

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	)	Criminal Action No. 06-26
	)	
v.	)	
	)	Honorable Arthur J. Schwab
CYRIL H. WECHT	)	
	)	
	)	
	)	

**AFFIDAVIT OF DICK THORNBURGH**

DISTRICT OF COLUMBIA            )  
  ) ss.  
  )

I, Dick Thornburgh, being sworn, deposed and say:

1. I am an attorney with the law firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP.
2. Jerry S. McDevitt, Mark A. Rush, and I are counsel to Dr. Cyril H. Wecht in the above-captioned matter.
3. I have been admitted to the practice of law in the Western District of Pennsylvania for nearly 50 years.
4. I have held various public positions in my legal career, including: United States Attorney for the Western District of Pennsylvania; Assistant Attorney General in charge of the Criminal Division, Department of Justice; two-term Governor of the Commonwealth of Pennsylvania; Under Secretary General of the United Nations; and Attorney General of the United States.

5. I have read the motion and affidavit filed by Assistant U.S. Attorney Stephen Stallings in the above-captioned matter at Document No. 477.

6. Reserving argument for our brief in response, I would note that Mr. Stallings' declaration in Paragraph 2 of his affidavit, "This affidavit is based solely on my personal knowledge, and does not speak for any of the other persons from our office involved in this matter" (emphasis added), is both troubling and highly unusual. I have not seen such a statement from an Assistant U.S. Attorney during my time with the Department. In my experience, Assistant U.S. Attorneys are never entitled to speak only for themselves in controversies (especially criminal cases) between the United States and its citizens.

#### **Initiation of the Representation**

7. In or around July 2005, I was contacted by David Armstrong and Dr. Cyril Wecht concerning my possible representation of Dr. Wecht, then Coroner of Allegheny, who was under investigation by the United States Attorney's Office in the Western District of Pennsylvania.

8. Dr. Wecht was then represented by Mr. Armstrong, along with J. Alan Johnson and Cynthia Eddy. I knew Mr. Johnson as a former United States Attorney of the Western District of Pennsylvania. I discussed our role with Mr. Armstrong and Dr. Wecht. I thereafter contacted Mr. Mark Rush to inquire if he would assist me in the representation, to which he agreed. I sent the confirmation of our engagement to Dr. Wecht on or about July 28, 2005.

9. As the investigation proceeded, I became aware of various contacts and discussions between Mr. Johnson, Mr. Rush and First Assistant U.S. Attorney Robert Cessar. Mr. Johnson, Ms. Eddy and Mr. Rush kept me informed of the progress of the Wecht investigation, as well as the various legal issues, and issues involving troubling investigative

techniques. Ultimately, I received a target letter concerning Dr. Wecht from the United States Attorney Mary Beth Buchanan, dated December 6, 2005.

10. After receiving the target letter from Ms. Buchanan, I communicated with Mr. Johnson, Mr. Rush and Ms. Eddy. A strategy was designed in order to secure a pre-indictment meeting with Ms. Buchanan, as well as prepare for, if necessary, a meeting at the Department of Justice with Mr. Paul McNulty, the Deputy Attorney General.

11. As part of that strategy, I sent to Mr. McNulty a letter dated December 20, 2005. That letter is attached as Ex. A. I raised with Mr. McNulty some of the issues that were causing us concern regarding the investigation and possible prosecution of Dr. Wecht. We specifically addressed the Federal Government's limited mandate in the area of criminal investigations when state and local politics are involved. We also discussed selective prosecution issues by noting allegations similar to Dr. Wecht's that were handled by the Pennsylvania State Ethics Commission without federal intervention, and lastly we discussed the investigative techniques that we found particularly troubling. I listed the following six specific investigative tactics:

- Searches and seizures of Dr. Wecht's property that we believe were conducted in violation of the Fourth Amendment;
- Instructions contained in subpoenas that improperly purport to impose obligations of secrecy on mere witnesses;
- Government leaks to the media of information concerning the investigation;
- Conduct and improper comments made by the investigating FBI agents;
- The lead case agent's prior conduct in Newark, New Jersey which placed his veracity at issue; and
- A letter-writing campaign by the government that appeared to be designed to impugn Dr. Wecht's character without serving any investigative purpose.

12. On January 5, 2006, at 9:30 a.m., I, along with Mr. Rush, met with Ms. Buchanan, First Assistant U.S. Attorney Robert Cessar, Assistant U.S. Attorney Stephen Stallings, Special

Agent Bradley Orsini of the FBI, and Special Agent Bob Elias of the IRS. This meeting was conducted in Ms. Buchanan's conference room, adjacent to her office.

13. The meeting opened with pleasantries, after which Ms. Buchanan expressed the view that the Wecht case was, "one of the worst cases of public corruption, mail and wire fraud, that we have seen in four years." She offered a very general overview of the case, without referencing any specific factual allegations. I thanked her for giving us the time to meet with her. I addressed her overview and then made my presentation, seeking to dissuade her from seeking an indictment of Dr. Wecht, I discussed issues of federalism; the Government's investigative techniques; the very "public" aspect of their Grand Jury investigation, including, inter alia, the fact that the media was present for the execution of certain search warrants, and that Mr. Stallings and Agent Orsini were pictured on the front page of the Tribune Review on September 17, 2005 while collecting documents (see Ex. B); the legal issues surrounding the novel prosecution under 18 U.S.C. §§1346 and 666; and other matters. During our discussion of the public nature of the investigation, Mr. Rush showed Ms. Buchanan and the others the front page photograph of Mr. Stallings and Agent Orsini. Mr. Stallings denied that the photograph was orchestrated, and said that, "I know you are still going to accuse me of prosecutorial misconduct," to which Mr. Rush replied, "That is not our intent at this time."

14. Additionally, I reviewed Dr. Wecht's life's work, and all of the letters of support that had been written to Ms. Buchanan or to members of the defense team for production to Ms. Buchanan on Dr. Wecht's behalf. Letters had poured in from religious leaders, state prosecutors, educators, politicians, etc. I highlighted one particularly meaningful letter from the Most Reverend Donald W. Wuerl, then Bishop of Pittsburgh. Ms. Buchanan's response to that letter,

which she acknowledged receiving, was to assert she will “personally cross-examine” the Bishop concerning his views.

15. It became obvious to me that we were not going to be successful in talking Ms. Buchanan out of seeking an indictment. In fact, towards the end of the meeting, Ms. Buchanan suggested that Dr. Wecht plead to one public corruption count and one private mail fraud count. I advised that I knew that Dr. Wecht would reject that offer. I, therefore, requested from her a reasonable period of time in order to set up a meeting with Paul McNulty, the Deputy Attorney General, concerning this case.

16. Ms. Buchanan advised that she would not set up a meeting on my behalf, but I told her that I could do so. I also advised her that I had already sent a letter to Mr. McNulty advising of this case on December 20, 2005. Although I did not provide her a copy when I sent it, upon her request, I understand Mr. Rush provided a copy to her later in the day.

17. Ms. Buchanan indicated that she was not going to delay seeking an indictment in this matter, but that she would give me some time to seek a meeting with the Department of Justice. At that point, Mr. Stallings, who was seated next to Ms. Buchanan and directly across from me, pointed his finger at me and asked me directly what I intended to say to the Deputy Attorney General. I ignored his inquiry, and thanked Ms. Buchanan for the courtesy of allowing me the time to make a request to meet with the Department once she made her final decision concerning indictment.

18. Ms. Buchanan proposed that Mr. Rush continue the meeting without her or me present, so that Messrs. Stallings and Cessar, along with the agents, could further discuss the facts known to the Government and to the defense. Mr. Rush stated that he thought that was a

good idea, and asked if he could call Mr. Johnson to join him in that meeting. He was told he could make such a call.

19. Before we adjourned the last issue that I raised was, that in the event that Dr. Wecht was indicted, I requested that she grant him the courtesy of self reporting and not having him arrested. To my surprise, Ms. Buchanan rejected my request, and indicted that she felt that Dr. Wecht was a “flight risk to Israel.” In strong, and uncertain terms, I asked Ms. Buchanan to reconsider, saying that Dr. Wecht was not going to flee because of the indictment, and that it was his intention to vigorously defend the charges. Mr. Rush also commented on Ms. Buchanan’s expressed desire to have Dr. Wecht arrested. The meeting ended without her assurance that Dr. Wecht would not be arrested should she seek an indictment. I was concerned that Dr. Wecht could be subjected to a demeaning “perp walk” if an arrest warrant were to issue.

20. I concluded by stating to Ms. Buchanan that it was my opinion that she was going to regret pursuing this indictment because of the political and novel aspects of such a prosecution. Mr. Stallings inappropriately responded as if I had threatened them. I did not respond to his outburst.

21. At no point during this meeting did anyone from the U.S. Attorney’s Office inform us of the inflammatory allegation that Dr. Wecht was trading bodies for lab space at Carlow University. I first learned of that allegation from Ms. Buchanan’s press conference of January 20, 2007.

22. I returned to Washington, D.C.

23. On January 11, 2006, I had [hand delivered] a 45-page letter to Ms. Buchanan that was prepared as a follow up to the January 5 meeting to discuss our various legal defenses, as well as other matters of investigative and pre-indictment misconduct to further attempt to

dissuade Ms. Buchanan from indicting Dr. Wecht, as was discussed in our January 5, 2006 meeting. I sent a copy of that letter to Mr. McNulty. A copy of that letter is attached as Ex. C. I would note that there is no mention of the allegations involving Carlow University, since they were not known to the defense at that time.

24. On January 17, 2006, Mr. Rush wrote a letter directly to Ms. Buchanan, concerning the fact we had not received any response to our January 11 letter, and inquiring as to the status of the indictment of Dr. Wecht, primarily because I wanted to attempt to obtain Department of Justice intervention. A copy of Mr. Rush's letter is attached as Ex. D. At the same time Mr. Rush was writing to Ms. Buchanan concerning the timing of the indictment, Mr. Johnson wrote, in consultation with all of us, and had hand delivered to Ms. Buchanan, a letter dated January 17, 2006, specifically addressing my request that Dr. Wecht be notified of the indictment by summons in lieu of an arrest warrant, because of Ms. Buchanan's statement that Dr. Wecht was a risk of flight to Israel, and her intention to have him arrested. I have attached a copy of Mr. Johnson's letter, dated January 17, 2006, as Ex. E. To my knowledge, Mr. Johnson did not receive a response to that letter.

25. On January 18, 2006, I received a call from Mr. Rush indicating that he had been advised by First Assistant U.S. Attorney Cessar that Dr. Wecht was, in fact, going to be indicted that week. As a result, I set out to contact Mr. McNulty in an effort to have him intervene and request additional time before an indictment was sought, so that a meeting could be had at the Department of Justice and to attempt to assure that Dr. Wecht was not arrested.

26. On January 19, 2006, I spoke with Mr. McNulty by phone from Florida and discussed the Wecht case, including both my letter of December 20, 2005, along with the copy of correspondence that I sent to him and Ms. Buchanan on January 11, 2006. I requested his

intervention in two specific areas: (1) to request Ms. Buchanan not seek an indictment this week, so we could have an opportunity to further personally discuss the case with him; and (2) if he was not so inclined to intervene to preclude an indictment from occurring this week, to at least request that Ms. Buchanan not have Dr. Wecht arrested. Mr. McNulty listened to my requests, but did not comment one way or another, other than to say that he would be back in touch with us.

27. During this time period, because I was away from my office, I asked that Mr. McNulty or his designee contact Mr. Rush directly.

28. On the morning of January 20, 2006, I was contacted by Mr. Rush, who advised that Mr. McNulty's Chief of Staff had contacted him, and advised that he and Mr. McNulty had spoken with Ms. Buchanan about the Wecht case. Mr. Rush further advised that he was told that they would not intervene on behalf of Dr. Wecht to delay the indictment. He said that they advised him that the Grand Jury conducting the investigation of Dr. Wecht was preparing to expire, and that it would be difficult to either extend the Grand Jury or to transfer the matter to a new Grand Jury. Mr. Rush did advise that they granted my request, and informed Ms. Buchanan that Dr. Wecht should be notified by summons in lieu of an arrest warrant when he was, in fact, indicted.

29. As noted above, I first learned of Ms. Buchanan's allegation of trading lab space for bodies as a result of her press release and news conference of January 20, 2006. A copy of the press release is at Ex. F, a copy of the DVD and transcript from the January 20, 2006 news conference are attached as Exs. G and H, respectively. In response, I directed Mr. Rush to prepare a press release, which I reviewed, and to arrange to read that press release to the TV and

print media as a response to Ms. Buchanan's inflammatory and prejudicial statements. Mr. Rush did that on January 20, 2006.

30. On or about March 13, 2006, I received the letter attached at Ex. I from Mr. McNulty acknowledging our telephone conversation, and noting that he was glad that an agreement was reached with the United States Attorney to allow Dr. Wecht to surrender voluntarily.

#### **Case Resolution Discussions**

31. On Friday, June 1, 2007, I returned a May 30 telephone call of Mr. Rush. I spoke with Mr. Rush and Mr. McDevitt. Mr. Rush advised me that he had been approached by Mr. Stallings on May 30 concerning the Wecht case. He further advised that Mr. Stallings was proposing a meeting between me and Mr. Eberhardt, and that Mr. Stallings had confirmed Mr. Eberhardt's willingness to participate in such a meeting to discuss the issues of the case looking toward finding a resolution. I was highly skeptical that an agreement could be reached. I suggested to Mr. Rush and Mr. McDevitt that they first meet with Mr. Eberhardt, and if any progress was made, then I might participate in any subsequent meetings. I asked Mr. Rush and Mr. McDevitt to report back to me after the meeting.

32. On June 6, 2007, Mr. Rush and Mr. McDevitt contacted me about their June 5, 2007 meeting with Mr. Eberhardt. They also advised me of the Post-Gazette's front page story about Ms. Buchanan retaining counsel to appear before investigators for the House Judiciary Committee. Following a discussion of those two matters, we next addressed Ms. Buchanan's earlier expressed intention to have Dr. Wecht arrested for being a "flight risk to Israel." I confirmed for them my recollection, which I describe, supra, and my concern that Dr. Wecht might be subjected to a "perp walk."

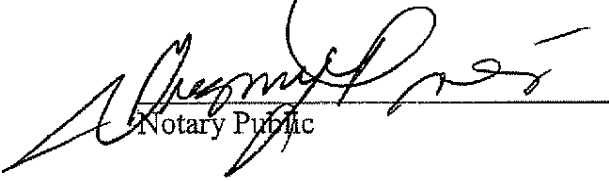
33. On June 8, 2007, I spoke with a reporter from the Pittsburgh Post-Gazette and confirmed my contact with Mr. McNulty regarding the indictment and the fact that Ms. Buchanan desired to have Dr. Wecht arrested.

The above information is true and correct to the best of my knowledge, information and belief.



Dick Thornburgh

Sworn to and subscribed  
Before me this 3<sup>rd</sup> day of  
June 2007.

  
Notary Public

**GREGORY PROCTOR**  
Notary Public, District of Columbia  
My Commission Expires - September 30, 2008