

November 28, 2012

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Re: Objection to Investigation of the 2012 General Election by
Attorney General's Office for Reasons of Conflict of Interest

Attorney General Vincent Frazer:

On November 12, 2012 it was reported in local media your intention to form a panel of senior attorneys for the purpose of conducting a probe into the 2012 election cycle.

Consequently, it seems you have been placed repeatedly in the position to attempt to defend conflict of interest charges leveled against you by the public and the media ever since.

Quoting from the homepage on the U.S. Virgin Islands Attorney General website:

"The role of the Attorney General and his staff is to act as lawyer for every citizen in the territory, asserting the rights of those citizens under the laws of the territory, and protecting them from those who would violate those rights."

However, given your controversial record pertaining to fitness, credibility and integrity that has punctuated your tenure as Attorney General, especially in contrast to the mandate your office prosecute in the name of the People of the Virgin Islands and offenses against the laws of the Virgin Islands, I firmly believe the potential for an impartial and objective outcome pertaining to the announced election "probe" to be conducted by your office is unlikely at the very least, and to be considered suspect at the very best.

Consider the following:

1. Recent issues involving your delinquent child support during your oversight of Paternity and Child Support. Case No. - 100-99-43.

2. The controversy surrounding attorney Wilson Campbell where you recommended him, an unlicensed attorney, to practice law in the Virgin Islands accompanied by the subsequent approval of your request by Governor John P. deJongh, Jr., to assign Campbell as Chief of the Criminal Division.

This concern was compounded by the removal of additional, unqualified attorneys from your staff who were discovered as having not passed the Bar Examination and thus ineligible to handle cases.

3. Ironically, you were the Attorney for the Relator in the 1994 Federal Qui Tam action brought against William Koenig, who was subsequently found guilty and convicted by grand jury indictment on ten (10) counts of fraud, "for knowingly and willfully making and causing to be made false, fictitious and fraudulent statements or representations concerning material facts within the jurisdiction of a department of the United States, namely, the Department of Housing and Urban Development, by claiming with supporting documents various costs that were not, in fact, direct costs of the Donoe project, each count in the criminal conviction constituting a separate fraudulent act." See United States v. William Koenig, Esther Koenig et al., Crim. No. 1997-155 (D.V.I.).

Although final Summary Judgment was issued by Federal Judge Thomas Moore in 2004, you shortly thereafter provided legal sufficiency to William Koenig dba WMK Mechanical Group, LLC, by your signature on 6/4/07, relative to the award of a Construction Contract, CC-18-DPW-T-2007, pertaining to the security guard house construction located at the private residence of your employer, Governor John P. deJongh, Jr.

According to US Government satellite images, construction on said guard house commenced as early as, or earlier than, November 1, 2006. This was a full eight (8) months prior to the 6/4/07 contract award to commence construction (to be paid for by public funds), eleven (11) months before work was scheduled to be completed, and well in advance of the November 7, 2006 election when John P deJongh, Jr., would have come into knowledge he was elected as Governor.

The subsequent 1/19/2010 Department of Interior USOIG Report found that public money was improperly used to improve deJongh's residence and that he should return the money.

To this day, neither US Attorney, Ronald Sharpe, nor yourself, have demonstrated any active interest, nor visible or tangible charges and prosecution of a matter possessing such grave implications.

Nor has the obvious question been raised as to whether or not there may be a correlation between premature guard house construction and the possibility of John P. deJongh's advance knowledge he would become Governor of the US Virgin Islands.

4. Title 3, Section 1105(a) requires that:

"Not later than April 30 of each year every statutory officer, every judge of the Superior Court, and every salaried appointed officer of a public agency exempt from the Personnel Merit System shall file a report disclosing certain financial interests..."

Recently, Title 3, Section 1105(d) was amended to require:

"Each candidate for public office shall file with the Supervisor of Elections within 10 days after filing his nomination petition or papers as a public record, a statement identical to the statement required by subsection (a) of this section."

Previously, the candidate requirement was to submit a financial disclosure report to the Attorney General's Office as a check and balance independent of the Election System. That vital check and balance was removed when legislation was passed to require reporting to the Supervisor of Elections.

According to a 10/31/2008 Virgin Islands Daily News article, "No candidates have obeyed disclosure law," Title 3, Section 1105 (a) and (d) had been on the books since 1971 and unobserved for 20 years without judicial enforcement.

The negligent oversight was brought your attention and your response was to grant extensions to candidates into 2009. No real enforcement, no follow-up, no real interest, nothing.

Ironically, candidates who received financial disclosure packets from your office during that time period not only discovered the crucial Section 1105 (d) legal reference absent from their material, candidates who attempted to comply, much to their surprise, had their information returned and unopened.

Shortly thereafter the law was then suspiciously changed in 2009 to remove the independent reporting requirement from under the Attorney General's Office and placed to the Supervisor of Elections.

Are you current in your compliance to Title 3(a)?

5. On 9/2/2010 an Agreement was signed between the Attorney General's Office and the US Department of Justice in order to avoid prosecution for chronic failure to comply with the federal Military & Overseas Voter Empowerment (MOVE) Act for the 2010 primary election.

Signing on behalf of the local Attorney General's Office was Carol Thomas-Jacobs, Assistant Attorney General.

In the document Thomas-Jacobs stated, "We have recently confirmed no federal positions will be on the ballot in the upcoming September 11, 2010, primary election - as there are no competing party nominations for the Delegate to Congress."

Attorney Thomas-Jacobs then indicated required ballots would be mailed out no later than September 18, 2010 in order to comply by the November 2, 2010 general election.

However, an October 2011 UOCAVA Report issued by the U.S. Election Assistance Commission (EAC) revealed our jurisdiction submitted no evidence ballots were ever mailed to military and overseas voters as previously agreed and, as a result, recently the U.S. Virgin Islands was placed under a 2012 Federal Consent Decree to force compliance.

Lingering questions that remain in the minds of many are: Why the Delegate to Congress write-in option was removed from voters in the 2010 primary election, and why the Attorney General's Office entered into an Agreement with US DOJ that would alter local election law and processes two (2) months prior to a general election when our law mandates changes are prohibited within six (6) months of a general election, unless by an order from a court of competent jurisdiction, or legislative due process?

The Attorney General's Office erroneously assumed, nor possesses, the authority of either.

Incidentally, Carol Thomas-Jacobs is one of the five (5) senior attorneys appointed to be dispatched by your panel to "look into" the 2012 election issues.

6. In regard to the 2010 voter/candidate ineligibility issue surrounding Alicia "Chucky" Hansen, while on probation, your delayed 12/19/2011 response to the St. Croix Board of Elections did not settle the issue as to whether or not her convictions on three (3) misdemeanor counts of willful failure to file income taxes, committed while a sitting senator, rises to the level of moral turpitude.

Your correspondence to the board was not only vague, but made no affirmation one way or the other of Hansen's eligibility, nor certification. The letter merely absolved the St. Croix District Board of Election from any further culpability (although they were not absolved in the 1989 Mapp v. Lawaetz case where Mapp's election was ordered to be de-certified), and in essence, told them to obtain an independent definition of moral turpitude, and shuffled the matter to Legislature.

Regardless, the board seized upon the opportunity to declare Hansen eligible as a 2010 candidate. Not only did they interpret your response as ironclad confirmation of her eligibility, the subsequent board meeting amounted to no more than an informal hearing, symbolically conducted to appear as an investigation, while forfeiting any substantive findings pertaining relative to the impact of moral turpitude or her probation on government that could be documented and furnished to the legislature in order to make an informed decision.

Hansen was deemed fit to run for re-election in 2012 and was the "top" vote-getter, under ongoing controversial circumstances, in the St. Croix District.

As a result, the moral turpitude question remains unresolved by the Boards of Elections, the Attorney General's Office, the Legislature, or the courts to this day.

7. On 10/29/2012 it was reported in the Avis that, "AG: Voting machines legal despite legislation requiring EAC certification."

In the article you were quoted as stating the non-EAC certified voting machines used in our elections were legal to use in contravention to Act 7334, signed into law on 12/28/2011 by Governor John P. deJongh, Jr., which mandates only EAC-certified voting machines shall be used in our elections from that date forward.

On 10/26/2012, you claimed on Channel 2 News, the Revised Organic Act of 1954 mandates the territory conduct elections and therefore the use of current voting machines is necessary because the Election System is presently in the process of procuring new voting machines, and implied the election would be diminished in some way without their inclusion.

In the 10/28/2012 edition of the Avis, you repeated the above message and further implied that Act 7334 was tantamount to an "unfunded mandate," that our elections must include voting machines as a voting instrument, and that the use of paper ballots as the sole voting instrument was not viable.

Again, a question begging an answer on the minds of many is if voters have been funneled solely into same voting machines for 26 years without a paper ballot voting instrument alternative, why, conversely, would you reject paper ballots, that provide voter's physical knowledge of ballot verifiability and independent audit-ability, as an only voting instrument?

In other words, why was it so very important that you personally advocate for the Election System, then intervene and see to it voters were funneled into these machines just one last time?

8. It was announced in the 11/12/2012 Avis your office would be assembling a 5-member panel of senior attorneys to "look into voter complaints" because "complaints have been coming in since the beginning of the [election] season."

As quoted, in a press release from Government House, "Frazer said, 'the purpose of the investigation is to put to rest all the unfounded allegations of fraud, corruptions and whatever other allegations have been levied.'"

In the same article, you disclaimed what should have been a strong declaration of intent and sense of urgency to get to the bottom of widespread and growing public concern regarding grave, substantiated claims of criminal wrongdoing relative to something as serious as how the outcomes were derived for the primary and general elections.

Instead, it is clear you are excusing, in advance, the likelihood of any real active interest, visible diligence, or measurable outcome underlying your endeavor by not only characterizing the allegations as "unfounded" in one breath, but claiming, "We have no preconceived notions" in the other.

Attorney General Frazer, why declare your intention to put "unfounded allegations" to rest before a panel has been formed, and if you have no "preconceived notions"?

Your intentions become more evident through additional lukewarm statements including, "The probe is not intended to be a criminal investigation but an opportunity to let the community know that we have heard their concerns and take them seriously," that you had "no expectations" as to the [investigation] outcome, and you would report your findings "to Elections and offer remedial action."

How is it the community will come into the knowledge "you have heard their concerns" when you have pre-determined to report non-transparent findings internally to the board and preclude the public from a detailed and publicized outcome?

If you take the public's concerns "seriously," why merely appease them by symbolically hearing them, yet simultaneously exclude an in-depth criminal investigation when the reality of criminal wrongdoing may very well be present?

Aren't all of these violations of American Bar Association Rule 8.4, which prohibits attorneys from engaging in conduct prejudicial to the administration of justice?

And in the event any of the previous statements are not enough to sufficiently convey self-serving bias, self-contradiction, and real conflict of interest, the following statement provides abundant insight into what I firmly believe is the fundamental objective and motivation behind your effort to suffocate public criticism of the Election System, well-founded or otherwise, void of any meaningful consequence to the Election System.

Your 11/12/2012 statement is as follows:

"If we do not take some steps to seriously look into the complaints and charges by the media, the criticism of the Election System will continue."

However, conflict of interest allegations become more apparent, according to Act 7334, where language contained within the legislation illustrates your office clearly acts on behalf of, and is legal counsel for, the sole representation of the interests of the Election System.

This position is further cemented by your own admissions as quoted in the 11/14/12 Virgin Islands Daily News as per the Attorney General Office's role regarding the conduct of elections, in the absence of Assistant Attorney General Kim Salisbury, who is usually present during Board of Elections meetings:

[Frazer] said his office was and remains on standby for any legal questions from the boards, independent of Salisbury's absence.

"They know they can call me if they need any legal advice, and I would send someone to do it," Frazer said.

Compounding the conflict of interest matter further is the 11/26/2012 Virgin Islands Daily News article: "Frazer denies conflict of interest in V.I. Justice's inquiry."

The article revealed you had sent an email "notifying the Election System and Board of Elections about the investigation." The email was not sent to all board members

who were entitled to know, but only to Joint Boards Chairman, Rupert Ross, Jr., St. Thomas District Chair, Alecia Wells, and John Abramson, Jr., Supervisor of Elections.

Why were other board members excluded? Why did you deny the media a copy of the email citing "client-attorney privilege" if indeed you do not represent the interests of the Election System and the boards much to the peril of the people you swore an oath to protect?

The article goes on to quote you in regards to the investigation of the Election System, "I'm not investigating them for wrongdoing, I'm investigating them to see what transpired."

Further, "We conduct an investigation and we submit our report to the Boards of Elections" and, "Whether I can release that to the public may be a matter that needs to be considered. I may be bound to release it only to the board."

The article concludes with miscellaneous statements by yourself, thus removing any doubt about your obligation and commitment to the board.

The above claims of representation, when juxtaposed, are in direct conflict with one another when one considers "those who would violate the rights of the citizens" are allegedly not only election officials, but very possibly the Office of, and the Attorney General, himself.

The appearance of conflict of interest will become self-evident given the likelihood the people bring suit against the Election System only to find, in the final analysis, the Office of Attorney General will indeed act and advocate as legal counsel for the boards, while challengers are pushed to the wayside to fend for themselves.

Are you willing to publicly deny the likelihood of your legal representation of the Election System or the Board of Elections in the event of any lawsuits?

9. Noteworthy in the 11-14-12 Virgin Islands Daily News article are your statements that now allegations have surfaced after the fact, the panel "will step up and investigate the matter," and election allegations were brought to your attention "only through the media."

VIC 18, Chapter 3, §47(8) mandates the Boards of Elections "investigate election frauds, irregularities and violations of this title, and report all suspicious circumstances to the Virgin Islands Department of Justice for possible prosecution;"

Logically, legitimate sources that would report verifiable election law violations to the Supervisor of Elections, or the Boards of Elections, to be forwarded to your office, would include the pool of voters and candidates themselves, as they have a vested interest in election outcomes.

Were you forwarded any reports from the boards or the election supervisor containing allegations of primary election fraud, irregularities and violations of Title 18? If so, were they so untimely as to be considered insufficient advance notification that would have precluded any reasonable mitigation on your part as it pertains to the general election?

For example, on 8/17/2012, Krista Schluderman submitted an inquiry to the St. Croix boards and the supervisor outlining findings that Senators Usie Richards and Alicia "Chucky" Hansen's election files contained petition signature deficiencies and were missing critical, 2010 election campaign disclosure documentation in terms of donations and expenditures.

Did you receive that document in a timely fashion?

On 9/20/2012, St. Thomas senatorial candidate, Jean Forde, listed several serious allegations in his notarized correspondence as they related to the board's mishandling of the primary election, tabulation and questionable conduct of the board altogether.

Did you receive that document in a timely fashion?

On 9/24/12 a detailed complaint was submitted to the St. Thomas/St. John Boards of Elections and its supervisor by a group of candidates alleging a wide variety of egregious infractions and observations in relation to the conduct of the primary election. Especially in regards to the negligent mishandling of paper ballots, voting machine non-certification and non-compliance, vote tabulation, etc.

Did you receive that document in a timely fashion?

On 10/1/2012, St. Thomas/St. John Board of Elections Vice Chair and Senator-At-Large candidate, Wilma Marsh-Monsanto, challenged the protocol and certification of the 2012 primary election as a result of the breaking of a quorum and affixing of signatures by board members to the certification document outside of the official meeting environment and out of public view.

Did you receive that document in a timely fashion?

On 10/1/2012, St. Croix Board of Elections candidate, Krista Schluderman, submitted a challenge to the 2012 St. Croix primary election certification due to issues surrounding the status of Electec, Inc. president and owner, Matthew Lilly, and his unlawful role as an examiner during the testing of our electronic voting machines. Additionally, issues were raised as to the conflicting and unsubstantiated claims made publicly by the Supervisor of Elections, the Joint Boards Chair, and Lilly that the voting machines used in our elections are National Association of State Election Directors (NASED) and Election Assistance Commission (EAC) certified - all abject misrepresentation. An identical complaint was submitted by St. Thomas/St. John Board of Election candidates Diane Magras and Harriet Mercer.

Did you receive those documents in a timely fashion?

On 11/2/2012, Delegate to Congress candidate, Norma Picard-Samuel, informed you the mere testing and deployment of non-EAC certified electronic voting machines into polling locations on election-day violates our local law, Act 7334, which mandates only EAC certified voting apparatus shall be used in all U.S. Virgin Islands elections from December 28, 2011 forward.

She informed you, as a candidate for Delegate to Congress, electronic ballots cast for federal office must be accomplished by voters on federally certified voting machines according to the Help America Vote Act (HAVA). Otherwise, all ballots are automatically nullified ab initio.

By her advance notification, you were alerted, in good faith, that this circumstance bears a direct impact on the outcome of her investment and endeavor to be fairly elected federal office and requested your immediate involvement to prevent the deployment of these voting machines on Tuesday, November 6, 2012 in order to avoid any potential legal ramifications.

Did you receive that document in a timely fashion?

If not, then the board and the supervisor are grossly negligent in their non-compliance to VIC 18, Chapter 3, §47(8) by their failure to bring serious election issues to your attention. At the very least they have denied the complainants due process by not properly vetting the complaints, but rather dismissing them out-of-hand and characterizing them on public airwaves as "political ploys to get votes" (St. Thomas/St. John board member Lawrence Boschulte), and "partisan politics" (Joint Board Chair, Rupert Ross, Jr.)

Conversely, if you did receive the above-mentioned documents in a timely fashion, then you are not only grossly negligent in

failing to act to mitigate the general election allegations that are presently flowing from those complaints and challenges as we speak (and of which you were apprised), but your statements, "allegations have surfaced after the fact," and were "brought to your attention only through the media" are troubling, disingenuous and misleading.

Undoubtedly, early and appropriate action would likely have not only reversed the primary election certification, but changed the face of the general outcome in terms of perceived transparency and voter satisfaction, plus avoided the turmoil and unnecessary controversy we all face today.

Other statements you made in the 11/14/2012 Virgin Islands Daily News include: Your characterization of election allegations as "unfounded" was a "slip," and "It's not our job to monitor elections," and "It is not my job or my role to stand over them and make sure they do what they are supposed to do," and you did not have the "staff to appoint...to help supervise activities on election day."

However, when contrasting those statements against claims made on 10/14/2010 during a guest appearance of yourself, Assistant Attorney General, Terrlyn Smock, St. Thomas/St. John Board of Elections Chair, Lorna Thomas, and Supervisor of Elections, John Abramson, Jr., on Radio 1000 AM with host Sam Topp, the Attorney General's role in oversight of election tabulation, your adverse position on paper ballots, and your staunch defense of electronic voting machines are revealed in stark detail.

Assistant Attorney General Terrlyn Smock's 2010 statements:

a. "The Attorney General's Office routinely attends the counting of ballots to make sure that they are verified and they are done legally. And that at the Attorney General's Office that's what we are there for...we are there to make sure it is done correctly and legally."

b. "We have an ethical responsibility as members of the Bar of the Virgin Islands, to see that that is done. I can tell you when we're there, we're there for that purpose."

c. "There is no legal basis for the use of a paper ballot in the Virgin Islands."

d. "Our jurisprudence in the United States of America will demonstrate the cases we have dealing with paper ballots, they are replete with problems, all kinds of problems that you have with the paper ballot. And there are less cases

that we have had in regards to the electronic ballots that we have."

e. "We've had cases in the Virgin Islands, very serious cases, where there's been spoiled ballots and there's been consequences of spoiled ballots. So I think using paper ballots is just problematic."

Attorney General Vincent Frazer's 2010 statements:

a. "[The] demand for it [paper ballots] really just creates a lot of confusion. It is an attempt to ignore the legal and established method for voting the legislature has created...that the election system of the Virgin Islands shall be by electronic votes."

b. "Until someone can substantiate there is something wrong with our voting system, that is the way that our voters are supposed to vote."

c. "You should have one voting system, one set of votes to count and when you create a second track of votes to count that is a dangerous thing, and is subject to manipulation and that is what we are trying to prevent."

d. "Our responsibility at the Department of Justice is to defend the electronic voting system."

e. "A paper ballot, a paper system is subject to much more manipulation than the electronic system we have."

f. "From our perspective in the family of justice, our position is the legislature says we vote on electronic voting machines. As far as I'm concerned, that's what we will defend."

Attorney General Frazer, is your longstanding prejudice towards paper ballots the driving force behind your decision to direct voters to use voting machines in contravention to Act 7334, and a key factor in your staunch determination to deploy the same antiquated voting machines in the 2012 election regardless of the consequences?

If it is not the job or role of the Attorney General's Office to "stand over them [the Boards of Elections] and make sure they do what they are supposed to do", why would Assistant Attorney General Smock make the claims she made?

When was the last time your office assigned anyone to oversee any election-day activity, vote tabulation, or voting machine certification of testing?

Given the 11/14/10 statements above, how is it remotely conceivable the election "probe" underway at this moment will yield anything other than biased results designed to shield the Election System and your office?

10. Lastly, there was the 8/17/2010 Court Case, No. SX-10-CV-0079, where Superior Court Judge Julio Brady dismissed the complaint filed by former Sen. Adelbert "Bert" Bryan which challenged the Board of Election's decision not to provide an official paper ballot as an option for voters who distrust the electronic voting machines, or object to the use of a provisional ballot.

Bryan was called out of the courtroom before proceedings commenced and into Brady's chambers, where attorneys from your office, including Asst. Atty. General Carol Thomas Jacob, were already present. And it was there Bryan learned that the hearing would proceed without witnesses, testimony or evidence and that the court would hear oral arguments only from Bryan and Jacob.

Again, Carol Thomas-Jacobs is one of the five (5) senior attorneys appointed to your panel to "look into" the 2012 election issues.

In conclusion, when it comes to a dismissive and biased spirit concerning election matters without due process, all of the above is reminiscent of former Attorney General Iver Stridiron's 7/24/2004 radio news remark in relation to the election turmoil occurring then, "But with regards to voter fraud with regards to people rigging the voter machines, and all of that, it's absolutely nonsense. This community is so small that it would be very, very difficult for anybody to get away with that sort of thing."

Taken in totality, the aforementioned illustrates plainly your conduct flies in the face of your fiduciary duty to investigate violations of the laws of the Virgin Islands, to see to it the best interests of the people of the Virgin Islands are served, and administer and enforce laws pertaining to ethics and conflicts of interest.

Thus, the rationale for previous reporting of your conduct to the V.I. American Bar Association.

Further, as legal counsel for the Board, you should be cognizant of S. Ct. No. 2007-96, page 20, where the Supreme Court of the Virgin Islands stated as part of their decision, "The Board and all election officials must pay close attention to the laws as enacted by the Legislature. For it is their duty as public servants of the people of Virgin Islands to ensure that all elections are conducted lawfully." You are bound to the same.

I am concerned the appearance of any investigation by your office may become a factor in the election. The mere fact that an investigation of any sort is being prematurely conducted may impact upon the potential adjudication of election litigation and contests in our courts.

Moreover, the seizure by authorities from your office, of documentation generated by the election process may deprive other election and judicial authorities of critical materials needed to resolve election disputes, conduct recounts, and certify the ultimate winners.

Accordingly, it should be general policy of your office not to conduct overt investigations or probes, including early interviews with individual voters, candidates, election officials or staff until after the outcome of the election allegedly affected by potential error or fraud has reached its ultimate conclusion.

Otherwise, a suspicious public is justified to reject, out-of-hand, any findings issued by your office and deem them chilling, duplicitous and self-serving.

The pervasive view at the moment is the likelihood of an outcome of any election "probe" conducted by your office, which is not biased, prejudiced, preemptive of federal action, or skewed in some way to favor the Election System and dilute voters' protections, albeit disguised as official act under the color of law, is utter fantasy.

It remains to be seen whether or not your activity is a legitimate "probe" or the precursor to the aiding and abetting of a cover up by government agency to protect the status quo and, once again, to sacrifice justice at public expense.

I vehemently object to any covert investigation of election-related issues that does not include introspective and comprehensive investigation of the Office of Attorney General and yourself. Transparency dictates you report your findings to the U.S. Attorney's Office.

Sincerely,



Eddie Donoghue, PhD

cc: Voting and Public Integrity Sections, US DOJ
Federal Bureau of Investigation and VI ABA
Election Assistance Commission and US DOI Inspector General
Governor John P. deJongh, Jr. and US Attorney, Ronald Sharpe
All Media