



GOVERNMENT
ACCOUNTABILITY
PROJECT

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By Email

United States House of Representatives
Committee on Foreign Affairs
Committee on Appropriations
Washington, DC 20515

United States Senate
Committee on Foreign Relations
Committee on Appropriations
Washington, DC 20510

U.S. Office of Special Counsel
1730 M Street NW # 218
Washington, DC 20036

Office of Inspector General
U.S. Department of State
State Annex 39
1700 N. Moore Street
Arlington, VA 22209

January 19, 2021

Re: Protected Whistleblower Disclosure of Gross Misuse of at Least
\$2 Million in Taxpayer Dollars by the U.S. Agency for Global Media

To Whom It May Concern,

We represent individuals who wish to remain anonymous. They possess information about recent payments over the past three months of at least \$2 million to a large law firm, McGuireWoods, to investigate current and former employees of the U.S. Agency for Global Media (USAGM), the parent agency of the Voice of America (VOA), and to perform follow up audit compliance among other matters.

The amounts spent to date are extraordinary. At minimum, the payments are a gross waste of government resources. The work performed by McGuireWoods – thousands of hours attorney and support staff time over three months at rates exceeding \$700 per hour – related to personnel and audit matters handled by federal agencies in the ordinary course of their business.

Michael Pack Hires McGuire Woods

McGuire Woods is a very large law firm. It employs more than 1,000 lawyers in 21 offices

worldwide.”¹ It describes itself as “a full-service firm providing legal and public affairs solutions to corporate, individual and nonprofit clients worldwide”²

On August 12, 2020, Mr. Pack entered into a contract with John D. Adams, a McGuireWoods partner and chair of its Government Investigations Department.³ Mr. Adams’ credentials include a clerkship with Supreme Court Justice Clarence Thomas and Republican candidate for Attorney General of Virginia in 2017. Under the contract, McGuireWoods initially agreed to conduct an internal investigation of current and former employees – for USAGM, not the U.S. Government – regarding complaints of employee misconduct. In ensuing months, the scope of work has expanded to include “compliance reviews.”

McGuireWood’s Very Large Legal Fees

Legal fees charged by McGuireWoods for its services to its clients are substantial. For example, the hourly rate in 2018 for its bankruptcy lawyers ranging from \$400 per hour for associates to \$710 per hour for partners.⁴ It is well known that big firm lawyers who possess credentials like Mr. Adams and do the kind work he does charge well more than \$1,000 per hour.

Legal fees billed to USAGM have been enormous. In the last quarter of 2020 alone, McGuireWoods submitted invoices for work performed for USAGM of approximately \$2 million. The fees charged for services rendered each month exceeded \$600,000.

Assuming an average billing rate for all the lawyers and support staff of \$500 per hour, \$2 million in fees represents 4,000 hours of work. Spread across twelve weeks, that totals 333 hours per week. Of course, the actual hours billed were likely much higher since support staff are billed out at a lower rate. We expect McGuireWoods to submit equally large bills in January.

¹ <https://en.wikipedia.org/wiki/McGuireWoods>.

² <https://www.mcguirewoods.com/about-us>.

³ https://en.wikipedia.org/wiki/John_Donley_Adams.

⁴ *In Re: Beaulieu Group, LLC*, No. 17-41677-mgd (Bankr. N.D. GA, ECF # 635 filed Mar. 5, 2018) (Notice of Change to Hourly Billing Rates for McGuireWoods LLP), available at <https://www.docketbird.com/court-documents/Beaulieu-Group-LLC-and-Beaulieu-Trucking-LLC/Notice-of-Change-to-Hourly-Billing-Rates-for-McGuireWoods-LLP-Filed-by-J-Robert-Williamson-on-behalf-of-McGuireWoods-LLP-Williamson-J/ganb-4:2017-bk-41677-00635>.

Why Was McGuireWoods Hired?

Personnel Investigations

On August 12, 2020 Mr. Pack removed six long-time senior USAGM officials, career civil servants, from their posts in what was widely described as a “purge.” The six – USAGM’s Chief Financial Officer, General Counsel, Executive Director, Deputy Director for Operations; Director of Management Services and Chief Strategy Officer – were placed on indefinite administrative leave. They collectively possessed decades of deep experience. Mr. Pack hired McGuireWoods the same day.

The move met with immediate, wide-spread criticism. The Chair of the House Foreign Affairs Committee said:

Michael Pack is once again attempting to purge USAGM of the apolitical, career officials who have helped ensure that the agency fulfills its mission to provide unbiased news and information around the world. He is destroying the decades-old legacy of America’s international broadcasting efforts in a clear attempt to transform the agency into an ideological mouthpiece to promote Donald Trump in advance of the election. ... I understand that a number of the individuals who have been relieved had tried to make agency leadership aware of potentially inappropriate or unlawful actions during Mr. Pack’s first months in his position. ... It is a clear attempt to cover up his wrongdoing to date and to silence those who might voice concern about his future actions. I intend to get answers and I will also ask the Office of Inspector General to launch a probe.⁵

It is now clear that Mr. Pack hired McGuireWoods to justify the purge. McGuireWoods has devoted at least hundreds of hours to creating dossiers on each purged employee. The dossiers were then used as the basis to commence administrative removal proceedings – to permanently remove each one from federal service.⁶ We believe McGuireWoods has compiled dossiers on additional current and former employees of USAGM, VOA and its sibling agencies.

Open Technology Fund “Reviews”

The Open Technology Fund (OTF) is an independent non-profit organization committed to advancing internet freedom. It receives federal grant funds via USAGM. Since his arrival at USAGM in June, 2020, Mr. Pack has sought to takeover OTF and starve it of funding. USAGM is now the subject of two ongoing lawsuits brought by OTF. One -- involving Mr. Pack’s effort to unilaterally takeover OTF -- is now pending before the U.S. Court of Appeals for the District

⁵ *Engel Statement on Purge of USAGM Officials* (Aug. 12, 2020), available at <https://foreignaffairs.house.gov/press-releases?ID=36A71127-A8CB-42F0-85DA-7549BDA7E9BC>.

⁶ Of the six purged, two resigned or retired before removal proceedings were initiated.

of Columbia Circuit, which this past July enjoined Mr. Pack from taking action.⁷ Another, filed on August 20, 2020 in the U.S. Court of Federal Claims, challenges USAGM's withholding of federal grant funds.⁸ USAGM has gone still further, by commencing debarment proceedings against OTF on December 15, 2020.

McGuireWoods has also been used by Mr. Pack to gather information for use against OTF. One memorandum – delivered on December 10, 2020, five days before debarment proceedings were initiated – examined whether OTF's removal of records and withholding of information could be used to support a debarment decision.⁹ It concluded, based on interviews of Radio Free Asia (RFA) employees and information supplied by USAGM, that such information could be used.

Another McGuireWoods memorandum on OTF delivered the same day, December 10, was a compliance review assessing OTF's use of resources for potential legal violations and waste. That work relied heavily on work performed by the State Department Office of Inspector General (State OIG), which has oversight over USAGM activities. In 2015, State OIG auditors issued a report on expenditures by RFA, which included findings and recommendations concerning OTF (RFA founded OTF).¹⁰ The McGuireWoods memorandum assessed whether OTF had adopted the recommendations – a compliance review handled by State OIG auditors in the ordinary course of their business.

Work Performed by McGuire Woods

Why were thousands of hours billed? USAGM handed over to McGuireWoods the email archives for senior managers and likely others – dating back years. The “data” probably consisted of hundreds of thousands of emails. McGuireWoods attorneys and staff has reviewed, classified and analyzed them – a labor intensive process. Equally labor intensive has been the interviews led by McGuireWoods attorneys. Dozens have likely been interviewed

⁷ *Open Technology Fund v. Pack*, No. 20-5195 (D.C. Cir. July 21, 2020). The District of Columbia also filed suit in July 2020 to resolve OTF corporate governance issues. *District of Columbia v. OTF* (DC Superior Ct.), available at <https://oag.dc.gov/sites/default/files/2020-07/Open-Technology-Fund-Complaint.pdf>.

⁸ *Open Technology Fund v. USA*, No. 20-cv-01047-VJW.

⁹ An apparently related McGuireWoods memorandum, covering OTF document destruction practices and procedures, was delivered to USAGM on November 19, 2020.

¹⁰ *Audit on Radio Free Asia Expenditures*, No. AUD-FM-IB-15-24 (June 2015), available at <https://www.stateoig.gov/system/files/aud-fm-ib-15-24.pdf>,

Gross Misuse of \$2 Million Taxpayer Dollars

USAGM and Mr. Pack have grossly misused government resources by hiring a big law firm to duplicate the work of federal investigative, audit and personnel agencies. Multiple federal government organizations are responsible for the kind of work at issue here.

State OIG “investigates instances of fraud, waste, and mismanagement that may constitute either criminal wrongdoing or violation of Department [of State] and USAGM regulations.” Its Mission is “[t]o conduct independent audits, inspections, evaluations, and investigations to promote economy and efficiency and to prevent and detect waste, fraud, abuse, and mismanagement in the programs and operations of the Department and the U.S. Agency for Global Media.”¹¹

The State OIG Office of Investigations “has broad jurisdiction over criminal, civil, and administrative investigations of alleged violations of Federal laws, regulations, and policies relating to Department/USAGM programs and operations.”¹² That Office specifically investigates USAGM employees. State OIG’s most recent semi-annual report to Congress notes:

The Office of Investigations conducts worldwide investigations of criminal, civil, and administrative misconduct related to USAGM programs and operations. From April 1, 2020, to September 30, 2020, the office’s work resulted in the plea bargain pending sentencing of one subject that is summarized below. Additionally, the office opened three preliminary inquiries and closed three preliminary inquiries, opened one case and closed two cases.

State OIG’s Office of Audits also has a staff specifically devoted to compliance reviews, the Audit Compliance and Followup (ACF) Division. It tracks the status of recommendations from OIG audit reports, “verifies that corrective actions have been taken to implement agreed-upon findings and recommendation in reports, assists in obtaining agreement (resolution) for audit recommendations not previously agreed to by management, and coordinates followup reviews and evaluations as needed. ACF is also responsible for periodic reporting of corrective actions.”¹³

USAGM itself also possesses the requisite resources to conduct personnel investigations. The Office of Human Resources, Labor and Employee Relations Division carries out administrative investigations of employee misconduct and performance issues used as a basis for the same kind of removal proceedings brought against the purged employees.

¹¹ *About OIG*, available at <https://www.stateoig.gov/about>.

¹² *OIG Office of Investigations*, available at <https://www.stateoig.gov/inv>.

¹³ *OIG Office of Audits*, available at <https://www.stateoig.gov/10188>.

A 2018 report from the Government Accountability Office process illustrates how the investigative process is supposed to run:

[A]t EPA [(the Environmental Protection Agency)], the human resources office collaborates with the office of general counsel and the agency's Office of Inspector General Office of Investigations (OI). EPA officials told us that their agency's human resources office, OI, general counsel, and labor relations meet bi-weekly to discuss ongoing misconduct investigations to provide a report of investigations to EPA's senior management on the facts surrounding allegations of employee misconduct.¹⁴

In sum, Mr. Pack hired McGuireWoods to perform work that could have and should have been provided by existing federal offices and staff.

* * *

This waste of government resources is shocking. We believe it likely that additional investigation will further reveal violations of law, rule and regulation, abuse of authority and gross mismanagement.

We urge you to promptly conduct such an investigation and report on its findings.

Very truly yours,

/s/

DAVID Z. SEIDE

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¹⁴ Government Accountability Office, *Federal Employee Misconduct -- Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct* at 36, GAO Report No. GAO-18-48 (June 2018), available at <https://www.gao.gov/assets/700/693133.pdf>.