

# Evergreen Freedom Foundation

A Nonprofit Public Policy Research Organization

May 20, 2005

Thomas F. McLaughlin  
Assistant Inspector General  
U.S. Department of Justice  
Investigations Division  
950 Pennsylvania Avenue, NW  
Room 4706  
Washington, D.C. 20530

Dear Mr. McLaughlin,

I am writing to request an investigation by your office into misconduct by John McKay, U.S. Attorney for Western Washington. I believe that he has committed malfeasance by systematically refusing to act on evidence of election fraud delivered to his office. He has attempted to hide behind a façade of excuses and responsibility-shifting, while sensitive documents pertinent to the investigation are in danger of being destroyed. His lack of action, whether intentional or negligent, has effectively hamstrung the possibility of finding and eliminating election fraud in Washington state.

On April 1, 2005, six members of the King County Council (Seattle-area) sent a request to U.S. Attorney General Gonzales for a Department of Justice investigation of the 2004 General Election. This request was followed up on April 7, 2005, by a letter from the Evergreen Freedom Foundation (EFF) of Olympia, Washington.

I believed that the Department of Justice would initiate an investigation; a belief based on a September 2004 report to Congress from the Government Accountability Office (GAO), which stated, "The Public Integrity Section (PIN), in conjunction with the 93 U.S. Attorneys and the FBI, is responsible for enforcing federal criminal laws applicable to federal election fraud offenses, among other things. Election fraud is conduct that corrupts the electoral process for (1) obtaining, marking, or tabulating ballots; (2) canvassing and certifying election results; or (3) registering voters."

The letter from EFF included twelve specific allegations of election fraud under this definition, and it was therefore copied to Mr. McKay in his role as U.S. Attorney. The letter is enclosed for your review. Please note that, subsequently, additional evidence has been found and sent to Mr. McKay.

After several attempts to contact Mr. McKay to request a grand jury investigation of these allegations, his office finally directed us to the Seattle FBI office. When called, the FBI stated that they could not begin an investigation without a request from Mr. McKay.

I contacted Mr. McKay again to relay this information, and was directed to Assistant U.S. Attorney Arlen Storm, the appointed District Elections Officer (DEO) for Western

Washington. His duties as DEO, as outlined by the GAO report to Congress, include screening and conducting “preliminary investigations of complaints, in conjunction with the FBI and PIN [Public Integrity Section], to determine whether they constitute potential election crimes and should become matters for investigation”; overseeing “the investigation and prosecution of election fraud and other election crimes in their districts”; and coordinating “their district’s (investigative and prosecutorial) efforts with DOJ headquarters prosecutors.”

Mr. Storm clearly has the duty to review and conduct preliminary investigations of allegations of election fraud; yet he too directed me to contact the FBI, who continued to indicate that they would not conduct an investigation without a request from Mr. McKay. Mr. McKay also attempted to evade the investigation by shifting responsibility to state authorities. In an email response to a question on this issue he wrote “Given the [election] contest now pending in state courts, state venues continue to exist for the matters you identify...” This communication ignored the fact that the 2004 General Election was for federal as well as state offices.

Further attempts to contact Mr. McKay regarding the investigation were rebuffed with the explanation that he had no authority to conduct a grand jury investigation of election fraud. This is despite the fact that Mr. McKay issued three press releases since May 2002 urging the public to contact his office with suspicions of election fraud.

Upon further research this excuse was found to be wrong, for several reasons:

1. Authority is found in the U.S. Attorney’s Grand Jury Manual Section 9-11-241 and in 28 U.S.C. 547;
2. A September 2004 report to Congress by the GAO stated that U.S. Attorneys and PIN attorneys initiated a total of 61 election fraud investigations related to election years 2000-2003. These investigations took place in 32 states, none were in Washington.
3. Mr. Storm, the DEO for Mr. McKay, attended a Symposium on Ballot Access and Voting Integrity Initiative hosted by the DoJ in September 2004. During this session he received clear information on his duties and authority to investigate election fraud.
4. Currently there are at least four ongoing grand jury investigations of election fraud by U.S. Attorneys, all with less evidence than was presented to Mr. McKay.
5. Top officials in the PIN of the DoJ have confirmed that Mr. McKay has the authority to convene a grand jury for investigation of the election.

These points were related to Mr. McKay in a letter from the Evergreen Freedom Foundation on April 20, 2005. Despite this explanation, Mr. McKay has continued to refuse to begin an investigation, and has offered no valid reason for his reluctance. On May 9, 2005, Mr. McKay appeared on a local radio talk show, and stated that his jurisdiction is limited to “crimes like bribery, forgery of ballots, conspiracies to intimidate individuals to affect the outcome of an election.” He intimated that he was waiting on state and county authorities to investigate, as well as attorneys from an

ongoing election challenge civil case. The transcript of this interview, which aired on the John Carlson show on KVI radio in Seattle, is available if needed.

Part of any investigation into the 2004 General Election will necessarily involve election records held by county auditors. Some of these records can be destroyed after a short period of time, and thus Mr. McKay's omission to act will soon seriously hinder any chance for a thorough investigation.

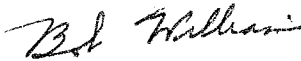
I have even asked Mr. McKay to merely recuse himself from the investigation, thus allowing DoJ PIN attorneys to step in. He has completely ignored this suggestion.

The election system in Washington state is severely damaged, partially as a result of apparent election fraud. So many irregularities have been uncovered that the integrity of the entire system is in question, and the people of our state have lost faith in the ability of government to conduct clean and fair elections. The integrity of the system and confidence of the public cannot be restored without vigorous enforcement of the election laws.

Mr. McKay is an essential part of this necessary enforcement, but despite repeated contacts from EFF and scores of concerned citizens, he has refused to fulfill his duties as a U.S. Attorney.

I respectfully request that you investigate this matter promptly. Please contact me if you need further information.

Cordially,



Bob Williams  
President

Enclosures:

- Press release of November 1, 2004 from John McKay
- Email of January 27, 2005, from John McKay stating the limits of his authority
- News Article of April 14, 2005, regarding call for grand jury.
- Letter of April 20, 2005 from EFF to John McKay
- Three Emails of April 29, 2005 from Bob Williams to John McKay
- Email of May 4, 2005, to John McKay from Bob Williams, includes series of exchanges
- Email of May 4, 2005 from DEO Arlen Storm to concerned citizen
- Email of May 5, 2005 from Bob Williams to John McKay
- Letter of May 12, 2005 from Arlen Storm to Bob Williams
- Letter of May 19, 2005 from Bob Williams to John McKay