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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

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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:_____ Date:_____

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