

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
GARY VANDER BOEGH,) Case No. 5:08-CV-150-TBR
)
Plaintiff,))
VS.))

UNITED STATES OF AMERICA,))
November 10, 2010
Defendant.) Paducah, Kentucky

TRANSCRIPT OF THE TESTIMONY OF DOUGLAS FROST
FROM BENCH TRIAL
BEFORE THOMAS B. RUSSELL
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

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(Begin testimony in open court at 5:26 p.m.)
DOUGLAS FROST, DEFENDANT WITNESS, SWORN
DIRECT EXAMINATION

BY MR. EKMAN:

Q. Sir, can you tell the Court your name and your home
address,
please?

A. I'm Earl Douglas Frost, 4207 North 38th Road, Arlington,
Virginia 22207.

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Q. Very good. Prior to the September meeting in Paducah, did you know Gary Vander Boegh?

A. No, sir.

Q. Had you heard of Mr. Vander Boegh prior to the September meeting?

A. I had.

Q. And how had you heard of him?

A. I received an e-mail I believe the Monday morning before the meeting. I don't recall if he was mentioned by name, but it was stated that a member of the advisory committee had come, had complained to the --

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THE COURT: It's not -- let's hear what he says. I don't think it's going to make any difference.

A. I can be very brief. I received an e-mail saying that a member of the advisory committee had complained to the officials

at the site that somebody had come to her home on a Sunday morning and had wanted to talk to her about the meeting that was

taking place later on in the week, and that person was Gary Vander Boegh.

Q. And did you do these meetings around the country?

A. Yes. There's two a year and -- yes.

Q. And are you used to dealing with public advocates?

A. Yes.

Q. And activists?

A. Yes.

Q. And people who are upset with the Department of Energy?

A. Yes.

Q. And what was your position with regard to Gary Vander Boegh

after you received that e-mail?

A. Well, I told the person who sent the e-mail we'd talk about

it when I got down to Paducah, and we did. I think on Wednesday morning, maybe Tuesday morning. The site manager came in from -- I think he lives in

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Lexington, because he's got two sites. And he was very concerned. He was well aware of Mr. Vander Boegh, and he said he had the potential to be disruptive. And I told him not to worry about it, that we would -- that it would be fine, that there was no need to try to stifle him or silence him, and if he got rambunctious, it would just look bad on him and not on us.

Q. And what was your approach to Mr. Vander Boegh or to any kind of public activist at a meeting that wanted to speak?

A. Oh, everyone is welcome to speak. The only constraint we have is that we try to limit them to five minutes, because it

can drag on if there's 15 to 20 people who want to speak.

Q. Do you remember if you saw Mr. Vander Boegh on September 26th, the first day of that meeting?

A. You know, I'm honestly -- I don't -- I think somebody pointed him out to me, yes.

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Q. Was there a problem with the news media being there taking photographs?

A. No, no, no.

Q. Is that part of your philosophy, to let people speak and --

A. Yes, it is. We rarely -- yes, it is.

Q. Was Assistant Secretary Rispoli speaking when the news team arrived?

A. He was.

Q. And when the news team arrived, what did you do?

A. I'm going back -- I believe Jim -- I believe Secretary Rispoli was, in fact, at the podium speaking. But we had confirmed with a colleague and said, you know, "Is there any problem with this?" And we decided there was not. I

believe they shot -- I believe they shot tape only and no sound, but I can't swear to that.

Q. Okay.

A. They said they just wanted background for the piece they were doing on the evening news.

Q. Can you explain to the Court what happened next?

A. They wrapped up their filming. They left the room, the meeting room, and Mr. Vander Boegh followed them out of the room. And at that point, I decided that I needed to monitor the situation, so I left the room and observed him speaking to the

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camera crews -- the camera crew and the reporter.

Q. And why did you feel the need to follow Mr. Vander Boegh into the hallway?

A. Well, I mean, it's my responsibility to know what's going on, and if he's saying something particularly to the media, I mean, I need to be able to know what he's saying.

Q. Then what happened?

A. Then he was coming -- well, he was -- he stated that he was going to go back into the room and he was going to give his public statement and that he was urging the camera crew and the reporter to come in and tape that. And as he was walking back from the lobby of the Drury Inn, I believe it is, and he was just a few feet away, I said to him and to the camera crew that, no, that the public comment period was scheduled for the afternoon -- I believe at 4:15, 4:30, something like that -- and that we were not going to change it.

Q. And then what happened after you informed Mr. Vander Boegh and the news team about the agenda?

A. Well, he attempted to enter the room, and it's -- and it's an alcove, and I was standing in the alcove. And when he -- when he -- I'm not sure if I was getting ready to open the door for him or he had the door first. But as he opened the door, I

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was in that alcove, and the door swung open towards me a little faster than I expected and a little harder than I expected, and I just stuck my hands up to stop it.

Q. Did you expect him to open the door?

A. Yeah, you know, I guess I assumed he was heading back in.

Yes. As I said, I wasn't sure whether I was getting ready to open it for him or he beat me to it, you know.

Q. And you said the door opened a lot faster than you expected it?

A. Yeah, yeah.

Q. And can you describe that for the Court, please?

A. Well, it just opens. I mean, the door -- I mean, the only thing that stops the door is the wall, and there's a big rubber doughnut on the wall to stop the door handle from, you know, hitting the sheetrock. So when he opened it, I just pushed back.

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Q. Were you surprised?

A. Yes.

Q. And did you -- how much time do you think you had to react?

A. Oh, it was -- it was -- it was split seconds. It was ...

Q. Did you have any time to think about what you were going to do?

A. I did not. It was reflexive and instinctive.

Q. Did you feel that there was any animosity between you and Mr. Vander Boegh?

A. None whatsoever.

Q. Were there any threats made?

A. None whatsoever.

Q. Did anybody raise their voice in the hallway?

A. No.

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in relation to the door you were in that alcove?

A. I was standing on the left side of it. You know, the hinges are on the left. The door's on the right. I was standing in the alcove with my back to the wall.

Q. Are you confident that you were inside the alcove area?

A. Oh, absolutely.

Q. And did you see the door hit Mr. Vander Boegh?

A. I did not.

Q. Did you follow Mr. Vander Boegh back into the room?

A. I did.

Q. Did you notice Mr. Vander Boegh stumbling?

A. I had -- no, I did not. I did not know he had had any contact. He didn't say "ouch" or "owie" or "look out" or -- no. I was totally -- it was five hours later before I heard anything about any contact.

Q. Had you heard him say "ouch" or had you seen the door hit him, what would you have done?

A. I would have said, "Oops, I'm sorry. What's up?" You know, I would have -- "Excuse me."

Q. And before the common -- public comment, rather, in the afternoon, did Mr. Vander Boegh or anyone tell you that there had been an incident with that door?

A. No.

Q. Do you remember how he opened the door?

A. I really don't.

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Q. And prior to his public comment, did you have any idea that there was a conflict?

A. None whatsoever.

Q. He went back into the room, and you followed him back into the room?

A. Right.

Q. And did he give a public comment at that time in the morning?

A. He did.

Q. And did he say anything about the door incident at that time?

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A. He made no mention of any incident of any kind.

Q. And following his public comment, did you have any contact with Mr. Vander Boegh?

A. I believe it was then -- because there was some -- because of the argument over whether we'd make the adjustment or not, I think when we broke for lunch I just walked over to him and I may have shaken his hand or just nodded at him or something, because he had clearly won that argument.

Q. Well, when he came in, did he ask to give a public comment?

A. Yes.

Q. And then what happened?

A. My recollection of the events was that Secretary Rispoli was speaking, answering questions probably. He then returned to the table, was sitting next to me on the side in the front of the room, and he sat down. And I said, "Jim, this Vander Boegh is going to ask to move the comment period." And he said, "What do you want to do?"

And I said, "I don't think we should move it." I said, "We don't make accommodations like this casually."

And that's when he made the -- he, Mr. Vander Boegh, stood up and said he was unable -- it was absolutely impossible for him to come in the afternoon, he had important things he wanted to say, and he wanted to say them now.

And Jim sort of looked at me, and he said, you know, "What's the harm?"

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And I said -- you know, what are you going to say to your boss? No? You know, I'm not going to let him do that, Mr. Secretary? I said, "Fine. If it doesn't bother you, it doesn't bother me."

Q. And he spoke for how long? Do you remember?

A. Four or five minutes.

Q. And did somebody cut him off?

A. I don't recall, but I wouldn't be surprised.

Q. And after his comments were over, what did you do? After you went over to him and nodded --

A. Nothing. I mean, that was the lunch break.

Q. Did he appear to be injured when he was giving these comments in the morning?

A. He gave no indication of any injury at all.

Q. Did you ever see Mr. Vander Boegh give an indication of an injury?

A. No.

Q. And then Mr. Vander Boegh came back for the afternoon session?

A. He did. He did, yes.

Q. And were you there for the afternoon session?

A. I was.

Q. And at any time during the afternoon session, did Mr. Vander Boegh come up to you and make a comment to you about the door?

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A. No. We did not communicate in any way.

Q. And then did Mr. Vander Boegh speak again during the public comment period?

A. He did.

Q. And do you recall what he said?

A. I'll never forget it. He accused me of intentionally slamming him in the door frame as he was trying to enter the room. I mean, I was -- I mean, I must say, I was stunned. And he went on for a good period of time. That was the sum -- that was the majority of his public comment in the afternoon was a very vocal complaint about this incident of hurting himself.

Q. And prior to that time, did you know about the incident?

A. No.

Q. And did he demand an apology from you?

A. He did.

Q. Did you give an apology?

A. No, sir, I did not.

Q. And what was your response? What were you thinking?

THE COURT: I don't think it makes any difference what he was thinking.

MR. EKMAN: What he was thinking?

THE COURT: Yeah.

MR. EKMAN: Why he didn't give an apology? I don't care. I mean, it's --

THE COURT: You can ask him. I don't --

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A. I didn't give an apology because I didn't do anything, and I wasn't about to apologize for something that did not occur.

Q. Did Mr. Vander Boegh approach you after the public comment period?

A. He did not.

Q. Did anybody approach you?

A. A number of people did. There was quite a bit of surprise. This is a very bad thing. This is a serious allegation. You know, you're charged with running a civil meeting and an orderly meeting, and one of the public comment people stands up and says I was physically assaulted by the person who's responsible for making sure the meeting is orderly? That's not a good thing to be accused of in my position.

Q. And I think I know the answer, but did you intend to hurt Mr. Vander Boegh in any way?

A. I did not.

Q. Between 1:30 and 4:30 and the public comment, was there an opportunity for Mr. Vander Boegh to approach you if he wanted to?

A. Absolutely.

Q. Were there breaks in that session?

A. Sure. We have -- yes. We have refreshments there, and there's at least one break.

Q. Did you think that Mr. Vander Boegh's comments about you hurting him with the door, did you think those were funny?

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A. No. No, I didn't. I didn't think they were funny. I thought they were very serious allegations. I was shocked, I was surprised, and I didn't have four hours to think about what was going on, but I had four or five minutes to think about it.

And I thought by the end of that four or five minutes, I sort of figured out what was going on.

Q. You made a decision not to say anything. Why?

A. I did. I did not think -- I just didn't think that was the prudent thing, to get into an argument at that point. I didn't think it would do anybody any good.

Q. Did you speak with the police later?

A. Three or four days later.

Q. And they called you?

A. Yes.

Q. And what did you tell them?

A. I told them what happened, and I gave them the names of some people that I thought might possibly have been -- you know, might possibly have seen it, and that was it.

Q. Were you ever charged?

A. No, sir.

MR. EKMAN: That's all I have, Your Honor.

CROSS-EXAMINATION

BY MR. FURMAN:

Q. Mr. Frost, my name's Dean Furman. I represent Gary Vander Boegh. I don't think we've ever met, have we?

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A. No, sir, we haven't. Good afternoon.

Q. When you testified earlier, did you say that Mr. Vander Boegh was pointed out to you at an earlier CAB meeting?

A. No. I said my recollection was that somebody had indicated to me that that was the gentleman they were concerned about.

Q. And that was on September 27th?

A. Might have been the 26th. I think it was a two-day meeting, and I think it was Thursday -- I don't know which day it was.

Q. In describing the incident with the door, you said that this alcove area was an area like a closet? Is that what you said?

A. Well, I was trying to use an analogy. I was saying that it is -- it is a square. It is recessed as deep as the door is wide, and it is as wide as the door is wide.

Q. And when a door was coming back at you, could you step out of the way?

A. I guess if I had been quick enough, you know, I could have darted to my right. I was in the alcove, and the door was coming to me. I'm not sure I could have gotten out of the way.

Q. Was there anything that would have prevented you from moving to your right?

A. I don't believe there was -- no, I don't believe there was.

Q. There was an open hallway there, in fact, correct?

A. Yes.

Q. Okay. Now, and when Mr. Ekman first asked you what

happened, did you not testify that you pushed the door back and you made a motion with both your arms just now, just like that, where your right arm and left arm went out from your body? Is that what you testified to earlier?

A. Yes.

Q. Okay. That you pushed back on the door?

A. No, I did not say I pushed back. I said I stuck my hands out to stop the door from hitting me. And when I was asked did I push back, I said, no, I didn't push back, because I didn't.

Q. The second time Mr. Ekman asked you that, that's what you stated. But I'm asking you the first time when Mr. Ekman first asked you that, did you not say, "I pushed back on the door," and put your two hands out?

A. I may well have said that.

Q. Okay. When Mr. Vander Boegh was going through that door when you were pushing your hands out, did anyone else touch the door?

MR. EKMAN: This is a mischaracterization.

THE COURT: It's cross-examination. I understand the take each of you do on this. As I say, I've heard lots of trials. Okay?

MR. FURMAN: I understand. Thank you, Your Honor.

THE COURT: You repeat everything about a dozen times, and everybody wants to slant it in their way. I understand.

MR. FURMAN: The record will be whatever the record

is.

BY MR. FURMAN:

Q. Mr. Frost, when you pushed your hands out, whether it was a push back or simply to stop the door, was there anyone else that touched the door besides you?

A. I don't believe so.

Q. Okay.

A. There wasn't any room for anybody else in there.

Q. It was just you, right?

A. I believe so.

Q. And it's your testimony that it was your intent not to have the door hit Mr. Vander Boegh, correct?

A. That is correct.

Q. But, in fact, the door did spring back and hit Mr. Vander Boegh; isn't that the case?

A. If it did, I was unaware of it at the time.

Q. But that's a possibility, correct?

A. It's absolutely a possibility. When a door stops opening, it's entirely possible someone could walk into it, bump into it.

I don't doubt that at all.

Q. And when Mr. Vander Boegh went into the room after this door incident, did the door close, or was it still open?

A. I followed -- the door -- I followed him in. The door -- if you're asking did I have to open the door, I mean, the door may have swung back and I had to open it. He didn't -- he certainly

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didn't hold the door for me, you know.

Q. Okay. And just so I have an idea of it, after your arms went out and the door stopped, you were behind the door, correct?

THE COURT: I understand what he's saying. I mean, you -- he says that didn't happen. You say he did say that. Let's just ask him after it happened, whatever happened.

Q. After that happens, after the incident happens --

THE COURT: You've both got different --

MR. FURMAN: I understand.

BY MR. FURMAN:

Q. After the incident happens, is the door between you and Mr. Vander Boegh?

A. It would have to be.

Q. Okay. Could you see through the door?

A. Could I see through the door?

Q. Yes, sir.

A. No, I didn't see through the door.

Q. So you don't know, do you, whether Mr. Vander Boegh stumbled into the room or not?

A. I do know because I followed him. I opened the door and was two feet behind him. I didn't see through the door, but I went right behind him into the room. And it's a very small meeting room, and I didn't see any indication of him stumbling or rubbing anything or --

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Q. How long did it take you to get around the door and into the room?

A. Two seconds, three seconds.

Q. And in those two or three seconds, you didn't see what happened to Mr. Vander Boegh, did you?

A. That's entirely possible. For two or three seconds, I might not have seen what happened.

Q. And, Mr. Frost, you gave a declaration under penalty of perjury in this case, correct?

A. Would that be the police report or --

Q. No, sir. It's a declaration provided to the United States of America.

A. Yes, I did. Yes.

Q. Okay. And in that declaration, you talk about that you shook Mr. Vander Boegh's hand. Did you shake Mr. Vander Boegh's hand at some point?

A. I think I might have, as I said earlier in my earlier testimony. I don't recall exactly. I remember walking over to him, but I don't -- I can't swear that I shook his hand or patted him on the shoulder or just nodded to him. I recognized him. I acknowledged him. Exactly what I did -- because it was not the most momentous event. I mean, I was not --

Q. And when did this happen, this going over and patting him or shaking his hand?

A. Right after he made his comments just prior to lunch.

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Q. Just prior to lunch?

A. Yeah.

Q. I'm going to show you this declaration. Is that your declaration, the front page?

A. Yes.

Q. Okay. And did you review that before you signed it?

A. I did.

Q. And on the last page, it looks like -- is that your signature?

A. It is.

Q. And you declare under penalty of perjury that the foregoing is true and correct and to the best of your knowledge, correct?

A. That is correct.

Q. Let me turn your attention to paragraph 19. Could you read that for us?

A. "After Mr. Vander Boegh spoke for the last time, I approached him and told him I hoped he was alright. I also told him that I did not recall the incident as he described it in the public forum. And at no time was I aggressive with Mr. Vander Boegh. In fact, I believe that I shook his hand."

Q. And in this, at least, you're saying this happened after he spoke for the last time?

A. Apparently, I was in error. It was in the afternoon session.

MR. FURMAN: Okay. I have no further questions.

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THE COURT: Thank you, Mr. Frost. You may be excused, sir.

THE WITNESS: Thank you, Judge.
(Testimony concluded at 5:56 p.m.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

s/Terri L. Turner November 29, 2010

Registered Merit Reporter Date

Official Court Reporter

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I N D E X

WITNESS FOR THE DEFENDANT:

DOUGLAS FROST

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