



**DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239**

October 7, 2010

**VIA First Class Mail**

Theresa V. Johnson  
Law Office of Theresa V. Johnson  
200 East Chicago Avenue  
Suite 200  
Westmont, Illinois 60559

**RE: Request for Deposition of Jerry Taylor in the case of: Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division, Case No. 08 L 403.**

Dear Ms. Johnson:

This letter is sent in response to our conversation of September 21, 2010 as well as the subpoena received in this office on September 21, 2010. You identified several individuals, currently employed the VA in different locations throughout the country, who were employees of CSSS at the time of the incident which forms the basis of your Client's claim. The only person you identified who you allege was an employee during the time frame of this claim is Officer Bob Androwski. Please be aware that, following the review of the information you provide in response to this letter we may conclude that these employees are not represented by the VA as they were employees of CSSS at the time of this claim and their involvement in this claim may not involve the VA. If this occurs, the individuals will need to respond to your discovery request on their own time. Please be sure to fully describe, as indicated below, the testimony you anticipate you will elicit from each of the individuals you want to depose. This should include clear statements about the employment status of each individual. This will help this office confirm whether the VA should be involved in your attempts to elicit discovery.

Title 38, Code of Federal Regulations, Sections 14.800 - 14.810 govern the testimony of Department of Veterans Affairs (VA) personnel and production of VA records in legal proceedings. These regulations expressly prohibit VA personnel from producing records or providing testimony in any form, including personal appearances in court, depositions, informal or formal interviews, without prior approval. The Regional Counsel, or an attorney designated by the Regional Counsel, is authorized to determine whether a VA employee may comply with a subpoena or other request in litigation. That authority has been delegated to me.

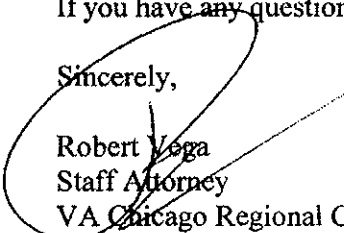
In accordance with 38 C.F.R. § 14.805, I request that you provide me with an affidavit or other written statement detailing the nature of the testimony or information you wish to elicit and the relevance of that testimony and information to the matter at hand. In addition, your statement should include sufficient information, using the factors listed in 38 C.F.R. § 14.804, to allow me to determine whether to allow the use of the requested testimony/documents.

Please note that 38 C.F.R. § 14.810 requires that fees be paid for the testimony of VA personnel as witnesses, or for interviews as part of legal proceedings, or for the production of documents. This provision will apply if we authorize our employee to provide the information, testimony or opinion you request.

As an added reminder, please also note the provisions of 38 C.F.R. 14.809, Demands or Requests in Legal Proceedings for Records Protected by Confidentiality Statutes. This section reinforces the proposition that a request such as yours really contemplates two general considerations: 1) What restrictions/exceptions apply to the mere release of information absent the patient's prior written consent, and 2) Even if the legal requirements of the applicable confidentiality statutes and corresponding regulations (5 U.S.C. 552a, 38 U.S.C. 5701, and 38 U.S.C. 7332) are met, what rules and procedures apply to the release of this information in the context of legal proceedings? To further aid you in this matter, I refer you to the following regulatory provisions: 1) 38 C.F.R. 1.575 – 1.582, Safeguarding Personal Information in Department of Veterans Affairs Records; 2) 38 C.F.R. 1.550 – 1.557, Release of Information from Department of Veterans Affairs Records Other Than Claimant Records; 3) 38 C.F.R. 1.500 – 1.527, Release of Information from Department of Veterans Affairs Claimant Records; and 4) 38 C.F.R. 1.460 – 1.496, Release of Information from Department of Veterans Affairs (VA) Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection with the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia. Consult each of these sections as you contemplate obtaining a court order for the information you seek. Please be advised that while Illinois law may authorize the Clerk of the Court to issue subpoenas, federal law requires that such demands for testimony and/or documents be authorized by a judge.

If you have any questions concerning this matter, please call me at (708) 202-2451.

Sincerely,

  
Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

cc: Jerry Taylor  
Noel Flanagan  
Neil Piper  
Ron Klavohn  
Linda Dunlap  
Robert Adrowski

## Rachlis Durham Duff & Adler, LLC

542 SOUTH DEARBORN STREET, SUITE 900  
CHICAGO, ILLINOIS 60605

John E. Murray  
(312) 275-0338  
jmurray@rddlaw.net

OFFICE (312) 733-3950  
FACSIMILE (312) 733-3952  
www.rddlaw.net

November 22, 2010

### Via Facsimile

Robert Vega  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Voice: (708) 202-2451  
Fax: (708) 202-2239

Dear Mr. Vega:

This letter follows our telephone conversation from this morning, November 22, 2010, in which we discussed our clients' request to briefly interview and/or depose certain current VA employees in order to defend a lawsuit brought by Christopher Cynowa against our clients CSSS.NET, Lisa Wolford, and William Slater.

Cynowa has alleged claims for defamation, false light, and intentional infliction of emotional distress arising in connection with termination of his employment on January 18, 2007. I have attached copies of the original and amended complaints for your reference and as you requested during our telephone conversation.

We have a cut-off date for fact witness depositions of December 10, 2010. As a result, we will need to complete depositions by that date.

Below is a list of the employees who we would like to briefly interview and/or depose in advance of December 10, 2010. It is our understanding that these persons are current VA employees but that some of them may not have been as of January 18, 2007.

### Witnesses to be Interviewed and/or Deposed:

- Michael Cronin – Upon information and belief, Mr. Cronin is a current VA employee who is expected to have personal knowledge concerning Cynowa's behavior, characteristics, conduct, and alleged damages.

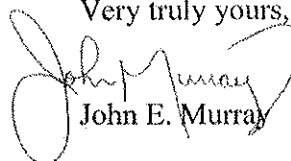
- Sylvia Delsa – Upon information and belief, Ms. Delsa is a current VA employee. Ms. Delsa is expected to have personal knowledge regarding Cynowa's behavior, characteristics, and conduct surrounding his termination.
- Linda Dunlap – Upon information and belief, Ms. Dunlap currently serves as a Senior Adjudicator at the VA Security and Investigation Center in North Little Rock, Texas. We intend to call Ms. Dunlap as an independent expert witness in the area of federal security access, public trust eligibility, and background investigation. Ms. Dunlap is expected to give her opinion regarding Cynowa's alleged damages in light of her experience with federal security access, public trust eligibility, and background investigation, and upon review of Cynowa's personnel file.
- Tushar Engregi – Upon information and belief, Mr. Engregi was employed by CSSS.NET as of the date of Cynowa's termination and has since become a VA employee. Mr. Engregi is believed to have personal knowledge concerning communications with Cynowa and others at the Hines VA surrounding Cynowa's termination and regarding Cynowa's behavior, characteristics, conduct, and alleged damages.
- Noel Flanagan – Upon information and belief, Mr. Flanagan was employed by Nortel Government Solutions as of the date of Cynowa's termination and has since become a VA employee. In addition, Mr. Flanagan was recently named as a defendant to this lawsuit. *See* Cynowa's amended complaint. Mr. Flanagan is expected to have personal knowledge regarding Cynowa's behavior, characteristics, and conduct in and around the workplace.
- Kim Griffin – Upon information and belief, Ms. Griffin is a current VA employee who is expected to have personal knowledge concerning Cynowa's behavior, characteristics, and conduct.
- Michelle Hinton – Upon information and belief, Ms. Hinton is a current VA employee and was so as of the date of Cynowa's termination. Ms. Hinton is expected to have personal knowledge concerning Cynowa's claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa's termination
- Dustin Joiner – Upon information and belief, Mr. Joiner is a current VA employee who will testify regarding any personal knowledge he has relating to Cynowa's termination and various employees' reactions relating thereto.
- Ron Klavon – Upon information and belief, Mr. Klavon has been named by Cynowa as a fact and independent expert witness. According to Cynowa, Mr. Klavon is a current VA employee who is expected to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS.NET contract for the Hines VA. Mr. Klavon is also expected to have personal knowledge concerning the validity of

various allegations made in our clients' counterclaims as well as information concerning the character of Lisa Wolford and other CSSS.NET management.

- Bunty Kothari – Upon information and belief, Mr. Kothari is a current VA employee and was so as of the date of Cynowa's termination. Mr. Kothari is expected to have personal knowledge regarding Cynowa's claims, his behavior, characteristics, conduct and alleged damages and regarding the circumstances of Cynowa's termination and regarding communications with and about Cynowa.
- Maria Millan – Upon information and belief, Ms. Millan was employed by Nortel Government Solutions as of the date of Cynowa's termination. Ms. Millan is believed to be a current VA employee who is expected to have personal knowledge concerning Cynowa's claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa's termination.
- Neil Piper – Upon information and belief, Mr. Piper is a current VA employee located in New York who has been named by Cynowa as a fact and independent expert witness. Mr. Piper is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS.NET contract for the Hines VA. Mr. Piper is also expected to have personal knowledge concerning the validity of various allegations made in our clients' counterclaims as well as information concerning the character of Lisa Wolford and other CSSS.NET management.
- Jerry Taylor – Upon information and belief, Mr. Taylor is a current VA employee who has been named by Cynowa as a fact and independent expert witness. Mr. Taylor is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS.NET contract for the Hines VA. Mr. Taylor is also expected to have personal knowledge concerning the validity of various allegations made in our clients' counterclaims as well as information concerning the character of Lisa Wolford and other CSSS.NET management.

Thank you very much for your prompt attention to this matter. As discussed during our earlier conversation, I look forward to receiving a response from you by tomorrow, November 23, 2010.

Very truly yours,

  
John E. Murray



**DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239**

November 24, 2010

**VIA Fax and First Class Mail**

John Murray  
Rachlis Durham Duff & Adler, L.L.C.  
542 South Dearborn Street  
Suite 900  
Chicago, Illinois 60605

**RE: Request for Interview/Deposition of Witnesses in the case of: Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division, Case No. 08 L 403.**

Dear Mr. Murray:

This letter is sent in response to our conversation of November 22, 2010 as well as your email with the attached subpoenas received on November 24, 2010. You identified several individuals, currently employed by the VA in different locations throughout the country, who were employees of CSSS or the VA at the time of the incident which forms the basis of the Plaintiff's claim. Please be aware that, following the review of the information you provide in response to this letter we may conclude that these employees are not represented by the VA as they were employees of CSSS at the time of this claim and their involvement in this claim may not involve the VA. If this occurs, the individuals will need to respond to your discovery request on their own time. The subpoena you send me will not be valid for proving service on said individual. Please be sure to fully describe, as indicated below, the testimony and/or statements you anticipate you will elicit from each of the individuals you want to depose and/or interview.

Title 38, Code of Federal Regulations, Sections 14.800 - 14.810 govern the testimony of Department of Veterans Affairs (VA) personnel and production of VA records in legal proceedings. These regulations expressly prohibit VA personnel from producing records or providing testimony in any form, including personal appearances in court, depositions, informal or formal interviews, without prior approval. The Regional Counsel, or an attorney designated by the Regional Counsel, is authorized to determine whether a VA employee may comply with a subpoena or other request in litigation. That authority has been delegated to me.

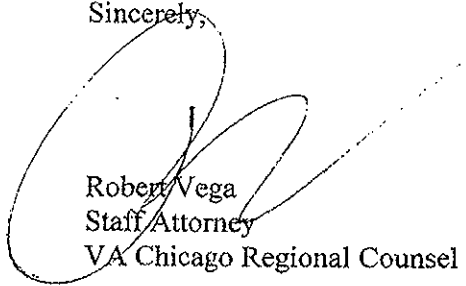
In accordance with 38 C.F.R. § 14.805, I request that you provide me with an affidavit or other written statement detailing the nature of the testimony or information you wish to elicit and the relevance of that testimony and information to the matter at hand. In addition, your statement should include sufficient information, using the factors listed in 38 C.F.R. § 14.804, to allow me to determine whether to allow the use of the requested testimony/documents.

Please note that 38 C.F.R. § 14.810 requires that fees be paid for the testimony of VA personnel as witnesses, or for interviews as part of legal proceedings, or for the production of documents. This provision will apply if we authorize our employee to provide the information, testimony or opinion you request.

As an added reminder, please also note the provisions of 38 C.F.R. 14.809, Demands or Requests in Legal Proceedings for Records Protected by Confidentiality Statutes. This section reinforces the proposition that a request such as yours really contemplates two general considerations: 1) What restrictions/exceptions apply to the mere release of information absent the patient's prior written consent, and 2) Even if the legal requirements of the applicable confidentiality statutes and corresponding regulations (5 U.S.C. 552a, 38 U.S.C. 5701, and 38 U.S.C. 7332) are met, what rules and procedures apply to the release of this information in the context of legal proceedings? To further aid you in this matter, I refer you to the following regulatory provisions: 1) 38 C.F.R. 1.575 – 1.582, Safeguarding Personal Information in Department of Veterans Affairs Records; 2) 38 C.F.R. 1.550 – 1.557, Release of Information from Department of Veterans Affairs Records Other Than Claimant Records; 3) 38 C.F.R. 1.500 – 1.527, Release of Information from Department of Veterans Affairs Claimant Records; and 4) 38 C.F.R. 1.460 – 1.496, Release of Information from Department of Veterans Affairs (VA) Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection with the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia. Consult each of these sections as you contemplate obtaining a court order for the information you seek. Please be advised that while Illinois law may authorize the Clerk of the Court to issue subpoenas, federal law requires that such demands for testimony and/or documents be authorized by a judge.

If you have any questions concerning this matter, please call me at (708) 202-2451.

Sincerely,



Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

- cc: Michael Cronin
- Sylvia Delsa
- Linda Dunlap
- Tushar Engregi
- Noel Flanagan
- Kim Griffin
- Michelle Hinton
- Dustin Joiner
- Ron Klavohn
- Bunty Kothari
- Maria Millan
- Neil Piper
- Jerry Taylor





**Department of Veterans Affairs  
Chicago Office of Regional Counsel**

**P.O. Box 1427**

**Hines, IL 60141**

**Phone: (708) 202-2216 Fax: (708) 202-2239**

---

**FAX  
Cover Sheet**

**Date:** November 24, 2010

**Number of Pages:** 4  
(including cover)

---

**TO: John Murray**  
Rachlis, Durham, Duff & Adler, L.L.C.

**FROM: Robert Vega**

Phone: 312-733-3950

Phone: 708-202-2451

Fax: 312-733-3952

Fax: 708-202-2239

---

**COMMENTS: Touhy Request**  
**Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook**  
**County, Illinois, Law Division, Case No. 08 L 403.**

---

This message is intended only for the use of the person or office to whom it is addressed and may contain information that is privileged, confidential or protected by law. All others are hereby notified that the receipt of this message does not waive any applicable privilege or exception from disclosure and that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone at the number listed above, and return the original message to us at the address listed above via the United States Postal Service. Thank you.



**DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239**

November 30, 2010

**VIA Fax and First Class Mail**

John Murray  
Rachlis Durham Duff & Adler, L.L.C.  
542 South Dearborn Street  
Suite 900  
Chicago, Illinois 60605

Theresa V. Johnson  
Law Office of Theresa V. Johnson  
200 East Chicago Avenue  
Suite 200  
Westmont, Illinois 60559

**RE: Requests for Interview/Deposition of Witnesses in the case of: Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division, Case No. 08 L 403.**

Dear Mr. Murray and Ms. Johnson:

Because you have indicated that you have a court date on December 10, 2010 and because there is some confusion about the employment status of several fact witnesses, this letter is sent to formally notify you that the following witnesses were not VA employees during the time period at issue in your case. I understand that the incident occurred on or about January 18, 2007.

Fact witnesses that have been identified to this office that were not VA employees at the time of the incident include the following:

Engreji Tushar  
Noel Flanagan  
Michael Cronin

These individuals are being copied on this letter so that they are aware of this finding.

As these individuals were not employees of the VA during the time period in questions, any discovery requests regarding these individuals need to be directed to these individuals and not to this office. Any subpoenas or other discovery requests that you have sent to our office for these individuals are invalid. This letter negates any prior commitment to accept subpoenas or other requests on behalf of these individuals. You must re-send your requests to these individuals and/or their employers in order to pursue discovery.

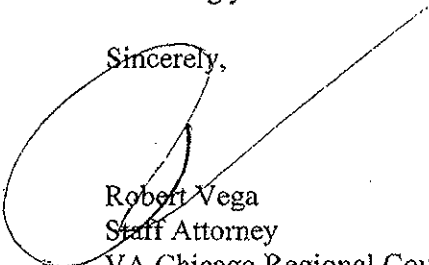
Additionally, you may not communicate with these individuals during their work hours or at their work stations.

This finding is based on a conclusion that any discovery conducted with these individuals does not hamper or prejudice the work of the VA. If the discovery process confirms otherwise or these individuals conclude that the VA's work will be affected by discovery, please contact this office immediately. If the parties or the individuals conclude that testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances, please contact this office immediately.

At this time, we ask as a courtesy that the parties as well as the individuals copy this office on any pertinent discovery requests and responses.

Thanking you in advance for your time and kindest consideration,

Sincerely,



Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

cc: Engreji Tushar  
Noel Flanagan  
Michael Cronin



**DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239**

November 30, 2010

**VIA Fax and First Class Mail**

John Murray  
Rachlis Durham Duff & Adler, L.L.C.  
542 South Dearborn Street  
Suite 900  
Chicago, Illinois 60605

Theresa V. Johnson  
Law Office of Theresa V. Johnson  
200 East Chicago Avenue  
Suite 200  
Westmont, Illinois 60559

**RE:       Requests for Interview/Deposition of Witnesses in the case of: Christopher S.  
Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division,  
Case No. 08 L 403.**

Dear Mr. Murray and Ms. Johnson:

Because you have indicated that you have a court date on December 10, 2010 and because there is some confusion about the employment status of several fact witnesses, this letter is sent to formally notify you that the following witnesses were VA employees during the time period at issue in your case. I understand that the incident occurred on or about January 18, 2007.

Fact witnesses that have been identified to this office that were VA employees at the time of the incident include the following:

Jerry Taylor  
Linda Dunlap  
Kimberly Griffin  
Ron Klavohn  
Michelle Hinton

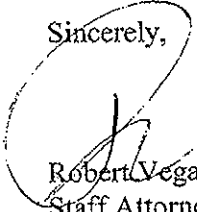
Dustin Joiner  
Bunty Kothari

These individuals are being copied on this letter so that they are aware of this finding.

As these individuals were employees of the VA during the time period in questions, any discovery requests regarding these individuals must be directed to this office. You may not communicate with these individuals without our express permission. If you want to question and/or depose any of these individuals or any other VA employee, you must provide a request that complies with Title 38, Code of Federal Regulations, Sections 14.800 - 14.810.

Thanking you in advance for your time and kindest consideration,

Sincerely,



Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

cc: Jerry Taylor  
Linda Dunlap  
Kimberly Griffin  
Ron Klavohn  
Michelle Hinton  
Dustin Joiner  
Bunty Kothari

## Rachlis Durham Duff & Adler, LLC

542 SOUTH DEARBORN STREET, SUITE 900  
CHICAGO, ILLINOIS 60605

John E. Murray  
(312) 275-0338  
jmurray@rddlaw.net

OFFICE (312) 733-3950  
FACSIMILE (312) 733-3952  
www.rddlaw.net

November 30, 2010

### Via Facsimile & Email Delivery

Robert Vega  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Voice: (708) 202-2451  
Fax: (708) 202-2239

Dear Mr. Vega:

This letter follows the voicemail I left for you on Monday, November 29, 2010, in which I thanked you for your prompt response to our Touhy Act Request and further notified you that I would like to offer a much abbreviated deposition and interview schedule aimed at completing only those most necessary depositions and interviews by our December 10, 2010 deadline. In addition, this letter follows your response letter from today, November 30, 2010, in which you notified both parties that Tushar Engregi, Noel Flanagan, and Michael Cronin were not VA employees as of January 18, 2007 and therefore we could contact them independently of the VA.

In the interests of saving time and resources for all concerned, below please find our significantly abbreviated deposition and interview schedule that could be completed by December 10, 2010:

### Witnesses to be Deposed:

- Dustin Joiner – Upon information and belief, Mr. Joiner is a current VA employee who will testify regarding any personal knowledge he has relating to Cynowa's termination and various employees' reactions relating thereto.
  - Our preference would be to have Mr. Joiner deposed on Monday, December 6, 2010, at 1:00 p.m. If that date and time does not work, however, we would be available on December 7<sup>th</sup>, 8<sup>th</sup> (morning), or 10<sup>th</sup> to take the deposition.

- Michelle Hinton – Upon information and belief, Ms. Hinton is a current VA employee and was so as of the date of Cynowa’s termination. Ms. Hinton is expected to have personal knowledge concerning Cynowa’s claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa’s termination.
  - Our preference would be to have Ms. Hinton deposed on Monday, December 6, 2010, at 3:00 p.m. If that date and time does not work, however, we would be available on December 7<sup>th</sup>, 8<sup>th</sup> (morning), or 10<sup>th</sup> to take the deposition.
  
- Neil Piper – Upon information and belief, Mr. Piper is a current VA employee located in New York who has been named by Cynowa as a fact and independent expert witness. Mr. Piper is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS.NET contract for the Hines VA. Mr. Piper is also expected to have personal knowledge concerning the validity of various allegations made in our clients’ counterclaims as well as information concerning the character of Lisa Wolford and other CSSS.NET management.
  - Our preference would be to have Mr. Piper telephonically deposed on either December 7<sup>th</sup> or 8<sup>th</sup> (morning). Again, however, we would be amenable to any schedule which enables us to complete all depositions and interviews by our December 10, 2010 deadline.

**Witnesses to be Briefly Interviewed:**

- Linda Dunlap – Upon information and belief, Ms. Dunlap currently serves as a Senior Adjudicator at the VA Security and Investigation Center in North Little Rock, Texas. We intend to call Ms. Dunlap as an independent expert witness in the area of federal security access, public trust eligibility, and background investigation. Ms. Dunlap is expected to give her opinion regarding Cynowa’s alleged damages in light of her experience with federal security access, public trust eligibility, and background investigation, and upon review of Cynowa’s personnel file.
  - We plan to name Ms. Dunlap as an independent expert witness in the area of federal employment and security clearance. In that respect, we would like to speak with her next week for the purposes of ascertaining her availability for deposition in the future as well as her opinions for our eventual expert disclosures which must be filed no later than December 16, 2010.
  
- Bunty Kothari – Upon information and belief, Mr. Kothari is a current VA employee and was so as of the date of Cynowa’s termination. Mr. Kothari is expected to have personal knowledge regarding Cynowa’s claims, his behavior,

Mr. Robert Vega

Page 3 of 3

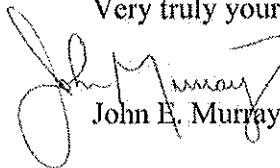
characteristics, conduct and alleged damages and regarding the circumstances of Cynowa's termination and regarding communications with and about Cynowa.

- We would like to speak with Mr. Kothari as soon as possible in order to ascertain the extent of his personal knowledge should he be called as a witness at trial.
- Maria Millan – Upon information and belief, Ms. Millan was employed by Nortel Government Solutions as of the date of Cynowa's termination. Ms. Millan is believed to be a current VA employee who is expected to have personal knowledge concerning Cynowa's claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa's termination.
  - We would like to speak with Ms. Millan as soon as possible in order to ascertain the extent of her personal knowledge should she be called as a witness at trial.

In addition to the above abbreviated requests, we respectfully request, pursuant to § 14.807 of the VA Regulations, that you waive the reasonable lead time period for evaluation and provide for an expedited response and approval of above requests so as to enable all parties to complete the needed discovery by the December 10, 2010 deadline.

Thank you very much for your prompt consideration of our much abbreviated request for testimony and/or interviews with VA staff. I look forward to receiving a response from you soon.

Very truly yours,



John E. Murray



## Rachlis Durham Duff & Adler, LLC

542 SOUTH DEARBORN STREET, SUITE 900  
CHICAGO, ILLINOIS 60605

John E. Murray  
(312) 275-0338  
jmurray@rddlaw.net

OFFICE (312) 733-3950  
FACSIMILE (312) 733-3952  
www.rddlaw.net

December 1, 2010

### Via Facsimile & Email Delivery

Robert Vega  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Voice: (708) 202-2451  
Fax: (708) 202-2239

Dear Mr. Vega:

This letter follows our telephone discussion from today, December 1, 2010, in which you requested that we send you a supplemental response that addresses the applicable factors listed in 38 CFR § 14.804, factors you must consider when deciding to authorize disclosure of the testimony of VA personnel. You also indicated that you would attempt to work with us as to our request to briefly interview the three VA personnel listed below within our December 10, 2010 deadline. In addition, you requested that we attempt to further describe the exact nature of the testimony expected to be elicited from the VA personnel listed below. While we will make every attempt to do so, it is important to understand that the vast majority of the VA personnel listed below were first identified by Plaintiff's counsel and we have provided virtually verbatim descriptions of their expected testimony based on Plaintiff's disclosures. That is precisely the reason for which we seek to depose and/or interview these persons: to discover their knowledge of relevant facts and to ascertain the nature of their expected testimony for trial. We also expect that the scope of the testimony elicited from the VA personnel listed will not go beyond those subjects discussed below.

### **Response to Relevant 38 CFR § 14.804 Factors:**

*(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning serving the Nation's veteran population;*

- We continue to believe that – through our much abbreviated request to take only three depositions and to briefly interview three current VA personnel – spending a

relatively small amount of time at this stage of the litigation will greatly conserve the time of VA personnel. For example, several or perhaps many of the VA personnel listed below may have little or no personal knowledge of Plaintiff's termination on January 18, 2007, and thus their cooperation would be limited or no longer be required. In addition, as the VA personnel listed below are current VA employees, we cannot obtain their testimony from any other source other than to request it from your office. However, we cannot arrive at that conclusion until we receive an opportunity to depose and/or briefly interview these persons.

*(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;*

- Our much abbreviated requests will neither unduly burden nor prejudice the VA. We have also significantly pared down our initial request to limit the burden on the VA. In this spirit, we will consider conducting the three depositions via telephone. However, and of course with the exception of Mr. Piper who on information and belief resides in New York, it would be more efficient to conduct the depositions of Mr. Joiner and Ms. Hinton in-person at the Hines VA, as both of those depositions could be conducted and concluded in one morning session.

*(e) Whether the testimony or production of records, including release in camera, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;*

- Obtaining the deposition testimony and/or being able to briefly interview VA personnel who may have personal knowledge of the events as they took place surrounding Plaintiff's termination on January 18, 2007 is vital to defending against Plaintiff's claims for defamation, false light, and intentional infliction of emotional distress. The court has set a deadline for the parties to obtain this information by December 10, 2010, and it is both necessary and appropriate that our much abbreviated requests be completed by that date.

*(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;*

- Granting our much abbreviated request for three depositions and three brief interviews, of which Plaintiff would be entitled to appear at said depositions and otherwise learn of the witness's recollections from their interviews, would not result in the VA or the Federal government favoring one litigant over another. Moreover, the VA could grant both sides equal access.

*(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;*

- Whatever recollections or opinions obtained through the three requested depositions and interviews could not reasonably be expected to result in the appearance of the VA endorsing a position advocated by any of the parties to this litigation. These six VA personnel are just a few witnesses; several other disclosed witnesses are non-VA personnel and were so as of January 18, 2007.

*(k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or federal policy;*

- We fully recognize that the VA desires to keep its policies separate from the personal opinions of its employees. In recognizing the VA's concerns in this area, we presented our much abbreviated requests so as to minimize any possibility of misconstruction.

*(l) The need to minimize VA's possible involvement in issues unrelated to its mission;*

- We fully recognize that the VA desires to keep its involvement focused only on those issues related to its mission. In recognizing the VA's concerns in this area, we presented our much abbreviated requests so as to minimize any possibility of misconstruction.

*(m) Whether the demand or request is within the authority of the party making it;*

- The three VA personnel whose depositions we seek have been served through you at your office on behalf of my clients, which are authorized to conduct discovery in connection with the lawsuit under the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure.

*(n) Whether the demand or request is sufficiently specific to be answered;*

- Including this correspondence, we have now sent your office three letters specifying the nature of our requests based on the information currently in our position. Please keep in mind that, as it relates to our much abbreviated request contained herein, the vast majority of the VA personnel listed below were first identified by Plaintiff's counsel and we have merely given verbatim descriptions of their expected testimony based on Plaintiff's initial identification. We have given our best efforts to specifically tailor the request so that your office can respond in an expeditious manner.

**VA Personnel to be Deposed:**

- Dustin Joiner – Upon information and belief, Mr. Joiner is a current VA employee who will testify regarding any personal knowledge he has relating to Cynowa’s termination and various employees’ reactions relating thereto.
  - The current availabilities for us and Plaintiff’s counsel is December 6<sup>th</sup> (morning), 7<sup>th</sup> (in the morning and early afternoon) and 10<sup>th</sup>. We are currently in the process of scheduling a separate deposition for December 7<sup>th</sup> in the late afternoon. Please inform us as to the availabilities for all three VA personnel to be deposed from now until December 10<sup>th</sup> so that we can make all efforts to accommodate their availabilities.
- Michelle Hinton – Upon information and belief, Ms. Hinton is a current VA employee and was so as of the date of Cynowa’s termination. Ms. Hinton is expected to have personal knowledge concerning Cynowa’s claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa’s termination.
  - The current availabilities for us and Plaintiff’s counsel is December 6<sup>th</sup> (morning), 7<sup>th</sup> (in the morning and early afternoon) and 10<sup>th</sup>. We are currently in the process of scheduling a separate deposition for December 7<sup>th</sup> in the late afternoon. Please inform us as to the availabilities for all three VA personnel to be deposed from now until December 10<sup>th</sup> so that we can make all efforts to accommodate their availabilities.
- Neil Piper – Upon information and belief, Mr. Piper is a current VA employee located in New York who has been named by Cynowa as a fact and independent expert witness. Mr. Piper is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS.NET contract for the Hines VA. Mr. Piper is also expected to have personal knowledge concerning the validity of various allegations made in our clients’ counterclaims as well as information concerning the character of Lisa Wolford and other CSSS.NET management.
  - Our preference would be to have Mr. Piper telephonically deposed on either December 6<sup>th</sup>, 7<sup>th</sup> (in the morning and early afternoon), or 10<sup>th</sup>. We are currently in the process of scheduling a separate deposition for December 7<sup>th</sup> in the late afternoon. Please inform us as to the availabilities\* for all three VA personnel to be deposed from now until December 10<sup>th</sup> so that we can make all efforts to accommodate their availabilities.

**VA Personnel to be Briefly Interviewed:**

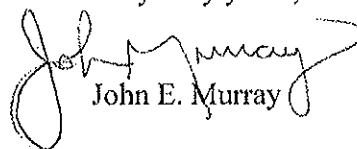
- Linda Dunlap – Upon information and belief, Ms. Dunlap currently serves as a Senior Adjudicator at the VA Security and Investigation Center in North Little Rock, Texas. We intend to call Ms. Dunlap as an independent expert witness in

the area of federal security access, public trust eligibility, and background investigation. Ms. Dunlap is expected to give her opinion regarding Cynowa's alleged damages in light of her experience with federal security access, public trust eligibility, and background investigation, and upon review of Cynowa's personnel file.

- We plan to name Ms. Dunlap as an independent expert witness in the area of federal employment and security clearance. In that respect, we would like to speak with her next week for the purposes of ascertaining her availability for deposition in the future as well as her opinions for our eventual expert disclosures which must be served and filed no later than December 16, 2010.
- Bunty Kothari – Upon information and belief, Mr. Kothari is a current VA employee and was so as of the date of Cynowa's termination. Mr. Kothari is expected to have personal knowledge regarding Cynowa's claims, his behavior, characteristics, conduct and alleged damages and regarding the circumstances of Cynowa's termination and regarding communications with and about Cynowa.
  - We would like to speak with Mr. Kothari as soon as possible in order to ascertain the extent of his personal knowledge should he be called as a witness at trial.
- Maria Millan – Upon information and belief, Ms. Millan was employed by Nortel Government Solutions as of the date of Cynowa's termination. Ms. Millan is believed to be a current VA employee who is expected to have personal knowledge concerning Cynowa's claims, behavior, characteristics, conduct and alleged damages surrounding Cynowa's termination. As Ms. Millan was not believed to be a VA employee as of January 18, 2007, we are operating under the assumption that we may contact her independently of the VA in the same fashion as Michael Cronin, Noel Flanagan, and Tushar Engregi.

Thank you very much for your prompt consideration. As discussed during our telephone conversation today, I look forward to hearing your final determination by Friday, December 3, 2010, so that in the event of a denial of our requests we can seek appropriate relief from the courts while still working within the timeframe of our December 10, 2010 deadline.

Very truly yours,

  
John E. Murray



DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239

December 3, 2010

**VIA Fax and First Class Mail**

John Murray  
Rachlis Durham Duff & Adler, L.L.C.  
542 South Dearborn Street  
Suite 900  
Chicago, Illinois 60605

**RE: Request for Interview/Deposition of Witnesses in the case of: Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division, Case No. 08 L 403.**

Mr. Murray:

This letter is sent in response to your most recent letter date December 1, 2010. Although correspondence has been exchanged and we have discussed the issues in this case via telephone, your December 1, 2010 letter is your first letter that discusses the elements described to you in 38 CFR 14.800 -- 14.810.

Please note that your letter dated December 1, 2010 lacks consideration of several elements described by 38 CFR § 14.804, namely (b), (c), (f), (g) and (h). These should be discussed in any future request.

After thorough consideration, your request for the depositions of Mr. Dustin Joiner, Ms. Michelle Hinton and Mr. Neil Piper are denied. The detail you have provided regarding the nature of the testimony that you wish to elicit and the relevance of the testimony suggests that you have identified these individuals solely because they were identified by the Plaintiff. This is not a narrowly tailored request for information that attempts to be as non-intrusive as possible. It is a fishing expedition. While more detail is provided about Mr. Piper, your request is for expert testimony about the VA's hiring process. You may not subpoena VA employees to serve as expert witnesses. More important, this request possibly interferes in the work of the VA and you fail to address this concern.

Nevertheless, this office will strongly consider a request to interview Mr. Joiner and Ms. Hinton via telephone. Such a request would be better tailored to ascertaining the value of any testimony they may give without the intrusiveness caused by a deposition.

Your request to interview Ms. Dunlap is also denied because it is a request for expert testimony. The VA will not provide expert witnesses to either party for this case. You will need to obtain this type of information through outside experts.

Your request to interview Mr. Bunty Kothari is tentatively accepted, provided you describe what type of information you expect to elicit from Mr. Kothari. At a bare minimum, you need to describe what you know of Mr. Kothari's position or proximity to events that leads you to want to question him in this case. Another caveat has to do with Mr. Kothari's work schedule. He may not be available before December 10, 2010.

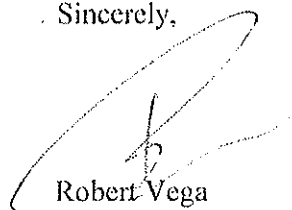
I am attempting to obtain confirmation of Ms. Millan's employment status and will respond to your request as soon as I receive an answer. In the interim, please provide additional detail. As with Mr. Kothari, you need to describe what you know of Ms. Millan's position or proximity to events that leads you to want to question her in this case.

In sum, we hope to be able to provide as complete disclosure as federal regulations permit. In the event you are not satisfied with the administrative decision of the Department of Veterans Affairs, sovereign immunity precludes a state court from compelling compliance with a subpoena. Instead, judicial review of the decision is available exclusively by way of a suit in federal court under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* See *Edwards v. U.S. Department of Justice*, 43 F.3d 312 (7th Cir. 1994).

One last issue: I was informed by Mr. Noel Flanagan on December 1, 2010 that he was served with a subpoena while at work. In addition, it appears the process server failed to follow proper procedure on the Hines VA Campus by visiting the Hines Police Station and getting clearance to be on this campus for non-VA related activity. Please ensure that your future process servers comply with VA policy before they attempt to serve any pleadings.

If you have any questions, please do not hesitate to contact me at (708) 202-2451.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Vega', with a large, sweeping flourish above the name.

Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

cc: Dustin Joiner  
Michelle Hinton  
Neil Piper  
Linda Dunlap  
Bunty Kothari  
Maria Millan





LAW OFFICE OF THERESA V. JOHNSON

FAXED

DEC 08 2010

**Theresa V. Johnson**

**Attorney at Law**

By: TJG Time: 7:26pm

Law Office of Theresa V. Johnson  
200 East Chicago Ave. Suite 200  
Westmont, Illinois 60559  
Tel: (630) 321-1330 Fax: (630) 321-1185  
theresavjohnson@prodigy.net

***TOUHY REQUEST***

December 8, 2010

**Letter Sent by Facsimile and U.S. Standard Mail**

Mr. Robert Vega  
Staff Attorney  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Phone: (708) 202-2451  
Fax: (708) 202-2239

Dear Attorney Vega,

**Re: Christopher S. Cynowa v. CSSS, Inc., Lisa Wolford and Bill Slater  
in the Circuit Court of Cook County, Law Division, Case No.: 08 L 403**  
**Subject: Touhy Request Letter - Request to Interview VA Employees and for  
Employees to be Permitted to Serve as Witnesses at Trial in 2011.**

This letter is written in follow-up to email sent to you yesterday, December 7, 2010 and your response email that I received today, December 8, 2010 (see **Attachment A** email string). I tried my best to get this Touhy Request Letter to you before 5:00 p.m., but compliance with all fifteen factors pursuant to 38 CFR § 14.804 took much more time than I had hoped – it took at least 7 hours – not including the time to read all the various laws cited in your letters to Defendants and to me. This was a lot of work and I have tried my best to comply with the government's requirements.

*As you know, our deposition cut-off in this case is this Friday, December 10, 2010.* There is also a court hearing in this matter on this Friday, December 10, 2010, at which time Plaintiff and Defendants expect the presiding Judge to set the trial date in early 2011. I can interview any of these three witnesses at any time on Thursday, December 9, 2010 and on Friday, December 10,

2010, excluding 10:00 a.m. to 11:00 a.m. (i.e., the court call time). If anyone is willing and/or able to speak with me after 5:00 p.m. or very early in the morning (before 10:00 a.m.), I am available to do that as well.

Given the short time frame remaining, I request no more than two hours of VA employees time to interview three witnesses by telephone with you listening in. If anyone is willing and/or able to speak with me after 5:00 p.m. or very early in the morning (before 10:00 a.m.), I am available to do that as well.

### PLAINTIFF'S REQUEST FOR INTERVIEW THREE VA WITNESSES

Since my email yesterday, my client, Christopher Cynowa (a/k/a Plaintiff or "Chris"), has narrowed our original intended VA witness list to these three persons: **Bunty Kothari, Randy Padal** and **Bob Adrowski**. We respectfully request a *telephone interview* with these three VA employees. *We also respectfully request that these three witnesses be allowed to appear as witnesses at trial in 2011.* There is a court hearing in this matter on this Friday, December 10, 2010, at which time Plaintiff and Defendants expect the presiding Judge to set the trial date in early 2011. I can interview any of these three witnesses at any time on Thursday, December 9, 2010 and on December 10, 2010, excluding 10:00 a.m. to 11:00 a.m. (there is a court call at this time to set the trial date for this case).

As stated in my email yesterday, Plaintiff also requests to interview any VA employee for whom the VA grants Defendants an interview or deposition. I ask that you notify me should such a grant be made in response to a request from Defendants.

### SPECIAL CONCERNS REGARDING BOB ADROWSKI

Regarding the discussion we had regarding Bob Adrowski, you have indicated that he currently works for the TSA, another federal agency and that it might be considerably more complicated for me to get permission to interview Officer Adrowski. I appreciate any assistance you could give me with regard to this matter. Also, there is the issue of Officer Adrowski's Police Incident Report. It is important to Plaintiff case that I have some way to establish that Police Incident Reports constitutes the VA police's business records. Officer Adrowski's live testimony at court can help establish that; however, does the VA have some other method to certify that the Police Report is a VA Police business record?

### EXPECTED TESTIMONY OF THE THREE WITNESSES

(1) **Bunty Kothari.** Mr. Kothari, on information and belief, sat near Chris's work cubicle, and knew Chris professionally and personally. He is expected to testify regarding what he knows about the work and personal behavior, traits, and characteristics of Chris and what he observed and heard on the day CSSS terminated Chris. Also, on information and belief, Mr. Kothari was present during part or all of the time that Chris was being terminated. He is expected to testify that Chris was not and is not a dangerous person, although Chris may be known as blunt and outspoken.

(2) **Randy Padal**. Mr. Padal worked with Chris from approximately August 2005 until January 18, 2007 (date CSSS terminated Chris) when Mr. Padal worked for FMI. He is expected to testify that Chris was an excellent worker for CSSS on the VA work projects, that in terms of Chris' work for the VA, that he did his job well, and that he (Padal) respected Chris's work ethic and customer service conduct, and that he offered to be a job reference for Chris after Chris was terminated. He is also expected to testify that Chris and he had many robust dialogues and differences of opinion regarding work procedures, but those robust discussions were professional in nature and not "confrontational" as in physically threatening. He is expected to testify that he did not view Chris as a physical threat or dangerous in the work environment. He may also testify to what he knows about Chris termination from CSSS. [Note: On information and belief, Mr. Padal was not a VA employee the day of Chris' termination, January 18, 2007. Please clarify Mr. Padal's status.]

(2) **Bob Adrowski** (former Hines Police Officer). Officer Adrowski is expected to testify that he was the officer standing by before CSSS'S termination of Christopher Cynowa. He is expected to testify regarding Bill Slater's statements to him which he (Adrowski) reported in the Hines Police Incident Report (please see *Plaintiff's Amended Verified Complaint, EXHIBIT E*, that I emailed to you on December 7, 2010), i.e., that Christopher Cynowa had (a) confrontations with the staff, (b) a temper, and (c) mentioned having an AK-47 assault rifle. He is also expected to testify consistent with his Police Incident Report. Officer Adrowski is also expected to describe the demeanor and behavior of Chris before, during and after termination and any discussion that he had with Chris during that time, as well as any comments made by Bill Slater and anyone during the entire termination events.

#### **POSSIBLE FOURTH WITNESS**

**Keeper of Records for Hines VA Police.** This person will testify that Officer Adrowski's Police Incident Report is a business record kept in the ordinary course of business by the Hines Police. I could ask the Judge if the VA Police keeper of records could testify telephonically – I believe it is possible. Also, is there a way that the Police Incident report can be stamped or certified as a business record so that testimony would not be necessary to establish it as a business record?

#### **COMPLIANCE WITH 38 CFR SECTION 14.804.**

I have reviewed each of 38 CFR 14.804 factors relative to Plaintiff's request for interviews with the three witnesses named above and the request that those witnesses be allowed to testify at trial in 2011. I find that the requested testimony or any relevant documents tendered by the government in support of or in lieu of testimony, does not interfere with or abrogate any factor/guideline set forth in 14.804. Plaintiff has set forth below, directly under a verbatim recitation below of each 14.804 factor (a) thorough (o), his specific address of the factor the government must consider relative to the witness/document request being made by Plaintiff. Plaintiff stipulates that the response to each of the factors applies to each VA witness that Plaintiff seeks to interview and/or call as witness as trial.

**APPLICATION FOR THE 38 CFR 14.804 FACTORS TO PLAINTIFF'S REQUEST TO INTERVIEW AND CALL AS WITNESS AT TRIAL BUNTY KOTHARI, RANDY PADAL AND BOB ADROWSKI.**

*Note: Plaintiff addresses in indented bolded statements each of the 14.804 factors directly below the cited fact.*

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning servicing the Nation's veteran population;

**Plaintiff requests a nominal amount of time, 15-30 minutes, for a telephone interview of each above named witnesses. The expense to the government of time and money is minimal compared with lengthy deposition away from the office.**

(b) How the testimony or production of records would assist VA in performing its statutory duties;

**Plaintiff does not comprehend the applicability of this factor; however, to the degree that the VA has regulations based on 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301 and seeks to enforce its policies regarding witness testimony and production of documents/information under CFR Section 14.800-14.810, the short interview (15-30 minutes) method, with the VA's attorney on the line during the interview, facilitates the ability of the VA to meet the guidelines for providing witnesses for a judicial proceeding.**

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

**The disclosure of testimony is necessary to prevent the injustice to Plaintiff who was accused by Defendants of allegedly being a danger and threat in the workplace. Defendants summoned VA police and provided false information that Plaintiff mentioned having an AK-47 assault rifle. This is a serious charge and this false charge actually could have endangered the lives of VA employees and/or the Plaintiff. Someone could have attacked the Plaintiff upon hearing that he allegedly had some type of gun, weapon or AK-47. Fortunately, the Plaintiff was able to leave the VA facility at Hines safely. The VA should want to not block the exposure of anyone who makes false charges against an employee or contractor working on VA's premises, especially when those types of claims could cause danger in the work place – it is equivalent to yelling "FIRE!" in a crowded theatre.**

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

**The request to have an oral interview for 15-30 minutes, followed up with a possible signed affidavit, and serving as witness at trial at Chicago Daley Center in 2011 is not unduly burdensome because the testimony is expected to be very short. Plaintiff's counsel agrees to request from the Judge that any VA witnesses be allowed to testify at a specific scheduled time so as to cause as little disruption of the VA work place as possible.**

(e) Whether the testimony or production of records, including release *in camera*, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

**Any documents that could be produced by the VA, that would address the testimony requested any Plaintiff would be about and/or concerning the Plaintiff and/or about Plaintiff being terminated, thus they would not be, or would not likely be, the subject of any privilege, because the VA is not a party to this lawsuit.**

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute's prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

**Plaintiff seeks no confidential records, except those records pertaining to his character, behavior and discharge from CSSS, Inc. and/or related to Defendants Lisa Wolford and Bill Slater, employees of Defendant CSSS, Inc. that would be given by the VA in support of testimony or in lieu of testimony related to Chris' CSSS employment and discharge from employment.**

(g) Whether the testimony or production of records, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

**Plaintiff seeks no testimony from VA personnel or VA documents in which a privilege would be claimed under the Illinois Rules of Civil Procedure, the Illinois Supreme Court rules, or any U.S. Federal rule.**

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.

**Plaintiff seeks no testimony from VA personnel or VA documents that have any impact on the business of the VA as it pertains to any of the items iterated in (h) above.**

- (i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;

**Plaintiff requests testimony regarding facts pertaining to the work/employment and personal behavior of Plaintiff and any facts known about Plaintiff's termination from Defendant CSSS, Inc., by and through its employees, Defendants Lisa Wolford and Bill Slater. Plaintiff seeks no testimony that would result in the appearance that the VA or federal government favors either Plaintiff or Defendant in their respective roles as litigants.**

- (j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;

**Plaintiff requests testimony regarding facts pertaining to the work and personal habits behavior of Plaintiff and any facts known about Plaintiff's termination from Defendant CSSS, Inc., by and through its employees, Defendants Lisa Wolford and Bill Slater. Plaintiff seeks no testimony that would result in the appearance that the VA or federal government is endorsing and supporting a position advocated by a party to the proceeding.**

- (k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy.

**Plaintiff requests testimony regarding facts pertaining to the work and personal habits and behavior of Plaintiff and any facts known about Plaintiff's termination from Defendant CSSS, Inc., by and through its employees, Defendants Lisa Wolford and Bill Slater. Since the VA was not the party that terminated or defamed Plaintiff Christopher Cynowa, no claim has been or will be made against the VA or federal government pertaining to this lawsuit. Since no accusation is made against any VA or other federal government employee, and federal policy is not at issue, there is no basis upon which the public would reasonably be able to construe from the testimony and/or any VA documents that the government might choose to tender in lieu of or in support of testimony, that the same represents a variance between VA personnel and the VA or Federal policy.**

- (l) The need to minimize VA's possible involvement in issues unrelated to its mission;

**Plaintiff requests only the testimony of very few VA employees and for only very short periods of time. Plaintiff does not seek to depose any VA employee. Plaintiff seeks only testimony and information concerning himself during his employment**

with CSSS and concerning his termination from CSSS – not concerning any veterans.

(m) Whether the demand or request is within the authority of the party making it;

**I, Theresa V. Johnson, am the attorney representing the Plaintiff in the case of Christopher S. Cynowa v. CSSS, Lisa Wolford and Bill Slater, Cook County Illinois Case No. 2008 L 000430. I have an appearance on file in this case in the Circuit Court of Cook County. My Cook County Attorney ID No. is: 37363.**

(n) Whether the demand or request is sufficiently specific to be answered;

**The VA employees that Plaintiff requests to interview and requests that they appear as witnesses at trial in 2011 are identified on pages 1-3 of this letter. The testimony that Plaintiff expects to obtain from these witnesses is described specifically above on pages 2-3.**

(o) Other matters or concerns presented for consideration in making the decision.

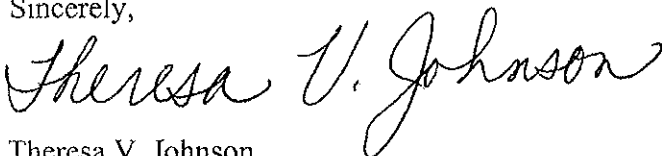
**Plaintiff Christopher Cynowa lost his job and reputation based on false allegations made by Defendants that he represented a danger in the work place and this same information was reported to the VA. Plaintiff is entitled under the Constitution of the United States to properly redress the ills inflicted upon him by other citizens in a U.S. court of law. Plaintiff requests the cooperation and reasonable assistance of the U.S. Veterans Affairs federal government agency in carrying out his rights as a U.S. citizen to litigate his claims in the courts of the United States.**

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

Please contact me immediately if there is any additional information that you need from me to meet the various requirements to obtain interview with VA witnesses and all them as witnesses at trial.

As you are aware, time is of the essence for us. Thank you for your consideration of our requests.

Sincerely,



Theresa V. Johnson

Copy to:  
Christopher S. Cynowa

**From:** Vega, Robert M. (Robert.Vega@va.gov)  
**To:** theresavjohnson@prodigy.net;  
**Date:** Wed, December 8, 2010 1:06:26 PM  
**Cc:**  
**Subject:** RE: Dustin Joiner and Bunty Kothari Fw: Plaintiff's Amended Complaint Re: Touhy Request

Ms. Johnson,

This email is sent to confirm that, as of this date, you have failed to submit a request that discusses the Touhy issues I described for you in my letter on 10/7/10.

This and your prior email do not qualify as an actual submission as they wholly fail to discuss any of the elements of 38 CFR 14.800 -- 14.810 identified in my letter.

You have indicated that you will send a responsive request today.

Sincerely,

**Robert Vega**

Staff Attorney  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Voice: (708) 202-2451  
FAX: (708) 202-2239

**From:** THERESA JOHNSON [mailto:theresavjohnson@prodigy.net]  
**Sent:** Tuesday, December 07, 2010 12:03 PM  
**To:** Vega, Robert M.  
**Cc:** Theresa Johnson  
**Subject:** Dustin Joiner and Bunty Kothari Fw: Plaintiff's Amended Complaint Re: Touhy Request

Dear Attorney Vega,

I inadvertently omitted the 2 VA employees named in the upper left corner of your letter of November 30, 2010: Dustin Joiner and Bunty Kothari. These names should follow after Michelle Hinton's name as persons I request to interview and call as witnesses at trial. Thank you.

Sincerely,

Theresa V. Johnson  
Attorney at Law  
Law Office of Theresa V. Johnson  
200 East Chicago Ave. Suite 200  
Westmont, IL 60559  
Tel.: (630) 321-1330  
Fax: (630) 321-1185

Attachment A

----- Forwarded Message -----

**From:** THERESA JOHNSON <theresavjohnson@prodigy.net>



To: "Vega, Robert M." <Robert.Vega@va.gov>  
Cc: Theresa Johnson <theresavjohnson@prodigy.net>  
Sent: Tue, December 7, 2010 11:40:27 AM  
Subject: Plaintiff's Amended Complaint Re: Touhy Request

Dear Attorney Vega,

In partial compliance with the Touhy letter, attached please find **Plaintiff's Amended Verified Complaint**. Please be advised that as of yesterday, December 6, 2010, Plaintiff claims against Noel Flanagan were dismissed. Based on your letter dated November 30, 2010, to me and Defendants counsel, John Murray, I *assume that Defendants may have already given you the Complaint or other information that has apprised you of the issues in the case*. I apologize if this information is redundant to what you already know. As I have stated in prior communications, Plaintiff has no claims against the VA or anyone working at the VA.

I hereby request would also like to approximately 1/2 hour interviews **Officer Bob Adrowski** and **Randy Padel** and **Ron Klavohn** on any of the following dates: December 8, 9, 10. I have identified these persons as trial witnesses in my 213 discovery disclosures. I beg your permission to call these persons as witnesses at trial.

As you noted in your November 30, 2010 letter, we have at court date on December 10, 2010 (around 10:00 a.m.) on which date we will be setting the trial date. Also Friday, **December 10, 2010, is the last day to depose witnesses**. I request only interviews due to the costs of depositions. The Defendants have the significant resources for depositions; however, plaintiff do not. I will send my request also by fax, which will include a description of expected testimony.

I have asked Defendants counsel, John Murray, for copies of their communications with you regarding their request to interview or depose above individuals referenced in your letter; however, to date they have not tendered it. I asked John Murray if he provided an affidavit to you regarding testimony of any witnesses and he indicated that he did not. My understanding from you was that an affidavit was required.

On information and belief, per your letter dated November 30, 2010, you have permitted Defendants to interview with the following VA employees:

**Jerry Taylor**  
**Linda Dunlap**  
**Kimberley Griffin**  
**Ron Klavohn** (same individual as named above)  
**Michelle Hinton**

I request an interview with **these same individuals** named above regarding the same matters, if any identified by defendants. I request an interview time on of 1/2 hour each on December 8, 9, or 10th. If Defendants are interviewing any of these persons during this week, on the 8th, 9th, or 10th, I request an interview them immediately before or after Defendants (i.e. same approximate time slot). I believe this approach would likely cause the least amount of disruption of the VA work flow. If Defendants are not interviewing the above named individuals, I will am available any time on those days, with except during the court hour of 10:00 a.m. December 10th and part of the morning on December 9th (I must take a relative to the doctor).

I will send my request also by fax, which will include a description of expected testimony.

Sincerely,

Theresa V. Johnson  
Attorney at Law  
Law Office of Theresa V. Johnson  
200 East Chicago Ave. Suite 200  
Westmont, IL 60559  
Tel.: (630) 321-1330  
Fax: (630) 321-1185

---

**From:** "Vega, Robert M." <Robert.Vega@va.gov>  
**To:** theresavjohnson@prodigy.net  
**Sent:** Mon, November 8, 2010 10:06:13 AM  
**Subject:** Touhy Request

As requested:

<<...>>

## Robert Vega

Staff Attorney  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Voice: (708) 202-2451  
FAX: (708) 202-2239

TRANSMISSION VERIFICATION REPORT

TIME : 12/08/2010 20:24  
NAME :  
FAX :  
TEL :  
SER.# : B6J130686

*Cynowa V. CSS9*

*To Robert VA*

*Veterans Affairs*

*Re: Sonby Letter*

- Buntty Kothari*
- Bob Androwski*
- Randy Padal*

DATE, TIME	12/08 20:22
FAX NO./NAME	17082022239
DURATION	00:02:08
PAGE(S)	11
RESULT	OK
MODE	STANDARD ECM



**DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
P.O. BOX 1427  
HINES, ILLINOIS 60141  
TELEPHONE: (708) 202-2216  
FACSIMILE: (708) 202-2239**

January 19, 2011

**VIA Fax and First Class Mail**

Theresa V. Johnson  
Law Office of Theresa V. Johnson  
200 East Chicago Avenue  
Suite 200  
Westmont, Illinois 60559

**RE: Request for Interview/Deposition of Witnesses in the case of: Christopher S. Cynowa v. CSSS, Inc., in the Circuit Court Cook County, Illinois, Law Division, Case No. 08 L 403.**

Ms. Johnson:

This letter is sent in response to your letter dated December 8, 2010, and your additional letter dated January 5, 2011. Although correspondence has been exchanged and we have discussed the issues in this case via telephone, your December 8, 2010 letter is your first letter that discusses the elements described to you in 38 CFR 14.800 – 14.810.

After thorough consideration, your request for the appearance at trial of Bunty Kothari, Jerry Taylor and Neil Piper is denied. In line with the elements identified by 14.804(a), (d), (i) and (l), a request to have VA employees appear at trial fails to conserve the time of VA personnel to conduct their official duties. You may conduct a 15 minute telephone conversation with Mr. Kothari, to be monitored by this office. A decision regarding the evidence deposition of Mr. Kothari and Mr. Piper will also be considered favorably. Please note that Mr. Piper is located at a different facility and so a telephone interview will involve another Office of Regional Counsel. So too any evidence deposition request.

Mr. Taylor may not be interviewed because you fail to provide details regarding his expected testimony regarding facts. Insofar as you want to discuss the VA personnel process with Mr. Taylor or Mr. Piper, this request is denied. This type of expert testimony must be obtained through an expert and not through fact witnesses.

Mr. Padal was not an employee of the VA during the time period in question. You may contact him outside of the VA with your discovery request.

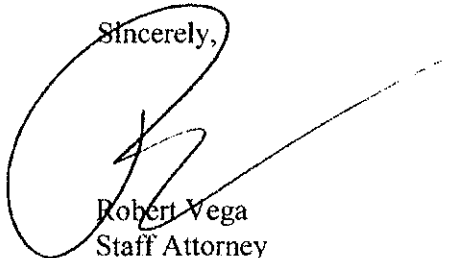
Mr. Adrowski is no longer with the VA, as we've discussed, and you have acknowledged in your request. Per 38 CFR § 14.800(b), we expect to represent Mr. Adrowski in any discovery request regarding his employment with the VA. After discussing this issue with Mr. Adrowski we have agreed the best course is for you to contact his current employer with your discovery request. Please include this office on any communications with Mr. Adrowski or his employer.

You did request a certification from the Police Station at Hines VA of the authenticity of Mr. Adrowski's report. This request has been submitted to the Station. If they provide a certified copy of the report it will be forwarded to your office. If you have a copy of the report, please send it to my attention so that I can forward it to the proper parties at the Station.

In sum, we hope to be able to provide as complete disclosure as federal regulations permit. In the event you are not satisfied with the administrative decision of the Department of Veterans Affairs, sovereign immunity precludes a state court from compelling compliance with a subpoena. Instead, judicial review of the decision is available exclusively by way of a suit in federal court under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* See *Edwards v. U.S. Department of Justice*, 43 F.3d 312 (7th Cir. 1994).

If you have any questions, please do not hesitate to contact me at (708) 202-2451.

Sincerely,



Robert Vega  
Staff Attorney  
VA Chicago Regional Counsel

cc: Bunty Kothari  
Randy Padal  
Bob Adrowski  
Jerry Taylor  
Neil Piper



# Theresa V. Johnson

Attorney at Law

Law Office of Theresa V. Johnson  
200 East Chicago Ave. Suite 200  
Westmont, Illinois 60559  
Tel: (630) 321-1330 Fax: (630) 321-1185  
theresavjohnson@prodigy.net

## ***TOUHY REQUEST - SUPPLEMENT NO. 1***

January 5, 2011

### **Letter Sent by Facsimile and U.S. Standard Mail**

Mr. Robert Vega  
Staff Attorney  
Chicago Office of Regional Counsel  
Department of Veterans Affairs  
P.O. Box 1427  
Hines, IL 60141  
Phone: (708) 202-2451  
Fax: (708) 202-2239

Dear Attorney Vega,

**Re: Christopher S. Cynowa v. CSSS, Inc., Lisa Wolford and Bill Slater  
in the Circuit Court of Cook County, Law Division, Case No.: 08 L 403**

**Subject: Supplement to Touhy Request Letter - Request to Interview Additional VA  
Employees and for Additional Employees to be Permitted to Serve as  
Witnesses at Trial in 2011.**

This letter is written in follow-up to and in supplement to my letter to you dated December 8, 2010 and to our brief telephone conversation yesterday. This letter incorporates by reference the December 8, 2010 letter as if it were fully set forth herein.

***Please be advised that the cut-off date for all discovery in this case is January 13, 2011. The trial date is March 14, 2011.***

### **PLAINTIFF'S REQUEST FOR INTERVIEW TWO ADDITIONAL VA WITNESSES**

In addition to interviews and request for witnesses at trial requested in my December 8, 2011 letter, i.e., **Bunty Kothari, Randy Padal and Bob Adrowski.**, my client and I respectfully

request a *telephone interview* with two additional VA employees: **Jerry Taylor** and **Neil Piper**. *We also respectfully request that these two witnesses, be allowed to appear as witnesses at trial during the week of March 14, 2011:*

As stated in my December 8, 2011 letter, Plaintiff also requests to interview any VA employee for whom the VA grants Defendants an interview or deposition. I ask that you notify me should such a grant be made in response to a request from Defendants CSSS or their attorney law firm, Rachlis Durham Duff & Adler.

As we have discussed in prior conversations, if you determine to deny Mr. Cynowa the right to call VA employees as witnesses at trial, we will need to seek relief from the Federal Courts. Accordingly, I respectfully request that you render your decision regarding whether the VA will permit Mr. Cynowa to call the afore-named witnesses (from the December 8, 2010 letter and this letter of January 5, 2011) by tomorrow, January 6, 2011. *Also, as you have done in the past, kindly refer me to the appropriate government regulations that I need to follow to seek leave from a federal Judge to obtain the witness testimony of VA/government employees at trial.*

I can be very flexible on interview times with the witnesses. I will rearrange my schedule and make myself available all day Thursday, January 6, most of January 7, 2011 and January 10-13, 2011.

I request no more than 40 minutes of VA employees time to interview these additional witnesses by telephone with you listening in. If any VA employee witness is willing and/or able to speak with me after 5:00 p.m. or very early in the morning (before 10:00 a.m.), I am available to do that as well.

#### **SPECIAL CONCERNS REGARDING BOB ADROWSKI**

As stated in the October 8, 2010 letter, regarding the discussion we had regarding Bob Adrowski, you have indicated that he currently works for the TSA, another federal agency and that it might be considerably more complicated for me to get permission to interview Officer Adrowski. I appreciate any assistance you could give me with regard to this matter. Also, there is the issue of Officer Adrowski's Police Incident Report. It is important to Plaintiff case that I have some way to establish that Police Incident Reports constitutes the VA police's business records. Officer Adrowski's live testimony at court can help establish that; however, does the VA have some other method to certify that the Police Report is a VA Police business record?

#### **EXPECTED TESTIMONY OF THE TWO ADDITIONAL WITNESSES**

**(1) Jerry Taylor.** Mr. Taylor is a VA employee who is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees from the CSSS, Inc. contract for the VA at Hines hospital. Further, Mr. Taylor is believed to have personal knowledge concerning the validity of allegations made in Defendant's Counterclaim and as well information concerning the character of Lisa Wolford and other CSSS, Inc. management (or prior management), to the extent such information is relevant to the

prosecution of Plaintiff's Complaint and to the defense of Defendant's prior filed Counterclaim. Mr. Taylor is expected to testify regarding the aforementioned matters, in particular what he what he heard, was tools or knows regarding Mr. Cynowa's termination from CSSS.

**(2) Neil Piper.** Mr. Piper's e-mail is [neil.piper@va.gov](mailto:neil.piper@va.gov) and he is a VA employee who is believed to have personal knowledge concerning the procedures for and other relevant information concerning the hiring of VA employees who previously worked on the CSSS, Inc. contract for the VA at Hines hospital. Further, Mr. Piper is believed to have personal knowledge concerning the validity of allegations made in Defendant's Counterclaim and as well information concerning the character of Lisa Wolford and other CSSS, Inc. management to the extent such information is relevant to the prosecution of Plaintiff's Complaint and the defense of Defendant's Counterclaim. Mr. Piper is believed to have spoken with and exchanged emails with CSS managers/employees regarding the reasons Chris Cynowa was terminated from CSSS, exchanged emails from with CSS managers/employees and that Chris was allegedly dangerous and/or possessed some form of a weapon/ gun/AK-47.

Please contact me immediately if there is any additional information that you need from me to meet the various requirements to obtain interview with VA witnesses and all them as witnesses at trial.

As you are aware, time is of the essence for us. Thank you for your consideration of our requests.

Sincerely,

Theresa V. Johnson

Copy to:  
Christopher S. Cynowa