

Questions for the Record
Subcommittee on Commercial and Administrative Law
Hearing on Accountability, Transparency, and Uniformity in Corporate Deferred and
Non-Prosecution Agreements
June 25, 2009

The Honorable Christopher J. Christie, Former United States Attorney for the District of New Jersey

Questions from the Honorable Steve Cohen, Chairman

1. In an email from Zimmer attorney Rick Robinson to you on October 17, 2007, Mr. Robinson states that “the parties have reached an impasse on certain key issues.” The first issue he mentions is the “Flat Fee Provision.”

A. How do you reconcile that email with your written statement on page 7, where you state: “Intervention by the Office would only occur if the company and the monitor were at a genuine impasse in fee negotiations. No such impasse occurred.”

B. Under what circumstances would you have considered a dispute between a monitor and a corporation to have reached a “genuine impasse”? Who makes such a determination? Please explain.

2. In an e-mail on October 15, 2007 from Zimmer attorney Rick Robinson to Michele Brown in the New Jersey U.S. Attorney’s Office, Zimmer’s attorney indicates that he is “shocked by the proposed fee agreement.” Two days later in an October 17, 2007 email from Mr. Robinson to you, he further states that the proposed fee agreement would require “Zimmer pay to the Ashcroft Group a monthly flat fee of \$750,000 as compensation for the time of its three senior executives: General Ashcroft, David Ayres and Stacy Taylor. ... We believe that this request, in both concept and amount, is unreasonable.”

A. How did you respond to the October 17, 2007 email from Mr. Robinson? Please explain.

B. Did you raise the conflict between Zimmer and the Ashcroft Group over fees with anyone in the Justice Department, including staff of the New Jersey U.S. Attorney’s Office? Please provide the dates of communications, who participated in the communications, and the content of the communications.

C. How was the impasse regarding fees between Zimmer and the Ashcroft Group resolved?

D. In your view, was Zimmer forced to accede to the Ashcroft Group's demands on fees because Zimmer had no other avenue to challenge what they considered to be an unjustified fee?

E. Did any other corporations that entered into a deferred or non-prosecution agreement ever raise concerns to you or your staff about the fees charged by the monitor you selected? Please list the corporations and describe the nature of the concerns.

F. What opportunity did Zimmer or the other corporations that entered into deferred or non-prosecution agreements with the New Jersey U.S. Attorney's Office have to appeal or object to any of Mr. Ashcroft's or the other monitors' decisions regarding monitor fees or implementation of the deferred or non-prosecution agreement?

G. Should a disinterested third party rather than the Department of Justice be available to resolve disputes and impasses between monitors and corporations in deferred and non-prosecution agreements? Please explain.

H. Should monitor fees be standardized or capped at particular rates? Do you support a fee schedule? Please explain.

3. In an October 17, 2007 email to you, Mr. Robinson also criticized the lack of transparency with respect to the Ashcroft Group's bills, writing that the bills contained "absolutely no detail regarding the number of hours spent, what tasks were performed to justify the aggregate fee or who performed those tasks."

A. How did you respond to Zimmer's complaint?

B. In order to promote transparency, should monitors be required to provide detailed billing records to justify fees?

C. Do you believe the Ashcroft Group's billing method justifying millions of dollars of fees was appropriate?

D. What role should the Justice Department have in assuring that monitor billing is transparent?

4. For the seven deferred and non-prosecution agreements that the U.S. Attorney's Office in the District of New Jersey entered into during your tenure as U.S. Attorney, how were the monitors selected?

A. Did you unilaterally select the monitors?

B. Was there public notice or bidding prior to the selection?

C. What was the basis for your selection?

D. Please name all of candidates considered for each monitorship.

E. How did you determine which monitor would be assigned to which company?

F. What reporting requirements were in place for each federal monitor appointed?

G. What criteria were used to ensure that monitors completed all of their responsibilities under the deferred or non-prosecution agreement?

H. What performance standards and oversight were used to ensure the monitors were doing their job?

5. With respect to the selection of corporate monitors, you stated in your law review article that the monitor should be strong and independent. Can a monitor truly be either strong or independent if he or she had a longstanding prior relationship with one of the parties to a deferred or non-prosecution agreement?

A. What was the nature of your relationship with Mr. Ashcroft at the time that you recommended him to be the monitor in the Zimmer case? What was the nature of your relationship with the other monitors you selected?

B. In light of your position that a corporate monitor should be strong and independent, how do you justify the selection of your former superior, Mr. Ashcroft, to be a monitor in the Zimmer case?

6. Prior to your appointment as U.S. Attorney, did you have any experience as a prosecutor or criminal defense attorney? Did you have any prior experience in formulating pre-trial diversion agreements like deferred or non-prosecution agreements?

How did you know which provisions should be in the agreements?

7. You testified that Herbert Stern was the only monitor that you appointed who subsequently donated money to your gubernatorial campaign.

A. Did any members of the monitors' firms contribute to your campaign? If so, please identify the individual and the total amount contributed.

B. Did family members of any of the monitors contribute to your campaign? If so, please identify the individual and the total amount contributed.