed: "We caught [my supervisor] taking Democrats out of my pile, [and] hand[ing] them to her assistant, and he ripped them up right in front of us," said one Sproul worker in Las Vegas.

More frequently, however, Sproul's troops bamboozled thousands of Democrats and Independents into registering as Republicans, either by altering the registration forms, or by misleading people into thus re-registering themselves.

Such service was expensive. According to their filings with the Federal Election Commission, the Republican National Committee paid Sproul well over $8 million—making it the RNC's eighth-largest expenditure of the 2004 campaign. And what did the party get for it? Aside from disenfranchising those Democrats whose forms were ripped up by Sproul's staff, the company created thousands of unwitting faux-Republicans, in Ohio, Florida, Nevada, Pennsylvania, West Virginia, Minnesota, Michigan and Oregon.

Thanks to those inflated numbers, there appeared to be more registered Republicans than there were in reality—a misimpression that would seemingly explain the party's unexpected victories in those places where the exit polls predicted otherwise. In Ohio, for example, countless Democratic votes were stolen through the tactics documented in the full committee's excellent report on the election there: voter "caging," thwarted registration drives, broad refusal of provisional ballots, organized disinformation, blunt intimidation tactics, shortages of functioning machines in Democratic districts only, and numerous "machine irregularities" undoing only Democratic votes. Those tactics were used also in those other states where the exit polls predicted a Republican defeat—and where Sproul's firm had also helped inflate the number of grass-roots Republicans.

Thus Sproul's firm not only broke the law, but may also have assisted in a larger plan to block the vote. (There are oddities, moreover, in the RNC's filings with the FEC, with nine expenditures, totaling well over $1 million, incurred somehow in *2005*, suggesting an attempt to minimize the sum spent on Sproul's services.)

Thus Sproul & Associates clearly merited a full investigation by the Justice Department; and yet the DoJ did nothing. If there has been a federal probe of Sproul's activities, I've never heard of it. Far from coming under federal suspicion, Nathan Sproul, the firm's director, was invited to the Christmas party at the White House two months after the election.

And while the DoJ has winked at practices that disenfranchise tens of thousands of Americans, that now wholly partisan Department focuses obsessively on "voter fraud," which numbers in the tens. Between 2002 and 2005, 24 people were convicted of illegal voting, with another 62 convicted since. Those low numbers reconfirm the scholarly consensus that "voter fraud" is actually quite rare. It is, in fact, a highly serviceable myth, and/or delusion, that helps to justify the actual vote suppression, and *election* fraud, that Sproul and others carry out to benefit their party. Today the fantasy of "voter fraud" preoccupies the managers at Justice, and the Supreme Court. It is therefore up to Congress to return us to reality, and redirect this nation toward democracy.

Ms. SÁNCHEZ. Thank you, Professor Miller.

We will now begin our round of questioning, and I will begin by recognizing myself for 5 minutes of questions.

My first question is for Mr. Twomey. Do you think that it is appropriate for the Bush administration to refuse to explain key questions in the jamming scheme, such as who knew about the scheme at the White House and when they were aware of it?

Mr. TWOMEY. In one word, no. We sought to get information from the White House about all the calls to the White House. There can be innocent explanations for those calls. This was during an election.

But if we could see a pattern of who Tobin calls, Tobin being the RNC Bush-Cheney guy who made the calls, and what those people next did, we could have determined whether or not those were in-

nocent calls or whether those were calls that were part of the conspiracy. We sought those. The White House refused to provide them.

My understanding is that this Committee has not been able to get any information on that either.

Ms. SÁNCHEZ. That is correct.

My second question is also for you. Do you think that the Department of Justice had a conflict of interest in investigating the phone jamming case?

Mr. TWOMEY. I think that those at the higher levels of the Department of Justice had an absolute and clear conflict of interest.

The two attorney generals, Ashcroft and Gonzales, had obvious connections. Mr. Gonzales was in the White House when this occurred. He was White House counsel.

There is a question about the White House Political Office having been part of it. That is an obvious conflict.

Mr. Ashcroft was a member prior to his becoming attorney general of the Republican Senatorial Committee. That is where Mr. Tobin worked, one of the places he worked, besides the Republican National Committee. Those are obvious conflicts.

They should have taken themselves out of this, out of the chain of command making these decisions.

I do not believe the trial level attorneys themselves had a conflict, but the problem was they could not make the decisions on the case. We were told several times that the reasons things took so long and the reasons that certain things did not happen, such as indicting Mr. Tobin on a timely basis, was because of orders from above.

Ms. SÁNCHEZ. Thank you.

Mr. Raymond, you indicate in your book "How to Rig an Election" that your case went all the way to the top of the Department of Justice and was on John Ashcroft's desk. Do you think it was an unusual circumstance that the attorney general was personally looking into your case? And do you think the attorney general made selective decisions on which individuals to go after and that you were particularly targeted?

Mr. RAYMOND. I cannot speak to the attorney general. I have no——

Ms. SÁNCHEZ. Is your microphone on? I am sorry.

Mr. RAYMOND. Is that better?

Ms. SÁNCHEZ. That is much better.

Mr. RAYMOND. I cannot speak to the motives of the Attorney General Ashcroft. I have never worked at the Department of Justice. I can say that a number of aides to Mr. Ashcroft have political backgrounds. That is how I met some of them. One had formerly been a political director of the Republican National Committee and, in fact, I think had been Mr. Tobin's superior at the time. So I certainly think that those calculations could have come into effect. I cannot speak to whether or not they did in fact.

Ms. SÁNCHEZ. Do you think it was wrong for Mr. Tobin to continue to serve as a Bush campaign official when the Department of Justice had evidence that he was a clear participant in the jamming scheme?

Mr. RAYMOND. Well, my understanding is once he was indicted and it was made public, he resigned. So it is a question of who knew what when, to coin a silly term, but I think that if his superiors had no idea it was going on, I think it was fine. If they did, then that is another matter entirely.

Ms. SÁNCHEZ. Thank you.

Professor Miller, have you heard of any other instances with any other voter registration firm where people were trained to register only voters of a certain party?

Mr. MILLER. I have not.

Ms. SÁNCHEZ. So, to your knowledge, that was a unique circumstance?

Mr. MILLER. No. That is unique. It is worth noting also that Sproul's people often represented themselves as being with a group called America Votes, which is a well-established and respected non-partisan voter registration operation, and the people from America Votes eventually complained about this because this was clearly a partisan effort, and to answer your question, I cannot think of any other examples of that happening on either side.

Ms. SÁNCHEZ. Okay. Can you describe in detail some of the other voter suppression strategies that might have been employed in the 2004 or the 2006 elections?

Mr. MILLER. That is a very big question. There are a number of books on the subject, and I would respectfully suggest that this should be, you know, a matter for a full investigation on its own. There has been a great deal of such activity.

And let me answer one of Ranking Member's earlier questions in this regard. I do not believe that this kind of investigation should be restricted to what Republicans do. I do indeed believe that Democratic vote suppression and election fraud should be prosecuted as well. I am kind of a purist on this matter, and what is good for the goose is good for the gander.

I also would agree that there has been election fraud in our history, sadly, forever. It goes way back, but having studied this and written extensively about it, I must conclude—and I am not the only one to draw this conclusion—that what has happened over the last 7 years is unprecedented in our history, both for its scale and for its technological sophistication.

The use of electronic voting machines of any kind seems to me quite perverse because what you have there is, in essence, a secret vote count. To have electronic machines on which you either vote or which count your vote is to use a technology that is tantamount to having somebody take the ballots home, pull the blinds, and then come out in the morning and say, "Here is the number. Take it or leave it."

Moreover, the companies that make the machines are private companies and are, therefore, unaccountable. So this represents something new, and even as we speak, there are things happening, such as the Veterans Administration now refusing to help wounded veterans register to vote, which was a policy they had briefly promised to change, and now we hear that they are not going to do it after all.

I think that if we believe in universal suffrage and we believe in the right to vote, we should do everything we can to make that pos-

sible. Voter fraud is a problem, a very, very minor problem, but it seems to me that we could much more easily solve it by, for example, putting video surveillance in polling places than in passing laws that disenfranchise tens of thousands of people. That is like treating a minor headache by getting a lobotomy, you know.

So, again, I appreciate your question and want to repeat that this matter is far too important, I think, to be left to either party and one that a Committee like this one should plan future investigations of.

Ms. SÁNCHEZ. Okay. If the Committee will indulge me, I have one final question, which, hopefully, will be instructive.

But, as I am sure you are aware, this is an election year. What do you think that we could do now to prevent situations like the New Hampshire phone jamming or Sproul's destruction of voter registration cards or any other attempts to suppress the vote? Prospectively, looking ahead, what would be some suggestions——

Mr. CANNON. Would the gentlelady yield?

Ms. SÁNCHEZ. I would yield.

Mr. CANNON. I suspect the fact that two guys have gone to jail and a third might go to jail actually works its wonders in dissuading people from illegal activity.

Ms. SÁNCHEZ. I would tend to agree to some extent, but no doubt there are further steps, I am sure, that could probably be taken to try to prevent those types of things from repeating themselves.

Mr. CANNON. Well——

Ms. SÁNCHEZ. You are——

Mr. MILLER. Yes.

Ms. SÁNCHEZ. May I ask, Professor Miller?

Mr. MILLER. I mean, there have been grassroots movements all over the country, which are bipartisan, by the way, to try to either get rid of paperless voting machines and replace them with optical scanners or to get rid of both types of machinery and go back to hand count of paper ballots. Those movements have failed. A lot of reformist movements have failed for very complicated reasons.

I think that the best thing that people can do now is to plan to monitor the election process aggressively and to make sure, whichever party they belong to, that they are registered because a lot of people are now turning up at the polls to find their names have been expunged. This is something that is often a result of voter caging, often a result of the improper use of felons' lists, but is also sometimes kind of summary action that relates to the fact that now we have electronic voter rolls. I mean, this is a terrible idea.

So, basically, what I am suggesting is that people have to become informed about the issue, know what their rights are, make sure they are registered, monitor the process, make a tremendous racket if they see improprieties and so on, and understand that it does not matter which party wins. It really does not.

If people are prevented from voting in an election, even if their chosen party wins, a terrible wrong has been done here, and there are people on the Republican side who agree with me very strongly about this.

Ms. SÁNCHEZ. I agree that it is not a partisan issue, I think, with respect to an individual's right to vote.

Just very quickly, Mr. Twomey, any suggestions prospectively, looking ahead, that might help prevent some more types of incidents?

Mr. TWOMEY. I do not think there is anything that you can do in a general sense that will stop everybody from trying to gain an unfair advantage in elections. But I can tell you one thing, that if you cut off investigations and you do not engage in oversight of the Department of Justice, people will be encouraged to do it on a large-scale basis.

Ms. SÁNCHEZ. Thank you.

My time has expired.

Mr. Cannon is recognized for 5 minutes of questions.

Mr. CANNON. Thank you, Madam Chairman.

Let me just associate myself with the comments of the gentlelady, which does not happen all that often, but this is really not a partisan issue, and, Professor Miller, I think you made that point. And I am not all that familiar with the Sproul case, but the way you characterized it is absolutely awful, and you have several crimes embedded in the description that you made that ought to be prosecuted.

Let me ask Professor Miller, did you say that you do not know of another case like Sproul where only one party was targeted for registration?

Mr. MILLER. I cannot think of one offhand, no.

Mr. CANNON. Are you familiar with the—pardon the familial reference here—but the Loretta Sánchez-Bob Dornan race in 1996 where you had Hispanic groups registering voters, including at least 90 people who were here illegally?

Mr. MILLER. I have heard about it, yes, but, you know, I have not looked into it.

Mr. CANNON. Okay.

Mr. MILLER. But I thought she was referring to, you know, nationwide registration drives.

Mr. CANNON. Well, are you familiar with ACORN?

Mr. MILLER. ACORN? Yes, I am quite familiar with ACORN. ACORN has been sued repeatedly by lawyers for the Republican Party and has always prevailed. I think that ACORN is an entirely respectable operation.

Mr. CANNON. But their focus has been registering Democrats, has it not?

Mr. MILLER. They are a liberal group, but they register people equally. They do not discourage people from registering.

Mr. CANNON. But they do focus on areas where they think——

Mr. MILLER. They focus on areas where there are more Democrats, yes.

Mr. CANNON. So the difference between ACORN and Sproul is that ACORN does not throw away or change registration documents after they have been filled out and——

Mr. MILLER. Well, they do not represent themselves as being something they are not. They do not throw away registration forms from the other side. They do not alter registration forms. I think those are significant differences.

Mr. CANNON. Yes. Granted they are significant differences, although, I suppose, in this business, we often have people who are

running for public office that represent themselves as something they actually are not.

Mr. MILLER. I cannot believe that. [Laughter.]

Mr. CANNON. Thank you. I appreciate your comments, Professor. Well taken.

Mr. Twomey, I was a little surprised by some of your opinions that were so clear about the Department of Justice. We have colleagues here of both parties who are under investigation, and all of them are really desperately wondering why it takes the Justice Department so long to do anything.

It seems to me that much of your concern goes to what you have called the delay in the Justice Department. Are you frustrated because of the case in New Hampshire, or do you have broader experience where you have seen the Justice Department move more quickly?

That is not a trick question, by the way.

Mr. TWOMEY. Okay. I have been a criminal defense lawyer for 30 years. The election law stuff I do is all pro bono. It is a sideline.

Mr. CANNON. Have you done Federal prosecutions at——

Mr. TWOMEY. Federal and State prosecutions.

The case against Tobin to the level it went is a simple case. As I said, it took a Manchester police officer an hour to basically bring the investigation to a conclusion to that level.

I have never seen a case take so long to come to trial, I mean, that was solved in the investigative sense so quickly. I mean, it is just astonishing to me.

Mr. CANNON. Okay. My sense is that this is not a political issue, but rather an organizational issue——

Mr. TWOMEY. If I could——

Mr. CANNON [continuing]. At the Department of Justice.

Mr. TWOMEY. If I could just say, I guess so, if we did not have reports that the prosecutor said that he was ordered to slow it down, if he did not tell people that the delays were due to interference by people above him, if there were not reports that he was told not to indict Mr. Tobin until after the presidential election. I might indulge in, I guess, the same kindness that you indulge, but we have a lot of evidence to indicate that it was political.

Mr. CANNON. Were those political people or career people that made those suggestions?

Mr. TWOMEY. That is what we need to find out. That is what we are asking you to find out. Was there political interference or wasn't there? If you——

Mr. CANNON. Well, but do you know the people that were quoted as having said to slow it down?

Mr. TWOMEY. Do I know them? No.

Mr. CANNON. Do you know who they were in the——

Mr. TWOMEY. No, I do not, and I think that is what your function as Congress is, is to engage——

Mr. CANNON. How do you know that they were told that?

Mr. TWOMEY. I do not want to talk over you, but could I answer the question? I do not know those people, but your function in Congress is to engage in oversight and to come to a conclusion. If you come to a conclusion that these were not political decisions and that they were prosecutorial decisions based fairly, I am fine with

that. But I do not think that is what you are going to find, if you investigate it.

Mr. CANNON. What I would like to know from you to help us in that regard is—you are aware that there were apparently some conversations from Justice saying slow it down—how are you aware of those so that we can go back and take a look?

Mr. TWOMEY. Okay. I am aware of it from several sources. One is that two attorneys involved in the case, one Mr. Raymond's attorney and one an attorney for the Democratic party, a civil attorney, told me that the prosecutor in the case said that to them, okay. I am also aware from the reports in the McClatchy newspapers where they indicate that a senior Justice Department official said the same thing. I was not there, and I do not have any ability to——

Mr. CANNON. Could I ask you to do us a couple of favors? One is, if you can recall who the prosecutor was, I would like to have the Committee have his name and whether context you could provide on that.

Mr. TWOMEY. Yes.

Mr. CANNON. The McClatchy papers ought to be relatively simple to get copies of if you could make those available to us.

Mr. TWOMEY. Well, let me give you his name. Let me first say that I believe that all the trial level prosecutors—there was a change in the middle—all of them were people of the highest integrity. The name of the initial prosecutor that I was referring to then is Todd Hinnen.

Mr. CANNON. All right.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. CANNON. Would the Chair indulge me in one more comment?

Ms. SÁNCHEZ. I believe Mr. Scott wanted to question before we went to the floor, but we will be returning, and I would be happy to give you time after.

Mr. CANNON. May I just make one comment?

I just want Mr. Raymond to know I really enjoyed the performance and the book. I hope you sell more books based upon this hearing, although it does not look to me like we have a lot press here.

Ms. SÁNCHEZ. Mr. Scott is——

Mr. CANNON. Thank you. I yield back.

Ms. SÁNCHEZ [continuing]. Recognized for 5 minutes of questions.

Mr. RAYMOND. Thank you very much, Mr. Cannon. Appreciate that.

Mr. SCOTT. Thank you.

I just wanted to ask Mr. Raymond. You were convicted. Who else was convicted? First of all, are you represented by an attorney here today?

Mr. RAYMOND. I am, yes. Pam Bethel sitting behind me.

Mr. SCOTT. Thank you. How many people were convicted of incidents involved with the phone jamming?

Mr. RAYMOND. There were three convictions, one acquittal.

Mr. SCOTT. And were people involved who were not roped into the prosecution?

Mr. RAYMOND. Everyone that I dealt with was charged in this case.

Mr. SCOTT. Who hired you?

Mr. RAYMOND. I was hired by the New Hampshire Republican State Committee at the direction of the agent of the Republican National Committee in New England.

Mr. SCOTT. Did they know what you were going to do?

Mr. RAYMOND. Yes. They instructed me to do exactly what I did.

Mr. SCOTT. And the people in the Committee hired you?

Mr. RAYMOND. Yes. The New Hampshire Republican State Committee hired me. They were my client.

Mr. SCOTT. Madam Chair, we just have a few minutes. I would defer to the Chairman at this point, if he has questions.

Ms. SÁNCHEZ. Mr. Conyers? Mr. Conyers is recognized for 5 minutes.

Mr. CONYERS. Oh, thank you very much.

How many minutes do we have left?

Ms. SÁNCHEZ. We have 6 minutes and 30 seconds remaining in this vote. If you would like, we can come back and finish any unanswered questions.

Mr. CONYERS. I would prefer to come back, Madam Chairman. These are very important witnesses, and this is a very important session.

Ms. SÁNCHEZ. I absolutely understand.

Mr. Scott, is there anything further?

Mr. SCOTT. Reclaiming my time then, how many people of the Republican Committee knew what you were going to do?

Mr. RAYMOND. Well, to my knowledge, only Mr. Tobin. To my direct knowledge, only Mr. Tobin. I can only speak to Mr. Tobin's involvement.

Mr. SCOTT. What did other people who were involved in the Committee think you were going to do when you were hired?

Mr. RAYMOND. Are we talking about the New Hampshire Republican State Committee, or are we talking about the Republican National Committee, sir?

Mr. SCOTT. Both.

Mr. RAYMOND. Well, the New Hampshire Republican State Committee, their executive director instructed me to do the phone jamming. As for the RNC, again, I cannot speak to anything beyond Mr. Tobin. He is the only one at the RNC with whom I discussed this program.

Mr. SCOTT. You discussed the program. And those are the two other people who were convicted?

Mr. RAYMOND. Yes, sir.

Mr. SCOTT. Do you have any information to know that others in the Committee knew what phone jamming was about?

Mr. RAYMOND. I have no direct knowledge of that, no.

Mr. SCOTT. Were others hired to do the same thing?

Mr. RAYMOND. Were other vendors hired to do the same thing?

Mr. SCOTT. Right.

Mr. RAYMOND. Yes. No. I was the only vendor hired to do this job, to my knowledge. After approach by Mr. Tobin, having worked with Mr. Tobin when I was at the Republican National Committee——

Mr. SCOTT. Did others of the Committee know what you were hired to do? Is there any way that people in the Republican Na-

tional Committee knew that you had been hired and did not have a clue as to what you were up to?

Mr. RAYMOND. The best way to answer——

Mr. CONYERS. Mr. Chairman? Madam Chairman? Would the gentleman yield for just a moment?

Mr. SCOTT. I yield.

Mr. CONYERS. Mr. Raymond, we are very pleased and proud that you are here. We also know that you are still on probation. If I were you, I would answer these questions with great care in terms of their accuracy.

Mr. RAYMOND. Yes, sir, I understand that. All I can tell you, sir, is that the only person at the Republican National Committee with whom I have direct knowledge knowing of this program was Mr. Tobin. I brought to that calculation to take on the assignment using my experience, having worked at the Republican National Committee, both as a regional political director and as a chief of staff to the Republican National Committee co-chairman. However, I do not have any knowledge directly of anyone else at the Republican National Committee, other than Mr. Tobin, who had any knowledge of this program.

Mr. CONYERS. Would the gentleman yield to me?

Mr. SCOTT. I yield.

Mr. CONYERS. Are you telling us, sir, that you have never met another person in the Republican Party doing the same kind of work that you were hired to do?

Mr. RAYMOND. The phone jamming was a very unusual request, and it is——

Mr. CONYERS. I know all about the phone jamming because you wrote a book about it.

Mr. RAYMOND. Right.

Mr. CONYERS. Now are you telling us here before the subcommittee on—well, two subcommittees. Are you telling us that you have never met anyone else doing the same work as yourself?

Mr. RAYMOND. I guess, if you could indulge me, sir, it means Republican——

Ms. SÁNCHEZ. If I could ask the Chairman to——

Mr. RAYMOND [continuing]. Or phone jamming specifically?

Ms. SÁNCHEZ. If I could ask the Chairman to clarify that question, do you mean other forms of voter suppression, or do you specifically mean phone jamming? Does that help clarify?

Mr. RAYMOND. Yes. I mean, are we speaking specifically about phone jamming?

Mr. CONYERS. Yes, specifically about phone jamming. Are you suggesting to us, sir, that you are the only person in the employ of the Republican Party and divisions thereof that were doing phone jamming that you had ever heard of?

Mr. RAYMOND. This is the only time that I had ever encountered phone jamming. Yes, sir.

Mr. CONYERS. And you do not know anyone else that has ever done this before you?

Mr. RAYMOND. As I sit here today, it does not come to mind. When it was presented to me at the time——

Mr. CONYERS. Okay. All right.

Mr. RAYMOND [continuing]. It was the first time I had heard of that and it was very unusual.

Mr. CONYERS. Do you think that, as far as you know, this is the first time that they ever engaged in phone jamming?

Mr. RAYMOND. Certainly the first and only time I ever did. Yes, sir.

Mr. CONYERS. I did not ask you that question.

Mr. RAYMOND. Could you repeat the question, sir?

Mr. CONYERS. All right. In other words, you are suggesting to us or you are telling us here today that you had never heard of anybody that had ever done phone jamming in the Republican Party before you?

Mr. RAYMOND. Yes. This is the first time a program such as this had ever been presented to me.

Mr. CONYERS. That is not the question that I asked you.

Mr. RAYMOND. Okay.

Mr. CONYERS. You know, I would——

Mr. RAYMOND. I——

Mr. CONYERS. You know, I admire you coming here. I am proud of the book that you have written. But I want to remind you, sir, please do your best here with these questions, and I know that if they are confusing or if I am not being clear, as I should, you may want to think over very clearly these questions I have already asked you and some more I am going to ask you while we are in recess.

Ms. SÁNCHEZ. I think this is a nice natural breaking point. We have very little time remaining in the vote. We will recess. We will allow Mr. Raymond to think over the question that Mr. Conyers posed to him, and perhaps when we return, we can take up this line of questioning again.

The Committee stands in recess.

[Recess.]

Ms. SÁNCHEZ. If we could please ask the witnesses to come forward and sit, I realize we are short one witness right now, but the Committee is going to come to order and we are going to continue with some questions and, hopefully, we will be joined by Professor Miller shortly.

I believe prior to the vote, it was Mr. Scott's time for questioning. Well, Mr. Scott had yielded time to Mr. Conyers. I am going to give the time back to Mr. Scott to do with what he will, and we will recognize Mr. Conyers for questions afterwards.

Mr. SCOTT. Thank you.

Mr. Raymond, I——

Ms. SÁNCHEZ. Mr. Scott, to be fair, I will give you 2 minutes of questions.

Mr. SCOTT. Thank you.

Ms. SÁNCHEZ. Mr. Scott?

Mr. SCOTT. Mr. Raymond, I had asked questions about phone jamming specifically, and maybe I should have asked it more generally. Was there a general strategy that you would use tricks and schemes to try to trick people out of voting?

Mr. RAYMOND. In my book, I detail dirty tricks, absolutely. Yes, sir. If you want, I can give you some details on that.

Mr. SCOTT. Yes, please.

Mr. RAYMOND. You know, there are many ways to use data. There are many ways to deliver a message. A message can be delivered to try and alienate people. There are many ways to use existing infrastructure to anticipate political attacks, to divert political attacks.

One example I would give you is using the Federal Election Commission. In an example I talk about in the book, managing a campaign with a candidate that had taken a contribution from a questionable source, knowing that questionable source could become a problem in the campaign, we directed that donor, that source, to give a little bit of money to our opponent so when that attack came, we could then dilute the attack and move on.

Mr. SCOTT. Well, what about tricking people out of showing up on time to vote in the get-out-the-vote effort?

Mr. RAYMOND. Yes, sir. I personally have never myself done that, and what I think I hear you saying are these things that you read about in the media about, you know, the election is now being held on Wednesday. That is not something I ever did. It is not something I ever witnessed personally being done. So I cannot speak to that.

I, however, in running campaigns, have seen instances where flyers show up on Election Day generally targeted at lower-income voters. One comes to mind in New Jersey when I was running a campaign a long time ago in the 11th District where flyers showed up on the street saying on Election Day, look out for the jump-out boys, and back then, what that meant was undercover police officers. These are clearly meant to intimidate people from voting.

Legendary is the 1981 case in New Jersey, the Ballot Security Task Force, which I am sure the Committee is fully aware of, that actually resulted in an injunction against the Republican Party, and New Jersey being the place where I entered politics, where I, so to say, cut my teeth.

So these are all things that as you run campaigns, you become made aware of, and you certainly know that they are part of the fabric of this business.

Ms. SÁNCHEZ. The time of the gentleman has expired.

At this time, I would recognize Mr. Conyers for 5 minutes of questions.

Mr. Conyers?

Mr. CONYERS. Thank you, Madam Chair.

This is very interesting. I have a question for Mr. Allen Raymond, and I want to commend you for being here with us today, sir.

Mr. RAYMOND. Thank you, sir.

Mr. CONYERS. I want to commend you for the book that you have written because I think it is important for the American people to know some of the things, even though they may be unsavory, that they go on and you had the courage to come forward about it and to come forward to this Committee. So I thank you very much.

Mr. RAYMOND. Thank you, sir.

Mr. CONYERS. You finished graduate school and joined the GOP for one reason, because rumor had it that there was big money to be made on the Republican side of the aisle.

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. And from the earliest days of the so-called Republican revolution, in culmination in the second Bush White House, you played a key role in helping GOP candidates twist the truth beyond recognition.

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. During a decade of crucial and bitterly fought campaigns, your career took you from the nastiest of local elections in New Jersey through runs for Congress and the Senate and right up to a top management position in a bid for the presidency itself.

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. And so this book that you wrote, I think, is an astonishing and frank look at some of the campaigning that goes on in the Republican establishment. I am paraphrasing now.

Courageously on your part, you have acknowledged this, not just here, but in other forums, and that is why I want you to consider my questions of you not hostile or trying to embarrass you in any way because the vote of the American people is the cornerstone of democracy, and it is not like we have gathered here today to pretend that everything has always been nice up until this Administration. The history of voting in American is full of things that have gone on. Everybody has heard about it.

But we have never met anybody like you with the courage enough to come forward and write it, to put it into American history. You are not writing hearsay or something you found out about going on in the library. You were in it, and now you are here to help this Committee, the voters of this country. That is what we stand for.

You have heard me say here that the most important thing that this Committee can do between now and November 4 is make sure we have the fairest elections that are humanly possible, and we have heard from Attorney Twomey and Professor Miller and yourself that there are some big challenges ahead. This is not an easy job.

And so I just wanted to thank you for everything that you have done and the way that you have helped us.

Now didn't Abramoff write checks for the work that you were doing?

Mr. RAYMOND. Well, there were certainly reports in the media that——

Mr. CONYERS. Oh, wait a minute. Stop. I do not care about any reports in the media. I have all the reports in the media we will ever need. Didn't you get checks from Abramoff for the work that you were doing?

Mr. RAYMOND. Just so I can clarify, sir, in the New Hampshire Republican phone jamming? The phone jamming incident? No. I was paid by the New Hampshire Republican State Committee Victory Committee, so that the funds that I received directly——

Mr. CONYERS. No, you are answering the question that you wanted to answer. I did not say the New Hampshire phone jamming. You said it. I am talking about in anything and everything else. Now, look, we have had a nice conversation so far.

Have you ever talked to Karl Rove?

Mr. RAYMOND. In one instance. Yes, sir. I met Karl Rove.

Mr. CONYERS. Wait a minute. Have you ever talked to Karl Rove?

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. Now be careful about this. We have a rather large investigatory staff here of lawyers.

Haven't you talked with him more than one time?

Mr. RAYMOND. I have only met Mr. Rove once.

Mr. CONYERS. I did not ask you that. Haven't you talked with him more than one time?

Mr. RAYMOND. I have only spoken with Mr. Rove on one occasion that I recall, sir.

Mr. CONYERS. All right. Could it have possibly been two occasions?

Mr. RAYMOND. I only have one recollection of meeting Mr. Rove.

Mr. CONYERS. Okay. All right. Now have you ever talked with Mr. Abramoff?

Mr. RAYMOND. I have never spoken with Mr. Abramoff. No, sir.

Mr. CONYERS. Have you known people that have?

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. And who are those people?

Mr. RAYMOND. Michael Scanlon, sir.

Mr. CONYERS. Who is he?

Mr. RAYMOND. Mr. Scanlon was a business partner of Mr. Abramoff.

Mr. CONYERS. Did you ever talk with Mr. Scanlon?

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. Now we are just about through, if you answer properly.

Now let me ask you this. What was the relationship of certain persons in the White House to the operation that you were doing?

Mr. RAYMOND. If by the operation, you mean the phone jamming, I have no knowledge of any involvement by the White House, any direct knowledge by the White House, in this program.

What I can speak to is when I worked at the Republican National Committee, I understood the processes in place for people like Mr. Tobin—I formerly held that similar position in the mid-Atlantic region of the country—on how programs come to light. Stop me if I am giving more information than you care for, but——

Mr. CONYERS. You have not given me enough information yet, Mr. Raymond. Please continue.

Mr. RAYMOND. Yes, sir. So my understanding when I was working at the RNC was twofold: one, as I said in my remarks, that a regional political director for the Republican National Committee did not instruct another committee or campaign, for that matter, whom to hire unless the RNC was directing the funds.

The second criteria would be that a program as unusual as the phone jamming, which was the first time I had ever heard of such a thing—in fact, when it was presented to me, it took some time for me to figure out how to actually, one, do it, and, two, I, in fact, as I say in my book, saw it as so unusual that I actually consulted counsel. However——

Mr. CONYERS. You talked with your lawyer about——

Mr. RAYMOND. Yes, sir.

Mr. CONYERS [continuing]. Its appropriateness.

Mr. RAYMOND. Its appropriateness, its legality. Yes, sir.

So the other thing that I had learned working at the Republican National Committee was that a program as unusual as this was did not see the light of day unless vetted by RNC attorneys, and so that was the operating procedure I knew, having had the same job at the Republican National Committee as Mr. Tobin did when he called me in 2002 about the phone jamming program. That is the knowledge I brought to that call. Those were the variables that I assessed in accepting the assignment, among others and, frankly, in the end, had a great deal to do with why I proceeded with the assignment.

Mr. CONYERS. If I could ask you unanimous consent to ask a question of Attorney Twomey, Madam Chair?

Ms. SÁNCHEZ. Without objection, the gentleman will be given 1 additional minute for questions.

Mr. CONYERS. This may take more than 1 minute, Madam Chair.

Counsel, you have heard the witness to your left talk about a variety of issues that I have raised with him. Would you help me understanding and shed some light on some of the subjects in our discussion, please?

Mr. TWOMEY. Certainly, Congressman. There were three things I heard that I think I can give you some information on.

You asked him about who knew at the Republican State Committee in New Hampshire. As far as we can tell, everybody knew—the chair, the vice chair, the executive director, the finance director, and probably five to seven other people. There has only been one person that worked there that we have been able to identify who denies knowing about the phone jamming. Mr. McGee testified he discussed it with all of them. The finance director who took part in some of the payments said it was openly discussed.

In regards to the Abramoff question, sometime shortly before the payments were made to Mr. Raymond—and he would not necessarily know this—two strange checks came into the New Hampshire Republican State Committee, one from the Mississippi Choctaw and another from the Agua Caliente tribe of California.

Let me focus on that. They added up together to almost exactly the same amount as was paid to Mr. Raymond, which is one thing that brought it to my attention in the first case.

We subsequently found out that the Choctaw money, which was $10,000, came in a single check that was hand delivered by a senior staffer of one of the New Hampshire senators to the Republican State Committee, that the Republican State Committee knew that it was an illegal donation—a maximum for an entity like the Choctaw Nation was $5,000—that they spent a considerable amount of time trying to decide how to handle this thing, and then pretended like it had been two separate donations, put one in their Federal PAC and one in their State PAC.

So we thought for a couple of years that it actually would have been a $5,000 donation that they transferred because they made a transfer the same day. So it was very hard. Until we finally got discovery, we had never realized that it was a $10,000 single donation.

So the Choctaw Nation was, I am sure the Committee is aware, probably the greatest source of funds for Mr. Abramoff. No Indian

tribe had ever donated any money to any State committee in New Hampshire prior to this date, and, actually, the next year, the Chippewa band in Michigan did make a donation, though.

Mr. CONYERS. Thank you, Madam Chair.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. Cannon has asked unanimous consent for 2 additional minutes of questioning.

Mr. Cannon is recognized.

Mr. CANNON. I hope the clock runs at the same speed that it ran for the prior questioners.

Mr. Raymond, were you a Republican before you decided to become a Republican consultant, or were you not a member of a party?

Mr. RAYMOND. Prior to opening my own consultancy, I had worked in Republican politics since 1992, beginning on the Victory Committee for the Bush-Quayle campaign in 1992, and——

Mr. CANNON. So you just bumped into being a Republican because there was more money there. You had been a Republican, right?

Mr. RAYMOND. No, that is a very good question, sir. Actually, I went to graduate school and got a master's degree in political management. Coming out of that program, I made a decision on where to go and whom to work for, and the decision I made was to go to New Jersey and work for Republicans because that is where the most opportunity was.

So, actually, I come from a long family of Democrats. My mother was mortified, but, in fact, to me, it was a business decision having just finished a master's degree in political management.

Mr. CANNON. Where did you get your master's?

Mr. RAYMOND. The Graduate School of Political Management, which is now affiliated with George Washington University.

Mr. CANNON. Neat program, actually.

Mr. RAYMOND. It is a very good program. Yes, sir.

Mr. CANNON. So, basically, you are not a Republican or a Democrat. You are a guy who decided that the money was in one place and you went there, right?

Mr. RAYMOND. I was a campaign professional. Yes, sir.

Mr. CANNON. Exactly. Okay. And, of course, campaign professionals talk to each other. Do only Republicans do nasty things?

Mr. RAYMOND. No, I would not say that, sir. I would say it happens on both sides equally.

Mr. CANNON. I have not read your book, but I suspect that there is a lot of fun poked at on people on both sides of the spectrum.

Mr. RAYMOND. Yes, sir. I tried to be very fair to everybody except for those who did not deserve the treatment.

Mr. CANNON. And I take it those are the Republicans that you say threw you under the bus?

Mr. RAYMOND. That is correct, sir.

Mr. CANNON. Of course, having been a professional, being thrown under the bus was not actually unexpected, was it?

Mr. RAYMOND. Well, I think that it was a bit of a surprise to me, not so much being thrown under the bus. I expected that when the scandal broke. It was the treatment thereafter. It was the $3 million spent on Mr. Tobin's behalf by the Republican National Com-

mittee that convinced me that the Republican Party was not a place that wished me to be around.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. CANNON. I ask unanimous consent for another couple of minutes, Madam Chair.

Ms. SÁNCHEZ. I will give you 1 additional minute. I would like to wrap up this hearing before the next series of votes. I do not want to be running to the Capitol in high heels as we did last time.

Mr. CANNON. That is hard.

Ms. SÁNCHEZ. One additional minute.

Mr. CANNON. Is Professor Miller not returning?

Ms. SÁNCHEZ. We have not been able to locate Professor Miller, and I do not know where he is. I suspect——

Mr. CANNON. We should try and get him some questions for the record and ask——

Ms. SÁNCHEZ. We will have an opportunity to submit written questions to the witnesses. His stuff is still here. I imagine he is somewhere, but we have not been able to locate him.

Mr. CANNON. Mr. Twomey or Mr. Raymond, are you aware of ACORN, the left-wing political activist group that registered people?

Mr. RAYMOND. No, sir.

Mr. TWOMEY. I have read reports. I cannot say I know a whole lot about it, but I have read newspaper reports and magazine articles. I think I read one on the train down here as a matter of fact.

Mr. CANNON. Are you aware that eight workers of ACORN pleaded guilty of Federal election fraud by submitting falsified applications or that, on March 13, 2008, the Philadelphia election officials accused the Association of Community Organizations for Reform Now of submitting voter registration paperwork that was false or that they were accused of registering 18 felons in Milwaukee or that Barack Obama is associated with them, has been associated as a lawyer? Are those things new to you at all?

Mr. TWOMEY. The very first thing you said, I learned on the train down here. I do not know if I learned it. I read an article that said something about eight people, and I think it also indicated that those people were disavowed by ACORN, but I really do not know very much about ACORN. I know nothing whatsoever about any connection with any of the presidential candidates. And the middle thing is that I cannot even remember, but I did not know it and I do not know it to be true. I really have very little information bout ACORN that I can share with you, sir. If you want to ask me a question about something I know about, I will be glad to answer it.

Mr. CANNON. You have——

Ms. SÁNCHEZ. The time of the gentleman has expired. I believe Mr. Raymond——

Mr. CANNON. You are not familiar with it?

Mr. TWOMEY. No, sir. No.

Ms. SÁNCHEZ. The time of the gentleman——

Mr. CANNON. Madam Chair, I yield back.

Ms. SÁNCHEZ. Thank you.

Mr. CONYERS. Madam Chair?

Ms. SÁNCHEZ. Yes?

Mr. CONYERS. You are the Chairperson of this important Committee. I have one question.

Ms. SÁNCHEZ. The Chair really would like to conclude this hearing before the next series of votes. If you can ask your question quickly, I will give you time.

Mr. CANNON. I certainly have no objection, Madam Chair.

Ms. SÁNCHEZ. The gentleman is recognized for 30 seconds.

Mr. Conyers, your 30 seconds starts now.

Mr. CONYERS. Mr. Raymond, the Republican National Committee was controlling your activities that brought you to this hearing. Is that correct?

Mr. RAYMOND. The Republican National Committee?

Mr. CONYERS. RNC.

Mr. RAYMOND. I am not sure I understand the question. I was invited here. I am no longer affiliated with any political party or political committee.

Mr. CONYERS. No, but when you were doing the things that you were doing to subvert the electoral process, the RNC was in control of your activities.

Mr. RAYMOND. Yes. When I worked for the Republican National Committee, I——

Mr. CONYERS. Is that correct?

Mr. RAYMOND. Yes, sir.

Mr. CONYERS. Of course. That is logical. Now wasn't the RNC in touch with the White House? Now I have warned you several times about accuracy. Wasn't the RNC in touch with the White House, as far as you knew, about the things you were doing?

Mr. RAYMOND. I would have to answer that question by telling you, sir, that I never worked at the Republican National Committee when there was a Republican administration in the White House. However, understanding processes, it would stand to reason—and I accept and accepted at the time—that the political operation within the White House would directly control the Republican National Committee as the chairman is appointed by the President and, in fact, the political director——

Mr. CONYERS. Of course.

Mr. RAYMOND [continuing]. Was bound to become the chairman of the Republican National Committee. So, yes, although I did not have any direct knowledge, I take it this means that they would.

Mr. CONYERS. I understand. In other words, Mr. Tobin was getting instructions or was clearing his activities with somebody?

Mr. RAYMOND. Yes, sir. He certainly was.

Mr. CONYERS. I mean, he was not——

Mr. RAYMOND. He was not in charge, yes.

Mr. CONYERS [continuing]. Some wild lone ranger out there. It was coordinated.

Mr. RAYMOND. As I said——

Mr. CONYERS. He would not be able to do these kinds of things that you were doing without somebody over him being in control?

Mr. RAYMOND. My experience with the Republican National Committee is it does not employ rogues, nor is it run by rogues, and Mr. Tobin certainly worked there for nearly a decade and would have to have concealed——

Mr. CONYERS. I do not know who the rogues are and the people that have not been prosecuted yet or who the criminals are. I do not want to characterize anybody. There was a chain of command, and this Committee will probably have to continue this inquiry.

Mr. CANNON. Would the gentleman yield for one moment?

Mr. CONYERS. Of course.

Mr. CANNON. Mr. Raymond, I think, has testified now based upon his understanding of the politics of the RNC and the White House, although he did not work at the RNC when the White House was controlled by Republicans. But to the degree you are aware of that, you are also probably aware of the fact that when Democrats have been in control of the White House, the Democratic National Committee has also been run by the White House. Is that not fair to say?

Mr. RAYMOND. Yes, sir. I think that would speak for itself. Yes, sir.

Mr. CANNON. And so some of the shenanigans——

Ms. SÁNCHEZ. The time——

Mr. CANNON [continuing]. That happened under the Clinton administration——

Ms. SÁNCHEZ. The time of the gentleman has expired——

Mr. CANNON. Would that not be the case?

Ms. SÁNCHEZ [continuing]. And I——

Mr. RAYMOND. We cannot speak to that.

Ms. SÁNCHEZ. I do not know that that is relevant for the inquiry about the specific phone jamming because my understanding is there was a Republican administration when that happened, that there was some funding issue that came through the RNC, and that there may have been some direction from upper echelon party operatives directing this type of activity to happen.

With that——

Mr. CANNON. If the Chair would yield——

Ms. SÁNCHEZ [continuing]. I——

Mr. CANNON [continuing]. It is true that——

Ms. SÁNCHEZ. I would like to conclude the hearing today. There will be an opportunity to submit additional questions.

I want to thank the witnesses for their cooperation and being here to testify. We realize it has been trying with the votes in between.

I only regret that the DOJ did not send a witness so that we could have asked specific questions as to what happened within the DOJ.

Without objection, Members will have 5 legislative days to submit any additional written questions, which we are going to forward to the witnesses and ask that you answer as promptly as you can so that they can be made a part of the record.

And without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

Again, I want to thank everybody for their time and patience. I wish we could have been more focused in the questioning and in the comments to the subject matter of today's hearing, but, again, I thank the witnesses for their indulgence.

And, at this time, the joint hearing of the Subcommittee on Commercial and Administrative Law and the Subcommittee on Crime, Terrorism, and Homeland Security is adjourned.

[Whereupon, at 4:54 p.m., the subcommittees were adjourned.]

APPENDIX

Material Submitted for the Hearing Record

RESPONSE TO POST-HEARING QUESTIONS FROM THE HONORABLE PAUL W. HODES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Questions for the Record
Joint Hearing on Allegations of Selective Prosecution Part II:
The Erosion of Public Confidence in Our Federal Justice System
Wednesday, May 14, 2008

The Honorable Paul Hodes, 2nd District of New Hampshire

Chris Cannon, Ranking Member, Subcommittees on Commercial and Administrative Law and Louie Gohmert, Ranking Member, Crime, Terrorism, and Homeland Security:

1. **Do you agree that we should investigate vote suppression allegations, regardless of which party is alleged to have suppressed votes?**

I believe that investigations should occur when sufficient evidence presents itself to warrant an investigation.

2. **Today there are allegations that the Obama and Clinton presidential campaigns are suppressing each other's voters in Democratic primaries such as Nevada's. Do you believe we should investigate those vote suppression allegations?**

As I said in response to the first question, I believe that cases with substantive evidence should be investigated without regard to politics.

3. **Do you believe we should investigate the Obama and Clinton campaign allegations immediately, so that they're resolved well in advance of the November 2008 election?**

As stated above, I believe that investigations should occur when sufficient evidence presents itself to warrant an investigation.

4. **Do you believe we should instead wait six years to investigate, as the majority has in the New Hampshire phone jamming incident?**

This hearing is to investigate the Department of Justice's investigation and prosecution of the case, not the phone jamming incident itself. The delay of this investigation is a result of alleged delays in prosecution and investigations by the Department of Justice. The substance of this investigation is major delays in prosecuting the phone jamming case that have not been properly investigated, and a failure of using the proper channels to investigate and prosecute.

RESPONSE TO POST-HEARING QUESTIONS FROM ALLEN RAYMOND, BETHESDA, MD

Questions for the Record
Joint Hearing on Allegations of Selective Prosecution Part II:
The Erosion of Public Confidence in Our Federal Justice System
Wednesday, May 14, 2008

Questions for Allen Raymond, former Regional Director, Republican National Committee

Linda T. Sánchez, Chair, Subcommittee on Commercial and Administrative Law and Robert C. "Bobby" Scott, Chair, Subcommittee on Crime, Terrorism and Homeland Security:

1. Are there others who were involved in the scheme with you that you believe should have been prosecuted or that were shielded from prosecution? If yes, who and why?

2. Please identity others that did not take responsibility, as you mention in your statement, for their conduct like you did?

3. Did your firm ever have direct contact with the White House in any instance during the 2002 election cycle? In your book, you state "One thing I could be absolutely sure of was that it was all going through the RNC." You also state that "The Bush White House had complete control of the RNC and there was no way someone like Tobin was going to try what he was proposing without first getting it vetted by his higher-ups." Is it not self-evident from what you wrote that the White House must have had some say or guidance in this matter?

4. The House has passed a bill, H.R. 740, which would prohibit phone spoofing, a practice whereby a caller uses a fake caller ID to hide the caller's true identity in order to commit fraud or some other abusive act. Would this bill, if it passed into law, prevent jamming practices, or any of the other phone tactics described in your book, from occurring?

5. Mr. Paul Twomey testified at the hearing that he heard from several sources, including your attorney, that the prosecutor in the case involving the 2002 phone jamming incident indicated that the Department of Justice ordered the prosecutor to "slow down" the investigation. Please describe in detail when and under what circumstances your attorney had this conversation with the prosecutor, and any further conversations your attorney had with the prosecutor about slowing down the investigation.

6. You talk about the importance of transparency. Do you have any insight as to whether the Department intentionally delayed the indictment of Mr. Tobin until after the 2004 Presidential election? What was your initial reaction when you first heard of reports that the frontline prosecutor at DOJ handling the case aggressively pressed for action against Mr. Tobin, but that various DOJ officials ordered delays and moved slowly on his requests? Had you met or do you know specific officials at DOJ that worked on the Tobin case?

7. As you are aware, this is an election year. What can we do now to prevent situations like the New Hampshire phone jamming or Sproul's destruction of voter registration cards or any other attempts to suppress the vote?

8. Based on your experiences and knowledge of elections, how prevalent are the activities you practiced at any time to sway voters or to suppress the vote?

Chris Cannon, Ranking Member, Subcommittees on Commercial and Administrative Law and Louie Gohmert, Ranking Member, Crime, Terrorism, and Homeland Security:

1. Do you agree that we should investigate vote suppression allegations, regardless of which party is alleged to have suppressed votes?

2. Today there are allegations that the Obama and Clinton presidential campaigns are suppressing each other's voters in Democratic primaries such as Nevada's. Do you believe we should investigate those vote suppression allegations?

3. Do you believe we should investigate the Obama and Clinton campaign allegations immediately, so that they're resolved well in advance of the November 2008 election?

4. Do you believe we should instead wait until as many as six years have passed, as the majority has in the New Hampshire phone jamming incident?

RESPONSE TO POST-HEARING QUESTIONS FROM PAUL TWOMEY, ESQ.,
TWOMEY LAW OFFICE, EPSOM, NH

Questions for the Record
Joint Hearing on Allegations of Selective Prosecution Part II:
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Questions for Paul Twomey, Esq., Counsel for the New Hampshire Democratic Party

Linda T. Sánchez, Chair, Subcommittee on Commercial and Administrative Law and Robert C. "Bobby" Scott, Chair, Subcommittee on Crime, Terrorism and Homeland Security:

1. As you are aware, this is an election year. What can we do now to prevent situations like the New Hampshire phone jamming or Sproul's destruction of voter registration cards or any other attempts to suppress the vote?

2. How many voter suppression cases do you know of and what criminal laws are these cases brought under? Who at the Department of Justice would be in a position to bring such cases?

3. Are there other laws, besides interstate telephone harassment, that Mr. Raymond and the others involved in the jamming scheme could have been prosecuted under?

4. Do you believe that White House officials were involved in the development of the phone jamming? If yes, why do you believe that?

5. Please describe in more detail your conversation(s) with Mr. Allen Raymond's attorney about the prosecutor in the phone jamming incident being ordered to "slow down" the investigation

Chris Cannon, Ranking Member, Subcommittees on Commercial and Administrative Law and Louie Gohmert, Ranking Member, Crime, Terrorism, and Homeland Security:

1. Do you agree that we should investigate vote suppression allegations, regardless of which party is alleged to have suppressed votes?

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RESPONSE TO POST-HEARING QUESTIONS FROM MARK CRISPIN MILLER, PROFESSOR, NEW YORK UNIVERSITY, NEW YORK, NY

Questions for the Record
Joint Hearing on Allegations of Selective Prosecution Part II:
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Questions for Professor Mark Crispin Miller, New York University

Linda T. Sánchez, Chair, Subcommittee on Commercial and Administrative Law and Robert C. "Bobby" Scott, Chair, Subcommittee on Crime, Terrorism and Homeland Security:

1. Do both parties typically employ voter registration firms? Under what authority do these firms operate and under what reporting obligations?

It is my understanding that the Republican Party tends to rely more heavily on private registration firms (e.g., Lincoln Strategies and Young Political Majors, or YPM), while the Democratic Party uses advocacy groups like the NAACP, ACORN, labor unions and so on.

The private firms work for their client, and would therefore seem to operate under that client's authority. The advocacy groups operate under their own authority.

The question of reporting obligations is an interesting one. If a firm or advocacy group discovers an attempt at voter fraud or voter registration fraud, I believe that there's an obligation to report it to the Secretary of State in whichever state the attempted fraud occurred. (ACORN, for example, has always duly turned over evidence of attempted voter registration fraud to the authorities.)

Of course, if private firms are hired *in order* to perpetrate voter registration fraud, or to yield results that must entail the perpetration of such fraud, they will surely be unlikely to report it.

2. In your book you detail the growing dangers of election fraud and vote suppression. How prevalent is vote suppression or vote fraud throughout the country? Is this national, regional, local?

Both types of voter disenfranchisement are epidemic, and occur at every level.

Chris Canuon, Ranking Member, Subcommittees on Commercial and Administrative Law and Louie Gohmert, Rauking Member, Crime, Terrorism, and Homeland Security:

1. Do you agree that we should investigate vote suppression allegations, regardless of which party is alleged to have suppressed votes?

Certainly. This is not a partisan issue, even though it's the Republicans who, lately, have engaged far more extensively in vote suppression *and* election fraud. If and when the Democrats

commit such crimes against democracy, it is no less deplorable, and so it must be thoroughly investigated.

2. As we speak there are allegations that the Obama and Clinton presidential campaigns are suppressing each other's voters in Democratic primaries such as Nevada's. Do you believe we should investigate those vote suppression allegations?

I do, and, in fact, I have investigated them myself, to some extent. There seems to be compelling evidence of various vote suppression tactics by the Clinton campaign; whereas I've been unable to confirm the rumors that Obama's campaign has attempted to suppress the vote. However, I believe such allegations ought to be investigated more comprehensively than I and other activists could do it.

It should be noted that Obama filed a credible complaint against the Clinton campaign in Nevada—credible because its points have been confirmed by many voters, or would-be voters, who had firsthand experience of disenfranchisement or interference by the Clinton campaign or its supporters.

Let me add that Obama's complaint was unusual, as he has on the whole been notably reluctant to confront the issue of the disenfranchisement of his supporters, who have apparently been targeted by vote suppression tactics in several states.

3. Do you believe we should investigate the Obama and Clinton campaign allegations immediately, so that they're resolved well in advance of the November 2008 election?

I think that such charges ought to be investigated quickly—and that means *investigated*, rather than just noisily decried throughout the media for the propaganda purposes of either party.

4. Do you believe we should instead wait until as many as six years have passed to investigate, as the majority has in the New Hampshire phone jamming incident?

Actually, the legal probe of the phone jamming operation in New Hampshire started shortly after the 2002 election.

In any case, I do agree that the Democrats should act more quickly in response to efforts by the GOP to steal the vote—just as the Republicans should act at once whenever they have solid reason to believe that *their* supporters have been disenfranchised. As far as the Democratic Party is concerned, however, the most serious problem is not a slowness to respond but a refusal to respond at all. Even if they did respond belatedly, for cynical reasons, vis-à-vis the operation in New Hampshire, at least they did eventually respond; whereas they have made no move to investigate a lot of other instances of vote suppression or election fraud, although such cases were no less suspicious than that action in New Hampshire in 2002.

The Democrats—or those on this committee—*were* admirably quick to look into the widespread vote suppression in Ohio in 2004; and they found copious evidence confirming the firsthand reports of disenfranchisement by thousands of Ohioans. However, such responsiveness was the exception, as the Democrats had not even acknowledged, much less probed, the massive evidence of widespread fraud and vote suppression throughout Florida in 2000. (The Democrats have also been completely silent on the fact that Al Gore actually prevailed in that election, as the eventual hard-counts of the ballots there, conducted both by the National Opinion Research Center at the University of Chicago and the *Miami Herald*, showed that Bush/Cheney actually had *lost* that contest, by a margin razor-thin. When that finding was released in November of 2001, it was widely misreported in the press; and the Democrats did nothing to correct to record.)

After that election, the Democrats went on to turn a blind eye to compelling evidence of fraud and vote suppression in contest after contest. Those neglected scandals include Georgia in 2002 (where three different sources have confirmed that illegal software patches were, a few weeks prior to Election Day, placed surreptitiously on the Diebold voting machines in two populous Democratic-leaning counties, leading to remarkable upset defeats for Sen. Max Cleland and Gov. Roy Barnes); Alabama in 2002 (where Gov. Don Siegelman's re-election victory was covertly negated, late on Election Night, by Republican operatives who fiddled with the electronic totals in Baldwin County); and Colorado in 2002 (where, as in Georgia, there was a staggering upset defeat of Democrat Tom Strickland by Wayne Allard—and where they also used Diebold voting machines).

The Democrats looked into none of those anomalous results—whose oddity was all the more suspicious for the fact that there were no exit poll results available for the 2002 elections (a consequence of an unexplained computer "glitch"). Nor did the Democrats continue their inquiry into the results of the 2004 election in Ohio, even though much evidence of fraud continued to pour forth. (Just recently, the statistician Richard Hayes Phillips has released *Witness to a Crime*, his thorough audit of the ballots cast in 18 Ohio counties in 2004. Phillips's exhaustive evidence, including photographic evidence, makes clear that Kerry/Edwards were illegally deprived of at least 200,000 votes in those counties alone—enough to have made them the victors in Ohio, where Bush/Cheney had ostensibly prevailed with some 118,000 votes.) The Democrats were, and still are, also silent on the copious evidence of vote suppression and election fraud in many other states in that election, including Arizona, Michigan, Wisconsin, Pennsylvania, New Jersey, Texas, North Carolina and Florida, among other states.

And in 2006, the Democrats said nothing in response to several clearly dubious elections, and offered no support to their defeated candidates. Thus they were silent vis-à-vis Francine Busby's defeat by Brian Bilbray in the special congressional election in CA 50, and then, again, on Election Day (even though there were egregious improprieties, including many e-voting machines having been warehoused for weeks inside the private homes of some Bilbray supporters). The Democrats also responded mutedly to Christine Jennings's loss to Vern Buchanan in FL 13, even though he had prevailed by just 373 votes—while there were over 18,000 electronic undervotes (i.e., no votes cast for a congressional candidate) in Democratic-leaning districts only. Elsewhere in Florida, the losses by Clint Curtis (FL 24), John Russell (FL 5) and Frank Gonzalez (FL 21) interested the Democratic Party not at all—not even after all three candidates came up with solid *proof* that the official count was illegitimate, having

carefully conducted canvassing drives in their respective districts post-Election Day. Those surveys demonstrated a large discrepancy—from 7 to 11 percentage points—between the electronic vote-count and the count conducted door-to-door. Although that gap was certainly sufficient to have changes the outcomes of those races, the Democrats (specifically, the Democratic members of the House Administration Committee, now in that party's hands) refused even to consider looking at the evidence.

The foregoing catalogue of dubious elections *not* investigated by the Democrats is by no means complete, as, since 2000, there have also been many other races—for the House and Senate, and for certain governorships and other posts—whose outcomes ought to have been probed carefully by the Democrats, yet they too *all* have been ignored.

Thus it seems to me a little strange that they should be attacked for their allegedly belated probe of just one race that took place several years ago—as if they're somehow desperate to revive past cases of electoral malfeasance. They are in fact quite eager *not* to pay attention to the evidence of fraud or vote suppression, past or present or to come. And I believe that long silence toward such crimes against democracy is finally just as heinous as such crimes themselves.

5. In the Sproul matter, could any Democrat who discovered that they were not registered following their contact with Sproul have gone ahead and registered in time for an election?

Well, that would depend on when they discovered it; and it assumes, moreover, that they ever would discover it at all. Since they had every reason to believe that they'd been duly registered, there would be little reason for them to confirm it prior to Election Day, at which point it would have been too late.

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