



Judy Laddon <jladdon@gmail.com>

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## OPR Chronology, "whitewash"

1 message

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Judy Laddon <jladdon@gmail.com>

Sun, Sep 14, 2008 at 4:15 PM

To: Judy Laddon <jladdon@gmail.com>

From: Timothy J. Connor <tjccamas@comcast.net>

Date: Sat, Sep 13, 2008 at 10:30 PM

Subject: the OPR letter

To: Larry Shook <lwshook@gmail.com>

Cc: [tjccamas@comcast.net](mailto:tjccamas@comcast.net)

Larry--

Earlier today I sent a letter to the *Spokesman-Review* conceding I made a mistake by not disclosing the "confidential" letter sent to me by the Department of Justice's Office of Professional Responsibility in late July. I treated the letter as private because my contacts with OPR were not as a reporter but as a private citizen raising an ethics concern about a U.S. Attorney. But since I had disclosed the contact with OPR in the article last December, I think I should have relayed the letter to you so that you could have shared it with Camas readers.

I'm going to give you a detailed chronology of my contacts with the DOJ Inspector General's office and the Office of Professional Responsibility because, now that this issue is out there, it is and should be open to inspection. I think the process was a sham and I think the OPR reveals that it was a sham.

As you know, I contacted old sources on the Hill in D.C. shortly after filing the McDevitt letter last August 19th. One recommended contacting the Justice Department to seek an internal investigation of Jim McDevitt's professional and ethical conduct. And so I pursued this, though not with high hopes or expectations given the well-known dysfunction of Alberto Gonzales's highly partisan management of DOJ. When I first contacted Mark Pendleton on August 29th he made clear to me that the line between the IG and OPR was that the IG would be responsible for looking issues of McDevitt's conduct PRIOR to his appointment as US Attorney, and that OPR would look at issues DURING his tenure as U.S. Attorney. But that's not how it played out.

### **\*August 29, 2007**

Mark Pendleton at the DOJ IG returned my call. He referred me to Special Agent Kenneth Strange in the Los Angeles Field office.

On the ethics/disclosure issue he referred me to the DOJ Office of Professional Responsibility at (202) 514-3365

I asked if I could use his name in the referrals. He said I could and even spelled it for me.

**\*August 31, 2007:** I sent a very long e-mail to James Duncan at OPR after I spoke with him on the phone. He told me he would be assigning the case to an OPR officer. Here's part of what I reported to him in the email: Given the profile of the RPS fiasco and the evidence of Mr. McDevitt's direct involvement in the transaction as a lawyer for Preston, Gates & Ellis, it's remarkable that he was nominated. That issue aside, the issue for OPR is why did he wait until 2007 to recuse himself?

**\*September 10, 2007**

Ken Strange called Friday afternoon and left a number with L&J-- (818) 543-1163. Called him back this morning. He wanted clarity on the complaint, and to tell me he would be sharing the information with Assistant Special Agent in Charge Mike Barranti out of the San Francisco office (650) 876-9058. He said that the issues regarding McDevitt's conduct, in office, would be issues for OPR. And that the issues regarding off-duty or pre-duty conduct would be investigated by the IG. He said he would be consulting with Roger Williams who is his supervisor in HQ.

He asked, in 2 or 3 sentences to describe the complaint.

I said I'd do that, and in a separate email send him questions about disclosure requirements for U.S. Attorney nominees.

**\*September 11 & 13 2007**

James Duncan, (202) 514-3365,

Left a second message for him on Thursday at 10:30 Pacific Time, asking if he could tell me who the agent assigned to the McDevitt case was, and reporting that I had new information from the city's former mayor to pass to the appropriate agent. Asked to be called back and left my number.

The first message was left on Tuesday, 9/11, at 8:40 Pacific Time, I did report I had new information for OPR but did not provide details.

**\*September 13, 2007**

Duncan called back at 12:30 and apologized for not getting back to me sooner. He said the woman who will make the assignment to the OPR investigator is on vacation, has been for two weeks, and will return on Monday. He has made a note to himself, to make sure he briefs her on it on Monday. And it will be the person she assigns the file to who contacts me for followup.

**\*September 14, 2007**

I wrote a detailed letter to Jim McDevitt asking him to describe how he had complied with Washington state ethics rules. It began with the question: did you make "a full disclosure of material facts" to the President or Attorney General about your involvement and your former law firm's involvement in the River Park Square garage transaction and bond issue?

**\*September 17, 2007**

James Duncan OPR called me back today at 11:15 Pacific Time (Monday September 17)

to say he would be giving the file today to Karen Wehner (202) 514-3365 and this would include directions on how to use the Camas website. He believes her email would be [Karen.Wehner@USDOJ.GOV](mailto:Karen.Wehner@USDOJ.GOV). She knows nothing as yet.

**Wednesday, September 19, 2007 [Inspector General Suddenly Bails Out of McDevitt Investigation]**

Left message for Ken Strange at 2:40 p.m. to talk to him about the **9/13/07 letter from Roger Williams** and the email Strange sent me on 9-18-07 (below).

Ken,

I did receive a copy of a letter from Mr. Williams Saturday and emailed a copy to you over the weekend. I don't mean to try your patience on this but let me walk through why I'm confused. In my view, the issue for the Inspector General is the issue of what Mr. McDevitt should have disclosed to the President and/or the Attorney General prior to his appointment. At your request, I set this issue out in my 9/10/07 email (below). On Saturday, I received Mr. Williams's 9/13 letter saying that because the issue--as laid out in the 8/19/07 letter we sent to Mr. McDevitt--involved conduct related to Mr. McDevitt's "litigation authority" the matter would be assigned to OPR.

However, my understanding of OPR's purview is that it WOULD NOT include a U.S. Attorney's conduct prior to

the appointment and that's the conduct that I understood the IG could and would address, because that's where I understand the IG's jurisdiction is.

**If the IG doesn't look into this, my concern is that the issue of what, if anything, Mr. McDevitt disclosed to the President and/or the Attorney General before he took office is going to fall through the cracks.** I'll be glad to contact Mr. Williams, but I'm a little bewildered about what happened with my 9/10/07 email to you and whether that got factored into the letter that I received from Mr. Williams. Again, my objective is to not have the disclosure issue fall through the cracks.

I'm at (509) 838-4580. regards, Tim Connor

THIS IS THE TEXT OF MY 9/10/07 email responding to your request to summarize the issue.

Ken,

Per your request I think I can distill the complaint/issue regarding Mr. McDevitt this way: Prior to his being confirmed as a U.S. Attorney, I believe he had a professional/ethical responsibility (and perhaps a legal responsibility as well) to fully disclose to the President and the Attorney General the fact and extent of his involvement in the River Park Square garage transaction. He should have also disclosed the fact that very serious allegations had, by the time of his nomination in late 2001, been made against his private law firm (Preston, Gates & Ellis) that were clearly connected to work he'd done for Preston Gates on the RPS transaction from 1997 to early 2001. As you can see by the attached excerpt from the Nuveen et al. filing in April 2001, Preston was accused of securities fraud in a civil suit filed in the U.S. District Court for the Eastern District of Washington, the same district that is now served by Mr. McDevitt in his capacity as U.S. Attorney. Preston has since paid upwards of \$2 million to help settle that case. (It has also, evidently, paid the IRS an additional but undisclosed amount for falsely certifying that the bonds were tax exempt.) The Nuveen case was civil litigation but there are obvious criminal ramifications for violations of the same securities laws that Nuveen and others used as the basis for their civil suit.

At a minimum, the issue is did Mr. McDevitt fully and forthrightly disclose his and Preston Gates's involvement in the ongoing River Park Square controversy? I don't know what the federal disclosure requirements are for U.S. Attorney candidates but it's implausible they wouldn't require full disclosure of a conflict like this one. Moreover, there are very serious disclosure requirements and procedures built into the applicable Washington state Rules of Professional Conduct that are adopted and enforceable by the Washington state Supreme Court. In particular, Mr. McDevitt clearly needed to comply with RPC Rule 1.7 (attached) as it existed at the time his nomination went forward. The rule has been modified recently but the substantive disclosure and consent requirements are similar. Both new and old versions of Washington RPC 1.7 follow ABA Model Rule 1.7. It's very clear that at the time of his nomination, RPC Rule 1.7 required Mr. McDevitt to disclose his conflict/potential conflict to his new client (the U.S. Government) and obtain written consent from the U.S. Government to represent the U.S. Government as a U.S. Attorney, prior to his accepting the post. If he didn't fully disclose this and obtain a written waiver from the President or the Attorney General, then he violated RPC 1.7. More importantly, he compromised his new client's ability and credibility in terms of its responsibilities to investigate and prosecute the federal securities fraud charges that, frankly, should have been brought by now against Preston Gates lawyers (possibly including Mr. McDevitt personally) and others involved in the fraudulent bond issue. I'm also attaching a copy of Under the Influence, (UTI Part 1), the story that I wrote with Larry Shook in 2001 that first reported on Preston's and Mr. McDevitt's role in the RPS garage/bond transaction.

By the way, my phone number is (509) 838-4580 and please call me if there are further questions and/or documents that I can provide in connection with this matter.

**On Sep 18, 2007**, at 3:18 PM, Strange Jr., Kenneth R. (OIG) wrote:

Tim, Thanks for the information. I have passed it along to SAC Roger Williams. I believe that we are going to refer it to Department of Justice, Office of Professional Responsibility. You may want to check with SAC Williams.

**\*September 20, 2007**

Karen Wehner (Wee-Ner) Office of Professional Responsibility

I introduced myself and explained the course of things with the IG. I gave her Talbott's contact information over the phone. She seemed to be discouraging email.

She did not want me to be too concerned with what the IG did. She said she (OPR) would take a look at the file

and make a determination whether they would open an investigation. If so, I would get a letter of that notification and possibly a request for additional information.

She also said that if that were to happen, the inquiry could "take us a while."

**I asked her if I would know from a closing letter whether or not the issue of McDevitt's disclosures prior to taking the nomination were addressed. She said, by the letter, "I think you would know." But she also said that much of the information reviewed is confidential, personnel files, etc.**

**I told her I was considering sending a letter to the IG, just to make a record of the confusion I experienced in dealing with them.**

**\*September 21, 2007 10:10 a.m. PT**

Called and left a message for Roger Williams regarding his 9/13 letter. I told him I would be sending him a letter regarding the confusion I experienced in dealing with the IG's office and Mr. Strange. I told him my main concern was that DOJ look at the issues of what Mr. McDevitt disclosed to the President and the Attorney General before his nomination went forward. I did leave my number and told him I'd be sending a letter in reply to his.

I reached him through the DJ switchboard (202) 514-2000.

**\*September 21, 2007 letter to Williams**

September 21, 2007

**Roger Williams**

**Office of the Inspector General**

**Investigations Divisions**

**1425 New York Avenue, NW**

**Suite 7100**

**Washington, DC 20530**

**Dear Mr. Williams:**

**I'm writing in response to your September 13<sup>th</sup> and September 18<sup>th</sup> letters to register my confusion and concern about my interactions with your office. As I'll reiterate, below, my main concern is that the issue of what Mr. McDevitt disclosed to the President and the Attorney General prior to his appointment in 2001 be examined by DOJ. It just doesn't make sense that a U.S. Attorney can wait six years to recuse himself in a case involving multiple and serious allegations of fraud without DOJ evaluating whether the attorney properly communicated his conflict to the President and/or the Attorney General.**

**My understanding from my earliest contact with the Department on this issue is that there were two separate questions that the DOJ would give serious attention to and that one would have to be addressed by the Office of Professional Responsibility, and the other would have to be addressed by the DOJ-IG. The source of this information was Mark Pendleton, to whom I was referred when I first contacted DOJ on August 29<sup>th</sup>. Mr. Pendleton was very helpful and he directed me to Kenneth Strange in the Los Angeles office.**

**Just to be clear, my understanding after speaking with Mr. Pendleton was that OPR had jurisdiction to address a U.S. Attorney's conduct in his or her capacity as a U.S. Attorney, and that the IG's office had jurisdiction to address conduct of a U.S. Attorney in his or her non-official duties. It was Mr. Pendleton's assessment that because my complaint about Mr. McDevitt involved questions about his conduct prior to his appointment that this was a matter that the IG's office would look at.**

**Mr. McDevitt's involvement in the fraudulent River Park Square transactions is well-documented, but**

**it's also complex and this can be seen both in the investigative reports of the Internal Revenue Service and the securities fraud complaint and subsequent evidentiary filings by Nuveen, et al. I began communicating this information to Mr. Strange in late August. On September 10<sup>th</sup>, Mr. Strange asked me to distill and clarify the issue that I wanted the IG to look at. He also reiterated that OIG would look at issues related to Mr. McDevitt's off-duty or pre-duty conduct and refer any issues related to Mr. McDevitt's on-duty conduct to the Office of Professional responsibility.**

**In response to his request, I sent him an email that began:**

**Per your request I think I can distill the complaint/issue regarding Mr. McDevitt this way: Prior to his being confirmed as a U.S. Attorney, I believe he had a professional/ethical responsibility (and perhaps a legal responsibility as well) to fully disclose to the President and the Attorney General the fact and extent of his involvement in the River Park Square garage transaction. He should have also disclosed the fact that very serious allegations had, by the time of his nomination in late 2001, been made against his private law firm (Preston, Gates & Ellis) that were clearly connected to work he'd done for Preston Gates on the RPS transaction from 1997 to early 2001.**

**The email speaks for itself and it clearly communicated that the issue I was asking the IG to examine concerned Mr. McDevitt's pre-appointment responsibilities to fully disclose his conflicts of interest in the River Park Square case to the President and the Attorney General.**

**On September 15<sup>th</sup>** I received a letter from you dated 9/13/07 informing me that--based on your reading of an August 19th letter that Mrs. Rodgers and I had delivered to Mr. McDevitt and copied to the Attorney General--your office had decided it "does not have jurisdiction to investigate allegations" of misconduct related to a U.S. Attorney's exercise of "litigation authority."

**But, Mr. Williams, that was *not* the complaint. The complaint we actually logged with the IG's office has nothing to do with Mr. McDevitt's exercise of "litigation authority" as a U.S. Attorney. Moreover, if Mrs. Rodgers and I had wanted the 8/19/07 letter to be the complaint we were directing to the IG, we would have sent the letter to the Inspector General or copied the Inspector General on the letter. We did neither.**

**Rather, the complaint for the IG was only formulated after the August 29<sup>th</sup>** conversation with Mr. Pendleton as clarified, at Mr. Strange's request, on September 10<sup>th</sup>. Mrs. Rodgers and I are baffled as to why you chose to use the 8/19/07 letter to define the complaint instead of relying on the written clarification that Mr. Strange requested three days before you wrote your letter.

**After I received your 9/13/07 letter, I sought an explanation from Mr. Strange both in emails and in phone messages. Mr. Strange only responded after I sent him a copy of a 9/14/07 letter Mrs. Rodgers and I had sent to Mr. McDevitt. His 9/18/07 email was very brief. It conveyed that he thought the IG would be passing the whole matter on to OPR and that I should contact you if I had questions about that.**

**I received your 9/18/07 letter today, shortly after I telephoned your office to discuss your earlier letter. It simply informs me that Mr. Strange forwarded my 9/15/07 email (in which I requested an explanation of your 9/13/07 letter from him) to you and that, notwithstanding the contents of my email, the OIG "will not be initiating an investigation regarding your concerns that Mr. McDevitt did not disclose to the White House or the Attorney General any perceived or real conflicts he may have had while a private attorney prior to his**

nomination and confirmation as the U.S. Attorney of the Eastern District of Washington."

You concluded your letter by saying you "hope this answers any questions regarding this matter."

Mr. Williams, with all due respect, we're more confused than ever.

At least in your earlier letter you provided an explanation of why your office didn't see that it had jurisdiction to evaluate Mr. McDevitt's conduct with respect to his "litigation authority." But now, after we've clearly established that the complaint communicated was never about Mr. McDevitt's exercise of "litigation authority," there's no explanation at all. All we've learned is that the matter has been referred to a branch of the Department that we've already been told doesn't have jurisdiction to look at the issue we presented to OIG.

I don't mean to offend you, but particularly given the circumstances of this case, I think Mrs. Rodgers and I deserve an explanation. All we really understand from your 9/18/07 letter is that you've made a decision and you're not going to change it. And, if I may clarify one other thing, you reference a "previous complaint" in your letter. There was no previous complaint. The 8/19/07 letter Mrs. Rodgers and I sent to Mr. McDevitt was not a complaint filed with the OIG.

Mrs. Rodgers and I have gone to quite a bit of work here to help the United States Government get itself square with a situation where a sitting U.S. Attorney waited six years to recuse himself from a controversy where he and his former law firm are *clearly* implicated in a fraud that, at the very least, should be thoroughly investigated to determine whether federal criminal charges should be prosecuted. The information I provided Mr. Pendleton and Mr. Strange was provided in good faith, and I responded to Mr. Strange's request to clarify the issues in good faith.

Our concerns, going forward are:

- 1) That the OIG appears to have made an arbitrary decision not to investigate the issue of what Mr. McDevitt disclosed (and should have disclosed) to the President and the Attorney General in 2001.
- 2) That the Office of Professional Responsibility does not have the purview to investigate the issues of what Mr. McDevitt disclosed or should have disclosed to the President and the Attorney General with regard to his and his former law firm's involvement in the River Park Square case.
- 3) Consequently, neither OIG or OPR will investigate the issue of what Mr. McDevitt disclosed or should have disclosed to the President and the Attorney General about his and his former law firm's involvement in the River Park Square case.

We'd appreciate a letter from you that substantively addresses those concerns.

Sincerely, Tim Connor

**\*October 17, 2007, WSBA Grievance filed against McDevitt by Cherie Rodgers**

**October 20, 2007, Letter to Karen Wehner of OPR**

**Karen Wehner  
Office of Professional Responsibility  
950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530**

**Dear Ms. Wehner:**

I spoke with you a month ago regarding the complaint that Mrs. Rodgers and I have made regarding U.S. Attorney James A. McDevitt (Eastern District of Washington).

This past week Mrs. Rodgers filed a grievance against Mr. McDevitt with the Washington State Bar Association. I'm sending you a copy because even though it pertains to Mr. McDevitt's conduct prior to his taking office as U.S. Attorney, the DOJ Inspector General has, inexplicably, terminated its inquiry into Mr. McDevitt and referred the entire matter to OPR.

If you have questions about the grievance you can contact Mrs. Rodgers at (509) 466-6636 and, if I can be of further help, you can reach me at (509) 838-4580.

**Sincerely, Tim Connor**

**\*November 21, 2007, McDevitt responds to WSBA grievance**

This is a key letter because it confirms that McDevitt only provided information about Preston Gates being involved in the RPS litigation. On the disclosure forms provided to WSBA there is nothing showing that he communicated is personal involvement in the RPS fiasco.

**\*July 24, 2008, OPR Clears McDevitt**

Incredibly, given all the material I provided to DOJ IG and OPR, the response from OPR counsel H. Marshall Jarrett uses Cherie's and my August 29, 2007 letter (to DOJ, IRS, SEC) about the fraud evidence at RPS as the citation of my allegations against McDevitt. Here's what Jarrett writes in the first paragraph:

"In your August 29, 2007 letter to then Attorney General Alberto Gonzales, you alleged that when the U.S. Attorney for the Eastern District of Washington, James A. McDevitt, was being considered for that appointment, he failed to disclose pending civil litigation against his law firm relating to the River Park Square (RPS) development, and subsequently delayed, interfered with, and obstructed the United States Attorney's Office (USAO) from conducting an investigation into possible criminal activity associated with the RPS Development by failing to recuse himself in a timely manner."

Well, the paper trail shows that to be utter nonsense. The extent to which we even addressed the McDevitt issue in the 8/29/07 letter is with this paragraph:

"As we noted in our letter to him, and subsequent letter to each of you, the credibility and integrity of federal law enforcement is squarely at issue in this case because of Mr. McDevitt's extensive involvement (prior to his becoming a U.S. Attorney) and the lack of any discernible criminal investigation into River Park Square during the several years he was U.S. Attorney for the Eastern District of Washington."

Thus, not only does the letter report on an allegation we never made, but it emphasizes the wrong question. The issue was not whether "he failed to disclose pending civil litigation against his law firm," but whether he failed to disclose his personal involvement.

That's why I think this investigation was a whitewash.

tc

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